

Concept of Promissory Estoppel under Indian Contract Act

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MEANING OF THE DOCTRINE PROMISSORY ESTOPPEL

"Estoppel may be defined as disability whereby a party is precluded from alleging or proving in legal proceedings, that a fact is otherwise than it has been made to appear by the matter giving rise to that disability."¹

Estoppel in simple words is a bar which prevents a party from asserting a fact or putting up claim inconsistent with the position he previously took. It is said to be a rule which precludes a person from saying one thing at one time and another thing, totally inconsistent with the earlier one, at another stage.

The term "Estoppel," comes from an old-French word- "Estoupail" (or variation), which means "stopper plug", referring to placing a brake on the imbalance of the situation. The rationale behind estoppel is to prevent injustice owing to fraud or inconsistency.

The following statement of Bowen LJ is an instructive expression of the principle of promissory estoppel.

If persons who have contractual rights against others induce by their conduct those against whom they have such rights to believe that such rights will either not be enforced or will be kept in suspense or abeyance for some particular time, those persons will not be allowed by a Court of enquiry to enforce the rights until such time has elapsed....

The doctrine of promissory estoppel is an equitable doctrine. Like all equitable remedies, it is discretionary, in contrast to the common law absolute right like right to damages for breach

¹ Arvind Thapliyal and Kunal Kumar, *India: Doctrine Of Estoppel: Overview*, MONDAQ (Jun., 24, 2018 02:35 PM), <http://www.mondaq.com/india/x/262648/landlord+tenant+leases/Doctrine+Of+Estoppel+Overview>.

of contract. The doctrine has been variously called ‘promissory estoppel’, ‘equitable estoppel’, ‘quasi estoppel’ and ‘new estoppel’. It is a principle evolved by equity to avoid injustice and though commonly named ‘promissory estoppel’, it is neither in the realm of contract nor in the realm of estoppel.²

The true principle of promissory estoppel is where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it. It is not necessary, in order to attract the applicability of the doctrine of promissory estoppel that the promisee acting in reliance of the promise, should suffer any detriment. The only thing necessary is that the promisee should have altered his position in reliance of the promise. Hence, as the doctrine is a principle of equity, the courts have taken a prerogative to lay emphasis on equity and justice and have explained the doctrine of promissory estoppel in India.

In *Indira Bai v. Nand Kishore*,³ Sahai, J., stated “Estoppel is a rule of equity flowing out of fairness striking on behaviour deficient in good faith. It operates as a check on spurious conducting by preventing the inducer from taking advantage and assailing forfeiture already accomplished. It is invoked and applied to aid the law in administration of justice. But for it great many injustices may have been perpetrated.”

The best and simplest description of the doctrine of Promissory Estoppel and how it works is to be found in the following words of Lord DENNING:

“When a man, by his words or conduct, has led another to believe that he may safely act on the faith of them- and the other does on them- he will not be allowed to go back on what he has said or done when it would be unjust and inequitable to do so”⁴

² Chitranshul Sinha, *The Doctrine of Promissory Estoppel – Application to the Government*, LEGAL SERVICE INDIA (Jun., 24, 2018 03:16 PM), <http://www.legalserviceindia.com/article/l249-Promissory-Estoppel.html>.

³ (1990)4 SCC 668 (670)

⁴ *William v Roffey Bros & Nicholls (Contractors) Ltd* (1991)1 QB 1: (1990) 2 WLR 1153: (1990) 1 AII ER 612 (CA)

EVOLUTION OF DOCTRINE OF PROMISSORY ESTOPPEL

Promissory estoppel is a relatively new development. In order to trace the evolution of the doctrine in England, we need to refer to some of the English decisions. The early cases did not speak of this doctrine as estoppel. They spoke of it as “raising equity”. Lord Cairns stated the doctrine in its earliest form in the following words in *Hughes v. Metropolitan Railway Company*.⁵

A landlord had given notice to his tenant to repair the premises within six months, failing which the lease was to be forfeited. A month after this the landlord entered into negotiations for the sale of the land to the tenant and, consequently, during the period covered by the negotiations, and the tenant carried out no repairs. The negotiations failed to materialise and shortly thereafter the period of six months expired and the landlord claimed the lease to have been forfeited. But it was held that six months would run from the failure of the negotiations. The conduct of entering into negotiations was an implied promise on the part of the landlord to suspend to the notice and the tenant had acted on it by not carrying out the repairs. The court said-

“It is the first principle upon which all courts of equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results afterwards by their own act or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense, or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable having regard to the dealings which have thus taken place between the parties.”

