CHAPTER – 3
DOCTRINE OF PROMISSORY ESTOPPEL –
AN INTRODUCTION

3.1 Introduction –

It is the principle of truism that the “Change is the law of Nature”. With the passage of time, society changes in order to respond to the needs of the society. The law being a social institution also changes with the societal changes. As such, the “change” also becomes the nature of the law as well; the change as dictated by the changing needs of the society conforming to the cannons of justice, equity and good conscience. A legal system sensitive to these changes can be termed as progressive. In a modern society, changes are taking place at a rapid pace. A progressive and a responsive legal system have to take account of these changes and in the process it undergoes transformation by adopting new concepts, discarding obsolete ones and modifying others.

Lord Denning observes, “Many of the Judges of England have said that they do not make the law. They only interpret it. This is an illusion which they have fostered but it is a notion which is now being discarded everywhere. Every new decision – on every new situation – is a development of law. Law does not stand still, it moves continuously. Once this is recognized then the task of the judge is put on a higher place. He must consciously seek to mould the law so as to serve the needs of the time. He must not be mere mechanic, a mere working mason, laying brick on brick without thought to the overall design. He must be an architect – thinking of the structure as a whole – building for a society, a system of law which is strong, durable and just. It is, on his work that, civilized society itself depends”.

As a jural postulate of civilized society men must be able to assume that those with whom they deal in the general intercourse of the society will act in good faith, and as a corollary must be able to assume that those with whom they deal will carry

1 Friedman, Law in the Changing Society, Second Ed., 465
out their undertaking according to the expectations which the moral sentiment of the community attaches thereto. Hence, in a commercial and industrial society, a claim or want or demand of society that promises are kept and that undertaking is carried out in good faith, a social interest in the stability of the promises as a social and economic institution becomes of the first importance. This social interest in the security of transactions, as one might call it, requires that we secure the individual interest of the promisee, which is his claim or demand, to be assumed in the expectation created which has become part of his substance. The concept of promissory estoppel based on the principle of honesty, good-faith and fairness, is one example of such civilized society.

The principle of promissory estoppel is an emerging concept all over the world, in both common legal systems as well as in civil legal systems. Though this principle is of an ancient origin, yet it has not been developed to an extent to which the other branches of law have been developed in modern times. In India too, the principle of promissory estoppel, though recognized and applied, has yet to attain its true position. The principle has been applied by the courts in different fields of law such as the administrative law, the law of contract, service jurisprudence etc. It is because of its wide applicability and pre-eminence of this principle that Jt. Bhagwati remarked in *M.P. Sugar Mill*’s case, “The Doctrine is potentially so fruitful and pregnant with such vast possibilities for growth that it might upset existing doctrines which are looked upon almost reverentially and which have held the field for long number of years”. This revolutionary observation clearly brings out the importance of this principle in modern times and is a pointer to the course that law shall take in future.

The principle of promissory estoppel in its present form has evolved through the various judicial pronouncements, the credit for propounding the principle, must go to Lord Denning. He reformulated and reshaped the crude principle into a recognized doctrine in the *High Tree* case, from thereon, it saw many ups and downs and slowly but steadily found acceptability and sought versatility as a

---

4 AIR 1979 SC 618
5 (1947) 1 KB 130
principle of equity under various legal systems.

This equitable doctrine is an emerging beneficial branch of law, in the law of obligations and has been evolved by the courts to avoid injustice that results by sticking to the technical requirements of consideration in every enforceable promise. It is a principle evolved by equity, to lessen the severity of law. The basis of the principle is the inter-position of equity. Equity has always; true to form stepped into mitigate the rigors of strict laws. The Doctrine provides a safeguard against the exercise of arbitrary powers on the part of the executive or unreasonable use of discretion. By virtue of promissory estoppel, the credibility of Government promises is maintained. To some extent, promissory estoppel seeks to discipline the administrative authorities insofar as it insists that they cannot resile from their promises at their whims and fancy. If a promise is made, it must be kept. The principle bridges the gap between the strict law and the social necessities of the people. It has been realized that an insistence on the archaic doctrines of consideration and estoppel had caused a lot of injustice in various number of cases, for these doctrines do not cover the de-furto promises. Thus, the principle of promissory estoppel was evolved to provide justice in cases involving de-furto promises.

