

## 'Stare decisis', amongst High Courts

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### Introduction

1. The principle of '*stare decisis*' (to stand by decided cases) is as old as the establishment of the courts. It is derived from legal maxim '*stare decisis et non quieta movere*'. It is best to adhere to decisions and not to disturb questions, which have been put at rest. When a point of law has been settled, it forms a precedent which is not to be ordinarily departed afterwards. When the same point comes for consideration again in litigation, the scales of justice must be kept even and steady. A principle of law should not change from case to case. The judgments are not to be altered or changed in accordance with the individual opinions or private sentiments of the judges. The primary duty of the judiciary is to maintain rule of law. The law does not change with the opinion of the judges. In a given case the opinion of the judges may change, the principles of law however must remain on surer foundations until there is any change in legislation, or the society needs such change.

2. In the hierarchy of courts the opinion of judges on the questions of law decided by the superior courts are binding on the lower courts. The Constitution of India declares in Article 141 that the law declared by the Supreme Court shall be binding in all courts within the territory of India. The High Courts do not have liberty under this rule of discipline, to take a different view or to rely upon supposedly conflicting decisions, where the Supreme Court has laid down clear law on the subject. The High

Courts are not to contradict the law declared by the Supreme Court.

3. A judgment of competent court is binding upon the parties and is subject to appeal, if there be any. The principle or the question of law decided in the case, however is binding on the subordinate courts and has great persuasive value on the courts of coordinate jurisdiction. This principle keeps the judiciary within the bounds of law. It is also a rule of discipline to avoid confusion, uncertainty and to subserve the ends of justice. The principle of stare decisis is however not applicable amongst High Courts. This article seeks to examine whether this practice has any legal basis.

#### **Ratio decidendi**

4. A precedent to be binding must be express and founded on reasons. The '*ratio decidendi*' and not '*obiter dicta*' has the binding force. '*Ratio decidendi*' means the reasons or the grounds of a decision. Reason is the soul of law. *Ratio est radius divine luminous*; reason is a ray of the divine light. *Ratio injure aequitas integra*; reason in law is total equity.

5. The '*obiter dicta*' is the incidental question which may arise indirectly connected with the main questions for consideration. The observations on such questions are not binding as precedent.

6. Only that much which has been decided, and is the ratio decidendi is binding<sup>1</sup>. The judgments are not to be read like statutes<sup>2</sup>. The courts relying upon a binding precedent should be careful to find out the ratio of the decisions. Such ratio must be on the matter in law and not the decisions on facts. The judgment must be read as a whole. The observations in the judgment must be considered in the light of the questions which were before the court. What is binding is the principle underlying a decision. A

decision cannot be relied upon in support of a proposition that it did not decide<sup>3</sup>.

7. In case of conflict between the decisions of the Supreme Court itself, it is the latest pronouncement, which is binding upon lower courts unless the earlier decision is of a larger bench<sup>4</sup>.

#### **The exceptions**

8. The doctrines of 'per-incurium' and 'sub-silentio' are exceptions to the rule of *stare decisis*. If a decision has been given in ignorance of law or any statute or any binding authority, the doctrine of 'per-incurium' is attracted<sup>5</sup>. Rule of 'sub-silentio' is applicable where a particular point of law is not perceived by the court or was not present to its mind or is not consciously determined by the court<sup>6</sup>.

9. Where no reasons are given in dismissing a petition the judgment is not binding on the subordinate courts<sup>7</sup>. The Supreme Court has ruled that it is not infallible. It may be the highest court but that there may be occasions when its judgment may be reconsidered. The Supreme Court has given unto itself the power to entertain curative petitions on the certificate given by a Senior Advocate<sup>8</sup>. In such cases the Supreme Court has reconsidered its decisions. This power however has not been conceded to the courts lower in hierarchy. The power to reconsider its decisions however has been very rarely exercised by the Supreme Court. In ITO Tutiquirin vs. T.S.D. Nadar in his dissenting judgment Justice Hedge observed that: ".....the decisions of this court should not be overruled excepting under compelling circumstances. ....Every time this court overrules its previous decisions the confidence of public in the soundness of the decisions of this court is bound to be shaken..... decisions of this court should be confined to questions of great public importance in law. Finality is of utmost importance. Legal principles should not be treated as mere subjects of mental

exercise. This court must overrule its previous decisions only when it comes to the conclusion that it's manifestly wrong, not upon a mere suggestion that some or all the members of the later court might arrive at a different conclusion if the matter was res integra.”

### **The persuasive value**

10. The judgments of the High Courts have persuasive value to the other High Courts. The principle of *stare decisis* is not strictly applicable when the High Court is considering the judgment of another High Court, on same issue. These judgments are treated with respect. The High Courts however are not obliged in law to follow them or to refer it to larger bench if they take a different view.

