

AN EXHAUSTIVE DELINEATION OF THE INTERPRETATION OF TAX LAW AMENDMENTS – ANSWERING THE PERENNIAL QUESTION OF PROSPECTIVE VERSUS RETROSPECTIVE OPERATION

*Sanjay Bhoosreddy**
*Jaiyesh Bhoosreddy***

Abstract

In the constitutional scheme of our country, legislative competencies and boundaries are well defined. Every branch of the state should respect the boundary conditions to avoid unnecessary conflicts. Good governance is based on the cardinal principles of consistency and equity in the legal framework of the country so that every legal person is able to take their decisions based on the declared law of the land and where every branch of the state follows the rule of law. Prospective amendments are easy to deal with as there are no complications in their implementation, however retrospective amendments, on pecuniary implication, can create tremendous amounts of confusion and complexity due to their nature of application, which subsequently may have huge impact on taxpayers. This paper discusses the sanctity and majesty of law in view of the increasing number of retrospective tax amendments, while also delineating upon the underlying intent behind such amendments.

I Introduction

“It is a truism, and like most truisms often forgotten, that taxes, like water, have a tendency to find the lowest level. In the last analysis, almost all taxes ultimately hit the common man.”¹

-Nani Palkhivala

TAXATION IS the imposition of compulsory levies on individuals or entities by the government for the purpose of raising revenue for government expenditures. Taxes serve as the most important source of governmental revenue. Taxes, as a source of revenue, contrast from the other sources of revenue in that they are compulsorily levied and are unrequited, that is, they are not *quid pro quo*, which is to mean that the person does not pay taxes with the expectation of something specific in return for the payment of the taxes.² Although taxes are collected for the welfare of the taxpayers as a whole, the individual taxpayer’s liability is independent of any specific benefit received.³ The government collects taxes to raise revenue, which is subsequently utilised to finance the governmental functioning and to fund public projects as well as to facilitate the

* IAS, Additional Chief Secretary of Excise and Sugar Industry, Uttar Pradesh.

** B.A., LL.B. (Student), University School of Law and Legal Studies, Guru Gobind Singh Indrapratha University, Delhi.

1 N.A. Palkhivala, *We, The People* 89 (1988).

2 Maria S. Cox, Charles E. McClure *et al.*, “Taxation” Oct. 12, 2018, available at <https://www.britannica.com/topic/taxation> (last visited on Oct. 29, 2020).

3 *Ibid.*

creation of a conducive business environment for economic growth. Taxes can affect the state of economic growth in the country because they contribute to the gross domestic product (GDP). As a result of this, taxes can instigate economic growth which in turn has a ripple effect on the country's economic growth. It can lead to an increase in job creation, improvement in standard of living, *etc.*⁴ Governments can use taxes as a deterrent by taxing undesirable activities such as the consumption of alcohol, tobacco smoking, and other detrimental consumables by imposing high excise levies on these products and thereby raising the cost of these products which discourages potential consumers and sellers from buying and selling these products.⁵

Therefore, it would be apposite to say that taxes play a significant role in the development of a country's economic growth. They also contribute to the infrastructure-creation of a healthy economy and pave the path for businesses in the country to flourish. Good governance with respect to taxation implies that the money collected is utilised in an efficient and diligent manner so that maximum satisfaction can be derived by the citizens from the benefits that are generated.⁶

II The ideology of taxation: Principles of a good tax policy

*In this world nothing can be said to be certain, except death and taxes.*⁷

-Benjamin Franklin

The ideology of taxation is broadly based on three considerations-to raise revenue, to bring about certain economic and social results and to discourage the consumption and use of consumables which the state regards as obnoxious.⁸ The first consideration is satisfied by most taxes. The second consideration is achieved by taxes like income-tax, wealth-tax and estate duty, which attempt to reduce the disparity between wealthy and poverty. The third consideration is fulfilled by imposing taxes and excise duty on liquor, tobacco and gambling.⁹

Adam Smith, the 18th Century economist and philosopher, attempted to lay down a systematic body of rules to govern a rational system of taxation in his work titled, 'The Wealth of Nations' in Book V at chapter two. He had put forth four general canons that should be borne in mind by the state in levying taxes. *Firstly*, is the principle of equity, the taxes must be equitable and fair as between different classes of society. *Secondly*, the convenience of taxpayers is paramount, the taxes must not be complicated

4 David, "The Importance of Taxes" Nov. 24, 2014, available at: <https://richardkleinpcpa.com/importance-of-taxes/> (last visited on Jan. 29, 2021).

5 *Ibid.*

6 *Ibid.*

7 Benjamin Franklin, in a letter to Jean-Baptiste Leroy, 1789.

8 *Supra* note 1.

9 *Ibid.*

and so cumbersome in their operation so as to cause needless inconvenience and hardship to the people. Every tax law should ultimately be beneficial to the taxpayers of the country. Any tax law which is unreasonable and arbitrary, and imposes excess liability on the taxpayers cannot be said to be a good tax law. *Thirdly*, economy- the government must economise and levy only the minimum tax that is necessary for the national good. Lord Macaulay expressed the same thought, in his Minute which he wrote in India when he was here between 1834 and 1838, when he said that all taxes are evil and the burden is on the government to prove that a particular levy is justified. This means that every tax law should consider the interests of the taxpayers and any tax legislation which is patently flouting the interests of the taxpayers must be struck down. *Fourthly*, certainty and clarity- the laws imposing taxes must be so precisely and clearly worded so that the taxpayer can understand what is written and what exactly is the burden that he is called upon to bear. The canon elucidates that tax laws should be unambiguous in its language and certain in its provisions, and that the tax legislation must be easily comprehensible by the taxpayers while being stable in its continuity.¹⁰

There are four broad requirements that must be kept under consideration while framing tax laws to achieve the goals of a tax policy. These requirements encourage in the efficient administration of tax. These requirements are clarity, stability, cost-effectiveness and convenience. These conditions must be present in any tax law as an inherent character for it to be an effective piece of legislation.

