CHAPTER 8: MODUS OPERANDI OF THE APPLICATION OF PRECEDENT IN INDIA
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“The Judges are Vigilant in guiding our Freedoms. Someone must be trusted. Let it be the Judges.” Lord Denning [1899-1999] [90]

8.1 General Introduction

The present chapter has far more pragmatic aspects than other chapters of the thesis which are in fact the amalgamation of the theoretical & practical aspects woven together. The actual modus operandi of the precedent in the Post-Independence Indian judiciary in general & twenty first century in particular are the part of detailed analysis here. The advent of the computers & thereby causing a huge information technology revolution has fully changed the Indian legal & judicial scenario. Judicial process is expecting a high disposal in the light of the modern Speedy Justice enactments passed everywhere in the world.

8.2 Application of precedents in the Lowest Courts of the Indian Judiciary

In orde to understand the application of precedents in Indian Judiciary it is necessary to their position from the top to bottom courts in India. Panchayats & Criminal Jurisdiction:- As regards criminal jurisdiction of Nyaya Panchayat it is not empowered to inflict a substantive sentenced of imprisonment, with regard to criminal jurisdiction, every Panchayat is empowered to take cognizance of petty crimes including offences in the nature of breach of peace. It may impose a fine generally not exceeding Rs.100/- upon the offenders. In default of the payment of fine, imprisonment cannot be awarded. It is not required to take cognizance of such criminal cases where it thinks that the offence is such for which it cannot award adequate punishment or that it has got no jurisdiction otherwise to try it. The Sub-Divisional Magistrates are generally empowered to withdraw any criminal case pending before the Nyaya Panchayat to their own courts at their own instance or at the instance of the party & try to dispose it of or transfer it to another Bench.
The second lowest Courts in India are The Sub-Divisional Magistrate, the Munsiffs [called Judicial Magistrate First Class - JMFC in some States]. On the civil side the same court is called the Civil Court Junior Division. These judicial officers are empowered to withdraw any case, pending before Nyaya Panchayat, Criminal or Civil to their own courts at their own instance or at the instance of the party & try or dispose it of or transfer in to another Bench. It is the full fledged Subordinate Criminal Judicature in India. There are the Hi. Co.s subjects to the ultimate jurisdiction of the Sup. Co. of India which is the highest court of the land. The following are the subordinate criminal courts.

Courts of Magistrates:- There are a number of Magistrates in each District. Magistrates are of two categories i.e. Judicial Magistrates & Executive Magistrates.

A functionary has the pass a sentence facilities of a term not of fine not extraordinary imprisonment for 5 thousand rupees, or of both, extraordinary 3 years pass a sentence of imprisonment for a term not of a Magistrate of I category. Subordinate extraordinary one year or of fine not extraordinary one thousand rupees, or of both. The chief Metropolitan of a Chief functionary; a Metropolitan courts beneath the Indian constitution:- For economical administration of law & justice within the country, it's necessary to confirm that subordinate judiciary remains on top of temptation, corruption & discrimination. A first functionary has the power Ccategory functionary of second category might The Executive Magistrates are under the control of the state government Functions of police or administrative nature belong to executive magistrates. The executive magistrates in a district are district Magistrate, additional district magistrates, sub-Divisional Magistrates & other sub-ordinate executive magistrates.

8.3 Application of precedents in the Lower Courts of the Indian Judiciary

The Lower Courts considered here are the District Courts & the Court of Sessions constituted for the civil & the criminal matters respectively. A state is divided into session’s Divisions & every such Division is a District. There is a court of session fro every session Division. There judges try serious offences, such as decoities, homicide, serious thefts by habitual offenders etc, An Assistant session's judge may pass any sentence except that of death, life imprisonment or imprisonment for a term exceeding 10 years. A session Judge may pass any sentence authorized by law; but any sentence of death passed by him subjects to confirmation by law the Hi. Co.. The Sessions judge
has appellate jurisdiction also. He hears appeals from the various Judicial & Metropolitan Magistrates. It is the district court which acts as the Sessions court & thus the same court acts in both capacities, civil & criminal.

Legal Procedure in Civil & Criminal Matters in India to be performed under the direction of the Hon’ble Sup. Co. of India

(1) Different stages in the procedure of a civil law suit. [92]

(a) Institution of a suit:- Every plaintiff should institute a law suit by presenting a plaint to the competent court or officer as it appoints in that behalf. When the plaint has been presented to a proper court mentioning the cause of action, the relief claimed & it is properly valued & sufficiently stamped an is not barred by time, or any other law, the court admits the plaint & it is numbered & registered as suit.

