Precedent means judgment or decision of a court of law cited as an authority for the legal principle embodied in it. The doctrine of precedent which is also known as stare decisis, i.e. stand by the decision, is based on the principle that like cases should be decided alike. Once a case is decided by judge by applying the principle, a case on similar facts which may arise in future must also be decided by applying the same principle. This is not always saves the time and labour of judges, but also secures certainty, predictability and uniformity in the applications of law.

CLASSIFICATION OF PRECEDENT

Original and Declaratory Precedents

The judicial decisions are of two types, namely those which create a new law, and those which apply known and settled principle of law to the particular facts of law. Both these types of decision are treated as precedent. It is because the legal principles embodied there in are authoritative guides to courts for the determination of future controversies. Decisions which create a new law are called original precedents, while those which apply known and settled principles of law to the particular facts of the case are called declaratory precedents. A declaratory precedents is not a source of new law where as an original principle is.

There are several declaratory precedents of law, for the law on most of the points is already settled, and judicial decision are mere declarations of pre-existing rules. On the other hand, original precedent, though fewer in numbers, are greater in importance, as they alone develops the law.

This distinction between original and declaratory precedents is based on two diametrically opposite theories of precedents. One theory supported by jurist like Austin and Friedmann concide they law making role of the judge. In their view some precedents may be original because they laid down original new principle of law. Jurist like Blackstone do not agree with this, and consider the precedents is the declaratory only , i.e., they merely reiterate recognise principles of law the common law contains a rule for every situation and the judge's function is only to discover and apply it to the case at hand. This is known as declaratory theory of precedent.

AUTHORITATIVE AND PERSUASIVE PRECEDENT

Classification of precedents into authoritative and persuasive is a widely accepted classification. An authoritative precedent is one which the judge is bound to follow the irrespective of whether he approves it. In other words the judge has no choice. For instance, are decision of Supreme Court of India is binding on a judge of Kerala High Court. Similarly, a decision of Kerala High Court is binding on lower courts in Kerala. In a system of precedent, decisions of superiors are always consider as authoritative precedents.

Authoritative precedents are further classified in absolute and conditional. An absolutely authoritative precedent is absolutely binding and must be followed without any question, however, unreasonable or erroneous it may be appear to be. It has a legal claim to implicit and unquestioned by the court. Conditionally authoritative precedent is one which is normally binding on the judge may be disregarded by him in limited circumstances.

A persuasive precedent is one which the judge under no obligation to follow. Here, he has a choice in deciding whether to follow a precedent. If he is convinced of the crime of the merits of a decision, he may follow it; otherwise he may refuse. A decision of the Delhi High Court is only a persuasive precedent as far as the Madras High Court concerned, under it is under no obligation to follow it. Foreign judgements may also be considered as persuasive. Persuasive precedents though not binding, often exert a decisive influence on judicial decisions. The distinction between a persuasive precedent and a conditionally a authoritative precedent lies in the fact that the former requires reason to supported while the latter requires are reason to reject it. Authoritative precedents are considered to be legal source of law, while the persuasive precedent is only historical sources.

In ‘oxford dictionary’ precedent defined as ‘a privious instance or case which is, or may be taken as an example of rule for subsequent cases or by which similar act or circumstances may be supported and justified’ A number of jurists

FOREIGN JUDGEMENTS:

Decisions of English courts lower in the hierarchy. For example, the House of Lords may follow a Court of Appeal decision, and the Court of appeal may follow a High Court decision, although not strictly bound to do so. In India Supreme Court may follow judgments of High Courts and High Courts may follow judgments of other High Court.

The English decisions referred to by Supreme Court are of courts of a country from which India has derived its jurisprudence and large part of Indian laws and in which the judgments were delivered by Judges held in high repute. Undoubtedly, none of these decisions are binding upon Supreme Court but they are authorities of high persuasive value to which Courts may legitimately turn for assistance. Whether the rule laid down in any of these cases can be applied by Courts must, however, be judged in the context of Indian own laws and legal procedure and

the practical realities of litigation in India. Forasol v. Oil and Natural Gas Commission, AIR 1984 SC 241; 1984 Supp. SCC 263.

