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The Doctrine of Prospective Overruling: Legislative Analysis of Its Evolution & Application in India

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ABSTRACT

The paper will follow the evolution of the doctrine of prospective overruling to navigate its transition from American jurisprudence to Indian legal jurisprudence. The paper analyses the merit of the doctrine as its ability to take cognisance of social legal change while expounding on the transformation of law without prejudicing the citizenry who acted on the faith of prior judicial pronouncements and believed the law to be good. Chapter 2 of the paper will talk about the principle of stare decisis and how the principle was stringently construed over several decades to act as an impediment in adopting the doctrine of prospective overruling. Chapter 3 would elaborate on the evolution and interpretation of the doctrine of prospective overruling and resulting American courts' decisions. Chapter 4 of this paper would dwell on the process and rationale behind which the Indian courts imbibed the doctrine from American jurisprudence. Chapter 5 would explore the depths of the doctrine's application in the Indian legal system and would dive into a plethora of cases involving different stands taken by the courts. Chapter 6 of this paper discusses the various criticisms the doctrine faces, both in India and America and the multiple rebuttals to these criticisms. These, in turn, help demonstrate how this doctrine is quintessential for the functioning of modern-day courts. Chapter 7 of this paper ends with the authors providing concluding thoughts and a summary of the paper while also highlighting the necessary merits of this doctrine.

Keywords: *stare decisis, retroactive, legislative function, outmoded precedent, safeguard against prior erroneous judgments.*

I. INTRODUCTION

It is a common practice of the human mind to follow fixed and similar patterns. The common law legal system works on similar lines and is based on the doctrine of binding precedents. As per the traditional notion of *stare decisis*, a court is bound by its own previous decisions and previous decisions of all higher courts. However, precedent "*is a matter of a technique. In*

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whatever way courts reach their conclusions, they are expected to place the situation they are judging within the generalised class of some existing decision."[3] Though this implied that the courts do not have to accept the prior ruling blindly, courts were cautious in sticking to the precedent, even if it was causing injustice to parties.[4] This was done for many decades under the Blackstonian principle.

Under the Blackstonian principle, the judge's job is to find and interpret the law rather than make it.[5] This principle was widely used in America. Judges would attempt to abide by this principle even though the law was erroneous or set bad examples for similar future cases. The reasoning was in tandem with the idea that it is not the task of the judge to create or amend the law, as that would fall under the ambit of the legislature. In the event of a misunderstanding or a controversy, the judge is expected to find the law as it existed previously. Any decision which would overrule such common law had been given a retrospective effect since the precedent is seen as an erroneous interpretation or evidence of the law and not the law itself.[6] In other words, under the Blackstonian principle, the precedent is treated as nugatory not because it is a 'bad' law but because it was not the law in the first place. The later decision has not tweaked the law but only discovered the truth rule that always existed.

As this principle was so closely related to the doctrine of *stare decisis*, the use of precedents in America with regard to its retrospective application was not questioned for hundreds of years.[7] Persons concerned with this doctrine felt the imperative need for the continuance of the principle, as it offered certain stability and certainty to decisions, even if it occasionally caused hardships in individual cases. This was aided by the courts' reluctance to overrule prior decisions unless absolutely necessary.[8] Then began the transition, first in America and then in other common law countries, to a principle termed as "prospective overruling". This principle refers to the judicial practice by which a Court overrules a bad precedent in a particular case before it but does not apply its decision on the parties to that case so as to not disappoint the expectations of the parties when they approach the court. This doctrine marked the change in judicial decision-making and is continued to the present date. The change in this doctrine meant that the hardships caused due to a "bad" law were mitigated, and decisions were pronounced in the interests of equity and justice.

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[3] Max Radin, *Case Law and Stare Decisis: Concerning "Prajudizienrecht in Amerika"*, Vol. 33 Columbia Law Review 199, 204 (1933).
[4] von Moschzisker, *Stare Decisis in Courts of Last Resort*, Vol. 37 Harvard Law Review 409, 417 (1924).
[5] 1 SIR WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 69 (15th ed. 1809).
[6] Editorial Board, *Prospective-Prospective overruling*, Vol. 51 Minnesota Law Review 79, 85 (1966).
[7] William F. Newton, *Prospective Overruling - Sunburst Theory*, Vol. 18 Baylor Law Review 606, 615 (1966).
[8] William F. Newton, *Prospective Overruling - Sunburst Theory*, Vol. 18 Baylor Law Review 606, 615 (1966).

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II. ROOTS OF THE DOCTRINE IN THE AMERICAN LEGAL SYSTEM

The American legal system was the first to transition from the traditional Blackstonian principle to that of prospective overruling. It resultantly marked the transition from judges simply interpreting the law to essentially performing 'legislative functions'.