Problems relating to the doctrine of promissory estoppel, seem to arise from equating the principle of estoppel with the equitable principle of promissory estoppel. Since, if it is a contractual problem, then the issue is whether there is representation and action based on reasonable reliance on the promise. Moreover, the two at times get mixed up and the doctrine of existing consideration or pre-existing contractual relations get the upper hand and creates confusion. So, the doctrine of promissory estoppel is neither exclusively in the domain of contract nor exclusively in the realm of estoppel but is evolved by the equity and it must yield when the equity so craves.

The doctrine of promissory estoppel is called by various names like equitable
estoppel, quasi-estoppel and new estoppel\(^6\). The true principle is thus “where one party by his words or conduct make to the other a clear and unequivocal promise which is intended to create legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom promise is made and it is in fact, so acted upon by the other party, the promise would be binding and subsequently the party making a promise would not be allowed to go back upon it\(^7\).

In other words it may be stated as the promissory conduct of a party which induces the other into some definite belief and leads him to act on its faith is now sought to be relieved against the former and in favor of the latter through promissory estoppel. In such cases promisor is not allowed to go back on his promise because this would cause injustice to the promise which is the purpose of the law to avoid\(^8\).

### 3.2 Meaning and Definition of Promissory Estoppel -

In order to unlock the definition of promissory estoppel, which has been a point of controversy for long, it is found that it is not susceptible of any clear and comprehensive definition and delineation of its scope and purport. It has developed more through the ages, being formed and molded, stretched and broadened, by the beaming rays of wisdom of some of the most revered and sagacious judges at home and abroad. Before defining promissory estoppel, we must peep into the concept of estoppel and its definition and categorizations, for promissory estoppel is an offshoot of equitable estoppel. The contemporary fate of estoppel underlines the accuracy of the opinion that “few doctrines are at once so potentially fruitful and so practically unsatisfying that they are more often cited than applied and more often applied than understood”\(^9\). It is perhaps that the technicality of the description leads to their frequent use, and the non-technicality of their contents to the confusion

---


\(^7\) M.P. Sugar Mill v. State of U.P., AIR 1979, SC 718


resulting from that use. Lord Wright, while delivering the judgment of Privy Council in *Canadian and Dominion Sugar Co. Ltd. v. Canadian National Steamships Ltd.*\(^{10}\), in 1946, said:

“There was, perhaps, a time when estoppel were described as odious and as such were viewed with suspicion and reluctance. But in the modern times, the law of estoppel has developed and has become recognized as a beneficial branch of law”.

The weapon of the estoppel once powerful both in courts of equity and common law, seems to have developed in those courts in parallel streams until the decision of House of Lords in 1854 of *Jorden v. Money*\(^{11}\), the effect of which has taken alone, is to limit the operation of the estoppel to situations where there are misrepresentations of fact.

Definitions of Estoppel –

The definition of Estoppel can possibly be sought from three sources in seriatim:

A.) Dictionary definitions.

B.) Statutory definitions.

C.) Judicial definitions.

### 3.2.1 Dictionary Definitions –

i) **The Oxford Dictionary** defines Estoppel as – An impediment or bar to a right of action arising from man’s own act, or where he is forbidden by law to speak against his own deed. Estoppel rests on the principle that everyman is presumed to speak and act according to the truths and facts of the case\(^{12}\).

ii) **The Random House** views – The estoppel is a bar or impediment preventing a party from asserting a fact or claim inconsistent with a position he previously took\(^{13}\).

\(^{10}\) 1947 AC 46 at p. 55

\(^{11}\) (1854) S.H.L.C. 185

\(^{12}\) The Oxford Eng. Dict., Vol. 3\(^{10}\) (1961) p. 304

\(^{13}\) The Random House Dict., College Ed., (19482) p. 452
iii) The Webster’s defines estoppel as – A legal preclusion or bar by which one is prevented from alleging something, he has previously denied in actual or by implication in his action or from denying something he was similarly alleged\textsuperscript{14}.

iv) The Chamber’s Dictionary says – Estoppel is conclusive admission which can not be denied by the party to whom it affects\textsuperscript{15}.

v) The Odham’s defines – Estoppel is the fact of being precluded or barred from a certain action or statement by a previous action or statement of one’s own\textsuperscript{16}.

