

General Clauses Act 1897 s 5 - Coming into operation of enactments

(1) Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent, —

(a) in the case of a Central Act made before the commencement of the Constitution, of the Governor-General, and

(b) in the case of an Act of Parliament, of the President.

(3) Unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

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- Gap between assent and promulgation
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- Publication of the assent
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## GC 5(1): Coming into operation of Central Act

Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the President.

**Operation on assent** - Unless provided otherwise, a Central Act comes into operation on the day it receives the Presidential assent and is construed as coming into operation immediately on the expiration of the day preceding its commencement.<sup>1</sup>

**Gap between assent and promulgation** - Although, unless otherwise provided, a Central Act comes into operation on the

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<sup>1</sup> CIT, Punjab v RB Jodha Mal Kuthiala AIR 1966 SC 1433 cited in Singh 2021 p 406

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day it receives the Presidential assent, the gap between the date of assent and the date of promulgation of the Act may, in cases affecting personal liberty, give rise to a defence of want of fair procedure.<sup>^2</sup>

**Publication of the assent:** Under the various State General Clauses Acts a State Act comes into force on the day when the assent of the Governor is published in the Official Gazette of the State.<sup>^3</sup>

**Future date:** Quite often the commencement of an Act is postponed to some specified future date or to such date as the appropriate Government may, by notification in the Official Gazette, appoint.<sup>^4</sup>

**Different date:** Provision is also at times made for appointment of different dates for coming into force of different parts of the same Act. Care has to be taken to bring into force all related provisions together for delay in bringing into force a related provision may defeat the legislative intent during the intervening period.<sup>^5</sup>

**Operation only by legislative enactment:** An Act cannot be said to commence or to be in force unless it is brought into operation by legislative enactment or by the exercise of authority by a delegate empowered to bring it into operation.<sup>^6</sup>

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<sup>2</sup> R (On the application of L) v Secretary of State for the Home Department, (2003) 1 All ER 1062 cited in Singh 2021 p 407

<sup>3</sup> Deputy Commercial Tax Officer, Madras v Sha Sukraj Peeraji, AIR 1968 SC 67 cited in Singh 2021 p 406

<sup>4</sup> State of Bombay v Salat Pragji, AIR 1957 SC 517 cited in Singh 2021 p 406

<sup>5</sup> J Mitra & Co Put Ltd v Assistant Controller of Patents and Designs, (2008) 10 SCC 369 cited in Singh 2021 p 406

<sup>6</sup> State of Orissa v Chandrashekhar Singh, (1969) 2 SCC 334 cited in Singh 2021 p 406

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Where legislature have ceased to be in power: Power to bring into force an Act can be exercised by the delegate even though the Legislature may have ceased to be competent to enact the Act if it was within the competence of the Legislature at the time of its enactment.⁷

No writ of *mandamus*: When enforcement of a statute or a provision therein is left to the discretion of the Government without laying down any objective standards, no writ of mandamus can be issued to the Government to enforce the statute or the provision.⁸

Writ in case of inordinate delay: But if considerable time has elapsed since passing of the statute a writ can be issued directing the government to consider the question whether the statute or the provision should be brought into force.⁹

Stay of operation by Court: Further, although the court has power to stay the operation of a statute, this should be done only in exceptional cases.¹⁰

Minister's discretion not unfettered: The House of Lords has also held that when certain provisions of a statute are to come into force on a day to be appointed by a minister by order made by statutory instrument, the courts could not compel the minister to bring those provisions into effect; but the minister's discretion was not unfettered and he was required to keep the question whether statutory provisions should be brought into force under

⁷ Ishwar Das v UOI, AIR (1972) 1 SCC 646 cited in Singh 2021 p 406

⁸ AK Roy v UOI, AIR (1982) 1 SCC 271 cited in Singh 2021 p 406

⁹ Altmesh Rein v UOI (1988) 4 SCC 54 cited in Singh 2021 p 406

¹⁰ Factortome Ltd v Secretary of State for Transport, (1991) 1 All ER 70; Bhavesh D Parish & Co v UOI, (2005) 5 SCC 471 cited in Singh 2021 p 406