(b) Service of summons:- After the registration of suit, the court should serve summons on the defendant(s) who appears & answers the claims of the plaintiff. The plaintiff has to take necessary steps for the service of summons. The summons has to be served in the prescribed manner with all requirements.

*Audi alteram partem* (or *audiatur et altera pars*) is a Latin phrase meaning "listen to the other side", or "let the other side be heard as well".

(c) Written statement:- After receiving the summons from the court, the defendant may, at or before the first hearing or within such time as the court permit ad per the statute, to present a written statement of his defense dealing with each allegation made in the plaint & clearly stating that which of the allegations are admitted or denied.

(d) Discovery:- Every party to a suit is entitled to know the nature of opponent’s case, so that he may know beforehand what he has to meet. The main object of the discovery is to secure, if possible, an admistration of facts in aid of proof, to supply the want of it & to avoid expenses. The discovery is to be generally made by way of interrogatories served on the opponent or by requiring him to disclose the document by affidavit.

(e) First Hearing & Striking of Issues:- On the day fixed in the summons for the defendant to appear & answer, the suit is heard if both the parties are present, unless the Court adjourns it to a later date, & after pursuing the pleading of the parties, answers to the interrogatories, if any, the court frames issues which have to be determined for deciding the case.
If neither party appears when the suit is called on for hearing, the court may dismiss the suit & if the plaintiff appears & the defendant does not appear, the court may proceed ex parte on the plaintiffs proving his case if the defendants is serviced summons. When the defendant appears & the plaintiff does not appear, the court may dismiss the suit, admits the claim.

As the unless the defendant first hearing of the case when both the parties are present the court goes through the plaint, the written statement & answers to interrogatories. If any, & then examines parties & records, their admissions denials. On ascertainment the court strikes issues which have to be determined to dispose of case.

If it is found that the parties are not at issue on any question of law or fact, the delivers the judgment at this stage itself.

(f) Production of evidence & Argument:- After framing of the issues, as is generally the case, a date is fixed for the final hearing. having the When the party, states his case right to begin & produces support of the his evidence in issue and, , the other thereafter party, produces his sat states his case tees his case evidence & addresses the court on the whole case. After the evidence of both the parties is over, the arguments advanced on their behalf are to be heard by court.

(g) Judgment:- After the cases has been heard the court may pronounce judgment at once or it may reserve its judgment & deliver the same on any future date; due notice whereupon shall be given to the parties or their advocates.

(h) Decree:- After the judgment is pronounced, a decree shall follow i. e. a decree be prepared in accordance with the judgment containing that date of the judgment.

(i) Execution:- Execution is the final stage of a suit. The execution is the means by which a decree or order of a court is implemented. The successful party can make an application in writing to the executing court specifying the mode of execution legally available to him & thereafter the execution proceedings are commenced for the fulfillment of the decree.

(j) Appeal:- Any party to the suit adversely affected by the decree may appeal to the higher court. The final appeal lies with the Sup. Co.(SC) depending on the jurisdiction.

(2) The stages of procedure in Criminal offences in India [93]
(a) The First Information Reports :-(The FIR):-Every person aware of the combustion of or of the intention of any other person to commit, any of the offences is required to forth with give information of the same to the nearest police officer Magistrate.

The FIR is usually made by the complainant or by someone on his behalf. It is a statement made soon after the occurrence, hence, the memory of the informant is fresh & it also unlikely that he had opportunities of fabrication.

The FIR sets the investigation process no motion. The FIR is given to an officer in charge of a police station. It must relate to a cognizable offence on the face of it. The FIR may be given by anybody to a police officer & he can submit it to theca be used only Magistrate while filling a case. Substantive evidence The FIR is not &or limited purposes.

(b)Investigation:- Investigation includes all the proceedings for the collection of evidence conducted by a police officer or by any person who is authorized by a Magistrate in this be half. An investigation is systematic, minute & through attempt to learn the fact about something complex or hidden. It starts after the police officer receives information in regard to an offence. An investigation consists of search for material & facts in order to find out whether or not an offence has been committed.

Arrested without A person be detained a warrant cannot by than 24 hours. If the police the police for more officersconsider it necessary to detain such a person for a larger period for the purposes of investigation, he can do so only after obtaining a special order of a Magistrate. The accused should be released when evidence is insufficient. When the evidence is sufficient the case has to be sent to the Magistrate.

