History of Law Reporting in India

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In England, the gradual development of the art of law reporting reflects the growth of the authority of precedent.[1] A court is bound by the *ratio decidendi* of every case decided by a higher court, and in the case of the House of Lords and the Court of Appeal, the position has traditionally been that they are bound by their own decisions. But now it appears that the House of Lords is not attached to the doctrine of precedent in all circumstances. It has been observed by Lord Reid in *Scruttons, Ltd. v. Midland Silicones Ltd.*[2], that the House of Lords may question or limit the *ratio decidendi* of a previous decision in three classes of cases: first, where it is obscure; secondly, where the previous decision itself is out of line with other authorities or established principles; and thirdly, where it is much wider than was necessary for the decision so that it becomes a question of how far it is proper to distinguish the earlier decision.[3] In a later case, *viz', Chancery Lane Safe Deposit and Offices Company, Ltd. v. Inland Revenue Commissioners*[4], the opinion of Lord Reid and Lord Upjohn was that the rule of the House of Lords neither to reverse nor to depart from a previous decision of the House applied to the reasoning of the decision but did not bind the House to follow a previous case merely because it was indistinguishable on its facts[5]. As regards the Court of Appeal, it does not appear that there is any departure from the traditional position.

In India, there has been no such development of the art of law reporting and the growth of the authority of precedent as in England. The method of law reporting to preserve judicial decisions and the principle of the authority of precedent have been adopted in this country from England. . As in England, a court in this country s bound by the *ratio decidendi* of every case decided by a higher court; but the Supreme Court and the High Courts are not bound by their own decisions. In *Bengal Immunity Company, Ltd. v. State of Bihar*[6], the Supreme Court held that it can depart from a previous decision if it is convinced of its error and its baneful effect on the general interests of the public.[7] The same is the position in the High Courts also.[8]

The History of law reporting in India may be divided into two parts: the first dealing with the early stages of its development (roughly a period 1813-1861), and the second with a more regular course which is said to have commenced with the establishment of Presidency High Courts in 1862.

Early Stages

In 1813 the necessity of establishing the authority of precedent in India was for the first time emphasised in the following words: '.... it should be enacted by a Regulation that from a given period, the judgments of the court shall be considered as precedents binding upon itself and on the inferior courts in similar cases which may arise thereafter. This will have the effect of making the superior courts more cautious and of introducing something like a system for the other courts, the want of which is now very much felt.' It was further emphasised that 'hitherto it has not been much the custom to refer to precedent; and for ought the Judges of the court may know, the same points may have been decided over and over again and perhaps not always the same way. It is obvious that having something like a system established would tend to abridge the labours of the civil courts.'

Thus arose the need of the publication of reports of cases involving questions of native law, and also of the publication of other reports, for guidance of the courts themselves as well as the legal practitioners.

Again in 1850 one William Macpherson observed that the practice and doctrines of the civil courts must be deduced, in great measure, from an examination of the decisions at large, both those which have been especially adopted and published as precedents and those which are issued monthly as a record of the ordinary transactions of the Sadar Courts; for all decisions practically tend to show by what principles the court is governed; and they become law, that is to say, they guide men in their private transactions and they regulate the decisions of the courts. No one can make the examination to which I have referred, without perceiving that there is a large body of living doctrine, which appears to mature itself by degrees in the minds of experienced judicial officers, but which is not to be met with in any definite form. Yet by this test the judgments of the inferior courts are necessarily tried, and no small portion of them are quashed for erroneous procedure, frequently with great severity of comment upon the part of the highest tribunal.

In this context we refer to the collections of reports made during 1813-1861:

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1 Harold Potter, *A Historical Introduction to English Law and its Institutions,* at p. 262 (1948). For history of law reporting in England; see *ibid.,* at pp 258-268; Philip S. James, *Introduction to English Law,* at pp. 10-16 (1962).
2 (1962) 1 All ER. 1.
3 (1962) I All E.R. 1. at p. 12.
4 (1966) I All E.R. 1.
5 Ibid, at pp. 10, 21.
6 A.I.R. 1955 S.C. 661.
7 *Ibid,* at pp. 672. See also Sajjan Singh *v.* State of Rajasthan, A.I.R. 1965 S.C. 845, at p. 855.
8 State of Uttar Pradesh *v.* Firm Deo Dutt Lakhan Lal, A.I.R. 1966, All. 73 at p. 80.

