DOCTRINE OF STARE DECISIS: A CRITICAL ANALYSIS

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INTRODUCTION

Meaning and concept of doctrine of stare decisis and precedents:

A doctrine is just a principle or an instruction but it's not necessarily a rule that can never be broken. The doctrine of stare decisis is embedded in Latin Maxim *'stare decisis et non quieta movere'* which means to stand by the decisions and is also incorporated in Article 141 of the Indian Constitution and it states that the law declared by the Supreme Court shall be binding on all courts within the territory of India. It simply means that the courts refer to the past similar issues to guide their decisions. The past decisions are the precedents.

With the coming of the British Rule in India and the subsequent introduction of the common law into the legal system of our country, important developments took place with respect to the use and the theory of precedents in British India. The role of law is increasing as a means of development and the task of the modern judges is increasingly becoming difficult. On one hand, the goals of law are to achieve stability and certainty, but continuously changing and progressive society norms are in conflict with each other.

To achieve the goal of law i.e. stability, certainty, and continuity, doctrine of precedent was evolved. The premise on which this doctrine is based is that law should be stable, predictable and secure. The trend of following precedents ensures that the citizens must behave according to the rules laid down in the society in the expectation that past decisions will be honored in the future if they deviate from their normal course of conduct and violate the rules or laws of the state. Certainty, stability, and predictability are not only the goals of law but they are important ones. Sometimes it so happens that people know beforehand how the court will respond to a certain type of behavior, so many disputes are avoided and some are settled without litigation.

Stare decisis is essentially 'the rule of precedent' which the courts follow in the future cases. In spite of the fact that a rule has to be strictly applied, there is a need to balance the demands

for change in the laws with stability and this necessitated the adoption of several judicial techniques by the House of Lords. The orthodox methods could be modified by way of a) analogy, b) distinguishing the facts, c) narrow or restricted interpretation, and d) ascertainment of ratio-decidendi.

The rules and principles of case law are not final; they can be changed according to changing circumstances of the society. There is a shift of emphasis by the courts in shaping the law towards development of the principles of strict liability through Rylands vs. Fletcher[i] and the whole concept of manufactures' responsibility towards the consumer in Donoghue vs. Stevenson[ii] are worth mentioning. Rylands vs. Fletcher[iii] is one of the best example of expanding principle of the common law.

In the Rylands case, there was a reservoir built by the defendants to store water for their mill and they filled the reservoir with water. The water broke through some mining shafts beneath, escaped, and flooded their neighbor's mine. Even though they were not personally negligent, defendant mill owners were held liable for the damage caused by the escaping water. This is called strict liability and this means you are liable even there is no fault of yours.

The same principle of Rylands case was adopted in another case of Hale vs. Jennings Bros[iv], where the defendant operated a chair-o-plane roundabout at a fairground. One of the chairs broke loose and hit the plaintiff. This was held to amount to an escape for the purposes of Rylands vs. Fletcher[v] and the defendant was held liable for the damage, even though they had not been negligent. Here the material facts were similar to Rylands case and the only difference was that the damage here was to a person, and not just to property. With Hale vs. Jennings Bros[vi], there was an expansion of the Rule in Rylands vs. Fletcher[vii] to also include personal injury.

Thus with the above mentioned cases, we could see that the doctrine of precedents is not a principle which could not be modified. It could be changed according to the facts and circumstances of the case.

EVOLUTION OF DOCTRINE OF STARE DECISIS & ITS RELATION WITH COMMON LAW

The countries which follow common law system of adjudication (i.e. case laws or precedents) then the decisions or the judgments of the court provide a very important source of law. The common law forms a major part of the legal system of many countries, especially those which had been British territories or colonies. Similar to the United States, Indian Legal System also has a common law foundation. The British introduced the English Common Law System in India and it has been continuously observed by the Indian Courts except where domestic Indian Law was more appropriate, as in the case of family law and law of succession.

