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Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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Prospective And Retrospective Overruling On Criminal Laws In India: Detailed Analysis With Respect To The Prevention Of Corruption (Amendment) Act, 2018

Authored By: Yashwardhan Bansal[1]

Abstract

The research paper reflects upon two different overruling's given to the legislations namely prospective and retrospective by judiciary. It examines the two concepts and provides nuances of the both. The paper analyses the role of the two overruling's and effects specifically on criminal law and how with time prospective overruling has been preferred by the judiciary over retrospective overruling when it comes to implementation of criminal laws. The various problems associated to imposing criminal legislations retrospectively has been explained in the paper. Even the impact on the vested rights with people and their violation by the legislator while imposing laws retrospectively will be explained in the paper. The role of judiciary in interpreting the criminal law with a specific reference to Prevention of Corruption amendment act, 2018 has been made in the paper. The various lacunas in judicial system that delay in interpretation of laws within time and in giving them right effect will be analyzed in the paper. Even the failure of judiciary in establishing a common ground over the interpretation of a statute in short period of time will be explained. The conclusion will offer pragmatic solutions to the problems related to effect given to different criminal statutes and the delay in proper implementation of the Prevention of corruption Amendment act, 2018 in India.

Keywords: Prospective overruling, Retrospective overruling, Judiciary, Legislature, Statutes and Prevention of Corruption amendment act, 2018.

[1] Yashwardhan Bansal,
4th Year BA LLB Hons. student in Christ (Deemed to be University) Bengaluru
E-mail: Yash.bansal@law.christuniversity.in

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1. Introduction

Jurisprudence is complex and is deeper than the oceans. It has various sides and peculiarities that the humans are still exploring. It grows as each human contributes to its enhancement and provides a different angle to analyse the concepts and challenges in society. The legal framework is divided into two common and civil law systems and both have their nuances and are different from each other. India is a nation which follow the common law system and the judiciary has helped in development of the vast legal system for about seven decades now since independence. The common law system is based upon the doctrine of 'stare decisis' which furthers the establishment of precedents for future reference by judiciary.[2] This helps judiciary even build guidelines for future and fill the grey areas by addressing them with clarity in their judgments.[3] The judiciary doesn't formulate laws in India but, it is entrusted with the duty to interpret the laws. With time in order to uphold the constitution and justice in the society it has established guidelines. The application of those guideline and the legislations formulated by the parliament has been in debate for ages. The two effects retrospective and prospective have been examined and attached to the laws when they are published.

Convoluted Criminal law framework has been in place for centuries which has helped humanity co-exist in different small and large settlements. It has acted as a binding agent in the society and has helped in embedding trust amongst all. It has further acted as a catalyst to the development in different fields. With time as development happened and human settlements grew the administrative bodies were set up to look after public services. Body of elected people (Government) was built later to decide what's reasonable and right for the settlements and human being co-inhabiting in them. As the supremacy of government grew mal-practices started to creep in and to regulate them anti-corruption laws were brought into place. Such set of rules and regulations were brought into place to make sure that the administrative functions were carried out without any prejudice or intent of illegitimate gains but, for the welfare of people.

[2] Thomas R. Lee, *Stare Decisis in Historical Perspective: From the Founding Era to the Rehnquist Court*, 52 Vand. L. Rev. 647, 661-62 (1999).
[3] Steinman, Adam. (2004). A Constitution for Judicial Law-making. University of Pittsburgh law review. University of Pittsburgh. School of Law. 65. 10.5195/lawreview.2004.13.

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This section of criminal law has been part of the system for long and has become elaborate since the time of its origin. There have been different challenges posed and with the changing time the challenges have helped the laws evolve extensively. It won't be wrong to state that as the loopholes started to develop even the laws were elaborated and changed in order for them to tackle different challenges.

The anti-corruption laws being an imperative part of criminal law is distinctive yet follows similar principles of natural justice as other parts of criminal law. It is like a tributary like many others that add and form criminal law as one whole river of laws. In India there have been various legislations brought in by the parliament and amended periodically to eradicate corruption and mal practices in the system. The implementation or effect given to these legislations has also evolved as years have passed by. The two types of effects attached to the law are prospective and retrospective when it comes to implementation of legislations. The prospective effect to statue refers to applying laws in from the date of its proclamation or in future. Whereas, retrospective effect to statute means applying law to current or existing situations, reopening of the past instances be it closed or ongoing and instances that takes place in future. The various doctrines, principles and ideas that form basis for these two effects have been enunciated and elucidated in the paper. The declaratory theory and ex post facto principles have been explicitly explained in the paper to provide extensive and profound understanding of the two effects.

