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Binding Nature of Judicial Precedents



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A precedent is something that precedes, or comes before. Courts relies on precedents—that is, earlier laws or decisions that provide some example or rule to guide them in the case they're actually deciding. Binding force of any judicial precedents is based on doctrine of "*Stare decisis*".

Stare decisis means "to stand by decided cases" or "to uphold precedents" and it is an abbreviation of Latin phrase "***Stare Decisis et non quieta movere***" which implies "to stand by decisions and not to disturb settled matters".¹ *Stare decisis* is a well known doctrine in legal jurisprudence. The doctrine of *stare decisis*, meaning to stand by decided cases, rests upon the principle that law by which men are governed should be fixed, definite and known, and that, when the law is declared by court of competent jurisdiction authorised to construe it, such declaration, in absence of palpable mistake or error, is itself evidence of the law until changed by competent authority. It requires that rules of law when clearly announced and established by a Court of last resort should not be lightly disregarded and set aside but should be adhered to and followed. What it precludes is that where a principle of

law has become established by a series of decisions, it is binding on the Courts and should be followed in similar cases. It is a wholesome doctrine which gives certainty to law and guides the people to mould their affairs in future.

Now in respect of binding nature of any judicial pronouncement following fundamental question arise:

1. Which part of the judgement has binding precedent;
2. Binding force of judicial precedent

WHICH PART OF THE JUDGMENT HAS BINDING PRECEDENT?

The decision of a court consists of three parts; statement and enumeration of the facts of the case, the 'reason for decision' based on the application of law on its statement, which is necessary for deciding the case in hand, and sometimes the discussion on the points of law involved in the case but the discussion on which is not essential for the decision of the case. Thus, in the decision the second part is known as 'ratio decidendi', whereas the third 'obiter dicta'.

While reading any judgement, we need to identify the "*obiter dictum*" and "*ratio decidendi*".² It is elementary that what is binding on the court in a subsequent case is not the conclusion arrived at in a previous decision but the ratio of that decision, for it is the ratio which binds as a precedent and not the conclusion.

Obiter dictum or obiter dicta is a Latin phrase meaning "other things said" i.e., a remark in a judgment that can be construed to be said in passing.

In *Arun Kumar Aggarwal v. State of Madhya Pradesh* reported in AIR 2011 SC 3056, the Hon'ble Supreme Court explained "**obiter dicta**", as follows:

"21.The expression obiter dicta or dicta has been discussed in American Jurisprudence 2d, Vol. 20, at pg. 437 as thus:

"74. -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, 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." Further at pg. 525 and 526, the effect of dictum has been discussed:

"190. Decision on legal point; effect of dictum ... In applying the doctrine of stare decisis, a distinction is made between a holding and a dictum. Generally stare decisis does not attach to such parts of an opinion of a court which are mere dicta. The reason for distinguishing a dictum from a holding has been said to be that a question actually before the court and decided by it is investigated with care and considered in its full extent, whereas other principles, although considered in their relation to the case decided, are seldom completely investigated as to their possible bearing on other cases. Nevertheless courts have sometimes given dicta the same effect as holdings, particularly where "judicial dicta" as distinguished from "obiter dicta" are involved."

The Wharton's Law Lexicon (14th Ed. 1993) defines term "obiter dictum" as an opinion not necessary to a judgment; an observation as to the law made by a judge in the course of a case, but not necessary to its decision, and therefore of no binding effect; often called as obiter dictum,; a remark by the way.

³ Obiter dictum is an observation by a judge as a legal question suggested by a case before him, but not arising in such a manner as to require decision, which is either not necessary for the decision of the case or does not relate to the material fact in issue.

⁴Obiter dicta is a judicial declaration, unaccompanied by judicial application, is of no authority; but having a persuasive force. The obiter dicta of the Supreme Court is however, binding.

Ratio decidendi which means literally the reason of decision or reason for deciding.

The only thing in a judge's decision binding as authority upon a subsequent judge is the principle upon which the case was decided. (*See Osborne v. Rowlett* 13 Ch. D. 785.) A decision is an authority for what it actually decides and what is of essence in a decision is its ratio and not what logically follows from various observations made while deciding the case. (*Nav Nirman (P.) Ltd. v. CIT* [1988] 174 ITR 574 (MP).)

The ratio decidendi is not binding where it is obscure or too wide, or where the decision itself is 'out of line' (See *Scruttons v. Midland Silicones* [1962] 2 WLR 186.).