(A) The inclination towards prospective overruling

After decades of legislating only on the Blackstonian principle, America began a slow but steady transition towards prospective overruling. Certain significant persons in the American field, such as John F. Canfield, began to argue against the Blackstonian principle and advocated that a court has a duty to announce and recognise a new and better rule for future transactions whenever the previous law is established to be unsound.[9] The Blackstonian principle itself was inherently causing miscarriage of justice. The retrospective application of the later decision under the Blackstonian principle meant that previous litigants before the Courts could not foresee the consequences of their actions. As a result, it would cause severe impedance to the previous litigants. In effect, it meant that a lawful act back then may become unlawful later under this later decision. There needed to be a balance drawn, one between judges having the power and will to overrule a bad precedent and the other to not cause harm to previously existing litigants. This line was met by the principle of 'prospective overruling' i.e. overruling of a well-established precedent that is limited to future situations, excluding application to situations that had arisen before the decision, thereby presumed to be governed by the overruled principle.[10] Briefly stated, prospective overruling "*is the judicial technique by which a court, eager to overrule an outmoded precedent but, reluctant to disappoint the expectations of the parties applies that precedent in deciding the particular case before it but simultaneously announces that it shall consider the precedent as over ruled in all future cases*."[11]

(B) Judicial decisions in American Courts

This principle was implicitly applied as early as 1848 in the case of *Ester Bingham v Miller*.[12] However, it was recognised and highlighted by Justice Benjamin Cardozo in the landmark case of *Northern Railway v Sunburst Oil and Refining Co.*[13] (hereinafter, "**the Sunburst case**"). In this case, the Supreme Court of Montana overruled a previous decision which granted shippers

[9] Beryl Harold Levy, *Realist Jurisprudence and Prospective Overruling*, Vol. 109 University of Pennsylvania Review 1, 17-21 (1960).
[10] Wolfgang Friedman, *Limits of Judicial Lawmaking and Prospective Overruling*, Vol. 29 The Modern Law Review 593, 606 (1966).
[11] Notes, *Prospective Overruling and Retroactive Application in the Federal Courts*, Vol. 71 Yale Law Journal 907, 911 (1962).
[12] Ester Bingham v. Miller, 17 Ohio 445 (1848).
[13] Northern Railway v. Sunburst Oil and Refining Co, 287 U.S. 358 (1932).

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certain rights to recuperate excess payments under the statute which regulated intrastate freight rates. Justice Cardozo, who occasionally wrote about the notion of prospective decision-making,[14] wrote, "*A state in defining the limits of adherence to precedent may make a choice for itself between the principle of forward operation and that of relation backward*".[15] However, while overruling, the court held that the old rule would be applied in the Sunburst case and in all cases where the contracts of carriage were entered into reliance upon the earlier erroneous decision.[16] The judgements gave the courts the impetus they needed to engage in prospective overruling on a case to case basis. The incentive for the court to overrule a previous 'bad' law would be such that they would not jeopardise parties who have come before it in reliance of that law and would only apply it for future applicants who have notice of this change. This was also termed as the 'sunburst device'. Thereafter, American courts began to use the principle with a higher frequency, with different forms of such retrospective application.

As could be seen in *Mosser v. Darrow*,[17] the dissenting ruling deviated from the majority with respect to applying the new rule retroactively and wanted the rule to be applied only prospectively; otherwise, it would be grossly unfair to previous litigants. The case of *Griffin v Illinois*[18] involved a statute that required defendants to submit bills of exceptions as a prerequisite to an appeal from a conviction. The act was held unconstitutional in that it provided no means whereby indigent defendants could secure a copy of the record for this purpose. Justice Frankfurter held this law to apply after the ruling of the case, i.e. prospectively and not retroactively.[19] His rationale behind such prospective application was to prevent the upsetting of previous convictions by the court done based on their inability to pay for the transcripts.

Unlike the previous cases wherein the parties to that dispute could not benefit from the change in law, the case of *Linkletter v Walker*[20] set an example of a varied trend of retrospective applicability. The issue was whether the *Mapp v Ohio* case,[21] which held that evidence illegally seized is inadmissible in a state criminal trial, could be applied retroactively to convictions obtained before this principle was judicially asserted. The court demonstrated that there were no constitutional barriers in its application, by sweepingly declaring that the United States

[14] Gil J. Ghatan, *The Incentive Problem with Prospective Overruling: A critique of the Practice*, Vol. 45 Real Property, Trust and Estate Law Journal 179, 183 (2010).
[15] Northern Railway v. Sunburst Oil and Refining Co, 287 U.S. 358 (1932).
[16] William F. Newton, *Prospective Overruling - Sunburst Theory*, Vol. 18 Baylor Law Review 606, 613 (1966).
[17] Mosser v. Darrow, 341 U.S. 267 (1951).
[18] Griffin v. Illinois, 351 U.S. 12 (1956).
[19] Griffin v. Illinois, 351 U.S. 12 (1956).
[20] Linkletter v. Walker, 381 U.S. 618 (1965).
[21] Mapp v. Ohio, 367 U.S. 643 (1961).

