

# **A Short Note on the Evolution of the Doctrine of Promissory Estoppel**

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## **ABSTRACT**

The short note aims to explore the evolution of the doctrine of promissory estoppel for determining the enforceability of promises to avert injustice. First, the note expounds on the origin and development of the doctrine of promissory estoppel in the common law jurisdiction of United Kingdom followed by its application. Later, it delves into a judicial discourse and how it has been made into application in India.

## **I. INTRODUCTION**

The doctrine of promissory estoppel is an equitable doctrine affecting the contract jurisprudence. The ambit of the doctrine is stated as follows: When a promisor makes a ‘clear and unequivocal promise’<sup>1</sup> encompassing “a commitment to future action, to which the promisee responds, as the promisor should have foreseen, by undertaking a specific act of substantial reliance sufficient to ensure that non-enforcement of the promise would be a manifest of injustice.”<sup>2</sup> This paper examines the doctrinal evolution and application of promissory estoppel in common law and in Indian jurisdiction. It further argues that the doctrine is applicable against public corporations and private individuals in India.

## **II. THE ORIGIN AND APPLICABILITY OF THE DOCTRINE OF PROMISSORY ESTOPPEL IN COMMON LAW**

In this part of the paper, I trace the evolution of the doctrine of promissory estoppel and examine its application in common law.

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<sup>1</sup> *Motilal Padampat Sugar Mills v. State of Uttar Pradesh*, (1979) AIR SC 621, at 631.

<sup>2</sup> Jay M. Feinman, *Promissory Estoppel and Judicial Method*, 97 HARVARD LAW REVIEW 678, 689 (1984), <https://www.jstor.org/stable/1340893>.

## **A. Historical Background**

The doctrine of promissory estoppel formulated on principles of justice and equity has influenced the contract law. The dominance of bargain theory of consideration in traditional contract law ignores the role of promisor in inducing reliance and unjustifiably allows promisors to prevent their responsibility. However, the “moral and legal obligation to fulfill promises”<sup>3</sup> *per se* necessitated the Courts to ensure enforcement of “deserving promises”<sup>4</sup> induced by reliance.

The doctrine of promissory estoppel originates from the principle of equity laid down by Lord Cairns in *Hughes v. Metropolitan Railway Company*<sup>5</sup>:

“ . . .if parties who have entered into definite and distinct terms involving certain legal results afterwards. . .which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced . . .will not be allowed to enforce them where it would be inequitable.”<sup>6</sup>

Subsequently, this principle was rejuvenated by Lord Denning J. in *Central London Property Trust Ltd. v. High Trees House*<sup>7</sup> wherein the enforceability of non-contractual variation of a contract was questioned. Lord Denning stated that a promise is valid when it is made with the intention of being acted upon and is acted upon irrespective of consideration.

The constitutive elements of promissory estoppel are enumerated below:

- (1) There has been a ‘unequivocal representation’<sup>8</sup> by the promisor regarding a ‘future conduct’<sup>9</sup>.

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<sup>3</sup> Michael B. Metzger & Phillips J. Phillips, *Promissory Estoppel and Reliance on Illusory Promises*, 44 SMU LAW REVIEW 841, 843 (1990), <https://scholar.smu.edu/smulr/vol44/iss2/4>.

<sup>4</sup> Stanley D. Henderson, *Promissory Estoppel and Traditional Contract Doctrine*, 78 THE YALE LAW JOURNAL 343, 353 (1969), <https://www.jstor.org/stable/794874>.

<sup>5</sup> [1877] 2 A.C. 439 [hereinafter *Hughes Case*].

<sup>6</sup> *Id.*

<sup>7</sup> [1947] KB 130 [hereinafter *Central London Property Case*].

<sup>8</sup> M.P. Thompson, *From Representation to Expectation: Estoppel as a Cause of Action*, 42 THE CAMBRIDGE LAW JOURNAL 257, 263 (1983), <https://www.jstor.org/stable/4506557>.

<sup>9</sup> Elise Bant & Michael Bryan, *Fact, Future and Fiction: Risk and Reasonable Reliance in Estoppel*, 35 OXFORD JOURNAL OF LEGAL STUDIES 427, 441 (2015), <https://www.jstor.org/stable/24562974>.

- (2) The promise has induced an ‘action in reliance by the promisee’ which is reasonably foreseeable by the promisor.<sup>10</sup>
- (3) The promisee has altered their position or suffered detriment which makes it unconscionable for the promisor to go back on their promise.<sup>11</sup>

## **B. Application of the Doctrine**

Promissory estoppel is being primarily used to effectuate non-contractual promises induced by reliance for preventing injustice. The application of the doctrine at common law has been delineated below:

- (1) Promissory estoppel is applied for enforcing future-oriented promises lacking consideration acted in reliance by promisee.
- (2) The protection of promisee’s reliance by forbidding the promisor from repudiating their promise is *sine qua non* for avoiding injustice. Under Section 90 of the Restatement of the Law of Contracts, a promise inducing action on part of promisee is ‘binding if injustice can be avoided only by enforcement of promise’.
- (3) It is applied irrespective of detriment suffered by promisee.<sup>12</sup> The promisee must have altered their position on assumption induced by promisor. However, detrimental reliance is needed for invoking promissory estoppel in Australia.
- (4) A pre-existing contractual relationship is not a prerequisite for applying promissory estoppel.<sup>13</sup>
- (5) Finally, the applicability of promissory estoppel as a cause of action differs in common law jurisdictions.

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<sup>10</sup> Benjamin F. Boyer, *Promissory Estoppel: Requirements and Limitations of the Doctrine*, 98 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 459 (1950).