The Supreme Court is not bound by the dicta and authority of English cases.

Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram and others, AIR 1954 SC 236:

Supreme Court although can be guided by English judgement but can not ignore the rulings of Supreme Court itself.

Samant N. Balakrishna, etc. v. George Fernandez and others etc. AIR 1969 SC 1201; 1969(3) SCC 238.

American cases relating to American constitution cannot be relied for the purpose of examining fundamental rights under Indian Constitution because of difference of social conditions and habits of people of both the countries. Pathumma and others v. State of Kerala and others, AIR 1978 SC 771: 1978(2) SCC 1:

The Courts have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy. Courts cannot allow its judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. Indian Courts no longer need the crutches of a foreign legal order. Indian courts have to build up their own jurisprudence. M.C. Mehta and another v. Union of India and others, AIR 1987 SC 1086: 1987(1) SCC 395:Forasol v. Oil and Natural Gas Commission, AIR 1984 SC 241; 1984 Supp. SCC 263.

American cases relating to American constitution cannot be relied for the purpose of examining fundamental right under Indian Constitution because of difference of social conditions and habits of people of both the countries. Pathumma and others v. State of Kerala and others, AIR 1978 SC 771, 1978(2) SCC 1.

Decisions of Privy Council or Federal Court are not binding on Supreme Court. State of Bihar v. Abdul Majid, AIR 1954 SC 245.

THEORY OF PRECEDENT

Declaratory Theory

This theory was propounded by Sir Mathew Hale as early as i 1713 when he said:

"…the decision of courts of justice…do not make a law properly so called, for that only the king and parliament can do; yet they have a great weight and authority in expounding, declaring, and publishing what the law of this kingdom is."

However, it was Blackstone who formally enunciated this theory. According to him:

"A judge is sworn to determine , not according to his own judgement, but according to the known laws and customs of the land, not delegated to pronounce a new law but to maintain and explain the old one jus decree et non jus dare."

This means that the judges can only declare the law, and never make or give new law. The staunchest supporters of this Blackstonian doctrine were the judges themselves For example, Lord Esher MR said;

"…there is in fact no such things as judge made law, for the judges do not make the law , though they frequently have to apply existing law to circumstances as to which it has previously been authoritative laid down such law is applicable."

This Blackstonian doctrine uncompromisingly asserts that the function of judge is jus decree et non jus dare, i.e., to discover in the existing rules of the law the particular principle that govern the facts of individual cases. Judges are, therefore, only 'law finders' rather than law makers.

Criticism of the Theory

This classical theory of Blackstone has been subjected to severe criticism by eminent jurists. The great law reformer Jeremy Benthan said that the statement that judges only declare the law is ' a wilful falsehood having for its subject the stealing of legislative power by and for hands which could not or durst not openly claim it'. His discipline john Austin also has assailed it as a 'childish fiction employed by our judges that judiciary or common law is not made by them, but it is a miraculous something made by no body ,existing, I suppose from eternity and merely declared from time to time by the judges.' Several other eminent jurists like Munro Smith and Holmes also consider that this orthodox theory cannot be taken seriously.

HIERARCHY OF COURTS

For the operation of the doctrine of precedent, a settled hierarchy of courts is imperative, because the basic rule of precedent is that a court is bound by the decisions of all superior courts. In India, as we know, the Supreme Court is the highest court of law in civil, and constitutional matters. There are high courts at the state level and civil and criminal courts below the high court. Article 141 of the Constitution states that the law declared by the Supreme Court of India shall be binding on all courts in India. The question whether the Supreme Court is bound by its own decision under art 141 was raised in Bengal Immunity Co Ltd v State of Bihar. In that case it was held that although the words, 'all courts in India' appear to be wide enough to include the Supreme Court. As a result, the Supreme Court is not bound and is free to reconsider its previous decisions in appropriate cases. This position was reiterated in Sajjan Singh v State of Rajasthan wherein it was held that the Constitution does not place any restrictions on the powers of Supreme Court to review its earlier decisions or even to depart from them. The court made it clear that the doctrine of stare decisis should not permitted to perpetuate erroneous decisions to the detriment of the general welfare. The court recognised the need for exercising restraint in overruling previous decisions stating that the power must be exercised only when consideration of a substantial and compelling make it necessary to do it.