⁵To be the ratio decidendi amongst others, the minimum requirements are :

- (1) that the matter was directly at issue,
- (2) that the issue needs to have been decided, and
- (3) the matter has been decided by giving reasons

BINDING FORCE OF JUDICIAL PRECEDENTS

1. PRECEDENTS OF SUPREME COURT RULINGS

By virtue of Article 141 of the Constitution of India, which is reproduced hereunder, law declared by Supreme Court to be binding on all courts.

"The law declared by the Supreme Court shall be binding on all courts within the territory of India."

While interpreting the word "all courts" in the case of ***Bengal Immunity Co. v. State of Bihar*** [AIR 1955 (SC) 661], Hon'ble Supreme Court has held that in the context of article 141, that the phrase "all Courts" must refer to Courts other than the Supreme Court.

Hon'ble Supreme Court is not bound by its earlier judgments

and possessed the freedom to overrule its judgments when it thought fit to do so to keep pace with the needs of changing times.

Review of its own judgement by Hon'ble Supreme Court is depends on multiple factors, such as:

- I. What was the nature of the infirmity or error on the earlier occasion,
 - i.* Did some patent aspects of the question involved remain unnoticed, or
 - ii.* The attention of the court not drawn to any relevant and material statutory provision, or
 - iii.* Any previous decision of the court bearing on the point not noticed?
- II. Has the earlier decision been followed on subsequent occasions, either by the Supreme Court or by the High Courts?
- III. What would be the impact of the error on the general administration of law or on the public good?
- IV. Is the court hearing the plea for review unanimous that there is such an error in the earlier view?

2. PRECEDENTS OF HIGH COURT RULINGS

In the constitution of India, no such article like Article 141 is present to make decision of one High Court binding on another High Court.

As per Article 227 of the Constitution of India, ***Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.***

The law declared by the High Court in the state is binding on authorities or tribunals under its superintendence and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding.

In the matter of ***CIT v. Thana Electricity Supply Ltd.*** [1994] 206 ITR 727 (Bombay), Hon'ble Bombay High Court has discussed the matter in length and held:

"From the foregoing discussion, the following propositions emerge:

- (a) *The law declared by the Supreme Court being binding on all courts in India, the decisions of the Supreme Court are binding on all courts, except, however, the Supreme Court itself which is free to review the same and depart from its earlier opinion if the situation so warrants. What is binding is, of course, the ratio of the decision and not every expression found therein.*
- (b) *The decisions of the High Court are binding on the subordinate courts and authorities or Tribunals under its superintendence throughout the territories in relation to which it exercises jurisdiction. It does not extend beyond its territorial jurisdiction.*
- (b) *The position in regard to the binding nature of the decisions of a High Court on different Benches of the same court may be summed up as follows:*
- (i) *A single judge of a High Court is bound by the decision of another single judge or a Division Bench of the same High Court. It would be judicial impropriety to ignore that decision. Judicial comity demands that a binding decision to which his attention had been drawn should neither be ignored nor overlooked. If he does not find himself in agreement with the same, the proper procedure is to refer to the binding decision and direct the papers to be placed before the Chief Justice to enable him to constitute a larger Bench to examine the question (see *Food Corporation of India v. Yadav Engineer and Contractor*).*
 - (ii) *A Division Bench of a High Court should follow the decision of another Division Bench of equal strength or a Full Bench of the same High Court. If one Division Bench differs from another Division Bench of the same High Court, it should refer the case to a larger Bench.*
 - (iii) *Where there are conflicting decisions of courts of co-ordinate jurisdiction, the later decision is to be preferred which was reached after a full consideration of the earlier decisions."*

2.1 Mandatory force of High Court decision in case of appeal pending before Supreme Court

It is not permissible for the authorities and the Tribunals to ignore the decisions of High Court or to refuse to follow the decisions of High Court on the pretext that an appeal is filed in the Supreme Court which is pending or that steps are being taken to file an appeal.

In the case of ***State of Andhra Pradesh v. Commercial Tax Officer* [1988] 68 STC 177 (AP)**, Hon'ble High Court of A.P. has held that:

"If any authority or Tribunal refuses to follow any decision of this Court on the above grounds it would be clearly guilty of committing contempt of this Court and is liable to be proceeded against."

