

A Study on the Upsurge of the Doctrine of Promissory Estoppel

Ayushi Sharma¹, Chandni²

^{1,2}School of Legal Studies and Governance, Career Point University, Kota

Abstract-

*The Doctrine of Promissory Estoppel is based on the rule of equity and has been developed gradually in India. The term “Promissory Estoppel” constitutes of two terms that is **Promise** and **Estoppel**. The term promise is defined under section 2(b) of Indian Contract Act, 1872 which states that, once assent is expressed in return to a proposal it becomes a promise. And the term estoppel is defined under section 115 of Indian Evidence Act, 1872 which states that once a declaration has been made by a person then he has the obligation to abide by such declaration. The integration of these terms adduces the doctrine which ascertains an incumbency that once an individual makes a promise then he cannot retract from it later on. In this paper the evolution and the impact of the promissory estoppel has been analysed as well as the contradictions faced in the sphere of the doctrine and the suggestions cited through diverging aspects are also enumerated, the paper also pivots on elaborating the 108th report given by the law commission of India. This doctrine is named differently via different act therefore also known as Equitable Estoppel, Quasi Estoppels and New Estoppel, in the foregoing statement the paper leads to exhibit the impact of promissory estoppel on governmental actions and this appears to be a constitutive element of this paper. The paper aims to draw a generalization regarding variant fact situations which needs neutralization.*

Key Words – Contract, Case, Doctrine, Estoppel, Promise.

I. Introduction

Promises are built on trust and fulfilled by trust. Even, promises are manifestation of trust flowed from one person to another and vice-versa. Therefore, law plays a crucial law in ensuring that all the promises made with an intention to create legal obligation are fulfilled while abiding the law.

The doctrine of promissory estoppels has not been defined specifically anywhere yet. Section 90 of the restatement (second) of contracts states that;

The doctrine of promissory estoppels has been derived from two terms that are promise and estoppels, both the terms are specifically defined under law and has been codified as well. In

Indian Contract Act, 1872, 'promise' is enumerated as when a person made a proposal to a person and as per the revert the other person signifies his assent, the offer considered to be accepted and becomes promise. In case of promise two parties are found these are defined under section 2 (c) of the Indian Contract Act, 1872.

While the term estoppels has been defined under section 115 to 117 of the Indian Evidence Act, 1872 that is – Section 115 of Indian Evidence Act defines the meaning of estoppels as – when one person made a declaration of by his act or by his omission which may be either active or passive to another person and such other person upon believing such act to be true does an act the neither that person nor his agent shall be allowed to deny the truth of such act, declaration or omission.

Here the term active indicates that the person performing that act does it with an intention to cause other person to believe it to be true. And the term passive indicates that the person performing the act permits the other person to believe it to be true.

This rule has been derived from the case of *pickard v. sears*.¹This rule is actually based on a legal maxim that is – *Allegans contraria non-est audiendus* which means, a person adducing to contract shall not be heard.

And section 116 and 117 deals with another type of estoppels that is statutory estoppels which relates to the matter of immovable property that is under tenancy or license and movable property that is under bill of exchange and bailment.

Both of these terms that is promise and estoppels when combines forms a new concept that is doctrine of promissory estoppels which neither properly lies under the promise of Indian Contract Act, 1872 nor lies under the estoppels of Indian Evidence Act, 1872.

- Evolution of the Doctrine of promissory estoppels

The doctrine of promissory estoppels is not codified under any of the laws and its existence is made through various judicial precedents, initiating with English law as per the section 90 of restatement (second) of contract .

This is supported later on by various judgements, this principle was mainly invoked in the case of *Central London property trust ltd. V. high trees*² – The essential elements of this principle has been elucidated as it is a relationship between promisor and promise who are binding with each other with an intent to create legal relationship through a clear and unequivocal promise made by one party and the other party relies on it thus it is unjust with respect to the party promising

¹(1837) 6AD 2 EL 469, 471

² (1947) K.B. 130.

to retract from such promise. And asserted that - “*A promise intended to be binding, intended to be acted upon, and in fact acted upon is binding.*”

This principle of promissory estoppels again found its place in *Hughes V. Metropolitan Railway company*³ – and same principle was implied in this case as of negotiations and when one party relies on the promise made by the other party then it inequitable or would be unjust to allow the other party to retract from their own promise which was supposed to be fulfilled.