Tax laws must be easily comprehensible for the taxpayer to understand the terms and provisions of the legislation. It must utilise simple language to reduce complexity so that every person can understand the law. Complex and technical language in the legislation prevents normal members of society, who lack a formal legal education, from appreciating the advantages of various legal provisions that provide tax saving opportunities. The application of unnecessarily difficult language in the legislation would indicate the hostile intent of the legislature towards the ignorant and underprivileged persons. An inexplicable tax law would result in a legislature enforced discrimination where the poor and uneducated would be incapable of taking advantage of the benefits that the legislation provides to the taxpayers which are otherwise availed by the wealthy and educated. The language of the legislation must be certain and unambiguous. Tax laws should be stable and law-makers should avoid enacting frivolous amendments to tax laws as this would erode the sanctity of the law. This will induce a dangerous taxpayer behaviour of reduced compliance to tax laws and openly flouting obedience to the law of the land. When tax law amendments are introduced, they should be brought about in a systematic manner which should be accompanied by adequate provisions for a fair and orderly transition from the old tax law system to the amended tax law system. The cost of assessing, collecting, and controlling taxes should be minimum because resources that are required for compliance and administration

¹⁰ *Supra* note 1 at 89-90; *See also, supra* note 2.

of taxes are scarce, especially in a developing country like India. The last condition that a tax law must satisfy to classify as a 'good tax law' is convenience. The process of payment of taxes should cause taxpayers as little inconvenience as possible, subject to the other objectives of the tax law.¹¹

III Understanding amendments

An amendment in the conventional legal usage would mean any change in law or statute that is brought at a future date, which can be implemented with prospective or retrospective effect. An amendment can be understood as the process of altering or amending a law or document (such as a Constitution) by parliamentary or constitutional procedure; or an alteration proposed or effected by the above process. An amendment in conventional usage of the English language could simply mean the act of amending something in order to fix it, which simply put means to correct an error and/or to improve upon it.¹²

An amendment, in the law of procedure, means any change in a pleading or in any paper filed for purposes of procedure. An amendment must generally be authorised by the court, usually upon motion, and the amended pleading then wholly supersedes the original. In statutory law, an amendment is a statute which changes the provisions of a previously passed statute, and repeals those provisions in express terms or impliedly so far as they are inconsistent with the amendment.¹³

An amendment, in legal practice, would mean the correction of any error in any process, pleading, or proceeding at law, either by consent of the parties, or upon motion to the court in which the proceeding is pending. An amendment, in legislation, would mean a modification or alteration to be made in a bill on its passage or in an enacted law, or a modification or change in an existing Act or statute.¹⁴

Amendments can be of two kinds. *First*, based on the implementation date of the amendment. If the amendment comes into effect at the date of enactment or at a specified future date, then it shall be classified as a 'prospective amendment' and if the amendment comes into effect at a specified past date, then it shall be classified as a 'retrospective amendment'. A statute is retrospective if it takes away or impairs any vested rights accrued under existing laws, or creates a new obligation, or imposes a new duty or attaches a new disabilities in respect of transactions made in the past.¹⁵ Retrospective tax would fall within the folds of retrospective amendments but the

11 *Supra* note 2; See also *supra* note 1 at 97.

12 Merriam-Webster, *Definition of amendment*, available at <https://www.merriam-webster.com/dictionary/amendment> (last visited on Jan. 20, 2021).

13 Hari Mohan Sinha and Dhiraj Pal Narula, *Legal Dictionary* 13 (1985).

14 P. Ramanatha Aiyar, *The Law Lexicon* 62 (1987).

15 *Darshan Singh v. Ram Pal Singh* 1992 Supp (1) SCC 191; See W.F. Craies, *Craies on Statute Law* 387 (Sweet and Maxwell Ltd., 7th edn., 1971).

converse may not be true. This is because a retrospective amendment deals with any change in law, which may be an exemption or imposition, which takes effect from a specified past date, but a retrospective tax is the imposition of additional charge or levy of tax from a specified past date.

The logic behind retrospective amendments

*The ideology of direct taxation has changed with the times. Fashions in this area come and go, like fashions in dress. What was regarded as good fiscal wisdom a hundred years ago is now discarded as unsupportable.*¹⁶

-NaniPalkhivala

Retrospective amendments pertaining to taxation, usually by way of Finance Acts, are normally introduced to offset the decisions of judicial bodies that went against legislative intent or for the removal of anomalies in law or to tax windfall profits that may have occurred due to multiple interpretations of law or due to deficient public policies. While there may be retrospective amendments which may be enacted to reduce the burden on the assesses and to provide tax benefits to assesses, there may be retrospective amendments, which may be enacted to cure the defects and remove the anomalies that have been highlighted by judicial decisions, or to clarify the meaning of the Act as envisioned by the legislature when the Act was designed.

The problem in the current scenario

At the beginning of every financial year, the Finance Ministry presents the Annual Financial Budget which covers issues such as past year's performance and formulates proposals for the next financial year in terms of revenue allocations to different sectors, changes relating to tax provisions (both direct and indirect tax), *etc.* These changes pertaining to taxation are generally introduced with the purpose of tackling the issue of ever-changing developments, welfare of taxpayers and loopholes in the taxation laws which were not dealt with at a previous date. An example of such changes would be the introduction of a new exemption or introduction of a new tax levy such as equalisation levy. Once the proposals for such changes are accepted by both the Houses of the Parliament and have received the assent of President, they enjoy the status of an enacted law.¹⁷

However, many governments have been misusing this power by using the Finance Act as a tool to overturn judicial decisions which go against government revenues, through retrospective amendments. This raises two serious questions of legislative propriety; i)

¹⁶ *Supra* note 1.

¹⁷ *Retrospective amendment and retrospective tax*, May 29, 2019, available at: <https://cleartax.in/s/retrospective-tax> (last visited on Jan. 24, 2021).

sanctity of law and ii) justification for the legislature to nullify judicial pronouncements by enacting ‘clarificatory’ amendments, which in effect change the position of law with a retrospective effect.

Surprisingly, the Finance Ministry has justified the alarming trend of increasing retrospective amendments by providing the justification that such amendments rectified the ‘aberrations’ that were the result of judicial decisions of quasi-judicial bodies such as Income-Tax Appellate Tribunal (‘ITAT’) and such clarificatory amendments with retrospective effects go against the legislative intent and mandate. The legislature disguises the new piece of legislation which is introduced months after an adverse decision by the courts, and which overrides the basis of a cogent argument provided by the taxpayers and assesses, supported by a particular interpretation of law and backed by judicial precedents under the garb of ‘clarificatory’ amendments whose purpose is to clarify the intent of law but which in reality changes the stated position of law in favour of the revenue department and thereby invalidating the legal defence taken by the tax assesseees.

