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Modus operandi to apprehend reasoning from observation: Determining ratio of a judgement

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Abstract
In this article, there is discussion about Ratio Decidendi and Obiter Dicta, these two terms as in daily usage and are very easy to understand theoretically. However, while in the real practice in the courts it becomes fairly difficult for a practitioner to deduce ratio as it differs from judge to judge. There has been a binding principle of stare decisis in the Constitution of India backed by the principles of precedent it gives rise to the authoritative power to the Supreme Court, that whatever judgement passed by the Supreme Court will be law. However, the difficulty of determining a ratio has been reduced by the three famous test reviewed in this article. The tug of war between obiter and ratio has also been resolved to certain extent.

Keywords: ratio decidendi, obiter dicta, stare decisis, constitution, law, precedent

Introduction
Since the very inception of Law and the concept of sources of law precedent has been a source of law, Ratio Decidendi and obiter dicta both have been in the lime light since then. In almost all legal systems the judges take guidance of the previous decisions on the point and rely upon them. The decisions made by the higher courts are very useful in deciding the subsequent cases of similar nature which are called as precedents. Every precedent has a Ratio Decidendi i.e. Reasons, for deciding which alone is binding in future cases and Ratio Decidendi is the rule of the court.
What we are dealing here is that it is incumbent upon a judge and a lawyer or a legal academic to make use of his/her sense of reasoning not superficially but at its very root so as to understand the essence and fundamentals of any issue. The major mistake which is being made while making a distinction between Obiter Dicta and Ratio Decidendi is the lack of thorough knowledge and the lack of clarity on the subject. When we look at Obiter dicta and Ratio Decidendi as a part of stare decisis we expect it to be a straight forward principle which ought to be used by a judge in determining the case by referring to other case laws and hence too much emphasis is laid on precedent as is, we forget or we simply just don't know, or tend to not look beyond precedent as it is, and get into its broader spectrum of how it could be moulded without changing its essence and we also tend to lose sight of how it doesn't necessarily have to be a textbook definition of what a judge can decide on a principle given.

The Doctrine of Precedent
In 'Oxford Dictionary' precedent is defined as "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 similar act or circumstances may be supported or justified [1]. A precedent cover everything said or done, which furnishes a rule for a subsequent case of similar kind. A judicial precedent is a precedent which has authority attached it. In general use, the term precedent means some set pattern guiding the potential conduct. In judicial field, it means guidance or authority of the past judgements for future cases. Only such judgments which lay down some new rule or principle are called precedents. It is the attribution of authority that makes a judicial decision a judicial precedent.
Precedents by courts are cited as stare decisis when an issue has been previously brought to the court and a ruling is already issued. Stare decisis can be explained in the following words, promotes the even handed, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process. In practice, the Supreme Court may defer to its previous decisions even if the soundness of the decision is in doubt. A benefit of this rigidity is that a court need not continuously evaluate the legal foster of past decisions and accepted doctrines. The doctrine operates both horizontally and vertically. A horizontal stare decisi refers to a court adhering to its own precedent. A court engages in vertical stare decisis when it applies precedent from a higher court.

The Principle of Stare Decisis
Doctrine of Stare Decisis
The policy of the courts and the principle upon which rests the authority of judicial decisions as precedents in subsequent litigations, is embodied in this maxim, Stare decisis et non quieta mnovere which means: to abide by the precedents and not to disturb settled points. 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. Under the doctrine of stare decisis, the decision of a higher court within the same provincial jurisdiction acts as binding authority on a lower court within that same jurisdiction.
The principle of stare decisis can be divided into two components:

[1] Oxford Learner's Dictionaries

The first is the rule that a decision made by a superior court is a binding precedent (also known as mandatory authority) which an inferior court cannot alter or supersede and a court cannot overturn its own precedents unless there is a strong reason to do so which should be guided by principles from subordinate and inferior courts.
The second principle, is persuasive precedent, it is an advisory precedent (obiter dicta the courts can occasionally ignore these kinds of precedents in order for the doctrine of stare decisis to be applicable, the moist important pre-requisite for this is the authority coming from higher court i.e. hierarchy is to be taken into consideration.

Article 141 of Indian Constitution

The law declared by the Supreme Court of India is binding on all Courts within the territory of India. The Supreme Court is not bound by its own decision. Arnit Das v. State of Bihar, "A decision not expressed, not accompanied by reasons and not proceeding on conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not *Ratio Decidendi* in the technical sense when a particular point of law was not consciously determined (this is the rule of *sub-silentio*) [2]. The expression all courts in Article 141 refers only to the lower courts the Supreme Court. However, if an earlier decision is found to be erroneous and is thus detrimental for the general welfare of the public the precedents need to be altered then the Supreme Court never hesitates in departing from its prior decisions. It is impermissible for the lower courts not to follow the Supreme Court.