Reports of Cases decided by the Crown's Courts[9]

The published collections of reports of Indian Decisions were not many, but they already existed in sufficient numbers to be of the greatest practical utility, and additions were made to them day by day.

The decisions of the Privy Council on appeal from India were originally inserted in the reports of Knapp and Moore. Later on, they were published separately under the title 'Indian Cases', and appeared at intervals. There was also a valuable collection of the printed cases decided in appeals, and prepared by Lawford, but it was never published.

W. H. Morley included in the Appendix to his Digest of Indian Cases, a valuable series of notes of cases of the Calcutta Supreme Court prepared by Judge Sir Edward Hyde East. The notes contained many important decisions on native law and questions relating to the jurisdiction of the Court.

Reports of cases were given by way of illustration by Sir Francis Macnaghten in his Considerations on the Hindu Law', as current in Bengal, published in 1824. These Reports, from the nature of the work from which they were extracted, were, of course, confined to cases involving questions of Hindu Law.

Notes of cases were found in Longueville Clarke's editions of the Rules and Orders of the Calcutta Supreme Court, published in 1829; of the additional Rules and Orders which appeared in the same year; and of the Rules and Orders for 1831-32, published in 1834. These notes of cases were very valuable, many of those in the two latter collections containing the judgments in' full and relating to points of native , law of great interest.

Reports of cases decided by the Calcutta Supreme Court were, published by Bignell in 1831. Only a single number of these Reports appeared. The cases were fully and ably reported.

Notes of cases were inserted by Smoult in his Collection of Orders on the Plea Side of the Calcutta Supreme Court from 1774 to 1813, published in 1834. These notes were succinct but highly useful and comprised decisions, principally on points of practice, from 1774 to 1798.

In 1841 Morton published a Collection of Decisions of the Calcutta Supreme Court. It was principally compiled from the manuscript notes of R. Chambers, C. J. , Hyde, J. , and other Judges of the Court, and the cases related almost exclusively to questions altogether peculiar to India. It was a work of great utility and authority.

Fulton published a single volume of reports volume comprised cases decided in the Calcutta between 1842 and 1844.

The example set by Morton and Fulton by publishing the decisions of the Calcutta Supreme Court was followed by the other barristers of the Court. In 1850 Montriou published a volume of Reports comprising decisions delivered in 1846. In 1851 Taylor continued these Reports comprising decisions given in 1848. Taylor in collaboration with Bell published the subsequent cases.

The only collection of the decisions of the Madras Supreme Court was published by Sir T. Strange, C. J. This work appeared in 1816 and comprised three volumes. The cases were clearly set forth and the judgments frequently given in entirety; but from the paucity of the materials placed at the disposition of the Judges at that time, the decisions of the Court, relating to questions of native law, must be taken with some reservation.

A valuable collection of the decisions of the Bombay Supreme Court was given by Morley in the Appendix to his Digest of Indian Cases. These decisions were made available by Sir Erskine Perry, C. J. They gained additional authority from the fact of the manuscript having been carefully revised and corrected by Sir Perry himself. In 1853 Sir Perry published a collection of cases 'illustrative of Oriental life, and the application of English law to India', decided by the Supreme Court.

Reports of Cases decided by the Company's Courts[10]

The first printed Reports of cases decided by the Courts of the Company were published by Sir William Hay Macnaghten, while he was Registrar of the Calcutta Sadar Diwani Adalat. These were the Reports of the cases decided by this Sadar Adalat. A second edition of the first two volumes appeared in 1827, and the Reports were subsequently continued in the same form. Those contained in the first volume were chiefly prepared by Dorin who later became the Judge of the Court. The notes appended to the cases in this volume were entitled to weight as having been written or approved by the Judges who had decided these cases; and those explanatory of intricate points of Hindu Law were most especially valuable as coming from the pen of Henry Colebrooke. The second, third and part of fourth volumes were also published by Sir William Macnaghten. The later cases in the fourth volume were selected and prepared by C. Udney, his successor in the Office of Registrar. The cases contained in the fifth volume were reported by Justice Sutherland. The cases given in the sixth and seventh volumes had no reporter's name affixed, but they were approved by the Court and were believed to have been prepared by the Registrars.

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9 The Mayor's Courts, established in the Presidency Towns under the Crown's Charter of 1726, were the first Crown's Courts. They were subsequently replaced by the Supreme Courts established in Calcutta, Madras and Bombay under the Parliamentary Acts of 1773, 1800 and 1823 respectively.