(c)Commencement of Proceedings- scrutiny of the Complaint.

The petition of complaint, the sworn statement of the complaint & the report of the inquiring officer are sufficient materials for the purpose of issuing commencement proceedings.

Subject to the cases of non-bailable offences, the granting of bail becomes mandatory. Granting of bail is essentially discretionary in all cases of non-bailable offence. Where an accused voluntarily appears before the Magistrate & submits to his jurisdiction, the Magistrate has full discretion to grant him bail. No bail with conditions may be given in some case of offence punishable with death or imprisonment for life. Bail with conditions
may be given in some cases of offence punishable with imprisonment which may extend to seven years or more. Anticipatory bail may be granted even before the person is arrested.

(g) Preliminary pleas to bar trial:- The accused party of a criminal case may plea to bar trial of criminal offence on the ground of no jurisdiction of the court, or lapse of the period of limitation, or protection against double jeopardy; or res judicata or rule of issue-estoppels.

(h) Charge:- A charge means accusation. On behalf of the state concerned officers frame charge sheet, properly & produce sufficient evidence which relate to matters stated in the charge & not to matters not covered by the charge. Charge is not framed by prosecutor but by the court & at the stage of framing of charge, that is required is to see whether a prima facie case is made out & the Magistrate should not to into the merits of the case. The purpose of a charge is to tell the accused as precisely & concisely as possible of the matter with which he charged.

(i) Trial before a court Sestions:- In every trial before a court of sessions, the prosecution shall be conducted by a public prosecutor. Every accused person has a right to be defended by a counsel of his choice & if the accused is a pauper, the court shall provide a lawyer for his defense at the expense of the State. Before starting the trial the Court shall supply necessary copies of documents for the perusal of the accused & to defend himself in trial.

The defeated party may go for an appeal to a higher court to have the judgment reverse because of errors committed in the court below. There shall be no appeal by a convicted person if the court possess only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees or of both such imprisonment & fine.

8.4 Precedents at Alternative Dispute Resolution Systems

New Dispute-Resolution Machinery (Alternative Dispute Resolution) Systems:- One method to lighten the burden of the subordinate courts may be to create a new
mechanism to resolve disputes outside the traditional Judicial system. The following
new instruments of justice have been created. They follow the precedents of the parent
Hi. Co., other Hi. Co.s and the Supreme Court of India.
Lok Adalats:- To clear up the huge areas of pending cases in subordinat courts,
experiments are being made with a new institution of lok Adalats programmed for speedy justice.
Family Courts:- A family courts has jurisdiction over the matters of suits for a decree of
nullity of marriage, restitution of conjugal right, judicial separation or dissolution of
marriage, declaration regarding validity of a marriage, legitimacy of a person,
maintenance, guardianship of a minor, suit between parties to a marriage regarding the
property of the parties or either of them etc.
Consumer Dispute Redresser Agencies & National council:-To provide for better
protection of the interest of the consumers, & to save the consumers from the evils of
unfair trade practices & the settlement of consumers disputes for that purpose to make
provisions for protection councils & other authorities for the establishment for consumer.
Under Consumer Protection act, 1986 a National consumer Disputes
Redressedcommissions, state consumer disputes redressal commissions, District forum
in each district. The district forum enjoys jurisdiction to entertain complaints where the
value of goods or the services & the compensation, if any claimed, does not exceed Rs
20 lakhs (previously it was 5 lakhs. A complaint can be filed either at the place where
the opposite party resides or carries on business or at the place where the cause of
action arises. In case of manufactured good, apart from the place of manufactured
goods, the cause of action arises also at the place where the product is sold. [94]
Development of the Administrative Law & the ancient Rule of Law. Administrative of the
System has its origin in the Droit French Judicial System. Tribunals are beings
established outside the judicial hierarchy to decide certain type of duties. Tribunals are
being established at two levels. At the District court level
and at the Hi. Co. level. As an example, the Motor Vehicles Acts provides for
establishment of claims tribunals by state governments for disposals of claims arising
out of death or bodily injury to persons as a result of a motor accident.
The industrial Disputes constituted under the Act, 1947 National Industrial tribunal for the adjudication of industrial disputes which, in the opinion of the central government involve questions of national importance or are of such nature that industrial establishment situated in more than one state is likely to be interested in, or affected by, such disputes.

Under section 252 of the Income Tax act, 1961, the Appellate Tribunal, constituted by the central government, functions under the Ministry of Law. It consists of two classes of members-judicial & accountant. Under section 253 of the Income Tax Act, 1961, an assesses aggrieved by the orders of the Tax officers may appeal to the Appellate Tribunal.

