
IMPERIAL STUDY OF DOCTRINE OF PROMISSORY ESTOPPEL

Lavanaya Malani, O.P. Jindal Global University

INTRODUCTION

Doctrine of Promissory Estoppel is applied when a party endures loss and some kind of damage in reliance of the promise by the other party. The consideration is absent from the promise and detrimental reliance was shown by the party facing loss. It is applied to legally bind promisor on their promise and defend the promisee. Promissory Estoppel is an equitable Doctrine and is not a contract neither an estoppel. It was developed to prevent unfairness. This paper will explore the Doctrine of Promissory Estoppel and its origins, history and applicability under both Common law and Indian law. Also, the essay will establish that Promissory Estoppel is available against private individuals in India.

COMMON LAW

ORIGIN

Doctrine of Promissory Estoppel originated through the case of *Hughes v. Metropolitan Railway Co. Ltd.* (1877)¹. Lord Cairns declared that if the parties in the contract enter into their own negotiations with mutual consent and if one party has enforced these rights the other party will not be allowed to back out of it. This was the case which called Promissory Estoppel as the principle through which all Courts of Equity proceed. Also, in the case of *Jorden v Money*, (1845)² certain rules were established like Promissory Estoppel will be considered only by the portrayal of facts and not intentions and estoppel would work under the depiction of fact and not a law. However, these rules were not absolute rules.

HISTORY

The Doctrine flourished right from the beginning and appeared in many cases which lead to evolution of the principle. The iconic case of *Central London Property Trust Ltd. v. High Trees*

¹ *Hughes v. Metropolitan Railway Company* (1877) 2 A.C. 439.

² *Jorden v. Money* 5 H.L.C. 185 (1854).

House (1947)³ established that a promise would be legally applicable when the intention was to create legal contract and the other party relied and acted on the promise. The promisor cannot go back on the promise. This judgment by Denning J became the key judgment for cases in future and helped maintaining justice. Further, the case of *Combe vs Combe* (1951)⁴ also held that an offer by a party which results in a promise and the other party acts upon it then the other party has accepted it.

APPLICATION

The Doctrine is applicable when the following conditions are fulfilled. Beginning from when a direct and explicit promise or representation is made. The intention of forming legal relations is present and it can be depicted that the promisor is willing to give up rights. Further, the position of the promisee has been affected in reliance of the promise while it is not necessary that damage should be suffered like financial setback. It would be unfair to the promisee if the promisor goes back on their promise and would alter the position of the promisee.⁵

Promissory Estoppel can be used as a shield i.e., defence and not a sword i.e., actionable claim and it suspends rights not abolishes them. This was established in the case of *Combe vs Combe*. Just like in the case of *Central London Property Trust Ltd. v. High Trees House*, the promisor going back on his promise would alter the promisee's position and the landlord can be promissorily estopped from raising the rent back to its original value but not completely banned from doing it. Further, through the case of *Crab vs Arun District Council* (1975)⁶ it was derived that the Doctrine requires a pre-existing relationship for its enforcement.

INDIAN LAW

ORIGIN

The Doctrine of Promissory Estoppel does not fall within the ambit of Section 115⁷ of the Indian Evidence Act as the Doctrine focuses on future promises. Implementation of the

³ *Central London Property Trust Ltd v. High Trees House Ltd* (1947) K.B. 130.

⁴ *Combe v. Combe.*, [1951] 2 K.B. 215.

⁵ Dave Shreya, *The Doctrine of Promissory Estoppel*, Manupatra (June, 15 2021, 5:20 PM), <https://www.patnauniversity.ac.in/e-content/law/LLM2.pdf>.

⁶ *Crabb v. Arun District Council* [1975] 3 WLR 847.

⁷ Indian Evidence Act § 115.

Doctrine nullifies the provision under Article 299⁸ as it provides immunity from liability of the party making the promise.

Promissory Estoppel can be originated to the case of *Ganges Mfg Co. v. Sourajmul*⁹. It constituted certain rules like the court has the power to bring forth Promissory Estoppel on equity and good conscience to stop the promisor from going back on his promise. Moreover, a promise can bring forward an actionable claim and not just a defence and it is not important that this equity consideration rule passes between promisor and promisee.¹⁰

HISTORY

Through the case of *Collector of Bombay v. Bombay Municipal Corporation*¹¹ was 'Promissory Estoppel' first introduced in the Supreme Court. Moreover, the case of *Union of India v. Anglo Afghan Agencies*¹² the government declared some privilege regarding importing of raw materials. However, the concessions were not fully provided. The court held government liable with regards to Promissory Estoppel. Since this case estoppel started applying against government.