This principle of equity made sporadic appearances but it was only in 1947 that it was restated as a recognized doctrine by Lord Denning in *Central London Property Trust Ltd v High Trees House Ltd*⁶, who asserted: “A promise intended to be binding, intended to be acted on, and in fact acted on, is binding so far as its terms properly apply.”

The plaintiff gave to the defendant a tenancy of a block of flats at a ground rent of £2500 a year for a period of ten years. As a result of the 2nd World war, the flats could not be fully let

⁵ (1877) 2 AC 439.

⁶ [1947] K.B. 130; (1956) 1 All ER 256

and, therefore, the plaintiffs agreed to reduce the rent by half the amount. In 1945, war conditions ceased to exist, and the flats became fully occupied, but the defendant continued to pay only the reduced rent. The plaintiffs' action to recover the full rent as reserved in the original lease from the middle of 1945 was successful, but not for the arrears.

One of the questions was what was the consideration for the agreement to reduce the rent. Apparently there was none. But in the opinion of DENNING J there was no necessity of finding consideration in a case like this where the promise is not set up as case of action, but only as a defence. The plaintiff having deliberately agreed to forego the rent and the defendant having acted on that promise up to the time of action, the plaintiff where stopped from alleging that there was no consideration for the promise.

In India, there are two stages in the evolution of the application of this doctrine; pre-Anglo Afghan case and post - Anglo Afghan case. Prior to this case, the position was that promissory estoppel did not apply against the Government. But the position altered with this case.

In *Union of India v. Anglo Afghan Agencies*⁷, the Government of India announced certain concessions with regard to the import of certain raw materials in order to encourage export of woollen garments to Afghanistan. Subsequently, only partial concessions and not full concessions were extended as announced. The Supreme Court held that the Government was estoppel by its promise. Thereafter the courts have applied the doctrine of promissory estoppel even against the Government.⁸

The term 'promissory estoppel' was used for the first time by the Supreme Court in the case of *Collector of Bombay v. Bombay Municipal Corporation*⁹. In this case the govt. of Bombay called upon the predecessor in the name of MC of Bombay to remove old markets from a certain site and vacate it on the application of MC in 1865. MC gave up that site and spent a sum of Rs. 17 lacks in erecting and maintaining markets on the new site. The collector of Bombay assessed the new site to land revenue in 1940 and the MC thereupon filed a suit for a declaration that it was entitled to hold the land even without payment of nay

⁷ AIR 1968 SC 718

⁸ Chitranshul Sinha, *The Doctrine of Promissory Estoppel – Application to the Government*, LEGAL SERVICE INDIA (Jun., 24, 2018 04:16 PM), <http://www.legalserviceindia.com/article/I249-Promissory-Estoppel.html>.

⁹ 1951 AIR 469

assessment. SC held that C has right to hold the land in perpetuity free of rent. Chandrasekhar Iyer J. while concurring with the majority rested his decision on promissory estoppels that the govt. could not be allowed to go back on its representation.¹⁰

The doctrine of Promissory Estoppel is premised to be conduct of a party making a representation to the other so as to enable him to arrange its affairs in such a manner as if the said representation is acted upon.¹¹

DENNING LJ in his judgement in *Combe v Combe*¹² said: “That principle does not create new cause of action where none existed before. It only prevents a party from insisting upon his strict legal rights, when it would be unjust to allow him to enforce them, having regard to the dealings which have taken place between the parties”

The final shape of the principle of promissory estoppel as it has resulted from the line of cases has been stated by Lord HODSON while delivering the opinion of the Judicial Committee of the Privy Council in *Emmanuel Ayodeji Ajaji v R.T. Briscoe (Nigeria) Ltd.*¹³