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Constitution "*neither prohibits nor requires retrospective effect*"[22] and it is therefore for the court to decide, on a case to case basis, whether a decision overruling a previous principle should be applied retroactively or retrospectively.[23] A similar ratio was also held in *Tehan v United States*.[24] Some judges have different ideas of applying the retrospective principle and believe that its benefits should be conferred on litigants to that case. For example, two dissenting judges held that the *Mapp v Ohio* case was applicable in Linkletter's case,[25] i.e. it is retrospectively applicable, but benefits of the same must be conferred on litigating parties.

(C) Varied applicability of the principle in American jurisprudence

Hence, the American courts' interpretation of prospective overruling could be used to distinguish and highlight four views or forms of prospective overruling. Under each of these views, the rule differs either on date of application or the parties to whom it can be applied against.

a) denying the use of the new rule in the case changing the rule, the 'pure' form;

b) using the new rule for the case that changed the rule, or giving the victor his fruits;

c) denying the use of the new rule in the overruling case and announcing that it will take effect on a future date, that is, acting like a legislature in the most obvious way possible;

d) using the new rule in the overruling case and announcing that it will take effect at a future date.[26]

American courts have generally viewed the first type as the actual type of prospective overruling, as the landmark cases illustrated above can be seen. However, as all four are legitimate forms of overruling prospectively, the correct application of the case to one of these four principles became a constant challenge. The Indian courts, too, have evolved and used multiple variants of the types of prospective overruling, and the same would be elaborated below.

III. ADOPTION OF THE DOCTRINE IN INDIA

Prospective overruling was a concept alien to Indian legal jurisprudence for many decades. Only after the 1950's did the usage of 'prospective overruling' become a trend in Indian courts,

[22] Mapp v. Ohio, 367 U.S. 643 (1961).
[23] Mapp v. Ohio, 367 U.S. 643 (1961).
[24] Tehan v. United States exrel Shott, 384 U.S. 719 (1966); Johnson v. New Jersey 382 U.S. 405 (1966); Chevron Oil v. Hudson, 404 US 97 (1971).
[25] Linkletter v. Walker, 381 U.S. 618 (1965).
[26] Cody Blake Bartlett, *Prospective Overruling and Property Law*, Vol. 18 Western Reserve Law Review 1205, 1226 (1967).

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beginning with the landmark case of *IC Golaknath v State of Punjab*.[27] This part will shed some light on the rationale behind the import of this doctrine by India to challenge traditional jurisprudence.

(A) The Development of Prospective Overruling in India

The adoption of the doctrine of prospective overruling in the Indian legal jurisprudence resulted from influence from other foreign jurisdictions. The Indian legal system has been established in a hierarchical structure adhering to the principles of common law. Any common law country, like India, operates on binding precedents. These precedents act as a guiding factor for the courts to adjudicate on future rulings. It will be compelling to state that with every changing time, there is a subsequent and simultaneous change in the country's political, socio-economic, and cultural structure. These cultural and other changes have a high probability of rendering previous judgements, which act as precedents, obsolete or meaningless. The law must not remain static and should have the ability to transform itself according to the needs and demands of any changing societal structure. The Indian legal jurisprudence, whilst adhering to the common law principle of precedents, has the ability to cope up with the changing societal structure by empowering its apex court, the Supreme Court of India, to overrule itself, thereby allowing the apex court to alter its past judgements and modify established precedents.[28] For instance, in the landmark case of *K.S. Puttaswamy v. Union of India*[29] dealing with the right to privacy as a fundamental right, the apex court set aside its previous ruling as pronounced in *ADM Jabalpur v Shivkant Shukla*.[30] Nonetheless, the power of overruling itself is a judicial function that ought to be exercised judiciously while considering that a previous judgement of the court can only be overruled by a larger bench of the same court or by a higher court.

As illustrated above, with the power of overruling itself, there is a pertinent question regarding the status of those cases adjudicated based on the previous judgements. The question here is regarding the applicability, status, legality and validity of those cases which have been pronounced in an earlier judgement, but now by virtue of a new decision pronounced by the court, stands overruled. In our logistical understanding, India has a vast population without a proportionate judicial system to cater to the judicial needs of every citizen uniformly. Presuming a scenario wherein overruling a previous judgement meant re-opening the adjudication of an old case which was decided relying on a currently overruled precedent then such a scenario

[27] IC Golaknath v. State of Punjab, AIR 1967 SC 1643.
[28] INDIA CONST. art. 141.
[29] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
[30] ADM Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521.

