

Judicial Precedent in Jurisprudence

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Abstract

There are various sources of law, but judicial precedent is considered to be the primary source of law. In jurisprudence, the precedent has been defined by three major philosophers:

1. *Salmond: He stated that precedents are the reported case laws which may be cited or followed by the courts, or a type of case law which has a great binding authority and has to be followed.*
2. *Austin: According to him, it is a law of the judiciary.*
3. *Bentham: He stated that precedents are the laws made by the judge.*

Keywords: Judicial precedent, Jurisprudence, law of judiciary, laws made by the judge, precedents

INTRODUCTION

Precedent can be defined as a decision or an action taken by the judges which has already taken place and guides cases in similar situations. It can also be defined as a rule which has been laid down in a past legal case. It is binding on all the courts and tribunals when there is a case with similar facts.

There are four types of judicial precedents:

1. *Declaratory or original precedent:* It involves declaring an existing law and putting it into practice. It occurs when a court has not previously rendered a decision in a matter and it is the first time an order has been issued for that particular case, and it does so to assist in creating new laws. In legal situations, new laws are developed and used [1].

Example: *Donogue v. Stevenson:* Plaintiff sued the defendant after being offered a drink by the defendant, after which she fell ill as the drink consisted of decomposed snail. The House of Lords stated that the customers do not have any contract with the manufacturer, and it was the manufacturer's duty of care towards the customers. So, the manufacturer was held liable.

2. *Persuasive precedent:* Superior courts have the authority to overturn decisions made by lesser courts. This is seen in high courts, where rulings from one high court may be used as persuasive precedent in another. For example: *Smith R v. CA*

In this case, the defendant was charged with manslaughter after killing his roommate. He claimed that he was provoked by others and that he had no intention of doing so.

This case was over ruled by *Jersey v. Holley* (2005).

In this instance, the male killed his girlfriend. Both of them were intoxicated when the event occurred, and the male claimed that he was provoked. Due to his lack of self-control, the jury chose to acquit him of all counts.

3. *Absolutely authoritative:* The legal precedent is required to be followed by the judges. This typically occurs when the bench is smaller than the bench that made the ruling that the judges are relying on. Also, it is feasible in situations where there is a hierarchy and certain courts must rely on judgements rendered by higher courts.

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Received Date: April 19, 2022
Accepted Date: March 27, 2023
Published Date: April 06, 2023

Citation: Sanya Kapoor. Judicial Precedent in Jurisprudence. Journal of Constitutional Law and Jurisprudence. 2023; 6(1): 87-90p.

For example: In *London Street Tramways v. London Country Council* (1966), the Lord Chancellor stated that rigid adherence to precedent may also lead to injustice and disrupt the proper development of law.

4. *Conditional authoritative*: In certain situations, precedent is viewed as being wholly binding, although it can be discarded when the parties come before the Supreme Court. The choice may be reversed. If the decision is incorrect and/or goes against the law and reason, the court may ignore it.

Parts of the decision:

- *Ratio Decidendi*: “Reason for decision”. It is relevant to all verdicts with comparable factual circumstances. All lower courts in the nation must abide by it. It serves as the foundation for considering a given judgement to be precedent.
- *Obiter Dictum*: It refers to opinions, observations, and ideas which are made by the judge while making a decision. These are not binding on all the other courts [2].

HISTORY

Judicial Precedents in Relation to Indian History

During the medieval period, there was no concept of the theory of precedent, and disputes were resolved by panchayats, which had their own unique way of thinking and would make decisions accordingly. Under British rule, justice was administered based on “personal law”. The establishment of the Supreme Court in Calcutta through the “Regulating Act”, along with the establishment of high courts in various provinces, provided independent judicial bodies that were bound by the decisions of the superior courts. The Act of 1935 led to the creation of federal courts in India, with Section 212 stating that the law declared by the federal court would be recognized as binding on all courts in British India. The decisions of the privy council were binding on the federal courts and courts below, but the privy council itself was not bound by its own decisions [3].

CONCEPT

After independence, the high courts and Supreme Court played an important role in judicial precedence in India.

HIGH COURTS

The decisions of the high courts are binding on all the subordinate courts. The decisions of the high court have persuasive value. The hearings are mainly heard by the single judge in the high court, but if the case is complicated, then two judges are appointed, which is also called the division bench [4]. The decision of the division bench is binding on a single judge of the same high court, even if the decision of the division bench may be wrong. One division bench’s decision is binding on the decision of the other division bench. If two division benches are not reaching a particular decision, then the earlier decision must prevail, or the matter shall be presented in front of the Chief Justice of India. One high court’s full bench judgements are highly regarded by other high courts. The ruling of one high court does not bind the ruling of another high court. The Government of India Act, 1935, declared that the rulings of the federal courts were conclusive. Section 212 and Article 225 of the Indian Constitution, 1950, upheld this ruling, but the Supreme Court was not permitted to overturn it.

SUPREME COURT

The Supreme Court is not bound to follow its own decisions.

Article 141 states that all courts are legally bound to follow the judicial decisions of the Supreme Court.

The Supreme Court cannot deviate from its earlier decisions, but if the earlier decision is found incorrect, it can deviate from it.

PRECEDENTS' AUTHORITY DESTROYING FACTORS

1. *Statute*: When the statute comes into consideration, the precedent loses its authority as the statute is considered more important than a precedent, and most courts follow the same.
2. *Over-ruling orders*: When the decision given by the lower courts is overruled by the Apex Court [5].
3. The decision will not be considered binding if it was given in the ignorance of statute.
4. A decision given by the court without considering the decision of the high court shall be considered inconsistent and will not be binding.

SIGNIFICANCE OF PRECEDENTS

1. Precedents are judge-made laws, and they are more practical in nature.
2. Changes according to society.
3. It helps prepare new judicial and statutory laws.
4. Guides in deciding the upcoming case laws.
5. It helps save time on future cases.
6. It enhances the practicality of the cases.
7. It helps to treat everybody in a similar manner, which leads to equality and fairness in justice.
8. It provides flexibility for the judicial system.
9. It helps to maintain stability.
10. Precedents bring certainty to the law. If judges start discussing all the matters as fresh, then it will make the law uncertain.
11. It prevents judges from committing errors.

CRITICISM OF PRECEDENTS

Precedent can be criticized as the development of law depends upon the incidents of litigation, and many important points are also left unadjudicated as nobody brings action on them. It can be considered rigid as it is very difficult to alter. It brings unnecessary restrictions to the law. There is the possibility of overlooking the authorities.

Several lesser courts are under pressure to uphold the rulings of the higher courts. Instead of concentrating on the future, it compels the system to look back. The fact that there are several precedents pertaining to numerous instances makes it more challenging to apply the proper precedent in the proper circumstance. Finding every authoritative source that is pertinent to a certain topic is challenging.

CONCLUSION

Precedents play an important role as they help in fair decision-making and bring equality to the justice system, but the overruling decisions of the subordinate courts do not allow them to make decisions. Even if the decisions of the higher courts are wrong, they are still binding on all the lower courts. Precedents do not allow the lower courts to take harsher decisions. It can be said that the lower courts are pressurized to follow in the footsteps of the higher courts. We can see that precedents have both advantages and disadvantages, but there is a need to maintain balance between the decisions of higher and lower courts. The decisions of lower courts shall be considered precedent, as every time the cases may not comply with the orders passed by the high courts or Apex Court.

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