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# **JUDICIAL PROCESS IN SHAPING LEGAL RESEARCH**

AUTHORED BY - KARTHIKEYAN.R

## **Introduction**

The judicial process is integral to the development and evolution of legal research. It not only interprets and enforces laws but also creates a framework for legal scholarship by establishing precedents, clarifying statutes, and shaping legal doctrines.

## **WHAT IS JUDICIAL PROCESS**

The judiciary plays a crucial role in interpreting and implementing statutes in cases. These statutes are laws or rules created by legislative bodies to uphold law and order and promote justice in the community.

According Cardozo, the first question is where the judge finds the law for their judgment. Sometimes the source is obvious, such as the constitution or statutes, but not always. Its important to note that the constitution overrides the statutes, and judge-made laws are secondary to laws made by the legislature.

Although the law may be present in the code or statutes, a judges work cannot be called mechanical as gaps, ambiguities, or wrongs may be cleared.

Interpretation means understanding the legislatures mind.

Difficulties arise when the legislature does not discuss the question when making the legislation, so the judge must guess what the legislature would have thought.

The judges first step is to compare the case with precedents. If the precedent matches the case, it can be applied like a statute.

However, no new law will evolve in such a case. The most knowledgeable judge has the best card index of topics. When there is no clear precedent or the colours don't match, the judge must create new law for the case.

Each judgment has the power to set a precedent for future cases.

Caselaw principles are continuously tested and modified over time. In a rule is found to cause injustice, it is gradually reworked and reformulated. Judges must extract the underlying principle, or ratio decidendi, from a precedent and determine how it should develop.<sup>1</sup>

## **PRINCIPLES WHICH INFLUENCIG THE DECISION-MAKING**

### **PROCESS**

1. Method of logic or philosophy. One method that he mentions is the rule of analogy, also known as the method of philosophy or logic. This approach requires judges to follow a logical progression and interpret statutes to preserve legal and logical consistency.

Philosophy and logic are often used interchangeably under this approach, as he views philosophy as simply using ones senses.

Using logic and philosophy in decision-making provides stability and consistency, although he acknowledges that logical consistency is not the ultimate goal.

2. METHOD OF HISTORY AND EVOLUTION. The use of land law and contract law concepts by Cardozo demonstrates the influence of history of legal growth and the need for history to shape it. When it is unclear which method to use, the judge decides which path to take.

Judges have used various methods to decide some cases, including the analogy Roman law, the history of conveyance forms, and the analysis of fundamental concepts and logical conclusions. These methods may also complement each other at times.

The choice of technique may depend on the case.

The process of history and evolution examines the origins of statutes, while the method of philosophy employs logic.

However, it is essential to note that these methods are not always opposing and can be used together for a better outcome.

3. METHOD OF CUSTOM AND TRADITION. According Cardozo, judges can utilise the custom or traditional method for interpretation.

Custom or tradition should only be used to test the application of established rules rather than create new ones.

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<sup>1</sup> Adarsh M G, The nature of the judicial process book by Benjamin M.Cardozo,Vollume 4 Issue 1 International Journal of Advanced Legal Research

According to Blackstone custom may be divided into 3:

1. General custom, which are the universal rule of the whole kingdom, and form the common law in its stricter and more usual signification.
2. Particular customs, which for the most part affect only the inhabitants of particular districts.
3. Certain particular laws, which by custom are adopted and used by some particular courts of pretty general and extensive jurisdiction.

But Cardozo observing as “undoubtedly the creative energy of custom in the development of common law is less today than it was in bygone times.

Sadhi was practiced in all part of India, but it has reformed later due to interventions of social reform movements.

Also untouchability practiced in India, but after enacting constitution through article 17 of the constitution the practice of untouchability got abolished and it included in the area of fundamental rights.

In the case of *Indian Young Lawyers Association & Ors v. The state of Kerala*<sup>2</sup> & ors, 2018, The Sabarimala temple is managed by the Travancore Devaswom Board restricted menstruating women between the age of 10 and 50 years from entering into the temple.

The restriction are based on the fact that the temple deity, Swami Ayyappa, is a *nashtika* *brammachari* A celibate and therefore is an epitome of purity which should not be violated by menstruating women. The followers of lord Ayyappan regarded it to be essential religious practice and its violation will lead to violation of spiritual development.

Court observed as, the rule is both in violation of the constitution and *ultra vires* of its parent act. Section 3 and 4 of the act were formulated with the specific objective of reforming public Hindu Places so that they become accessible to all sections of Hindus. Rule 3(b) of Kerala Hindu Places of Public worship act aims to achieve the opposite it allows public Hindu Places of worship to debar women on the basis of custom. Hence, chief justice pointed that the rule is not only in violation of the constitution, but also stands in contention with the intent of the parent act.

