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Promissory Estoppel and the Control of Executive Powers

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ABSTRACT

Avoiding injustice and promoting a fair system where each person is at par with the other is the essence of law. Promissory Estoppel is mainly used under the common law in a case where a breach of contract occurs either between parties or against the government. It is basically a case where if the government promises something to the citizens of the country and the promise turns out to be one of such a nature which is not against the law and is permitted, as well as works in the favour of public welfare and interest, the government cannot refuse to fulfil such a promise made by it. The doctrine has its origins in the Principles of Equity which have been an original part of the English Legal System. The basic idea of proposing such a doctrine was to ensure the accountability of the government and the executive powers in cases where a promise is made to the citizens.

A major argument which was brought up was the differentiation between private and public bodies under the “doctrine of promissory estoppel”. It was asked by the authorities and powers to the courts to provide them an immunity to them which was declined under any executive functions.

It also provided that such a check is important to keep the executive powers of the government in control in consonance with the concept of checks and balances on the government. The courts clearly denied on making any clear demarcation or exception between private bodies/individuals and public bodies. The government will be held equally liable to fulfil all promises made notwithstanding the fact that there is no consideration provided in such a promise and the promise as such has not been put up in any formal recorded manner which is as stated under Article 299.

Keywords: *Executive, Power, Promissory Estoppel, Government, Decline, Equity, Promise, Checks and Balances.*

I. INTRODUCTION

The control of executive powers under the doctrine of promissory estoppel is only possible in a situation where the government does not have any reasonable fact or reason to not be held

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under the fulfilment of equity controlled by the doctrine. In a case where the government proves to the court that it would be unjust and against public policy and interest to perform the promise so made, the doctrine will stand displaced as the main essence of providing equity will not be served if the government is still made to fulfil the said promise. In such a case the court is expected to establish a balance between the delivering of equity along with a balance of the public interest at large.

As a part of further study, it is also specified that the estoppel can also not be used if it is in violation with any constitutional rights as well as powers conferred on the government. In the case of *C.Sankaranarayanan v. State of Kerala*², the court had rejected the plea of usage of doctrine of promissory estoppel against the government on the grounds that the estoppel cannot be used to violate or curtail any powers of the government as provided in the Constitution despite of such a mention in any promise or agreement made by the State.

It is also not allowed in a case where there is a request of repealing any provision or conditions in the Constitution as a promise made by the government. In *Mulamchand v. State of Madhya Pradesh*³, the court rejected the application of the doctrine as it was asking for the repealing of a very important provision of the Constitution which was against the general interest of the public. The court also held that it would not regard any promises which are not made in consonance with Article 299 of the Constitution in such cases against the government.

As a contrary to the exceptions of the application of the doctrine, in the case of *Motilal Padampat Sugar Mills v. State of UP*⁴, the plaintiffs had acted on the promise made by the government upon which later the government brought in a new policy which was not in the favour of the promise made earlier. The court held the government liable to complete the promise as there was no other exception or reason which could be stated by the government to provide for non-fulfilment of the said promise. There is another landmark judgement by the Supreme court in the case of *Express Newspaper Pvt. Ltd. v. Union of India*⁵ where it was found that there was a fraud in the use of powers by the government but the plaintiffs themselves were at a fault in the manner of representing the case. Therefore, the court held that the government cannot be held liable under the estoppel in cases where the facts have been misrepresented by the party itself. Similarly, in *Central Airmen Selection Board v.*

²*C. Sankaranarayanan v. State of Kerala*, (1971) 2 SCC.

³*Mulamchand v. State of Madhya Pradesh*, (1953) SCR 476.

⁴*Motilal Padampat Sugar Mills v. State of UP*, 1979 AIR 621.

⁵*Express Newspaper Pvt. Ltd. v. Union of India*, 1958 AIR(SC) 578.

Surinder Kumar⁶, the court displaced the doctrine of promissory estoppel because the party itself had recorded fake statements and submitted before the court. It was held that the estoppel will not be applicable in cases where the authority or the State has been misled by the party itself in any manner.

The paper has the object of explaining with reference to the leading cases and landmark judgements, how exactly is the Doctrine applied by the court in order to control the government's actions and the executive powers. It also talks about the various principles related to the doctrine as well as the implications arising from the application of the same, particularly in cases against the executive.