Administrative Tribunals or courts are not full pledged courts, though they possess may of the trappings of a court & though they exercise the quasi-judicial functions & they are adjudicating bodies. They exercise judicial powers as distinguished from purely administrative function for the statues under which they are formed. The Administrative Tribunals are needed as they discharge their social interest involved, & greater technical knowledge & more cheaply, more efficiently the ordinary courts, possess fewer prejudices against the government, give greater lead to the decide disputes with conscious effort at furthering in the legislation. functions more rapidly social policy embodied, The Courts is bound to follow the precedents of the Sup. Co. of India & the parent Hi. Co. of the State with a binding force of law in first place. There is also a binding force of law in second place to the precedents taken from the Indian Hi. Co.s outside the territorial jurisdiction of the parent Hi. Co. in which this sub-ordinate court is situated. It is to be noted carefully that the precedent of the Sup. Co. of India has tremendous value & it surpasses the Hi. Co. precedent. It should also be kept in mind that sometimes the inexperienced advocates bring the precedents taken from the district courts or the tribunals. They are not at all binding upon any Indian court constituted under the Constitution of India because they are not recognized as the Court of Record under the provisions of the Article 129. The precedents from the foreign courts are rarely traced in these courts. They all have a guiding force of law & are the learned opinions in the eyes of the jurisprudence.
8.5 Application of precedents in the Hi. Co.s of the Indian Judiciary

It is interesting to note that the some of the inherent powers of the Indian Hi. Co.s are peculiar if compared to that of the Sup. Co. of India. In the world famous habeas corpus petition –ADM Jabalpur v Vidya Charan Shukla, it was declared that the National Emergency suspends all the Fundamental Rights including Article 32. Let us have a glimpse of this case in short.

ADD. DISTRICT MAGISTRATE, JABALPUR V/S SHRIKANT SHUKL (THE HABEAS CORPUS CASE) (1976 2 S.S.C. 521) [ARTS. 21 & 226]
On 20th April 1976, a 5 judge constitution bench of the Sup. Co. delivered a very important decision on the subject of enforcement fundamental rights during an emergency. By a 4 to 1 majority,

The majority verdict was handed down (in four separate but conquering judgements) by the chief justice Mr. ANRay & three other judges of the bench namely, Mr M H Beg, Mr justice YV Chandrachud & Mr justice PN Bhagwati. The dissenting judgement was delivered by Mr. Justice HR Khanna.

The chief justice Mr Ray observed in his 70 page judgment that Art. 21 of the constitution is the sole repository of the right to life & personal liberty.

Describing the constitution as the mandate & the rule of law above which no one rise, Mr Justice Ray held that it would be incorrect to say that the jurisdiction & powers of the powers of the Sup. Co. & the Hi. Co. were virtually abolished by the presidential order.

Concurring with the majority judgement, Mr justice Beg held that the court could not inquire into the vires of the detention of a petitioner under the MISA, once the court was shown a prime facie valid detention order passed by an authorised officer recording his purported satisfaction. Referring to the strongly emphasised point of the basic structure of the constitution Referring to the strongly emphasised point of the basic structure of the constitution, he observed under which the Hi. Co.s can issue rights, is an integral part of the constitution & he same cannot be suspended by putting a particular interpretation on the presidential order issued under Art. 359(1). Thus no one can file any writ petition in the Sup. Co. of India. However the Indian Hi. Co.s are always
empowered to issue writs under the provisions of the Article 226 of the Constitution of India. The precedents submitted to the Hi. Co. are from that Hi. Co. or the other Indian Hi. Co.s & the Apex Courts of India. Here the Hi. Co. judges have to carefully see whether the produced precedent is Per Curium or Per Incurium. Whether it is to be relied on or is dissenting & distinguished one. The Hi. Co. has to further examine with utmost care whether any Full Bench of the Hi. Co. or the Sup. Co. of India has overruled the same or not. The advocates may not remain impartial. They will only show what is beneficial to their client & will naturally hide the other things of his knowledge. We have to note it carefully that every Indian Hi. Co. is a Court of Record under the Constitution of India.

8.6 Application of precedents in the Sup. Co. of India

The Sup. Co. of India is the Apex Indian Court. It is a standout amongst the most effective courts on the planet. Recording tor Prof HLA Hart the House of Lords is fundamentally Legislation & the combination may not bring any unprejudiced demeanor like that of the totally autonomous Sup. Co. of India.

