

Summary of papers written by Judicial Officers on the subject:

“LAW OF PRECEDENT”

Introduction :-

A precedent is a statement of law found in the decision of a superior Court, which decision has to be followed by that court and by the courts inferior to it. Precedent is a previous decision upon which the judges have to follow the past decisions carefully in the cases before them as a guide for all present or future decisions.

In other words, ‘Judicial Precedent’ means a judgment of a Court of law cited as an authority for deciding a similar set of facts, a case which serves as authority for the legal principle embodied in its decision. A judicial precedent is a decision of the Court used as a source for future decision making.

Meaning :-

A precedent is a statement of law found in decision of a Superior Court. Though law making is the work of the legislature, Judges make law through the precedent.

Inferior courts must follow such laws. Decisions based on a question of law are precedents. Decisions based on question of facts are not precedents. Judges must follow the binding decisions of Superior or the same court. Following previous binding decisions brings uniformity in decision making, not following would result in confusion. It is well settled that Article 141 of the Constitution empowers the Supreme Court to declare the law and not to enact the law, which essentially is the function of the legislature. To declare the law means to interpret the law. This interpretation of law is binding on all the Courts in India. This is called as precedent.

Definition of Precedent :-

The term precedent is not defined anywhere. In general English it means, A previous instance or case which is, or may be taken as an example of rule for subsequent cases, or by which some similar act or circumstances may be supported or justified”.

According to salmond :-

In loose sense it includes merely reported case law which may be cited and followed by courts.

In strict sense, that case law which not only has great binding authority but must also be followed.

In all precedents are authority of past decisions for future cases. It must be reported, cited and followed by courts.

Object :-

The main object of doctrine of precedent is that the law of the land should be clear, certain & consistent so that the Courts shall follow it without any hesitation. In **Union of India Vs. Raghubir Singh (AIR 1989 SC 1933)** it has been held

“The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of

daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a Court.”

Origin of Precedent :-

Precedent originates from the doctrine of stare decisis. Stare decisis means to abide by the decisions. The doctrine of stare decisis brings certainty and conformity to the decisions of the court and to law.

Stare decisis :-

The maxim explains the doctrine of stare decisis. When court settles an issue, a conflict or a controversy between parties it becomes the law on those issues and conflicts. Such a decision is a precedent. A precedent is a statement of law found in decision of the superior court. Such decisions are binding to that court and the inferior courts have to follow. The cases based on similar set of facts decided by a court may arise in any future case. Following previous decisions in similar future cases, the court may save time and avoid conflicting decisions, bringing uniformity to law. The court settles a question of law or of fact, it is best to stand by

that decision while adjudicating similar cases in the future. Before deciding a case, the Judges look into previously decided cases of similar nature by their own court or by superior courts. They shall apply them on the facts or case before them and decide accordingly.

In Indian legal system, the judges take guidance from previous decisions on the point, and rely upon them. The decisions of Apex Court and High courts are compiled and published in reports. These reports are considered to be valuable from the legal literature perspective. Those decisions are very efficient in deciding cases of subsequent cases of similar nature. They are called as Judicial Precedents. A decision is an authority for what it decides.

The ratio in the decision is its essence. The reason and principles on which a court decides a case forms a precedent. A Judicial decision has a binding force for subsequent cases. However, the whole Judgment is not binding in future cases.

In the case of *Commissioner of Income Tax -vs- M/s Sun Engineering Works Private Limited AIR 1993, SC 43*, the Hon'ble Apex Court held that, “while applying the

decision to a later cases, the court must carefully try to ascertain the true principle laid down by the decision of the Supreme Court and not to pick out words or sentences from the Judgment divorced from the context of question under consideration by the court to support their reasoning.”

It is very clear that, only those statements in an earlier decision which may be said to constitute the ratio decidendi of that case are binding. Statements which are not essential or necessary for deciding the later cases, such non authoritative statements are called as obiter dicta.

Ratio Decidendi :-

Ratio decidendi means the reason or the principle upon which the case has been decided by the higher Courts and only this much is binding on the subordinate courts while applying the earlier decision. The ratio decidendi can be ascertained by an analysis of facts. In the case **Krishna Kumar vs. Union of India and others, (1990) 4 SCC 207** it has been observed the hon'ble supreme court that:

“In other words, the enunciation of the reason or principle upon which a question before a

court has been decided is alone binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it.”

Obiter Dicta :-

Obiter Dicta means all that is said by the court by the way or the statement of law which go beyond the requirements of the particular case and which laid down rule

i.e. irrelevant or unnecessary for the purpose in hand are called obiter dicta. These dicta have the force of persuasive precedents only. The judges are not bound to follow them.