(A) Research Objectives

1. The basic idea to opt for this research topic comes from a realization that the existing laws regarding promissory estoppel against the government in India require new efficacies as well as approach and amendments in itself to match the existing the scenario of modern day developments in the common law structure and framework as well as the changing nature of contractual relationships and liabilities.

2. The major portion of the paper will be dealing with executive powers provided that there are several challenges and difficulties as well as advancements which has arisen in law over the past few years. There needs to be a check on the same and the reliability of the promises made by the government in such executive actions should be brought under strict review and a rationale for the same should be set up by the Court under the doctrine of promissory estoppel.

3. To examine the impact of the new amendments proposed as well as studies and findings of reports and studies on Promissory Estoppel and the idea of growing sense of jurisdiction of the Courts in taking in probative action in common law cases, mainly against the government in India particularly.

4. To compare the Indian application and concept of Promissory Estoppel with laws of the other countries for the same concept and its practical use during the study of this research.

5. To study the various laws and principles related to the application of the doctrine and providing better ideas for amendments and a forward approach which can be followed effectively in cases.

⁶Central Airmen Selection Board v. Surinder Kumar, (1998) 2 SCC 502.

(B) Research Questions

1. Whether Promissory estoppel and its definition as a whole is comprehensive and exhaustive in nature? What are the laws in effect currently which function and apply in consonance with this doctrine?

2. What are the major difficulties which are faced by the courts in the application of the estoppel?

3. What are the various amendments which have been brought about in this doctrine considering all the flaws in the original concept established from the English Legal System? Whether all the amendments brought are completely applicable and enforced properly by the Courts provided the conferred jurisdiction in this concept?

4. Related to the concept as being used in the legal systems of other countries, how effective can the doctrine be understood in context of the Indian laws?

5. What are the various recommendations which have been provided and can be executed to make the doctrine more applicable in the context of the existing common law system in the country? There is a significant lack of clarity in the concept which require more implementation measures. What suggestions can be provided for a critical analysis of the said provision by the lawmakers of the country?

(C) Significance of the Study

A promise made by any individual or the government in essence and consonance with the law of the land needs to be fulfilled. To keep a check on such fulfilment and to uphold the concept of equity, the doctrine of promissory estoppel is of utmost important. This doctrine also keeps a check on the executive powers of the government and their application. This study is important in order to understand the powers conferred on the courts with respect to contracts, agreements and promises made by the government and their non-fulfilment. It provides the scope of the judiciary and the control that it brings on the executive powers of the government.

(D) Research Methodology and Sources

The methodology used for the research and study of this paper is Doctrinal in nature. Such a research is considered a conventional form of research under which the study is based on various legal statutes, provisions, journals, case laws, judgements, law and information as well as various theories by the theorists of legal research. Various references from case laws as well as statutes have been taken throughout the course of the study. The judgements so

used are indicative of the nature and applicability of Promissory estoppel under various cases against the government in India.

The sources used by the researcher for the completion of this study are secondary in nature. As stated, the help of various case laws, judgements as well as obiter dicta has been taken. There is a reference taken from various papers from law journals as well as literature published on this specific concept under the Administrative law of the country.

(E) Literature Review

1. **“Doctrine of Promissory Estoppel, L.K. Sharma”** (p. 16-25) provides the basis of the research by providing the conceptual information, principles as well as application rules and what can be expected about the concept at large for the study.

2. **“Estoppel by Conduct and Election, K.R. Handley”** is based majorly on the political conduct of the government and the role of the various executive functionaries and how to keep their powers in control.

3. **“Administrative Statutory Interpretation: The Aftermath of Chevron V. Natural Resources Defense Council, Ruth Ann Watry”** talks about the various amendments which were made to the concept. The researcher has used this text to analyse the applicability of the amendments made to the estoppel’s concept.

4. **“Judicial Review of Administrative Discretion: How Justice Scalia and Breyer Regulate Regulators, Scott Allen Clayton”**, (p. 27-45) talks about the various judicial aspects and the jurisdiction of the court in matters against the government where the doctrine can be applied.

