Ratio Of a Precedent

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The Doctrine of Binding Precedent- Evolution

- The doctrine of binding precedent is a significant feature of the common law jurisprudence.
- Statutes can never cover every legal aspect involved in a case.
- In many cases **Out of necessity** courts are required to fill the gaps in law, to resolve legal conflicts/ ambiguities and to evolve a principle for a problem not covered by it.
- The principle so evolved in course of time becomes a **precedent.**
- India and Bangladesh both having inherited the Common Law system , the doctrine of binding precedent is well applicable to both the countries.

Law of Precedents & Stare Decisis

- The Common law doctrine of binding Precedent is based upon the Latin maxim ‘***Stare decisis et non quieta movere***’, commonly referred to as ‘**stare decisis**’, meaning to “to stand by decided matters and not to disturb settled points.”
- “The principle promotes the even-handed, predictable, and consistent development of legal principles,
- fosters reliance on judicial decisions, and
- contributes to the actual and perceived integrity of the judicial process.” **(Supreme Court Of U.S.)**

Precedent and Ratio Decidendi

- “Thus a **precedent** is a judicial decision, **which contains in itself a principle**. The only principle which forms its authoritative element is often termed the **`ratio decidendi'.**
- The concrete decision is binding between the parties to it, but it is the **abstract ratio decidendi** which alone has the force of law as regards the world at large"**.(Salmond)**

Precedent

- " ....Judicial declaration, unaccompanied by **judicial application**, is not of binding authority."
- *They (Judges) must not lay down principles which are* ***not required for the due decision of the particular case****, or which are* ***wider than is necessary for this purpose.***
- The only judicial principles which are authoritive are those which are thus relevant in their subject-matter and limited in their scope..." **[Salmond on Jurisprudence (11th Edition, page 224]**

Ratio Decidendi- Meaning

- **'Ratio decidendi**'-a Latin expression means 'the reason for deciding.'
- "The only thing in a Judge's decision binding as an authority upon a subsequent Judge is the *principle* upon which the case was decided." **Sir George Jessel in *Osborne* v. *Rowlett*,(1880) 13 Ch D 774**
- The principle arrived at regarding a disputed point of law through a process of reasoning to justify the decision(s) is called the ***ratio decidendi*** of the decision.

Obiter Dictum & Ratio Decidendi

- **`Obiter dictum'** is 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. **(The Wharton's Law Lexicon -14th Ed. 1993)**
- An **"obiter dictum"** as distinguished from a **"ratio decidendi"** is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. .... **Director of Settlements, A.P. & Ors. v. M.R. Apparao & Anr., (2002)4 SCC 638**

Obiter Dicta & Ratio-Difference

- " The distinction between a dicta and obiter is well known. Obiter dicta is more or less presumably **unnecessary to the decision**. It may be an expression of a viewpoint or sentiments which has no binding effect.
- It is also well settled that the statements which are not part of the ratio decidendi constitute obiter dicta and are not authoritative." **State of Haryana v. Ranbir, (2006) 5 SCC 167**

Constitution & The Doctrine of Precedents

- **Indian Constitution: Article 141.** 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
- **Bangladesh Constitution: Art.111**.Binding effect of Supreme Court judgments : The **law declared** by the Appellate Division shall be binding on the High Court Division and the law declared by either division of the Supreme Court shall be binding on all courts sub-ordinate to it.

Finding Ratio Decidendi Not a Mechanical Process But an Art

- **Finding ratio decidendi** is **not a mechanical process but an art** which one gradually acquires through practice.
- What is really involved in finding the ratio decidendi of a case is **the process of abstraction.**

  S.I. Rooplal and another v. Lt. Governor through Chief Secretary, Delhi and others, A.I.R. 2000 SC 594.

Finding Out the Ratio-Duty of The Court

- "5. ..... The High Court and all other courts in the country were no doubt ordained to follow and apply **the law declared by this Court**, but that does not absolve them of the obligation and **responsibility to find out the ratio of the decision and ascertain the law, if any, so declared** from a careful reading of the decision concerned and only thereafter proceed to apply it appropriately, to the cases before them.”