When there is conflict between the two decisions of the Supreme Court, the decision of the larger Bench prevails over that of the smaller Bench. This principle is true that in the case of high courts also.

ADVANTAGES AND DISADVANTAGES OF PRECEDENTS

Advantages

* There is certainty in the law. By looking at existing precedents it is possible to forecast what a decision will be and a person can plan accordingly.

* There is uniformity in the law. Similar cases will be treated in the same way. This is important to give the system a sense of justice and to make the system acceptable to the public.

* Judicial precedent is flexible. There are a number of ways to avoid precedents and this enables the system to change and to adapt to new situations.

* Judicial precedent is practical in nature. It is based on real facts, unlike legislation.

* Judicial precedent is detailed. There is a wealth of cases to which to refer.

Disadvantge

* Difficulties can arise in deciding what the ratio decidendi is, particularly if there are a number of reasons.

* There may be a considerable waiting period for a case to come to court for a point to be decided.

* Cases can easily be distinguished on their facts to avoid following an inconvenient precedent.

* There is far too much case law and it is too complex.

EXCEPTIONS TO BINDING PRECEDENT

If two judges Bench find a judgement of a three judges Bench to be so incorrect that it cannot be followed in any circumstances, keeping view of judicial discipline and propriety, the proper course is to refer the matter before it to another Bench of three judges. Pradip Chandra Parija v/s Pramod Chandra Patnaik AIR 2002 SC 296 ;(2002) 1 SCC 1 .

It is impermissible for a High Court to overrule the decision of the Apex Court on the ground that the Supreme Court laid down legal position without considering any other point. High Court cannot question the correctness of the decision of the Supreme Court even though the point sought before the High Court. Suganthi Suresh Kumar v/s Jagdeeshan (2002) 2 SCC 420.

When a court differs from the decision of a co-ordinate bench of a Single Judge of High Court, the decision should be referred to Larger Bench. Ayyaswami Gounder and others v. Munnuswamy Gounder and others, AIR 1984 SC 1789: 1984(4) SCC 376.

If a division bench of a High Court differs from the view expressed by another division bench of the same court, it is appropriate that the matter is referred to a larger bench.Rajesh Kumar Verma v. State of Madhya Pradesh and others, AIR 1995 SC 1421: 1995(2) SCC 129; Sundarjas Kanyalal Bhathija and others v. The Collector, Thane, Maharashtra and others, AIR 1991 SC 1893; 1989(3) SCC 396. Union of India and others v. Godfrey Philips India Ltd., AIR 1986 SC 806; 1985(4) SCC 369.

Division Bench of Supreme Court consisting of two Judges cannot over rule the decision of a Bench of two Judges as it would be an inappropriate.

Javed Ahmed Abdul Hamid Pawala v. State of Maharashtra, AIR 1985 SC 231; 1985(1) SCC 275. When there is a conflict of opinion that is when there is disagreement by one single judge with the decision of another single Judge it is appropriate that the appropriate course is to refer the matter to a larger bench for an authoritative decision.

Shridhar son of Ram Dular v. Nagar Palika, Jaunpur and others, AIR 1990 SC 307; 1990 Supp. SCC 157. One Full Bench decision cannot over rule another Full Bench Decision delivered by Judges of equal strength. Shyamaraju Hegde v. U. Venkatesha Bhat and others, AIR 1987 SC 2323: 1987 Supp. SCC 321.

CIRCUMSTANCES DESTROYING OR WEAKENING THE BINDING FORCE OF PRECEDENTS.

1. **Abrogated Decisions**: A decision ceases to be binding if a statute or statutory rule is inconsistent with it is subsequently enacted or if it is reversed or overruled by a higher court.