5. **“Dicey Morris & Collins, The emergent doctrine of equitable estoppel, 14th ed. (2006)”** at 7-031: "For the purposes of English domestic law, estoppel is sometimes said to be a rule of evidence. Whether ... it should be regarded as a rule of substance or procedure ... may well vary with the type of estoppel under consideration." This book provides the sole principles of the doctrine which are provided by the English law.

II. ANALYSIS

“Procedure is important. It acknowledges the value of and the need to protect certain interests or fails to do so; it can hinder or assist efficient administration.”⁷

Any procedure so followed must always be in consonance with the said statute related to it or

⁷Sam Marholono, Promissory Estoppel: A Basis for Enforcement of Governmental Promises by Third Parties, 4 The University of Chicago Law Review (1950).

common law in general. An act by the authorities may lead to cases of right to be heard or get consultation or to file a case altogether. Such an act may take up either one or both of these forms:

- a. Promise by the authorities for completion of action
- b. General procedure followed by law

The analogy of a promissory estoppel may come as an assumptive action in such a case where the parties may determine their own stance on the court's procedure of decision which will in turn lead to an expectation. Such a legitimate expectation always depends on the courts enforcement.

(A) Origin and Scope of the Doctrine

The concept of "promissory estoppel" was mainly started in common law countries in the aspect of modern contractual relationships and jurisprudential reasonings. This invention can be credited to Samuel Williston, Harvard Law School as he made this concept during his work on contracts.⁸

The doctrine has its evolution tracing back to the principles of equity. It was mainly introduced in order to bring law closer to justice by ensuring honesty, duty fulfilment and good faith in the governing bodies of a nation. The origination of this doctrine did not mention it as a "doctrine" but depicted it as "raising the equity"⁹.

In the past two decades, Indian courts have taxed their imagination to the full in order to improve it and grant our jurisprudence a position of honour, such as the dangerous basis of this amalgam of estoppel and contract. There has inevitably been a lack of continuity in the theory being a product of our courts, and its reach and boundaries have to be decided by a labyrinth of cases scattered over a span of a little over a century.

Even so, taking a formulation of the doctrine from the Supreme Court in M.P. by Bhagwati, J. as a standard one, we find that the doctrine is claimed to have a shape and applicability, as far as the states or other public authorities are concerned, in the following lines:

"Where a government or governmental agency makes a promise (meaning thereby a representation) knowing or intending that it would be acted upon by the promisee (representee) and if the promisee acting in accordance therewith and thereby alters

⁸B.F. Boyer, Promissory Estoppel; Requirements and Limitations of the Doctrine 98 *U of Pen. L Rev.* 459, note 1, 1950.

⁹Law Commission of India, Government of India, Promissory Estoppel (20/10/2020), <http://lawcommissionofindia.nic.in/101-169/Report108.pdf>.

hisposition, the government or the governmental agency would be heldbound by the promise (representation) and the promise would beenforceable against the government or governmental agency at the

instance of the promisee notwithstanding that there is noconsideration for the promise or that the promise has not beenreduced to writing in the form of a contract as required under Article 299.”¹⁰

The oldest source in Indian law of this concept has been shown to be held in *Ganges Manufacturing Co. v. Sourjmul*¹¹. A deal for the procurement of bags from the defendants was entered into by a specific corporation called M/s Cohen & Bros. They sent the company distribution notices while the supplies stood overdue for the endorsing company-that is, assigned-certain of the plaintiffs' distribution orders.

As the defendants failed to comply with their own shipping orders, the plaintiffs did not allow shipping of such bags, as the defendants had signed written orders at the company's request.

The following terms are written in such orders:"The bearer of this (order) will personally take delivery of each lot as required." The plaintiffs charged the defendants for failing to supply the bags. Having decreed the case, the defendants appealed and it was decided that through their actions, the defendants" induced the complainant to proceed. It was pointed out by CJ. Garth that it is not possible to take in every fallout of an argument as rules of estoppel being regarded as evidences.

Estoppels are questions of infinite complexity in the way of which the word is used in English legal diction and this is by no means confined to subject matters concerned with and in Chapter VIII of the Evidence Act¹².

