
SILENT DISQUISITIONS OF A PROMISE: AN ANALYSIS OF THE DOCTRINE OF PROMISSORY ESTOPPEL

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INTRODUCTION

The rise of promissory estoppel in the past half century has been described as "one of the most significant developments in contract law".¹ From the humble foundation as a substitute for consideration in donation related promise cases,² "this reliance-based doctrine has come to enjoy application in a wide variety of contexts".³ The doctrine of Promissory estoppel has been an area of contention since its dawn. The Doctrine of Promissory Estoppel is a fair principle developed to prevent counts of injustice in the society, however ordinarily named Promissory Estoppel, it falls in the circle of neither agreement nor estoppel. This standard is ordinarily summoned in precedent-based law if there should arise an occurrence of break of agreement or against a Government. The principle is famously called as Promissory Estoppel, Equitable Estoppel, Quasi Estoppel and New Estoppel. One might say that assuming the Government in India makes a guarantee to any individual and the guarantee isn't conflicting with the tradition that must be adhered to and isn't against public interest, then, at that point, a short time later it can't decline to maintain its guarantee. Thus in lieu of this complexity, the first part deals with origin and history of the doctrine including certain opposing rulings to the doctrine. The second section deals with the position of the doctrine at common law. Lastly, the third section ventures upon the position of the doctrine at Indian law.

ORIGIN AND HISTORY

Origin

In the past, Law of equity existed separately from common law; the former being developed at the court of equity. Promissory estoppel being a principle based on principle equity which was

¹ Jay. M. Feinman, *Promissory Estoppel and Judicial Method*, 97 HARV. L. REV. 678, 678 (1984).

² Benjamin F. Boyer, *Promissory Estoppel: Principle From Precedents: Parts I & II*, 50 MICH. L. REV. 639, 873 (1952).

³ Michael B. Metzger & Philips J. Philips, *Promissory Estoppel and Reliance on Illusory Promises*, 44 SMU L. Rev. 841, 841 (1990).

originated by Lord Cains in the Hughes judgement.⁴ Hence, common law borrowed this principle from the courts of equity. Lord Denning J, in the judgement of Central London Property Trust Ltd. v. High Trees House Ltd⁵ gave rise to the principle in common law through the obiter dictum in the judgement.

History

Through the course of various judgements the doctrines had various additions to it. Like in Crabb v. Arun District Council, 1975⁶, it was concluded pre-existing relationship is necessary to enforce the doctrine. Lord Scarman J. documented in the judgement that once the court established equity, courts determine the extend further. In the judgement of Tool Metal Manufacturing Co v. Tungsten Electric Co Ltd, 1955⁷ established that detriment is not perennial for application of the doctrine. If the party relied and acted upon the representation if adequate for it.

The doctrine had its fair share of contention as well. The foremost being, the high trees judgement essentially offended the rule developed in Jorden v. Money, (1845)⁸ which said that only a case dealing with present or past representation shall be grounds for estoppel, negating the central trees judgement, which gave birth to future claims. However, the said rule is not absolute, which is qualified by various exceptions and the rule had no application to such situations.⁹

Also it is argued that dictum of Lord Denning J. is incongruous with the judgement of Pinnel's rule (1774)¹⁰ and Foakes v. Beer (1884)¹¹. However, the principle in contention in the High trees was concerned with estoppels, which must be specifically pleaded; and a plea of estoppel was never broached in the latter cases¹²

⁴ Thomas Hughes v. Metropolitan Rly. Co., [1877] 2 App Cas 439.

⁵ Central London Property Trust Ltd. v. High Trees House Ltd., [1947] KB 130.

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

⁷ Tool Metal Manufacturing Co v. Tungsten Electric Co Ltd [1955] 2 All ER 657.

⁸ Jorden v Money [1843-60] All ER Rep 350.

⁹ Shreya Dave, *The Doctrine of Promissory Estoppel*, Manupatra, (20 May, 2021).
<https://www.patnauniversity.ac.in/e-content/law/LLM2.pdf>

¹⁰ Pinnel's Case [1558-1774] All ER Rep 612.