IV Constitutional position of retrospective amendments

*Taxes are the lifeblood of the government, but it cannot be over-emphasised that the blood is taken from the arteries of the taxpayers and, therefore, the transfusion has to be accomplished in accordance with the principles of justice and fair play.*¹⁸

-Nani Palkhivala

The validity of retrospective amendments depends on the facts and circumstances of each case and needs to be determined on the merits of each amendment in view of the facts under which such amendment(s) have been framed. While it is undeniable that the legislature has power to legislate with retrospective effect,¹⁹ any retrospective amendment which benefits the assesseees will normally be held to be valid. However, if a retrospective amendment is non-beneficial and imposes a liability upon the assesseees, it would be accepted if it is clarificatory or declaratory in nature.

It is an established principle that a defect that has been recognised by the judiciary can be cured by enacting an amendment retrospectively, thereby making the judicial decision ineffectual as it takes away the basis of the judgment itself. However, the legislature cannot directly overrule a judicial pronouncement. It can as aforementioned, retrospectively cure the defect that was highlighted by the judicial decision, thereby making the judgment ineffective by enacting a validating legislation. What is to be kept under consideration while gauging the legislative intent of any such clarificatory

18 JB Kanga, and NA Palkhivala *et al.*, *The Law and Practice of Income Tax*, (Lexis Nexis, New Delhi, 9th edn., 2004).

19 *Maneka Gandhi v. Union of India* (1978) 1 SCC 248: AIR 1978 SC 597.

amendment implemented with retrospective effect, is whether or not, the legislature is utilising its power to enact retrospective amendments as a device to nullify judicial decisions under the disguise of curing the impugned legislation. The legislature must adhere to the principle that what is directly forbidden cannot be indirectly achieved.²⁰

Violation of article 14: Superior position of the state and similar treatment of unequals

The Supreme Court has laid down the law that the power of legislature to enact, amend or to delete a statute prospectively or retrospectively cannot be challenged unless the court is of the opinion that such an exercise of power is in violation of article 14.²¹ Article 14²² guarantees the equal protection of laws to all persons, but simultaneously allows the state to apply different laws to people who are situated differently. However, it is also established that such a classification must be founded on an intelligible differentia and this differentia must have a rational nexus to the object sought to be achieved by the statute.²³ The converse to the rule that equals should be treated equally is that unequals should not be treated equally.²⁴ The Supreme Court has held that article 14 will be violated even if similar treatment is given to different classes of people who are dissimilar to each other or if 'unequals are treated as equals'.²⁵ Therefore, if a retrospective tax amendment which imposes any unreasonable burden or liability from an anterior date will fail the test of article 14 if it does not recognise the two classes of taxpayers, the first class being the taxpayers who are subjected to the amendment retrospectively and the other class being the taxpayers who are subjected to the amendment for the first time, and treats these two classes similarly. The state, when retrospective taxation amendments are implemented, assumes a superior position in relation to the taxpayers, and therefore violates the principle of equality as guaranteed by article 14.

The amendment must not create any unreasonable restriction upon the fundamental or existing statutory rights of taxpayers and, if it creates unreasonable fiscal difficulties for the taxpayers and deprives them of their rightful claims supported by legal principles before such an amendment was introduced, then such an amendment cannot be said to have been done in public interest, and it would not satisfy the touchstones of

20 *Indira Gandhi Neelam v. Raj Narain* 1975 Supp SCC 1: AIR 1975 SCC 2299.

21 *State of Tamil Nadu v. Arooran Sugars Ltd.*, AIR 1997 SC 1815.

22 The Constitution of India, 1950 art. 14.

23 *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75; *Budhan v. State of Bihar*, AIR 1955 SC 191; *Harakchand v. Union of India* (1969) 2 SCC 166; AIR 1970 SC 1453; *State of Bombay v. F.N. Balsara*, AIR 1951 SC 318.

24 M.P. Jain, *Indian Constitutional Law* 1002 (2003).

25 *Chiranjit Lal v. Union of India*, AIR 1951 SC 41; *Om Narain v. Nagar Palika Shahjahanpur* (1993) 2 SCC 242.

article(s) 14 and 19(1)(g)²⁶ of the Constitution as the said amendment would be squarely arbitrary and discriminatory in nature.

Test of article 19(1) (g)

As discussed in the subsequent parts of this article, a taxing statute is presumed to be prospective unless a contrary legislative intent appears from its language. This is for the reason that, at the time of entering into a transaction, the tax payers must have knowledge of the tax which they are expected to pay. It also provides an opportunity to the taxpayer to carry out cost-benefit analysis of the proposed transaction and decide whether or not to enter into such a transaction.²⁷ Although it just as true that the Parliament has the power to legislate retrospectively and a law can never be invalid simply on the ground that it is retrospective in operation,²⁸ there is a general presumption of unjustness, unreasonableness and oppressiveness against a retrospective taxation statute unless it is provided in the statute expressly or impliedly.²⁹ Tax amendments may be retrospective if the legislature clearly intends so but the amendments must not impose any unreasonable restriction upon the fundamental or existing statutory rights of taxpayers. If they do create unreasonable fiscal difficulties for the taxpayers and deprive them of their rightful legal claims, then such amendments cannot be upheld as valid.³⁰ The test to determine whether a particular retrospective amendment is so unreasonable and harsh that it would be in clear violation of article 19(1)(g) would need to consider factors such as duration of retrospectivity and the degree of unforeseen financial burden or liability imposed.³¹ It is also established that a mechanical test based on the duration of the retrospective operation cannot be applied to determine the validity of the amendment.³² If the legislature enacts an explanatory/curative amendment, even if the statutory provision is not provided retrospective operation expressly in the amendment,³³ then the earlier judgment becomes irrelevant and unenforceable.³⁴ However, the court had also stated in the same breath that if the amendment purports to clarify the existing law but imposes a completely new tax liability, then the court would consider the amendment to be excessively and unreasonably violating the assessee's fundamental rights under articles 14 and 19(1)(g) of the Constitution of India.

26 The Constitution of India, 1950, art. 19, cl. (1), sub cl. (g).

27 Pradip R. Shah, "Retrospective Amendments – High-time for Introspection by India", Apr. 1, 2010, available at: <http://www.caclubindia.com/articles/retrospective-amendments-hightimefor-introspection-by-india-5144.asp>. (last visited on Jan. 20, 2021).

28 *Jayam and Co. v. Commissioner* 2016 SCC OnLine SC 909 at para. 14.