2.2 Precedents of High Court Rulings in case of reorganization of state

While dealing with the controversy whether a decision of the erstwhile Travancore High Court can be made a binding precedent on the Madras High Court on the basis of the principle of stare decisis, the Hon'ble Supreme Court in the matter of ***Valliamma Champaka Pillai v. Sivathanu Pillai* [1980] 1 SCR 354** held:

"These erroneous decisions of the Travancore Court could, at best, have a persuasive effect and not the force of binding precedents on the Madras High Court. There is nothing in the States Reorganisation Act 1956 or any other law which exalts the ratio of those decisions to the status of a binding law, nor could the ratio decidendi of those decisions be perpetuated by invoking the doctrine of stare decisis."

So, in case of reorganisation of states it is important to consider the respective state reorganisation laws whether they enable principal of stare decisis to be stretched to new states otherwise judgments will have only persuasive value and not binding force.

2.3 Precedents of High Court Rulings in the jurisdiction of another High Court in the matter of all India jurisdictional statutes like Income Tax Act, 1961, CGST Act, 2017 etc.

As we have concluded from above discussion that judgments of one High Court are not binding on other High Court but we can't simply disregard the judgement of any High Court in the jurisdiction of another High Court because such judgement carry very high degree of persuasive value.

In the case of ***CIT v. Jayantilal Ramanlal & Co.*** [1982] 8 Taxman 188/137 ITR 257 the Hon'ble Bombay High Court has held that:

"We are aware that the practice is not uniform among the High Courts, but nevertheless we are of the opinion that it is a desirable one. Unless the judgement of another High Court dealing with an identical or comparable provision can be regarded as *per incuriam* it should be ordinarily followed"

The Bombay High Court further in the case of ***Thana Electricity Supply Ltd.*** (*supra*) has commented on the above position in the paragraph 31 of the order which is verbatim reproduced below.

31. This court, in the above case, discussed the real issue before it at great length in the light of the facts of the case and ultimately decided to answer the question in line with the decisions of the Kerala and Punjab and Haryana High Courts. The aforesaid observations leave no scope for doubt that the court merely observed what according to it is desirable and did not lay down any principle of law making the decisions of other High Courts binding precedents for this court. Any other construction of the observations in the above cases will lead to an anomalous situation as it will have the effect of giving the decisions of other High Courts the status of law binding on all courts or Tribunals throughout the country - a status which the Constitution, by virtue of article 141, has conferred only on the judgment of the Supreme Court. If for the sake of uniformity, the decisions of any High Courts and Tribunals in the country, the very distinction between the precedent value of the Supreme Court decisions and the High Court decisions will be obliterated. Such a situation is neither contemplated by the Constitution nor is it in consonance with the principle laid down by the Supreme Court and the doctrine of stare decisis.

The Bombay High Court in ***Maneklal Chunilal & Sons Ltd.***

v. *CIT* [1953] 24 ITR 375, wherein the Bombay High Court has observed that (at page 385) : 'in conformity with the uniform policy which we have laid down in income-tax matters, whatever our own view may be, we must accept the view taken by another High court on the interpretation of the section of a statute which is an all-India statute'.

CIT v. Chimanlal J. Dalal & Co. [1965] 57 ITR 285, the Bombay High Court, again reiterated the same position by observing that (at page 290) : 'Barring some exceptions, it has been the general policy laid down by this court in income-tax matters that whatever our own view may be, we should follow the view taken by another High Court on the interpretation of a section'

In *Arvind Boards and Paper Products Ltd. v. CIT* [1982] 9 Taxman 185/137 ITR 635, the Gujrat High Court, has observed that in income-tax matters, which are governed by an all-India statute, when there is a decision of another High Court on the interpretation of a statutory provision, it would be a wise judicial policy and practice not to take a different view (whatever ones own view may be), barring, of course, certain exceptions, like where the decision is sub-silentio, per incuriam, obiter dicta or based on a concession or takes a view which it is impossible to arrive at or there is another view in the filed or there is a subsequent amendment of the statue or reversal or implied overruling of the decision by a higher court or some such or similar infirmity is manifestly perceivable in the decision.

2.4 Precedents of High Court Rulings in the matter of constitutional validity of central laws

To understand the implications of High Court rulings relating to constitutional validity of any central law, we will have to read Article 226(2) which deals with powers of High Court to issue writs and a very important judgement pronounced by Hon'ble Apex Court in the case of *Kusum Ingots And Alloys Ltd. v. Union of India* AIR 2004 SC 2321. Relevant extracts are reproduced hereunder:

Article 226(2) of the Constitution of India

The power conferred by clause (1) to issue directions, orders

or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

***Kusum Ingots And Alloys Ltd.* (supra)**

A parliamentary legislation when receives the assent of the President of India and published in an Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ court, it is well settled would not determine a constitutional question in vacuum.