As such it can digress from its own past choices. The points of reference from the Hi. Co.s & even from the outside courts are constantly cited in the legal procedures of this court. They all have a managing power of law as they are dealt with as the scholarly feelings.

Here the Sup. Co. judges need to painstakingly observe whether the delivered point of reference is Per Curium or Per Incurium. Regardless of whether it is to be depended on or is contradicting & recognized one. The Sup. Co. needs to additionally inspect with most extreme care whether any Full Bench of the Sup. Co. of India has overruled the same or not. The Advocates on Record [AOR] may not stay fair-minded. They will just show what is useful to their customer & will normally shroud alternate things of his insight.

SUP. CO. ADVOCATES-ON-RECORD ASSOCIATION AND ANOTHER versus UNION OF INDIA (A.I.R. 1994 SUP. CO., 268)
A point of interest choice including the arrangement & exchange of Judges was given by a nine-part Bench of the (S.C.) Sup. Co. in the above case. The Hon'ble Judges contrasted in their perspectives, the greater part view being that of Justice Pandian, Justice Kuldip Singh, Justice averma, Justice Yogeshwar Dayal, Justice(Dr.) Anand & Justice Bharucha. The minority view was taken by Justice Ahmadi & Justice Punchhi.

In spite of the fact that the judgment of the Sup. Co. keeps running into 537 sections, the next might be taken summery of the conclusion touched base at by seven out of the nine Judges on this matter of the best protected criticalness:

1. manner not justiciable on any ground made on the proposal of the a, is not to be regarded to be reformatory. Any trade of a Hi. Co. Judge Such trade is in likeChief Justice of India.

2. The above models must be taken after. any justifiable proper & trades, on any person In making all game plans. Regardless, the same don't give

3. Obsession of the quality of Judges (i.e. the quantity of Judges) in a Hi. Co. is justifiable, yet just to the surviving prosecuted in the Judgment.

4. The dominant part conclusion in a prior case chose by the Sup. Co., S.P. Gupta v. Union of India (A.I.R 1982 S.C. 149), in so far as it takes an opposite view identifying with the part of the Chief Justice of India matters of arrangement & exchange matters, in & the justifiability of such is not the right view. Presently let us see the specialized parts of legitimate points of reference.

8.8 Per Incuriam[96]

The choices of the U.S. Sup. Co. are normally not per curiam. Their choices all the more ordinarily appear as at least one suppositions marked by individual judges which are then participate by different judges. Consistent & marked assessments are
not considered per curiam choices, as just the court can formally assign suppositions. Per curiam choices have a tendency to be short. The assignment is expressed toward the start of the conclusion. Single line per curiam choices are for the most part issued without simultaneousness or dispute by a hung Sup. Co. at the point when the Court has an empty seat. The outstanding exemption to the standard attributes for a per curiam choice is the situation of Bush v. Gut. In spite of the fact that it recording for curiam, there were different concurrences & dissents. Examples include: Ex parte Quirin, (1942), Ray v. Blair, 343, Toolson v. New York Yankees, (1953) One, Inc. v. Olesen, (1958) Dusky v. Joined States, (1960), Brandenburg v. Ohio, (1969), Alexander v. Holmes County Board of Education, (1969) New York Times Co. v. Joined States, (1971)

Sup. Co. of India at times discharges choices for the sake of "The Court", however these are not really consistent. Now & then a supposition for the sake of the Court might be joined by broad agreeing & disagreeing assessments.

The Sup. Co. of Canada additionally ascribes a few choices to "The Court" however does not utilize the expressions per curiam. In the U.S. the term is utilized basically for uncontroversial cases. In Canada, in any case, it has been utilized for critical & questionable cases to accentuate that the whole Court is talking with a solitary voice.

8.9 A disagreeing sentiment (or dissent) and Unanimous cases

A contradicting sentiment is a supposition in a lawful case composed by at least one judges communicating conflict with the dominant part assessment of the court which offers ascend to its judgment. At the point when not really alluding to a legitimate choice, this can likewise be alluded to as a minority report.[97]

Disagreeing conclusions are regularly composed in the meantime as the larger part feeling & any agreeing assessments, & are additionally conveyed & distributed in the meantime. A disagreeing supposition does not make restricting point of reference nor
does it turn into a piece of case law. Nonetheless, they can in some cases be referred to as a type of convincing expert in consequent situations when contending that the court's holding ought to be constrained or toppled. Now & again, a past dispute is utilized to goad an adjustment in the law, & a later case may bring about a greater part assessment receiving a specific control of law once in the past supported in difference. Similarly as with agreeing assessments, the distinction in feeling amongst contradictions & greater part suppositions can frequently light up the exact holding of the larger part sentiment. The difference may differ with the lion's share for any number of reasons: an alternate translation of the current case law, the utilization of various standards, or an alternate understanding of the realities. Let us see a dissenting judgment issued by the Rt Hon Justice P N Bhagvati.