In England, most of the law in certain fields such as torts, developed entirely on the basis of prior decisions. In fact what is known as common law has developed wholly from judicial pronouncements. The doctrine of stare decisis has essentially developed as a result of progress made in law-reporting. In the beginning, there was no doctrine of stare decisis as there was no reporting of the decisions of the courts in England.

The origin of reporting decisions in England can be traced back to 17th century when the decisions of Exchequre Courts came to be reported and were given a binding force. In 1833 Chief Justice Park reiterated the need for recognizing the binding force of precedents in the historic decision of Mirehouse vs. Rennel[viii], and later with the establishment of the Supreme Court of Judicature by the Acts of 1873 and 1875, the doctrine of stare decisis was firmly established. A hierarchy of courts which is also a pre-condition for the stare decisis was also established along with the above said acts.

In tracing the history of the recording of judicial precedents in British India, the name of Sir Francis MacNaughten is worth mentioning who was a judge of the Supreme Court at Calcutta, and who began the tradition of inserting reports of cases illustrative of his dissertations on Hindu Law. Sir MacNaughten's work was published in 1824. Printed reports of the cases decided in the reign of the East India Company were published by Sir William MacNaughten when he was the Registrar of Sadar Diwani Adalat at Calcutta. It is significant to state that most of the case reports up to the year 1844 were written, or approved, by the judges who decided the cases. Since then, these reports came to be known as Select Reports and were published as "Approved by the court". These reports were adapted to serve as precedents to the inferior courts.

The Governor of Bengal ordered a collection of decisions of the Sadar Diwani Adalat to be published in 1845. A separate volume was prepared for each year and from the year 1850 abstracts of decisions was also given in the margins of the reports. A comprehensive volume on reported decisions of the Supreme Court appeared in 1831. An era of authentic law reporting began with the Indian Law Reports Act, 1875 and the Indian Law Reports, Calcutta series appeared in the same year. It is important to note here that 1875 Act nowhere states that that the decisions of a High Court are binding on itself or the inferior courts within its jurisdiction. Subsequently, Indian High Court Act, 1861 came and it led to the demise of the dual judicature that had existed previously and it facilitated the subscription of all courts lower in the hierarchy under the unified jurisdiction of the provincial High Courts. Thus, a hierarchy of courts with provisions for appeal to the higher court came to be established. Therefore, the two prerequisites for the emergence of the doctrine of judicial precedent- hierarchy of courts and the emergence of authentic law reports were fulfilled only around 1875.

As for the Federal Courts which is the constitutional predecessor of the Supreme Court, The Government of India Act, 1935 expressly made the decisions of the Federal Court and the Privy Council binding on all courts in British India and thus gave statutory recognition to the doctrine of stare decisis. The Federal Courts were not bound by its own decisions. After independence, the doctrine of precedent continues to be followed in the country. Article 141 of the constitution of India makes the 'law declared' by the Supreme Court binding on all courts within the territory in India.

On the promulgation of the constitution, the Federal Court which functioned under the Government of India Act, 1935, ceased to exist and the Supreme Court was set up instead. The Supreme Court has ruled that while the pre-constitution decisions rendered by the Privy Council and Federal Court are entitled to great weight, those decisions are not binding on the Supreme Court which can take a different view.

LAW DECLARED BY SUPREME COURT UNDER ARTICLE 141

Interpretation of Article 141:

Article 141 says that that the Law declared by the Supreme Court shall be binding on all courts within the territory of India. Although, the adoption of Article 141 and its constitutional predecessor i.e. section 212 of the Government of India Act, 1935 may be taken as representing

a point of culmination in the growth and development of the doctrine of precedent, yet neither the Federal Court nor its successor, the Supreme Court, has held itself bound by its own decisions.

The Supreme Court in Bengal Immunity case[ix] unanimously held that Article 141 of the Indian Constitution cannot be so construed as to make the prior decisions of the Supreme Court binding on it. "Courts" as used in Article 141 was held not to include the Supreme Court. The view that Article 141 does not make the Supreme Court decisions binding on the court itself has been repeated in many other cases.[x] The fact that the Supreme Court has in many decisions overruled its previous decisions is the affirmation of the fact that the both judicial practice and constitutional interpretation have combined to release the court from the fetters of its own decisions.