4. METHOD OF SOCIOLOGY. Sometimes, to prioritise society's needs, logic, history, and customs may be bent.

However, exercising control over his method of pursuing social needs is essential.

Judges are often called upon to fill gaps, but their discretion must be limited.

Cardozo is concerned not with how much a judge fills a whole but with their method.

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<sup>2</sup> *Air 2018 SC 582, (2008) 1 SCC 234*

The principle of sociology comprehensive and encompasses many aspects of social welfare, including public policy, morals, religion, and ethics. He gives more importance to morality about social justice.<sup>3</sup>

### **HOW PRECEDENT SHAPENED LEGAL RESEARCH**

In the 18<sup>th</sup> century Blackstone said the decisions of courts of justice are the evidence of what is common law.

As late as 1892 lord Esher said: “There is in fact no such thing 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 not previously been authoritatively laid down that such law is applicable”.

According Bhandham, what is judge made law is, “just as a man makes law for his dog. When your dog does anything you want to break him of you wait till he does it and then beat him. This is the way you make laws for your dog, and this is the way the judges make law for you and me.”

In the case of *Donoghue v. Stevenson*<sup>4</sup>,

#### Facts

A woman and her friend visited a café in Paisley where the friend ordered for her some ice-cream and a bottle of ginger beer.

These were supplied by shop keeper who opened the ginger beer bottle and poured some of the contents over the ice-cream which was contained in a tumbler. The woman drank part of the mixture, and the friend then proceeded to pour the remaining contents of the bottle into the tumbler. As she was doing so, a decomposed snail floated out of the ginger beer.

In consequence of having drunk part of the contaminated contents of the bottle, the woman alleged that she contracted a serious illness.

The bottle was stated to have been of dark opaque glass, so that the condition of the contents could not have been ascertained by inspection.

The question was whether the woman could recover damages as compensation for her illness from the manufacturers?

Before this case a consumer may not avail compensation because of there is no contract between the shop keeper but from this case onwards the consumer get compensation.

Precedent is a basic concept of administration of justice.

<sup>3</sup> The nature of the judicial process, Lecture Series, The Yale University Press

<sup>4</sup> A.C. 562, [1932] UKHL 100, 1932 S.C. (H.L.)31, 1932 S.L.T. 317, [1932] W.N. 139

In almost all jurisdiction a judge is deciding a matter in the same way as that which a similar case has been decided by another judge.

Judicial precedent has some persuasive effect almost everywhere because stare decisis keep to what has been decided previously is a maxim of practically universal application.

The peculiar feature of English precedent is its strongly coercive nature.

English judges sometimes obliged to follow a previous case if there is good reasons not to doing so.

English law on large extent based on case laws.

Case laws consists of the rules and principles stated and acted upon by judges in giving decisions.

The system of case law means, that the judges decision in a particular case constitutes a precedent.

The judge is forced to oblige precedent if he not found new reason to the matter.

In later in English legal system legislatures began to implement various agencies to review the laws, so the rules from the precedent can be amended through recommendations behalf of law reform agencies and law commission.

In the case of R v. Millis, The house of lords adopted the rule that the presence of an episcopally ordained priests is essential at common law to a valid marriage in England or Ireland with the result that an Irish Presbyterian marriage was held void.

In the case of Beamish v. Beamish the house of lords decided that the fact that the bride groom was in wholly orders did not prevent the rule in R v. Millis from applying in order that the marriage should be valid, the priest had to be present as a celebrant not as a party to the ceremony.

In another feature of precedent:

In the case of Simonin v. Mallac

It was held that, the English court had jurisdiction to hear a petition for nullity of marriage on the ground that the marriage was void because of a defect in the ceremony, if it was celebrated in England although the parties were domiciled in France had their permanent home there, and the

husband was temporarily resident in Naples.

In the case of Ross-Smith v. Ros-Smith,

This judgment also followed Siminen ratio.<sup>5</sup>

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<sup>5</sup> J W Harris, Precedent in English law, Clarendon Press Oxford

## **HOW PRECEDENT WAS SHAPENED JUDICIAL PROCESS**

### **IN INDIAN CONTEXT**

Considering the historical development of precedent in India, it is necessary to look in to the British system of Government in India.

The English common law system widely build up on precedents or case laws.

With the establishment of Mayor's courts by the British East India Company in 1726, the use of judicial precedents was introduced in India.

In 1935, through the enactment of Government of India act, judicial precedent were finally given statutory recognition.

Section 212 of Government of India Act, 1935 declared that the laws and precedents made by the Privy Council and the federal court shall be binding on all the decisions taken by Indian courts.

After getting independence, when our constitution came into force in 1950, Article 141 was enforced, which strengthened the status of judicial precedents in the Indian legal system. It established that all the laws or rules made by the Supreme Court shall be binding on all the other lower courts. However, there was ambiguity regarding whether bound by Supreme court on its on judgment.