In case of the criminal law statutes naturally, prospective effect is attached and retrospective effect is avoided to a great extent. Though, if retrospective effect is attached by the legislature it is deemed to explicitly lay it down in the legislation in an elaborate manner.[4] The most common reason why retrospective effect is not considered is due to the substantive nature of criminal laws.[5] Another reason generally stated is the requisite for its action in drawn from a time when the law wasn't even prevailing. The legislature is expected and even bound to prevent enacting of ex post facto law with respect to ones that provide for criminal liability. Any vested right which an individual acquires from the existing law can't be taken away by embedding contingencies in future by the means of enacting a legislature.

[4] W. S. Hooker Jr., Prospective Overruling in India: "Golak Nath" and After, Journal of the Indian Law Institute, October-December 1967, Vol. 9, No. 4 (October-December 1967), pp. 596-637 Published by: Indian Law Institute, https://www.jstor.org/stable/43949956

[5] Hitendra Vishnu Thakur and others etc. etc. v. State of Maharashtra and others (1994) 4 SCC 602 (India)

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The natural rights of a human to act freely get impacted gravely by it. In the paper these rights of individuals have been explained.

In India Prevention of Corruption Act[6] was enforced in 1947 by the legislature to curb corruption in the government and public administration. Parts of the act have been amended, repealed and added a few times to tackle the challenges faced by it and reduce the loopholes in the whole structure. The most recent amendment was made in the year 2018 by the parliament in India and it shall be elucidated in the paper. The effect given to various sections will be traced through the different judgment by the judiciary benches across India. Even the lacunas and drawbacks that still persist are highlighted and addressed in the paper further, probable solutions are also laid down in it.

In this study/research on the effect and overruling of this particular doctrine of criminal law and anti-corruption statues in India plays a major role. This doctrine establishes the foundation for the implementation of retrospective effect on laws. The research will be incomplete and of no relevance without the analysis of this doctrine as the author plans to explain application of both the effects on the criminal laws and the anti-corruption law in India. It's current implementation and the wide scope of its implementation on the anti-corruption are also illustrated by the author and for that this doctrine stands to be important part of the chain.

2. Prospective Effect

The judiciary is an institution which directly impacts the society. It does that by pronouncements considering both the past and existing realities. The legislature is an institution which analyzes the peculiarities in the society and proclaims amendments in society that apply to the future acts. The prospective effect or overruling to a law is an exception to the functioning of both institutions and has been evolved to meet the ends which is cherishing justice.[7] Traditionally, it can be traced from the records that judiciary has never pronounced any new law instead has upheld the existing ones.[8] The precedents established in past are not only the reflection of the existing law but even the evidence of what the law is and it is to be interpreted.

[6] The Prevention of Corruption Act, (Act No. 2 Of 1947)
[7] "Prospective or Retroactive Operation of Overruling Decision," 10 A L.R. 3d 1371 (1966).
[8] Blackstone, Commentaries 69.

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Hence, the decisions laid down by the judges are the discovery of the real law and not the establishment of a new law. The retroactive effect to the law can be traced and see in generally practice traditionally. This system was changed by Blackstone in the 18th century as he found the trails after extensive examination of the way in which appellant courts inevitably made new laws. The appellant courts were enshrined with two duties in general which were deciding instant cases and to lay down a rule which could be employed in future cases as guidelines. From this practice of the courts an integral system developed which is now known as prospective overruling.

There exist two wings in jurists one that promote judicial law making and the other that despise it from the bottom of their heart. The common law system provides for the establishment of precedents which is the beginning point of judicial law making. Prospective overruling is promoted by the jurists which thrive upon judicial law making. The prospective overruling initially was introduced by "*Prof. George F. Canfield*" a faculty member in "*Columbia law school*" as a judicial technique.[9] He in his various addressing's emphasized upon the fact that judiciary should comply with their duty to announce new laws for future instances. He in the state of South Carolina proposed prospective overruling as a specific reform.[10] According to him there are various difficulties faced by the court like inflicting penalty in criminal cases for an act committed while it was lawful and the tendency of the courts to protect any right acquired in reliance upon a common law decision.[11] These problems can be resolved by the courts by inducting prospective law making.

Later, "*Wigmore*" and "*Cardozo*" during early 1900s played a major role in introducing prospective overruling to the American jurisprudence. *Wigmore* in his lectures criticized the absolute dogma of stare decisis. He further established that it wasn't a pragmatic idea concluding that a concept will give the certainty which it fails to provide so, moving on and finding solutions like prospective overruling and applying them is important.[12] He stated that

[9] Goebel, A History of The School of Law, Columbia University 172-73 (1955).
[10] Address by George F. Canfield at 24th annual meeting of the South Carolina Bar Association, August 4, 1917, in S.C. Bar Association Representation 17-19, 20-21 (1917).
[11] In an article published a few months after Canfield's address, Charles E. Carpenter of the Illinois Bar, dealing with the same general theme, appears to be unaware-though he comes close to it-of the possible use of prospective overruling. See Carpenter, Court Decisions and the Common Law, 17 COLUM. L. REv. 593, 606 (1917).
[12] WIGMORE, PROBLEMS OF THE LAW: ITS PAST, PRESENT AND FUTURE 79-82 (1920).

