International Journal of Law
ISSN: 2455-2194; Impact Factor: RJIF 5.12
Received: 16-09-2019; Accepted: 18-10-2019
www.lawjournals.org
Volume 5; Issue 6; November 2019; Page No. 76-79

Doctrine of stare Decisis

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Abstract
Stare decisis, (Latin: “let the decision stand), in Anglo-American law, principle that a question once considered by a court and answered must elicit the same response each time the same issue is brought before the courts. The principle is observed more strictly in England than in the United States. Since no court decision can have universal application, the courts, in practice, must often decide that a previous decision does not apply to a particular case even though the facts and issues appear to be closely similar. A strict application of stare decisis may lead to rigidity and to legal hair splitting, whereas too much flexibility may result in uncertainty as to the law.
Case law, so called, or the decisions of the courts serve as a very important source of law, especially in countries following the common law system of adjudication. In countries that follow the common law system, the judgments of the higher courts are treated as binding on all subordinate courts. This concept of treating judgments of superior courts as binding is called the doctrine of precedent or stare decisis.
Certainty and predictability are very important attributes of law, and indeed essential for its success. If law treats a person in particular way, it is only just that other persons in similar position are treated likewise. Only then will there be greater compliance with law. This first principle of law, so to say, should be applicable to the judiciary in order to ensure consistency in interpretation of various laws. The doctrine of precedent was, therefore, evolved in order to maintain consistency and uniformity in law. This apart, the doctrine of precedent has the advantages of equality, efficiency and avoiding arbitrariness.
The doctrine of precedent is expressly incorporated in India by Article 141 of the Constitution of India, 1950. Article 141 provides that the decisions of the Supreme Court are binding on all courts within the territory of India. Although there is no express provision, but by convention the decisions of a High Court are binding on all lower courts within the territorial jurisdiction of that High Court. Similarly, a decision of a higher Bench, is binding on the lower Bench.

Keywords: doctrine of stare decisis, precedents, stare decisis in India, jurisprudence, judgements

1. Introduction
The doctrine of Stare Decisis is of ancient origin. Precisely when it became a distinctly established doctrine of English law is not easy to determine. In Croke's Reports in the seventeenth year of the reign of James I, 1584, (Cro.Jac.,527) the reporter summarizes the ratio decidendi thus: "Wherefore, upon the first argument it was adjudged for the defendant, for they said that those things which have been so often adjudicated ought to rest in peace." This seems to be a very accurate and condensed expression of the doctrine.
The doctrine of precedent refers to the doctrine that the court is to follow judicial decisions in earlier cases, when the same questions or points are raised before it in subsequent matters. According to Salmond, the phrase ‘the doctrine of precedent’ has two meanings. In its loose sense, it means that precedents are reported, may be cited and will probably be followed by courts. In strict sense, it means not only that a precedent has great authority but in certain circumstances, courts are bound by previously decided cases. Thus, what a court really does is to apply principles or decisions laid down in past. [ii] It is now appropriate to turn to the question of how the doctrine of binding precedent works in the context of the English common law, with particular reference to:

- The way in which the courts decide what it is that is binding in earlier decisions;
- The extent to which, and the circumstances in which, the highest court should feel free to depart from its own previous decisions.

The name *Stare Decisis* is taken from the Latin maxim, *stare decisis et non quieta movere*, and the translation of the maxim is a good definition of the rule itself: *To stand by precedent and not to disturb what is settled*. It may be called the doctrine of precedent or of authority.
Its meaning is that when a point of law has been once solemnly and necessarily settled by the decision of a competent court it will no longer be considered open to examination or to a new ruling by the same tribunal or those which are bound to follow its adjudications.
The general rule as laid down by the authorities is as follows: "*Precedents and rules must be followed unless flatly absurd or unjust; for though their reason be not obvious at first view, yet we owe such a deference to former times as not to suppose that they acted wholly without consideration*;" but "if it be found a former decision is manifestly absurd or unjust, it is declared, not that such a sentence was bad law, but that it was not law [1]."
It might be considered as a kind of legal axiom that courts should not exercise their jurisdiction in any random manner for this would speedily land everything in "confusion worse confused." Of necessity there must be certain fixed land-marks approaching correctness, though not infallibly perfect; and courts should be guided by these even though a rigorous adherence to them might at tines work individual

hardship. These land-marks are, of course, your decisions serving as precedents not lightly to be changed.

According to Hart and Sacks, stare decisis furthers three primary goals. First, the doctrine promotes private ordering of citizen's affairs by enabling them to plan their social and economic transactions with confidence that they are in compliance with existing law. Stare decisis also encourages private settlement of disputes by discouraging individuals from forum and judge shopping.