Bachan Singh vs State of Punjab [1980 Sup. Co. cases 684] [Arts 14, 19 & 21]

Bachan Singh was tried & convicted for murder & sentenced to death under section 302 of Indian penal code by the sestion’s judge. He appealed to the Hi. Co., which dismissed his appeal & confirmed the death sentence. Bacchant Singh then applied to the Sup. Co. for special leave to appeal, & since important questions were involved, the matter was referred to a five member bench comprising of chief justice Y V Chandrachud, justice P N Bhagwati, Justice R S Sarkaria, Justice A.C Gupta & justice N L Untwalia. Ten other petitioners also intervened & all the eleven petitions were disposed of by a 216 paragraph judgment of the court with Justice Bhagwati giving a dissenting judgment.

Under the Indian Penal Code, a death sentence is mandatory in case of murder by a person already under a sentence of life imprisonment, & there are seven offenses where the death penalty is prescribed as an alternative punishment, as for instance, for waging war against the Government of India, for murder, for dacoity, accompanied with murder, & so on. The criminal procedure code, 1973, makes a life sentence the rule, & the death penalty an exception. It provides that where death penalty is awarded in cases where it is an alternative punishment, the special reasons for such sentence are to be stated in the sentence (S.354 (3) of the code in criminal procedure 1973).
The two principle questions before the Sup. Co. in this case whereas follows:

(a) Whether the death penalty provided for the offense of murder in S.302 of the Indian Penal Code is unconstitutional.

(b) If the answer to questions (a) above is in the negative, whether S.354(3) of the criminal procedure code (referred to above) is unconstitutional, on the ground that it gives the Court unguided & untrammeled discretion, & allows the death penalty to be arbitrarily or freakishly imposed on a person found guilty of murder or any other offense where the death sentence is prescribed as an alternate sentence.

Both the questions were answered in the negative by the majority judgment of the Court, which was delivered by Justice Sarkaria.

The court was of the view that the death penalty or its execution cannot be regarded as an unreasonable, cruel or unusual punishment. Nor can it be said to defile the “dignity of the individual” (which is the term used in the preamble to the constitution). The court was, therefore, of the opinion that the death basic structure of the penalty violate the constitution does not.

The court further opined that the fact that India has become a party to the international Covenant on civil & political Rights does not affect the constitutional validity of the death sentence.

In the opinion of the court, as Art.19 does not deal with the right to life & personal liberty, the said Article is not applicable for judging the constitutional validity of s.302 of the Indian penal code. In the words of the Sup. Co., “to commit crime is not an activity guaranteed by Article 19(1)”.

The court observed that it cannot be said, reasonable & rationally, that any of the rights mentioned in Art. 19(1) confers the freedom to commit murder, or for that matter, the freedom to commit any offence whatsoever. Therefore, S.302 of the constitution. Nor does this provision violate Art. 14 or Art.21 of the constitution the Court held that if in the opinion of the Court, such standardization is well-nigh impossible. Firstly, degree of culpability cannot be measured in each case. Secondly, criminal cases cannot be categorized, there being infinite, unpredictable & unforeseen variations. Thirdly, on such categorization, the sentencing process will cease to be judicial. & lastly, such
standardization of sentencing discretion is a policy matter belonging to the legislature, & is beyond the Court’s function.

A dissent in part is a dissenting opinion that disagrees selectively—specifically, with one part of the majority holding. In decisions that require holdings with multiple parts due to multiple legal claims or consolidated cases, judges may write an opinion "concurring in part & dissenting in part. In some courts, such as the Sup. Co. of the United States, the majority opinion may be broken down into numbered or lettered parts, which allows those judges "dissenting in part" to easily identify which parts they join with the majority, & which sections they do not. Unanimous judgment is that judgment of a Full Bench where all the judges agree with each other.

The India is basically a Gift of Indian Judiciary. It is the great contribution of the learned judges who have protected the Constitution of India as it's true Guardian, & thus have proved to be worthy of the trust which Dr. B. R. Ambedkar had kept upon the Indian Judiciary collectively.