10 The courts established in India by the East India Company.

Since the end of 1844, these Reports, which were later called 'Select Reports', published 'as approved by the Court', were 'but a reprint, accompanied by notes, of such of the decisions, published monthly, as containing constructions of law, or being illustrative of points of practice, are adapted to serve as precedents to the lower courts'. It was subsequently determined by a resolution of the Court, dated April 27, 1849, that the publication of the Select Cases should be discontinued. The mere reprint of a selection from the monthly publications of decisions was perhaps unnecessary, as the object of pointing out the 'leading cases', might have been more readily accomplished by the edition of a tabular reference and explanatory notes, sanctioned by the Court, and appended to the monthly issue. This was, however, not done, and it could not be denied that much inconvenience had arisen from the discontinuance of the Select Reports.

Reports of summary cases decided by the Sadar Diwani Adalat at Calcutta from 1841 to 1846 were appended to seventh volume of the above-mentioned collection. In 1845 a selection of reports of summary cases was published separately, containing selected decisions from 1834 to 1841, the former year being the period in which the Summary and Miscellaneous Department of the Business of the Court was first entrusted to one Judge. These were continued to the end of 1848, and were published as the first volume of Reports of Summary Cases. In the resolution, as mentioned above, it was stated, in respect of the Reports of Summary Cases, that "the Court are of opinion that their publication may go on, not as 'approved by the Court', but with the sanction only of the Judge incharge of the Miscellaneous Department, whose decisions they are, and who will note such of them as he may think useful for publication".

An Index to all the seven volumes of the Select Reports of Regular Cases and to the first volume of the Select Reports of Summary Cases was published in 1849.

A reprint of the Reports of Summary Cases decided by the Calcutta Sadar Diwani Adalat comprising reports from 1834 to 1852 was prepared by Carrau and published at Calcutta in 1853. This work is said to have been published by authority, and under the supervision of the Judges.

Another edition of the summary decisions of the Calcutta Sadar Diwani Adalat from 1834 to 1855, alphabetically arranged, was published at Calcutta in the latter year.

Reports of cases, chiefly in summary appeals, decided by the Calcutta Sadar Diwani Adalat, were published by Sevestre, a pleader of the Court. First volume of this collection comprised three parts and was completed in 1842. These Reports were exceedingly useful and were further in progress.

The decisions of the Calcutta Sadar Diwani Adalat, recorded in English, in conformity to Act XII of 1843, then began to be published monthly. This collection was commenced in 1845 by order of the Governor-General. The decisions of each year formed a separate volume. In the volume for 1850, marginal abstracts of the decisions reported were for the first time added.

The former Reports of cases decided by the Sadar Courts principally related to constructions of the written law and touched only occasionally points of procedure and practice, so that the publication of the decisions recorded in English, including cases of every description, may be said to have opened an entirely new field for the investigation of the student.

The monthly collections, referred to above, were of great value, and as they were published simultaneously at Calcutta, Agra and Madras, anyone could form a comparison between the practice of the several courts of last resort, which could not fail to be of the utmost utility in furthering the attainment of uniformity of procedure through the courts in India. Unfortunately, however, the decision in these collections were not easily referred to; the Indices appended were insufficient and the mode in which the cases themselves were reported was often such as to render it difficult to seize their full bearing. It is also regretted that the plan of adding marginal notes to these collections had been long delayed and was not even generally followed. No person, who did not examine them attentively, could form an idea of the labour required to master the contents of a single volume. The propriety of the object of their publication, viz., 'to give all possible publicity to the decisions of the Sadar Courts', was unquestionable, but it may be doubted whether the requisite publicity might not have been better attained by adopting a somewhat modified form. There was frequent and needless repetition of similar cases and decisions. This repetition was especially conspicuous with regard to cases involving points of practice, cases constantly recurring in which precisely similar circumstances presented themselves, and the erroneous decisions of the lower courts, passed on the same points, were reversed; or the suits remanded on appeal, on identical grounds.

The decisions of the Zila Courts of the Lower Provinces, recorded in English according to the Act of 1843, were printed monthly in the same form as the preceding collections. The decisions of the Zila Courts in the North-West Provinces were also published in a similar way and form. They were commenced in 1848. The decisions of the Zila Subordinate and Assistant Courts of the Madras Presidency were also published monthly. They began with the cases decided in 1851. All these collections of cases of Zila Courts were, however, comparatively unimportant since they were never referred to in the superior Courts as precedents.

