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# **ANALYSIS OF PROSPECTIVE AND RETROSPECTIVE OPERATION OF STATUES**

**AUTHORED BY - ADV.MITHIL MADAN BURANDE**

## **Abstract:**

The purpose of the research article is to study and analyse the prospective and retrospective operation of statutes in India. The study elaborates that, Operation of statutes in general means usage or working of statutes. Operation of statutes is either prospective which seeks to lead current and future activities, events which are deemed to organize the regulatory system intact or retrospective which seeks to govern past acts, events as to impair an existing right or obligation or both prospective and retrospective from the point of their applicability. Generally, any statute is presumed to have prospective operation. Thus, further study details the concepts of these the prospective and retrospective operation of statutes by elaborating the conditions of applicability of these operations with appropriate judicial pronouncements and examples. Study also talks about the applicability of these operations in different laws such as substantive, declaratory, textual and penal laws etc.

The American Judicial System developed the doctrine of Prospective Overruling which means that a judgment in a particular case will only take effect in the future and will not do so retroactively. This principle was for the first time established in India through the case of Golak Nath vs. The state of Punjab, A.I.R 1967 SC 1643. Secondly, the study reveals the divergence between retrospective and prospective application of statutes, as well as main distinctions between the retrospective and the retroactive laws. In addition, the study examines retrospective operation of statutes in the global perspective. And last it is the problems that revolve around the operation of statutes.

**Keywords:** Prospective operation of statutes, retrospective operation of statutes, doctrine of Prospective Overruling.

## **Introduction:**

Laws are made in any country to punish wrongdoers for the heinous crimes they might commit. These are generally formulated when there are increased instances of people being left scot-free despite committing an offence due to the lack of proper legal provisions. A prime example of this is the anti-defection law, introduced in 1985 owing to mass defections. As a result, these laws are applicable to

similar crimes that might be committed in the future. However, there have been several instances in which the newly formulated or amended laws could be used to hold a person liable for offences committed before the introduction of that law as well. These types of laws or amendments are very rarely found in any country and are known as retrospective laws or statutes.<sup>1</sup>

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<sup>1</sup> Interpretation of statutes by Bhattacharyya 9<sup>th</sup> edition .



Retrospective laws can generally be made for both criminal as well as civil offences. In recent times, such legislation has become a topic of debate. While certain scholars are of the opinion that such legislation directly violates the rights of the people, others feel it is necessary that the wrongdoers get punished even though they committed a wrongful act that was unrecognized at that point in time owing to the lack of any statutory provisions.

This article will delve deeper into all these aspects and resolve the existing ambiguities in such laws. On the other hand, a prospective operation of any statute essentially means that the statute as it is formulated is solely focused on the future acts or offences that might be committed. It doesn't consider any past act or incident that happened that in the present times would have constituted a crime.<sup>2</sup>

### **Meaning of prospective and retrospective operation of statutes :**

The dictionary meaning of the word prospective with reference to statutes shows that it is concerned with or applying the laws in future or at least from the date of commencement of the statute. Whereas the word retrospective when used with reference to an enactment may mean:

1. Effecting an existing contract or
2. Reopening of the past, closed and completed transactions, or
3. Affecting accrued rights and remedies, or
4. Affecting procedure. The retrospective operation of an enactment may mean one thing and it affects the rights of parties another. Normally, an enactment is prospective in nature.

It does not affect that which has gone, or completed and closed up already. Ordinarily, the presumption with respect to an enactment is that, unless there is something in it to show that it means otherwise, it deals with future contingencies, and does not annul or affect existing rights and liabilities or vested rights, or obligations already acquired under some provisions of law although its effect is that it does not affect an existing right as well. If an enactment expressly provides that it should be deemed to have come into effect from a past date, it is retrospective in nature. It then operates to affect existing rights and obligations, and is construed to take away, impair or curtail, a vested right which had been acquired under some existing law.<sup>3</sup>

If an enactment is intended to be retrospective in operation, and also in effect, the legislature must expressly, and in clear and unequivocal language, say so, in the enactment itself. A retrospective operation is not given to a statute, so as to impair an existing right or obligation, otherwise than as regards

matters of procedure unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in a language which is capable of either interpretation, it ought to be construed prospectively.

