

OBITER DICTA AND ITS APPLICATION IN THE JUDICIAL PROCESS

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CHAPTER I INTRODUCTION

All that is said by the court by the way or the statements of law which go beyond the requirements of the particular case and which lay down a rule that is irrelevant or unnecessary for the purpose in hand, are called obiter dicta. These dicta have the force of persuasive precedents only. The judges are not bound to follow them. They can take advantage of them but they are not bound to follow them. Obiter dicta help in the growth of law. These sometimes help the cause of the reform of law. The judges are expected to know the law and their observations are bound to carry weight with the government. The defects in the legal system can be pointed out in the obiter dicta. The judges are not bound to make their observations on a particular point unless that is strictly relevant to the point in issue but if they feel that they must speak out their own minds on a particular point, the public should be grateful to them for their labour of love.

CHAPTER II CONCEPT

The term obiter dicta literally means statements by the way. In Halsbury Laws of England, it has been defined as statements which are not necessary to the decision, which go beyond the occasion and lay down a rule that is unnecessary for the purpose in hand (usually term dicta) leave no binding authority on another court, though they may have some merely persuasive efficacy. According to Talbot, J.,¹ an obiter dictum is an opinion on some point which is not necessary for the decision of the case. The emphasis is not only on the opinion but also on the point. It is not merely an expression of opinion unconnected with the cases for determination. In *Jaiwant Rao and other v. State of Rajasthan*,² the court observed a dicta which does not form the integral part of the chain of reasoning directed to the question decided may be regarded as 'obiter'.

In England an obiter dicta has no binding effect either upon a co-ordinate court or upon a subordinate court. An obiter dicta of the House of Lords would undoubtedly be entitled to the highest respect. But a judge in England would not feel that he would be bound by an opinion expressed by the higher tribunal.³

According to Patterson, an obiter dictum is 'statement of law which could not logically be a major premise on the selected facts of the decision'⁴. The above statement is conversion of Wambaugh's test for determining whether a statement is a ratio. But the question of what are the selected facts of the case and who is going to select them? Remains unanswered. It is always possible to contend that the obiter dicta as said by the later court had been treated as a major

¹ Expressed in the cases *Dew v. United British Steamship Co. Ltd.*, (928) 139 LT 628.

² AIR 1961 Raj 250

³ Per Justice Tendulkar in *Mohandas v. Sattanathan*, 56 Bom LR 1160

⁴ P. Raja Ram- Jurisprudence p.140

premise of a syllogism of which the selected facts are minor premise and the decision is the conclusion. Then the definition given by Patterson is not capable of suggesting a method for determining whether a given statement is obiter or not.

Godhart is of the view that the obiter dictum is a 'conclusion based on a fact that the existence of which has not been determined by the court'.⁵ But Godharts statement cannot be considered as the exhaustive definition of obiter, though Godhart is correct in pointing out the one category of obiter dictum. All propositions of law entertained by the court cannot be called the Ratio Decidendi of the case, can be called as Obiter Dictum.

Judges are human beings; perhaps more so; hence usually in writing the opinion they do not confine themselves to the logical sequence. Often lengthy judgements indicate the judge's eagerness for exhibitionism of their learning than the necessary elucidation to decide the proposition of law to decide the case. In such cases we have to consider the major part of the judgement as obiter dictum. For example Indian judges are prone to write more about philosophy (as they think) and religion volumes, though such a treatise is not necessary to decide the case. Justice Verma in *Prabhoo v. P.K. Kunte*⁶ and Justice K. Ramasamy in *A.S. Narayana v. State of A.P.*⁷ had written voluminous pages about Hindu Theology without enlightening anyone including themselves. Naturally those pages have to be construed only as obiter.

In India, a departure has been made of the principle operating in England with regard to obiter dicta. The High courts have held almost uniformly that they are bound by the obiter dictum of the Supreme Court of India. In *Mohandas v. Sattanathan*⁸ their Lordship observed that the

⁵ Ibid

⁶ AIR 1996 SCW 145

⁷ AIR 1996 SC 1768

⁸ AIR 56 Bom LR 1160

Supreme court is the highest judicial tribunal in India and it is as much necessary in the interest of judicial uniformity and judicial discipline that all the High Courts must accept as binding the obiter dicta of council. But if the obiter dicta is on a question that did not arise for determination by the Supreme Court and is a mere expression of opinion given by the way then it is not binding. In *Basant Kumar Pal v. The Chief Electrical Engineer and others*⁹ it was held that ‘Even an obiter of the Supreme Court is binding upon the High Court only if the Supreme Court has enunciated or declared some principle of law’.

In *Nurudin Ahmed v. State of Assam*,¹⁰ it was laid down that ‘the observations of their Lordships of the Supreme Court if they were made obiter, would be entitled to the highest esteem from the High Court’. In *Ashok Leyland*¹¹ it was held that “The obiter dicta of a judge of the Supreme Court even in a dissenting judgement are entitled to high respect, especially if there is no direct decision to conclude the question at issue.

