

Book Review

A. Lakshminath: Judicial Process Precedent in Indian Law, Eastern Book Company, Lucknow, Third Edition 2009, Hardcover, ISBN: 978-81-7012-180-0

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Precedent is one of the unique and an important feature of a common law legal system. From the Hamurabi Code, the Twelve Table or the Justian Code the development of law can be viewed as an eternal, continual or an evolutionary saga of human mind or society to free itself from the shackles of systematic code and go forward to a well organized judicial process. The book essentially focuses on the process followed by judiciary while deciding the cases before it as well as it elaborately describes the practice of precedent in India. The book has immensely examined more than 300 cases from various angles by giving special reference to the landmark judgments pronounced in India in addition to U.S. and U.K cases which are limited in this book.

The author in his book has quoted J. Cardozo who described the Judge's task as an eclectic exercise that blends in varying proportions. A judicial power is best understood in terms of methods used by courts to preserve their institutional integrity, prestige, power and dynamic decision making. The book rightly focuses on the law laid down in majority judgment but less emphasis has been given to minority judgments.

In total the book contains eight chapters where the author has keenly elaborated the working of Precedent in Pre and Post-Independence era with regard to the Government of India Act, 1935 and its principle which transformed into the Constitution of India. Supreme Court as a legal successor of Privy Council and Federal Court did not have to follow the ideological legacy of rigidly following fixed legal opinion in regard to judicial law making within the straightjacket of *stare decisis*. The court was at liberty to deviate. But the Supreme Court followed the legacy until 1955 when *Bengal immunity Co. Ltd v. State of Bihar* (AIR 1955 SC 661) was pronounced.

Further the book highlights the importance of Supreme Court by highlighting the role of Privy Council and Federal Court which was a bridge between English legal institutions and the native institutions. The Privy Council was not only the institution who emerged precedent but also acted

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as a bridge in the transition from *la* doctrine to *la* jurisprudence or enacted law which writes little about the Hindu jurisprudence and the role of *Dharmasastras*, *Dharmasutras* or *Vedas*.

Classical jurisprudence posited that law was founded by judges through application of logic; in the Austinian sense the adherence to fixed principles. But the application of law involves a reasoned decision behind every judgment and a reference to past judgment. It is observed that judges not only are charged to find what law is, but also to make law while deciding upon constitutional validity of a statute. It is necessary that while deciding cases a judge must be guided by the principle of public policy.

Article 141 of the Constitution of India has been interpreted wisely throughout the book with case to case basis. It states that a law declared by the Supreme Court is binding on all inferior courts but whether Supreme Court itself bound by its previous decision or not is laid down in Bengal Immunity case. The book has nicely described the position of Precedent in pre and post Bengal Immunity case as well in a classic assertion of its power of overruling; Supreme Court of India ruled that it would not be absolutely bound by its own decisions. Since then the Court has exercised the power of overruling in as many as 50 decisions. The frequent overruling of precedent of recent authority has gravely undermined the values of certainty, predictability and continuity in law. The overruling has been criticized by lacking precedent consciousness. The book essentially keeps a neutral opinion and examines the applicability of precedent and overruling as to why it should not be considered wrong or right. Today the Apex court may overrule its prior decision by giving proper reasons. In progressive chapters, the author mentioned the cases which have been overruled and therefore the overruling is considered as a *sine qua non* for maintaining the dynamism in law. A conflict arises when a legal system recognizes precedent as well as the overruling. And existence of two rules in one legal system makes the rule of precedent a myth or a lie. The book is titled as Precedent in Indian Law where the author has confined the work in the territory of India which is a Common Law Country and it has given less emphasis to Civil Law countries.

Simultaneously, the author has described the role of *ratio decidendi*, *obiter dicta* and prospective overruling which are the principles of precedent along with cases. The author has also addressed the problem of multiple versions of *ratio decidendi* or *multiple rationes decidendi* produced by a single judicial decision. While analyzing the *ratio* the author asked what exactly is overruled in a case whether the entire decision or a principle laid down in a case? The book in addition enumerates the sociological perspective of judges from being authoritative to liberal to conservative and sometimes individualistic which somehow influences the decisions of court. As a social-psychological norm *stare decisis* must be assessed in its

functional context. In conclusion the author referred recent cases and legal theories. And also slightly compared Indian legal system with code based legal system- In French judgments individual precedents are not cited as they are cited in India. Similarly, in China precedents are nowhere accepted. Traditions like Islamic, Tamudia lack any notion of precedent.

Overall, the book is a great compilation of cases of all years along with the laws enumerated in those cases. The author had conducted a detailed investigation on cases for establishing *ratios* by examining the role of precedent and justifying overruling. The language is lucid and easily understandable as a whole it is a great help to legal researcher towards the field of judicial process and precedent.