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REVISITING BENGAL IMMUNITY CO. LTD VS STATE OF BIHAR: STRIKING THE BALANCE BETWEEN AN EVOLVING JUDICIARY AND STARE DECISIS

~ Aldrin Kolakkal

PROLOGUE

Stare Decisis is a doctrine founded in the very essence of common law principles– meaning, " to stand by things decided" and is sine qua non of the fundamental principles thereto. Courts develop the interpretations of constitutional and statutory provisions and these decisions serve as precedents for both the lower courts to adjudicate and the legislature to develop. This commentary would first try to revisit Bengal Immunity Co. Ltd Case(1955) where the Supreme Court answered several questions on its overruling powers and the vertical binding nature of its decisions.

BENGAL IMMUNITY CO. LTD. VS STATE OF BIHAR (1955)

Bengal Immunity Co Ltd , was a company headquartered in Calcutta and was a tax resident under the Bengal Finance(Sales Tax) Act 1941. The Assistant Superintendent of Commercial Taxes of Bihar issued a notice to the company to get itself registered under the Bihar Sales Tax Act, 1947 and to deposit Bihar Sales Tax dues as well. Company responded to the notice stating that it wasn't a resident of Bihar and had no operations in Bihar and was not liable to pay taxes under Bihar Sales Tax Act 1947. Company filed for a writ of Prohibition at the Patna HC and prayed for the notice to be quashed on the grounds that it was ultra vires of Article 286 (Restrictions as to imposition of tax on the sale or purchase of goods) and was also repugnant under Article 254.

Patna HC in its judgement said that in this case the company had the remedy to file for redressal under other provisions within the Bihar Sales Tax Act after the notice was issued and also that the

sales within Article 286(2) doesn't include particular class of sales or purchases provided in the explanation to Article 286(1), hence Bihar Sales Tax Act is not violative of Article 286. It is important to note that this was in accordance to the interpretation of 286 according to the SC judgements. Patna HC referred the case to the SC under Article 132.

Respondents submitted their arguments to the SC based upon the precedent made by SC in its decision of The State of Bombay v. The United Motors (India) Ltd (1953) and argued that this judgement had served as a precedent for state legislatures to realise sales tax for sales or purchases of goods where the goods are delivered for consumption within their respective state boundaries.

Issues raised by the SC where (1) Whether the Bihar Sales Tax Act was ultra vires of Article 286 and (2) Apart from such questions of taxation, a very important question before the court was whether the SC had the authority to overturn/re-examine its own decision.

SC in its decision held that the Bihar Sales Tax Act was ultra vires of Article 286, until the Parliament provided otherwise. For the question of overruling its own decision, court said that Article 141 gives that “law declared by the court is binding on all courts within the territory of India” and held that there is nothing in our constitution which stops the Supreme Court to depart from a precedent if it is convinced that such decision is erroneous and has a negative effect in general public interest. But the problem with such volte-face decisions where the court would overturn a precedent on which many social bargains and economic transactions where dependent for a long time would upset not just the society, but also affect governance and reduce confidence in the courts. This issue becomes the major part of discussion for this paper to equipoise the courts overruling powers in nonchalance with the doctrine of stare decisis.

HOW SACROSANCT IS STARE DECISIS

Stare decisis is a very old doctrine which says that judicial precedents or prior judgements should be respected and followed. In the *Federalist Papers,* Alexander Hamilton wrote, “respecting precedents is indispensable to prevent the judges from exercising arbitrary actions”. But when courts have to answer a question of law it is seen more as a thumb-rule than an austere and ironfisted command. When a precedent is recognized for a long period of time it matures into a stare decisis and such a longstanding interpretation becomes the *warp and woof* of legislation and keystone on which private conduct, social bargains and legislative activity will presumptively

build. And overturning such a precedent would clutter public and private expectations. But stare decisis while advocating for predictability and consistency in law; also recognises an evolving constitution which must adapt to changing social realities and circumstances. *Plessy Vs Ferguson* was seen as a valuable judgement where the US Supreme Court established the 'doctrine of separate-but -equal'. Only later for the society to evolve and realise the malefic effects of racial segregation in schools and public facilities and a major overturning of the doctrine and Jim Crow laws with the decision in *Brown Vs Board of Education.* Many such trumps of overturning precedents can be presented but this should not undermine the importance of stare decisis as Justice Lewis Powell once remarked, "the elimination of constitutional stare decisis would represent an explicit endorsement of the idea that the constitution is nothing more than what five justices say it is".