Delhi Administration (Now NCT of Delhi) v. Manohar Lal, (2002)7 SCC 222.

Finding Out the Ratio: Major and Minor Premises

- The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the **major premise consisting of a pre-existing rule of law**, and a **minor premise based on the material facts of the case under immediate consideration.**
- It is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. **Lord Halsbury, 4th Edn., Vol. 26, para 573**

Finding Out the Ratio- Conventional Method

I. Must arise from dispute of law.
II. Must be necessary for determination of lis .
III. Must be directly related to the issue.
IV. Must be argued and decided on due consideration.

Ratio Decidendi-The Essentials

- This **Ratio Decidendi** is not:
  I. the facts of the case,
  II. the law applied to the case , or
  III. the order of the case.

  Instead, it's the **'necessary reasoning regarding legal aspect '** that the judge needed to resolve the case.

DETERMINING RATIO - THE INVERSION TEST

- **The Inversion Test"** also known as the **"Wambaugh Test"** propounded by **Eugene Wambaugh,** a Professor at **The Harvard Law School**, in his book **"The Study of Cases"** is used as a tool to determine the ratio decidendi in any judgment.
- The **"Inversion Test"** suggests that we should reverse or negate the proposition of law put forward by the judge and then see if its reversal would have altered the actual decision.
- If yes, then the proposition is the ratio or part of it;
- if the reversal would have made no difference, it is not.

DETERMINING RATIO - THE INVERSION TEST

In the words of **Professor Wambaugh**,

- "In order to make the test, let him first frame carefully the supposed proposition of law. Let him then insert in the proposition a word reversing its meaning. Let him then inquire whether, if the court had conceived this new proposition to be good, and had had it in mind, the decision could have been the same. If the answer be affirmative, then, however excellent the original proposition may be, the case is not a precedent for that proposition, but if the answer be negative the case is a precedent for the original proposition..."
- Applied by S.C. Of India **in State of Gujarat vs. Utility Users' Welfare Association** Judgment dated-12.04.2018 in Civil Appeal No.14697 of 2015

Favourable Decision with Adverse Finding

- Where a case is decided in favour of the petitioner on more than one grounds , but on certain points **a finding is recorded against him,** on the application of the reversal test, the point on which a finding is given against the petitioner would not be a ratio decidendi and shall be mere obiter dictum considering that the reversal of the finding on this point would not alter the decision of the case.

Decision By Multiple Judges

- The determination of the *ratio* is easy if there is only **one opinion** or all the opinions are in agreement along with reasoning .
- In case of difference of opinion, the majority view **on a point of law** with **identical reasoning** will be ratio on that point.
- If the judges have identical view but for different reasons, find essential areas of agreement.

Decision By Multiple Judges

- "It is unfortunate that a Constitution Bench had to be constituted for interpreting a 11-Judge Bench judgment **(T.M.A. Pai Foundation and others v. State of Karnataka and others (2002(8) SCC 481).** Probably in judicial history of India, this has been done for the first time. It is equally unfortunate that all of us cannot agree on all the points, despite the fact that the matter involves construction of a judgment. In the name of interpretation we have to some extent, however little it may be, re-written the judgment **The Constitution Bench of the Supreme Court in Islamic Academy of Education And Another v. State of Karnataka And Others, (2003) 6 SCC 697**

Ratio and Obiter: An illustration from the book *Legal Technique* by Christopher Enright.

- Suppose there's a *Dog Act 1947* , Section 6 whereof says : '**A person may bring an action against the owner of a dog if the dog enters land owned by that person.**'
- **SUIT BY Elisabeth:** Elisabeth ,who owns a meadow , brings an action under S. 6 of the Dog Act 1947 against Kit Walker because he allowed his pet wolf '**Devil**' to walk onto her meadow and molest her pet rabbit, much to the distress of both Elisabeth and the rabbit.

Ratio and Obiter: An illustration from the book *Legal Technique* by Christopher Enright.

- **FACTS FOUND PROVED:**
- **First, ,** Elisabeth is owner of the meadow's land which some years ago was mortgage by her to the Rural Bank, however, the mortgage has been discharged.
- **Second ,**Devil has entered Elisabeth's land and has molested her pet rabbit.
- **Third**, from a zoological perspective a wolf is a member of the dog family.

