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DOCTRINE OF STARE DECISIS

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Introduction:

The doctrine of *stare decisis* is taken from the Latin maxim ‘stare decisis et non quieta movere’ which means ‘to stand by decisions and not to disturb settled matters’. In other words the decisions or adjudications pronounced by the Supreme Court are binding on all courts within the territory of India. This is what article 141 of the Constitution states – Law declared by the Supreme Court to be binding on all courts within the territory of India. The expression “all courts within the territory of India” means Courts other than the Supreme Court. Thus the Supreme Court is not bound by its own decisions and may in proper case reverse its previous decisions. This article examines some of the aspects of this doctrine and its applicability in India.

Principle of Stare decisis

Stare Decisis asserts that subordinate courts observe and follow decisions on similar matters made previously by superior courts. Once a court has issued a legal ruling, that court and inferior courts within the same jurisdiction must abide by that ruling and apply it to similar cases in future ruling.

Origin of Stare Decisis

The doctrine of Stare Decisis originated in the twelfth century England during the reign of King Henry II. Henry ordered the classification of English Common Law drawn from the customs of the English people. Under this reform, judges were given the authority to draw from old decisions and make them stand as precedents for future rulings. This integrated and stabilized many regional traditions into a single effective legal system.

When the United States became independent of Great Britain in 1776, it inherited the doctrine of Stare Decisis and an English common law tradition. By the mid-eighteenth century, the ready circulation of printed court decisions allowed courts to know how other courts were ruling. This helped to reinforce the doctrine of Stare Decisis.

Stare Decisis Vs. Precedent

Most often the terms Stare Decisis and precedent were used alongside each other and in similar ways. These terms are closely related, yet there is an important distinction between the two. Stare Decisis is a doctrine and abstract concept that describes the idea of a prior ruling having future consequences. A precedent is not abstract at all, it is the actual decision that will carry forward in judicial rulings. Stare Decisis is a principle whereas precedents are actual rulings. By integrating the principle of Stare Decisis and the reality of precedents, a legal system has been created which is strong, flexible and enduring.

Stare decisis and Art.141 of the Constitution.

The doctrine of Stare decisis is embodied in Art.141 of the Constitution. Art.141 states that law declared by the Supreme Court is binding on all courts other than the Supreme Court. Supreme Court is not bound by its own previous decisions as it has the absolute power to reverse its previous decisions if found inconsistent with the law. Thus the doctrine of Stare decisis is followed in India to a limited extent. This is in line with modern practice. Too rigid adherence to precedents may lead to injustice. Not only that it is improper and unwise to keep nation's Constitution in constant uncertainty in the guise of judicial review. Such a stand will retard all legislative actions which the parliament has effected after due deliberations." It should only be done when there is a national crisis of great movement to the life, liberty and safety of the country and its nations are at stake or the basic direction of the nation itself is in peril of a shake up."¹

Objectives of the doctrine of Stare Decisis.

Stare Decisis refers to the principle that subordinate courts must adhere to previous judicial decisions of Supreme Court in cases where the same legal issues are brought before them. The concept of Stare Decisis has four main objectives which are –

1. It instils confidence in the people that if they comply with law, law will protect them.
2. It encourages out of court settlement through dispute resolution mechanisms. Since the parties to a dispute know the outcome of similar legal issue, they might resort to private dispute settlement which is time saving and cost effective rather than relying on traditional court procedures which are time consuming sometimes taking the whole life time and beyond, very much expensive and cumbersome.

¹ Ambika Prasad v. State of U P, AIR 1980 SC 1762 .

3. The doctrine of Stare Decisis reduces the burden on the courts as well. It eliminates the requirement to litigate again in the cases where decisions have been declared by competent courts.
4. It strengthens people's confidence in the judiciary as the doctrine puts certain restrictions and constraints on the powers of the judges. The judges of subordinate courts can never deliver a decision against a decision made by Supreme Court on a similar case.

Advantages and disadvantages of the doctrine.

Advantages: -

It reduces further litigation on the same matter and saves time and energy of the judiciary.

It avoids possibility of arbitrariness and bias and facilitates fair and just adjudication as judges are bound by established precedents.

It ensures confidence of the people in the judicial system.

It also brings stability, certainty and consistency in the law.

Disadvantages: -

The doctrine can hinder the all round progress of law. It may affect proper interpretation of the law as per changing cultural, social, economic and other circumstances.

It is considered a doctrine that is against the principles of democracy as it allows unelected judges to make law through their judgements.

The doctrine of Stare Decisis may lead to the propagation of certain cases which might have been wrongly declared.

Binding nature of the doctrine under Art. 141.

All the courts within the territory of India are bound by the decisions declared by the Apex court. However, the Supreme Court is not bound by its own previous decisions.

A judgement passed by the higher court can be considered as a precedent only when such judgement is capable of resolving a legal issue.

It is the *Ratio decidendi* of a case that is binding on the Courts. *Ratio decidendi* of judgement is

the principle of law adopted having regard to the line of reasoning of judge which binds in future cases. *Ratio decidendi* can only be laid down after discussion of relevant provisions and case law on the subject. Where judgement is given without hearing other party without any line of reasoning and certain conclusions are arrived at without any reference to any case law, it would be difficult to hold such judgement having binding force.²

Ratio decidendi of a judgement is not to be discerned from a stray word or phrase read in isolation. It has to be found out only by reading the entire judgement.³

A stray sentence in a judgement without a focussed argument cannot be considered as the ratio of such judgement.⁴

In certain cases, the bench might be of different opinions and in such cases, the opinion of the majority shall prevail as a precedent.

Non binding nature under Art.141

As per the doctrine of Stare Decisis, Obiter dicta of a case is not binding.

Decision declared *per incuriam* is not binding.

Decision rendered *sub silentio* is not used as a precedent. *Sub silentio* means when a question of law was not correctly and reasonably determined.

The decisions that are not expressed properly are not binding.

Stare Decisis in common law and civil law.

Unlike the common law system, civil law jurisdictions do not apply stare decisis.

In a common law system, according to the doctrine of judicial precedents (stare decisis) previous decisions by the judiciary is the source for their future decisions and this is what is called case law- finding the facts, finding the law and applying the law to the facts according to past cases. What has been decided in the past rules the future verdicts for every person. That is the law.

In the Civil Law system, practice of law is based on what a Code or written law says. Written law includes the Constitution, Laws by the Parliament and Executive.

² Jayant Verma v. Union of India. AIR 2018 SC 1079.

³ Arasmeta Captive Power Co. Pvt. Ltd v. Lafarage India Pvt. Ltd AIR 2014 SC 525 at pp 535,536.

⁴ Union of India v. Pfizer Ltd. AIR 2018 SC 265 p 279.

Conclusion;

Stare Decisis creates important uniformity in a common law system by providing the judges with a common and evolving collection of decisions that will be applied in all future cases. Stare Decisis also limits a judge from having too much autonomy and making inequitable rulings. Stare Decisis and binding precedent should constrain a court for ruling differently if the evidence against the defendants is the same. This uniformity in application is the greatest advantage of Stare Decisis because it promotes equal protection of the law.

