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Binding the Unbargained Promise: History and Evolution of Promissory Estoppel

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- Himanshu Boruah,
Student at NEF Law College, Guwahati

1. INTRODUCTION

Traditional Contract law follows exchange of consideration from both parties before a promise becomes enforceable. Despite of this primary rule to form a legal contract there is a loophole too, known as promissory estoppel. It is an equitable doctrine, designed to prevent arbitration in the process. If promise's life completely relies on the promise that made by the promisor himself, then the promisor will be as held liable, even so the contract between them was not legally bound.

The doctrine of promissory estoppel is stated in Bharatiya Sakshya Adhiniyam Act, 2023[1] (previously as The Indian Evidence Act, 1872). Section 121[2] of the act states that when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe 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 .With this doctrine a few inevitable questions arise to judiciary; that how far will this doctrine of promissory estoppel can proceed, what will be the limit, whether the absolute justice will be given to a party whom already convicted as guilty under this doctrine and many more queries.

[1]Bharatiya Sakshya Adhiniyam Act, 2023 (previously The Indian Evidence Act, 1872).
[2] Section 121 of the act Bharatiya Sakshya Adhiniyam Act, 2023 (previously The Indian Evidence Act, 1872).

II. EVOLUTION OF PROMISSORY ESTOPPEL

The topic Doctrine of Promissory Estoppel is a somewhat recent innovation. To trace the evolution of the doctrine, it is necessary to look into some judicial decisions. Promissory estoppel concerns certain circumstances where a party to a contract promises something which is different from the original terms of the contract and where the other party to the contract alters his/her behaviour in reliance on that promise. In such situations, English law will prevent the former party from enforcing the original terms of the contract. The doctrine has some promises binding even when they are not supported by consideration. Prior, in the cases the term Estoppel word was not used. Instead, they used "raising equity''. In England, Lord Cairns stated the doctrine in its earliest form in the following word in Hughes v. Metropolitan Railway Company Co., (1877) 2 App Cas 439 (HL)[3].

Hughes v. Metropolitan Railway Co., (1877) 2 App Cas 439 (HL): Lord Cairns LC said that "in all cases in which one party has acted on the belief that the strict legal rights of the other parties will not be enforced or that the time or the money required will be postponed, and the other party has either directly encourages that belief or will not be heard in equity to dispute its encouragement, equity will restrain the strict enforcement of that right". The doctrine then slept for over 70 years.

In Central London Property Trust Ltd v. High Trees House Ltd, [1947] KB 130[4] in the king's bench division of the English high court, the Principe articulated by Lord Cairns was revived by Denning J. A landlord had agreed to a reduction of the rent payable for the whole period of World War II but when he went to ask for the full rent for this period also at the end of the war Denning said (although obiter[5] as actual claim was for full future rent) landlord could not do this as was bound by the promise throughout the duration of the war. The case itself forms the basis of promissory estoppel in modern law.

However, the doctrine of promissory estoppel in English law could at best serve as a shield and never a sword (Combe v. Combe, [1951] 2 KB 215)[6]; that is to say could be relied as a defence in an action, but never for itself could be a cause of action. Subsequent Indian judges rejected this aspect.

[3] Hughes v. Metropolitan Railway Company Co., (1877) 2 App Cas 439 (HL)
[4] Central London Property Trust Ltd v. High Trees House Ltd, [1947] KB 130
[5] Obiter: Obiter (short for obiter dictum, plural obiter dicta) is a Latin phrase meaning "said in passing". In law, it refers to a comment or observation made by a judge that is not essential to reach the final decision in a case.
[6] Combe v. Combe, [1951] 2 KB 215