While in India a concept of estoppels is already enumerated in the section 115 of Indian Evidence Act, but there is slight indifferences found as the term estoppels not covers wholly the concept of promissory estoppels it can be said that the basic structure of the doctrine of promissory estoppels is taken from the base concept of estoppels but the doctrine made its place differently as this came in existence in Indian through its application on governmental actions.

II Literature Review

The doctrine of Promissory estoppels has various aspects and found its importance in varied areas as in the Indian law it has been invoked by its application against governmental actions as this concept has never been properly or specifically defined in any of the law thus its emergence and existence is seen through various judicial precedents.

Various researches has been conducted on this doctrine but has been having varied approach but talking about the essence the issue of trust and the reliance of one party on the party making the promise has always found its place in all the researches. In one of the research by Eric Alden “rethinking promissory estoppels” the main element addressed was that injustice can be avoided only by enforcement of the promise. One of the research states about the whether the promise made induce action or forbearance and if it happens then does it affects the applicability of the doctrine.

To further conduct the research on this doctrine it is apparent that the main three attributes found from the restatement of contracts section 90⁴ must be considered and these are as follows:

1. Whether the promisor while making the promise expected an action or forbearance from the promise?
2. Whether promisee while relying on such promise did induced an action?
3. Whether the mere enforcement of the promise would cover the reliance damages?

³ (1877) 2AC439

⁴restatement refer to restatement of the law, published by the american law institute as scholarly refinements of black letter law; theses includes restatement of contracts, second completed by American law institute in 1979

In answer of these many researchers made several reasoning and not only these questions were answered but their researches opened several doors to many questions.

This paper aims to review those open doors which laid more doubts in analyzing the concept of the doctrine of promissory estoppels.

Research Gaps

As it is evident that doctrine of promissory estoppels is an uncodified topic thus with various precedents it will always unfold various layers whenever be applied on different aspects as stated above with the growing research on the doctrine of promissory estoppel several locks has been cracked open which leads to a new segment of research and this paper aims to be the key of all those locks along with elaborating the already enunciated researches with new approaches and point of views.

In the already researched paper a few outlines have been drawn that can be further researched as in the already mentioned research promissory estoppels has been related with the term estoppels but a comparative study is needed to done to draw the application of promissory estoppels. Secondly, it has been evident that quasi-contract somehow related to promissory estoppels but at the same time both are too distinct in the conceptual view and this factor is still needs to be fragmented separately. Thirdly the relation of consideration with promissory estoppels is still vague. Thus, this paper desires to lead to a path to consummate all those research gaps. And most importantly the application of promissory estoppels on governmental actions although its an already elucidated topic still with more aspiration the issue will be addressed.

Research Objectives

These are the concatenated objectives aims to be unfolded through this research paper:

1. To gain familiarity with the doctrine of promissory estoppels
2. To analyse whether promissory estoppels is a part of estoppels or a whole different concept.
3. To determine whether promissory estoppels is an exception to consideration or treated as a substitute for consideration under Indian Contract Act, 1872.
4. To unfurled that whether there is any correspondence between the concept of unililateral promises and doctrine of promissory estoppels.

5. To enunciate that a mere enforcement of promise in case of promissory estoppels is sufficient to reinstate the position of the aggrieved person.
6. To draw more attention towards the application of doctrine of promissory estoppels on governmental actions.

Apart from these the research is conducted to unclatch other small hatchways, for instance the upsurge of the doctrine of promissory estoppels.

III Research Methodology

Research methodology refers to the strategies or the methods or the procedure employed while conducting the research as well as in quoting the research in the research paper.

This paper focused on two types of research methodologies and these are named as follows along with the justification of its operation in the research paper:

1. Doctrinal legal research methodology- As this methodology focuses on the descriptive and detailed analysis of legal rules found in primary sources of law that are cases, statutes or regulations. And while conducting the research of doctrine of promissory estoppels the primary sources played a major role.
2. Qualitative empirical legal research methodology – As this methodology focuses on extracting the data then interpreting it as well as organising it while showing its application as well. Therefore, to show the applicability of the doctrine of promissory estoppels this methodology came handy.
3. Comparative legal research methodology – This methodology evolves around critical analysis of bodies of law. Thus, to illustrate the correspondence of the doctrine of promissory estoppels and other regulations a critical analysis was needed to be done.

Thence, with all above three methodologies the research paper drawn the necessary finding that are required to be done.