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 review and it would be an abuse or excess of power for him to exercise a prerogative power inconsistent with that duty.<sup>11</sup>

**No doctrine of legitimate expectation:** A provision in a statute cannot be made operative by applying the doctrine of legitimate expectation when the provision is yet to come into force on a notification issued by the executive Government.<sup>12</sup>

**Operation of a provision of Bill:** A provision in a Bill does not come into operation unless the enacting process is over and the resultant Act containing that provision is brought into operation. But an Act can provide that provisions of a Bill on a given subject will come into operation on their introduction in the Legislature. Thus, section 4 of the Provisional Collection of Taxes Act, 1931 provides that a declared provision (which refers to a provision relating to increase of a duty of Customs and Excise with a declaration that it is in public interest that the provision should have immediate effect) will have the force of law immediately on the expiry of the day on which the Bill containing the provision is introduced and it will cease to have the force of law when the provisions of the Act come into operation as an enactment.<sup>13</sup>

**Operation of ordinance:** When an Act is preceded by an identically worded Ordinance and Act contains a provision that “all actions and orders under the Ordinance are deemed to have been under the Act”, for all practical purposes the Act will be

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<sup>11</sup> R v Secretary of State for the Home Department, ex parte, Fire Brigade Union (1995) 2 All ER 244 cited in Singh 2021 p 407

<sup>12</sup> R v Director of Public Prosecution *ex parte* Kebeline, (1999) 4 All ER cited in Singh 2021 p 407

<sup>13</sup> Pieco Electronics & Electrical Ltd v Collector of Central Excise, (1997) 2 SCC 220 cited in Singh 2021 p 407

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deemed to be in operation and effective from the date of the commencement of the Ordinance.¹⁴

GC 5(3): Operative on the expiration of the day preceding its commencement

A Central Act shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

The enactment, however, is subject to the expressed contrary intention.

Commencement: Commencement, used with reference to an Act, means the day on which the Act comes into force.¹⁵

Expiration of the day preceding: Thus, if a Central Act is assented to by the President on 26th January at 10.30 am, it would be construed to have come into operation on the midnight between 25th and 26th January.¹⁶

Retrospectivity

All laws which affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations unless the legislative intent is clear and compulsive.

Power to Make Retrospective Laws: The Union Parliament and State Legislatures have plenary powers of legislation within the field assigned to them and subject to certain constitutional and

¹⁴ Fuerst Day Lawson Ltd v Jindal Exports Ltd, AIR (2001) 6 SCC 336 cited in Singh 2021 p 407

¹⁵ GC 3(13)

¹⁶ SS Gadgil v Lal & Co, AIR 1965 SC 171 cited in Singh 2021 p 406

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 judicially recognised restrictions<sup>17</sup> can legislate prospectively as well as retrospectively.<sup>18</sup>

**Present competence to legislate:** Competence to make a law for a past period on a subject depends upon present competence to legislate on that subject.<sup>19</sup>

**Limited period of retrospectivity:** By retrospective legislation, the Legislature may make a law which is operative for a limited period prior to the date of its coming into force and is not operative either on that date or in future.<sup>20</sup>

**Restoration of law retrospectively:** The power to make retrospective legislation enables the Legislature to obliterate an amending Act completely and restore the law as it existed before the amending Act.<sup>21</sup>

**Validating Act:** This power has also been often used for validating prior executive and legislative acts by retrospectively curing the defect which led to their invalidity and thus even making ineffective judgments of competent courts declaring the invalidity. It is not necessary that the invalidity must be cured by the same Legislature which had passed the earlier invalid Act. Thus, if a state Legislature passes an Act on a subject which falls outside its competence and within the competence of Parliament and is for that reason held invalid, Parliament can by passing a

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<sup>17</sup> State of Gujarat v Raman Lal Keshav Lal Soni, AIR 1984 SC 161 cited in Singh 2021 p 408

<sup>18</sup> United Provinces v Atiqa Begum (Mt), AIR 1941 FC 16 cited in Singh 2021 p 408