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would traumatise and burden the current Indian legal system since such a proposition has the potential to disrupt the equilibrium and *status quo* to allow for a multiplicity of litigations. The multiplicity of litigation will over-burden the already burdened legal system, and undo the implications or ramifications of a previous judgement is highly improbable. The doctrine of prospective overruling rectifies this probable fallacy while prospectively applying a judgement without altering the implication of prior cases which were decided relying on a currently overruled precedent.

The renowned author, W.S. Hooker, while talking about prospective overruling in India, stated in his article, "*using the Doctrine of Prospective Overruling the judiciary, through necessity of circumstances and through purposeful interpretation of the reasons for substantial changes in the law is able to leave the past events undisturbed after it has found that because of past errors in its decisions or through obsolescence that a substantial change in the existing law is called for*".[31] The purpose of the doctrine is superbly illustrated and captured through the observations of W.S. Hooker. The understanding propagated by the doctrine enables the judiciary to interpret any law according to the changing circumstances while acknowledging historical sources to assess the purpose of having such a law. Any change in the law or precedent must be substantiated with the reason and purpose for which the law was enacted. Notwithstanding the above, the law can only be effective when considering the surrounding circumstances. Therefore, any interpretation of the law, especially in India where several statutes operate on borrowed principles or laws which have been formulated in the nineteenth century, there needs to be an interpretation that can accommodate the purpose of the law and simultaneously take into account the current socio-economic, political and cultural surroundings of the country.

The doctrine of prospective overruling was first introduced in the Supreme Court's landmark judgement of *IC Golaknath v. State of Punjab*[32] (hereinafter, "**IC Golaknath**"). The case holds significance in terms of how and to what extent is the Parliament empowered to alter and change the fundamental rights as mentioned under Part III of the Constitution of India. The eleven-judge bench in *IC Golaknath* pronounced that any amendment enacted by the Parliament to be under Article 13 of the Constitution. Therefore, any power of the Parliament to amend the Constitution was limited to the extent that no amendments could be made to the fundamental rights as enshrined in the Constitution. The enactment and introduction of the doctrine of prospective overruling allowed the bench not to put effect to the judgement retrospectively.

[31] W.S HOOKER, *Prospective Overruling in India: Golaknath and After*, Vol. 9 Indian Law Institute 596, 599 (1967).
[32] IC Golaknath v. State of Punjab, AIR 1967 SC 1643.

Instead, the Supreme Court in *IC Golaknath* prospectively overruled the previously pronounced decisions of *Sankari Prasad v. Union of India*[33] and *Sajjan Singh v. State of Rajasthan*.[34]

(B) Correcting the Indian "anomaly"

In the Indian legal jurisprudence, the application of the doctrine of prospective overruling was perceived to be antithetical to the Indian legal system since any law considered to be non-compliant with the Constitution, or any other parent statute would be rendered as *void ab initio*. The term *void ab initio* portrays the non-existence of any law since its inception. The application of the doctrine of prospective overruling is placed on the edge. If the understanding of an invalid law is that it was never in existence, how is the doctrine of prospective overruling reconciling with this apparent anomaly in India. Although the view mentioned above would not have allowed the introduction of the doctrine of prospective overruling but Justice Subba Rao in *IC Golaknath* construed the application of the doctrine in a manner most suitable to the Indian legal jurisprudence. The logistical incoherence that the retrospective overruling creates is undisputed. Justice Subba Rao was able to introduce and implement this doctrine in a manner through which the declaration of the unconstitutionality of law would still not hinder the previous implications and applicability.[35] Justice Subba Rao imposed a simplified meaning of the doctrine to imply the doctrine only to restrain the effect of a judgement retroactively and differentiated it from the aspect of lawmaking on practical grounds. Justice Subba Rao can be quoted to illustrate the same, wherein the Justice mentions that "*while in strict theory it may be said that the doctrine involves making of law, what the court really does is to declare the law but refuse to give retroactivity to it"*.[36] There would be immense logistical constraints and impracticalities if the implications of previous judgements were to be undone in their entirety.

Justice Subba Rao's consideration was sensible enough to adopt the doctrine of prospective overruling while empowering the courts to use their judicial discretion to determine the extent and usage of such a doctrine. The doctrine was laid down with specific protectionist measures which would prohibit any probable misutilisation of the doctrine. The measures include the application of the doctrine only by the apex court of the country and restricting the application of the doctrine only in constitutional law matters. Certainly, these restrictions were imposed during the doctrine's inception, but the doctrine currently covers a wide array of cases and is not restricted to constitutional matters. The application of the doctrine also invoked the inherent

[33] Sankari Prasad v. Union of India, AIR 1951 SC 458.
[34] Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845.
[35] W.S HOOKER, *Prospective Overruling in India: Golaknath and After*, Vol. 9 Indian Law Institute 596, 601 (1967).
[36] IC Golaknath v. State of Punjab, AIR 1967 SC 1643.