29 Vepa P. Sarathi, *Interpretation of Statutes* 467 (2003).

30 Sutherland, *Statutes and Statutory Construction* 131-133 (1943).

31 *Ujagar Prints v. Union of India* (1989) 3 SCC 488; AIR 1989 SC 516 (532); See *supra* note 28.

32 *Rai Ramakrishna v. State of Bihar* (1963) 50 ITR 171; See also, *supra* note 28.

33 *Allied Motors (P) Ltd. v. CIT* (1997) 3 SCC 472; 224 ITR 677; *CIT v. India Steamship* 196 ITR 917.

34 *Ujagar Prints v. Union of India* (1989) 3 SCC 488; 179 ITR 317.

If such clarificatory/explanatory amendments amount to imposition of a new tax levy or are in substance, a change in law, in order to over-come previous judicial decisions, then they will be held unconstitutional.³⁵ The presumption of constitutionality for such amendments cannot be justified by stating that there are uncertain and vague reasons for which certain individuals are being subjected to a hostile legislation which is specifically targeting them. Such a discriminatory law will be struck down if arbitrariness and unreasonableness is proved.³⁶ Therefore, while the Parliament has competence to enact retrospective amendments, such amendments are not only subject to questions of competence but also to the test of adherence to fundamental rights, specifically article 19(1)(g)³⁷ which grants the right to practise any profession, or to carry on any occupation, trade or business; which entails, *inter alia*, an *aegis* against imposition of an unreasonable tax liability.³⁸

V Judicial exposition on the interpretation of amendments

*Every government has a right to levy taxes. But no government has the right, in the process of extracting tax, to cause misery and harassment to the taxpayer and the gnawing feeling that he is made a victim of palpable injustice.*³⁹

-Nani Palkhivala

Amendments affecting substantive law are prospective unless specifically made retrospective while amendments affecting procedural law are generally retrospective

Statutes can be classified on the basis of the subject matter depending on whether the statute is dealing with procedural rights or substantive rights. It is an established principle that any change in procedural law is generally applicable retrospectively in the absence of anything to indicate the contrary. Procedural law does not bestow any vested rights upon the litigant. Therefore, any change in the procedural law cannot be assailed on the ground that it affects any existing vested right of the litigant. The litigant has to proceed according to the altered mode of procedure.⁴⁰ Therefore, since there is an absence of infringement of any vested rights in matters of procedure, any alteration to procedure is retrospective unless there is a good reason against it.⁴¹ It is also established that any change in procedure is not only applicable retrospectively but

35 *National Agricultural Co-operative Marketing Federation of India v. Union of India* (2003) 5 SCC 23: 260 ITR 548.

36 *R.K. Dalmia v. Justice Tendolkar*, AIR 1958 SC 1938.

37 *Supra* note 26.

38 *Ram Bachan v. State of Bihar*, AIR 1967 SC 1404.

39 *Supra* note 18.

40 P.B. Maxwell, *Maxwell on Interpretation of Statutes* 216 (11th edn. LexisNexis Butterworths, 2016).

41 *Id.*, at 217.

there is a strong presumption of retrospectivity with regards to any change/alteration in procedure unless such a construction is textually impossible.⁴²

The Supreme Court has held that procedural amendments apply retrospectively in the absence of anything to the contrary. The amendment applies to all actions after the date the amendment comes into force even though the actions may have begun earlier or the claim on which the action may be based may have originated on a prior past date.⁴³ *An Act of Parliament is not to be given retrospective effect, applies only to statutes which affect vested rights. It does not apply to statutes which only alter the form of procedure, the admissibility of evidence, or the effect which the courts give to evidence.*⁴⁴

It is a well-established principle that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have a retrospective operation.⁴⁵ The aforesaid principle of law flows from the legal maxim '*Nova constitution futuris formam imponere debet non praeteritis*', which means that a new law ought to regulate what is to follow and not the past. This viewpoint was reiterated by the Supreme Court where the court held that this principle operates until and unless there is an express provision in the statute providing for the retrospective applicability of the statute.⁴⁶ In *Re, Pulborough Parish School Board Election, Bourke v. Nutt*,⁴⁷ the court, through Justice Lopes, observed that, "Every Statute, it has been said which takes away or impair vested rights acquired under existing law, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect".

An amendment to procedural law raises several questions regarding interpretation and applicability. The general rule for applicability of procedural laws is that it would be applicable retrospectively, whereas substantive laws would be applicable prospectively, unless otherwise proved in the language of the statute. It would not be a matter of substantive right of a litigant when the issue relates to adjudication forum or limitations. However if there is an amendment which mandates a change of forum for adjudication of proceedings, then it affects the vested right of the litigant and falls as an exception to the general rule of retrospectivity of procedural laws.⁴⁸

42 *Gardner v. Lucas* (1878) 3 AC 582.

43 *Memon Abdul Karim Haji Tayab v. Dy. Custodian-General* (1964) 6 SCR 837.

44 *Blyth v. Blyth* (1966) 1 All ER 524.

45 *Keshvan v. State of Bombay*, AIR 1951 SC 128.

46 *Monnet Ispat and Energy Ltd. v. Union of India* (2012) 11 SCC 1.

47 (1894) 1 QB 725.

48 Jeevan Ballav Panda, Shalini Sati Prasad and Asees Jasmine Kaur, *Procedural Amendments Affecting Vested Substantive Right of a Litigant Are Prospective in Application Unless Specifically Made Applicable Retrospectively*, May 17, 2018, available at: <http://www.mondaq.com/india/x/702132/trials+appeals+compensation/procedural+amendments+affecting+vested+substantive+right+of+a+litigant+are+prospective+in+application+unless+specifically+made+applicable+retrospectively> (last visited on Jan. 24, 2021).

Therefore, such amendments mandating a change of forum for pending proceedings cannot be applied retrospectively unless the language of the amendment expressly provides for such retrospective application.⁴⁹ This principle was iterated by the Supreme Court in *Commissioner of Income Tax, Orissa v. Dhadi Sabu*,⁵⁰ where the court held that no litigant had any vested right in matters of procedural law, but where the question was of change of forum, then it ceased to be a question of pure procedure and it held value from the point of substantive right with respect to the pending litigation. The forum of proceedings or appeal was held to be a vested right when the proceedings were initiated. A similar view has been taken by the courts in a number of cases⁵¹ where the law stated a change in forum is not applicable on pending litigation/proceedings unless the parliamentary intention to the contrary is proved.

