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# JUDICIAL PRECEDENT AS A SOURCE OF LAW

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## CHAPTER 1

### I. INTRODUCTION

According to a layman, Law can be defined as a set of rules and regulations that govern a particular country or community and is enforced to administer justice and bring in order in the society. Black's Law Dictionary, one of the most important legal dictionaries in the profession defines law as "a body of rules of action or conduct prescribed by controlling authority and having binding legal force. That which must be obeyed and followed by citizens subject to sanctions or legal consequence is a law."

Law in India brought with it the three organs of the State, mainly the Legislature which is tasked with making the laws, the Executive which is tasked with implementing the laws, and the Judiciary which is tasked with interpreting the law and providing justice. All the three organs work parallelly with each other, but maintain checks and balances in each other's works so that they do not overstep their limits.

Sources of Law are categorized into Primary Sources of Law and Secondary Sources. Primary Sources of Law consist of the Constitution, Legislations, Customs, and Judicial Precedents (Judicial Decisions), whereas on the other hand, Secondary Sources of Law consist of Books, Treatises, Commentaries, Journals, Textbooks, Law Reviews, etc. This project will discuss on how "Judicial Precedent is a Source of Law."

According to Black's Law Dictionary, Precedent may be defined as "An adjudged case or decision of a court of justice, considered as furnishing an example or authority for an identical or similar case afterward arising or a similar question of law." Judicial precedent is therefore that source of law in which the past judgments create a set of rules and laws for judges to look back at and refer to for any guidance in their cases. According to Gray "A judicial precedent covers everything said or done, which furnished a rule for subsequent practice." It is based on the principle of "stare decisis et non quieta movere", often called "stare decisis" which means "to stand by decided matters". As a result of which, a precedent becomes a key but not the only source of law if it speaks with authority and the principle it embodies is applicable to similar

situations in the future. In this project, we shall find out if Judicial Precedent actually serves as a guide and makes it one of the Sources of Law in all aspects.

## **II. STATEMENT OF PROBLEM**

This study aims to examine the different aspects of how Judicial Precedent actually serves as a Source of Law, including the argument of whether it actually serves as a guidance for Judges in their Judgement making in all their cases.

What are the different advantages and disadvantages of Judicial Precedent when it is taken into account as a Source of Law?

## **III. RESEARCH QUESTIONS**

- Can Judicial Precedents actually be considered as a Source of Law with the passage of time, especially in this modern era which is filled with many legal challenges?
- In the name of guidance does a Judicial Precedent from a Higher Court restrict the Lower Court from exercising its autonomy within its particular jurisdiction and allow it to give a free and fair judgment as per its rationale?
- Do Judicial Precedents force the Justice System to look backward in the past, rather than look at the cases from the future perspective and give the judgments from such a perspective?

## **IV. RESEARCH METHODOLOGY**

Research for this project was gathered from a variety of secondary sources, including papers, publications, journals, blogs (with reputable and pertinent material), etc. The entire project is conducted using the Doctrinal Method of research, and none of the supplied static data is first-hand data. In this study, descriptive research is mostly used.

## **CHAPTER 2**

### **I. RELEVANCE OF JUDICIAL PRECEDENT**

Since ancient times, the significance of precedent or earlier rulings by judges has been acknowledged as a source of law. The resolution of conflicts is the judiciary's primary duty. In the beginning, the courts' decision-making is influenced by traditions and their own sense of fairness. Legislation then takes the place of other sources of law, and judges may base their rulings on the Rule of Law. Almost all legal systems depend heavily on precedent. India has a single constitution and a unified judicial system. This indicates that the responsibility for interpreting the Constitution rests alone with one Judiciary. The last translator is the Apex Court. This is a component of the fundamental structure of our Constitution. Unlike the United States, which practises federalism in the real sense, we have a strong central government. This was done with the intention of creating a strong central government that would hold the various provinces together even though they each had their own State Legislatures. This was done to prevent riots and protests from erupting in the newly established country, which had previously experienced a partition that caused a refugee crisis as terrible as the one in Europe during the Second World War and had also been controlled by the British. The judges of the Supreme Court are the people most qualified to make a judgement. There is no doubt as to who the most suitable, effective, and only body must be when interpreting the law. The Supreme Court is in session. We can ensure that the law of the nation is consistent in these situations thanks to court precedents.

### **II. ADVANTAGES OF JUDICIAL PRECEDENT**

Legal precedent aids in the creation of new statutes and allows for adjustments to be made in response to societal changes. Judicial precedent improves convenience by allowing a matter to be settled after it has been determined, saving time for the court system in subsequent instances. It establishes a system where everyone handling a comparable issue will be treated similarly, resulting in equity and justice that is fair. Binding legal precedent creates a rule that aids in preserving stability. It gives the legal system a degree of flexibility. It offers examples, which renders them more useful. Additionally, it serves as a roadmap for resolving current cases. The court's unanimous decision-making process increases the precedent-setting decision's value and strength. Case law is more in line with societal demands since it is the result of an ongoing judicial process. Precedents provide courts the power to reshape the law in accordance with practical necessities, while also serving as an effective check on the judge's arbitrary discretion through their binding authority. The law established by the legislature is mostly founded on

assumptions and imagination, making it a defective and abstract law, whereas precedent is the outcome of specific difficulties that were really present in the case. When considering matters that come before them, judges might cite precedents as important guidelines. Precedents are based on customs and are therefore reflective of public opinion. It gives certainty to the law. While the law lays out certain situations, these precedents account for those factors that cannot be factored into theory.