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powers of the Supreme Court, wherein the court was to take a call on the retrospectivity, or perspectivity of a judgement according to the case at hand.[37] Essentially, it meant that every case has its own nitty-gritty. To reach the end-goal of justice, the court can assess every instance on a case-to-case basis to apply the doctrine of prospective overruling according to their judicial requirement.[38] Furthermore, the application of the doctrine was not left in its entirety to the subjective interpretation of the court. While assessing the application of the doctrine, the court has to take into account the purpose behind a change in the law and the adverse effects if such a change in law was to be retrospectively applied. The ultimate objective is to ensure the non-hindrance of any right or relief which might have been enshrined on any individual by virtue of the old law.

IV. APPLICATION OF THE DOCTRINE IN INDIA

The doctrine of prospective overruling has evolved through various case laws in India. While *IC Golaknath* did *prima facie* lay down the foundation of the doctrine, it was only through judicial pronouncements that the doctrine could give itself a formulated structure. While discussing various case laws, this segment of the paper will also consider the utility of the doctrine in correcting erroneous judgements and portray how this doctrine became a tool of judicial activism through judicial innovation.

(A) Discussion of the doctrine through Indian case laws

Through the exploration of various Indian case laws, it can be witnessed that the primary focal point or beneficiary of this doctrine is the litigant who otherwise would be adversely affected due to the change in law caused by the overruling of a precedent.[39] In *Narayanan Nair v. State of Kerela*,[40] the observations made by the court amplifies the usage of the doctrine of prospective overruling to achieve justice by reinstating the status of judgements that were based on old case laws or overruled precedents. Similarly, in *Sarwan Kumar v. Madan Lal Aggarwal*,[41] the Supreme Court emphasised on the applicability of the doctrine to future cases only while making it clear that previously pronounced cases should be treated as final since the judgement has been in execution and rescinding the same at a later date would cause unnecessary inconvenience to those "*who have trusted to its existence"*.[42] The doctrine of

[37] WENZHEN ZHANG, CONSTITUTIONALISM IN ASIA: CASES AND MATERIALS 285-291 (Hart Publishing 2014).
[38] M.V. Pratap Kumar, *The Doctrine of Prospective Overruling: Its Application in India*, LEGAL SERVICE INDIA, http://www.legalserviceindia.com/articles/prul.htm, Last accessed on March 21, 2021.
[39] Sarwan Kumar v. Madan Lal Aggarwal, (2003) 4 SCC 147.
[40] Narayanan Nair v. State of Kerala, AIR 1980 Ker 153.
[41] Sarwan Kumar v. Madan Lal Aggarwal, (2003) 4 SCC 147.
[42] Sarwan Kumar v. Madan Lal Aggarwal, (2003) 4 SCC 147.

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prospective overruling has been used in a wide array of cases. It has not kept itself limited to only constitutional cases, as envisioned by Justice Subba Rao in *IC Golaknath*. It was actually in the case of *Ganga Ram Moolchandani v. State of Rajasthan*,[43] wherein the Supreme Court allowed the extension of the doctrine to both constitutional and non-constitutional cases. This extension allowed the doctrine to escape its former limitations, and from thereon, the doctrine applied to all forms of statutes and other regulations. In *P. Rajendran v. State of Madras*,[44] the Supreme Court held a rule within the State law to be in non-consonance with Article 14 since the rule provided for the allocation of seats within the general category according to population ratio within every district. Though the Supreme Court declared the rule to be invalid and unconstitutional, it nonetheless utilised the doctrine of prospective overruling to make the judgement applicable prospectively since the retrospective application of such a judgement would prejudice the academic careers of many who might have taken admission in this medical institute based on the existing rule, which now stands invalidated by the Supreme Court.

(B) Benefit of the doctrine in correcting erroneous judgements

The benefit of the doctrine is that it allows the maintenance of *status quo* in previous cases. Maintenance of *status quo* for previously decided cases is essential, especially when any law is overturned due to the court's incorrect understanding or adjudication of any law. The people are vastly dependent on the Judiciary, and no person should be a victim of judicial incorrectness. This was appropriately portrayed in the case of *Gurunamal Rajaldad Pamanani v. State of Maharashtra*.[45] In this case, the Supreme Court overruled a judgement regarding food adulteration, which the court had incorrectly decided without any rationale to support its judgement. To cause less inconvenience to the people arising out of an incorrect judgement of the court, the larger bench of the Supreme Court decided to apply the judgement only prospectively.