2. **Ignorance of Statute**: A precedent is not binding if it was rendered in ignorance of a statute or rule having the force of statute i.e. delegated legislation. Such decisions are per incuriam and not binding. The mere fact that the earlier court misconstrued a statute or ignored a rule of construction is no ground for impugning the authority of precedent. It is clear law that a precedent loses its binding force if the court that decided it overlooked an inconsistent decision of a higher court. Such decisions are also per incuriam. A court is not bound by its own decision that is in conflict with one another. If the new decision is in conflict with the old, it is given per incuriam and is not binding on later courts. In this circumstance the rule is that where there are previous inconsistent decisions of its own, the court is free to follow either i.e. earlier or later.

To come within the category of per incuriam it must be shown not only that the decision involved some manifest slip or error but also that to leave the decision standing would be likely, inter alia, to produce serious inconvenience in the administration of justice or significant injustice to citizens.

3 **Sub Silentio**: Precedents sub silentio or not argued: A decision passes sub silentio when the particular point of law involved in decision is not perceived by the court or present to its mind. When a decision is on point A upon which judgement is pronounced but there was another point B on which also court ought to have pronounced before deciding he issue in favour of the party,

but that was not argued or considered by the Court. In such circumstances although point B was logically involved in the facts and although the case had a specific outcome , the point B is said to pass sub silentio.[Gerard v/s Worth of Pipers Ltd (1936) 2 All. E R 905(A)]. It is rightly said that an hundred precedent sub silentio are not material. Where a judgement is given without the losing parties having been represented , there is no assurance that all the relevant consideration have been brought to the notice of the court and consequently the decision ought not be regarded as absolute authority even if it does not fall within sub silentio rule. A precedent is not destroyed merely because it was badly argued, inadequately considered and fallaciously reasoned. Total absence of argument vitiates the precedent. A decision is an authority only for what it actually decides and not for what may logically or remotely follows from it. Decision on a question which has not been argued cannot be treated as precedent. M/s. Goodyear India Ltd. v. State of Haryana and another, AIR 1990 SC 781: 1990(2) SCC 71: 1989 Supp. (1) SCR 510: 1989(2) Scale 982

When observation of the court on a question about validity of a statutory provision which was neither raised nor argued would not be a binding precedent.Rajpur Ruda Meha and others v. State of Gujarat, AIR 1980 SC 1707: 1980(1) SCC 677.

5. **Distinguishing:**A binding precedent is a decided case which a court must follow. But a previous case is only binding in a later case if the legal principles involved is the same and the facts are similar. Distinguishing a case on its facts, or on the point of law involved, is a device used by judges usually in order to avoid the consequences of an earlier inconvenient decision which is, in strict practice, binding on them.

If a Court deems fit to follow a precedent of a superior court the proper course , in such a case, is to try to find out and follow the opinions expressed by larger benches of SuperiorCourt in the manner in which it had done this. The proper course for a Court , is to try to find out and follow the opinions expressed by larger benches of superior Court in preference to those expressed by smaller benches of the Court. If, however, the Court was of opinion that the views expressed by larger benches of this Court were not applicable to the facts of the instant case it should say so giving reasons supporting its point of view.

Union of India and another v. K.S. Subramanian, AIR 1976 SC 2433;1976(3) SCC 677.

Even Apex Court is bound by its earlier decisions. It is only when the Supreme Court finds itself unable to accept the earlier view, it shall be justified in deciding the matter in a different way.

Income Tax Officer, Tuticorin v. T.S. Devinatha Nadar etc., AIR 1968 SC 623.

6. **Overruling**: A higher court can overrule a decision made in an earlier case by a lower court eg. The Court of Appeal can overrule an earlier High Court decision. Overruling can occur if the previous court did not correctly apply the law, or because the later court considers that the rule of law contained in the previous ratio decidendi is no longer desirable.

The overruling is retrospectively except as regards matters that are res judicata or accounts that have been settled in the meantime.