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<sup>2</sup> Interpretation of statutes by Bhattacharyya 9th edition.p.283

<sup>3</sup> <https://www.legalservicesindia.com/article/517/Prospective-Vs.-Retrospective.html>.



In *Young v. Adams*, it was observed that retrospective operation ought not to be given to a statute, unless an intention to that effect is expressed in plain and unambiguous language. However, it does not seem probable that the legislature should intent to extinguish by means of a retrospective enactment, rights and interests which might already have vested. The retrospective operation should not be favoured, unless the legislature clearly and distinctly authorizes the doing of something which is physically inconsistent with the existence of an existing right and a statute is not construed to have a greater retrospective operation than what its language renders it necessary, because it may be that the retrospective operation may be partial and not full at some places in the enactment.<sup>4</sup>

Right to appeal, though, provided by procedural laws, is a substantive right and it accrues to a person as soon as a case filed by or against him in the Court of original jurisdiction. Therefore, any subsequent amendment changing the jurisdiction of appellate Court will not be applicable to parties whose cases are already pending before the lower Courts.

## **CASE LAWS**

### **Hitendra Vishnu Thakur v. State of Maharashtra AIR 1994 SC 26233**

In this case the Court laid down the ambit and scope of an amending Act and its retrospective operation as follows:

1. a statute which affects substantive rights is Presumed to be prospective in operation unless made retrospective, either expressly or by necessary implication, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should be given an extended meaning and should be strictly confined to its clearly defined limits.<sup>5</sup>
2. Law relating to forum and limitation is procedural in nature, whereas law relating to right to action and right to appeal even though remedial is substantive in nature.
3. Every litigant has vested right in substantive law but no such right exists in procedural law.
4. A procedural statute should not generally speaking be applied retrospectively where the result would create new disabilities or obligations or to impose new duties of transactions already accomplished...
5. A statute which not only changes the procedure but also creates rights and liabilities shall be construed to be prospective in operation unless otherwise. Provided, either expressly or by necessary implication.

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<sup>4</sup> Young v. Adams 693 F. Supp. 2d 635 (W.D. Tex. 2010).

<sup>5</sup> Hitendra Vishnu Thakur v. State of Maharashtra AIR 1994 SC 26233



## **What is retrospective operation of statutes**

The term 'retrospective' essentially means speculating or looking into the events or incidents that have taken place in the past. When any law that was already existing is changed, altered, or some portion of it is removed, it doesn't remain the same as it was previously. However, the new changes still have an influence on the events that occurred in the past. In other words, if a person commits an act that was not considered to be an offence at that point under any legislation, but becomes one after some changes in the existing laws or the introduction of a new law, the person could be held liable even for the acts committed by him in the past that are now an offence. This operation of a statute acts contrary to the general perception that any law is introduced to consider the crimes that might be committed in the future.

When a statute operates retrospectively, however, the new law can be applied to the facts or the actions that were carried out even before such a law had been proposed. When such a statutory provision is introduced which aims to consider past actions as well, it is clearly stated that the act was said to be in operation from the given date in the past. From that date forth, all the offences would be included within the purview of the statute and the people would be punished. These statutes are also known as ex-post facto laws. There can be four different scenarios that might arise when retrospective legislation is introduced.<sup>6</sup>

### **Recognition of crime:**

In this scenario, if a person carries out an act that was not wrongful at that point of time but later on, due to the passing of legislation recognizing the same act as wrongful, he could be held liable. This would happen when the law has a retrospective operation, making the person liable for acts committed in the past that are wrongful or criminal in nature, due to the introduction of legislation or a statute.

### **Removal of a crime:**

In a very rare scenario, 'if a person has been sentenced for around 7 years for committing any wrongful act, but 2 years later, the act committed by him is no longer unlawful with a retrospective impact, the person could be directly released.' It is a very rare situation to actually happen that an act previously declared unlawful becomes a legal act.