The legal Issue & Findings of The Court

- **The legal issue** -whether the domesticated wolf can be held to be a dog within the meaning of 'dog' under S. 6 of the *Dog Act*.
- **The Court finds:** Elisabeth was entitled to bring the action in her own right even if she had not discharged her mortgage to the Bank some years ago, hence, it would not have been necessary for the action to be brought by both Elisabeth and the Rural Bank as co-plaintiffs.
- A number of the provisions of the Dog Act 1947 referring to dogs clearly indicate that only dogs which are ***ordinarily domesticated come within S.6***
- In this case the offending animal is a **wolf**. Though the particular wolf **was domesticated**, however ,as a species wolves are not usually domesticated.
- Therefore, **'Devil'** is not a dog within the meaning of S. 6 of the Dog Act so the plaintiff's claim fails.

Ratio and Obiter ?

- **The ratio decidendi** *: the term "dog" under S.6 of The Dog Act 1947 "means only a dog of a type which is ordinarily domesticated" and did not extend to a wolf which has been domesticated.*
- **Obiter Dicta:** Even if Elisabeth had not discharged her mortgage to the Rural Bank some years ago. It would not have been necessary for the action to be brought by both Elisabeth and the Rural Bank as co-plaintiffs.

It was obiter because Elizabeth had discharged 'her mortgage to the Rural Bank,' and therefore, the statement was not necessary to the decision.

Donoghue v Stevenson [1932] AC 562

- In **Donoghue v. Stevenson,** also known as the 'snail in the bottle case' Mrs Donoghue drank a bottle of ginger beer manufactured by Mr Stevenson and purchased for her by a friend. The bottle, which was opaque, contained the decomposed remains of a so the snail could not be detected until Mrs Donoghue had already consumed a large part of the ginger beer. She claimed to suffer from shock and severe gastroenteritis as a result of the incident. .
- **Lord Atkin** Deciding in favour of **Donoghue** said (majority) : "You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. …."

Donoghue v Stevenson [1932] AC 562

- What is the ratio and what is the obiter, if any?
- The principle stated by **Lord Atkin** (Neighbour's Principle) is a very wide principle that goes beyond the specific facts of the case so, arguably, it ought not to have been part of the *legal* proposition .
- **Ratio** "A manufacturer of an article of food, which he sells… to reach the ultimate consumer in the form in which they left him… owes a duty to the consumer to take reasonable care".

Must Arise From Dispute of Law

- **In an appeal under Order 43, Rule 1, C. P. C.**, against an order dismissing the plaintiff's suit , the High Court while dismissing the appeal as not competent under Order 43, Rule 1, observed that ***the plaintiff may file a regular appeal against the decree framed upon the dismissal of the suit.***
- The observation indicating what would be the proper remedy ; **ratio or obiter ?**

Argued and Decided on Due Consideration

- In **N. Sukumaran Nair vs. Food Inspector, Mavelikara [1997 (9) SCC 101] and Santosh Kumar vs. Municipal Corporation & Anr. [2000 (9) SCC 151]** ,cases under Prevention of Food Adulteration Act, **the S.C. Directed the Govt. to commute sentences u/s 433 Cr.P.C. on deposit of fine.**
- Relying upon these pronouncements the High Court in a case under Prevention of Food Adulteration Act directed the Govt. to extend the **benefit of commutation of sentence under S.433 (d) Cr.P.C**. on deposit of fine by the appellant .

Argued and Decided on Due Consideration

- The question being- what is the ratio in **Sukumaran and Santosh Kumar as regards High Courts power to grant commutation u/s 433 Cr.P.C.**
- The apex Court held: we could not find from the decisions reported in **Sukumaran and Santosh Kumar *any law*** *having been declared or any principle or question of law having been decided or laid down* therein and that in those cases this Court merely proceeded to give certain directions to dispose of the matter in the special circumstances noticed by it. " **Delhi Administration (Now NCT of Delhi) v. Manohar Lal, (2002)7 SCC 222**

THANKS