Prospective versus retrospective

A well-established legal principle in the subject of interpretation of statutes is that when there is ambiguity present in tax provisions, then the law will be interpreted in favour of the taxpayers/assesseees. The established principle states that when there is more than one interpretation that can be taken, then the one which favours the taxpayers/assesseees must be preferred. The logic behind the principle is that the framer of the legislation is the Parliament and common-sense dictates that the framing of the legislation would be worded ambiguously to favour the national exchequer. Therefore, when multiple interpretations are possible, then it is justifiable to give weightage to the interpretation that favours the taxpayers.

The Supreme Court provided clarity on the issue of prospective versus retrospective operation of tax amendments in the landmark case of *CIT v. Vatika Township (P) Ltd. ('Vatika')*,⁵² where the court held that the proviso to section 113 of the Income Tax Act, 1961⁵³ levying a surcharge on undisclosed income was prospective in nature. It held that imposing a retrospective levy on the taxpayer would cause undue hardship, especially when the language of the amendment was silent with respect to retrospective application of the provision. In doing so, the Supreme Court observed obedience to a fundamental rule of taxation law, that is the rule of strict interpretation.⁵⁴ The rule of strict interpretation states that when interpreting a taxing Act, one has to look at what is written in the taxing Act itself. There is no scope for presumption in a taxing Act and consideration should be given to the words in the taxing Act. The rule of strict

49 *Commissioner of Income Tax, Orissa v. Dhadi Sabu* (1992) SCR 3 168.

50 *Ibid.*

51 *Videocon International Limited v. Securities and Exchange Board of India* (2015) 4 SCC 33; *Securities and Exchange Board of India v. Classic Credit* 2017 SCC OnLine SC 961.

52 2014 SCC OnLine SC 712.

53 The Income Tax Act, 1961 (Act No. 43 of 1961).

54 *Cape Brandy Syndicate v. IRC* (1921) 1 KB 64; *CIT v. Ajax Products Ltd.* (1965) 55 ITR 741.

interpretation states that sections which impose a charge or additional tax levy should be strictly construed.⁵⁵

In *Vatika*, there was a search and seizure operations carried by out on the taxpayer, Vatika Township Private Limited, under section 132⁵⁶ of the Act, and accordingly, a notice under section 158BC⁵⁷ of the Act was issued, requiring the taxpayer to furnish its return of income for the block period. The block assessment was completed under section 158 BA⁵⁸ by the tax office rat a total undisclosed income of Rupees 85,18,819/- with a levy of tax thereon, but no surcharge was levied. Then section 113⁵⁹ was inserted in the Act by an amendment through the Finance Act, 1995 and the circular⁶⁰ of the Central Board of Direct Taxes (CBDT), the Commissioner of the Income Tax (CIT) was of the opinion that a surcharge should have been levied under section 113. Thereafter, a notice was issued to the taxpayer under section 263⁶¹ of the Act and subsequently the tax officer was instructed to levy the surcharge at ten percent. The Income Tax Appellate Tribunal ruled in favour of the taxpayer stating that section 113 was not retrospective in effect as it was neither a clarificatory nor a declaratory amendment. Therefore it was to be treated as prospective in nature. The high court dismissed the revenue department's appeal and held that proviso to section 113 of the Act inserted by the Finance Act, 2002, was prospective in nature.

When this matter was brought before the Supreme Court, it had to adjudicate upon the issue whether the surcharge to be levied by way of insertion of proviso to section 113 of the Act *vide* Finance Act, 2002, was to operate prospectively or retrospectively as it was contended to be clarificatory in nature. The revenue department contended that the proviso to section 113 of the Act inserted *vide* Finance Act, 2002, was clarificatory and curative in nature as there was ambiguity and uncertainty in the language of the Act as to whether surcharge was to be applied.

The Supreme Court laid the general principles concerning retrospectivity and held that a legislation is more than physical manifestations of words on paper. It cannot be treated as mere series of statements that one finds in a work of fiction/non-fiction or even in a judgment of a court of law. Therefore, a legislation is conceptually more than an ordinary text. There is a technique that is required to draft a legislation as well as to understand a legislation. A legislation differs from other textual works as its

55 *I.R. v. Countess of Longford* 13 TC 573, 620 (HL); *Kerala SIDC v. CIT* 246 ITR 330.

56 *Supra* note 53, s. 132.

57 *Id.*, s. 158BC.

58 *Id.*, s. 158BA.

59 *Id.*, s. 113.

60 See, Circular No. 717 dated Aug. 14, 1995, *available at*: <https://taxguru.in/income-tax/circular-717income-tax-dated-1481995.html>(last visited on Dec. 20, 2020).

61 *Supra* note 53, s. 263.

meaning and implications must be understood from the point of view of the intent of the lawmaker that drafted the legislation.⁶² The judgment also discusses the rule of interpretation that states that a legislation is presumed not to have retrospective operation unless a contrary intention appears from the language of the legislation.⁶³

The idea behind this rule is that the present law should govern the current activities and the law passed in the present cannot be applied to the events that have occurred in the past. The citizens and legal persons govern their activities in view of the law that is in force today and not on the basis of prediction of tomorrow's backward adjustment of it. Every human being is entitled to arrange his affairs by relying on the existing laws and should not find his plans retrospectively upset.⁶⁴ This principle of law is known as *lex prospicit non respicit*, which means that the law looks forward and not backwards. Retrospective legislation was contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.⁶⁵ The obvious basis of the principle against retrospectivity is the principle of 'fairness', which must be the basis of every legal rule.⁶⁶ Legislations which modify/alter accrued rights or which impose obligations or new duties or attach new disabilities, have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect. Unless such a legislation is for the purpose of supplying an obvious omission in a former legislation or to explain a former legislation,⁶⁷ the doctrine of fairness states that when construing a statute that confers a benefit without inflicting a corresponding detriment. Accordingly, it had to be given a retrospective operation.⁶⁸

In the case under discussion, the proviso added to section 113 was not beneficial to the taxpayers and only added a retrospective burden on the taxpayer. Therefore, the proviso did not have any retrospective effect under the normal rule of presumption. A particular amendment may be treated as clarificatory or declaratory in nature. Such statutory provisions are labelled as "declaratory statutes". The presumption against retrospective operation is not applicable to declaratory statutes. A declaratory Act may be defined as an Act to remove doubts existing around common law, or the meaning

62 *Supra* note 52 at para. 27.

63 *Govinddas v. Income Tax Officer* (1976) 1 SCC 906; *CIT Bombay v. Scindia Steam Navigation Company Limited* (1962) 1 SCR 788.