8.10 Distinguished & Overruled Cases

Distinguished case law is a peculiar case law which is used in thre specific circumstances only. Overruled case law is not at a good law for the pragmatic purposes. It may be a learned opinion but when overruled by the Full Bench of the same Hi. Co. or the Sup. Co. of India the concerned judgment loses its capacity to become the judge made law of the land. Here the judges have to carefully see whether the produced precedent is Per Curium or Per Incurium. Whether it is to be relied on or is dissenting & distinguished one. The Court has to further examine with utmost care whether any Full Bench of the Sup. Co. of India has overruled the same or not. The Advocates may not remain impartial. They will only show what is beneficial to their client & will naturally hide the other things of his knowledge. Let us have an illustrative case. Let us see an example of an old overruled case for academic purpose. It is to be noted that it is not at all any good law & it must not be used as any precedent in any court.

STATE OF MADRAS vs. CHAMPAKAM & STATE OF MADRAS vs. SRINIVASAN [Arts. 15 & 29][COMMON JUDGMENT]
The facts of these cases were similar; the state of Madras had fixed certain proportions of seats available for admission of students of certain distinct communities to technical colleges like Medical Colleges & Engineering Colleges. This order was known as the Communal G.O. the petitioner challenged the validity of this G.O. which reserved seats in that educational institution for different communities in certain proportions, on the basis of religion & caste.

The petitioners based their prayer on the following grounds:

(1) The communal G.O. violated the right to equality guaranteed under Art. 15(1).

(2) guaranteed under Art. 29(2). It also violated the right of the admission to educational institutions, on behalf of the State of Madras, it was contended. Art. 46 of the constitution laid down a directive principle that the State shall promote with special care the educational & economic interests of the weaker section of the people. Therefore, the communal G.O., being in accordance with the directive principle, could not be declared ultra vires.

The Sup. Co., in this case, laid down the following principles:

(1) Any Government order, which denied admission to any persons into any State-owned educational institution, on the sole ground of his religion, race, caste language or any of them, infringes the fundamental rights under Art.29(2).

(2) Art.29(2) is not controlled by Art.46. The directive principles of state policy as laid down in part IV of the constitution cannot in any way override or abridge the fundamental rights guaranteed by part III.

(3) Such order also violated the right to equality guaranteed under Art. 15 of the constitution.

(4) The court watched that the tenet of joy typified in Article 309, 310 & 311 of the Indian Constitution is neither a relic of the medieval age, nor is it in view of any extraordinary privilege of the British Crown. Or maybe it depends on open approach. The regulation of joy need not be practiced by the President or by the Governor by & by. Workmanship. 311, unmistakably sets out that an administration laborer can't be ousted or
emptied by a pro subordinate to that by which he was named. This
unmistakably demonstrates rejection or expulsion can be by experts other
than the President or the Governor.

(5) Moreover, when the specialist is fulfilled that it is not sensibly
commonsense to hold a request, the disciplinary request can be shed. So
this fulfillment additionally require not be the individual fulfillment of the
President or the Governor. The administering of the disciplinary request
should be possible even after the request has started. In this way, even
where a piece of the request has started, a circumstance which makes the
holding of the request not sensibly practicable may appear & the ranges of
the request can be abstained from under the established arrangements.

In M.R. BALAJI VS STATE OF MYSORE (AIR 1963 SC 649).
State of Mysore In this case the order under issued an Art. 15(4) by which all the
communities except the Brahmins were declared educationally & socially backward, so
75 % of the seats were reserved for all these classes. The Sup. Co. in this case
carefully interpreted the Art. 15(4) under the light of the Directive principles. It Stated
that the reservation should be less than 50 %. It is to be noted carefully that the
Champakam Case was cited here by the advocates as a precedent but was totally
rejected by the Hon Sup. Co. of India because ot has already been overruled.
INDRA SAWHNEY V. UNION OF INDIA (AIR 1993 SC 477).
The Sup. Co. has held that the classification of backward classes into backward & more
backward is constitutionally valid. This interpretation was taken with reference to clause
(4) of Art. 16 is equally applicable to clause (4) of Art. 15 as the words ‘backward
classes of citizen’ in Art. 16(4) includes the Scheduled Castes & Scheduled Tribes &
other socially & educationally backward classes. Should be on The distinction the of
social backwardness. In fact such basis of degrees a otherwise those of the backward
classes who are little more advanced than the more backward classes might walk away
with all the seats.
It is to be noted carefully that the Champakam Case was cited here by the advocates as a precedent but was totally rejected by the Hon Sup. Co. of India because it has already been overruled.