An example of this is the decriminalization of Section 377 of the Indian Penal Code, 1860, which stated

that it had declared homosexuality a criminal offence. It is applied retrospectively to all the citizens who were criminally charged because of their sexual orientation before the introduction of this Act.<sup>7</sup>

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<sup>6</sup> Craies , Statute of law 6<sup>th</sup> edition p .336

<sup>7</sup> Interpretation of statutes by Bhattacharyya 9th edition.p.107



**Reduction in punishment:**

Under this scenario, if the person has been punished for an act under any given statutory provision but later on, some changes are made, leading to a reduction in the period of punishment. This is a situation of a retrospective law dealing with amnesty to decriminalize certain acts and grant a pardon to the wrongdoer. A person serving a prison sentence for a specified period will have the punishment reduced owing to the same. An example of this is the Amnesty Scheme. The government may introduce it to reduce the payment of the late fee for tax filing. This would reduce the punishment for the late payment of taxes.

**Increase in punishment :**

When an existing law is amended with a retrospective impact to bring a wrongful act into a more severe category than it was while being committed, the sentence or the term of punishment might be increased for the wrongdoer. This might involve an increase in penalties, increasing the fines payable, increasing the sentence of imprisonment, or any other factor. These are some of the general impacts that a statute with a retrospective operation might have on a person who committed a wrongful act recognized by the statutes later on.<sup>8</sup>

**General application of retrospective operation of statutes :**

Substantive laws Retrospective laws are generally applied in a country to either increase or decrease the punishment for any particular crime. They may be placed into a more serious category or reduce the punishment of the crime, thereby reducing their sentence. However, the treatment of retrospective laws also varies for the various laws. A retrospective operation can only be given to a statute affecting the substantive rights of the people and could be made applicable to the events that took place in the past. For example, if a person committed a crime 2 years ago, which was held to be a punishable offence, the act now is no longer a crime with a retrospective effect. It would be applicable to the person and he would be released. This is an example of a retrospective operation on substantive law.

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<sup>8</sup> <https://www.legalserviceindia.com/legal/article-8915-operation-of-interpretation-of-statutes.html>

### **Procedural laws**

On the other hand, the above-mentioned is not applicable to procedural laws. The procedural laws generally have a retroactive operation and not a retrospective operation. The retroactive operation essentially means that the statute introduces a new obligation or transaction and, at the same time, impairs certain vested rights. Hence, the retrospective operation of laws applies only to the substantive laws and not to the procedural ones.

### **Declaratory laws**

A declaratory statute refers to a statutory provision that aims to remove any ambiguities related to prior law, either by explaining the previous statute or by reconciling the conflicts in various judicial decisions. The declaratory laws, as a result, have a retroactive operation as they aim to improve the prior laws. It is only when the rights are vested or the litigation is settled that they are applied retrospectively, as stated in the case of *Commissioner of Income Tax v Sriram Agarwal* (1986).<sup>9</sup>

### **Explanatory laws**

Explanatory statutes are also very similar to declaratory statutes and have a retrospective application. These statutes aim to explain the law and rectify all the omissions that existed in the previous laws.

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<sup>9</sup> *Commissioner of Income Tax v Sriram Agarwal* (1986).

## **Criminal applicability of retrospective operation of statutes**

Retrospective laws can certainly be made for criminal acts. However, these are not encouraged in India. This is so because holding a person liable for an act committed by him in the past, which was not unlawful at that point but now is, would be clearly unjustified. Most of the interpreted legal provisions state that the punishment for the offences is prohibited from having a retrospective effect. Only if stated in an implied manner with the appropriate intention, the new punishments introduced under the laws are allowed to have a retrospective impact<sup>10</sup>

### **Difference between retrospective laws and ex-post facto laws**

Though both the retrospective and ex-post facto laws might have the same effect most of the time, there are slight differences that exist between them. While all the ex-post facto laws are necessarily retrospective laws, all retrospective laws are not ex-post facto laws. While ex-post facto laws are prohibited in India, there is no such express prohibition on retrospective laws. There are several retrospective laws that aren't ex-post facto laws that are allowed to be introduced for the purpose of amnesty in taxation, criminal punishment, etc.