India had no similar statutory provision and thus the Supreme Court had to borrow the equitable principle from English law and tailor it to the legal system where the state has always been and continues to be the most common defendant promising action. Union of India v. Indo-Afghan Agencies Ltd (better known as Anglo Afghan Agencies), AIR 1968 SC 718, (1968) 2 SCR 366[7] an export promotion scheme framed by the government offered its citizens claiming under the scheme import entitlement certificates on the full value of exports made. The respondent exporter had, in accordance with the scheme, exported woollen goods to Afghanistan but was granted an entitlement certificate for an amount much less than what was legally due to them. The Supreme Court found that "even executive necessity cannot justify an executive action which is considered solemn" where it has had an impact on the rights of the citizenry, who has responded and acted on that representation, and that Article 299[8] of the constitution, though governing formal contract, does not rule it. This is one of the first cases when doctrine of promissory estoppel squarely applied to Government of India. This case is the beginning of Indian use of doctrine. However, the term doctrine of "Promissory estoppel" was first used in Supreme Court in the case of Collector of Bombay v. Bombay Municipal Corporation (1951 SCR 1193),[9] In this case the govt. of Bombay called upon the predecessor in the name of MC of Bombay to remove old markets from a certain site and vacate it on the application of MC in 1865. MC gave up that site and spent a sum of Rs. 17 lacks in erecting and maintaining markets on the new site. The collector of Bombay assessed the new site to land revenue in 1940 and the MC thereupon filed a suit for a declaration that it was entitled to hold the land even without payment of nay assessment. SC held that C has a right to hold the land in perpetuity free of rent. Chandrasekhar Iyer J. while concurring with the majority rested his decision on promissory estoppels that the govt. could not be allowed to go back on its representation. The doctrine of Promissory Estoppel is premised to be conduct of a party making a representation to the other so as to enable him to arrange its affairs in such a manner as if the said representation is acted upon.

In Century Spinning & Manufacturing Co. Ltd v. Ulhasnagar Municipal Council, AIR 1971 SC 1021, (1970) 1 SCC 582[10] A municipality induces entrepreneurs to establish and develop

[7] Union of India v. Indo-Afghan Agencies Ltd (better known as Anglo Afghan Agencies), AIR 1968 SC 718, (1968) 2 SCR 366

[8] Article 299 of The Constitution of India,1950
[9] Collector of Bombay v. Bombay Municipal Corporation (1951 SCR 1193)
[10] Century Spinning & Manufacturing Co. Ltd v. Ulhasnagar Municipal Council, AIR 1971 SC 1021, (1970) 1 SCC 582

industries in an area by offering, among other incentives, octroi exemption. This offers the legal basis for applying doctrine on local authorities as the Supreme Court ruled that the complaint of the company that the municipality should be restrained from levying octroi on the goods entering within its territorial limits founded on the municipality's representation deserves to be heard.

III. EXCEPTIONS OF DOCTRINE OF PROMISSORY ESTOPPEL

An exception in law exempts specific situations from a general rule. It limits the scope of a statute or contract by carving out specific conditions where the standard legal liability or rule does not apply. There are exceptions also seen in the doctrine of promissory Estoppel to prevent unlawful usages originated from use of this doctrine.

1.) This doctrine of estoppel does not apply to statutes. A person cannot take recourse to the defence to plead that a false representation has been made regarding the provisions of the statute. Where a statute imposes positive duty, estoppel cannot prevent it.

2.) The doctrine cannot be applied to prevent the government from acting in discharge of its functions. It cannot be used to compel the government to do act which is prohibited by law. The doctrine cannot be applied if it jeopardizes the constitutional powers of the government.

3.) The doctrine does not apply against the exercise of legislative power. The legislature cannot be precluded from exercising its legislative functions by resort to the doctrine.

IV. CONCLUSION

It may thus be concluded that the doctrine of Estoppel is rooted in justice, equity and good conscience. It obligates a person to be truthful to his words. It forbids playing "hide and seek" or "fast and loose" with the situation. In short, while estoppel regards truth an issue the same stands overridden by equity.

Thus, if a promise is made by the Government, the Government cannot go back on it as long as such promise does not conflict with provisions of the statute or public interest; it has got to adhere. SC occupies a vital and a significant position by taking upon itself the task of fixing the state for being responsive to the promises. The SC has given a verdict that having relied upon the representation of the government that alone is sufficient to bring about the doctrine into operation, no damage or injury needs to be inflicted. Thus, any Indian can boldly depend on the assurance of the government because it stands protected by the laws of the country.

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