Precedents on Prospective over-ruling.

1. For the first time, it has been called upon to apply the doctrine of prospective over-ruling involved in a different country under different circumstances. In the case of**,"Golaknath Vs. State of Punjab, A.I.R.1967, SC 1643"**. This doctrine has its roots in a American case i.e. **(Chicot county Vs. Baxter State Bank (1940) 308 U/s.371)** stated thus,
   "The law prior to determination of constitutionality is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration".
2. In Golaknath Case (supra), the Supreme Court reversed two of its previous decisions, i.e. Shankari Prasad's case and Sajjan Singh's case. In both the cases the Court has held that the power to amend the Constitution was contained in Art.368 and the word 'law' in Art.13 did not include in amendment of the Constitution which is made in exercise of constitutent power of Parliament. In Glakhnath's case, however, the Supreme Court reversed its decisions in the above case And held that the power to amend the Fundamental Rights is not found in Art.368, but in the residuary power of Legislation, hence a law made under Art.368 is subject to Art.13. In that case the Court had applied the rule of prospective overruling.
3. In Golaknath case, the validity of the (17th Amendment) Act-1964 to the constitution which inserted certain State Acts in Ninth Schedule was again challenged. The Supreme Court by a majority of 6 to 5 prospectively overurled its earlier decisions in Shankari Prasad and Sajjan Singh cases and held that Parliament had no power from the date of this decision to amend Part III of the Constitution so as to take away or abridge the fundamental rights.
4. The Chief Justice (Subba Rao, C.J.) said that the fundamental rights are assigned transcendental place under our Constitution and, therefore, they are kept beyond the reach of Parliament. The Chief Justice applied the doctrine of Prospective Overruling and held that this decision will have only prospective operation and, therefore, the 1st, 4th and 17th Amendment will continue to be valid. It means that, all cases prior to Golaknath shall remain valid.
5. It is modern doctrine suitable for a fact moving society. It does not do away with the doctrine of stare decisis, but confines it to past transactions. It is true that in one sense the
   Court only declares the law, either customary or statutory or personal law. While in strict theory it may be said that the doctrine involves making of law, what the Court really does is to declare the law but refuses to give retroactivity to it.
6. It is really a pragmatic solution reconciling the two conflicting doctrines, namely, that a Court finds law but restricts its operation to the future. It enables the Court to bring about a smooth transition by correcting its errors without disturbing the impact of those errors on the past transactions.
7. Our Constitution does not expressly or by necessary implication speak against the doctrine of prospective overruling. Indeed Arts.32, 141 and 142 are couched in such wide and elastic terms as to enable the Supreme Court to formulate legal doctrines to meet the ends of justice. The only limitation thereon is reason, restraint and injustice. To deny this power to the Supreme Court on the basis of some outmoded theory that the Court only find law but does not make it is to make ineffective the powerful instrument of justice placed in the hands of the highest judiciary of this country.
8. The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest Court of the country, i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding o n all the Courts in India; (3) the scope of the restrospective operation of the law declared by the Supreme Court

supersending its 'earlier decisions' is left to its discretion to be moulded in accordance with the justice of the ause or matter before it.

9. While ordinarily the Supreme Court will be reluctant to reverse its previous decisions, it is its duty in the constitutional field to correct itself as early as possible, for otherwise the future progress of the country and the happiness of the people will be at stake.
10. Since it is indisputable that a Court can overrule its earlier decision there cannot be any valid reason why it should not restrict its ruling to the future and not to the past. Even if the party filing an appeal may not be benefited by it, in similar appeals which he may file after the change in the law he will have the benefit. The decision cannot be obiter for what the Court in effect does is to declare the law but on the basis of another doctrine restricts its scope. Stability in law does not mean that injustice shall be prepetuated.

Object of Accepting this Doctrine :

11. Prospective declaration of law is a device innovated by Supreme Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigatio n. By the very object of prospective declaration of law it is deemed that all actio ns take country to the declaration of law, prior to the date of the declaration are validated. In**,"A.I.R.2001, S.C.3795, Harsh Dhingra Vs. State of Haryana**" it is held that,

"This is do ne in large p ublic interest. Therefore, the subordinate forums which are bound to apply law declared by Supreme Court are also duty bound to apply such dictum to cases which would arise in future. Since it is indisputable that a Court can overrule a decision there is no valid reason why it should not be restricted to the future and not to the past. Prospective overruling is not only a part of constitutional policy but also an extended facet of stare decisis and not judicial legislation".

12. When the Supreme Court while deciding a particular case did not hold that the law declared by it would be prospective in operation, it was not proper for the High-Court to say that the law laid-down by Supreme Court would be prospective in operation. If, this is to be accepted, then conflicting rules can supposedly be laid-down by the different High-Courts regarding the applicability of the law laid-down by the Supreme Court (**Sarwankumdar Vs. Madanlal, A.I.R.2003, SC1475).**

Applicability of Prospective Overrule :

13. Prospective overruling is a part of the principals of canal of interpretation and can be restored by the Supreme Court while supersending law declared by it earlier. In**,"M.A.Murti Vs. State of Karnataka, A.I. R.2003, SC 3821"** it is held that "It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken countrary to the law declared prior to the date of declaration are validated in large public interest. The law as declared applies to future cases. However, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling".

Conclusion:

14. Prospective overruling is not only part of Constitutional policy, but also an extended facet of stare decisis and not judicial legislation. Hon'ble, Justice Savant in**,"Managing Director Vs. D.Karunakar (1993((4) SCC 727"** discussed that, it is not well settled that the Court can

make the law laid down by them prospective in operation to prevent unsettlement of the settled position, to prevent administration chaos and to meet the ends of justice.

Some other Relevant case-laws :

1) "Kaliaschandra Sharma Vs. State of Raj. A.I.R. 2002, SC 2877"
2)"M/s.Somayya Organics Ltd. Vs. State of U.P. A.I.R.2001, SC 1722"
3) "M/s.Remand Ltd. Vs. M.P.Electric Board, A.I.R. 2001, S.C.238"
4) "State of H.P. Vs. Nupure Pvt. Bus, A.I.R.1999, SC 3880"
5) "L.Chandrakumar Vs. U.O.I., A.I.R.1997 S.C.1125"
6) "Managing Director ECIL Vs. D.Karunakar, A.I.R. 1994, SC 1074".

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