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the judiciary should adhere with the past decisions only till it is able to respect the rights of individuals in status quo. According to him it was important for the courts to start applying prospective overruling just like legislature attached prospective effect to the legislations.[13] Similarly, "*Cardozo*" in the year 1921 published "*The Nature of Judicial Process*" in which he discussed about the problems in judiciary and the need of prospective overruling to be part of it. He did not specifically refer to prospective overruling but, the intentions were clear. He in another address in the year 1932 to the "*New York State Bar Association*" talked about legal realism and vouched for prospective overruling. He expressed his concerns towards retroactive effect and even specified how relying on outmoded rule just because people have relied on it in past is not reasonable.[14] He was of the opinion that depending on dictum expressed by the judges in past which weren't even part of the judgment is objectionable and untying.[15]

The doctrine of prospective overruling has enabled the judiciary to act reasonably during the times of necessity and even enables it to differ from the errors made in past. It helps judiciary to refrain from distressing the decisions and move forward freely towards the preferred direction in future.[16] The prospective effect to statutes has been explained by various jurists and in wide span of decades this concept has evolved. "*It has been defined as expected, or expecting to be specified thing in the future, or likely to happen at future date*" by "*Weiner Edmund*".[17] In "*Black's law dictionary*" prospective effect to law has been explained as applying law only to the cases which shall arise after its enactment.[18] Law exists and works in the society to provide justice and promote welfare of people. It even exists so that human beings could co-exist in a settlement. This effect helps legislature uphold the "*principles of natural justice*" as the Latin maxim '*Salus Populi Est Suprema Lex*' establishes that welfare of people is of paramount importance.[19]

[13] Wigmore, Editorial Preface to SCIENCE OF LEGAL METHOD at xxxvii-xxXviii (Modern Legal Philosophy Series vol. IX, 1917

[14] Address by Chief Judge Cardozo, New York State Bar Association, January 22, 1932, in 55 REPORT OF N.Y.S.B.A. 263, 294-96 (1932).

[15] Beryl Harold Levy Source, Realist Jurisprudence and Prospective Overruling, University of Pennsylvania Law Review Nov., 1960, Vol. 109, No. 1 (Nov., 1960), pp. 1-30 Published by: The University of Pennsylvania Law Review Stable URL: https://www.jstor.org/stable/3310340 (Last Visited:)

[16] State v. Bell, 136 N.C. 674, 49 S.E. 163 (1904).

[17] Simpson John and Weiner Edmund; Oxford university press; ed. 3

[18] Garner A Bryan; Thomson west aspatore books; black's law dictionary; ed. 10

[19] Pandey J.N.; Constitution of India; ed 2017; central law agency

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It even forwards principles of justice, equity and good conscience. The prospective effect doesn't affect the existing contracts and when it comes to criminal law the past rulings by different courts of law are not affected. It makes sure that injustice is avoided. It deals with future contingencies and aim to avoid injustice in future. There are various explanations provided for attaching prospective effect to various laws and criminal law in specific. Law aims to look forward and not backwards is the idea legal maxim '*Lex Prospicit Non Respicit'* promotes which is the key for forming and establishing laws in society.

In Indian scenario the constitution and article 20(1)[20] in it imposes duty on the parliament to formulate statutes and amendment laws with prospective application. There are various cases in India and across the world where the judiciary has applied prospective overruling and has attached prospective effect to the law. In last few decades the courts have depicted inclination towards prospective overruling in matters related to criminal laws as it can be traced from different judgment. In "*Kedarnath case"*[21] the court refused intensification of the punishment and surge the compensation of convicted after an amendment under "*Prevention of Corruption Act"* was made. Even when it provided for more stringent and longer punishment for similar crimes. The court cherished the prospective effect attached to the amendments made in the act. Further, in "*Prahlad Krishna case"*[22] the court recognized the principle of prospective overruling. It stated that a person shall have immunity from being tried under act which came into being after the act had be committed. In "*Garikapat veeraya v N. Subbiah*"[23] case the apex court stated that if nothing specifically implies that retrospective effect has to be attached to the act prospective effect should be attached to the law. Even the golden rule of construction compliments application of this effect.

3. Retrospective Effect

Retrospective operation to law can be understood as, "application of law to the facts and instances that occurred before the law was proclaimed by the law-making body".[24] The legislature refrains from enacting retrospective laws as it doesn't intend what is unjust.

