

The Doctrine of Promissory Estoppel is an equitable doctrine. This principle is commonly invoked in common law in case of breach of contract or against a Government. The doctrine is popularly called as 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 sphere of contract nor in the sphere of estoppel.

The Principle of Estoppel in India is a rule of evidence incorporated in Section 115 of The Indian Evidence Act, 1872. The section reads as follows :

□ *When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe such a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.*□

The Doctrine of Promissory Estoppel is an equitable doctrine. This principle is commonly invoked in common law in case of breach of contract or against a Government. The doctrine is popularly called as 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 sphere of contract nor in the sphere of estoppel. 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. The only thing necessary is that the promisee should have altered his position in reliance of the promise.

This rule is applied by the Courts of Equity in England, as estoppel is a rule of equity. In India, however, as the rule of estoppel

is a rule of evidence, the ingredients of 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 ambit 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 negate constitutional provision, as under Article 299, which affords exemption from personal liability of the person making the promise or assurance. In India the courts have taken the initiative to lay emphasis on equity and justice and have explained the doctrine of promissory estoppel in India.

The essential ingredients for the application of the doctrine are:-

- " That there was a representation or promise in regard to something to be done in the future
- " That the representation or promise was intended to affect the legal relationship of the parties and to be acted upon accordingly
- " That it is, one on which, the other side has, in fact, acted to its prejudice.

EVOLUTION OF THE DOCTRINE OF PROMISSORY ESTOPPEL:-

Promissory Estoppel is a relatively a new development. We need to refer to some of the English decisions in order to trace the evolution of the doctrine. 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, [1877] 2 A.C. 439:

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 irregular appearances but it was only in 1947 that it was restated as a recognized doctrine by Lord Denning in

Central London Properties Ltd. v. High Trees House Ltd., [1947] K.B. 130, who asserted:

A promise intended to be binding, intended to be acted upon, and in fact acted upon is binding.

In the early stages of its formation, the doctrine of promissory estoppel could not be invoked by the promisee unless he had suffered detriment or prejudice. All that is required is that the party asserting the

estoppel

must have acted upon the assurance given by him. The alteration of position by the party is the only indispensable requirement of the doctrine. In India, the doctrine was marked by the two significant cases that are: - 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 was changed with this case. In

Union of India v. Anglo Afghan Agencies,

the Government of India announced certain concessions with regard to the import of certain raw materials in order to encourage export of woolen garments to Afghanistan. Subsequently, only partial concessions and not full concessions were extended as announced. The Supreme Court held that the Government was estopped by its promise. Thereafter the courts have applied the doctrine of promissory

estoppel

even against the Government.

ESSENTIAL CHARACTERISTICS TO MAKE PROMISE BINDING ON GOVERNMENT:-

1. The State makes the promise within the scope/parameters 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.

NO ESTOPPEL AGAINST STATUTE AND LAW:-

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 estopped

, 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 can not 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

can not override the provisions of a statute. Where a statute imposes a duty by positive action, estoppel can not prevent it. The doctrine cannot also be invoked to prevent the legislative and executive organs of the Government from performing their duties.

In **Jit Ram Shiv Kumar v. State of Haryana** , a municipality granted exemption from octroi for developing a mandi , but later revoked the

exemption. Further, it granted the exemption in keeping with the terms of the original sale of plots, but levied taxes again. Even though, a claim of estoppel

against its legislative power was not allowed. Similarly it is the case with the tax laws. If the law requires that a certain tax be collected, it cannot be given up, and if the government give any assurances that now the taxes would not be collected would not bind the Government, when it chooses to collect the taxes. Thus it was held that when there was a clear and unambiguous provision of law that entitles the plaintiff to a relief, no question of estoppel arises.

Thus in order to invoke the maxim of No estoppel against a statute following conditions are to be fulfilled:-

" 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.

APPLICATION OF DOCTRINE OF PROMISSORY ESTOPPEL TO GOVERNMENT:-

The doctrine of promissory estoppel has also been applied against the Government and the defence

based on executive necessity has been categorically negated

. The Government is not exempted from liability to carry out the representation made by it to its future conduct and it cannot on some undefined and undisclosed grounds of necessity or expediency fail to carry out the promise made, solemnly by it. The Supreme Court has refused to make any distinction between a private individual and public body so far as the doctrine of promissory

estoppel

is concerned. But if the promise is on behalf of the Government is unconstitutional, against any statute or against public policy the question of promissory estoppel

against Government does not apply. Thus, the Government through its officers is bound by the doctrine and cannot invoke any

defence

for their inaction, unless backed by statutory authority. Statute imposes a public duty while the duties imposed by a promise are owed by the Government not to the public but to private individuals.