The Apex Court or any superior court cannot allow itself to be tied down by and become captive of a view which in the light of the subsequent experience has been found to be patently erroneous, manifestly unreasonable or to cause hardship or to result in plain iniquity or public inconvenience. The Court has to keep the balance between the need of certainty and continuity and the desirability of growth and development of law. It can neither by judicial pronouncements allow law to petrify into fossilised rigidity nor can it allow revolutionary iconoclasm to sweep away established principles. On the one hand the need is to ensure that judicial inventiveness shall not be desiccated or stunted, on the other it is essential to curb the temptation to lay down new and novel principles in substitution of well established principles in the ordinary run of cases and the readiness to canonise the new principles too quickly before their saintliness has been affirmed by the passage of time. It may perhaps be laid down as a broad proposition that a view which has been accepted for a long period of time should not be disturbed unless the Court can say positively that it was wrong or unreasonable or that it is productive of public hardship or inconvenience.

Manganlal Chhagganlal (P) Ltd. v. Municipal Corpn. of Greater Bombay, AIR 1974 SC 2009; 1974(2) SCC 402.

The decision of Full Bench of High Court passed after considering the local conditions and history should not be easily disturbed.

Nityananda Kar and another, etc. etc. v. State of Orissa and others, AIR 1991 SC 1134; 1991 Supp (2) SCC 516.

7. **Reversing**:.Reversing is the overturning on appeal by a higher court, of the decision of the court below that hearing the appeal. The appeal court will then substitute its own decision.

8. **Concession**: Concession made by counsel on a question of law is not binding as precedent.

The Government of Tamil Nadu and others v. Badrinath and others, AIR 1987 SC 2381: 1987(4) SCC 654; State of Rajasthan v/s Mahaveer Oil Industries (1999) 4 SCC 357.

9. **Consent**: When a direction or order is made by consent of the parties, the Court does not adjudicate upon the rights of the parties nor lay down any principle.

Municipal Corporation of Delhi v. Gurnam Kaur, AIR 1989 SC 38: 1989(1) SCC 101; 1989 Supp. (2) SCR 929.

10. **Non Speaking Order**: Non speaking order dismissing special leave petition would not constitute binding precedent as to the ratio of the High Court involved in the decision against which special leave petition to appeal was filed. Ajit Kumar Rath v/s State of Orissa (1999) 9 SCC 596.

11.**Specific Exclusion**:A judgment stating therein itself that the ratio laid down there in shall not be binding precedent or shall not be followed or relied upon , cannot be treated as binding precedent. Kendriya Vidyalaya Sangathan v/s Ram Ratan Yadav(2003) 3 SCC 437.

12 .**On Facts**: If a judgment is rendered merely having regard to the fact situations obtaining therein , the same could not be declaration of law within meaning of Article 141.UP State Brassware Corp. Ltd v/s Uday Narain Pandey AIR 2006 SC 586 ;(2006)1 SCC 479;.

There is nothing in the Constitution which prevent the Supreme Court from the reversing its previous decision.

State of West Bengal v. Corporation of Calcutta, AIR 1967 SC 997: 1967(2) SCR 170.

An earlier decision cannot be departed unless there are extra-ordinary or special reasons for doing so.

Manganese Ore (India) Ltd. v. The Regional Assistant Commissioner of Sales Tax, Jabalpur,AIR 1976 SC 410;: 1996(4) SCC 124.

Non-consideration for foreign decisions. The decision of Constitution Bench which held the field a quarter of century without challenge. Reconsideration on account of non-consideration of an American decision, not cited before the bench, is not called for.

Smt. Maya Rani Punj v. Commissioner of Income-tax, Delhi, AIR 1986 SC 293: 1986(1) SCC 445: ;India Electric Works Ltd. v. James Mantosh and another, AIR 1971 SC 2313; 1971(1) SCC 24.

Thus , one of the tools of an Advocate to persuade a Court on the point canvassed before it, that is to cite a binding precedent, is not always without limitations and it has to be an endevour of every advocate to perform an exercise to find out the ratio decidendi of a judgement and its relevancy to the proposition put before the court in the context of the facts of the case, before the same is quoted.