KESHAVAN MADHAVAN MENON VS. STATE OF BENGAL (A.I.R 1951 S.C. 128) [ART 13]

The appellant was accused of having violated certain privation of the (Emergency Powers) Act, Indian press 1931. The proceedings had commenced before the commencement of the Constitution, & the matter recording toning before the Court. The petitioner contended the following: Certain privations of the Indian Press (Emergency Powers) Act, Were inconsistent 1931. with Art.19 (1)(a), read with clause (2) of the Article. Therefore, the law was void under Art.13 Therefore; proceedings against him could not be continued after the commencement of the Constitution. In appeal the Sup. Co. laid down the following principles:

The entire part III of the Constitutions relating to Fundamental was Rights prospective. Accordingly, existing laws which were inconsistent with another provision of part III were rendered void with effect from the commencement of the Constitution, & ab initio. The inconsistency referred to in Art, 13(1) did not affect which had transactions taken places before the commencement of the Constitution, or the enforcement of rights & liabilities that had accrued under the inconsistent law The Constitution is to be interpreted before the commencement of the Constitution. Recording for its language, & not recording for any supposed spirit of the Constitution.

UNION OF INDIA & ANOTHER vs. TULSIRAM PATEL (A.I.R. 1985 SUP. CO., 1416) [Art. 309,310,311]

This landmark decision of the Sup. Co. arose out a bunch of special leave petition & Hi. Co. appeals, where railway servants participating in all India strike & members of the central industrial security forces were dismissed without holding any disciplinary inquiry, & such dismissals were challenged as being violative of Articles 310 & 311 of the constitution. The majority Judgment was delivered by Madan J., for himself & on behalf of Chandrachud, C.J., Tulzapurkar J., & pathak J. A dissenting judgment was
handed down by Justice Thakkar. (What follows is the view of the majority of 4 out of 5 judges.)

The court observed that the doctrine of pleasure embodied in Article 309, 310 & 311 of the Indian Constitution is neither a relic of the feudal age, nor is it based on any special prerogative of the British Crown. Rather it is based on public policy. The doctrine of pleasure need not be exercised by the President or by personally. Art. 311, clearly lays down that a government worker can't be expelled or evacuated by a specialist subordinate to that by which he was named. This clearly shows that dismissal or removal can be by authorities other than the President or the Governor.

Likewise, when practical to hold an inquiry the satisfaction that authority is not reasonably, the disciplinary inquiry can be dispensed with. So this satisfaction also need not be the personal satisfaction of the President or the Governor. The dispensing of the disciplinary inquiry can be done even after the inquiry has begun. So, even where a part of the inquiry has begun, a situation the holding which makes of the reasonably inquiry not practicable into existence may come & the areas of the inquiry can be dispensed with under the constitutional provisions.

The court also held that when there is an order removing or dismissing a Government Servant without an inquiry, a mere omission to mention the relevant clause of Art. 311 or of the relevant service Rules does not invalidate the order. The Court further observed that when a disciplinary inquiry is dispensed with, the reasons therefore should be recorded in writing. Such reasons contain detailed need not particulars, be vague, but must not or a of the language of Article 311 mere repetition. There is no constitutional obligation that such reasons should be communicated to the Government servant. It is, however, better that such reasons are so communicated. Moreover, when an inquiry is dispensed with, the reasons therefore cannot be required to be in the final order, nor can they be made public.

8.11 Law & Computers

This is the Age of the Information Technology Revolution. There is a tremendous growth of the knowledge & communication. Every aspect of the modern life is impressed by the computer & communication revolution. It may be education to
medicine or from the official work to the judiciary. We are fast getting the judgment from the Sup. Co. or the Hi. Co. within few hours of its pronouncement. The advocates, the judges, the law students, the officers of the court all have their own Lap-top sets along with internet facility. There is always a Wi-Fi in a campus area even like a railway station. The web links of the Sup. Co. of India & the State Hi. Co.s are practically free. We can get our case status on internet. There are some paid web-sites like Lexis-Nexis or Manupatra where we get the fast legal citations & the legal material. Recent knowledge has become a great weapon in the modern times.[98]

8.12 Conclusion

We have seen the modus operandi of the application of precedents in India. The place of precedent & its importance has always been a point of criticism in the eyes of the modern jurists especially from the Civil Law countries. Let us see their views in the next chapter.