The reports of cases decided by the courts of the Company at Madras, with the exception of the monthly collections already mentioned, were few in number. A volume was published in 1843 entitled as 'Decrees in Appeal Suits determined in the Court of Sadar. ' Adalat', Volume I, containing select decrees from

1805-1826. The cases in this collection involving questions of Hindu Law were interesting as illustrative of the prevailing doctrines of the southern schools. These decrees were, however, obscurely reported and in some instances they contained no point of law whatever, being merely decisions for want of proof.

A collection of decrees in appeal suits decided by the Sadar Adalat at Madras from 1826 to 1847 was published at Madras in 1853.

The first collection of the decisions of the Sadar Diwani Adalat at Bombay was the well-known series of Reports by Borradaile, formerly a Judge of the Court and the author of the translation of Mayukha. His work was in two folio volumes and was published at Bombay in 1825. It was full of cases on points of law peculiar to that part of India; these cases were ably reported.

A small but useful publication appeared in 1843 entitled as Reports of Selected Cases determined in the Sadar Adalat at Bombay. The Reports contained in this little volume were prepared, with few exceptions, by the Deputy Registrars of the Court and were arranged according to the dates of decisions which were scattered over a period extending from 1820, to 1840, the latter ones having been noted by the Judges as proper subjects for publication.

In 1850, Bellasis, once Deputy Registrar of the Bombay Sadar Diwani Adalat published a small volume containing decisions of that Court from 1840 to 1848, intended as a continuation of the Reports of Selected Cases. Bellasis stated that 'the cases reported are for the most part the decisions of a full Court of three Judges, such being considered more authoritative as precedents', A few Reports in this collection were prepared by Babington while he was the Deputy Registrar of the Sadar Court. .

In 1855, Morris commenced the publication of Reports of cases decided by the Sadar Diwani Adalat at Bombay. The first volume contained all the decisions for 1854. Each of the subsequent volumes comprised the decisions of a year.

In the branch of the criminal judicature, only a few Reports were printed. The first collection that appeared was of the sentences of the Sadar Nizamat Adalat at Calcutta. The first two volumes were prepared by Sir William Macnaghten. There was no reporter's name in the subsequent volumes.

In 1851, a monthly series of decisions of the Calcutta Nizamat Adalat was commenced.

At Madras a similar issue of Reports of criminal cases decided by the Sadar Faujdari Adalat began in the same year. Marginal abstracts were added in this series.

A valuable collection of Reports of cases decided by the Sadar Faujdari Adalat at Bombay, compiled by Bellasis and comprising decisions from 1827 to 1846, appeared in 1849. The cases recorded in this collection were selected to illustrate the application of the Bombay Criminal Code, both in questions of evidence and of punishment and also to settle doubtful points of procedure and practice.

In 1852 publication of the decisions of the Sadar Nizamat Adalat of the North-Western Provinces began I commenced with the decisions of 1851.

In 1855 Morris published a collection of Reports of cases decided by the Sadar Faujdari Adalat of Bombay, the cases commencing with those of 1854. Two volumes were published every year, each containing the decisions of six months.

In the lasts, Analytical Digest of all the reported cases, prepared by W. H. Morley, may be mentioned. In 1850 he published its first two volumes, text being accompanied by copious notes referring to the original authorities and explanatory of doubtful points. The work was received favourably and, therefore, it was further continued. In 1852 Morley published the first volume of a 'New Series' comprising the decisions of all the courts to the end of 1850.[11]

Reporting after 1861

Hitherto law reporting was not regular and systematic. It was only with the establishment of the High Courts in the Presidency Towns in 1862 that regular law reporting commenced. From that time semi-official and private law reports came to be published regularly and systematically. At present there is official law reporting also.

Sir James Stephen, who was the Law Member in the Governor General's Council, recorded a minute to the effect that law reporting should be regarded as a branch of legislation; he accepted the principle that it was hardly a less important duty of the Government to publish the law enunciated by its tribunals than to promulgate its legislation. On this subject a circular was issued to various local Governments and the High Courts. Later on Mr. Hob house, who succeeded Sir Stephen as the Law Member, became interested in the subject of law reporting and took initiative in the passing of the Law Reports Act in 1875 for the improvement of Law Reports. Its section 3 gave authority only to authorized reports by providing that no court would be bound to hear cited, or would receive or treat as an authority binding on it, the report of any case decided by any High court, other than a report published under the authority of the

11 This part of the article under the heading 'Early Stages' is based on W. H.

Government. After the passing of this Act, Councils of Law reporting were set up in several High Courts and Reports began to be published under the supervision and authority of the Government. .