Ratio Decidendi

Ratio Decidendi refers to 'reason for deciding' the case, however, one must not limit their understanding to this and look further than the definition. The 'reason' here is not

a. The fact of the case.
b. The law that the case applies.
c. The order of the case.

As a substitute what we need to look at in Ratio Decidendi is the necessary step the interpreter must take to utilize a particular case and prove to be that decision which will be helpful to decide the case. It must be a step that leads directly to the conclusion of the particular issue in question. It in such circumstances the law shall prevail over the facts. Ratio Decidendi is to be argued as per the facts and circumstances of the prior case and then only the court can analyse in the matter and consider the precedent as good in the eyes of law. It is this complexity yet the simplicity of this maxim that the judges need to comprehend while deciding cases and be cautious so as to not fall in a trap. One may interpret something to be the ratio of a case while in reality it wouldn't be so.
The authority of a judgement as a precedent lies in its Ratio Decidendi. It is, therefore necessary how Ratio Decidendi is determined; the determination of Ratio Decidendi is far more difficult as it appears in the books of law. The judges are responsible to determine Ratio Decidendi and to appropriately use it on the case in question. This gives an opportunity to the judges to shape the law according to the societal change that has occurred during the course of time.

[2] AIR 2000 SC 2264

The doctrine of precedent abides the judges and makes the ration decidendi of binding nature.

Determination of Ratio Decidendi:

Ration Decidendi can be determined by the following ways:

- By characterising unimportant from facts material facts;
- By in-depth study of the precedent to understand the approach of the court;
- By limiting only to the decisions of majority; and
- By analysing various judgements in line with that same issues and understanding different levels involved in the particular case.

It is impermissible for the High Court to overrule the decision of the apex Court on the ground that Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts in India; it is the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all courts within the territory of India. It was pointed out by the Supreme Court in Anil Kumar Neotia v. Union of India [3], that the High Court cannot question the correctness of the decision of the Supreme Court even though the point sought before the High Court was not considered by the Supreme Court. Krishena Kumar & another v. Union of India & Others, "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 [4]. This is what we mean by Ratio Decidendi, explained very precisely by the Supreme Court.

Obiter Dicta

The expression obiter dicta or dicta have been discussed in American Jurisprudence as thus:
"Dicta ordinarily, a court will decide only the questions necessary for determining the particular case presented. But once a court acquires jurisdiction, all material questions are open for its decision; it may properly decide all questions so involved, even though it is not absolutely essential to the result that all should be decided. It may, for instance, determine the question of the constitutionality of a statute, although it is not absolutely necessary to the disposition of the case, if the issue of constitutionality is involved in the suit and its settlement is of public importance. An expression in an opinion which is not necessary to support the decision reached by the court is dictum or obiter dictum. "Dictum" or "Obiter dictum: is distinguished from the "holding of the court in that the so- called "law of the case" does not extend to mere dicta, and mere dicta are not binding under the doctrine of stare decisis, As applied to a particular opinion, the question of whether or not a certain part thereof is or is not a mere dictum is sometimes a matter of argument. And while the terms "dictum" and "obiter dictum" are generally used synonymously with regard to expressions in an opinion which are not necessary to support the decision, in connection with the doctrine of stare decisis,

[3] AIR 1988 SC 1353
[4] AIR 1990 SC 1782

a distinction has been drawn between mere obiter and "judicial dicta," the latter being an expression of opinion on a point deliberately passed upon by the court [5].

The Hon'ble Supreme Court explained "obiter dicta", as follows:

In State of Haryana v. Ranbir, "A decision, it is well settled, is an authority for what it decides and not what can logically be deduced there from. The distinction between a dicta and obiter is well known. Obiter dicta are more or less presumably unnecessary to the decision. It may be an expression of a viewpoint or sentiments which has no binding effect [6]"

Generally, obiter dictum is not of binding nature, except, the High Court's have considered dicta seriously as binding even when it is persuasive. From the we understand that the reasoning on the point of law which are binding on the lower courts are Ratio Decidendi and the suggestions or observation in a judgement are Obioter Dicta.

Overruling / Reversing

Overruling implies disapproval with the ratio in a former case, either that the former Court did not interpret the law correctly or because of the societal changes that took place that law cannot be considered as the Rule of law and becomes undesirable. Reversing takes place when a judgement is appealed to a higher court or is reviewed, it generally involves disapproval of the ratio as decided by the lower court or the same court.