<sup>19</sup> A Hajee Abdul Shukoor & Co v State of Madras, AIR 1964 SC 1729 cited in Singh 2021 p 408

<sup>20</sup> District Mining Officer v Tata Iron & Steel Co, (2001) 7 SCC 358 cited in Singh 2021 p 408

<sup>21</sup> State of Tamil Nadu v Arooran Sugars Ltd, (1997) 1 SCC 326 cited in Singh 2021 p 408

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 retrospective Act which incorporates the State Act cure the
 invalidity.^{^22}

Implication: It is a cardinal principle of construction that every
 statute is prima facie prospective unless it is expressly or by
 necessary implication made to have retrospective operation.^{^23}

***Nova constitution futuris formam imponere debet non
 praeteritis:*** There is a presumption of prospectivity articulated in
 the legal maxim “*nova constitution futuris formam imponere
 debet non praeteritis*” (a new law ought to regulate what is to
 follow, not the past), and this presumption operates unless shown
 to the contrary by express provision in the statute or is otherwise
 discernible by necessary implication.^{^24}

Existing rights: But the rule in general is applicable where the
 object of the statute is to affect vested rights or to impose new
 burdens or to impair existing obligation. Unless there are words
 in the statute sufficient to show the intention of the Legislature to
 affect existing rights, it is deemed to be prospective only.^{^25} Said
 as follows:

“Provisions which touch a right in existence at the passing of the
 statute are not to be applied retrospectively in the absence of
 express enactment or necessary intendment”.^{^26}

Vested rights: It is presumed that any statute affecting vested
 rights must be prospective. Said as follows:

²² P Kannadasan v State of Tamil Nadu, (1996) 5 SCC 670 cited in Singh 2021 p 408

²³ Keshvan v State of Bombay, AIR 1951 SC 128 cited in Singh 2021 p 408

²⁴ Monnet Ispat & Energy Ltd v UOI, (2012) 11 SCC 1 cited in Singh 2021 p 409

²⁵ Doolubdas Pettamberdass v Ramlohl Thackoorseydass, (1850) 5 MIA 109 cited in Singh
 2021 p 409

²⁶ Delhi Cloth Mills & General Co Ltd v CIT, Delhi, AIR 1927 PC 242 cited in Singh 2021
 p 409


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“Every statute which takes away or impairs vested rights acquired under existing laws, 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”.<sup>27</sup>

**Property rights:** If rights created in favour of any person, whether they are property rights or rights arising from a transaction in the nature of a contract or rights protected under a statute, are to be taken away by any legislation, then that legislation will have to say so specifically by giving its provisions a retrospective effect. This principle was applied by the Supreme Court to protect a “deemed tenant” under section 15A of the Bombay Rent Act, 1947, from eviction as an “unauthorized occupant” under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The Supreme Court held that a “deemed tenant” under the 1947 Act continued to be protected under its succeeding Act, being the Maharashtra Rent Control Act, 1999, in view of the definition of “tenant” under section 7(15)(a)(ii) thereof, and he therefore cannot be said to be in “unauthorized occupation” of the premises. His right as a “deemed tenant” cannot be destroyed giving retrospective effect to the provisions of the Public Premises Act since there is neither such express provision therein, nor is it warranted by any implication.<sup>28</sup>

**Scope of retrospectivity:** As a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, there is a subordinate rule to the effect a statute or a

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<sup>27</sup> Re, Pulborough Parish School Board Election, Bourke v Nutt, (1894) 1 QB 725 cited in Singh 2021 p 409

<sup>28</sup> Suhas H Pophale v Oriental Insurance Co Ltd, (2014) 4 SCC 657 cited in Singh 2021 p 410

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section in it is not to be construed so as to have larger retrospective operation than its language renders necessary.²⁹ In other words, close attention must be paid to the language of the statutory provision for determining the scope of the retrospectivity intended by Parliament.³⁰

Absurdity and anomaly: But if the literal reading of the provision giving retrospectivity produces absurdities and anomalies, a case not prima facie within the words may be taken to be covered, if the purpose of the provision indicates that the intention was to cover it.³¹