[20] India Const. art. 20, cl 1.
[21] Kedar nath v state of west Bengal AIR 1954 SC 660
[22] Prahlad Krishna v state of Bombay AIR 1952 Bom 1, (1951) 53 BOMLR 717, ILR 1952 Bom134
[23] Garikapat Veeraya v N. Subbiah 1957 AIR 540, 1957 SCR 488
[24] Richard S. Kay, Retroactivity and Prospectivity of Judgments in American Law, The American Journal of Comparative Law, Vol. 62, U.S. National Reports to the XIXth International Congress of Comparative Law in Vienna, Austria, 2014 (2014), pp. 37-67 Published by: Oxford University Press Stable, https://www.jstor.org/stable/10.2307/26425390

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It has the duty of imposing laws that uphold rights of people and violate them. Retrospective effect to a particular law can only be imposed when the intentions of the same is clearly expressed by the legislature. The enactment made by the legislature prejudicially affects the vested rights with people while they were committing the act.[25] Any rule or regulation which affects the vested rights with people under existing laws, or creates new obligations, or imposes new duties, or attaches a disability with respect to the act committed violated natural rights of people. Legislature hence, regains from giving retrospective effect to the criminal laws in specific as it leads to violation of the core natural rights of people.

3.1 Doctrine Of Ex Post Facto

It has always been a notion of debate, the effect and impact of the different laws on the society that are being promulgated by the legislature for centuries now. The doctrine of ex post facto provides for retrospective application or effect to law. The doctrine plays a cardinal role in the research as it forms the basis for the implementation of retrospectively in India. The legislature and judiciary both work on it and devices the effect of it on law with time while it's in process of implementation. The judiciary with different judgments in common law system and specifically in India lead the course and the probable effect. Prior studies have identified many intricacies of the Ex Post Facto law from legal point of view.[26] It's application in prospective effect on law has been explained and elaborated by various jurists and scholars. The doctrine of Ex Post Facto law has been explained in various judgments by jurist and legislature in statues. [27] It is a Latin maxim explained by Charles Sweet. In the most generic sense it means, "*law after the fact*" and it has been explained as "*anything be it a fact after which a law comes and upon which law has some distinctive bearing*". *Fuller*, explains it as "law which reaches back in time and alters the legal status of an action at the point of commission".[28] The prohibition of the ex post facto doctrine at a more refined level stops the government and prevents it from making amends in the criminal consequences attached to

[25] Id. 9
[26] Oliver P. Field, Ex Post Facto in the Constitution, Michigan Law Review , Jan., 1922, Vol. 20, No. 3 (Jan., 1922), pp. 315-331 Published by: The Michigan Law Review Association Stable http://www.jstor.com/stable/1277164
[27] Charles Sweet, Note, Law Quarterly Review 34 (1918): 8
[28] Fuller, The Morality of Law, 53. In much the same vein, see N. E. Simmonds, "The Nature of Law: Three Problems with One Solution," German Law Journal 12 (2011): 601, 615-6

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certain actions after that action has been performed.[29] Hence, the prohibition states that the government can't punish a person for committing an act that was perfectly legal when it was commited by the accused.[30] According to Justice Chase, "*any prohibition on the doctrine of ex post facto needs to be explained and elaborated by the concerned authority"*. He explained it in his writings that without any explanation the prohibition will be unintelligible and will mean nothing.[31] The principle still remains to be important part of both civil and common law system specifically while dealing with criminal laws.[32] The punishments related to this doctrine have further been explained by Bryan R. Diederich.[33]

In Indian laws the constitution of India and various judgments have played a major role in explaining the relevance of the doctrine and most elaborate fashion. The Article 20(1) of the Indian Constitution prohibits the sentencing and convicting under a law that has been brought after the act had already been committed. Though, it doesn't absolutely prohibit the doctrine of ex post facto.[34] There are various cases that have interpreted and explained the nuances and scope of this particular doctrine in India. In the *R.S.B. Singh case* the scope of the doctrine was established as its effect will be prohibited on the laws that are followed in India before the constitution of India came into existence.[35] The other case explained the relevance of the doctrine and mentioned that any benefit to convict by the effect of the principle on the amended law shall prevail and benefit the person.[36]

[29] This is simply a rough outline of the purpose of the ex post facto doctrine. More detailed discussion of the scope and extent of the prohibitions follows. See infra text accompanying notes 11-13; Part

[30] See U.S. Const. art. I, 9, cl. 3 (barring the passage of ex post facto laws by the federal government); id. art. I, 10, cl. 1 (barring the passage of ex post facto laws by state governments).