<sup>11</sup> Thompson, *supra* note 8.

<sup>12</sup> See *Tool Metal Manufacturing Company v. Tungsten Electric Company Limited* [1955] 1 WLR 761.

<sup>13</sup> *Crabb v. Arun District Council* [1975] 3 WLR 847.

### III. THE GROWTH AND APPLICABILITY OF THE DOCTRINE OF PROMISSORY ESTOPPEL IN INDIA

In this part of the paper, I provide the exposition of the rise of promissory estoppel in India and examine the application of this doctrine against public corporations and private individuals besides being applicable against the State.

#### A. The Judicial Discourse

The Indian Contract Act, 1872, is a statutory transcription of the laws relating to contracts in English Common Law. Consideration defined under Section 2(d) of the Indian Contract Act refers to ‘an act or abstinence or promise at the desire of the promisor’ which instantiates the element of induced reliance.<sup>14</sup> The judicial discourse in India enlarging the concept of promissory estoppel started in 1968 in *Union of India v. Indo-Afghan Agencies*<sup>15</sup> wherein the Agencies (Respondents) relying on a non-contractual export promotion scheme by the Government were denied of the entitlement. The Apex Court observed:

“ . . .the equity which arises in their [Respondents] favor as a result of the representation made on behalf of the Union of India in the Export Promotion Scheme, and the action taken by the Respondents acting upon that representation under the belief that the Government would carry out the representation made by it.”<sup>16</sup>

Subsequently, the Court in *Motilal Padampat Sugar Mills v. State of Uttar Pradesh*<sup>17</sup> delineated the ambit of the doctrine of promissory estoppel which has been affirmed in several cases<sup>18</sup>.

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<sup>14</sup> 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, 158 (2017).

<sup>15</sup> AIR 1968 SC 718.

<sup>16</sup> *Id.*

<sup>17</sup> (1979) AIR SC 621 [hereinafter *Motilal Sugar Mills Case*].

<sup>18</sup> *State of Rajasthan v. Mahaveer Oil Industries*, (1999) 4 SCC 357; *Monnet Ispat and Energy Limited v. Union of India*, (2012) 11 SCC 1.

## **B. Applicability of the Doctrine in India**

The doctrine of promissory estoppel is based on equity and not on any vested right.<sup>19</sup> It is applicable as a cause of action when a person makes an unequivocal promise intending to create a legal relationship which induces the promisee to act in reliance of the promise and upon acting irrespective of any detriment suffered by promisee, a perceivable injustice arises when the promisor is allowed to go back on their promise.

It is well-established that promissory estoppel is applicable against the Government for enforcing their obligations, *albeit* a perusal of the doctrine of promissory estoppel which was comprehensively deliberated by the Apex Court in *Motilal Sugar Mills*<sup>20</sup> provides that the doctrine can be invoked and applied against individuals other than the State. There has been no reticence in allowing the operation of promissory estoppel against public corporations and private individuals.

The application of promissory estoppel against public corporations and private individuals have been set out by the Supreme Court in the case of *Century Spinning & Manufacturing Company Limited v. The Ulhasnagar Municipal Council*<sup>21</sup>. In this case, the Appellant (Century Spinning Company) had set up their factory in an industrial area in 1956 when no octroi duty was payable for the importation of materials. During 1962, a Municipality was constituted which assured to provide an exemption of seven years to the existing industries from paying octroi. Later, the Ulhasnagar Municipality became in charge of the industrial area in 1968 and levied octroi duty. Subsequently, the Appellants approached the Apex Court.

The Apex Court held that “A public body [public corporation] is, in our judgment, not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice.”<sup>22</sup> Further, the Court did not create a distinction between public corporations and private individuals and held that the representations made by public corporations (the Ulhasnagar Municipality) to any other person who altered their position by acting in reliance of this representation are bound as private individuals to uphold their promises which becomes inequitable on lack of enforcement of promises.

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<sup>19</sup> D.D. Basu, *Commentary on the Constitution of India, Art. 299. Contracts* 35 (9th ed., 2014).

<sup>20</sup> *supra* note 17.

<sup>21</sup> (1970) 1 SCC 582 [hereinafter *Century Spinning Company Case*].

<sup>22</sup> *Id.*

In *Radha Krishna Agarwal v. State of Bihar*<sup>23</sup>, the Supreme Court, *inter alia*, supported the decision in *Century Spinning Company Case* and held that public corporations are bounded in the same manner as the private individuals to perform their obligations which have induced the other person to alter their position or suffer detriment by acting in reliance of the promises made by them. Lastly, in *Motilal Sugar Mills* case, the Court held that “promissory estoppel cannot be invoked to compel the Government or even a private person to do an act prohibited by law.” Therefore, in the Indian jurisdiction, the Apex Court has affirmed the applicability of the doctrine of promissory estoppel to public corporations and private individuals other than the State.

#### IV. CONCLUSION

The doctrine of promissory estoppel emanating from the principles of equity aims to avert the manifestation of injustice by contemplating the enforceability of promises which have been induced by reliance and unsupported by consideration. This paper demonstrated the evolution and application of the doctrine of promissory estoppel in common law by analyzing the decisions in the cases of *Hughes* and *Central London Property*. Further, the paper examined the judicial discourse in India which contributed in emergence of the doctrine of promissory estoppel in India. By examining the decisions in *Motilal Sugar Mill*, *Century Spinning Company* and *Radha Krishna Agarwal*, it is clear that the doctrine of promissory estoppel is available against public corporations and private individuals other than the State in India.

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<sup>23</sup> AIR 1977 SC 1496 [hereinafter *Radha Krishna Agarwal Case*].