Secundum materium: The inhibition against retrospective construction is not a rigid rule and must vary *secundum materium* (according to the subject matter).³²

Fairness: It has been said that “the basis of the rule is no more than simple fairness which ought to be the basis of every legal rule”.³³

Remedial provision: It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole.³⁴

²⁹ Reid v Reid, (1886) 31 Ch D 402 cited in Singh 2021 p 410

³⁰ UOI v Raghubir Singh, (1989) 2 SCC 754 cited in Singh 2021 p 410

³¹ UOI v Filip Tiago De Gama of vedem vasco De Gama, (1990) 1 SCC 277 cited in Singh 2021 p 410

³² Barber v Pigden, (1937) 1 All ER 126 cited in Singh 2021 p 410

³³ L’ Office Cherifien des Phosphates v Yamashits-Shinnihon Steamship Co Ltd, (1994) 1 All ER 20 cited in Singh 2021 p 410

³⁴ Mithilesh Kumari v Prem Bihari Khare, (1989) 2 SCC 95 cited in Singh 2021 p 410

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**Legal fiction:** Instead of express words the device of legal fiction may also be used to bring about retrospective operation by implication.<sup>35</sup>

**Partly antecedent:** The rule against retrospective construction is not applicable to a statute merely “because a part of the requisites for its action is drawn from a time antecedent to its passing”.<sup>36</sup>

**Pre-amended Act:** If that were not so, every statute will be presumed to apply only to persons born and things come into existence after its operation and the rule may well result in virtual nullification of most of the statutes. An amending Act is, therefore, not retrospective merely because it applies also to those to whom pre-amended Act was applicable if the amended Act has operation from the date of its amendment and not from an anterior date.<sup>37</sup>

**Past transactions:** But this does not mean that a statute which taken away or impairs any vested right acquired under existing laws or which creates a new obligation or imposes a new burden in respect of past transactions will not be treated as retrospective.<sup>38</sup>

**Retrospective amendments:** Thus, to apply an amending Act, which creates a new obligation to pay additional compensation, or which reduces the rate of compensation<sup>39</sup>, to pending proceeding for determination of compensation for acquisition already made, will be to construe it retrospectively which cannot

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<sup>35</sup> Mohd Akram Ansari v Chief Election Officer, (2008) 2 SCC 95 cited in Singh 2021 p 410

<sup>36</sup> R v St Mary White Chapels (Inhabitants), (1848) 12QB 120 cited in Singh 2021 p 410

<sup>37</sup> Bishun Narain Misra v State of Uttar Pradesh, AIR 1965 SC 1567 cited in Singh 2021 p 411

<sup>38</sup> KS Paripoornan v State of Kerala, AIR 1995 SC 1012 cited in Singh 2021 p 411

<sup>39</sup> Maharaja Chintamani Saran Nath Shahdeo v State of Bihar, (1999) 8 SCC 16 cited in Singh 2021 p 411

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be done unless such a construction follows from express words or necessary implication. Similarly, a new law enhancing compensation payable in respect of an accident arising out of use of motor vehicle will not be applicable to accidents taking place before its enforcement and pending proceedings for assessment of compensation will not be affected by such a law unless by express words or necessary implication the new law is retrospective.⁴⁰ It makes no difference in application of these principles that the amendment is by substitution or otherwise.

Events prior to enactment: Another principle flowing from presumption against retrospectivity is that “one does not expect rights conferred by the statute to be destroyed by events which took place before it was passed”.⁴¹

Saves vested rights and not existing rights: In certain cases, a distinction is drawn between an existing right and a vested right and it is said that the rule against retrospective construction is applied only to save vested rights and not existing rights.⁴² This distinction, however, has not been maintained in other cases.⁴³

Confusion in usage: The word “retrospective” has thus been used in different senses causing a certain amount of confusion.⁴⁴ The real issue in each case is to the scope of particular enactment having regard to its language and the object discernible from the statute read as a whole.⁴⁵

⁴⁰ Padma Srinivasan v Premier Insurance Co Ltd, AIR 1982 SC 836 cited in Singh 2021 p 411

⁴¹ Birmingham City Council v Walker, (2007) 3 All ER 445 cited in Singh 2021 p 411