The principle is that when one party to a contract in the absence of fresh consideration agrees not to enforce his rights equity will be raised in favour of the other party. This equity is, however, subject to the qualifications: (1) that the other party has altered his position, (2) that the promisor can resile from his promise on giving reasonable notice, which need not be a formal notice, giving the promise reasonable opportunity of resuming his position, (3) the promise only becomes final and irrevocable if the promisee cannot resume his position.¹⁴

¹⁰ Madhubala Solanki, *Promissory Estoppel*, ACADEMIKE (Jun., 24, 2018 04:21 PM), <https://www.lawctopus.com/academike/promissory-estoppel/>.

¹¹ **L.M.T. Limited v. State of Uttar Pradesh**, AIR 2008 SC 1032

¹² (1951) 2 KB 215: (1951) 1 All ER 767 (CA)

¹³ (1955)1 WLR 761: (1955)2 All ER 657

¹⁴ AVTAR SINGH, CONTRACT AND SPECIFIC RELIEF ACT 136 (11th ed. 2013).

ESSENTIAL CHARACTERISTICS THE DOCTRINE OF PROMISSORY ESTOPPELS

The following are the essentials to make any promise binding on the Government:

1. The State makes the promise within the ambit of law.
2. There is an intention to enter into a legal relationship.
3. The other party must do an act in furtherance of that promise or is forbidden to do anything.

In the case of *Central London Property Trust v. High-trees House*¹⁵, High-trees leased a block of flats from CLP at a fixed amount of rent later at the time of war it was not getting tenants other flats were unoccupied because The defendant had difficulty in getting tenants for all the flats during war time. CLP agreed to reduce the rent amount till the war prevails. Then war was over, all the flats got occupied on the normal rent amount. The defendant asked high trees for the normal rent for the present time and for the earlier time also. High trees went to court; court held that high-trees acted upon the words of CLP that during the war time rent will be reduced, after the end of war amount cannot be claimed after the war they should continue with the normal rent only. In this case, Denning J established the doctrine of promissory estoppel. Here all the three ingredients are fulfilled.

ELEMENT OF DOCTRINE OF PROMISSORY ESTOPPEL

There are specific elements that must be present:

- Promisor made a promise significant enough to cause the promisee to act on it
- Promisee relied upon the promise
- Promisee suffered a significant detriment
- Relief can only come in the form of the promisor fulfilling the promise

JURISPRUDENCE BEHIND THE DOCTRINE

The doctrine of promissory estoppel is reasonable doctrine. Like all equitable remedies, it is flexible, in contrast to the common law absolute right like right to damages for breach of contract. It is a principle evolved by equity to avoid discrimination and though commonly named ‘promissory estoppel’, it is neither in the realm of contract nor in the realm of estoppel. In India, however, as the rule of estoppel is a rule of evidence, the ingredients of

¹⁵ [1947] K.B. 130

section 115 of the Indian Evidence Act, 1872, must be satisfied for the application of the doctrine. The doctrine of promissory estoppel does not fall within the scope of section 115 as the section talks about representations made as to existing facts whereas promissory estoppel deals with future promises. The application of the doctrine would counteract the constitutional provision, as under Article 299, which affords exception from personal liability of the person making the promise or declaration.

APPLICABILITY OF THE DOCTRINE OF PROMISSORY ESTOPPELS

The doctrine of estoppel does not apply to statutes. In other words, a person who makes a statement as to the existence of the provisions of a statute is not estoppel, subsequently, from contending that the statutory provision is different from what he has previously stated. A person may not represent the true status of a statute or law, but the other person who relies on such a representation is at liberty to find out the position of law on the matter and as the maxim says, ignorance of law is no excuse. So a person cannot take recourse to the defence of estoppel to plead that a false representation has been made regarding the provisions of a statute or law. The principles of estoppel cannot override the provisions of a statute. Where a statute imposes a duty by positive action, estoppel cannot prevent it. The doctrine cannot also be invoked to prevent the legislative and executive organs of the Government from performing their duties.