Where the Government makes a promise knowing or intending that it would be acted upon by the promisee and, in fact, the promisee acting in reliance of it, alters his position, the Government will be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution of India. It is indeed the pride of constitutional democracy and the rule of law that the Government stands on the same footing as a private individual so far as obligation under the law is concerned. Since the doctrine of promissory estoppel is an equitable doctrine it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to the Government to abide by the promise made by it, the court would not raise equity in favor of the promise and enforce the it against the Government. The doctrine of estoppel cannot be invoked for preventing the Government from acting in discharge of its duties under the law. The doctrine 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. There can be no promissory estoppel against the exercise of legislative power.

Further, it indicates that estoppel cannot be applied against the Government if it jeopardizes the constitutional powers of Government. In the case of *C. S ankananarayanan v. State of Kerala*, the court rejected the contention of estoppel and held that the power conferred by the Constitution cannot be curtailed by any agreement. The court also did not allow the plea of estoppel against the Government if it had the effect of repealing any provision of the Constitution. In *Mulamchand v. State of Madhya Pradesh*, the Supreme Court did not apply estoppel against the Government in cases of contracts not entered into in accordance with the form prescribed in Article 299 of the Constitution. The court held that if the estoppel is allowed it would mean the repeal of an important constitutional provision, intended for the protection of the general public.

The case of *Motilal Padampat Sugar Mills v. State of U.P.* 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.

In *State of Rajasthan v. Mahavir Oil Mills*, a new industry was set up on the basis of an incentive scheme from the Government wherein it promised some benefits. The Supreme Court held that the State Government was bound by its promise held out in such situation. However, it does not preclude the State Government from withdrawing the scheme prospectively. It could withdraw the scheme even during its continuance, if public interest so requires. Even if the party has altered his position, if due to supervening circumstances public interest requires the withdrawal of benefits, the benefits can be withdrawn or modified. The supervening public interest would prevail over promissory estoppel

. Further, in

Century Spinning and Manufacturing Co. v. Ulhasnagar Municipality

, the municipality agreed to exempt certain existent industrial concerns in the area from octroi

duty for a period of seven years. However, later on it sought to impose duty. This was challenged and the Supreme Court, while remanding the case to the High Court, held that where the private party had acted upon the representation of a public authority, it could be enforced against the authority on the grounds of equity in appropriate cases even though the representation did not result in a contract owing to the lack of proper form. However, the case of

Jit

Ram Shiv

Kumar v. State of Haryana

, cast a shadow on the

Motilal

case where it was held that the doctrine of promissory estoppel

is not available against the exercise of executive functions of the State. The Supreme Court in *Union of India v. Godfrey Phillips India Ltd.*

soon removed this doubt. The court held that the law laid down in

Motilal

case represents the correct law on promissory estoppel

There is another landmark judgment given by the Supreme Court in *Express Newspaper Pvt. Ltd. v. Union of India* where the doctrine was used to preclude the Government from quashing the action of a minister for approval of a lease as it was within the scope of his authority to grant such permission. Thus the fraud on power was checked. But if there is misrepresentation by the party itself to obtain the promise then the State is not bound by the promissory estoppel as held in *Central Airmen Selection Board v. Surrender Kumar*.

The court said that a person, who has himself misled the authority by making a fake statement, could not invoke this principle, if his misrepresentation misled the authority into taking a decision, which on discovery of the misinterpretation is sought to be cancelled.

SIGNIFICANCE OF THE DOCTRINE OF PROMISSORY ESTOPPEL IN INDIA:-

Where a promise is made by a 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. The judiciary in India has played a very significant role in making the State responsible and accountable and made it abide by its promise.

CONCLUSION:-

In last, it can be said that if the Government 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. Hence, one can rely on the lawful promise of the Government of India and can safely act on the same because the law of the land is there to protect the citizens.