IV Research Analysis And Discussions

Promissory estoppels is a doctrine which focuses on trust between the parties even without the presence of legally framed contracts this doctrine follows the principle of equity. It is not defined in any law or statutes but its glimpse are seen in few acts, mainly the Contract Act and the Evidence Act.

- Promissory Estoppel When Coupled With Indian Contract Act, 1872

Indian Contract Act, plays an important role in the enforcement of promises, as per section 2(h) of Indian Contract Act. Every promise that is formed with an intention to enter into legal obligation coupled with consideration⁵ are converted into agreement which later on forms the legal contract. It is clear that, to create legal obligation it is necessary that a legal contract should be framed with all the essential elements⁶ that are:

1. free consent of parties that are competent to contract
2. for lawful consideration
3. lawful object
4. not expressly declared void.

- Unilateral Promises

Unilateral promise is defined according to the liability responsibility as it is a promise made from one party with an intention to adduce some act by other party. In case of *Aloka bose v. Parmatama Devi*,⁷ “A unilateral contract refers to a gratuitous promise where only one party makes a promise without any return promise.” thus the promisee in a promise is not bound to act upon such promise but if he takes a move as yearned by the promisor then he can foothold the promisor in terms of the promise made by him as the action performed by him is treated as acceptance as well as consideration of the promise.

Same has been enumerated in the case of *Jamuna Das v. Ram Kumar*⁸ that; “ here the defendant agreed to pay from his own self-earned income certain sums proportionate to the value of goods that are imported by him, to a charitable society, the promise was not made enforceable as it was considered being done without consideration”

Therefore it can be said that unilateral promises somehow either directly or indirectly requires consideration that is why cannot be treated upon the doctrine of promissory estoppel but this also lays question that whether an action in return of the promise done by the promisee in case of promissory estoppel amounts to consideration along with acceptance, similar to the situation of unilateral promise?

- Consideration

Consideration being one of the crucial essential of a contract is defined as follows under ICA,

⁵ Section 2 (d) of Indian Contract Act, 1872

⁶ Section 10 of Indian Contract Act, 1872

⁷(2009) 2 SCC 582: AIR 2009 SC 1527

⁸AIR 1937 pat 358: 169 IC 396

1872. In the case of *Rann V. Hughes*⁹ it was observed by the lord chief baron skynner that; “*it is undoubtedly true that every man is by the law of nature bound to fulfil his engagement. It is equally true that the law of the country supplies no means, nor affords any remedy, to compel the performance of an agreement made without sufficient consideration.*”

It is clear that consideration serves as an important part for ensuring that a promise is lawfully abided, but there is an exception to it that is doctrine of promissory estoppel.

As the doctrine of promissory estoppel acts on the future conduct thus such future conduct is sufficient to execute the doctrine. Because this is the main objective of the doctrine that even though all the requirements of a contract are not fulfilled still the mere assurance with a future conduct can be abided by the law as well as executed if it is made with an intention to create legal obligations. Thus, here it is considered that promissory estoppel mounts as an alternative to consideration while executing a promise.

- Quasi Contract

A contract must be framed properly between two parties but in certain circumstances implied contracts can also be enforced and certain circumstances which appears like contract are also enforced as completed contract and known as quasi-contract There is relationship discovered between both promissory estoppels and quasi contract.¹⁰ Both of them exist when actual contract is not formed but still the equations formed will be enforced by the law but the approach of both of the principles is quite different as in promissory estoppels there is a promise while in quasi contract no promise exist.

Quasi-Contract basically shows five kinds of quasi-contractual obligations that are –

1. Section 68 serves for the claim for necessities provided to the person on whose behalf contract is done as he is incapable to do so
2. Section 69 states about reimbursement of person having interest in paying money due by another person.
3. Section 70 highlighting the obligation of person who is enjoying the benefit of non-gratuitous act.
4. Section 71 states about responsibility of finder of goods.
5. Section 72 enumerates the liability of person to whom money is paid, or things delivered either by some mistake or under coercion.

In all of the five obligation there is no proper formation of contract but still compensation is

⁹((1778), 7 T.R. 350 n.)

¹⁰ Chapter v of Indian contract Act, 1872 (sections 68 to 72)

provided to prevent any kind of injustice which might be caused to the aggrieved party. While looking further into the doctrine of promissory estoppel a party can recover when there is a promise formed from one party and the other party reasonably relied on that promise which incurred a substantial detriment to such party if not fulfilled and would cause injustice. On the hand, in the case of quasi contract no promise is formed and it is considered as a kind of implied contract where one party has done an act and other party has enjoyed the benefit generated through such act.