⁴² West v Gwynne, (1911) 2 Ch 1 cited in Singh 2021 p 411

⁴³ Duke of Devonshire v Barrow Haematite Steel Co Ltd, (1877) 2 QBD 286 cited in Singh 2021 p 411

⁴⁴ Gardner & Co v Cone, (1928) All ER Rep 458 cited in Singh 2021 p 411

⁴⁵ Singh 2021 p 412

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**Surrounding circumstances:** If the language is not clear then the Court has to decide whether in the light of the surrounding circumstances retrospective effect should be given to it or not.<sup>46</sup>

### **Retrospectivity wrt procedural statutes**

In contrast to statutes dealing with substantive rights, statutes dealing with merely matters of procedure are presumed to be retrospective unless such a construction is textually inadmissible.<sup>47</sup> Said as follows:

“The rule that 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 or the admissibility of evidence, or the effect which the courts give to evidence.”<sup>48</sup>

**Pending actions:** If the new Act affects matters of procedure only, then, prima facie, “it applies to all actions pending as well as future”.<sup>49</sup>

**Proceeding as per altered mode:** In stating the principle that “a change in the law of procedure operates retrospectively and unlike the law relating to vested right is not only prospective”, the Supreme Court has quoted with approval the reason of the rule as expressed in Maxwell.<sup>50</sup>

“No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure

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<sup>46</sup> Punjab Tin Supply Co. v Central Government (1984) 1 SCC 206

<sup>47</sup> Gardner v Lucas, (1878) 3 AC 582 cited in Singh 2021 p 412

<sup>48</sup> Blyth v Blyth, (1966) 1 All ER 524 cited in Singh 2021 p 412

<sup>49</sup> AG v Ernazza, (1960) 3 All ER 97 cited in Singh 2021 p 412

<sup>50</sup> Anant Gopal Sheorey v State of Bombay, AIR 1958 SC 915 cited in Singh 2021 p 412

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is altered, he has no other right than to proceed according to the altered mode.”

Court’s jurisdiction: Relying upon this principle it has been held that “if a court has jurisdiction to try the suit, when it comes for disposal, it cannot refuse to assume jurisdiction by reason of the fact that it had no jurisdiction to entertain it at the time when it was instituted”.⁵¹

Laws of limitation: It has been said that law relating to forum and limitation is procedural in nature whereas law relating to right of action and right of appeal even though remedial is substantive in nature; that a procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished; that a statute which not only changes the procedure but also creates new rights and obligations shall be construed to be prospective, unless otherwise provided either expressly or by necessary implication.⁵²

Change in court’s jurisdiction: A change of forum except in pending proceedings is a matter of procedure and, therefore, if a new Act requires certain types of original proceeding to be instituted before a special tribunal constituted under the Act to the exclusion of civil courts, all proceedings of that type whether based on old or new causes of action will have to be instituted before the tribunal.⁵³

⁵¹ Sudhir G Angur v Sanjeev (2006) 1 SCC 141 cited in Singh 2021 p 412

⁵² Hitendra Vishnu Thakur v State of Maharashtra, AIR 1994 SC 2623 cited in Singh 2021 p 412

⁵³ New India Insurance Co Ltd v Shanti Misra (Smt), (1975) 2 SCC 840 cited in Singh 2021 p 413

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**Execution of decree:** The non-executability of a decree passed by an Indian court against a foreigner at a place in foreign country is also a matter of procedure and the decree becomes executable if the place where it is being executed ceases to be a foreign country and becomes part of India and the Indian Code of Civil Procedure, 1908 (CPC, 1908) is extended to that place.<sup>54</sup>

**Arbitration award:** On the same principle it was held that an arbitration award made in a foreign State is enforceable in the United Kingdom as a convention award under section 3 of the Arbitration Act, 1975 if the foreign State is a party to the New York Convention when proceedings for enforcing the award are taken although it was not such a party at the time of making of the award.<sup>55</sup>