PRINCIPLES OF PROSPECTIVE OVERRULING

Prospective overruling implies that an earlier decision of the same issue shall not be disturbed till the date of the later judgement. It is resorted to mould relief claimed to meet the justice of the case. It means that relief though the Petitioner may be entitled to in law because of interpretation of the law made by the Supreme Court, the same shall not be applicable to past transactions. Frequently such situations arise in service matters or tax matters where in the person already appointed for a long time based on interpretation of a law by the Apex Court in its earlier judgment, but the same is overruled in the later judgement, and therefore the person already in public employment need not be directed to vacate the post or the tax already imposed and collected is not directed to be refunded.

In normal course, a law declared by Supreme court is the law assumed to be from the date of inception and prospective overruling is only an exception when the Supreme Court itself make the applicability of the ration of the judgement prospectively to do complete justice to the parties or to avoid chaos.

It is therefore necessary that if a law is to be made applicable prospectively , the same is required to be so declared in the judgement when it is delivered .M.A.Murthy v/s State of Karnataka (2003) 7 SCC 517. If Supreme court does not exercise such discretion to hold that the law declared by it would operate only prospectively, High Court can not of its own do so. Sarwan Kumar v/s Madanlal Agarwal AIR 2003 SC 1475; (2003) 4 SCC 147.

ARTICLE 141

The law laid down by Supreme Court of India is binding upon all courts in the country under Article 141 of the Constitution, and numerous cases all over the country are decided in accordance with the view taken by Supreme Court.

Now it is desirable that some light should be thrown on the future precedents. As observed above, the courts are performing a very valuable creative function in modern times. This role of the court is assuming in favour importance and their field of any activity is rapidly widening. On the other hand, the trend of opinion is in favour of freedom from the binding effect of precedents, at the first place these two trends may appear divergent but they are not so and are perfectly consistent. It is the creative spirit that desires the removal of the shackles of the binding precedents. In England the doctrine of stare decisis has been modified. It may be hoped that some device would be invented to get rid of it. However the decisions of higher tribunals shall remain binding on subordinate courts. There is no possibility of departing from this rule in the near future nor are there very strong reasons for to undergo any considerable modification. The federation, as envisaged by the Indian Constitution, requires it, It will help in bringing about national integration and uniformity in law, and will cause a uniform development of law. But some technique or method will have to be envolved to save the lawyer and the judge from the labour and wastage of time in finding from the rapidly multiplying volumes of reports and the constant danger of overlooking authorities.

RATIO DECIDENDI

When we say that a judicial decision is binding as a precedent, what we really mean is that a rule or principle formulated and applied in that decision must be applied when similar facts arise in future. This rule or principle is the ratio decidendi which is at the centre of the doctrine of precedent. The expression ratio decidendi has different meanings. The first meaning which is the literal translation of the expression is 'the reason for deciding'. Ratio decidendi is as 'the rule of law proffered by the judge as the basis of his dicisions.

According to Salmond: A precedent is a judicial decision which contains in its a principle. The underlying principle which thus form its authorative element is often termed the ratio decidendi. The concrete decision is binding between the parties to it but it is the abstract ratio dicidendi which alone has the force of law as regard the world at large.

It is a legal phrase which refers to the legal, moral, political, and social principles used by a court to compose the rationale of a particular judgment. Unlike obiter dicta,the ratio decidendi is, as a general rule, binding on courts of lower and later jurisdiction—through the doctrine of stare decisis. Certain courts are able to overrule decisions of a court of coordinate jurisdiction—however, out of interests of judicial comity, they generally try to follow coordinate rationes.

The process of determining the ratio decidendi is a correctly thought analysis of what the court actually decided—essentially, based on the legal points about which the parties in the case actually fought. All other statements about the law in the text of a court opinion—all pronouncements that do not form a part of the court's rulings on the issues actually decided in that particular case (whether they are correct statements of law or not)—are obiter dicta and are not rules for which that particular case stands Ratio Decidendi is the binding part for the case at hand. Goodheart- He does not accept the classical view that ratio is the principle of law which links the essential determination of the case with the essential or material facts of it and the statement of the judge may or may not do that or may be formed too widely or too narrowly. It is the general ground upon which the decision is based- Supreme Court of India How to ascertain Ratio Decidendi Krishna Kumar v. Union of India- AIR 1990 SC 1782 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 either statutory or judgment and minor premise consisting of the material facts of the case under immediate consideration. Therefore, we find that it is the ratio decidendi which is a binding precedent. Other material part is the Obiter Dictum.