64 *Supra* note 52 at para. 28.

65 *Phillips v. Eyre* (1870) LR 6 QB 1.

66 *L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd.* (1994) 1 AC 486; (1994) 2 WLR 39; (1994) 1 All ER 20 (HL).

67 *Supra* note 52 at para. 29.

68 *Government of India v. Indian Tobacco Association* (2005) 7 SCC 396; *Vijay v. State of Maharashtra* (2006) 6 SCC 286.

or effect of any statute. Such Acts are generally held to be retrospective in nature. The conventional reasoning for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of common law or the interpretation of statutes. Usually, such an Act would possess a Preamble, and also the word “declared” as well as the words “enacted”.⁶⁹ However, simply the use of the words ‘it is declared’ is not conclusive evidence that the Act is declaratory for these words may, at times, be used to introduce new rules of law and the Act in the latter case may be only amending the law and would not necessarily be retrospective in nature. In determining the nature of the Act, regard must be given to the substance rather than to the form. If the purpose of a new Act is ‘to explain’ an earlier Act, it would be construed as retrospective. An explanatory/clarificatory law is generally passed to supply an obvious or to remove doubts as to the meaning of the previous Act.

It is well settled that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended. The language ‘shall be deemed to always have meant’ is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit.⁷⁰ The insertion of a proviso to section 113 was clearly a substantive provision and hence must be construed prospective in operation.⁷¹ An amendment made to a taxing statute can be said to be intended to remove ‘hardships’ only of the assessee, and not of the revenue department.⁷²

In *CED v. M.A. Merchant*,⁷³ the court dealt with the question whether the newly enacted section 59 of the Estate Duty Act was retrospective in operation so as to affect the assessment already completed on accountable persons. The court held that there were no specific words that confer retrospective effect to section 59. To spell out retrospective operation in section 59, then there must have been something in the intent to section 59 from which retrospective operation could necessarily be inferred. The new section 59 was altogether different from the earlier section 62 which it purported to be similar to and there was nothing in section 59 from which an intent to give retrospective effect could be concluded.⁷⁴ The court also held that the assessment on the accountable person had long been completed. There is a well settled principle against interference

69 W.F. Craies, *Craies on Statute Law* (Sweet and Maxwell Ltd., 7th edn., 1971); *Central Bank of India v. Workmen*, AIR 1960 SC 12 at para. 29.

70 Justice G.P. Singh, *Principles of Statutory Interpretation*, (LexisNexis Butterworths Wadhwa, Nagpur, 13th edn., 2012).

71 *Supra* note 52 at para. 44.

72 *Supra* note 52.

73 1989 Supp (1) SCC 499: 1989 SCC (Tax) 404.

74 *Id.* para. 7.

with vested rights by subsequent legislation unless the legislation has been made retrospective expressly or by necessary implication. If an assessment has already been made and completed, the assessee cannot be subjected to a re-assessment unless the statute permits it to be done.⁷⁵

In *Govind Das v. ITO*,⁷⁶ the court held that it is a well settled rule of interpretation that unless the terms of a statute expressly provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedures. The basis of the rule was that all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are *prima facie* prospective.⁷⁷ Therefore, retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is capable of either interpretation, that is prospective or retrospective, it should be construed as prospective only.

In *Jayram and Co. v. Commissioner*,⁷⁸ the court consolidated the broad legal principles upon which a retrospective statute must be tested to satisfy the constitutional validity of the said statute. The following legal principles were laid by the courts in *R.C. Tobacco (P) Ltd. v. Union of India*⁷⁹ and *Jayam and Co. v. Commr.*,⁸⁰ where the courts stated that a retrospective statute must satisfy the following conditions:

- (i) A law cannot be held to be unreasonable merely because it operates retrospectively;
- (ii) The unreasonability must lie in some other additional factors;
- (iii) The retrospective operation of a fiscal statute would have to be found to be unduly oppressive and confiscatory before it can be held to be unreasonable as to violate constitutional norms;
- (iv) Where taxing statute is plainly discriminatory or provides no procedural machinery for assessment and levy of tax or that is confiscatory, Courts will be justified in striking down the impugned statute as unconstitutional;
- (v) The other factors being period of retrospectivity and degree of unforeseen or unforeseeable financial burden imposed for the past period;
- (vi) Length of time is not by itself decisive to affect retrospectivity.

75 *Controller of Estate Duty, West Bengal v. Ila Das* (1981) 132 ITR 720 (High Court of Calcutta).

76 (1976) 1 SCC 906; 1976 SCC (Tax) 133 at para. 11.

77 *Halsbury's Laws of England* 36 (Butterworths 3rd edn. 1964).

78 *Supra* note 28 at para. 14.

79 (2005) 7 SCC 725 at paras. 21, 22 and 28.

80 2013 SCC OnLine Mad 2051 at para. 85.

In *Keshavlal Jetthalal Shah v. Mohanlal Bhagvandas*,⁸¹ the court held that section 29(2) as amended was not intended to be retrospective in action. Section 29(2) as amended in terms conferred the jurisdiction upon the high court to call for the records of a case for the purpose of satisfying itself that the decision in appeal was according to law, which the high court did not possess before the date of the amending Act. The amending Act did not explain any pre-existing legislation which was either ambiguous or defective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. The court held that section 29(2) before it was enacted, was precise in its implications as well as in its expression. The meaning of the words used was not in doubt, and there was no omission in its phraseology, which required to be supplied by the Amendment.

In *Sedco Forex International Drill. Inc. v. CIT*,⁸² the court held that a cardinal principle of the tax law is that the law to be applied is one which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication.⁸³ An explanation to a statutory provision may fulfil the purpose of clearing up an ambiguity in the main provision or an explanation can add to and widen the scope of the main section.⁸⁴ If it is in its nature clarificatory, then the explanation must be read into the main provision with effect from the time that the main provision came into force.⁸⁵ However, if it changes the law, then it cannot be presumed to be retrospective, irrespective of the fact that the phrases used are “it is declared” or “for removal of doubts”. When the explanation seeks to give an artificial meaning to a phrase in the Act and brings about a change effectively in the existing law and in addition is stated to come into force with effect from a future date, there is no principle of interpretation which would justify reading the explanation as operating retrospectively.⁸⁶ The same view was reiterated by the court in *Greatship (India) Ltd v. Commissioner of Service Tax*.⁸⁷ In *Union of India v. Martin Lottery Agencies Ltd.*,⁸⁸ the court held that a substantive law may be introduced by way of an explanation. However, if a substantive law is introduced, then it will have no retrospective effect.