Tests to Determine Ratio Decidendi of A Decision

Wambaughs's Test: (Reversal test)

The inversion test was propounded by Eugene Wambaugh which is based on the assumption that the Ratio Decidendi is a general rule and without which a case ought to have been decided otherwise. Inversion test is in a form of dialogue between him and his student.
He gave following instructions for the test:

1. "1. Frame carefully the supposed proposition of law;
2. Insert in the proposition a word reversing its meaning;
3. Inquire whether, if the court had conceived this new proposition to be good and had it in mind, the decision could be the same;
4. If the answer is affirmative, the however excellent the Original proposition may be, the case is not a precedent for that proposition; and
5. But if the answer is negative, the case is a precedent for the original proposition and possibly for other proposition also [7]."

According to Wambaugh, the general rule to determine a case was through ratio decidendi, after thorough inspection also if that ratio is not being formed then only it is to be considering as a dictum. However, some jurists criticized the Inversion test on the ground that the catchphrase to frame carefully a proposition of law and the limitation of the test to cases turning on only one point, also loosing the value of the decision. It becomes fairly uncertain as to how one point can change the whole conception of a case.

In the case of State of Gujarat vs Utility Users Welfare association & others, "102. In order to determine this aspect, one of the well-established tests is "The Inversion Test" propounded inter alia by Eugene Wambaugh, a Professor at The Harvard Law School, who published a classic text book called "The Study of Cases" 56 in the year 1892. This 56Eugene Wambaugh, The Study of Cases (Boston: Little, Brown, & Co., 1892) text book propounded inter alia what is known as the "Wambaugh Test" or "The Inversion Test" as the means of judicial interpretation. "The Inversion Test" is used to identify the Ratio Decidendi in any judgment. The central idea, in the words of Professor Wambaugh, is as under: "In order to make the test, let him first frame carefully the supposed proposition of law. Let him then insert in the proposition a word reversing its meaning. Let him then inquire whether, if the court had conceived this new proposition to be good, and had had it in mind, the decision could have been the same. If the answer be affirmative, then, however excellent the original proposition may be, the case is not a precedent for that proposition, but if the answer be negative the case is a precedent for the original proposition and possibly for other propositions also." 103. In order to test whether a particular proposition of law is to be treated as the Ratio Decidendi of the case, the proposition is to be inversed, i.e., to remove from the text of the judgment as if it did not exist. If the conclusion of the case would still have been the same even without examining the proposition, then it cannot be regarded as the Ratio Decidendi of the case. This test has been followed to imply that the Ratio Decidendi is what is absolutely necessary for the decision of the case [8]."

Thus, the merit of Wambaugh's test is that it gives us an idea as to what ratio decided cannot be, rather than pointing out at what ratio decideni is. The fundamental principle is that the ratio will be that which confirms the ultimate juridiction. So, the proposition given by Wambaugh is that if the ratio is removed from the judgement will there be a reversal of judement or will it remain as it is, if it changes then it is ratio and if it does not then it is obiter dictum or no ratio. According to the Wambaugh test, also known as the inversion or reversal test, the proposition of law put forward by the judge should be reversed and if the reversal would modify the actual decision, then that proposition is the Ratio Decidendi of the case.

Halsbury Test

The concept of precedent has attained important role in the administration of justice in modern times as Administration of Justice is the most important thing for the working of a state and precedent is the that source of law which came since the inception of law. The case before the court should be decided in harmony with law and the doctrines that have been developed and also been moulded as per the societal changes. Precedents are those things which reflect the working and mindset of the court. The precedent of a particular case determines the reason and spirit of the court.

Halsbury explained the word 'ratio decidendi' as, " it may be laid down as general rule that, that part alone of a decision by a court of law is binding upon courts of co-ordinate jurisdiction and inferior courts which consists of the enunciation of the reason or principle upon which the question before the court has really been determined. This underlying principle which forms the only authoritative

[5] [2d, Vol. 20, at pg. 437]
[6] (2006) 5 SCC 167
[7] Eugene Wambaugh, The Study of Cases (Boston: Little, Brown, & Co., 1892).
[8] (2018) 6 SCC 21

element of a precedent is often termed as Ratio Decidendi [9]."

In the famous case of Quinn v. Leathem, Lord Halsbury said that,

" now, before discussing the case of Allen v. Flood and what was decided therein, there are two observations of general character which I wish to make, and one is to repeat what I have very often said before, that every judgement must be read as applicable to particular facts proved, or assumed to be proved, since the generality of the expression which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which the expressions are to found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all [10]."