Since the court is entrusted with the responsibility of declaring the law for the authoritative guidance of the subordinate courts, it has an added responsibility to bring the law in line with modern and progressive ideas. Although the Supreme Court is slow in overruling its own precedents unless circumstances of compelling gravity dictate necessity of a change in the law, its reserve power of overruling is an essential component of its jurisdiction.

So it may be possible to regard Article 141 as merely codifying judicial practice without obliging the highest judiciary to be absolutely bound by its precedents.

Article 141 and ratio decidendi of a case- scope of Article 141 in its application to judicial precedents:

"A decision which is not express and is not founded on reasons, nor which proceeds on consideration of the issues, cannot be deemed to be a law declared to have a binding effect under Article 141."[xi]

Article 141 gives a constitutional status to the theory of precedents in respect of law declared by the Supreme Court. A five judge Bench led by S.P. Bharucha, C.J. in Rupa Ashok Hurra vs. Ashok Hurra[xii] stated that "a precedent is the law of the land for itself, and for all Courts, Tribunals and authorities in India".

Thus, the law laid down by the Supreme Court is now binding on the lower courts under a constitutional provision. The operation of the doctrine of precedent will be considered to be

consistent with the traditional legal theory only when the ratio decidendi of the judgment is binding.

It is beyond doubt that the ratio decidendi which is binding under the doctrine of precedent and it undoubtedly the declared under Article 141. Even when there is no ratio decidendi available in a case, there are High Court judgments[xiii], which hold judgments to be binding upon High Courts.

Status of obiter dicta under Article 141:

Obiter dicta may be an expression of viewpoint or sentiment which has no binding effect. The statements which are not part of ratio decidendi constitute obiter dicta and are not authoritative.[xiv] But in some cases, even an obiter dicta is expected to be followed and obeyed.[xv] Sometimes well considered obiter dicta of the Supreme Court are taken as precedent, but every passing expression of a judge cannot be treated as an authority.[xvi]

The law which will be binding under Article 141 would, therefore, extend to all observations of point raised and decided by the court in a given case.[xvii]

STARE DECISIS- INSTITUTIONAL ASPECTS

The present chapter deals with some of the institutional aspects of the doctrine of stare decisis.

Judicial Power to expand statutory power:

The Supreme Court went a step forward and expanded the powers under Article 141. In Paramjit Kaur vs. State of Punjab[xviii] the Supreme Court issued a direction to the National Human Rights Commission to inquire into and report on extrajudicial killings in Punjab. Thereafter the jurisdiction of the Commission was questioned with reference to its statutory obligations and limitations including prohibition from enquiring into any matter after expiry of one year as provided under section 36(2) of Protection of Human Rights Act, 1993. It was held that the order of Supreme Court referring the matter to the Commission was made in exercise of plenitude of its jurisdiction under Article 32 which has the effect of designating the Commission as a body sui generis to carry out mandates of the Supreme Court. The Supreme Court held that by its orders and directions it can confer jurisdiction on a body to act beyond the purview of its jurisdiction.

Binding on tribunals:

The Supreme Court insisted that tribunals also should follow the doctrine of precedent. A tribunal is bound to follow the law laid down by the concerned High Court and Supreme Court.[xix]

Two decisions by equal Benches:

In Kalabai Choubey vs. Rajabahadur Yadav[xx] the High Court was faced with a situation regarding which decision to follow when two co-equal Benches of Supreme Court gave opposite decisions on an identical issue. This was a case of Motor Vehicle Claims where there were several judgments of the Supreme Court delivered by Benches of equal strength on the issue under consideration. After examining several judgments of the Supreme Court on the biding nature of precedent, the Court stated that it is not bound by all the decisions or decision which comes later in point of time but may follow the one which, according to it, is better in point of law. It further said that even if there is a direct conflict between the decisions of the co-equal Benches of the Supreme Court, the High Court has to follow the judgment, which appears to it state the law more elaborately and more accurately and in conformity with the scheme of the Act. Both the views of the Supreme Court cannot be binding on the courts below. In such situation a choice, however, difficult it may be, has to be made. This may lead to uncertainty because of the fact that what happens to be elaborate and accurate to one may not be so for the other.