WHAT IT TAKES TO OVERTURN A PRECEDENT

There are many considerations that the court has to make while deciding to overturn/reexamine a decision- like if it is substantially incongruent with social morality, social policy, and experience; inconsistent with other, sound rules; if it has been riddled with inconsistent distinctions; or if it is manifestly inequitable and unjust; and if the value of overruling the rule in question exceeds the value of retaining it. This is for the court to accommodate the evolving views of society.

But other legal procedural reasons where a court overturns decisions are in cases where the precedent is in ignorance of statute or per incuriam, was made sub silentio to an argument, inconsistency with prior decisions of the same bench, where the bench is equally split or lastly if it was an erroneous decision—if in the nature of a forfeited error (plain error) and if a preserved error thereto proved that it affected the outcome of the decision severely.

RE-EXAMINING CONSTITUTIONAL AND STATUTORY PRECEDENTS

Often there are wrongs within the interpretation of the constitution which is difficult for the Parliament to correct with constitutional amendments and court becomes the effective resort for changing obsolete constitutional doctrines. But jurists attach a super-strong presumption of correctness to the statutory interpretations. This is because the constitution gives Parliament the *legislative supremacy,* and hence any statute enacted is considered to be right and to be serving the will of the people. This reason and also the rationale that there is stark dichotomy between the

development of statutory and constitutional law; the latter developed evolutionally and perennially, with interconnected principles; each is connected to another decision such that one which is incoherent can be overruled without undermining the overall stability. But statutory law develops in a linear fashion and one is a buildup on another; overruling one can compromise the stability sought by stare decisis. All this testifies to the fact why jurists believe there is a higher threshold to read down/overturn statutory interpretations.

JUDICIAL OVERREACH AND CAUTION TO BE EXERCISED BY THE JUDICIARY

Justice Antonin Scalia, a well-known textualist (originalist) of the US Supreme Court in his dissenting opinion in *Johnson v. Transp. Agency* said that any argument about legislative inaction to statutory wrong is subject to the objection that it is hard to "assert with any degree of assurance that legislature's failure to act represents (1) approval of the status quo, as opposed to (2) inability to agree upon how to alter the status quo, (3) unawareness of the status quo, (4) indifference to the status quo, or even (5) political cowardice. But still the constitution doesn't grant the judiciary the powers to change statutory interpretations unless they are unconstitutional.

When the court tries to change a statutory interpretation, it is seen to be an usurpation of legislative power because it would then be undertaking *legislative activity* but also being protected from regular procedural public debate, bicameral approval, presentment to the President. This is seen as judicial overreach. Hence the formalist view is veracious that precedents of statutory interpretations must be left to the Parliament.

EPILOGUE

The same way *Brown Vs Board of Education* ameliorated and corrected the wrongs of years of racial segregation in the United States; Indian law has also had an evolutive journey with many doctrines and precedents being overruled which were once considered to be 'founded in law'. The overruling of statutes to protect the rights of Muslim women in *Shah Bano Case*. To seeing itself transmogrify from the precedents set in *ADM Jabalpur* by finding its way to recognising the sanctity of Right to Life and inalienability of Right to Privacy with the *Puttaswamy Judgement*. Today, with the judgements in *Navtej Singh Johar Vs UOI,* this evolutive approach speaks volumes because of its nature to accommodate the changes in the society and nurturing the 'living' aspect of our constitution. Hence, the power of the court to revisit, reexamine and rectify the

precedents is a more logical way to protect the main objective of stare decisis; the orderly development of the law.

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