**Enforcement of award:** It was pointed out that in so construing the section it was not given a retrospective operation as it merely affected the form of procedure of enforcement in that an award which, at the time it was made, was enforceable by action at common law became enforceable under the Act on the foreign State becoming a party to the convention subsequent to the date of the award. Section 45B the Employees' State Insurance Act, 1948, which enables the Employees' State Insurance Corporation to recover arrears of contribution from the employers as arrears of land revenue, has been held to be procedural and applicable to arrears falling due before coming into force of the section on 28 January 1968.<sup>56</sup>

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<sup>54</sup> B Narhari Shivram Shet Narvekar v Pannalal Umediram AIR (1979) 3 SCC 203 cited in Singh 2021 p 413

<sup>55</sup> Kuwait Minister of Public v Sir Frederick Snow & Partner, (1984) 1 All ER 733 cited in Singh 2021 p 413

<sup>56</sup> Employees' State Insurance Corp v Dwakar Nath Bhargawa, (1997) 7 SCC 131 cited in Singh 2021 p 413

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Past cause of action: The reason is that statutes providing for new remedies for enforcement of an existing right are treated as procedural and apply to future as well past causes of action.⁵⁷

Retrospectivity wrt fiscal statutes

Fiscal legislation imposing liability is generally governed by the normal presumption that it is not retrospective and it is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication.⁵⁸

Charging and machinery provisions: The above rule applies to the charging section and other substantive provisions such as a provision imposing penalty⁵⁹ and does not apply to machinery or procedural provisions of a taxing Act which are generally retrospective and apply even to pending proceedings.⁶⁰

Finality of assessment: But a procedural provision, as far as possible, will not be so construed as to affect finality of tax assessment or to open up liability which had become barred.⁶¹

Reassessment: Assessment creates a vested right and an assessee cannot be subject to reassessment unless a provision to that effect inserted by amendment is either expressly or by necessary implication retrospective.⁶²

⁵⁷ Dilip v Mohd Azizul Haq, (2000) 3 SCC 607 cited in Singh 2021 p 413

⁵⁸ Reliance Jute and Industries Ltd v CIT (1980) 1 SCC 139 cited in Singh 2021 p 422

⁵⁹ Collector of Central Excise Ahmedabad v Orient Fabrics Pvt Ltd, (2003) 3SCC 636 cited in Singh 2021 p 422

⁶⁰ Commr of Wealth Tax, Meerut v Sharvan Kumar Swarup (1994) 6 SCC 623 cited in Singh 2021 p 422

⁶¹ Income-tax Officer v SK Habibullah, AIR 1962 SC 918 cited in Singh 2021 p 422

⁶² Controller of Estate Duty Gujarat-I v MA Merchant, AIR 1989 SC 1710 cited in Singh 2021 p 422


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**Opening the liability:** A provision which in terms is retrospective and has the effect of opening up liability which had become barred by lapse of time, will be subject to the rule of strict construction.<sup>63</sup>

**Scope:** In the absence of a clear implication such a legislation will not be given a greater retrospectivity than is expressly mentioned; nor will it be construed to authorise the Income-tax Authorities to commence proceedings which, before the new Act came into force, had by the expiry of the period then provided become barred.<sup>64</sup>

**Unambiguous language:** But unambiguous language must be given effect to, even if it results in reopening of assessments which had become final after expiry of the period earlier provided for reopening them.<sup>65</sup>

**No fixed formula:** There is no fixed formula for the expression of legislative intent to give retrospectivity to a taxation enactment.<sup>66</sup>

**Arbitrary and irrational:** Though the Legislature has enormous power to make retrospective taxing laws, yet when a retrospective Act is entirely arbitrary and irrational it may be declared invalid as offending Article 14 of the Constitution.<sup>67</sup>

**Oppressive and confiscatory:** But the retrospective operation would have to be found to be unduly oppressive and confiscatory

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<sup>63</sup> Banarsi Debi v ITO, District IV, Calcutta, AIR 1964 SC 1742 cited in Singh 2021 p 422

<sup>64</sup> SS Gadgil v Lal & Co, AIR 1965 SC 171 cited in Singh 2021 p 422

<sup>65</sup> Commercial Tax Officer v Biswanath Jhunhunwala, AIR 1997 SC 357 cited in Singh 2021 p 423