The Act of 1875 which was an attempt at creating a partial monopoly in favour of official Reports, was strongly opposed. Sir George Campbell who was then Lieutenant-Governor of Bengal said: 'If you put into the hands of anyone authority the power of deciding which of these decisions should be treated as authoritative and which are to be rejected and snuffed out, you give that authority an enormous power over the Superior Courts of the country: you make him, in fact, Judge over the Judges. ' Notwithstanding this Act, unofficial reports, published in this country, were and are cited before the superior courts and relied upon by them in their judgments. In fact the Act has proved to be a dead letter. In 1927 a non-official Bill, introduced in the Central Legislature, containing provision to ban the citation of non-official Law reports, met with a strong criticism and opposition and ultimately collapsed. Recently the Law Commission also declared that monopoly of law reporting was not desirable, and suggested that the Act of 1875 should be repealed.[12]

According to the information available in the 14th report of the Law Commission, the official and non-official Law reports, published in this country, are mentioned below.[13]

Non-Official All India Reports.

(1) All India Reporter. (2) Criminal Law Journal.

Official Law Reports.

(1) I. L. R., (Indian Law Reports), Allahabad. (2) I. L. R. Andhra Pradesh. (3) I. L. R., Assam. (4) I. L. R. Bombay (5) I. L. R., Calcutta. (6) I. L. R., Cuttack. (7) Jammu & Kashmir Law Reports. (8) I. L. R., Kerala. (9) I. L. R., Madhya Pradesh (taking the place of I. L. R., Nagpur and I. L. R., Madhya Bharat). (10) I. L. R., Madras. (11) I. L. R., Mysore. (12) I. L. R., Patna. (13) I. L. R., Punjab. (14) I. L. R., Rajasthan. (15) Supreme Court Reports.

Non-Official Law Reports.

(1) Allahabad Law Journal. (2) Allahabad Weekly Reporter. (3) Andhra Law Times. (4) Andhra Weekly Reporter. (5) Bihar Law Journal. (6) Bombay Law Reporter. (7) Calcutta Law Journal. (8) Calcutta Weekly Notes. (9) Calcutta Law Times. (10) Jabalpur Law Journal (Gwalior) (previously Madhya Bharat Law Journal). (11) Jabalpur Law Journal (Jabalpur). (12) Karnatak Law Journal. (13) Kerala Law Journal. (14) Kerala Law Times. (15) Madhya Pradesh Cases. (16) Madhya Pradesh Law Journal. (17). Madras Law Journal (Civil). (18) Madras Law Journal (Criminal). (19) Madras Law Weekly. (20) Madras Weekly Notes. (21) Mysore Law Journal. (22) Nagpur Law Journal. (23) Patna Law Reports. (24) Punjab Law Reports. (25) Rajasthan Law Weekly. (26) Supreme Court Appeals. (27) Supreme Court Cases (in Hindi). (28) Supreme Court Journal.

Special Law Reports.

(1) Company Cases. (2) Company Cases Supplement. (3) Factories Journal Reports. (4) Income Tax Reports. (5) Labour Appeal Cases. (6) Labour Law Journal. (7) Sales Tax Cases.

Law Commission and Law Reporting

The Law Commission, appointed in 1955, has dealt, in detail, with the question of Law reporting in India and has made certain valuable suggestions for improvement.[14]

The Law Commission has omitted to consider the desirability of undertaking the reprinting of old Law Reports.[15] It is submitted that in the interest of administration of justice, it is necessary that this project should be undertaken by either the Government or some private agency under the supervision of the Government.

12 Morley: The *Administration of Justice in British India,* at pp. 331-346 (1858), with some changes in the language and arrangement.

13 Law Commission of India, *Fourteenth Report,* at pp. 633, 634.

14 Law Commission of India, *Fourteenth Report,* at pp. 636-637, 641, 646.

15 See Resolution on Revision of Law Reports, reported in the *Journal of the Indian Law Institute,* Vol. 4, at p. 631 (1962).