vi) The Reader’s Digest holds – Estoppel is bar or hinder, be precluded by one’s own previous act or declaration from doing etc.\textsuperscript{17}.

vii) Everyman’s Encyclopaedic places the Estoppel as – Estoppel, in English law is the Doctrine which prevents a person from denying a fact which he has represented to be true\textsuperscript{18}.

viii) Jowitt’s Dictionary opines – Estoppel is a rule of Evidence whereby a party is precluded from denying the existence of some state of facts which he has previously asserted. An action can not be founded on an estoppel unlike other evidence, an estoppel must be pleaded\textsuperscript{19}.

ix) Halsbury’s Law of England used Estoppel as – There is said to be an estoppel where a party is not allowed to say that a certain statement of fact is untrue, whether in reality it is true or not.

Finally, Estoppel, or ‘conclusion’ as it was frequently called by older authorities may therefore be defined as ‘a disability whereby a party is precluded from alleging or proving in legal proceedings that fact is otherwise than it has been made to appear by the matter giving rise to that disability\textsuperscript{20}.

\textsuperscript{15} Chamber’s 20\textsuperscript{th} Century Dict. By Thomas Davidson, 3\textsuperscript{rd} Reprint 1975.
\textsuperscript{17} The Reader’s Digest Great Encyclopedic Dict., vol. I, 3\textsuperscript{rd} Ed., 1980 p. 304
\textsuperscript{18} Everyman’s Encyclopedic Special Ed. Vol. 2(1978) p. 680
\textsuperscript{19} Jowitt’s Dict. Of Eng. La, 2\textsuperscript{nd} Ed. By John Burke, Vol. I pp.725-26
3.2.2 Statutory Definition –

Having survey of the provisions of various statutes, the estoppel has been defined in only “The Indian Evidence Act, 1872”.

Indian Evidence Act, 1872: Section 115 of the Act defines Estoppel in following “When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe the thing to be true and to act upon such belief, neither he nor his representation shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing”.

To invoke the doctrine of Estoppel embodied in section 115 of The Indian Evidence Act, 1872, following four conditions must be fulfilled:

a.) There must be a representation of the existing fact to another person;

b.) The latter should believe in this representation;

c.) He should act on this behalf; and

d.) Such action shall have been detrimental to the interest of that person to whom the representation has been made. In other words, by his so acting his position should be materially altered.

3.2.3 Judicial Definitions –

Time and again, in different cases the estoppel has been defined by various Judges in one or the other forms:

1.) The English Legal System :

a) Lord Cokes 21 says:

“Estoppee, cometh of the French word estoupe, from whence the English word stopped; and it is called an estoppel or conclusion, because a man’s own act or acceptance stoppeth or closeth up his mouth to allege or plead the truth”.

b) Lord Dennam, C.J. in Pickard v. Sears 22, defines estoppel as:

“An Estoppel is a doctrine which prevents (estops) a person acting

21 Co. Litt. 352a
22 (1837)6 A & E 469. This case paves the foundation of Sec. 115 of the Indian Evidence Act.
inconsistently with a representation which he has made to the other party, in reliance on which the other party has acted to his detriment”.

c) **Bowen, L.J.,** in *Lowe v. Bourverie*\(^23\) observed:

> “An estoppel is a rule, whereby a party is precluded from denying the existence of some state of facts which he has formerly asserted. It is usually said to be only a rule of evidence because at common law an action can not be founded thereon”.


d) **Lord Thankerton**\(^24\) holds:

> “Estoppel is a complex legal notion involving a combination of several essential elements, the statement to be acted upon, acted on the faith of it, resulting detriment to the actor”.


e) **Bramwell, L.J.** held in Simm’s case\(^25\) that:

> “Estoppel may be said to exist, where a person is compelled to admit that to be true which is not true and to act upon a theory which is contrary to the truth”.