[31] Calder v. Bull, 3 U.S. (3 Dall.) 386, 389 (1798

[32] Ex Post Facto Limitations on Legislative Power Source: Michigan Law Review, Aug., 1975, Vol. 73, No. 8 (Aug., 1975), pp. 1491-1516 Published by: The Michigan Law Review Association Stable URL: http://www.jstor.com/stable/1287952

[33] Bryan R. Diederich, Risking Retroactive Punishment: Modifications of the Supervised Release Statute and the Ex Post Facto Prohibition, Columbia Law Review, Oct., 1999, Vol. 99, No. 6 (Oct., 1999), pp. 1551-1583 Published by: Columbia Law Review Association, Inc. Stable URL: http://www.jstor.com/stable/1123548

[34] Supra 25 at 8

[35] *Rao Shiv Bahadur Singh & Another v. The State Of Vindhya Pradesh, 1953 AIR 394.*

[36] *T. Barai v. Henry Ah Hoe & Another, 1983 AIR 150.*

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4. Evolution Of The Laws

When the evolution of anti-corruption laws in India is traced the role of both legislature and judiciary has been exceptional. There are various amendments that have been brought to the Prevention of Corruption Act that have reduced the loopholes which existed in system. Though the various challenges posed by the legislature have been dealt by the judiciary efficiently. Judiciary being one of the three bodies prescribed in the constitution of India that are imposed with duty to take care of the state affairs. Its basic function is to administer justice in accordance with the laws of the state and uphold the constitutional validity of different laws enacted by the legislature.[37] It has in last few decades has crossed the barriers and made extensive efforts to protect the rights of people. It has played a major role in the evolution of various sub-fields of law and anti-corruption laws are no exception to it. With the introduction of 'Judicial Activism' the judiciary has even intervened with the functioning of legislature and executive to deal with harsh realities like rampant corruption and bribery.[38] The judiciary has played a major role by attaching the right interpretation to the laws enacted by the legislature by establishing precedents. The Ratio Decidendi written by the judges in various cases have been used as laws in future cases and in certain instances even considered by the legislature while they formulate laws.[39] The first prevention of corruption act was passed in the year 1947 which was primitive and lacked various specifications. It even failed to address various key aspects and was dependent over other various other criminal law legislations like Indian Penal Code. The definitions of basic terms and ideas like offences related to corruption and public servant were missing in the act. The punishments attached to the various offences were also limited like an imprisonment of one to seven years maximum. There wasn't any immunity for the individuals who bribed the public servants as in certain cases they had to due to circumstances. This further discouraged the bribe givers from approaching the court to seek redressal.[40] Later, first amendment to the act was brought by the parliament in the year 1952.

[37] P.S. Seema, **"Eradication of Political Corruption – An Evaluation of the Legislative and Judicial Efforts"** The Academy Law Review p.189 (1999).
[38] D.N. Jauhar, **"Judicial Activism: A need for Parameters"** Legal News and Views Vol.: 11, (2010).
[39] Sanjay Singh & Anr. Ã Petitioners v. U.P. Public Service commission, (2007) 3 SCC 720
[40] Section 2: The Prevention of Corruption Act. 1947.

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Under this amendment various problems with the existing act were addressed like the punishment mentioned under the section 165 of the IPC was made more stringent as it was increased from two to three years. Even a provision for the corruption related cases to be dealt by special judges was added.[41]

For a few decades no changes were brought to the PC Act, 1947 and the court played a major role in developing the laws and highlighting the loopholes in the existing laws. Later, in the year 1962 Santhanam Committee was established by the parliament to identify the various challenges that the anit-corruption laws in India were facing and the pragmatic solutions to it. The report was submitted in the year 1964 and various recommendations were extended by the committee in this report which was widely debated in the parliament. In toto the committee commented on nine specific points and recommended for instillation of a code of conduct for the ministers, a declaration in which the property of the family members of the ministers could be disclosed and a separation for the executive from the legislature. The ministries were suggested to be formed separately on the basis of meritorious performances of the officers.[42]

4.1 Prevention of Corruption (Amendment) Act, 2018

The recent amendment to Prevention of Corruption act was brought and enforced on 26th July 2018 which led to repealing, amending and addition of various provisions of previously existing enactment. These changes were brought to make the existing act to be more effective in curbing the corruption in the country. It was the limited success of PCA, 1988 and emerging challenges which prompted the need for changes in the act. This act was further brought to comply with the various international practices laid down in United States Convention Against Corruption (UNCAC) held in the year 2005. India became a signatory to this convention in the year 2011 and since then the efforts were in place to include the provisions to curb corruption in the country.

The amendment added definition of undue advantage and explained its nuances. This emphasised upon any gratification obtained by the public servant other than permitted in

[41] Section 2: The Prevention of Corruption Act. 1947.
[42] G. Sadasivan Nair, **"Judicial Activism no Panacea for Prevention of Corruption"** Cochin University Law Review, (1997), p. 377.

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order to discharge his/her duty towards public shall be punishable. The gratification was explained to be anything and not just pecuniary in nature. The undue advantage even includes seeking benefits for others also from anyone in exchange for performing the public duty. For the first time separate provision for persons liable for offering a bribe to public servant was laid down. Such act to attain undue advantage from public servant was attached with a punishment of up to 7 years of imprisonment, fine or both.