As discussed earlier in this article, the conventional reason for enacting retrospective amendments is to correct the decisions of judicial bodies, which went against legislative

81 (1968) 3 SCR 623; AIR 1968 SC 1336 at para. 15.

82 (2005) 12 SCC 717 at para. 17.

83 *Commissioner of Income Tax v. Goslino Mario* (2000) 10 SCC 165; (2000) 241 ITR 312; *Reliance Jute and Industries Ltd. v. CIT* (1980) 1 SCC 139; 1980 SCC (Tax) 67.

84 *Sonia Bhatia v. State of U.P.* (1981) 2 SCC 585, 598; AIR 1981 SC 1274, 1282 at para. 24.

85 *Slyam Sunder v. Ram Kumar* (2001) 8 SCC 24 at para. 44; *Brij Mohan Das Laxman Das v. CIT* (1997) 1 SCC 352, 354; *CIT v. Podar Cement (P) Ltd.* (1997) 5 SCC 482, 506; *Laxmi Industries Ltd. v. ITO* 231 ITR 514; *CIT v. Sri Jagannath* 191 ITR 676; *ITO v. Manoharlal* 236 ITR 357.

86 *Supra* note 82 at para. 19.

87 2015 SCC Online Bom. 1708 at para. 14.

88 (2009) 12 SCC 209 at para. 50.

intent or for removal of anomalies in law. However, there has been an increasing number of Finance Acts which overturn judicial decisions and which went against the revenue department by the means of retrospective amendments. This raises serious questions as to what extent it is justifiable for the legislature to interfere and nullify judicial precedents by enacting ‘clarificatory’ amendments, which in effect change the position of law with a retrospective effect.

In *Priithvi Cotton Mills Ltd. v. Broach Borough Municipality*,⁸⁹ a Constitution Bench of the Supreme Court while dealing with the question of validity of a validation Act passed with a view to get over the judgment of the court, held that even it has appropriate competence, the legislature cannot merely pass a law that a decision of the court shall not bind the parties unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.

On the principles of retrospectivity, in addition to the above development of legal framework of judicial precedents, it would be interesting to draw parallel from two major areas of jurisprudence i.e. Constitutional and Service laws. In the matter of *Cauvery Water Disputes Tribunal, Re*,⁹⁰ a Constitution Bench of the Supreme Court held that the legislature cannot directly overturn a judicial decision without changing the basis for the said decision and thereby changing the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter-se parties and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the state or functioning as an appellate court or tribunal.

Similarly, in Service jurisprudence, a three-judge bench of the Supreme Court in *S.R. Bhagnat v. State of Mysore*,⁹¹ held that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such a judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect.

In an important adjudication, *State of Tamil Nadu v. State of Kerala*,⁹² on constitutionality of legislative competence of the state legislature, the Supreme Court held that when the direct object and effect of the impugned legislation is to overturn a judgment of the court, then the said Amendment Act cannot be said to constitute a Validation Act

89 1969(2) SCC 283.

90 1993 Supp. (1) SCC 96 (II).

91 (1995) 6 SCC 16.

92 (2014) 12 SCC 696.

but will be a mere device to defy, obstruct and nullify the judgment, and thereby extinguish existing legal rights as upheld by the court. The apex court laid down the following principles on retrospective legislations:

- (v) the doctrine of separation of powers applies to the final judgments of the courts. The Legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aliunde;
- (vi) If the Legislature has the power and competence to make a validating law it can make the law retrospective;
- (vii) Even where the law is enacted by the Legislature appears within its competence but if in substance it is shown as an attempt to interfere with the judicial process, such law can be invalidated being in breach of the doctrine of separation of powers.

The above principle had been more succinctly explained in *Cheviti Venkanna Yadav v. State of Telangana*,⁹³ where the court held that the legislature has the power to enact laws including the power to retrospectively amend laws and thereby remove causes of ineffectiveness or invalidity. A law enacted with retrospective effect, will not be considered as an encroachment upon judicial power when the legislature does not directly overrule or reverse a judicial dictum. The legislature cannot, by way of an enactment, declare a decision of the court as erroneous or a nullity. It can, however, amend the statute or the provision so as to make it applicable to the past.

It would be pertinent to consolidate the above discussed principles regarding the validity and constitutionality of the 'clarificatory' amendments enacted with retrospective operation with the view to overcome the fiscal difficulties that have been put forth on the government revenues because of the unfavourable interpretation that has been held in the judicial pronouncements by the Judicial Authorities in Taxation laws.

In *Indian Aluminium Co. v. State of Kerala*,⁹⁴ the Supreme Court held that in exercise of legislative powers, the legislature by mere declaration, without anything more, could not directly overrule, revise or override a judicial decision. However, what the legislature could do was render the judicial decision ineffective by enacting a validating law on the topic within its legislative field by fundamentally altering the character, of the basis of the decision, with a retrospective effect. The altered conditions are changed to such a degree that the previous decision would not have been given by the courts, if the said altered conditions had existed at the time of the rendering of the unfavorable decision. The legislature could change the character of the tax or duty from an impermissible

93 (2017) 1 SCC 283.

94 (1996) 7 SCC 637.

nature to a permissible nature as long as the infirmities that were the basis of the decision are removed or cured.⁹⁵

In a constitutional democracy that is governed by the observance to the rule of law, the legislature exercises its powers under articles 245 and 246 and the other companion articles read with the specified entries in the respective lists of the seventh schedule to the Constitution. The power to legislate would include the power to amend the laws, to enact new laws in appropriate cases, with retrospective effect. The legislature in enacting a new law or amending the existing law or revalidating the law has the power to alter the language in the statute by employing the appropriate phraseology and to put up its own interpretation that is inconsistent with that put up by the court in an earlier judgment on the basis of the pre-existing law and to suitably make new law, amend the law or alter the law removing the base on which the previous decision was founded. If the legislature finds that the interpretation given by the court to the existing law is inconsistent with the constitutional or public policy or the objective sought to be achieved by the Act, the legislature has power to enact a new law, or amend the existing law consistent with the constitutional or public policy. Such an enactment must generally be prospective and not retrospective in nature.⁹⁶

If such amendments are given retrospective effect, then it would grant legitimacy to the legislature to overrule every inconvenient final judgment by way of an amendment with retrospective effect, rendering judicial review a supine mute witness to legislative overruling judicial decisions emasculating the vitality of judicial review which would generate feeling of disbelief not only in the efficacy of the rule of law⁹⁷ but also in the majesty of law. As soon as a judgment rendered by a constitutional court becomes final, it would become an easy passage for the executive to knock the doors of the legislature and have the *rule nisi*⁹⁸ or *mandamus*⁹⁹ or directions issued by a constitutional court nullified by a legislative judgment.¹⁰⁰ This would be in contravention of the legal principle of finality of orders, where assessment proceedings have been completed and an assessment order has been passed against the assessee, such a completed assessment cannot be affected and would not be reopened by virtue of retrospective

95 *Ibid.*

96 *S.S. Bola v. B.D. Sardana* (1997) 8 SCC 522 (dissenting opinion).