In the case of Bengal Immunity co. v. State of Bihar<sup>6</sup>, 1955,

The question is that, whether the all courts include supreme court?

It observed that, there is nothing from constitution that prevents Supreme court from departing from its own decision, if it is satisfied of its error and benifiial interest of of the general public.

### **HOW LEGISLATION INFLUENCED JUDICIAL PROCESS**

According Dean Roscoe Pound observed as, four ways maybe conceived of in which courts in such legal system as ours might deal with a legislative innovation.

1. They might receive it fully into the body of the law as Affording not only a rule to be applied but a principle from which

To reason and hold it, as a later and more direct expression of the general will. As superior authority to judge made rules on the same general subject. And so reason from it by analogy in preference to them.

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<sup>6</sup> AIR 195 SC 661

2. They might receive it fully into the body of the law to be reasoned from by analogy the same as any other rule of law, regarding it, however, as of equal or coordinate authority in this respect with judge made rules upon the same subject.
3. They might refuse to receive it into the body of the law and give effect to it directly only, refusing to reason from it by analogy but giving it nevertheless a liberal interpretation to cover the whole field it was intended to cover.
4. They might not only refuse to reason from it by analogy and apply it directly only, but also give to it a strict and narrow interpretation, holding it down rigidly to those cases which it covers expressly.

In English system the terms of one statutory provision may be used as the ground of a conclusion concerning the construction of another statutory provisions.

In the case of R v. Bourne,

A doctor was charged with abortion. He had operated on a young girl who was the victim of a rape with a view to procuring her miscarriage. He had come to the conclusion after consulting another doctor, that the operation was necessary for the preservation of the girl's health.

The offence of abortion is defined by Section 58 of the Offences against the person act 1861.

But here, court treated the case as one which turned on the effect to be given to the word unlawfully, and court found guidance in the Infant Life Preservation Act, 1929.

### **HOW LEGAL DOCTRINES IS IMPACTING JUDICIAL PROCESS**

WHAT IS A LEGAL DOCTRINE:

A doctrine is defined as a core principle within a system of knowledge.

As the term applies to the law, it refers to one of these principles that if formed by continued legal precedents.

Legal doctrines are considered crucial within the legal sub-fields where they apply because they provide a blueprint for how to resolve a given type of case or legal dispute. Within the common law philosophy, which provides the foundation for the United States judicial system, legal doctrines are crucial to the daily operation of the justice system at every level from the lowest to highest courts in the land and across both criminal and civil law.

A legal doctrine is created when a judge outlines a process, procedure, or rule that can be applied to not only the case in front of them but similar cases in the future.

When multiple judges use said process, procedure, or rule, over time, it becomes enshrined in the common law system as legal doctrines, meaning that it becomes the principle way of

handling any similar cases in the future.

### **TYPES OF LEGAL DOCTRINES:**

Legal doctrine can be classified or categorized based on whether it is a rule or a standard.

A rule, as it applies to legal doctrine, is a strict answer to a legal question.

An example of a legal doctrine that falls into the category of rule is the full payment doctrine. Established in the year of 1958 by US supreme court case of Flora v. United States, the doctrinal rule of full payment states straightforwardly that a taxpayer must pay the full amount of an income tax deficiency.<sup>7</sup>

### **METHODS OF INTERPRETATION**

Literal rule:

This rule is the most basic rule in interpretation, which states that words, in a law should be given their ordinary and plain meaning unless it would lead to an absurd or unreasonable outcome.

In the case of Fisher v. Bell<sup>8</sup>

In this case, the defendant displayed flick knife with price tag in his shop. The statute made it a criminal offence to offer such flick knife for sale. His conviction was quashed as goods on display in shops are not offers in the technical sense but an invitation to treat. The court applied the literal rule of interpretation.

Golden rule:

Which is departure from the literal rule, which allows courts to modify the meaning of a law in order to avoid absurd or unreasonable results.

In the case of Ramji Missar v. State of Bihar (1962)

The appellant and his brother assaulted one person who suffered injury, and they were charged with s 307 326 along with 324 of IPC. It was also found that younger brother who was 19 years of age, had no intention to cause harm but charged with s 324 of IPC. So the younger brother is under the age of 21 and thus, s 6 of the probation of offenders act, 1958 should be applied.

Court interpreted in golden rule.

Rule of harmonious construction:

The rule suggests that laws should be interpreted in a way that aligns with laws to prevent conflicts between them.

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<sup>7</sup> www.allsubjectjournal.com

<sup>8</sup> (1961)1QB394

In the case of Shankari Prasad v. Union Of India, Court observed as, Fundamental rights and DPSP are different sides of the same coin and hence, harmonized them stating they are for public good.

Mischief rule:

It permits courts to consider the problem or issue that a law was ment to address when interpreting it.