The amendment act even defines commercial organization and criminalises the act of offering bribe by such organizations. It included various bodies and partnership to the list with companies under section 9 of the act. There has been fines laid down which can be imposed over the organizations that try to seek undue advantage or bribe the public servant. Even the management and heads of the organization committing offences mentioned in the act can be held liable if they consent to such violations. Under the amended act criminal misconduct has been redefined and has been narrowed and more precise. The process for establishing the offence of possession of disproportionate assets has been raised after the amendment. The need for proving of intention to possess disproportionate assets has been expressed in the amended act which the possession of such assets.

The sanction required for the investigation on serving official from the appropriate government has been extended to the retired officials also. Though a rule for the appropriate government to reply within a period of three months has been specified in the act. Even the right with central government to prescribe a sanction from prosecution has been laid down. The time frame for special courts to address the cases has been specified for the first time as two years. This period can be extended for six months at once until fours years of the total period of trial are lapsed. Even the punishments under the amended laws have been made more stringent. A minimum imprisonment has been increased from six months to three years and the maximum years has been increased from five to seven years.

5. Role Of Judiciary In India

In India the judiciary plays a major role in upholding the values embedded in the constitution. The natural or fundamental right of people is protected by it and through various cases it has helped the legal frame-work develop and become watertight. The parliament formulates and enacts the legislations in India and judiciary interprets them and works to deliver justice in

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the society. The doctrine of prospective overruling has been one of the tools that the judiciary has used to protect the rights of individuals in society. This tool wasn't part of the Indian judiciary and was inducted by "*Chief Justice Subba Rao*" in his judgments. The retrospective overruling had been part of Indian judicial system even before the independence of the state. It has been cherished by court at various instances in past but with time prospective overruling has become the highlight. The cardinal reason behind this shift has been to protect the fundamental rights of individuals. In the case Prahlad Krishna v. State of Bombay,[43] the court held supporting the idea and stated that one should be granted immunity from being tried for an act under the law enacted subsequently, which makes the law unlawful. The court cherished the principle of Salus Populi Est Suprema Lex in it.

The first case through which this doctrine was introduced to Indian judicial system was Golak Nath v. State of Punjab. This decision has impacted the decision making in India for decades and it still continues to influence the decision making. This judgment led to revolution in Indian decision making and has empowered the whole judicial system. In the case there was a 11 judges' bench which stood divided and the majority side including Chief justice of India were six in number. They expressed in the judgement that the parliament can't pass amendments that violates the fundamental rights enshrined under the constitution of India. They even limited the operation of the principle by the doctrine of prospective overruling.[44] The "*Chief Justice Shri Subba Rao*" was trying to correct the very roots of traditional jurisprudence and lay down more pragmatic trails for future decision making. Since the independence of India there were various changes that had happened in political, social and economic structure for which arrangements had to be made for upholding law in the country.[45] The prospective overruling was essential for progress and delivering justice so that future decisions are not solely influenced by the precedents set in the past and the judgments that stood to be obsolete due to change in the present dynamics of the society.

The judiciary has been questioned upon the effect that would be attached to the various amendments that have been made to the act recently. The parliament introduced PC amendment act, 2018 and again the question of the interpretation and applicability of the provisions was in question.

[43] AIR 1952 Bom 1
[44] I. C. Golaknath & Ors vs State of Punjab & Anrs. 1967 AIR 1643 (India)
[45] Cf. Blackshield, " fundamental Rights' and the Institutional Viability of the Indian Supreme Court," 8 J. I.L.I. 139, 175-76 (1966).

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In various cases the court at different levels functioning in the country have ruled in different manners. The effect attached to its sections have been stated by the court on the basis of the intention which the legislature had behind making the changes and additions. In the case Katti Nagaseshanna vs The State of Andhra Pradesh[46], the Andra Pradesh High Court was questioned the effect which section 19(1) would bear after the amendment. The amendment changed the procedure through which a retired public servant could be inquired or enquired about any incident of bribery. The court stated that the intention of legislature behind making the amend as it was not to free the accused individuals of bribery. The court stated that applying the section retrospectively would suggest a change in the procedure and would have devastating impact on the going on trials and pave the way for accused to be free. Further court stated that this being capable of causing injustice and standing not in contrast with the intention of legislature behind bringing this change shall be applied prospectively.

In the case M.Soundararajan v. State through the Deputy Superintendant of Police, Vigilance and Anti-Corruption, Ramanathapuram the court was questioned whether three provisions of the amended act would have retrospective effect or not. The sections 4 (4), 18 (A) and 19 were in question as they dealt with the procedure of trial and were felt to be applied to pending trials. The court nullified this claim of the accused and attached prospective effect to all the sections of the amended act in question. The court stated that these amended sections won't be applied to actions committed on or before 26-09-2018 which is the date of proclamation of the Central Act 16 of 2018. The court stated that none of the provisions amended or introduced to the act neither indicate nor implicate to have retrospective affect.