In the *Ganges Manufacturing Company* case , three rules are expected to have been laid down, as stated by Justice Wad in *Jasjeet Films (Pvt.) Ltd v. Delhi Development Authority*¹³:

1. 1. the justice by means of representation is a distinctive category from that inserted in Sections 115¹⁴ and 117¹⁵and that court still has the right to invoke this theory of honesty and faith in order;
2. that a promise is capable of providing a cause for action and is not a defence;

¹⁰INDIA CONST. art. 299, amended by The Constitution (Eightieth Amendment) Act,2000.

¹¹*Ganges Manufacturing Co. v. Sourjmul*, (1880) ILR 5 Cal 669.

¹²Indian Evidence Act, 1872, Part VIII, No. 1, Acts of Parliament, 1949 (India).

¹³*Jasjeet Films (Pvt.) Ltd v. Delhi Development Authority*, AIR 1980 Delhi 83.

¹⁴Indian Evidence Act, 1872, § 115, No. 1, Acts of Parliament, 1949 (India).

¹⁵Indian Evidence Act, 1872, § 117, No. 1, Acts of Parliament, 1949 (India).

3. it is not mandatory that attention must pass here between promisor and the promisee for the implementation of this law of equity.

(B) The Changing Paradigm and the Nature of the Doctrine

Twenty years later, approximately, the Privy Council had to determine the terms of a government grant to the appellant's predecessors in the case of *Ahmed Yar Ali Khan v. Secretary of State*¹⁶. It referred to a private channel constructed over the Sutlej across the state land by the appellant's predecessors. In the Multan District, the Government valued the importance of the channel for farming. It later released an order indefinitely taking over the operation of the canal and strongly questioning the appellant's exclusive claim to canal property. In the Court of the Divisional Judge, Lahore, and the Chief Court of Lahore, the appellant lost. He succeeded in appealing to the Privy Council. In *Ramsden v. Dyson*¹⁷, the Privy Council applied the law.

As Narayana Nair aptly pointed "in essence, this verdict is built on the creation of the terms of a grant- it is not an agency for the implementation of the doctrine of promissory estoppel."¹⁸ There was no opportunity to create any such theory. Wad, J., made the bold assertion in *Jasjeet Films* that these two examples, namely *Ganges Mfg. Co.* and *Ahmed Yar Ali Khan* where questions have been addressed, such as whether a previous legal relationship between the parties is sufficient or whether the presence of consideration as an authority given is sufficient or whether the principle should function as a claim for damages or whether the doctrine can be used against it.

"Government or otherwise" and that such issues were settled by Indian Courts "at the beginning of the 20th century itself-while these issues are now being discussed in England and the U.S."

This doctrine is said to have been accepted and enforced by the High Court of Bombay in *Municipal Corporation of Bombay v. Secretary of State*¹⁹ and by the Supreme Court in *Collector of Bombay v. Municipal Corporation of Bombay*²⁰. In the former scenario, the Municipal Corporation of Bombay gives up its own property in favour of the government in view of the lease of government property produced in favour of the state.

¹⁶Michael Cameron, 'Equitable Estoppel: Its Genesis, Development and Application in Government Contracting', (1990) 19 *Public Contract Law Journal*, (20/10/2020) <https://www.jstor.org/stable/25755609?seq=1#metadata_info_tab_contents>.

¹⁷*Ramsden v. Dyson*, (1866) LR 1 HL 129.

¹⁸J.G Malark, *Contracts and Promissory Estoppel*, 20 *Virginia Law Review* (1993) available at https://www.jstor.org/stable/1067013?seq=1#metadata_info_tab_contents.

¹⁹*Municipal Corporation of Bombay v. Secretary of State*, I.L.R. 29 Bom. 580.

²⁰*Collector of Bombay v. Municipal Corporation of Bombay*, 1952 S.C.R. 43.

Upon making it part of the estate, the company built stables, warehouses etc. at substantial cost. A complaint against the company was filed by the Secretary of State for India in Council citing rent arrears at Rs. 12,000 per annum and for a claim to assess the loan. The company appealed to the High Court against the decision taken by the trial judge, setting aside on the grounds of error, affirmed the corporation's leasehold interests and instructed that a fair rent be set in compliance with the parties' arrangement. It was the High Court that operated mostly on an equity. Having been placed under the government's jubilation that a certain interest would be given, the municipal corporation took possession of the property with the government's approval and confidence in such a promise or anticipation and with the information of that agreement or intention.