Second, stare decisis furthers fair and efficient adjudication by sparing litigants the need to relitigate (and judges the need to reconsider) every issue in every case, and it discourages a rush of litigation whenever a change of personnel occurs on the bench. Third, stare decisis promotes public confidence in the judiciary by providing some constraints on judges power through the obligation to build upon prior decisions in a fashion that may withstand professional criticism [2].[iii]

The doctrine that holdings have binding precedence value is not valid within most civil law jurisdictions as it is generally understood that this principle interferes with the right of judges to interpret law and the right of the legislature to make law. Most such systems, however, recognize the concept of jurisprudence constante which argues that even though judges are independent, they should judge in a predictable and non-chaotic manner. Therefore, judges' right to interpret law does not preclude the adoption of a small number of selected binding.

The Doctrine of Stare Decisis

Stare decisis is a doctrine or rule of the common law there is no doubt, but that it belongs to the common law in any exclusive sense of origin, application or usage is incorrect.

In the first place, it is a rule equally applicable and equally applied in equity as in the common law. Thus Blackstone says, in repelling th e idea that equity consists of the "opinion of the judre":

'The system of our court of equity is an elaborate, connected system governed by established rules and bound down by precedents from which they do not depart although the reason of some of them may perhaps be liable to objection."

He adds, "Sometimes a precedent is so strictly followed in equity that a particular judgement founded upon special circumstances gives rise to a general rule [3]."

The basic reason behind the doctrine of stare decisis is the maintenance of consistency and certainty. Certainty, predictability, and stability in law are considered to be the major objectives of the legal system, and the doctrine of stare decisis aims at achieving these objectives.

Understanding the Notion of Precedent For the common-law mind steeped in the tradition of progressive advancement on a foundation of progressively refined reason, there is a self-evident quality to the notion of precedent. Precedent appeals to primal desires for—and, in a system of laws, justified expectations of—rationality, regularity, and stability [4].

Importance of the Doctrine

The importance of a strict and rational adherence to the doctrines of adjudged cases is remarkably exemplified in the growth of English Constitutional jurisprudence.

The notion that judges should adhere to authoritative decisions of the past has a deep lineage in America's common-law heritage. After two hundred years of domestic judicial pronouncements on the subject, legal scholars have had ample source material for examinations of the foundations of stare decisis. The most recognizable value of stare decisis is its ability to enhance stability and consistency across time and similar circumstances.

At its most elemental level, it satisfies the impulse that, all other things being equal, a legal system is better advised to resolve matters firmly and finally than to search for normatively more appealing solutions on a case-by-case basis. In the same vein, adherence to precedent fosters the orderly and efficient administration of justice by discouraging successive reiteration of issues that have already been authoritatively resolved. Finally, stare decisis serves to sustain the public's trust in a principled, law-bound judiciary.

"The principle of precedent is eminently philosophical. The English Constitution would not have developed itself without it. What is called the English Constitution consists of the fundamentals of the English polity laid down in customs, precedents, decisions and statutes; and the common law in it is a far greater portion than the statute law" [5]

In the United States itself, the maintenance of this doctrine is of peculiar importance on account of the deference which we are accustomed to pay to the decisions of the law courts even in cases where their logical correctness is open to doubt.

This recognition of the power and provisions or the judicial tribunals in the guidance and settlement of our civil institutions leads the American citizen to Wield his implicate obedience to their doctrines, even when the decision of a court lays a controlling and shaping hand, not formally perhaps, but, in the necessary deductions from its conclusions, upon the most zealously debated political questions or the most important affairs of government. Then if progress is desirable, if growth of the 7 nation in the perfect development of constitutional government as well as in the stability of its institutions be a desideratum, these objects can certainly not be abstained by a disregard of the principle of Stare Decisis.

The past history declares this truth with unmistakable voice. To appreciate its value, one only has to reflect how seriously the progress of American federalism would have been retarded if the interpretation put upon the Constitution by the Supreme Court in the formative period of our national character had been thought open to contradiction by any and every court.

An objection is sometimes made to the "adherence of courts to musty, mouldy authorities and antique forms and customs, whereby they seem to be wedded to error and absurdities, sanctioned and venerated merely because they have the flavour of age about them, while everything else is revolving in the whirl of progress [6]."

The Doctrine in India

The doctrine of stare decisis as is understood today appears to not have existed in India during the ancient or medieval times. It is only with the establishment of British rule in the country that the concept of binding precedent came to be applicable in India. The British Rule led to the hierarchy of courts as well as reporting of decisions, i.e., the two pre conditions for the stare decisis. In 1813, Dorin suggested the adoption of the doctrine of stare decisis in India.

The establishment of British Rule led to the setting up of the Sardar Diwani Adalats and the Supreme Courts at Calcutta,

Bombay and Madras. In 1861, the high court Act was enacted providing for the establishment of high Courts by issue of letters patent. Such courts had original as well as appellate jurisdiction. A hierarchy of courts was thus established [7].