The high court of Bombay has also discussed the effect which could be attached to the amended provisions of the PC act, 2018. In the case Kishore Khanchand Wadhwani and Ors. v. State of Maharashtra[47], "*Justice B.H. Dangre*" commented on the interpretation of the various provisions of the act. The section 12 was in question which provides for penalties of acts criminalised under sections 7 and 11 of the same legislation. The act before the amendment made in 2018 didn't define the term abetment and the liability on individual offering bribe to a public servant. The act of mere offering bribe wasn't constituted to be a crime before the amendment made to the act in 2018. In this case the high court overruled the judgement made by the special court in which the petitioner was head liable.

[46] Criminal Petition No.9044 of 2018
[47] MANU/MH/2028/2019

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The high court stated that special court applied the amended law from 2018 on the case which was filed in the year 2007 erroneously. By providing a prospective effect to the amended law high court squashed away the proceeding pending in favour of the petitioner.

In the case Madhu Koda v. State[48], the appellant pleaded for immunity under the amended section 13 (1)(d) of the amended PC act, 2018. The court stated that it couldn't consider the amended law as it existed when the offence took place. Court enunciated on the fact that no intention of the legislature was seen to exclude the said offence from the scope of PC act with retrospective effect. Further, the section 6 (d) of the General Clause Acy was implemented by the court which stated that any criminal offence and its liability can't be waived off if the existing law is repealed after the commission of the act. The court concluded that if the act committed by the appellant falls to be under the abuse of his position for securing pecuniary benefits, then the beneficial construction of the PC (Amendment) Act, 2018 could not be applied.

The interpretation of section 17A of the amended act has been a source of confusion with regards to its applicability to the cases that have been pending since before the amended act was brought into force.

6. Drawbacks And Lacunas

India has wide range of anti-corruption laws concerning different sub-fields of it. Even after an exhaustive list of laws and courts catering to people hearing cases a surge in corruption level is experienced over years. Different scams of larger amount are disclosed after years they had been committed. This points towards the problem in the structure of governance in India and the public offices. The alliance between the different rank officers, ministers, staff of the public offices and businessmen is so strong that it is inevitable to eradicate corruption completely. Red-tapism and massive number of layers of bureaucrats gives an opportunity for corruption to exist and thrive.[49] Even the legislations have failed to respond to different challenges and loopholes that exist in the system.

[48] MANU/DE/1079/2020
[49] Dr. G.B. Reddy, (2014). The Lokpal and Lokayuktas Act, 2013. Gogia Law Agency, Hyderabad.

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Even in PC (amendment) Act, 2018 there exist various problems like lack of protection for the person approaching courts with complaints against corrupt actions. The amendment fails to throw light on situations when the person filling complaint is falsely accused of abetment. The need for seeking prior sanction from the appropriate authorities even in the case of an ex-public servant has made it difficult for officers to investigate in timely fashion and for court to discharge the matter in time. The nuances related to fines for the commercial organizations has not been specified in the act which leave a grey area and space for injustice or unequal treatment. Due to such problems and flaws injustice prevails in society as the judiciary has to hear various cases and then years are spent on deciding upon the effect that would be applied to the amended law and the gravity of punishment that would be attached in different situations.

Section 16 of the amended act shall be referred to while granting punishment for offences under any of the sections including attempt to commit the offence under section 15 of the act. This makes imprisonment compulsory for all the offences except in the case of bribe givers. It is important to understand that the individual who offers bribe is the one who is corrupting the public servant though they have been protected to a great extent. The sub-section 9 (3)(a) becomes redundant as it provides for imposition of fine over the organization which indulges into extending undue advantage where as to the contrary section 9 and 10 of the PC (Amendment) Act as according to the section the undue advantage need not be or by the performer of the public duty. Further, a space for malpractice has been left under sub-section 8 (1) as the promisor of undue advantage if informs law enforcement agencies then he/she will be protected from any liabilities. This will protect an unwilling decoy from prosecution under section 8 (1). The sub-section 9 (4) fails to specify that any offence under it is not just cognizable but non-bailable. Such has to be inferred from Part II of schedule 1 of Cr.P.C. Section 10 provides for liability on the members that are part of commercial organizations. The amendment included partners of the partnership firm as liable persons for offences established under section 9 of the act. Section 11 of the amended act further refines and clears the grey area related to expression valuable things. It was replaced with undue advantage and even the expression official functions have been replaced with public duty which widens the understanding.