¹¹ Foakes v. Beer [1884] 9 App Cas 605

¹² Shreya Dave, *The Doctrine of Promissory Estoppel*, Manupatra, (7 January, 2022).
<https://www.patnauniversity.ac.in/e-content/law/LLM2.pdf>

POSITION AT COMMON LAW

“In the absence of a bargain, justifiable reliance and moral obligation are the only grounds upon which common law courts enforce promises.”¹³ Thus we saw the birth of the equitable principle, named, promissory estoppel. However Till this date, courts have been a bit reluctant to apply the doctrine widely. They have adopted a conservative approach. This is because the courts believe that the doctrine would eventually ‘cut up the doctrine of consideration by the roots if a promisee could make a gratuitous promise binding by subsequently acting on it’, a notion which was vouched by Lord Denning J, themselves in *Central London Property Trust Ltd. v. High Trees House Ltd.*

Also at common law level, the doctrine can only be only used as a defense and rather not as a cause of action. The said principle finds its existence in *Combe v Combe*, 1951¹⁴ where Lord Denning J, states that the promissory estoppel is a “shield rather than sword.” The reasoning for this is, that the doctrine could become a back hand way to obliterate the doctrine of consideration. Further it has been culminated that just mere acts of indulgence, especially in cases of commercial transactions, there cannot be instances of promissory estoppel there.¹⁵

The ambit of the doctrine extends to public authorities¹⁶. Further, the doctrine is available for usage against the government and individual as well, like it is seen from cases of *Combe v. Combe* where courts heard the appeals on pleas of promissory estoppel in a case which involved individuals.

POSITION AT INDIAN LAW

The first trace of the doctrine traces back to the case of *Ahmad Yar Khan v. Secretary of State* (1901)¹⁷. In this judgment, the Privy Council stopped the government from acquiring a private land. After its usage in *Indo-Afghan Industries* (1968)¹⁸ the doctrine was not prolific in usage and was essentially waning away.¹⁹ However, “The judgment of Bhagwati, J. in *M.P. Sugar*

¹³ Kevin M. Teeven, *A History of Promissory Estoppel: Growth in the Face of Doctrinal Resistance*, 72 TENN. L. REV., 1111 (2005).

¹⁴ *Combe v. Combe.*, [1951] 2 K.B. 215.

¹⁵ *Tool Metal Manufacturing Co v. Tungsten Electric Co Ltd.*, [1955] 2 All ER 657.

¹⁶ *Lever (Finance) Ltd. v. Westminster Corporation.*, [1970] 3 All ER 496.

¹⁷ *Ahmad Yar Khan v. Secretary of State*, (1901) SCC OnLine PC 12.

¹⁸ *Union of India v. Indo-Afghan Agencies*, (1968) 2 SCR 366.

¹⁹ Chandralekha Ghosh, *Promissory Estoppel: Its Space in Public Law*, 18 STUDENT BAR REV. 59, 64–74 (2006).

Mills rose like the morning sun clearing the misty atmosphere with a bold and imaginative approach to the whole problem.”²⁰ The judgement was also described as the “sheet anchor of the doctrine of promissory estoppel” in *R.K Deka v. Union of India* (1984)²¹.

In India, our law allows the doctrine to be used both as a defence and as a cause of action. The *MP Sugar Mills* (1979)²² judgement itself said that the doctrine can be enforced and initiate proceeding, effectively bringing a cause of action. However, the SC did acknowledge that such allowance may cause dilution of the principle of consideration and for this they do keep a check that it doesn’t dilute the principle of consideration. The doctrine here also works mere on reliance, i.e., alteration of position without a need for detriment.²³ However, this approach was critiqued by the Law commission, who called for a necessary presence of detriment for enforceability.

Also in Indian Law, No estoppels are available against minors. As the court said “The law of estoppel cannot be invoked in aid to validate that which is void under the law”.²⁴ Thus as any contract with a minor is void, there cannot be any estoppel against them.