(C) Utilisation of the doctrine as a tool for judicial activism and judicial innovation

The doctrine of prospective overruling acts as a tool of judicial activism in the judiciary's hands, which is utilised in various ways to reach the end goal of justice. The doctrine of prospective overruling was granted an expansive interpretation which led to the implementation of a judgement not only prospectively, but the execution of the judgement was scheduled five years from its pronouncement. The Supreme Court adopted this note-worthy application of

[43] Ganga Ram Moolchandani v. State of Rajasthan, (2001) 6 SCC 89.
[44] P. Rajendran v. State of Madras, AIR 1968 SC 1012.
[45] Gurunamal Rajaldad Pamanani v. State of Maharashtra, AIR 1974 SC 259.

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prospective overruling in *Indra Sawhney v. Union of India*.[46] The case is also popularly referred to as the "*Mandal Commission*" judgement. In this case, the Supreme Court overruled its previous decision in *The General Manager, Southern Railway v. Rangachari*,[47] to declare that reservation quotas cannot be applicable in cases of promotion. The judgement was not given any retrospective application since the people who might have been promoted based on the reservation could not be reinstated to their previous position.

Moreover, reservation-based promotions have been applicable for the last three decades, and the mere implementation of one judgement could not undo the same. It was Justice Jeevan Reddy in the *Mandal Commission* case who employed the doctrine of prospective overruling in a new-fangled way to facilitate the change in law, wherein it announced that the "new law" would take effect on a future date, similar to the prior discussed variations found in American legal jurisprudence. The doctrine of prospective overruling considers that people function in a specified way, keeping in mind the existence of any provision, law or statute. Through the *Mandal Commission* case, it can be observed that by effectuating a judgement five years from its pronouncement date, the judiciary has allowed all the relevant stakeholders to absorb the change in law and accommodate themselves to the change. This can be viewed as a form of rational transition. By utilising the doctrine of prospective overruling, the judiciary precludes the potential prejudice of those who were functioning based on the assumption of reservation-based promotions. The further grant of five years to effectuate the judgement ensures that people who have worked for several years assuming the existence of reservation-based promotions are not suddenly affected by this judgement. The doctrine has created new pathways of judicial convenience to overcome the chaos, confusion and legal trauma caused by the retrospective application of judgements and the sudden change in the law.

V. LIMITATIONS OF THE DOCTRINE

The evolution of the doctrine of prospective overruling in American jurisprudence and its subsequent application in Indian jurisprudence has raised several eyebrows and is not without criticism. The doctrine deviates from a principle established and followed for decades and unseated some fundamental provisions in the country's constitution. Some of these criticisms and their counters, both in the Indian and American spheres, are discussed below.

(A) Lawmaking is a legislative and not a judicial function

One criticism faced by proponents of prospective overruling is that the judiciary is overstepping

[46] Indra Sawhney v. Union of India, (2000) 1 SCC 168.
[47] The General Manager, Southern Railway v. Rangachari, AIR 1962 SC 36.

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its constitutional duties by encroaching on the legislature's functions.[48] This criticism has been formulated by the House of Lords in the United Kingdom. For example, in India's federal setup, the judiciary is separated from the legislature. The legislature's function is to make new laws and amend or scrap old laws. The judiciary's role is to simply 'interpret' that law. Hence, the question asked is if the judiciary is within constitutional bounds when applying the doctrine. This question gains more relevance since courts in few foreign jurisdictions, like Canada, have not accepted this doctrine to maintain their domestic courts' independence and continue the segregation between the legislature and judiciary.[49]

Firstly, while lawmaking is certainly a legislative function, it cannot be said that correcting 'bad' laws and implementing a different law for the future does not fall under its judicial functions.[50] To say so would be to argue that overruling a prior decision is a usurpation of the legislative function.[51] Hence, in reality, the judiciary functions as a judicial organ itself, and there is no question of encroaching on the legislature's functions. Secondly, legislatures are more and more swamped with municipal, political and technical problems, which makes them unable to keep up with the ever-increasing and complex judicial issues.[52] Thirdly, there could be an instance of legislative inaction, wherein despite identifying a problem; the legislature does not step in and resultantly harms several litigants by making them liable under a 'bad' law. It is in this light that prospective overruling offers a note of a solution. Instead of leaving the change in law to be a product of the legislature, courts should be free to correct what is erroneous, especially when the court makes that error.[53]

(B) The doctrine is a mere dictum

A second objection is that the court lacks the power to announce a new rule without applying it. Doing so would imply that such an announcement would amount to a mere dictum. This would mean that courts would not be bound by it, making such prospective 'overruling' a myth.[54] It also forms the basis of a definite but misleading origin for reliance. It either encourages further litigation to establish the new rule or discourages further attempts to proceed