High Courts cannot overrule Supreme Court's decisions:

In Suganthi Suresh Kumar vs. Jagdeeshan[xxi] the Supreme Court said that it is impermissible for the High Court to overrule the decision of the Apex Court on the ground that Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts in India, it is the mandate of the Constitution as stated in Article 141 that the law declared by the Supreme Court shall be binding on all courts within the territory of India.

In Pandurang Kalu Patil vs. State of Maharashtra[xxii] the court said Privy Council decisions are binding on High Courts as long as the Supreme Court does not overrule them.

Duty of the High Courts to assist the Supreme Court:

When the Supreme Court decides a principle it would be the duty of the High Court or Subordinate Courts to follow that decision. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity", the Supreme Court observed in the matter of Director of Settlements, A.P vs. M.R. Apparao[xxiii], recently.

PRECEDENT & STARE DECISIS

In Dhanwanti Devi case[xxiv] , the Supreme Court reiterated that "a precedent by long recognition matures into rule of stare decisis. The court explained that "it is not everything said by a judge while giving judgment that constitutes a precedent, the only thing in a judge's decision binding on a party is the principle upon which the case decided and for this reason it is important to analyze a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates- i) findings of material facts, direct and inferential, ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and iii) judgment based on the combined effect of the above. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment.

It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason and the precedent by long recognition may mature into rule of stare decisis.

Therefore, the court held, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. In Municipal Corporation of Greater Bombay, the court stated, section 328-A of Bombay Municipal Corporation Act, 1988 was not at all interpreted. Reiterating the principle that ratio of a judgment is alone binding, which is to be ascertained by analyzing all material facts and issues involved in the case and argued on both sides. The said case was explained and distinguished in ICICI Bank vs. Municipal Corporation of Greater Bombay[xxv]. No judgment can be read as if it is a statute. A word or a clause or a

sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, judges are to employ an intelligent technique in the use of precedents.

The trend of judicial decisions is that stare decisis is not a dogmatic rule which is allergic to logic and reasons; it is a flexible principle of law operating in the province of precedents and it provides room to adjust to the demands of changing times dictated by social needs, state policy, and judicial conscience. The doctrine of stare decisis is generally to be adhered to, because well-settled principle of law founded on a series of authoritative pronouncements ought to be followed. But yet, the demands of changed facts and circumstances, dictated by forceful factors supported by logic, amply justify the need for a fresh look in the merit of justice.[xxvi]

Here the question is not whether the Supreme Court is bound by its own decisions; but the question is under what circumstances and within what limits and in what manner should the highest court overturn its own pronouncements. Being the highest court of the country, it is open for the Supreme Court not to feel bound by its own previous decisions because if that was not permitted, the advance of judge-made law and the development of constitutional jurisprudence would come to a standstill. However, the doctrine of precedent cannot be given a go-by.[xxvii]

SUPREME COURT AND OVERRULING OF PRECEDENT

The power of the apex court in a legal system to overrule its prior decisions undoubtedly involves the authority of the judicial process to change the law or to adopt it in response to changing social needs. The circumstances which favor overruling:

a. The impugned decision is a recent one.
b. Judicial opinion was divided, if not evenly balanced.
c. One of the judges who contributed to the majority decision in the preceding decision feels that he was in error in holding the view that he did on the other occasion and is now willing to reconsider his position.
d. The decision on the point is not quite clear because of the inconsistency in the reasoning's adopted in the concurring opinions. In other words, the ratio on the point is obscure.

e. An erroneous decision touching interpretation of the constitution which has given rise to public inconvenience or hardship.
f. The power of review must be exercised with due care and caution and to promote the public well-being.