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New section 12 provides for abetment of any crime mentioned in the act and has been expanded to the extent under which even if that crime hasn't been committed one abetting shall be liable. Punishment of 3 to 7 years has been prescribed under the amended act. Section 13 was changed by the legislature and its ideas were expanded and expressed under different sections. The idea of habitual offender explained under sub-sections 13 (1) (a) and 13 (1) (b) were obliterated and was explicitly explained in section 14 as second time offender. Section 13 (1) (b) in the amended act provides for the expression "intentionally enriches himself illicitly" was added which mends it generic in nature. Whereas, an expression "illicitly enriches himself" would have been more appropriate and restricted the interpretation to the offences under that act alone. Section 15 provides for punishment for attempt as explained under section 13 (1) (a) of the amended act. There isn't any fine prescribed which make imprisonment compulsory. Further, the idea of attempt to obtain undue advantage under section 7 could also have been included to make the section stringer and more appropriate. Section 16 of the act provides for the considerations which shall be taken into account which fixing fine for offences under sections 7, 8, 9,10, 11,14, 15 and sub-section 13 (2). It omits section 7-A and 12 which might be accidental yet important to reflect upon.

Section 17-A particularly leads to confusion due to its possible multifaceted interpretations with respect to its application on the offences which were committed prior to incorporation of the amending act. The friction might erupt with respect to prospective or retrospective implementation of the section. In general practice it has been established through various cases that in case of laws dealing with substantive rights prospective application is seen until anything contrary has been prescribed in the act.[50] Whereas, in case of laws dealing with procedural rights retrospective application of the law takes place. It is important to note that just because one section is providing for condition precedent the whole act can't can attached with retrospective effect.[51] The offences under the new act are different and they shall be applied in prospective manner. Even after the established practice and principles it rests upon judiciary to interpret the section in the cases and at various instances people might end up facing problems due to that.[52]

[50] **Keshavan Madhava Menon v. State of Bombay - AIR 1951 SC 128; State of Bombay v. Vishnu Ram Chandra - AIR 1961 SC 307; Arjan Singh and Another v. State of Punjab and Others -AIR 1970 SC 703**
[51] **Janardhan Reddy and Others v. State - AIR 1951 SC 124**
[52] **Mahadeolal Kanodia v. Administrator General of West Bengal - AIR 1960 SC 936**

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Section 18-A placed under a separate chapter as "Chapter IV-A", provides for attachment and eventual confiscation of ill-gotten properties by amalgamating the procedures under the Criminal Law Amendment Ordinance, 1944 and the Prevention of Money Laundering Act, 2002 ("PML Act" for short). An important departure from old Section 19, made by amended Section 19 is that prosecution sanction is insisted even in the case of a retired public servant or a public servant who has ceased to occupy the post which he held while committing the offence but instead is occupying some other post. No prosecution sanction was necessary under old Section 19 with regard to both categories of public servants referred to above. This change is to intertwine the section with section 197 of Cr.P.C. which provides for necessity of prosecution sanction in case of serving and retiring Government officers. Changes with respect to modes through with prosecution sanctions are attained has been made. Two pre-conditions have been added in case of private complaint which are the need of filing complaint in a competent court and that the court shouldn't have squashed it under section 203 and directed for availing prosecution sanction.

7. Conclusion

Courts play a cardinal role in development of jurisprudence specifically in common law states. It is important that different techniques are adopted and applied in order to develop and expand the roots of jurisprudence. One of the techniques is prospective application of law which is important. Further for law to develop it is important that judiciary plays a major role in its inclusion and interpretation. With time the challenges faced by the administration with respect to implementation of laws change and in order to protect the harmony and peace in the state it is necessary that law keeps developing and thrive to tackle such new challenges. When it comes to retrospective application of law with respect to criminal law it is unjust as individuals that have been convicted for certain crimes can use amendments and introduction of new legislations as grounds for seeking acquittal. The amendment brought to the existing prevention of corruption act, 1988 in the year 2018 showcases how certain key ideas if changed can be used to avoid the punishment granted by the court in past. If the act was applied retrospectively then the burden of courts would have increased to a great extent.

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In various scenarios specifically in the case of criminal laws it is important to check the legislation and the interpretation attached to it so that rights and liberty of people are protected. It is even important so that interests of the powerless minorities are also protected.

When faced with the question upon application and impact of the amended act there are various reservation to it in my humble opinion. The Prevention of Corruption Act, 1988 was elaborate and vast in itself and the amendment attaches different new avenues to it. The precedents established with respect to old act have reached to the optimum level and are largely applied for years now. Barring interpretation established of sections 7 and 13 (1) (d) the law as administered under the PC act, 1988 is up to scratch to fight corruption in India. It shall take years for the final interpretation of the provisions to be established by the judiciary though its pronouncements. Further, there might be instances in which wrong verdicts will lead to casualties and injustice. Amendments of such scale were uncalled for as loose ends and loopholes could be in the existing set-up. The need to rush towards applying amended act doesn't persist as the existing laws are enough to keep corruption in check. Hence, the old act shall be continued to be applied. The amendment with time might lead to more harm and prove to be inexpedient towards the agenda with which it has been imposed which is to curb corruption.