[48] R v. Secretary of State for the Home Department, [2007] EWHC 1109.
[49] Adryan J.W. Toth, *Clarifying the role of Precedent and the doctrine of Stare decisis in trial and Intermediate Appellate Level Charter Analysis*, Vol. 22 Dalhousie Journal of Legal Studies 34, 44 (2013).
[50] William F. Newton, *Prospective Overruling - Sunburst Theory,* Vol. 18 Baylor Law Review 606, 612 (1966).
[51] State v. Jones, 44 N.M. 623, 107 P.2d 324, 332 (1940).
[52] William F. Newton, *Prospective Overruling - Sunburst Theory,* Vol. 18 Baylor Law Review 606, 612 (1966).
[53] Cody Blake Bartlett, *Prospective Overruling and Property Law*, Vol. 18 Western Reserve Law Review 1205, 1232 (1967).
[54] Candler S. Rogers, *Perspectives on Prospective Overruling*, Vol. 36 University of Missouri at Kansas City Law Review 35, 49 (1968).

under the old rule.[55]

Firstly, the argument that such overruling is merely a dictum is only applicable to 'pure' prospective overruling cases. Subsequently, these dicta would arise in court when those individuals or businesses directly affected by the rule would file cases as they are anxious to have the court make a full overruling.[56] This would allow the court to elevate the rule from being mere dicta to binding case law.[57] Secondly, as the overruling can be and has been applied differently on a case-to-case basis, its applicability cannot always be termed as not binding. Depending on the factual situation, courts may or may not apply the new rule to the existing litigants, depending on whether the change in the rule unfairly prejudices those litigants. Thirdly, the rule is eventually applied according to natural justice principles of equity and good conscience while ensuring that no party is unfairly prejudiced. Hence, this argument can be rendered academic.

(C) Contrary to the principle of 'res judicata'

The principle of *res judicata* states that an issue between two or more parties that the court already legislates on is final and not subject to subsequent litigation.[58] This principle is the bedrock of the judicial, legislative function, in the absence of which the number of cases before it would be never-ending. It also brings much-needed stability and consistency to the legal system.[59] Therefore, the critics ask if prospective overruling is actually "unsettling the already settled'? If the answer is affirmative, then the following question is whether a decision could truly be deemed "final".

It would be incorrect to say that prospective overruling is unsettling an established or final case. Firstly, the doctrine only applies to future litigants, which means all previous litigants and the decisions taken by courts in those cases would remain unimpaired. The doctrine only renders them nugatory in future cases and establishes or amends a rule, which in turn would be final until the interests of justice are met. Secondly, the principle does not run contrary to *stare decisis* in the strict sense, as cases would still be binding and final after extinguishing all appeal procedures. Finally, the decision to overrule is to rectify 'bad law', which is quintessentially required in the interests of justice.

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[55] Candler S. Rogers, *Perspectives on Prospective Overruling*, Vol. 36 University of Missouri at Kansas City Law Review 35, 48 (1968).
[56] William F. Newton, *Prospective Overruling - Sunburst Theory,* Vol. 18 Baylor Law Review 606, 616 (1966).
[57] William F. Newton, *Prospective Overruling - Sunburst Theory,* Vol. 18 Baylor Law Review 606, 616 (1966).
[58] Edward W. Cleary, *Res Judicata Re-examined*, Vol. 57 The Yale Law Journal 339, 342 (1948).
[59]Brajesh Ranjan, *A Restatement of the law of Res Judicata in India*, SSRN (July 2016), https://ssrn.com/abstract=2810683, Last accessed on May 12, 2021.

(D) Lack of relief and incentive for a litigant

In cases of 'pure' overruling, the litigant does not enjoy the labour of his fruits, as the rule is only applied to future cases, excluding the case at bar. The 'successful' litigant is left without a remedy as the old rule would still be applied to the parties to the proceeding. Resultantly, prospective plaintiffs generally will have little incentive in bringing an action.[60]

While this is a compelling argument, firstly, it is not the court's job to try and stimulate judicial business that can be left to the legislature.[61] Secondly, there has to be some balance drawn by the courts in which it will attempt to use the new rule only if it does not unfairly prejudice the litigants to the proceeding who placed reliance on the old law.[62] Therefore, if the court does go ahead with a 'pure' prospective approach, it is doing so in the litigants' interest. Thirdly, from the courts perspective, there is hesitation in overruling a 'bad' law as it would harm several parties who placed reliance on that law. However, this has to be contrasted with the potential deprivation of a new law to future litigants. Hence, prospective overruling offers a middle ground, wherein it doesn't harm existing parties to a dispute and offers much-needed relief to future litigants of similar circumstances. Lastly, lack of incentive applies only to litigants but not 'institutional litigants' interested in the long-term outcome of that dispute.[63]

(E) Criticisms in the Indian Context

The doctrine of prospective overruling is not immune to criticisms and has been criticised on varying grounds. The case of *IC Golaknath*, which introduced this doctrine, has been the first case to face the spotlight. Firstly, the American legal jurisprudence has influenced the doctrine, which is inherently different and does not run *pari materia* to the Indian legal jurisprudence.