Gopalan Case overruled:

A.K. Gopalan vs. State of Madras[xxviii] arose out of the detention of the well-known Indian communist A.K. Gopalan. The apex court interpreted that the words "procedure established by law" in Article 21 are to be given a wide and fluid meaning of the expression "due process of law" as given under the U.S. Constitution but it refers to only state made statutes laws and if any statutory law prescribed procedure for depriving a person of his rights or personal liberty it should meet the requirements of Article 21.

However, this decision was overruled in the case of R.C.Cooper vs. Union of India[xxix] and after this there was a series of decisions by the apex court including that of Maneka Gandhi vs. Union of India[xxx], where it was held that any law that deprives the life and liberty must be just and fair.

Golak Nath case:[xxxi]

The Supreme Court's power to prospectively overrule its earlier decisions was established by the judgment rendered by an eleven judge bench in the Golak nath case. Before this, this doctrine was used by the American Courts in specific instances to achieve certain ends. Because it was the first time the court was applying this doctrine borrowed from America, the Indian Court laid down certain provisions restricting the application of the doctrine in the Indian system. It was laid down that:

I. The doctrine of prospective overruling can be invoked only in matters arising under our constitution;
II. It can be applied only by the highest court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare the law binding on all courts in the territory of India;
III. The of the retrospective operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it.

Mandal case:[xxxii]

The doctrine of prospective overruling also finds a reference in Mandal Commission case. In this case, Justice Jeevan Reddy decided that the ruling in this case would be effective after five years from the date of the ruling. The court thus postponed giving effect to the ruling for five years from the date of the judgment. This case not only sees the extension of the application of the doctrine but even the elongation of the time period when the judgment would be effective.

CASE HISTORIES

Vishaka vs. State of Rajasthan:

The first case which I am dealing in my research paper is Vishaka's case[xxxiii]. It was an incident of alleged, brutal gang rape of a social worker. A three-judge Bench of the Apex Court speaking through J.S. Verma, C.J. laid down guidelines and norms as there was no enacted law to provide for the effective enforcement of the basic human rights of gender equality and guarantee against sexual harassment. The Supreme Court has laid down a full length law penalizing sexual harassment; which the court stressed should operate as binding law upholding the gender equality.

The court further gave a specific direction that the guidelines and norms must be strictly observed in all working places by treating them as law declared under Article 141. It refers to several international conventions and widened constitutional guarantees. The Articles of the Constitution 14, 19, 21 and 15(1), (3) 42, 51-A (a), (e) and 32, 141 and Beijing statement of 1995 and Articles 10, 11 and 24 of Convention on the Elimination of all forms of Discrimination Against Woman (CEDAW) were considered in this case.

Gender Equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance.

In view of the above, and in the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplaces, guidelines and norms were laid down by the Supreme Court for strict observance at all workplaces or other institutions, until a legislation is enacted for the purpose. According to the Court, sexual harassment included such

unwelcome sexual harassment included such unwelcome sexually determined behavior (whether directly or by implication) as:

a) Physical contact and advances;
b) A demand or request for sexual favors;
c) Sexually colored remarks;
d) Showing pornography;
e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

The court laid down that all employers, both public and private, should take appropriate steps to prevent sexual harassment at the work place by giving wide publicity to its guidelines and by including rules prohibiting sexual harassment in the conduct rules and standing orders, as the case may be. Further, steps should b taken to initiate criminal proceedings where such conduct amounted to specific offence under the Indian Penal Code, 1860. The court provided further guidelines in respect of i) disciplinary action, ii) complaint mechanism, iii) complaints committee iv) workers initiative v) awareness; and vi) harassment by third party. The court further urged the central as well as state government to consider adoption of suitable measures including legislation to ensure that these guidelines are observed by the employers in private sector too.

And now after almost 15 years after the guidelines laid down by the court for the prevention and redressal of sexual harassment and their due compliance under Article 141 of the Indian Constitution, finally law is passed in this regard in the case of Medha Kotwal Lele & Ors. vs. Union of India[xxxiv]. The sexual harassment of women at workplace (prevention, prohibition and redressal) Act, 2013 was passed on 22nd April, 2013[xxxv]. The Act is intended to include all women employees in its ambit, including those employed in the unorganized sector as well as domestic workers.

