

# PROSPECTIVE OVERRULING: NEED FOR A RELOOK

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## INTRODUCTION

A simplistic definition of prospective overruling for the purposes of this paper would be "a variation of normal overruling decision whereby the new decision would not apply to already pending cases." The Supreme Court's power to prospectively overrule its earlier decisions was firmly established by the judgement rendered by an eleven judge bench in the *Golaknath*<sup>1</sup> case. Until then, prospective overruling was primarily a device used by the American Courts in specific instances to achieve certain ends. As this device has been borrowed from America, Indian jurisprudence has not actually analysed the role played by prospective overruling and its actual impact and consequences which will be discussed during the course of this paper. While the issues and concerns relating to prospective overruling were thought to have been settled in 1967 by the Supreme Court, the criticisms levelled against the use of this device are several. Keeping in mind the Apex Court's decision in the *Mandal*<sup>2</sup> case, it becomes necessary to examine and analyse the major issues involved in cases wherein prospective overruling is resorted to. Such an analysis would enable one to understand whether the propositions laid down by the Supreme Court in the *Golaknath*<sup>3</sup> case, as a matter of caution, are really necessary at all. Before doing so, it is imperative to clarify the effect of an ordinary overruling, how a prospective overruling differs from an ordinary one and the purpose served by such prospective overruling.

The impact of an overruling decision:

A normal overruling decision which applies both retrospectively and prospectively can never be fully retrospective in its operation i.e. it cannot apply to already decided cases for the following reasons.<sup>4</sup>

1. The principle of *res judicata* would prevent the reopening of already decided cases.
2. Reopening of already decided cases would also result in a load of litigation further burdening the already overburdened judicial process.

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1 *I.C. Golaknath v. State of Punjab*, AIR 1976 SC 1463.

2 *Indira Sawhney v. Union of India*, AIR 1993 SC 477.

3 *Supra* n.1.

4 A. R. Blackshield, *Fundamental Rights and the Economic Viability of the Indian Nation, Part Three: Prospective Overruling*, 10 JILI 183 (1968) at 184-7.

3. The files of old cases may have been lost or destroyed thus making such a reopening impossible.

It is clear from the above that a normal overruling decision has no impact on already decided cases. It affects only pending cases and all transactions which occurred before the overruling decision but have not yet come up before the courts. "Normal" overrulings enable judges to make their decision based on the law as it stands at that time and not based on prior laws which are invalid at the time of the decision. Thus prospective overruling assumes significance only for the pending cases and transactions completed prior to the overruling decision.<sup>5</sup> The overruling decision will not affect these pending cases. However, resort to prospective overruling gives rise to two problems:

1. Cases are decided based not on existing law but on prior law which is now invalid.
2. This gives rise to problems in the functioning of the judiciary as the judge has to determine the time frame in which the case arose and decide accordingly.

It is clear that retrospective overruling is the better option as it causes less problems. This is why retrospective overruling is used in an overwhelming majority of decisions. But there are certain exceptional circumstances which warrant a resort to prospective overruling in order to prevent undue hardship and inconvenience. These factors which must be taken into consideration may be briefly summarised as:

1. Degree of reliance on the old rule<sup>6</sup> - if the old rule has been greatly relied upon in the conduct of past transactions, the court may choose to apply the new rule only to future cases to prevent injustice to such people.
2. Purpose of the new rule - if the objective of the new rule is to facilitate social change, giving the rule retrospective operation would be self defeating and serve no purpose whatsoever besides causing undue hardship to the people who had relied upon the old rule.<sup>7</sup>
3. Administrative inconvenience - prospectivity may be resorted to by the courts if retroactivity were to upset the functioning of the administrative network and throw peoples' lives into confusion.<sup>8</sup>
4. *Stare-Decisis* - A normal overruling decision could order values which *stare-decisis* seeks to promote viz. certainty in the law, protection of reliance and

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5 Blackshield, *supra* n. 4 at 188.

6 Annot, *Overruling Decisions: Application*, 10 ALR 3d 1371 at 1384.

7 *Prospective Overruling and Retroactive Application in the Federal Courts*, 71 Yale L J 1962 (907) at 912; See, *supra* n. 2.

8 *supra* n. 1.

enforcement of accrued rights. However, resort to prospectivity balances the interests of *stare decisis* and justice by reducing the ill effects of a normal overruling. Also prospective overruling may be resorted to keeping in mind the general interest of society.

It follows from the above that while retrospective overruling is the rule in the majority of cases as it involves less complications, certain exceptional circumstances may warrant a departure from this rule in the form of prospective overruling. It must be kept in mind that the court is not exceeding its powers by resorting to prospective overruling. It is merely a modification of the normal overruling<sup>9</sup> in that, the court, while declaring a new rule of law, also decides the time frame in which such new rule operates, keeping several factors in mind. Deciding the time-frame of the new rule is merely a logical extension of the court's role of ensuring justice.