But statements on matters other than Law have no binding force. Supreme Court decisions which are essentially on question of fact cannot be relied upon as precedents upon as precedents for decisions of other cases

⁹ AIR 956 Cal 93.

¹⁰ AIR 1956 Assam 48

¹¹ AIR 1957 Mad 263

CHAPTER III SIGNIFICANCE OF OBITER DICTA

A judicial statement can be *ratio decidendi* only if it refers to the crucial facts and law of the case. Statements that are not crucial, or which refer to hypothetical facts or to unrelated law issues, are obiter dicta. *Obiter dicta* (often simply *dicta*, or *obiter*) are remarks or observations made by a judge that, although included in the body of the court's opinion, do not form a necessary part of the court's decision. In a court opinion, *obiter dicta* include, but are not limited to, words "introduced by way of illustration, or analogy or argument". Unlike *ratio decidendi*, *obiter dicta* are not the subject of the judicial decision, even if they happen to be correct statements of law. The so-called Wambaugh's Inversion Test provides that to determine whether a judicial statement is *ratio* or *obiter*, you should invert the argument, that is to say, ask whether the decision would have been different, had the statement been omitted. If so, the statement is crucial and is *ratio*; whereas if it is not crucial, it is *obiter*.

An example of an instance where a court opinion may include *obiter dicta* is where a court rules that it lacks jurisdiction to hear a case or dismisses the case on a technicality. If the court in such a case offers opinions on the merits of the case, such opinions may constitute *obiter dicta*. Less clear-cut instances of *obiter dicta* occur where a judge makes a side comment in an opinion to provide context for other parts of the opinion, or makes a thorough exploration of a relevant area of law. Another example would be where the judge, in explaining his or her ruling, provides a hypothetical set of facts and explains how he or she believes the law would apply to those facts.

In reaching decisions, courts sometimes quote passages of *obiter dicta* found in the texts of the opinions from prior cases, with or without acknowledging the quoted passage's status as *obiter dicta*. A quoted passage of *obiter dicta* may become part of the holding or ruling in a subsequent

case, depending on what the latter court actually decided and how that court treated the principle embodied in the quoted passage.

CHAPTER IV BINDING FORCE OF SUPREME COURT

The union judiciary article 141 describes binding force of law declared by Supreme Court that; “*the law declared by the Supreme Court shall be binding on all courts within the territory of India.*” It means only the law declared by the Supreme Court which was necessary for the determination of the case would be binding in nature not the opinion of the court on the question which was not necessary to decide the case. To understand this situation let me explain word *Ratio Decidendi* and *Obiter Dicta*:

Ratio Decidendi means “the reason” or “the rationale for the decision”. The ratio decidendi is “the point in a case which determines the judgment” or “the principle on which the case establishes”. The process of determining the ratio decidendi is a correct thoughtful analysis of what the court actually decided essentially, based on the legal points about which the parties in the case actually fought.

All decisions are, in the common law system, decisions on the law as applied to the facts of the case, therefore, ratio decidendi is one of the most powerful tool, with a proper understanding of the ratio of a precedent, one can force a lower court to come to a decision which that court may otherwise be unwilling to make, considering the facts of the case.

Obiter Dicta means “other things that are said”, that is, a statement in a judgment that is “said in passing” All other statements about the law in the text of a court opinion or all pronouncements that do not form a part of the court’s rulings on the issues actually decided in that particular case are obiter dicta, and are not rules for which that particular case stands.

The distinction between the ratio decidendi and obiter dictum has been very beautifully explained by *Chagla C.J. in the case of Mohandas Issardas v. A. N. Sattanathan*¹², (at page 1160) in the following words

“.....an obiter dictum is an expression of opinion on a point which is not necessary for the decision of a case. This very definition draws a clear distinction between a point which is necessary for the determination of a case and point which is not necessary for the determination of the case. But in both cases points must arise for the determination of the Tribunal. Two questions may arise before a court for its determination. The court may determine both although only one of them may be necessary for the ultimate decision of the case. The question which was necessary for the determination of the case would be the ‘ratio decidendi’; the opinion of the Tribunal on the question which was not necessary to decide the case would be only an ‘obiter dictum’.”

So it would be incorrect to say that every opinion of the Supreme Court would be binding on the High Courts in India. The only opinion which would be binding would be an opinion expressed on a question that arose for the determination of the Supreme Court.

¹²AIR 56 Bom LR 1160

CHAPTER V CONCLUSION

As per the above discussion it is clearly says that Courts may consider *obiter dicta* in opinions of higher courts. Dicta of a higher court, though not binding, will often be persuasive to lower courts. The *obiter dicta* is usually translated as "other things said", but due to the high number of judges and several personal decisions, it is often hard to distinguish from the *ratio decidendi* (reason for the decision). For this reason, the obiter dicta may usually be taken into consideration.

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