The Government of India Act, 1935 expressly made the decisions of the Federal court and the Privy Council binding on all Courts in British India and thus gave statutory recognition to the doctrine of stare decisis. The Federal courts were not bound by its own decisions. After independence, the doctrine of precedent continues to be followed in the country.

Article 141 of the Constitution of India makes the 'law declared' by the Supreme Court binding on all courts within the territory in India. The Expression 'law declared' implies the law creating role of the Supreme Court. The Supreme Court is not bound by its own decisions.

In Bengal Immunity Co. v. State of Bihar [8] the court observed that there is nothing in the Indian constitution that prevent the Supreme Court from departing from its own previous decision if it is convinced of its error and baneful effect on public interest. In so far as high courts are concerned, the decisions of a High Court are binding on all subordinate courts within the jurisdiction of High Court.

Does the doctrine 'Subvert' Law?

The doctrine tends to disfavour legal argument that precedents were wrongly decided, especially if they are precedents established at a higher level in the appeals hierarchy, and to demand the litigants "distinguish" their cases from adverse precedents, arguing that those precedents do not apply to the present case because of elements that make it different from the cases on which the precedents were established. This can be very difficult to do if there are a great many recent cases on the same issues which cover most of the possibilities.

The situation can be made more difficult by the rules of most courts which limit the length of briefs the litigants may file. In working backward through a long line of wrongful precedents, a litigant can reach the length limit before the argument can make it back to the foundations where the chain of precedents began to drift away from its authority in the constitutional enactments.

It is a general maxim that when a point has been settled by decision, it forms a precedent which is not afterwards to be departed from. The doctrine of stare decisis is not always to be relied upon, for the courts find it necessary to overrule cases which have been hastily decided, or contrary to principle. Many hundreds of such overruled cases may be found in the American and English books of reports. Mr. Greenleaf has made a collection of such cases, to which the reader is referred.

This is accomplished by opinions that do not define a set of consistent propositions that extend beyond A. That is, every judge is careful to anticipate all the ways the words of his opinion might be misconstrued to support decisions beyond what is authorized by the constitutional enactments, and in particular, the Constitution [9].

Conclusion

While statutes and enactments of the legislature lay down the general rules to be applied in the adjudication of disputes between parties, the final authority for the interpretation of those rules are the courts. The doctrine of stare decisis makes the decisions of courts, usually the higher forums, binding on subordinate courts in cases in which similar or identical questions of law are raised before the court. The application of this doctrine ensures that there is uniformity and certainty in the law. It saves time and efforts of judges and helps in preventing arbitrary action on the part of judges. The doctrine thus ensures that at least over a certain period of time law remain certain and people are able to conduct their business in accordance with the prevalent interpretation of law. The doctrine is thus in the interest of public policy.

In India, the doctrine is constitutionally recognized in respect of the decisions of the Supreme Court which have been declared under Article 141 to be binding on all courts and tribunals in the country. This of course implies that even a single pronouncement of the Supreme Court would be binding on subordinate courts. However, as held in the Bengal Immunity case, the decisions of the Supreme Court are not binding on itself. It is only the reasons for deciding a case i.e., the ratio decidendi of the case which are binding on future courts. There is no definite view as to how the ratio decidendi is to be determined but there are a number of tests for its determination of which some are the material facts test proposed by Prof. Goodhart and the Reversal Test Proposed by Wambaugh.

In order for the doctrine of stare decisis to be applicable, there are two basic prerequisites, first that there must be authentic reporting of decisions of courts. The second requirement is an established hierarchy of courts. The principle that the decisions of higher forums would be binding on lower forums is referred to as vertical stare decisis while that the decisions of forums would be binding on coordinate or coequal benches is known as horizontal stare decisis. The great value of the doctrine of stare decisis is that it provides certainty. While the doctrine of stare decisis is in the interest of public policy, there are number of disadvantages of the doctrine.

In view of the large numbers of pronouncements of the Supreme Court and high courts it is difficult to locate all the precedents. Also, even in case of an erroneous decision, lower forums are bound to follow the decision as precedent. Contrary decisions, of coordinate benches can create confusion for lower forums. Another major disadvantage is that if a strict interpretation is given to this doctrine, and precedents are considered to be binding even on the highest forums, it may hinder the development of law which is necessary with changes in society. Stare decisis is not meant to be an inflexible rule that hinders the development of law.

The Supreme Court appears to have taken this view in the *State Of Gujarat vs Mirzapur Moti Kureshi Kassab* [10] that while stare decisis is ordinarily to be adhered to, precedents can be reconsidered in view of changed circumstances where there are compelling reasons to do so.

Thus, while the doctrine of stare decisis should generally be adhered to, the same should not be interpreted in a manner as to hinder the development of law and the correction of erroneous decisions. At the same time, the power to reconsider decisions cannot be given forum and thus, it is appropriate that the power remains with higher forums to the court that rendered the decision.

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