The retrospective laws only look backward at the events of the past, but the ex-post facto laws act on the things that are in the past. The retrospective laws aim to focus on acts committed in the past before the commencement of the statute. On the other hand, any ex-post facto law might impose various new obligations on the transactions or any act committed by an individual or impair the vested rights. These are the major differences between ex-post facto laws and retrospective laws. In most situations, these terms can be used synonymously. Yet, there are several laws that can have a retrospective operation but can't be ex-post facto laws, such as the amnesty schemes of taxation<sup>11</sup>

<b>Ex post facto laws</b>	<b>Retrospective laws</b>
All ex post facto laws are to be necessarily retrospective laws.	All retrospective laws are certainly not ex post facto laws. These are a bigger set of which ex post facto laws form a part
Ex post facto laws are prohibited to be formulated in India.	Retrospective laws, if explicitly mentioned, are allowed to be introduced, however, with certain restrictions.

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<sup>10</sup> <https://lawnotes.co/retrospective-operation-of-statutes/>

<sup>11</sup> [https://www.law.cornell.edu/wex/ex\\_post\\_facto](https://www.law.cornell.edu/wex/ex_post_facto)



Ex post facto laws impose various new obligations on the transactions or acts committed by an individual or impair certain vested rights.	Retrospective laws focus on all the acts committed in the past before the commencement of the statute.
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### **Difference between retrospective and retroactive laws**

The retrospective and retroactive laws both aim to look into the past, but the method of dealing with the laws is different. While the retrospective laws just aim to look into the legal provisions of the past, the retroactive laws not only look into the past but also aim to act upon them. In the case of *Mahakali Rolling Mills v. Union of India (2002)*, the Supreme Court provided the distinction. The Court stated that retrospective means the law which contemplates the past, referring to a given statute that was there previously. It is made applicable to all the events that occurred in the past before the new law came into force. On the other hand, a retroactive statute refers to any statute that aims to look into the previous legislation and create certain new duties or business dealings. Additionally, it may potentially undermine or damage some vested rights.<sup>12</sup>

The Court continued by stating that retroactive statutes are intended to address two different ideas. True retroactivity refers to the process of applying a new regulation to an act that was completed prior to the rule's creation. The other is quasi-retroactivity, which is applicable to an act that is not yet finished. Conversely, the retroactive operation could end up being quite unclear. However, these regulations typically come into play when the person's past behaviour has an impact, even if it's just temporarily.<sup>13</sup>

These are some of the major differences between retrospective and retroactive laws, but the one thing common to both is that they both focus on past acts. Applicability of retrospective operation of statutes in India In India, the retrospective operation of any statute is prohibited for any civil offence. The Constitution of India doesn't permit a retrospective operation of any given act unless there is any implication in law stating that the law that is there has to be retrospective in nature. Any Act that is introduced in India that is held to be retrospective but has not been specifically implied in the act, is said to be unconstitutional as well as void. Making ex-post facto laws is completely prohibited under the fundamental rights stated in the constitution of India.

Under Article 20(1) of the Constitution, it has been clearly stated that there could be no retrospective impact of the formulated laws on offences committed before the introduction of the statute. The primary objective of this article is to ensure that the law and order are maintained properly and that there is absolutely no illegal detention taking place. The person who carried out an act at that point was

completely aware that it was not unlawful, and later on, if it is declared to be unlawful, it is clearly violative of his rights. The person won't have knowledge of any sort that the act he committed would be in the future declared unlawful or illegal and hence should not be punished.

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<sup>12</sup> Mahakali Rolling Mills v. Union of India (2002),

<sup>13</sup> <https://aiftponline.org/journal/2019/november-2019/doctrine-of-retrospective-legislation/>



## **Examples of retrospective legislation in India-**

There are various examples of retrospective legislation in India. Though these laws primarily deal in the field of taxation, there have been several other laws introduced in India. <sup>14</sup>

One of the examples of such legislation is the Karnataka Scheduled Caste and Scheduled Tribe (Prohibition of Transfer of Certain Lands) Act, 1978, which was retrospective in nature. This Act aimed to prohibit the transfer of land granted by the government to people belonging to the Scheduled Castes and the Scheduled Tribes. This law was also applicable on the land under the ownership of the Scheduled Castes and the Scheduled Tribes before the enactment of this law. Nobody was even allowed to purchase the land owned by the people belonging to SC and ST communities. <sup>15</sup>

