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Topic- Principle Sources of Indian Law – Judicial Decisions

Principle Sources of Indian Law – Judicial Decisions

Judicial precedent or decisions is a process which is followed by the judges to take the decision. In Judicial precedent, the decision is taken by following the similar cases happened in the past. So judicial decision is based on the principle of stare decisis i.e. “stand by the decision already made”. Let us explore the types and principles of Judicial Precedent in detail.

Judicial Precedent

There is a term called the doctrine of stare decisis which states that the court's decision becomes a precedent to be followed in future cases of a similar nature. The reason why a precedent is recognized is that the verdict of the judiciary is assumed to be correct. The use of precedents helps the litigant gain confidence in the judicial system. The administration of the judicial decision becomes just and fair.

Precedent

There are two rules that apply to the doctrine of judicial precedents:

1. The first rule says that a court which is lower in a hierarchy is completely bound by the decisions of courts which are above it.
2. The second rule states that higher courts are bound by their own decision in general in matters of related to precedence.

High Court

- The decisions of the high court are binding on all subordinate courts. In case of a conflict between two benches of similar authority, the latter decision is to be followed.
- The more the number of judges on a bench, the higher their authority.
- The decision of one high court is not binding on other high courts.
- The Supreme court is the highest authority and its decisions are binding on all other courts. Article 141 of the constitution says that any law decided by the supreme court shall be binding on all courts of the country.

Supreme Court

Article 141 states all courts are legally bound to the Supreme Court judicial decisions with the exception of Supreme Court itself. The Supreme Court is not bound by its own decisions.

However, the Supreme Court recognises that its earlier decisions cannot be deviated from, except in case of extenuating circumstances. If an earlier decision is found to be incorrect, the Supreme Court will deviate from it.

Types of Judicial Precedent

1. Declaratory and Original Precedents

As John William Salmon explained, a declaratory precedent is one where there is only application of an already existing rule in a legal matter.

Whereas, an original precedent is one where a new law is created and applied in a legal matter. Original precedents are responsible for the creation of new laws.

2. Persuasive Precedents

A persuasive precedent is a type of precedent where the judge is not required to follow the precedent in a legal matter but will take the precedent heavily into consideration.

So a persuasive precedent is not a direct source of law but is considered a historical source of law. In India, the decisions of one high court can act as persuasive precedents in other high courts.

3. Absolutely Authoritative Precedents

In an absolutely authoritative precedent, the judges have to compulsorily follow the judicial decision of the precedent in a case of law.

In other words, even if the judge finds the precedent to be a wrong judgment, he is legally bound to give the same judicial decision.

For e.g. – Every court in India is absolutely bound by decisions of courts superior to itself because of hierarchy.

4. Conditionally Authoritative Precedents

A conditionally authoritative precedent is one where generally the precedent is absolutely authoritative but in certain special circumstances, like a supreme court decision, it can be disregarded. The court can disregard the decision if it is a wrong decision, or goes against the law and reason.