The case of *Motilal Padampat Sugar Mills v. State of Uttar Pradesh*,¹⁶ is a trendsetter regarding the application of the doctrine of promissory estoppel against the Government. In this case the Chief Secretary of the Government gave a categorical assurance that total exemption from sales tax would be given for three years to all new industrial units in order them to establish themselves firmly. Acting on this assurance the appellant sugar mills set up a hydrogenation plant by raising a huge loan. Subsequently, the Government changed its policy and announced that sales tax exemption will be given at varying rates over three years. The appellant contended that they set up the plant and raised huge loans only due to the assurance given by the Government. The Supreme Court held that the Government was bound by its promise and was liable to exempt the appellants from sales tax for a period of three years commencing from the date of production.

¹⁶ AIR 1979 SC 621

In *State of Punjab v. Nestle India Ltd*¹⁷, the Apex Court said:

“...promissory estoppel long recognised as a legitimate defence in equity was held to find cause of action against the Government, even when, and this needs to be emphasized, the representation sought to be enforced was legally invalid in the sense that it was made in a manner which was not in conformity with the procedure prescribed by the statute.”

The following conditions have been laid down as necessary to invoke no estoppel against a statute:

- The parties must bilaterally agree to contract irrespective of statutory provisions of the applicable Act.
- The agreement entered into by the parties must be expressly prohibited by the Act.
- The provision of law must be made for public interest and not pertain to a particular class of persons.
- The agreement of the parties should not have been merged into an order of the court which by the conduct of the parties had been dissuaded from performing its statutory obligations.

No Estoppel against a Minor

Suppose that a minor by misrepresenting his age induces another to contract with him, will there be any estoppels against him, or, in other words, will he be precluded from disclosing his true age in a litigation resulting from the contract? Even this question had at one time created a controversy. But it is now settled by a preponderance of authority that there is no such estoppels against a minor. The infant is not stopped from setting up the defence of infancy. The reason is very simple. There can be no estoppels against a statute. The policy of the law of contract is to protect persons below age from contractual liability and naturally the doctrine of estoppels cannot be used to defeat that policy. Thus, in a case before the Bombay High Court, Beaumont CJ reviewed the earlier authorities and concluded by saying: “The Court is of the opinion that where an infant represents fraudulently or otherwise that he is of age and thereby induces another into contract with him then in an action founded on the contract the infant is not stopped from setting up infancy.”¹⁸

¹⁷ AIR 2004 SC 4559.

¹⁸ AVTAR SINGH, CONTRACT AND SPECIFIC RELIEF ACT 150 (11th ed. 2013).

SIGNIFICANCE OF THE DOCTRINE OF PROMISSORY ESTOPPEL IN INDIA

Today we are living in a world where a promise of Government to any citizen or non citizen matters a lot especially if it is done in a contractual or business transaction. When a person relies on the Government's promise and invests hard earned money and the Government afterwards does not abide by its promise then it creates a position where the person's investment is in danger and he becomes helpless and paralyzed. The judiciary in India has played a very significant role in making the State responsible and accountable and made it abide by its promise.¹⁹

CONCLUSION

In conclusion, it can be said that if the Government of India or of any State in India makes a promise to any person and the promise is not inconsistent with the law of the land and is not against public interest, then afterwards it cannot refuse to abide by its promise. The Supreme Court of India has said that acting on the assurance or representations is enough and consequent detriment, damage or prejudice caused is not to be proved. It is also immaterial whether such representation was wholly or partially responsible for such alteration in the position. The Supreme Court has rightly observed that the concept of detriment now is not merely monetary loss but whether it appears unjust. It is inequitable that the promisor should be allowed to resile from the assurance or representation having regard to what the promisee has done or refrained from doing in reliance on the assurance or representation. There can be no promissory estoppel against the exercise of legislative power.

¹⁹ Shreya Dave, *The Doctrine of Promissory Estoppel*, MANUPATRA (Jun. 25, 2018, 02:30 PM), <http://manupatra.com/roundup/376/Articles/The%20Doctrine%20of%20Promissory.pdf>.