(C) Intervention of the Courts and Problems Faced in the Application of the Doctrine

*Union of India v. Anglo Afghan Agencies*²¹ was a landmark case in the judicial acceptance of the doctrine of promissory estoppel. Although the doctrine had historically been used by courts across India to compel state or individual intervention, the manifest need for the doctrine in Indian jurisprudence was made concrete by *Anglo Afghan Agencies*.

With regards to the duty of the administration, there are three very relevant points made by the bench. Next, there is the force of statutory responsibility. The government argued that executive necessity will allow the government to behave in a manner unimpeded by its previous promises. The Supreme Court disagreed with this not only on the basis of the contractual duty from which the state cannot escape, but also on the basis of equity and estoppel.

In doing so, it draws on clauses from the Indian Contract Act to prove that once agreed, a request becomes a commitment. Thus, the first significant argument the bench makes is that an arrangement in the form of a commitment as specified in the Indian Contracts Act²² is a requirement in order for promissory estoppel to extend against the state. The first case that accepted an arrangement as enforceable on the grounds of the commitment was the *Anglo Afghan Agencies*, as opposed to a contract.

The second relevant point the bench holds is that, according to Section 115²³ of the Indian Evidence Act, the government should not have been legally stopped. The operative portion of Section 115 is:

²¹*Union of India v. Anglo Afghan Agencies*, A.I.R. 1968 S.C. 718.

²²Indian Contract Act, 1872, No. 9, Acts of Parliament, 1949 (India).

²³Supra note 17.

“When one person has, by his declaration, act or omission intentionally, caused or permitted another person to believe a thing to be true.”

The bench observed that "believing a thing to be real" necessarily implies that there has to be evidence that they caused others to believe in the actual reality of something in order for someone to be prevented under this clause. A futuristic declaration cannot be protected by such a clause, since the existing estoppel statute allows the purpose of the commitment to exist at present.

The third important statement raised by the bench is that, on arbitrary grounds of statutory requirement, regulatory actions are not excluded from liability. Justice Shah makes an argument that attempts to explain the ethical and legal justification of promissory estoppel. He states that if the president intends to rob a person of life and liberty through his exercise of discretionary authority, the same must have justification based in a law.

J. Shah takes Lord Denning 's approach to accepting promissory estoppel as a way of protecting people's rights against the State in *Central London Land Trust Ltd v High Trees House Ltd*.²⁴

With respect to both the quantitative and qualitative application of estoppel toward the state, there is considerable uncertainty between courts in India. Since there is no specific contractual reference to promissory estoppel, this issue is often exaggerated. In their position on the declaration of promissory estoppel against the state, the courts ought to be firmer.

(D) An Analysis of the Implementation of the Doctrine

*Motilal Padampat Sugar Mills v. State Of Uttar Pradesh And Ors.*²⁵ played a major role in shaping the interpretation of the doctrine by the judiciary. This case went ahead and took a path which was different from the doctrine's UK standard guidelines which were being followed. One of the key problems in the case of the Afghan Agencies was that it merely transplanted into the Indian context the way the High Trees case interpreted the doctrine in the UK.

The Motilal bench claimed that the UK restriction on promissory estoppel does not extend to the Indian sense because the doctrine is more developed under Section 115²⁶ of the Evidence Act as an equity clause, as opposed to estoppel. This necessarily means that the doctrine is not bound by the same rules that are bound to estoppel under the Evidence Act.

²⁴*Central London Land Trust Ltd v. High Trees House Ltd.*, (1947) KB 130.

²⁵*Motilal Padampat Sugar Mills v. State of UP*, 1979 AIR 621.

²⁶*Supra* note 17.

The bench also redefined, in the sense of the estoppel, the boundaries of executive necessity and public policy. Next, the bench created an exception to promissory estoppel, wherein if the implementation of the government's representation were not in the public policy interest, this equity would not be imposed by the courts. Second, a distinction is usually made by the bench, that even in the lack of a public policy effect, if the state offers the promising group fair notice to resume its original role, the government may be permitted to withdraw the promise.

(E) Comparison of the Indian Application of the Doctrine to Other Countries

The United Kingdom has witnessed some of the first cases of promissory estoppel, and a variety of findings in India surrounding the doctrine have been inferred explicitly or implicitly from cases in the United Kingdom.