The court must have the requisite territorial jurisdiction. **An order passed on writ petition questioning the constitutionality of a Parliamentary Act whether interim or final keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act.**

Numbers of High Courts across the country has followed Article 226(2) and *Kusum Ingots And Alloys Ltd.* case (supra) to pronounce judgments, few cases are highlighted below:

In the matter of *Saumya Ann Thomas v. Union of India* (2010 (1) KLJ 449), the Kerela High Court has ruled that:

....(b) The stipulation in Sec.10A(1) of the Divorce Act that the spouses must "have been living separately for a period of two years or more" is declared to be unconstitutional as the stipulation of the period of "two years" therein violates the fundamental rights to equality and the right to life under Arts.14 and 21 of the Constitution.

(c) To save the provision and to avoid the vice of unconstitutionality the period of "two years" stipulated in

Sec.10A of the Divorce Act is read down to a period of "one year".

Further in the matter of ***Shiv Kumar v. Union Of India*** AIR 2014 Kant 73, the Karnataka High Court has ruled that:

7. Having heard learned counsel and on perusal of the judgment of the Kerala High Court in ***Soumya Ann Thomas***, as well as the judgment of the Apex Court in *Kusum Ingots and Alloys Ltd.*, what follows is that Section 10A(1) of the Act has been held to be unconstitutional being violative of Articles 14 and 21 of the Constitution. However, to save it from the vice of unconstitutionality, the expression of 'two years' has been read down to 'one year' in sub-section (1) of Section 10A of the Act. The Kerala High Court's pronouncement on the constitutionality of a provision of a Central Act would be applicable throughout India. This is made clear by Hon'ble Supreme Court in *Kusum Ingots and Alloys Ltd. Corpn*, wherein it has been stated that an order passed on a Writ Petition questioning the constitutionality of a Parliamentary Act whether interim or final keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution, would have effect throughout the territory of India subject of course to the applicability of the Act. In that view of the matter, this Writ Petition would not call for any specific orders with regard to holding constitutionality or otherwise of sub-section(1) of Section 10A of the Act. Keeping in mind the pronouncement of the Division Bench of the Kerala High Court and reading the same in the context of *Kusum Ingots and Alloys Ltd*, the position of law with regard to sub-section (1) of Section 10A of the Act is now been made clear, particularly, insofar as State of Karnataka is concerned.

The Delhi High Court had struck down Section 2(p) of Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, and consequently, Rule 3(3)(1)(b) of Pre-natal Diagnostic Techniques Rules in the case of *Indian Radiological and Imaging Association v. Union of India* AIR 2016 Del 78. The judgment was challenged in the Supreme Court by way of Special Leave Petition, but no stay of the judgment was granted. Thereafter the question of the constitutional validity of Pre-conception and Pre-natal Diagnostic Techniques

(Prohibition of Sex Selection) (Six Months Training) Rules 2014, came up before the Madras High Court. In these proceedings, *Dr T. Rajakumari v. Government of Tamil Nadu* AIR 2016 Mad 177, the Court observed that the Delhi High Court had already struck down the provisions and no stay was granted against the judgment by the Supreme Court. It was therefore held that **"it is trite to say that once a High Court has struck down the provisions of a Central Act, it cannot be said that it would be selectively applied in other States"**. It was further held that the provisions held unconstitutional were applicable in the country unless Supreme Court stayed or overruled the Delhi High Court judgment.



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1. *Sakshi v. Union of India* (Writ Petition (crl.) 33 of 1997) 18 ILD (2004) 888 (SC)
 2. *S.P. Gupta v. President of India* AIR 1982 SC 149, 1981 Supp (1) SCC 87, 1982 2 SCR 365
 3. *K. Jayarama Iyer v. State of Hyderabad* AIR 1954 Hyd. 56.
 4. *CIT v. Madhukant M. Mehta* [1981] 5 Taxman 11/132 ITR 159 (Guj.) and *CIT v. Smt. T.P. Sidhwa* [1981] 6 Taxman 91/[1982] 133 ITR 840 (Bom.)
 5. *Industrial Credit and Investment Corporation of India Ltd. v. Dhanesh D. Ruparelia* [2000] 99 Comp. Cas. 181 (Bom.).
 6. *East India Commercial Co. Ltd. v. Collector of Customs* 1962 taxmann.com 5