Another major legislation was the Tamil Nadu Land Acquisition (Revival of Operation, Amendment, and Validation) Act, 2019, whose constitutional validity was recently upheld by the Supreme Court, which was going to be applied retrospectively till the year 2013. The reasoning behind this decision of the Supreme Court was that the basic principle of the legislature is to protect the public interest at large. The legislature is at the helm of protecting the rights of the people and ensuring a democratic polity among the people. Hence, any step taken towards achieving this purpose is considered to be lawful, and the contention raised by the petitioner that it violated the principle of the separation of powers is completely invalid. For the public good, any law can be operated retrospectively without any stoppage since the law doesn't completely prohibit the same. <sup>16</sup>

However, if any retrospective law is to be introduced, it is only allowed for criminal matters and not in the case of civil matters.

## **Retrospective laws for taxation**

The retrospective laws are generally utilized for tax-related matters, such as the Amnesty scheme. Those who fail to file their taxes on time are provided with some rebate, especially in the times of Covid-19. There were crores of people who lost their jobs and many even went bankrupt. Even small industrialists suffered a lot during this period. Many of them become incapable of paying their taxes on time.

It is at this point in time that the government can make good use of retrospective statutes. People would

need to pay fewer taxes if the government amended the Income Tax Act, 1961 to state fewer taxes to be paid with a retrospective effect. At the same time, this operation can be used to impose some justified charges on transactions that have been carried out in the past. Such retrospective taxes help in rectifying any deviations in the taxation policies that previously allowed businesses to benefit from any kind of loophole.

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<sup>14</sup> Retrospective operation of statutes - iPleaders

<sup>15</sup> (Prohibition of Transfer of Certain Lands) Act, 1978

<sup>16</sup> (Revival of Operation, Amendment, and Validation) Act, 2019



There were several amendments that took place in this Act that were retrospective in nature. An example of the same is explanation 7 to Section 9(1) of the Income Tax Act, 1995, which had to be applied retrospectively. It was declared by the Court in the case of *Augustus Capital PTE Ltd v DCIT (2020)* that explanation 5 of the Income Tax Act was applied retrospectively for the removal of any doubt with respect to the payment of the interest amount. Later explanations 6 and 7 were introduced that had to be read along with explanation 5 for providing further clarity regarding the accrued income. Since explanation 5 was applied retrospectively, the same should be the treatment of explanations 6 and 7. Hence the assessing officer, in this case, was ordered by the Court to read the concerned explanation 12 7 of Section 9(1)(I) as applicable from the year under consideration and that there shall be no further additions or questions regarding the same.<sup>17</sup>

Another landmark case with regard to Section 9 of the Act is *Ishikawajima Harima Heavy Industries Ltd v. Director of Income Tax (2007)*.<sup>18</sup> Section 9 of the Act gave a whole new dimension to the concept of 'income deemed to have accrued in India'. The company concerned in this case was involved in selling its products in the Indian market but was incorporated in Japan. There was a question in this case regarding the tax treatment of the fees for technical services that were to be paid by the non-resident companies in India. The Apex Court in this particular case held that two conditions are to be fulfilled for explanation 7 of Section 9 of this Act to be made applicable. The services from which the company is earning both these conditions are satisfied, the income is said to be accrued in India.<sup>19</sup>

This judgement completely reversed the general perception that if the technical or consultancy services were provided in India, the company would be liable to pay the taxes regardless of whether these services were rendered outside India or not.

Further, the retrospective operation can also be used when the policies in the present and the past were very different owing to the fact that firms were required to pay a lesser amount of tax. In order to create a level playing field and to ensure justice and fairness in the payment of taxes. The most recent example of a retrospective taxation law is the policy under the Union Budget 2022-23. It brought about certain amendments to the Income Tax Act, 1961, which carried a retrospective impact. The examples of various amendments brought about under the Income Tax Act, 1961 are as follows.

1. The government allowed an exemption on the amount received for the medical treatment and on the account of death due to Covid-19 retrospectively from April 2020.
2. The gifts and freebies provided to the doctors are not going to be treated as business expenditures under Section 37 of the Income Tax Act of 1961. Further, even capital expenditures of a personal nature are not to be reflected as expenditures under this given act.