Secondly, though the doctrine was principally influenced by American legal jurisprudence, the doctrine was not adopted in the strictest sense in *IC Golaknath*. There was a significant deviation from the original interpretation of the doctrine as handed down by Justice Cardozo in the American legal jurisprudence. The application of the doctrine of prospective overruling in America invalidated the overruled law prospectively without effectuating its invalidation retrospectively. Still, in *IC Golaknath*, the Constitutional amendments in themselves were not invalidated. Only one aspect of the judgement involving the power of the legislature to amend fundamental rights was restricted prospectively. This is a digression from the original doctrine

[60] Wolfgang Friedman, *Limits of Judicial Lawmaking and Prospective Overruling*, Vol. 29 The Modern Law Review 593, 607 (1966).
[61] Paul J. Mishkin, *The Supreme Court, 1964 Term-Foreword: The High Court, the Great Writ, and the Due Process of Time and Law*, Vol. 79 Harvard law Review 56, 61 (1965).
[62] Jesse Wall, *Prospective Overruling - It's about Time*, Vol. 12 Otago Law Review 131, 137 (2009).
[63] Jesse Wall, *Prospective Overruling - It's about Time*, Vol. 12 Otago Law Review 131, 146 (2009).

as applied in the American legal jurisprudence. It can be said that the doctrine, though adopted from another jurisdiction, was moulded by the Supreme Court of India to suit its cause and purpose. Therefore, the doctrine was only implemented in fragments as compared to its original version.

Thirdly, the doctrine of prospective overruling received some criticism since the courts failed to establish and layout the doctrine at one go. The doctrine evolved over time, and the initial limitations of the doctrine as laid down in *IC Golaknath* were subsequently revoked. There was a lack of clarity and limiting the doctrine only at the disposal of the Supreme Court for constitutional law matters denoted a narrow meaning to the idea of justice achievable by employing the doctrine; furthermore, implying that the Supreme Court is the sole judicial body responsible for delivering justice. It was only through the evolution of exhaustive case laws that the apparent erroneous limitations attached to the doctrine could be rectified.

The primary critique of the doctrine emerges from the eminent legal jurist, H.M. Seervai. The premise of H.M. Seervai's critique stems from differing legal systems in India and America.[64] As briefly touched upon in an earlier sub-topic, the doctrine of prospective overruling runs antithetical to the Indian legal jurisprudence. In *Deep Chand v. State of UP*,[65] the court made a similar assertion by stating that any rule, regulation, or statute that contravenes India's Constitution must be declared as *void ab initio*. The declaration of any law as void ab initio calls for invalidating the law retrospectively. Reading H.M. Seervai's criticism and the Supreme Court's ruling in *Deep Chand* conjunctively, it can be contended that since the question of law in *IC Golaknath* was regarding the validity of amendments vis-à-vis fundamental rights, the invalidation of the same on the grounds of violating the Constitution would require the annulment of the law retrospectively, or since its inception. Notwithstanding the abovementioned contention, Justice Subba Rao decided not to invalidate the amendment retrospectively, and the judgement in *IC Golaknath* has been justified since Justice Subba Rao utilised the doctrine of prospective overruling instead of prospectively invalidating the law.

VI. CONCLUSION

As is evident from the benefits accrued to the present legal system, the usage of prospective overruling is a much-needed breakthrough. It diverges from the age-old Blackstonian principle, under which a change in the law would be reflected only through retroactive application. While overruling under the Blackstonian principle would cause the upheaval of cases previously

[64] 2 H.M. SEERVAI, *CONSTITUTIONAL LAW OF INDIA* (Universal Law Publication 2015).
[65] Deep Chand v. State Of UP, AIR 1980 SC 633.

decided by the courts, the doctrine of prospective overruling offers a much more stable approach to judicial overruling. For starters, it enables changes to occur more smoothly by giving notice to future litigants, thereby not prejudicing previous litigants before the courts. It eases the burden on the parliament and State legislatures by primarily correcting its own mistakes. It also paves the way for much-needed change in legal jurisprudence, especially to keep track of the ever-increasing changes in the business and corporate world. It is also essential to protect the sanctity of the judicial system by allowing past cases to remain untouched. While it has specific criticisms, as was elaborated in the preceding section of the paper, its usage is essential in encouraging courts to make the required changes and have equitable application in ensuring justice to the community.

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