The ground breaking case of *M.P. Sugar Mills Ltd. v. State of Uttar Pradesh*¹³ is very important in the history of Promissory Estoppel. In the case the chief secretary had proclaimed 3 years of tax exemption to new industries setting up. Keeping this promise in mind the Sugar Mill took a huge loan to set up. However, the government changed their position in regards to the exemption of tax. Justice Bhagwati declared that government has to provide the exemption of tax for 3 years and it cannot go back on its words. Also, there should be no difference between a sovereign, a governmental and business or trading function with regards to implementation of Doctrine of Promissory Estoppel. Further, it is not necessary for both the parties to have pre-existing contractual obligations.

⁸ INDIAN CONST. art 299.

⁹ *Sorujmull and Ors v. The Ganges Manufacturing Co* (1880) I.L.R. 5 Cal. 670.

¹⁰ *Ramaseshan V, Promissory Estoppel and State Liability*, 31(4), *Journal of the Indian Law Institute*. 482, 490 (1989).

¹¹ *Collector of Bombay v. Bombay Municipal Corporation*, 1952 SCR 43.

¹² *Union of India & Ors. v. M/S. Indo-Afghan Agencies Ltd*, (1968) SCR (2) 366.

¹³ *Motilal Padampat Sugar Mills v. State of Uttar Pradesh.*, (1979) 2 SCC 409.

APPLICATION

The Doctrine of Promissory Estoppel has some prerequisites like promise or representation by one party to another. The other party should have acted upon the promise or in reliance of the promise. Further, going back on the promise would be detrimental to the other party. Thus, the promisor would be bound by the promise. These elements were justified in the case of *M.P. Sugar Mills Ltd. v. State of Uttar Pradesh* where the promise was made by the promisor and the promisee had acted upon the promise. If government backed out from the promise it would have resulted in huge loss to M. P. sugar mills.¹⁴

However, in some situations, the Doctrine of Promissory Estoppel does not apply like under a commercial contract, against a well-established principle, if the promise is not incorporated in the agreement of the parties and if the party's only condition for applying the rules of Promissory Estoppel is if they have changed their stance. The Doctrine of Promissory Estoppel was predominantly brought into action to prevent government's defaulting on their promises. However, this imposition doesn't extend to the legislative functions of the government. Also, courts do not require a contractual setting to enforce the Doctrine, but will only do so to remedy an injure.

Honourable S. Swaminathan in their article *Eclipsed by Orthodoxy* describes Section 2(d)¹⁵ of the Indian Contract Act as the origin of Promissory Estoppel. The cases of Promissory Estoppel like *Kedarnath v Gorie Mohamad* (1886)¹⁶ were covered under this section but later Promissory Estoppel became a distinct Doctrine. Professor Swaminathan also states that Promissory Estoppel is available only against the state in India.¹⁷ They used the MP Sugar Mills judgement to form this notion. However, I do not agree with this view. Promissory Estoppel is available against private entities as well. In the MP Sugar Mills judgement itself, Justice Bhagwati throws paramount importance on having the government equivalent to a private citizen in terms of application of Doctrine of Promissory Estoppel while considering their contractual liability. Thus, if our courts wish to determine the government equivalent to private individuals in the scope of Promissory Estoppel, it clearly implies that the Doctrine is available against private individuals in the first place. Further, in the case of *Century Spinning*

¹⁴ Ramaseshan V, *Promissory Estoppel and State Liability*, 31(4), *Journal of the Indian Law Institute*. 482, 490 (1989).

¹⁵ Indian Contract Act § 2, cl. D.

¹⁶ *Kedarnath Bhattacharji v. Gorie Mohammad*, (1886) 14 ILR Cal 64 (India).

¹⁷ Shivprasad Swaminathan, *Eclipsed by Orthodoxy: The Vanishing Point of Consideration and the Forgotten Ingenuity of the Indian Contract Act 1872*, 12 *Asian Journal of Comparative Law*, 141, 162 (2017).

and Mfg Co. Ltd. v. Ulhasnagar Municipal Council (1970)¹⁸, Supreme court held that Promissory Estoppel applies against private entities as well. The court established that both private and public entities have to keep the promise they made to the other party and backing out from the promise could result in a compromising position for the promisee. Although, there are not many cases of Promissory Estoppel against private entities and it is majorly used against government but it is still available against private individuals both as a cause of action and defence. However, the Doctrine cannot compel the private individual to undertake any action i.e., illegal in the eyes of law. Justice Bhagwati affirms this in the MP Sugar Mills Judgement.

¹⁸ Century Spinning and Manufacturing Company Ltd v. Ulhasnagar Municipal Council, (1970) 1 SCC 582 (India).