3. There was also a retrospective change brought about in the financial year 2005-06 wherein it was stated that any form of cess or surcharge couldn't be deducted in the form of expenditure.

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<sup>17</sup> Augustus Capital PTE Ltd v DCIT (2020)

<sup>18</sup>SLP (Civil) No.5318 of 2005)

<sup>19</sup> Industries Ltd v. Director of Income Tax (2007).



4. With respect to the funding of companies, it has also been laid down in the budget that the source of funding for any given loan or borrowing for its recipient is going to be reflected only if the source of funds is appropriately explained in the hands of the creditor. This measure is retrospectively going to impact all the major business ventures in their funding processes. It would have a much more adverse impact on the Start-ups if the creditor is not a venture capital fund that is legally registered with the SEBI (Securities and Exchange Board of India). Earlier, only the PAN of the creditor by the taxpayer would suffice, but now this is no longer the case. The recipient is required to prove that it is the right source of income and that the creditor's net worth was appropriate to provide this amount.

Hence, the retrospective operation of the various amendments in the Income Tax Act, 1961 has played a vital role in ensuring the fair payment of taxes by every individual on time. Secondly, it has facilitated the introduction of amnesty schemes to provide some relief to small businessmen and industrialists.

### **Relevant judgements**

#### **Commissioner of Income Tax v. Hindustan Electrographite Ltd (1998)**

In this particular case, the assessee was a public limited company, which had filed the income tax. Apart from that, there was an additional amount representing the cash compensatory support that wasn't offered to the tax as an adjustment.

It was not required under the Act prevailing in 1989. However, there was the introduction of the Finance Act of 1990 with a retrospective effect, stating that the tax is also required to be paid on cash assistance. The suit was henceforth filed in the Court, stating that these provisions are penal in nature.

However, the Court in this case declared that the provisions of this Act were not penal and, hence, this legislation can certainly be retrospective in nature. It is only a penal law on which the retrospective operation can't take place.<sup>20</sup>

#### **Assistant Excise Commissioner, Kottayam and Ors v. Esthappan Cherian and Anr (2021)**

In this case, a writ petition had been filed wherein it was demanded that the amendment to Rule 13 terminating the liquor license should be quashed. As a result, a certain amount that was sought to be recovered by him for giving the liquor license in the past had been stuck. The decision in the High Court of Kerala was passed in favour of the licensee. However, an appeal was made before the Supreme Court. Hence, the state was allowed to claim only 50% of the departmental management fees that were due for the period after the contract of sale for the liquor was terminated from the licensee.<sup>21</sup>

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<sup>20</sup> Commissioner of Income Tax v. Hindustan Electrographite Ltd 1998 229 ITR 16 MP

<sup>21</sup> **Assistant Excise Commissioner, Kottayam and Ors v. Esthappan Cherian and Anr**(Civil Appeal No. 5815/2009)



## **Difference between retrospective and prospective operation of statutes**

1. A prospective operation of any statute essentially means that the statute as it is formulated is solely focused on the future acts or offences that might be committed. It doesn't consider any past act or incident that happened that in the present times would have constituted a crime. On the other hand, the retrospective operation of the law is in absolute contradiction with prospective laws. Under this form, the law that has been passed or the amendment made to the current times is also going to be applicable to the events carried out in the past which would now constitute an offence. Hence, this contradicts the general presumption of the law being effective in the future.
2. Any law, unless stated otherwise, is considered to be prospective in nature, i.e., to be effective from either the date of its enforcement or from any other future date. This is not the case with retrospective legislation. If such legislation is to be introduced, the legislators need to specify the past date from which the law is going to be applicable. Also, the Supreme Court has the power to decide whether a law should be enforced retrospectively or not.
3. In India, all the laws relating to both civil and criminal matters can have prospective operation. In other words, all the statutory provisions are going to be applicable to future events or any of the acts. However, the retrospective statutes can only be used for criminal matters and not civil ones.
4. The retrospective operation of any statute is most of the times highly criticized by the people for violating their rights. While committing that act, they didn't have the knowledge that it was going to become unlawful in the future for which they could be punished. On the other hand, there is general acceptance by the public for the prospective operation of the statutes because they acquire complete knowledge about the various offences and hence don't commit them to attract any penalty.
5. Most countries in this world don't recognize the retrospective operation of any statute or with certain restrictions. Even in India, Article 20(1) of the Constitution prohibits the enforcement of any retrospective law or amendment which might be harmful to the rights of the citizens. However, the same is not the case with prospective legislation. They are always given preference because it upholds the values of democracy and, at the same time, is the most favourable path to follow as people acquire the necessary information about offences<sup>22</sup>

These are some of the major differences between the retrospective and prospective operation of the statutes.