### **LEGAL DOCTRINES IN INDIAN CONTEXT**

A doctrine is a concept or theory that is commonly applied and supported by courts of law.

In Indian constitutional law, multiple judicial theories emerge over time based on the interpretation provided by the judiciary.

#### **SOME OF THE LEGAL DOCTRINES:**

Doctrine of basic structure:

In the case of Kesavananda Bharati v. State of Kerala, 1973, applied this principle of doctrine of basic structure.

This doctrine hold that, certain fundamental features of the constitution are beyond the the amending power of the parliament.

#### **DOCTRINE OF PROPORTIONALITY:**

The concept of proportionality mainly using in Human law, international law and criminal law etc.

The doctrine of proportionality is a legal concept that asserts that acts or measures performed by a public authority must be proportionate to the goal being sought.

In other words, the authorities should not use excessive force or impose more limits to attain a legitimate purpose.

In the case of Anuradha Basin v. Union of India, The case concerned relating right to speech and expression along with access to internet.

The Supreme Court ruled that, the governmental decision infringed that the right to freedom of speech and expression as well as the right to access to internet because it was out of the proportion to the goal of protecting public order and security.

#### **DOCTRINE OF LEGITIMATE EXPECTATION:**

Legitimate expectation is a notion in administrating law that refers to a persons or groups

reasonable expectation of being handled in a specific manner by a public authority, such as a Government agency or a court. This doctrine protects the legitimate expectation of individuals arising out of a promise or consistent practice of a public authority.

Legitimate expectation is not an absolute right, but rather than basis for judicial review of administrating decision.

In the case of Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing society, 2013, The court held that the respondent society had a legitimate expectation of getting a lease of land from the appellant corporation as per the allotment letter issued by the corporation and the corporation cancellation of the allotment on the ground of non-payment of dues without giving any notice or hearing to the society was a violation of the doctrine.

#### DOCTRINE OF NECESSITY:

The doctrine of necessity is a legal notion that allows for the breaking of the law in an emergency or when it is necessary.

The notion recognises that in some cases, strong enforcement of the law can cause more harm than the offence itself. This idea is recognised in many legal systems around the world.

In the case of State of Maharashtra v. Mohd Ajmal Ameer Kasab (2012)

Court held that, the necessity of defence and declared that the existence of an impending threat is a required requirement for the defence to apply. The court dismissed his defence because there was no urgent threat to his or his families lifes.

This criterion is important because it prevents the defence from being used as an excuse to commit a crime. The defence can only be used in cases when there is a true and imminent threat to life, limb, or property.

## **RESEARCH**

#### WHAT IS RESEARCH:

According Manning, the research Is the careful examination and exhaustive investigation of a specific subject matter, aiming to the advancement of mankind knowledge and revision of accepted conclusions in the light of newly discovered facts.

According Hudson, “all progress is born of inquiry. Doubt is often better than overconfidence, for it leads to inquiry, and inquiry leads to invention”.

According Karl Pearson, “there is no short-cut to the truth, no way to gain knowledge of the universe except through the gateway of scientific method.”

### LEGAL RESEARCH:

Legal research is systematic finding law on a particular point and making advancement in the science of law.

However, the finding law is not so easy. It involves a systematic search of legal materials, statutory, subsidiary and judicial pronouncements.

When a approach becoming systematic when a researcher follow scientific method.

Generally legal research influenced existing social values, also through research law is attempts to mold or change existing social values.

### LAW AND SOCIETY:

According Luhman, "all collective human life is directly or indirectly shaped by law."

Law does not operate in a vacuum. It has to reflect social values, attitudes and behaviour.

Societal values or norms directly or indirectly influence law.

The societal values and patterns are dynamic and complex. These changing societal values and ethos obviously make the discipline of law dynamic and complex.

Such a complex nature of law and its operation require systematic approach to the understanding of law and its operational facets.

A systematic investigation into these aspects of law helps in knowing the existing and emerging legislative policies, laws and their social relevance.

### WHAT IS LEGAL SYSTEM:

A system of law can be conceptualized in 3 principle ways.

1. A legal system can be conceived as an aggregate of legal norms.
2. It can be conceived as systems of social behaviour of roles, statutes and institutions as involving patterned interactions between the makers interpreters, breakers, enforcers, and compliers of the norms of law.
3. Legal system may be equated with social control systems involving differential basis of social authority and power, different normative requirements and sanctions, and distinctive institutional complexes.

In legal system as an agrigate of legal norms, raises the questions like how is law generated? What forces in society influenced?

And in second conception of legal system is, a study of institutions and roll of law-makers, legislators, judges etc.

And in third one, trying to understand inter-relationship between formal legal rules and

informal legal rules such as religious, customary norms in shaping law as social control system. Through the development of judicial process and along with factors which influencing on research these concepts that is, judicial process and research is shaping through social changes.