It is evident that both the principles works upon the theory of unjust enrichment that is benefit of one at the cost of another in the case of *Fibrosa Spolka Akeyjna v. Fairbarin Lawson Combe Barbour ltd.*¹¹ the theory of unjust enrichment¹² was mentioned –

“it is clear that any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which is against conscience that he should keep.”

While thinking of the remedies provided under both the principles the approach is again quite different as under quasi-contract damages provided are kind of restitution that means the aggrieved person can recover the damages for the fair market value of the benefit conferred. On the hand, in promissory estoppels reliance damages are recovered which possess the aim to restore the aggrieved person on the same position he has been before relying on that promise which changed his position.

Promissory estoppels and quasi-contract does share few similarities on the basis of their objects but both approaches with a different standard of view point and the obligation lies quite different in both of them.

➤ Apportionment Of Promissory Estoppel In Indian Evidence Act

Under Indian Evidence Act, 1872 chapter VIII¹³ deals with the concept of estoppels. Section 115 says – when one person made a declaration of by his act or by his omission which may be either active or passive to another person and such other person upon believing such act to be true does an act then no one, either that person or his agent be allowed to deny the truth of such act, declaration or omission.

Here, term ‘active’ indicates that the person performing that act does it with an intention to cause other person to believe it to be true. And the term passive indicates that the person

¹¹1943 AC 32 (HL)

¹² Given by Lord Mansfield

¹³ Section 115 to 117 of Indian Evidence Act, 1872

performing the act permits the other person to believe it to be true. This can be illustrated from the case of *Sarat chunder Dey v. Gopal Chunder*¹⁴ - it was held that if any person does any conduct by which other person is induced and acted upon such belief then the principle of estoppel shall apply.

And the doctrine of promissory estoppel took place whenever any person had promised to another person with an intention to create legal obligations and upon relying on such promise the promisee has acted upon then the promisor shall not be allowed to retract from his own promise. In the case of *Motilal padampat sugar mills v. state of uttar Pradesh and ors*,¹⁵ it was held that government has to fulfill its promise and has to exempt the plaintiff in view of the doctrine of promissory estoppel.

It is evident that both the concept shares the same view point that nobody can blow hot and cold air at the same time and both the principles also follow the same legal maxim that is, “*Allegans contraria non-est audiendus*” which means that whenever any person speaks contrary to his own statement he shall not be heard. And both relies upon the principle of equity.

Basically, the rule of Estoppel is based on following principles these are –

1. No person should be unjustly enriched
2. No person should be benefitted by his own mistake
3. Nobody should make any contradictory statement.

And in the doctrine of promissory estoppel the first and third principles are found with the same intensity. But still there are few contradiction between these two principles that are;

Firstly, in the case of estoppel the act, omission or declaration is made to an existing fact. While, in the case of promissory estoppel the promise is made regarding a future intention. Secondly, the rule of estoppel is based by parties consideration while, promissory estoppel is supported by the futuristic act of parties not by the consideration. Thirdly, the concept of estoppel acts as a rule of defence while, the doctrine of promissory estoppel acts as a cause of action to obtain relief. In the case of *Banwari lal v. sukdarshan*¹⁶ – court held that estoppel can be used as a shield not as a sword.

Thus the concept of estoppel and promissory estoppel while upsurging same base of still differs in their approaches.

➤ Application of promissory estoppel on governmental actions

The principle of estoppel does not apply on the conducts of government thus, government can

¹⁴(1891) 19LA 203

¹⁵ A.I.R 1979 S.C. 621

¹⁶ (1973) 1 SCC 294

alter their rules and regulation anytime. In the case of *Jit Ram shiv kumar v. state of Haryana*¹⁷— in this case municipality first granted exemption then later on revoked it even though the rule of estoppel was not applied against its legislative powers.

Similarly, in the case of *State of Karnataka v. K.K. Mohandas*¹⁸- it has been held that no rule of estoppel shall apply against any statutes, this means the rule of estoppel cannot override the provisions of a statute.

Provision of doctrine of promissory estoppel regarding its applicability on private individual or public entities is missing thus it is not clear whether this doctrine of promissory estoppel applies on the actions of government or not.