### **III. DISADVANTAGES OF JUDICIAL PRECEDENT**

A precedent obligates a lower court to follow it, which occasionally compels it to issue conclusions that are less than necessary or too harsh. A precedent that has already been set cannot be changed. It is challenging to apply the appropriate precedent in the appropriate situation since there are several precedents pertaining to numerous cases. If a case is distinct, precedent-following is not required since they are not taken into consideration, some scenarios are not recognised by precedent. This procedure could result in unneeded legal constraints. The judgements have no weight for setting a precedent because they are overturned by a bench of equal or greater power. In contrast to overruling, prospective overruling applies the previous decision to the specific case as well; however, it does not apply to subsequent instances. Judges have the authority to make decisions in certain instances that a legislative body would never consider. In this case, judicial precedent-setting might result in the introduction of needless legal constraints. Despite the fact that it is important for legal systems to adapt to changing social conditions, this drawback frequently makes it difficult, if not impossible, for judges to establish the legal theory required to produce a justified conclusion. This kind of thinking can lead judges to depend on earlier rulings rather than the facts of the case at hand, which may not be applicable now. One of the major drawbacks of judicial precedent is that there may be an excessive number of cases available for consideration due to the sheer number of cases that have been decided and are codified in the law. The fact that lawyers on both parties may suggest a case law precedent to the judge to support their stance on this matter might be confusing. After then, under an adversarial system, it would be up to the court to decide which party had a stronger case to make.

## CHAPTER 3

### I. JUDICIAL PRECEDENT FORCES JUSTICE SYSTEM TO LOOK BACKWARDS

The system is compelled to look backwards rather than forward as a result. For a legal precedent to establish a standard in the first place, it must constantly be looking backwards. If a person breaks a rule based on what a court has previously ordered, this results in an unjust system of justice because the law is not the source of the infraction. It's feasible for it to occur in other industrialised nations. That is why a system of statutory laws that considers future conduct as felonies is typically regarded as a just judicial system. Statutory requests produce legislation that becomes part of the public record, so there is no need to go through tens of thousands of different court judgements to determine whether someone has broken the law.

### II. RESTRICTIONS ON LOWER COURT DUE TO JUDGEMENTS OF HIGHER COURTS

There is a chance that authority will be missed as a result of the courts and attorneys having to deal with an enormous quantity of cases. Finding the many different authority on the subject becomes challenging. The judges of subordinate courts can face a conundrum as a result of the conflicting rulings of superior courts. As a result of subordinate courts being bound by decisions made by higher courts, precedent-setting practises promote rigidity in the system. The social, economic, and other conditions in society change throughout time since they are not constant. The law may need to be interpreted differently in light of altered circumstances. In reality, enforceable precedents may impede the advancement of the law.

### III. GOOD EXAMPLES OF PRECEDENTS

#### *“Vishakha and others vs. State of Rajasthan (AIR 1997 SC 3011)”*

This lawsuit was the first of its type to offer protection for women at their workplaces, therefore it is recognised as one of the landmark cases in India. The case's origins may be traced back to Miss Bhanwari devi, a social worker who opposed child marriage and was viciously gang raped by upper-class males. Despite having a case, she was unable to obtain justice. Many women and NGOs joined together under the banner of Vishakha to launch a public interest litigation (PIL) for the breaches of articles 14, 15, 19(1)(g), and 21 as a result of Bhanwari Devi's resolve. The sexual harassment of women at workplace act, 2013, was passed in response to the judgement rendered by the bench of J.S. Verma, Sujata Manohar, and B.N. Kripal, which established the vishakha guidelines to protect women against sexual harassment at work. This was one of the biggest victories for women.

***“Peoples Union for Civil Liberties Vs. Union of India 2001: Right To Food”***

India became the first country to safeguard the right to food in its constitution as a result of this lawsuit. The scenario involves using an efficient PDS system to feed a population that is famished. Food Corporation of India (FCI) warehouses outside the city of Jaipur were overflowing and rotten, and nearby villagers were eating food on a rotating basis. Additionally, the government had 40 million tonnes of food above the buffer stock, which prompted the PUCL of Rajasthan to file a lawsuit. The judgement resulted in the introduction of several acts, including midday meals, the integrated child development system, the annapurna scheme, and many others, to protect those living below the poverty line and

## CHAPTER 4

### CONCLUSION

*“Precedent Provides Legal Authority for An Action Precisely Because It Occurred Before”*

~ Ari Melber

It is clear that precedents are crucial in filling in the gaps in the law and in numerous statutes. They also promote public confidence in the court, make laws ethically acceptable, and provide laws more certainty. A good system needs to be developed with an efficient and clear hierarchy of court that properly defines the courts in various levels. India has adopted this system from common law, but its implementation suffers due to the large number of subordinate courts and cases registered, so the hierarchy needs to be more clear and proper record of all the cases. Precedents are a very effective source of law because they save time and also ensure equal justice. It is necessary to group the various courts into specific categories, spell out who exactly is bound by each court's ruling, and keep a record of all precedent-setting judgments. While the broad guidelines to be followed in the resolution of disputes are set forth in statutes and other legislative acts, the courts are the last arbiter of how such laws should be interpreted. When a comparable or same legal subject is addressed before a court, the precedents doctrine makes the court's rulings typically binding on the lower courts. The notion of precedents has considerable importance because it offers assurance. However, precedents are seen as being legally binding, which has the potential to impede the growth of legislation that is required to keep up with societal developments. The court must strike a balance between the requirements for consistency and predictability and the benefits of growth and development of law.