> In *Freeman v. Cooke*\(^26\), **Lord Parke B.** after citing *Pickard v. Sears* case\(^27\) expresses the estoppel in the following terms:

> “Man is estopped from denying what he has represented not only when he represents as true that which he knows to be untrue but when whatever his real intention may be he so conduct himself that a reasonable man would take the representation to be true, and believe that it was meant that he should act upon it and did act upon it as true”.


f) **Lord Cranworth** in *Jorden v. Money*\(^28\) opined:

> “Estoppel is a principle in law, founded upon good faith and equity, if a person makes any false representation to another and that other acts upon that false representation, the person who made it, shall not afterwards be allowed to set up that

---

\(^23\) (1891) 3 Ch. 82, 105. Also see at p. 923 of Phipson on Evidence 11\(^{th}\) Ed., 1970

\(^24\) *C.D. Sugar Co. v. C.N. Seamanship*, 1947, A.C. 46, 56; All E.R. 1947, PC 401

\(^25\) *Simm v. Anglo – American Telegraph C.* (1879) 5 QBD 188 at p. 203

\(^26\) (1848)2 Exch. 654; Also see Stroud’s Judicial Dict. 4\(^{th}\) Ed., Vol. 2, 1972

\(^27\) (1837)6 A & E 474,

\(^28\) (1854) 5 H.L.C. at 210
what he said was false, and to assert the real truth in place of the falsehood which has so misled the other........ The doctrine does not apply to case where the representation is not a representation of fact, but a statement of something which the party intends or does not intend to do.”

g) Lord Wright in Canadian and Dominion Sugar Co. Ltd. v. Canadian National Steamships Ltd.\(^\text{29}\) held:

“Estoppel is a complex legal notion, involving a combination of several essential elements the statement to be acted on, action on the faith of it resulting detriment to the actor. Estoppel is often described as a rule of evidence, as indeed it may be so described. But the whole concept is more correctly viewed as a substantive rule of law”.

2.) The Indian Legal System :

In Indian legal system, the estoppel has been defined by the courts on several occasions.

a) V. Shastri,J. in Depuru Veeraraghava Reddi v. Depuru Kamalamma\(^\text{30}\) case held:

“An Estoppel though a branch of law of Evidence, is also capable of being viewed as a substantive rule of law in so far as it helps to create or defeat rights which would not exist and he taken away but for that doctrine”.

b) In Ekkari Ghosh v. Chittarlekha Ghoshami\(^\text{31}\), the Court took the following opinion:

“Estoppel is a rule of evidence which prevents one party from denying the existence of a fact which he represented as existing and upon which representation another person has been induced to act to his detriment”.

c) In Maddamppa v. Chandramma\(^\text{32}\), the SC held:

“Where one by his word or conduct willfully, causes another to believe for the existence of a certain state of thing and induced him to act on that behalf so as to

\(^{29}\) (1947) A.C. 46 at p. 656
\(^{30}\) AIR 1951 Mad. 403 at p. 405; (1950)2 M.L.J. 575
\(^{31}\) AIR 1958 Cal. 447 at 452; 62 C.W.N. 209, Estoppel is a rule of Evidence which prevents from alleging and proving the truth.
\(^{32}\) AIR 1965 SC 1812
alter his own previous position the former is concluded from averring against the latter a different state of things as existing at the first time”.

It is concluded that:

The principle, on which the law of estoppel is attracted, is that, a person who by his declaration or act or omission caused another person to believe a thing to be true should not be allowed to deny the truth of that thing. This is a cardinal principle which attracts the law of Estoppel in any case.

In other words, if a man, either by words or by conduct has intimated that he consents to an act which has been done, and he will offer no opposition to it, although it could not have lawfully done without his consent, and thereby induces others to do that from which they might have abstained – he can not question the legality of the act he had so sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.

3.3 Categorizations of Estoppel –

The word ‘estop’ is an ancient English word which originally before precisely, the same signification as the equally ancient English word ‘stop’, whereof it is merely a variant.

Kinds of Estoppel:

According to Coke’s\(^33\) classification, there are three kinds of estoppel viz.,

a) Estoppel by matter of record,

b) Estoppel by deed, and

c) Estoppel in \textit{pais}, i.e., Estoppel by conduct\(^34\).

In Coke’s era these three types, obviously regarded as exhaustive but today it requires further examination. Coke’s estoppel, by matter of record corresponds roughly in modern times to estoppel per ‘\textit{Res Judicatam}’. Similarly estoppel by deed, in general speaking has the same attributes as estoppel by representation.