Thus to clear those discrepancies, in various judgements this issue has been raised. The term ‘promissory estoppel’ foremost used by the justice Chandreshekhar Iyer in the case of *Collector of Bombay v. Bombay Muncipal Corporation*.¹⁹

Subsequently, in *MP Sugar mills v. state of Uttar Pradesh*²⁰, court held that the government cannot later on retract from its own assurance.

In the case of *U.O.I V. VVF Ltd and Ors*²¹ It was held by the Supreme court that while promissory estoppel is a principle of equity and public interest is higher equity thus with a view to serve public interest first the amending of the exemption notification due to misuse by certain manufacturers is served right.

Thus, by the decision of Supreme Court it can be stated that yes, the doctrine of promissory estoppel applies on the government with subject to article 299 of the Constitution of India yet the rule of public interest and statutes cannot be overridden by this doctrine.

VRResearch Findings

Doctrine of promissory estoppel is a doctrine based on the rule of equity which not merely act as a shield but also as a sword and also treated as a cause of action to attain relief, this doctrine provides the reliance damages which put the aggrieved person in the same position as if the promise has not been made thus if the position of the promise is altered then it will be again reversed by the enforcement of the promise made by the promisor. Thus, a mere performance of promise is sufficient to obtain such reliance damages.

It can also be invoked by analysing the correspondence of the rule of estoppel and promissory estoppel that they are related to each other as both relies on the same principle of equity but still

¹⁷ A.I.R 1980 S.C. 1283

¹⁸ ILR 2002 KAR 2872, 2002 (3) KarLJ 450

¹⁹ 1959 AIR 469, 1952 SCR 43

²⁰ AIR 1979 SC 621

²¹ 2020 on 22 April

with their applicabilities a slight difference can be traced. It can be said that promissory estoppel has a wider concept by its application on the governmental actions.

While, relating the doctrine of promissory estoppel with the legislative powers of government it can be enunciated that promissory estoppel applies on the government but cannot override the following rules that are:

1. The law of statute
2. The principle of public interest
3. Rule of equity and public policy.

In the matter of consideration and promissory estoppel it is unfurled that in promissory estoppel the future conduct of the party is itself sufficient to create legal obligation upon the promisor there is no need of a proper consideration unlike unilateral promises in which the action adduced from the promise is treated as consideration as well as acceptance.

VI Conclusion

It is clear that there are several circumstances occurred between individuals where a proper contract is not framed still there was intention to create legal obligation between the parties and it becomes necessary to fulfill those promise or assurance for the public interest and to maintain the humanity which is based on trust thus to ensure such trust between individual and especially between government and the public this doctrine of promissory estoppel should be upsurged but at the same time it should be ensured that there should be no unjust enrichment and the principle of equity cannot override the principle of public interest. They both must run simultaneously.

VII Recommendation

There Are Several Problems Encountered while dealing with the doctrine of promissory estoppel for instance to invoke the doctrine of promissory estoppel does the promisee first need to suffer all the detriments then only while the court deals the case the doctrine can be invoked by the court and then applied because there is no statute regarding it, similarly while ensuring its application on the actions of government the extent of its applicability is decided on the some viewpoints traced through various judgment thus to revoke all these discrepancies it is necessary to insert this doctrine in the statute to uphold a clear view regarding its applicability.

This recommendation has already been made under the 108th Report of the law commission of India which catalogues to insert a new section as 25A under Indian Contract Act, 1872.

VIII Scope For Future Research

Doctrine of promissory estoppel is conceptual issue and its extent of applicability will always be in issue especially regarding its effect on governmental action and as there is no provision enumerated regarding it thus it is possible to generate new view points with the upsurge of this doctrine and even though if any provision will be made regarding it then also several interpretations can be made as this is how law evolve. Interpretation of law always unfolds more locks with more keys.

IX References

Books

1. Avtar singh, contract and specific relief Act, 10th ed., 2008, Eastern Book Company, Lucknow
2. R.K. Bangia, Law of Contract-I, 6th ed, 2009, Allahbad Law Agency, Faridabad.
3. Avtar Singh, Principle of law of evidence

Websites

1. <https://www.barandbench.com>
2. <https://indiankanoon.org>
3. <https://lawshelf.com>
4. <https://www.researchgate.net>

Statutes Referred

1. The Constitution of India
2. The Indian Evidence Act, 1872
3. The Indian Contract Act, 1872
4. 108th Report of Law Commission of India