<sup>66</sup> National Agricultural Co-op Marketing Federation, of India Ltd v UOI, (2003) 5 SCC 23 cited in Singh 2021 p 423

<sup>67</sup> Tata Motors Ltd v State of Maharashtra, (2004) 5 SCC 783 cited in Singh 2021 p 423

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 before it can be held to be so unreasonable as to violate constitutional norms of Articles 14 and 19 of the Constitution.⁶⁸

Liability of HUF and partition: On the principle that a new Act affecting, existing rights or creating obligations, is presumed to be prospective only, section 171 (6) of the Income-tax Act, 1961 has been held not to be applicable to assessment made on a Hindu undivided family for any assessment year prior to 1st April, 1962, when the Act came into force. Section 171 (6) creates joint and several liability of the members to pay the tax assessed on a Hindu undivided family if the Income-tax Officer, after completion of the assessment, finds that the family has already effected a partition whether total or partial. It was pointed out that as the liability created by section 171 (6) was not limited to the extent of the joint family properties coming to the hands of a member and made him personally liable, it was a new liability and the section could not be construed to apply to assessments completed under the old Act.⁶⁹

Law in force at the beginning of the assessment year: The liability to pay income-tax is a perfected debt on the last day of the previous year⁷⁰ but as that liability is computed according to the law in force at the beginning of the assessment year, i.e., the first day of April, any change in law affecting tax liability after that date though made during the currency of the assessment year, unless specifically made retrospective, does not apply to the assessment for that year.⁷¹

⁶⁸ RC Tobacco (Pvt) Ltd v UOI, (2005) 7 SCC 725 cited in Singh 2021 p 423

⁶⁹ Govinddas v Income-tax Officer, (1976) 1 SCC 906 cited in Singh 2021 p 423

⁷⁰ Kesoram Industries & Cotton Mills Ltd v CWT (Central), Calcutta, AIR 1966 SC 1370 cited in Singh 2021 p 423

⁷¹ CIT, Bombay v Scindia Steam Navigation Co Ltd, AIR 1961 SC 1933 cited in Singh 2021 p 423

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**Imposition of surcharge:** On the same principle when a surcharge on Agricultural Income-tax was enforced from 1 September 1957; it was held that it could not apply to the assessment year 1957-58 as it was not brought into force from the beginning of that year, i.e., 1 April 1957.<sup>72</sup>

**Revision of tariff:** Similarly, revision of Schedule to the Kerala Plantation Tax Act, 1960 by the Kerala Finance Act, 1987 w.e.f. 1-7-1987 which revised the tariff categories as well as the tariff structure was held to be applicable only in the next financial year, viz. 1988-89 and not the financial year 1987-88.<sup>73</sup>

**Continuing event:** A taxing Act cannot, however, be called retrospective if it taxes an event which is continuing and not complete when the Act comes into force. So, instalments of hire paid after the coming into force of the Finance Act, 1972 under a hire-purchase agreement made before the Act were subject to the value added tax it was held that the tax was not retrospective.<sup>74</sup>

**Continuing default:** A default, which is a continuing default and not a default once for all, can be dealt with under the provisions of the new Act, if it continues when the new Act comes into force, although it commenced when the old Act was in force. A default in filing a return of income is a continuing default till the return is filed; such a default, though it commenced when the Income-tax Act, 1922 was in force, can yet be dealt with under the provisions of the Income-tax Act, 1961 if it continued after the commencement of the Act.<sup>75</sup>

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<sup>72</sup> Karimtharuvi Tea Estates Ltd v State of Kerala, AIR 1966 SC 1385 cited in Singh 2021 p 423

<sup>73</sup> State of Kerala v Alex George, (2005) 1 SCC 299 cited in Singh 2021 p 423

<sup>74</sup> Customs and Excise v Thorn Electrical Industries Ltd, (1975) 1 All ER 439 cited in Singh 2021 p 423

<sup>75</sup> Maya Rani Punj v CIT, Delhi, (1986) 1 SCC 445 cited in Singh 2021 p 424