However, obiter dictum of Their Lordships of the hon'ble Supreme Court is entitled to highest respect and is binding on all the Courts of the country. It is observed in case of "Mohandas Issardas and others Vs. A.N. Sattanathan & Others, A.I.R. 1995 (Bom.) 113" that:

"the court in India should accept as an authoritative pronouncement on the particular aspect of law and treat that pronouncement as binding. The Supreme court has now taken the place of privy council and we would like to say unhesitatingly that we must show the same respect for the 'obiter dicta' of the Supreme Court that we did for those of privy council. The Supreme Court is the highest judicial tribunal in India today and it is as much necessary as in the interest of judicial uniformity and judicial discipline that all the

High Courts must accept as binding the 'obiter dicta' of the Supreme Court in the same spirit as the High Courts accepted the 'obiter dicta' of the privy council."

Sub Silentio :-

A decision is sub silentio if an important issue ignored or was not argued by counsel. That point or issue may turn the decision of the court. Such decision is not an authority on the point which is not fully argued is sub silentio.

When Precedents cease to apply :-

There are three main criteria to oversight the previous precedents as follows ;-

- I] Overruling
- II] Reversing
- III] Distinguishing

I] **Overruling** :-

This is where a court higher in the hierarchy departs from a decision made in a lower court. Then the previous decision is no longer binding.

II] **Reversing** :-

This is where a higher court departs from the decision of the lower court on appeal.

III] **Distinguishing** :-

This is where the facts of the case are deemed sufficiently different so that the previous case is no longer binding.

Order by consent of the parties :-

The court can pass orders by consent of the parties. Those orders are not adjudication of the rights and liabilities of the parties. That decision does not lay down any principle. Those orders are not precedent.

Whether judgments of Hon'ble High Court are binding as precedents :-

Like Article 141 empowering the Supreme Court to declare the law and making its precedents binding on all the Courts, there is no specific provision directly empowering the High Court to declare the law and making its decisions binding on its subordinate Courts. But it is well settled that the Courts from a State subordinate to a High Court from that State are bound by its decisions. Question is what is the basis for this settled law.

The Honble Supreme Court in M/s. East India Commercial Co. Ltd. Calcutta and another V/s. Collector of Customs, Calcutta (AIR 1962 S.C.1893) held in para 31 of the Judgment as under :-

“31..... Under Art. 215, every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under Art. 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other

purpose to any person or authority, including in appropriate cases any Government within its territorial jurisdiction. Under Art. 227, it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that Court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Courts binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be

conducive to their smooth working otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notices issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves could be without jurisdiction.”

Per incuriam decisions :-

Per incuriam decisions do not have binding effect. Per incuriam decisions mean where the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction or when the decision is given in

ignorance of the terms of a statute or a rule having statutory force.

The Apex Court in *State of Bihar Vs. Kalika Kuer alias Kalika Singh & others (2003) 5 SCC 448* held that :

“A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of House of Lords decision, in which case it must follow that decisions; or when the decision is given in ignorance of the terms of a statute or rule having statutory force.”

CONFLICTING DECISIONS OF DIFFERENT STRENGTH :-

If there is conflict between the decision of lesser bench, then law laid down by the larger bench will be binding. In this regard the Five-Judges Constitution Bench of Honourable Supreme Court in case of "**Central Board of Dawoodi Bohra Community v. State of Maharashtra, (2005) 2 SCC 673**" has observed that,

"The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength".

This view is also followed by Honourable Bombay High Court in case of "**Reliance General Insurance Company Ltd. versus Syeda Aleemunbee w/o. Syed Razaq. First Civil Appeal No. 1611 of 2013, decided on 03.03.2014,**" To quote Honourable Bombay High Court-

"28) It is well-settled, judicial process demands that a judge moves within the frame-work of relevant legal rules and the coveted modes of those for ascertaining them. The judicial robe has its inbuilt discipline, which

mandates, for a High Court to adhere in tune with the precedent of Supreme Court and in particular of the larger Benches. This is more so, if there are divergent views by Honourble Judges of the Supreme Court, on identical issues.”

EFFECT OF ORDERS OF HIGHER COURT :-

Any interim order passed even by the Supreme Court is limited to that particular case and should not be used as precedent for other cases specifically when the Supreme Court itself has earlier authoritatively decided the question which is squarely involved in the later case. The Hon'ble Apex Court in “Megh Singh v. State of Punjab [AIR 2003 SC 3184]” has held that,

“circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases or between two accused in the same case. Each case depends on its own facts and a close similarity between one case and another is not enough because a single significant detail may alter the entire aspect.”

Conclusion :-

Precedents work like lighthouse to guide all courts. Precedents bring certainty in law. They always help the lower court judges, specially the junior judges to deal with applying the law correctly. Some times the judges may support their views with help of the precedents. These are the guidelines which must be followed by the lower courts to ensure the real justice, consistency, uniformity in the judicial decisions and also provide predictability to the individual rights.

Submitted with all respect.

Group Members

Shri. M. B. Pathan,
C.J.J.D & J.M.F.C., Sironcha.

Shri. V. M. Karhadkar,
C.J.J.D & J.M.F.C., Kurkheda.

Shri. S. M. Bomidwar
2nd Jt. C.J.J.D & J.M.F.C., Gad.

Shri. D. J. Patil,
C.J.J.D & J.M.F.C., Chamorshi

(U.M.Padwad)
Group Leader,
District Judge I,
Gadchiroli.