Process of Reasoning–

1. Major Premise
2. Minor Premise

In Union of India v. Maniklal Banerjee[1] Only ratio decidendi is binding and has precedent value.

State of Orissa v. Sudhanshu Shekhar Mishra[2]– A decision is an authority for what it decides and not for what can logically be deduced from it. The only thing in a judge's decision binding a party is the principle upon which the case is decided. On our analysis, we have to isolate the ratio of the case. A decision contains:

1. Finding of Material Facts- Direct and inferential
2. Statement of the principle of law applicable to the legal problem disclosed by the facts.

- Judgments based on the combined effects of the above two.

Ratio Decidendi is a statement of law applied to the legal problems raised by the facts as found upon which the decision is based. Dalveer Singh v. State of Punjab[3] Though we are able to find out the ingredients from the decision. But later on, when there is a similar situation, it is very difficult for him to apply the ratio in that case because a rigorous division of facts has to be made which is not possible. It is correct that a decision on a question of sentence depending upon the facts and circumstances of a case can never be regarded as a binding precedent, much less 'law' declared under article 141 of Constitution of India so as to bind all law courts within the territory of India. \

Minerva Mills v. Union of India[4] "If a provision is uphold by the majority, the fact that the reasoning of some of the judges is different from the ratio of that case will not affect its validity".

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OBITER DICTA

The judge may go on to speculate about what his decision would or might have been if the facts of the case had been different. This is an obiter dictum.

The binding part of a judicial decision is the ratio decidendi. An obiter dictum is not binding in later cases because it was not strictly relevant to the matter in issue in the original case. However, an obiter dictum may be of persuasive (as opposed to binding) authority in later cases.

A difficulty arises in that, although the judge will give reasons for his decision, he will not always say what the ratio decidendi is, and it is then up to a later judge to "elicit" the ratio of the case. There may, however, be disagreement over what the ratio is and there may be more than one ratio.

In a judgement delivered by a court, what part is a binding precedent is relevant so as to be precise as to what is ultimately biding proposition to other courts. What the court decides generally is ratio decidendi or rule of law which it is authority. As against persons not parties to suit or proceeding general rule of law i,e ratio decidendi is binding . The rule of law or ratio decidendi is that what is applied and acted upon by the Court . The rules of law or ratio decidendi

are developed by courts and are thus creatures of courts. The ratio has to be developed by judges while deciding cases before them. Statement made by judges when giving lectures are statements made in extra judicial capacities and are therefore not binding. In the course of judgement a judge may make observations not precisely relevant to deicide the issue. These observations are obiter dicta and are having no binding authority but are none the less important. These obiter dicta are helpful to rationalize law only to suggest solutions to problems not yet decided by the Court. Any ratio decidendi are amenable to distinction on different facts and thus where the meaning thereof are widened , restricted, distinguished or explained , the latest interpretation of ratio decidendi in later cases becomes authority to these state of facts and in that sense. The rule of law based on hypothetical facts is mere obiter dicta and thus not binding.

Not infrequently it is difficult to find out what is the ratio decidendi in the judgement when several propositions are considered by the Court. In short ratio is general rule without which the case would have been decided otherwise.

The application of the same law to the differing circumstances and facts of various cases which have come up to this Court could create the impression sometimes that there is some conflict between different decisions of this Court. Even where there appears to be some conflict, it would, we think, vanish when the ratio decidendi of each case is correctly understood. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.

The Regional Manager and another v. Pawan Kumar Dubey, AIR 1976 SC 1766:; 1976(3) SCC 334.

The general observations therein should be confined to the facts of those cases. Any general observation cannot apply in interpreting the provisions of an Act unless the Court has applied its mind to and analysed the provisions of that particular Act.