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<sup>22</sup> <https://legalserviceindia.com/legal/article-8915-operation-of-interpretation-of-statutes.html>

These are some of the major differences between the retrospective and prospective operation of the statutes:

<b>Retrospective operation of statutes</b>	<b>Prospective operation of statutes</b>
Such a statute focuses on the events of the past, and the new laws introduced are applicable to those past events.	Such a statute focuses solely on events resorting to wrongful acts after the introduction of the act or the amendment.
No statute is presumed to ever be retrospective in nature.	Any statute introduced, unless expressly stated otherwise, is considered to be prospective in nature.
A statute can have a retrospective operation only when it is concerned with civil matters and not criminal matters. Criminal matters can only have a retroactive operation.	Any statute, whether concerned with civil or criminal matters, is presumed to have prospective operation.
Retrospective statutes are generally criticized by the society and not recommended by governments because of their being unfair and unjustified toward the citizens.	The prospective statutes enjoy acceptance from the general public and the governments are also mostly in favour of such statutes. These uphold the democratic values of justice and the rule of law.
The retrospective operation of statutes is still not recognized in most countries. In several other countries, these can be introduced with several restrictions.	All countries generally accept all the new laws to be applicable for future events, i.e., prospective operation of the laws.

### **Issues with retrospective operation of statutes :**

The primary intention behind introducing retrospective laws is to ensure that the people who escaped liability in the past are held responsible or to reduce their punishment. However, its enforcement poses many challenges to democracy and also brings the government under scrutiny. Some of its ill effects are as follows:

1. It is violative of the basic rights of the people. It is directly violative of the principle of the rule of law since the people aren't treated equally in this situation.
2. When a retrospective law is introduced, the people who previously committed the offence don't have the required knowledge to comply with the same. The law is enforced later but the person is punished for his/her past acts which is completely unjustified.
3. In the case of retrospective laws, the assent of the Supreme Court is required which could certainly cause some delays.
4. A statute can have a retrospective operation only in criminal and taxation matters thereby reducing its scope significantly.
5. The retrospective laws can be used to obtain certain taxes which were evaded by the people previously making use of the loopholes. At times, it becomes very difficult to determine the year in the past from which it should be made applicable because the interests of both the government and the people are to be considered.
6. The amendments which are retrospective in nature are most of the time very short sighted or short-lived that it steals the existing law of its stability which is essential for its healthy growth.
7. Only the substantive civil laws can be operated retrospectively; the rest all have to be operated retroactively. This acts as a limit to the retrospective laws. These are some of the major limitations of retrospective legislation.<sup>23</sup>

There are problems not only with the procedural aspects of it with the various formalities but also with respect to the democratic values, including the people's rights.

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<sup>23</sup> <https://www.linkedin.com/pulse/retrospective-operation-statutes-special-reference-bench-and-brothers>

### **Conclusion:**

The retrospective operation of statutes is highly beneficial in certain areas but, at the same time, could be violative of people's rights. The procedural aspects could also be very complicated if seen along with the Constitution of India. As a result, there is a need to balance the interests of both the government and the citizens by some measures. After observing all the aspects relating to it, it is fair to conclude that such laws have more negative as compared to positive impacts on society. Hence, except for certain circumstances in which there is no other alternative, these laws or amendments should not be allowed. Even with the recent Supreme Court judgements, legislators have the power to make retrospective legislation. They should still be used within reasonable limits so that there is fair justice for all. The purpose of law-making would be fulfilled only by ensuring fair justice. Any law, regardless of its retrospective or prospective application, should always uphold the democratic principle; if it is otherwise, as could be possible in the case of retrospective legislation, appropriate actio