M.C. Mehta vs. Union of India[xxxvi]

The rule of strict liability famously laid down by Blackburn J., in Rylands vs. Fletcher[xxxvii], proved to be ineffective with the passage of time to counter the dangerous use of one's property or an industry that produced substances or wastes detrimental to public health. The pre-requirements essential for establishing a liability under the principle of strict liability viz., the non-natural use of land, use of a dangerous thing, and the element of escape provided

substantial loopholes to the enterprises to escape liability under the Rylands vs. Fletcher[xxxviii] rule.

Subsequently, this rule has been modified and a more stringent rule than the strict liability rule in Rylands' case was laid down by the Supreme Court in M.C. Mehta vs. Union of India[xxxix]. In this case, the Supreme Court has established a new doctrine of 'absolute liability' in place of the doctrine of strict liability to deal with the new situations in society arising out of modern industrial development. The case is related to the harm which is caused by the escape of Oleum gas from one of the units of Shriram Foods and Fertilizers Industries. The court held that the rule of Rylands vs. Fletcher which was evolved in the 19th century did not fully meet the needs of a modern industrial society with highly developed scientific knowledge and technology were hazardous or inherently dangerous industries were necessary to be carried on as part of the development programme and that it was necessary to lay down a new rule not yet recognized by English Law, to adequately deal with the problems arising in a highly industrialized economy.

The court also pointed out that the duty owed by such an enterprise to the society is "absolute and non-delegable" and that the enterprise cannot escape liability by showing that it had taken all reasonable care and there was no negligence on its part.

The rule in Rylands' case requires non-natural use of land by the defendant and escape from his land of the thing, which causes damage. But the rule in M.C. Mehta case is not dependent upon any such conditions. The necessary requirements for applicability of the new rule are that the defendant is engaged in hazardous or inherently dangerous activity and that harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity.

Another important point of distinction between the two rules is in the matter of award of damages. Damages awardable where the rule in Rylands' case applies will be ordinary or compensatory; but in cases where the rule applicable is that laid down in M.C. Mehta's case the court can allow exemplary damages and the larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it.

For long, commercial enterprises had managed to escape the tight noose of liability, there being no comprehensive common law remedy to cases of mass disasters. However, finally with this case, the Supreme Court of India evolved a new principle of liability to deal with cases where

the industry being carried out was of a hazardous and inherently dangerous nature. The new principle of law did not incorporate the exceptions provided under the Rylands' case rule, nor was it necessary to establish the requirements of non-natural use of land, the escape of thing etc., which had hindered the rule of strict liability useless in the modern era of rapid economic development.

CONCLUSION

The continuous application of the doctrine of precedent and stare decisis comes in between the changing trends and systems of society. In conclusion it could be said that the importance of precedent varies with individual judges for although common law normally recognizes precedent as binding, judges not only may occasionally depart from precedent when it "appears right to do so" but they may distinguish between various precedents in evolving the new law. Moreover, times and conditions change with a changing society and no era should be hampered by outdated law. But on this Cardozo, J. states that while a judge may discard the old and adopt the new, he must remember that the past is often a reflection of the present and he must know and understand it, "for the depths are the foundation of the heights".

Thus if we look at these doctrines, we could see that doctrine of stare decisis and precedents promotes certainty and uniformity in any legal decisions. These doctrines also help in promoting convenience to the lawyers and judges i.e. when an issue of law is already decided and it has been made binding, then it is convenient to pass the same judgment if the facts of the case are similar. It also helps in reducing the number of errors that judges might make while passing a judgment, and thus it tries to restore the public confidence in the judiciary system.

One of the drawbacks of the binding doctrines is that the judges do not get to apply their minds on the facts of the case and they have just have to follow the well-established precedents and stare decisis. One of the striking features of these doctrines is that it is not strictly binding, it is flexible.

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