Given this intertwining of the creation of the doctrine, the courts have diverged on a very critical front about the doctrine of the two nations. The first case to mention these disparities was the *Afghan Institutions*²⁷, while the case of *Motilal* further examined them. The United Kingdom courts have specifically ruled that promissory estoppel and patent estoppel will, and should, be separated from each other. They claim that while promissory estoppel is in fact reversible, in eliciting a certain behaviour, proprietary estoppel may be permanent. Furthermore, while *High Trees* held that the cause of action cannot be promissory estoppel itself, proprietary estoppel can confer this right on an individual.

Both *Anglo Afghan* and *Motilal* disagree with this differentiation in India. By claiming that there is no real qualitative difference between the two, both cases muddy the line between promissory and exclusive estoppel. The courts claimed that the principle of equity was embedded in all kinds of estoppel²⁸, and that it is illogical to claim that promissory estoppel should not be a cause of action in and of itself.

Altogether, the United States had a radically different solution to promissory estoppel. First, promissory estoppel only refers to "substantial character" actions²⁹; courts in the US have understood this to mean that the claimant has to suffer financial damage due to a change in place due to the pledge in order to bring a claim under promissory estoppel.

Promissory estoppel can be used in situations where the state is liable for fraud, especially in

²⁷Supra note 24.

²⁸M.P Thompson, *From Representation to Expectation: Estoppel as a Cause of Action*, 43 *Cambridge Law Journal* (1983).

²⁹V. Ramaseshan, *Promissory Estoppel And State Liability*, 41 *Journal of Indian Law Institute* (1989) available at https://www.jstor.org/stable/43951265?seq=1#metadata_info_tab_contents.

the form of contracts it has entered into. Fraud within a contract, moreover, is well known as a justification for deeming the contract invalid under contract law.³⁰ In making a state accountable for theft, it is uncertain what the status of promissory estoppel is, since there is already a controlling body of law in the context of contract law which will answer the same.

III. CONCLUSION AND RECOMMENDATIONS

The doctrine of promissory estoppel is an egalitarian adaptation doctrine³¹. It is in order to ensure that when seeking to execute the act that will serve as a consideration for a unilateral commitment from another party, no party to an arrangement causes any harm. This theory, however, should be enforced only after those requirements are met.

Next, his status must have been changed by the party trying to enforce the estoppel. Secondly, the other party could not have provided the party with fair warning or a fair opportunity to resume its position. Ultimately, the party should not be allowed to regain its original role. If the three conditions stated above are met, then the doctrine of promissory estoppel applies.

It is important to check the coercive powers of the State through the doctrine of promissory estoppel, and this doctrine is one that will definitely serve that aim by preserving citizens' right to contract. Recently, focus has been put on government commitments, especially in the field of contract law and business transactions.

It follows that protection must be provided to an individual citizen who spends his savings based on the pledge of the government merely to find that the government does not conform with its commitment.

It is also disappointing to notice that, after *Motilal Padampat Sugar Mills v Uttar Pradesh*³², the judicial pronouncements in India were neither uniform nor coherent. The tendency has been not to enforce the doctrine in recent times and to make the use of the doctrine of executive necessity as an effective defence. There is an opinion that doing so is not fair because it has a retrospective effect even though it is in the exercise of the legislative powers of the government.

Although the Supreme Court 's contribution and role in the establishment of the promissory estoppel doctrine has been important, the author is frustrated with the doctrine 's limiting

³⁰Stanley D Henderson, *Promissory Estoppel and Traditional Contract Doctrine*, 78 *The Yale Law Journal* (1969) available at https://www.jstor.org/stable/794874?seq=1#metadata_info_tab_contents.

³¹*Harbans Lal Malhotra & Sons Ltd. v. Union Of India* 2003, (1) AWC 610 SC.

³²*Supra* note 28.

view and narrow implementation³³. The powers and restrictions granted to the government, in particular for the good of its citizens, have a social role to play. The change in the mindset of the Supreme Court is not an agreeable one because it tilts the balance in favour of one against the other, with the triumph of the government against the average citizen.

³³Jit Ram Shiv Kumar And Ors. Etc v. State Of Haryana And Anr, 1980 AIR 1285.