Prospective overruling enables a court to perform its role more efficiently with less hardship being caused. It lets a court make an omlette without breaking any eggs! Thus prospective overruling is a tool which facilitates justice and is used only in special circumstances.<sup>10</sup> Keeping in mind that prospective overruling is an exception, it becomes necessary to examine the *Mandal*<sup>11</sup> case where the Supreme Court adopted a modified version of prospective overruling. In overruling *Rangachari's*<sup>12</sup> case prospectively, it was said that the new rule would operate only for five years after the judgment. While there may have been political reasons involved for the Supreme Court deciding as it did, it must be kept in mind that the judiciary in India has to walk a tightrope balancing the interests of justice with those of not antagonizing the public. The issue involved in this case was a very sensitive one regarding the right to continue reservations even in cases of promotions. The Supreme Court while holding that the government could no longer reserve posts in the case of promotions added that its decision would be operative only after five years from the date of the decision. Thus the Supreme Court clearly recognised its role as a facilitator of social change and it used prospective overruling as a device to make such change less abrupt.<sup>13</sup>

Having examined the true nature and uses of prospective overruling, it must be noted that the purpose for using this device in India is severely limited by the *Golaknath*<sup>14</sup> decision. As it was the first case in which this device was being used in Indian jurisprudence, the Supreme Court felt the need to move

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9 W. S. Hooker, *Prospective Overruling in India: Golaknath and After*, 9 JILI 596 (1967) at 599-603.

10 *Union of India v. Mohd. Ramzan Khan*, (1991) 3 SCC 588.

11 *supra* n. 2.

12 *General Manager, S. Rly v. Rangachari*, AIR 1962 SC 36.

13 Thomas S. Currier, *Time and Change in Judge made Law : Prospective Overruling*, 51 Va L Rev 214 (1965).

cautiously and laid down three rules to be followed while resorting to prospective overruling.

1. This device is to be used only in constitutional matters:- This appears to be a rather self-defeating rule as the rationale behind invoking this device is to render justice and justice can never be limited solely to constitutional matters. There are many non-constitutional issues where exceptional circumstances may warrant prospectivity, but this rule would prevent the use of prospective overruling in such a situation. It appears to be more of an obstacle to judicial relief and the sooner this rule is removed, the better it would be in order to facilitate justice in matters of property rights, criminal law, etc.<sup>15</sup> This rule is also quite out of context when one considers the progressive role played by the Apex Court in the *Mandal*<sup>16</sup> case. However the biggest support for the proposition that prospective overruling should be applied to non-constitutional matters comes from Article 142 of the Constitution which enables the Supreme Court to do complete justice in all matters and not merely constitutional matters.
2. The device can be used only by the Supreme Court. This again appears to be a very restrictive proposition for it completely prevents the High Courts from resorting to the use of this tool in any circumstance whatsoever. This may result in the decisions of High Courts causing injustice and undue hardship. Such a restriction also serves no purpose, because if a High Court has abused the device, the wide supervisory powers of the apex court would enable it to correct this abuse when the case comes up before it on appeal.<sup>17</sup> Also Article 226 is couched in such wide terms, that the High Courts have power to use this prospective overruling while enforcing any legal right provided for by the Constitution itself. Thus this rule seems unnecessary when one analyses it after understanding the true nature of prospective overruling. Both these propositions appear to be needless obstacles and it is submitted that they be done away with.
3. The nature of prospectivity to be applied in each case is left to the discretion of the court to be used in accordance with the case:- This is in stark contrast to the proposition that prospective overruling is a flexible device whose use depends upon individual facts and circumstances as was seen in the *Mandal*<sup>18</sup> case.

Thus prospective overruling can be seen as a tool of general application which enables the Supreme Court to meet the ends of justice. It is one of the

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14 *supra* n. 1.

15 Hooker, *supra* n. 9 at 630-32.

16 *supra* n. 2.

17 Hooker *supra* n. 9 at 633.

18 *supra* n. 2.

many judicial innovations that has been evolved over the years and can also be viewed as a general equivalent to *res judicata* (or atleast an extension of it) as it ensures that past transactions are decided by the earlier rule and not by the new rule of which the parties evolved were unaware.<sup>19</sup> Keeping the purpose which this device serves in mind, the obstacles laid down by the *Golaknath*<sup>20</sup> case are more self defeating than directory and need to be reconsidered in order to allow the use of this device by High Courts and in cases of non-constitutional matters as well. This would enable the ends of justice to be served more effectively by the courts. The first step taken towards a reconsideration of prospective overruling came with the Supreme Court adopting a hitherto unused type of prospective overruling in India in 1993. While such progressive steps are welcome, a thirteen-judge bench needs to be constituted to overrule the two obstacles placed by the Apex Court in 1967.

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<sup>19</sup> Blackshield, *supra* n. 4 at 230-32.

<sup>20</sup> *supra* n. 1.