In, Mohmad Ayub @ Babbu Sagirbhai vs Commissioner of Police and Ors,

"29. Lord Halsbury (Halsbury's Laws of England, Fourth Edition, Vol. 26, para 573) describes the Ratio Decidendi in the following manner:

The use of precedent is an indespensable foundation upon which to decide what is the law and its application to individual cases; provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules. The enunciation of the reason of principle upon which a question before a Court has been decided is alone binding as a precedent. This underlying principle is called the ratio decidendi, namely the general reasons given for the decision or the general grounds upon which it is based, detached or abstracted from the specific peculiarities of the particular case which gives rise to the decision. What constitutes binding recedem is the ratio decidendi, and this is almost always to be ascertained by an analysis of the material facts of the case, for a judicial decision is often reached by a process of reasoning involving a major premise consisting of a pre-existing rule of law, either statutory or Judge made [11].'

Thus, according to Lord Halsbury, it is those authoritative reasoning on the rule of law determine ratio decidendi. In Halsbury's Laws of England, it has been observed that Ratio Decidendi are the reasons which assisted the court to deduce a particular problem and aspect of law, this reasoning and the law created by this reasoning in the judgement which cannot be separated from the judgement is Ratio Decidendi.

Goodhart's Test: (Material Facts)

In 1929, Goodhart had argued that the ratio of a case must be in the reasons for the judgement and there can be or cannot be a connection between the reasons and ratio of that particular judgement. He laid down following guidelines for discovering the ratio dcidendi of the case:

1. "1. Ratio Decidendi must not be sought in the reasons of which the judge has passed the decision.
2. The reasons given by the judge are of peculiar importance, for they may furnish us with a guide for determining which facts he considered material and which immaterial.
3. A decision for which no reasons are given does not necessarily lack ratio, furthermore, the reasons offered by the court in reading a decision might be considered inadequate or incorrect, yet the court's ruling might be endorsed in later cases- a bad reason may often make good law.
4. Thus, Ratio Decidendi is whatever facts the judge has determined to be the material facts of the case, plus the judge's decision based on those facts of the material facts that the judge creates law [12]."

From the above we can easily deduce that Goodhart test of ratio is: *Ratio Decidendi = material facts + decision*. Goodhart stated that its on the judge as to what are the material facts of a particular case and it is the judges choice. The Goodhart test inculcates the message that the material facts taken into consideration by the judge in the decision will form the precedent for subsequent cases. The Material fact theory is another name for Goodhart's theory. This theory says that one must determine the ratio by the help of material facts and the decision given by the judge.

- Highlights of the test are as follows;

a. It is only applicable to those cases where a final judgement is not given:'
b. This theory has given a lot of stress only on those propositions that are authoritative in nature
c. The most important thing discussed is that all depends on the choice of the judge; however, the interpretation of every person differs with the same set of facts too.

This theory is based on the judge's choice, however in the real practice the judges don't use this and it is very vague because two judges can or cannot form the same the same interpretation to same facts. So, it is vague in nature and confuses the practitioner as when to consider a certain decision as a precedent

Conclusion

A difficulty arises as to interpret the exact ratio of a particular judgement, as the court has varied interpretation and also the choice of the judge which matches with the particular question in a particular case. A case may even contain more than one ratio so; it can lead to delusion as to which one is to be considered. The most important aspect that judges have worked on and made it easier for the practitioners as well as the layman is the distinction in the judgement as to what shall be considered as ratio and what as obiter. However, there is a debate on as to when an obiter shall be considered as persuasive and authoritative, to become a binding on the courts, this is that grey area of law. The above three tests make the job a little easy to ascertain what is to be considered as ratio and what as obiter. There lies a tug of war as to what ratio shall be and what obiter shall be in a judgement. It is quite clear that the ratio will be the reasoning deduced from the material question answered in the judgement and the obiter will be the observations and suggestions that lie in the judgement. In India, the doctrine of Stare decisis 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

[9] Halsbury's Laws of England
[10] [1901] UKHL 2
[11] 1993 SCC Online GUJ 94
[12] Goodhart, determining the ratio decidendi of a Case.

tribunals in the country, however, the decisions of the Supreme Court are not binding on itself and are binding only on the lower courts and tribunals. A.R. Antulay v. R.S. Nayak & Another "*Per incuriam* are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or some authority binding on the Court concerned so that in such cases some part of the decision or some step in the reasoning on which it is based is found, on that account to be demonstrably wrong. If a decision is given *per incuriam*, the Court can ignore it."13 From the above we can conclude that ratio is important part of the judgements because it becomes a precedent and forms a new judge made law.

References

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10. UKHL 2, 1901.
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13. AIR SC 1531, 1988.

[13] AIR 1988 SC 1531