

Book Review

A. Lakshminath: Judicial Process Precedent in Indian Law, Eastern Book Company, Lucknow, Third Edition 2009, Hardcover, ISBN: 978-81-7012-180-0

Suparna Bandyopadhyay¹

Precedent is one of the unique and an important feature of a common law legal system. From the Hamurabi Code, the Twelve Table or the Justian Code the development of law can be viewed as an eternal, continual or an evolutionary saga of human mind or society to free itself from the shackles of systematic code and go forward to a well organized judicial process. The book essentially focuses on the process followed by judiciary while deciding the cases before it as well as it elaborately describes the practice of precedent in India. The book has immensely examined more than 300 cases from various angles by giving special reference to the landmark judgments pronounced in India in addition to U.S. and U.K cases which are limited in this book.

The author in his book has quoted J. Cardozo who described the Judge's task as an eclectic exercise that blends in varying proportions. A judicial power is best understood in terms of methods used by courts to preserve their institutional integrity, prestige, power and dynamic decision making. The book rightly focuses on the law laid down in majority judgment but less emphasis has been given to minority judgments.

In total the book contains eight chapters where the author has keenly elaborated the working of Precedent in Pre and Post-Independence era with regard to the Government of India Act, 1935 and its principle which transformed into the Constitution of India. Supreme Court as a legal successor of Privy Council and Federal Court did not have to follow the ideological legacy of rigidly following fixed legal opinion in regard to judicial law making within the straightjacket of *stare decisis*. The court was at liberty to deviate. But the Supreme Court followed the legacy until 1955 when *Bengal immunity Co. Ltd v. State of Bihar* (AIR 1955 SC 661) was pronounced.

Further the book highlights the importance of Supreme Court by highlighting the role of Privy Council and Federal Court which was a bridge between English legal institutions and the native institutions. The Privy Council was not only the institution who emerged precedent but also acted

¹ Teaching Assistant, Department of Law, University of North Bengal

as a bridge in the transition from *la* doctrine to *la* jurisprudence or enacted law which writes little about the Hindu jurisprudence and the role of *Dharmasastras*, *Dharmasutras* or *Vedas*.

Classical jurisprudence posited that law was founded by judges through application of logic; in the Austinian sense the adherence to fixed principles. But the application of law involves a reasoned decision behind every judgment and a reference to past judgment. It is observed that judges not only are charged to find what law is, but also to make law while deciding upon constitutional validity of a statute. It is necessary that while deciding cases a judge must be guided by the principle of public policy.

Article 141 of the Constitution of India has been interpreted wisely throughout the book with case to case basis. It states that a law declared by the Supreme Court is binding on all inferior courts but whether Supreme Court itself bound by its previous decision or not is laid down in Bengal Immunity case. The book has nicely described the position of Precedent in pre and post Bengal Immunity case as well in a classic assertion of its power of overruling; Supreme Court of India ruled that it would not be absolutely bound by its own decisions. Since then the Court has exercised the power of overruling in as many as 50 decisions. The frequent overruling of precedent of recent authority has gravely undermined the values of certainty, predictability and continuity in law. The overruling has been criticized by lacking precedent consciousness. The book essentially keeps a neutral opinion and examines the applicability of precedent and overruling as to why it should not be considered wrong or right. Today the Apex court may overrule its prior decision by giving proper reasons. In progressive chapters, the author mentioned the cases which have been overruled and therefore the overruling is considered as a *sine qua non* for maintaining the dynamism in law. A conflict arises when a legal system recognizes precedent as well as the overruling. And existence of two rules in one legal system makes the rule of precedent a myth or a lie. The book is titled as Precedent in Indian Law where the author has confined the work in the territory of India which is a Common Law Country and it has given less emphasis to Civil Law countries.

Simultaneously, the author has described the role of *ratio decidendi*, *obiter dicta* and prospective overruling which are the principles of precedent along with cases. The author has also addressed the problem of multiple versions of *ratio decidendi* or *multiple rationes decidendi* produced by a single judicial decision. While analyzing the *ratio* the author asked what exactly is overruled in a case whether the entire decision or a principle laid down in a case? The book in addition enumerates the sociological perspective of judges from being authoritative to liberal to conservative and sometimes individualistic which somehow influences the decisions of court. As a social-psychological norm *stare decisis* must be assessed in its

functional context. In conclusion the author referred recent cases and legal theories. And also slightly compared Indian legal system with code based legal system- In French judgments individual precedents are not cited as they are cited in India. Similarly, in China precedents are nowhere accepted. Traditions like Islamic, Tamudia lack any notion of precedent.

Overall, the book is a great compilation of cases of all years along with the laws enumerated in those cases. The author had conducted a detailed investigation on cases for establishing *ratios* by examining the role of precedent and justifying overruling. The language is lucid and easily understandable as a whole it is a great help to legal researcher towards the field of judicial process and precedent.

ISBN 978-82-326-2423-2 (electronic ver.) ISSN 1503-8181 201 Pages · 2017 · 3.61 MB · 6,118 Downloads · English · Winner of the 2005 deGroot prize! This book is for people who want to learn probability and statistics quickly. It brings Rich Dad Poor Dad. What is judicial precedent? A decision of the a court used as a source for future decision making. What does stare decisis mean? What is binding precedent? + case. A decision in an earlier case which must be followed in later cases, usually made in higher courts. A case example is Schweppes, where 2 cases with similar principles were being decided on the same day, and while one judge disagreed with the first case's outcome, on the second he said he was bound to follow the decision in the first, even though he disagreed. The Note Book attributed to him mentions about 2,000, only a small part of which are cited in the Treatise. Bracton seems to have regarded legal opinions both in and out of court as of substantially the same authority. He nowhere argues that a new case be adjudged by the precedent of a similar earlier case. Coke asserted: "Law is said to be a science and book cases provide a solution for all new cases." Bacon approved the authority of the decided case. Why does judicial precedent play a different role on the Continent than in England? Perhaps the statesmanship of William I and his successors in their desire to pacify the English by retaining ancient customs is in part the explanation. Since the drafting of the Indian Constitution, Indian laws also adhere to the United Nations guidelines on human rights law and the environmental law. By now Christian law in India has emerged as a separate branch of law. It covers the entire spectrum of family law so far as it concerns Christians in India. Christian law, to a great extent is based on English law but there are laws that originated on the strength of customary practices and precedents. Lucknow: Eastern Book Company. ISBN 978-93-5028-982-2. CS1 maint: ref=harv (link). Basu, Durga Das (2007). Commentary on the Constitution of India (8th ed.). Nagpur: Wadhwa & Co. ISBN 978-81-8038-479-0. CS1 maint: ref=harv (link). Fyzee, Asaf A.A. (2008). Outlines of Muhammadan Law (5th ed.). Delhi: Oxford University Press. 5 A Lakshminath: Judicial Process: Precedent in Indian Law, (3rd edn), Eastern Book Company, 2009, p.188.

3. It is a well-accepted view, there is a possibility to exist certain un-bridged gaps and un-resolved ambiguities in a statute even drafted with all the possible care. Judicial process basically means, the role played by a judge in a court of law while espousing the concept of law over specific aspects of legal guarantee either by constitution, a legislative enactment or an order of the Executive. In other words, it is referred to as the procedure adopted by a Judge in civil or criminal proceedings according to the law of the land or espousing the real meaning of constitution or a statute or executive or administrative order of a country.