97 *Ibid.*

98 Merriam-Webster, *Definition of rule nisi*, available at: <https://www.merriam-webster.com/dictionary/rule%20nisi> (Last visited on June 27, 2019) (a rule or order upon condition that is to become absolute unless cause is shown to the contrary).

99 Lex Warrior, *Writ of Mandamus and Indian Constitution*, Aug. 18, 2015, available at: <https://web.archive.org/web/20150819205457/http://www.lexwarrior.org/writ-of-mandamus-and-indian-constitution.html#rf1-483> (Last visited on June 27, 2019) (Writ of Mandamus is an order by the superior Court commanding a person or public authority to do or forbear to do something in the nature of public duty).

100 *Supra* note 96.

operation of an amendment Act, or sanctity of existing rights cannot be impaired by retrospective operation of the relevant provision.¹⁰¹

The legislature in enacting a law cannot, by a mere declaration, directly overrule, revise or override a judicial decision. It can render the judicial decision ineffective only by enacting a valid law on the subject within its legislative competence fundamentally altering or changing the character prospectively or retrospectively. The changes or altered conditions have to be such that the previous decision would not have been rendered by the court, had those (changed/altere) conditions existed at the time of the declaration of the law in the previous decision, as invalid.¹⁰² It is also empowered to give effect to the Acts so enacted or revalidated prospectively or retrospectively with a deemed date or with effect from a particular date.¹⁰³

VI Conclusion

*Tax evasion is reprehensible: it is social injustice by the evader to his fellow citizens. Arbitrary or excessive taxation is equally reprehensible: it is social injustice by the government to the people. Tax evasion aggravates arbitrary taxation; and arbitrary taxation aggravates tax evasion. To break the vicious circle, while there must be every attempt to check evasion, there must equally be every attempt to stop whimsical taxation. There are various provisions of our income-tax act law which are truly capricious. They are saturate and dripping with injustice.*¹⁰⁴

-Nani Palkhivala

Before concluding the study on retrospective amendments of fiscal laws, it would be apt to say that the body of law on the subject that developed in the last five decades has few facets and finer shades, which before it is applied should be appreciated. A question should be asked to oneself; whether the retrospective law is procedural or substantive, declaratory/clarificatory or otherwise. Once such an amendment is dissected as suggested above, then it would become easy to apply the correct legal principle as laid down by the Supreme Court.¹⁰⁵ Upon analysis of the aforesaid body of judicial precedents, it can be concluded that the legislature has the power to enact validating laws. It also has the power to amend laws with retrospective effect. However, this can be done to remove causes of invalidity or anomalies in law. When the legislature passes

101 *Venkatachalam, ITO v. Bombay Dyeing and Mfg. Co. Ltd.* (1958) 34 ITR 143 (SC).

102 *Supra* note 94; See *D. Cavasji and Co. v. State of Mysore* 1984 Supp SCC 490: 1985 SCC (Tax) 63; See *Janapada Sabha, Chhindwara v. Central Provinces Syndicate Ltd.* (1970) 1 SCC 509: AIR 1971 SC 57; See *Municipal Corporation of the City of Ahmedabad v. New Shorrock Spg. & Wvg. Co. Ltd.* (1970) 2 SCC 280: AIR 1970 SC 1292.

103 *Supra* note 94; *Supra* note 96.

104 *Supra* note 1 at 100.

105 The Constitution of India 1950, art. 141.

such a law, it is basically correcting the errors which have been pointed out in a judicial pronouncement. Therefore, it passes a validating Act to amend the law, thereby removing the errors or anomalies present in the earlier legislation. This results in the removal of the basis or foundation of the judicial pronouncement. This would not amount to the legislature directly overruling a judicial pronouncement.

However, the legislature cannot set at naught the judgments, which have been pronounced by amending the law, not for the purpose of making corrections or removing the anomalies that were pointed by the judicial pronouncements but to bring in a completely new provision which did not exist earlier. In a catena of cases,¹⁰⁶ there have been instances of introduction of a completely new provision by way of a retrospective amendment where instead of curing the defect or removing the lacuna that was pointed out by the judicial decisions, the State attempted to nullify the judgment and avoid its liability. What the legislature can do is to amend the provisions of the statute to remove the basis of the judgment itself.¹⁰⁷

The legislature may have the power to remove the basis or foundation of the judicial pronouncement but the legislature cannot overturn or set aside the judgment, that too retrospectively by introducing a new provision. A judicial pronouncement is always binding unless the very fundamentals on which it is based are altered and the decision could not have been given in the altered circumstances. The legislature cannot, by way of introducing an amendment, overturn a judicial pronouncement and declare it to be wrong or a nullity.

106 *D. Cavasji and Co. v. State of Mysore* 1984 Supp SCC 490: 1985 SCC (Tax) 63; *Janapada Sabha, Chhindwara v. Central Provinces Syndicate Ltd.* (1970) 1 SCC 509: AIR 1971 SC 57; *Municipal Corporation of the City of Ahmedabad v. New Shorock Spg. & Wvg. Co. Ltd.* (1970) 2 SCC 280: AIR 1970 SC 1292.

107 *The State of Karnataka v. The Karnataka Pawn Brokers Assn.*, AIR 2018 SC 1441 at para. 23; See *D. Cavasji and Co. v. State of Mysore* 1984 Supp SCC 490: 1985 SCC (Tax) 63; See *Janapada Sabha, Chhindwara v. Central Provinces Syndicate Ltd.* (1970) 1 SCC 509: AIR 1971 SC 57; See *Municipal Corporation of the City of Ahmedabad v. New Shorock Spg. & Wvg. Co. Ltd.* (1970) 2 SCC 280: AIR 1970 SC 1292.