11. The High Courts are constituted under Article 214 of the Constitution of India and are courts of record. The High Courts, under the Constitution of India, administer both central and state laws and very often decide common questions, on the matters of central laws and principles on issues involving state laws, municipal laws, personal laws, administrative laws and international laws coming before them. The new constitutional norms and values require a serious consideration to extend the doctrine of *stare decisis* to the judgments by the High Courts, on the other High Courts. The 'doctrine of amity or comity', in judiciary persuades us to consider whether the judgments of other High Court should be given more than just persuasive value. Persuasion in the matters of *stare decisis* means something more than a request. It means respect. If we respect the statutes then why not the judgments given by other High Courts? It is difficult to believe that in the common constitutional culture the High Courts should have different opinions on the

rights and liabilities of the citizens of the country interpreting the same laws. Article 261 of Constitution of India provides:-

*“261 (1) Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.*

*(2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament.*

*(3) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.”*

12. Fairness and non-arbitrariness are the essential requirements of every state action, more so in the acts of judges. The object of Article 261 is to respect the public acts, records and judicial proceedings by all the authorities in the country. The final judgments and orders passed by civil courts are capable of execution anywhere within the territory of India. A purposive and meaningful interpretation of Article 261 would suggest that the judgments of courts in any part of India should be given faith and credit by all authorities including the judges of the High Court. How then it is possible that the judgments on the same question of law interpreting same statutes may not have binding effect upon the other High Courts?

13. While reorganising the States parts of the State are declared as territory of the new state. Very often the laws applicable to these territories, when they were part of the erstwhile States, are adopted by the new states or the State to which the territories are given. In such cases High Courts ordinarily follow the judgments rendered by the parents States on the legal issues. In such cases the courts have given more than the persuasive value to these judgments. Similarly very often the local or the personal laws applicable to the citizens of the

neighbouring states are common. In such cases the doctrine of *stare decisis* should be held applicable and the judgments of the High Court should be given more than persuasive value to the judgments where same laws or customs are the subject matter of decisions.

### **The administration of justice**

14. The Gauhati High Court is administering justice to the seven states, namely Assam, Nagaland, Manipur, Tripura, Meghalaya, Mizoram and Arunachal Pradesh. The Punjab High Court is administering justice in the union territory of Chandigarh. The Calcutta High Court is administering justice in Andman and Nicobar Island through a circuit bench at Portblair; Madras High Court in the union territory of the Pondichery; the Bombay High Court in the state of Goa, through a bench. The central laws relating to union territories and the local laws have provided mechanism of administering justice in these states. The High Courts have been effectively functioning and implementing the legislative will in these states according to constitutional values. The doctrine of *stare decisis* in these High Courts does not make any distinction applying principles of binding precedents when the judgment is rendered by the High Court in respect of issues arising in different states. Why then the High Courts should not respect the decisions of the other High Courts on the same laws?

15. In the matters of interpretation of local statutes the view taken by the High Court over a number of years has been respected by the Supreme Court. The manner in which the people of the State arrange their affairs on any interpretation of provisions of law is accepted as the correct view. The doctrine of *stare decisis* has been invoked in such decisions and the Supreme

Court has not interfered in such matters<sup>9</sup>. These decisions on common issues should receive same respect from other High Courts as well.

### **Conclusion**

16. The High Courts should consider to adopt the doctrine of *stare decisis* in the matters of the decisions of other High Courts in interpreting the same laws and the common laws applicable to the people in their states. Article 261 of Constitution of India guides to such approach. It is difficult to believe that the High Courts in the country committed to the same constitutional goals and values may be allowed different and sometimes conflicting resolutions and interpretations on the same issues in law. The unity and integrity of the nation, foreseen in the preamble of the Constitution of India can be achieved by uniting the institutions, working together towards the same constitutional goals.

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1. State of Orissa vs. Md. Illiyas AIR 2006 SC 258 para 13
2. Punjab National Bank vs. R.L. Vaid AIR 2004 SC 4269 para-5; Bharat Petroleum Corporation Ltd vs. N.R. Vairamani AIR 2004 SC 4778 para 9
3. Mittal Engineering Works Pvt. Ltd. vs. Collector of Central Excise, Meerut (1997) 1 SCC 203.
4. Mattu Lal vs. Radhay Lal AIR 1974 SC 1596 para11; State of UP vs. Ram Chandra Trivedi AIR 1976 SC 2547 para 22 and Commissioner of Income Tax Bihar vs. Trilok Chandra Mehrotra (1998) 2 SCC 289 para 4.
5. State of UP vs. Synthetics and Chemicals Ltd (1991) 4 SCC 139.
6. Arnit Das vs. State of Bihar AIR 2000 SC 2264 para 21
7. Rupa Ashok Hurra vs. Ashok Hurra AIR 2002 SC 1771

8. India Oil Corporation vs. State of Bihar AIR 1986 SC 1780; Supreme Court Employees Welfare Association vs. Union of India AIR 1990 SC 334 (para 22)
9. Raj Narain Pandey vs. Sant Prasad Tiwari AIR 1973 SC 291; Bishambhar Das Kohli vs. Satya Bhalla 1973 AIR SCW 643; Misrilal vs. Dharendra Nath AIR 1999 SC 2286.

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