Further, there hasn’t been profuse conversation of consideration against promissory estoppel. In fact, the mere relationship or difference between them is still not clear. Only in one judgement named *Sat Narain v. Union of India* (1961)²⁵, the Punjab High Court applied both. This application was however, incorrect because “for if a court holds that a plaintiff is bound by a contractual undertaking, it need not invoke its equity jurisdiction for a new estoppel. Existence of a valid contract or consideration is *noi a sine qua non* for the application of promissory estoppel.”²⁶

One area of auxiliary deliberation, I believe exists is that no court has ventured upon the scope of induced reliance mentioned in Section 2(d)²⁷ of the Indian Contract Act itself. Professor Shivprasad Swaminathan, also highlights the same paradox in his article “eclipsed by

²⁰ V. Ramaseshan, *Promissory Estoppel and State Liability*, 31 *Journal Of The Indian Law Institute* 482, 501 (1989)

²¹ *R.K Deka v. Union of India*, AIR. 1984 Del. 413.

²² *Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.*, (1979) 2 SCC 409.

²³ *Delhi Cloth and General Mills Ltd v Union of India*, (1988) 1 SCC 86.

²⁴ *Jagar Nath Singh v. Lalta Prasad.*, 1908 SCC OnLine All 13

²⁵ *Sat Narain v. Union of India*, AIR 1961 Punjab 314.

²⁶ I.C. Saxena, *The Twilight of Promissory Estoppel*, 16 *Journal Of The Indian Law Institute* 1, 20-42 (1974).

²⁷ Indian Contract Act § 2, cl. D.

orthodoxy”²⁸. He also highlights in his article that ‘promissory estoppel can only be used against a government’ as derived from the MP sugar mills judgement. However, I find this understanding to be incorrect. I believe promissory estoppel is available for application against private individuals as well. The same judgement states:

“If the Government makes such a promise and the promisee acts in reliance upon it and alters his position the Government would be compelled to make good such promise like any other private individual.”

Thus if the court extends Government’s liability to that of a private individual, pertaining to making good of promises, it eventually portrays itself that promissory estoppel would be available against individuals in India in the first place, then only it can be extended to government. This notion was also seen in *Central Spinning & Manufacturing Co. Ltd. & Anr. v. The Ulhasnagar Municipal Council & Anr.* (1970)²⁹ where Shah J. stated “Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice.” The MP Sugar Mills judgement itself support this argument by another instance where Justice Bhagwati goes on to say that “The doctrine of cannot be applied in teeth of an obligation or liability imposed by the law. It cannot be used to compel the Government or even a private party to do an act prohibited by law”.

Various notable scholars also hold the same opinion for the usage of doctrine among private parties.³⁰ Also there has been numerous cases highlighting the usage of promissory estoppel against individuals. For example in the case of *Jyotsna Nalinikant Kilachand and others V. Nandlal Kilachand Investment Pvt Ltd. and others* (1993)³¹, Mr. Chagla, applied the doctrine for his plea and used the MP Sugar mills judgement as the support. Justice Jhunjhunwala eventually ruled that “Relying upon the promise of the respondents as recorded in the said minutes in accordance therewith the said order was passed, the petitioners permitted the

²⁸ 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, 145 (2017)

²⁹ *Central Spinning & Manufacturing Co. Ltd. & Anr. v. The Ulhasnagar Municipal Council & Anr.*, 1970 SCR (2) 854

³⁰ A. G., Noorani, *Promises by Government*, 19 ECONOMIC AND POLITICAL WEEKLY 979, 979 (1984).

³¹ *Jyotsna Nalinikant Kilachand v. Nandlal Kilachand Investment Private Limited.*, (1993) Bom 47.

seventh respondent to dispose of the said premises and altered their position. Even on the basis of equitable principle evolved by the courts for doing justice, viz., the doctrine of the promissory estoppel, the respondents are now estopped from challenging the said order as invalid, void and/or illegal.” Thus this judgement clearly supports the notion that promissory estoppel can be used against private individuals.