\(^33\) Lord Coke says that ‘estoppe’ cometh of the French word estoupe, from whence the Eng. word stopped: “and it is called an estoppe or conclusion, because a man’s own act and acceptance stopeth or closeth up his mouth to allege or plead……..” (Coke on Litt. 352a)

\(^34\) Halsbury Law’s, 3rd Ed. At p. 177
3.3.1 Estoppel by matter of record –

Estoppel by record is that doctrine which holds that once judgment has been obtained on an issue or matter, it should no longer be the subject of litigation between the parties to the act or their privies. This branch of estoppel can be further sub-divided into: (i) Estoppel by Res Judicata, and (ii) Issue Estoppel. The distinction between the two is that as to the former the cause of action no longer exists, whilst with the late the plea is merely that a relevant issue or matter has been disposed of\(^{35}\).

Estoppel, by record is, dealt with by the Code of Civil Procedure, Sections 11-14, and by Sec. 40-44 of Indian Evidence Act. There is a two fold estoppel arising by record that is, from the proceedings of the courts; first, in the record, considered as a memorial or entry of the judgment, and secondly, in the record considered as a judgment. In the first case, the record has a conclusive effect upon all over the world. It imports absolute verity, not only against the parties to it and that in privity with them but against strangers also; no one may produce evidence to impeach it. Thus, no one, whether party, privy or stranger, is permitted to deny the fact that the proceedings narrated in the record took place, or the time when they purport to have taken place, or that the parties, there named as litigants participated in the cause or that judgment was given as therein stated; unless in a direct proceeding instituted for the purpose of correcting or annulling the records.

The estoppel of a record as a judgment\(^{36}\) is of greater importance. The force and effect of a judgment depends first upon the nature of the proceedings in which it was rendered, i.e., upon the question whether it was an action in rem or in \textit{personam}\(^{37}\) and secondly upon the forum in which it was pronounced i.e., upon the question whether it was a judgment of a domestic or foreign of foreign court. The record of a judgment in rem is generally conclusive upon all persons. In other cases, so far as the record purports to declare rights and duties, its material recitals imports absolute verity between the parties to it and those who claim under them. The

\(^{35}\) J.A. Gabbo, D. Byrne and J.D. Heydon; \textit{Cross on Evidence} (2nd Aust. Edition) 1980 at p. 315


\(^{37}\) Bigelow, op. cit., 5th Ed. 8, 36, 38.
estoppel arising from or fixed by the fact enrolled, constitutes the estoppel of a judgment. There can be no estoppel by record where there is no judgment or decree. So also a judgment can operate as estoppel only as between the parties thereto, unless it is a judgment in rem.

3.3.2 Estoppel by Deed –

In the English Legal system, Estoppel by deed was neatly stated by Baylay, J. *Baker v. Dewly* 38, in these terms: “A party who executes a deed is stopped in a court of law from saying that the facts stated in the deed are not truly stated”. ‘Deed’, of course is a larger term of art and these estoppel is subject to other restrictions in its operations. 39 It will not operate against a person claiming rectification of the deed. 40 The action must be on deed, 41 the statement must be clear and unambiguous 42 and doctrine cannot prevent the judgment of illegality or fraud. 43

The strict technical doctrine of estoppel by deed can not be said to exist in India. 44 Section 115 of Indian Evidence Act is exhaustive, and the law of Estoppel in this country is contained in it.

An estoppel by deed is preclusion against the competent parties to a valid contract and their privies to deny its force and effect by any evidence of inferior solemnity. 45 The rule declares that no man shall be permitted to dispute his own solemn deed. In a case where the person executing the deed is neither blind nor illiterate, where no fraudulent misrepresentation is made to him, where he has ample opportunity of reading the deed and such knowledge of its purport that the plea of non est factum is not open to him, it is quite immaterial whether he reads the deed or not. He is bound by the deed because it operates as a conclusive bar against him, not because he has read it or understood it, but because he has chosen to execute it. This

38 (1823) 1 B & C 704, 707
41 *Commissioner of Taxes (Queensland) v. Ford Motor Company of Australia Proprietary Ltd.* (1942) CLR 261
42 *Onward Building Society v. Simthron* (1893) Ch. 1
43 *Hayne v. Malthy* (1789) 100 ER 665; *Horton v. Westminster Improvement Commissioners* (1852) 155 E.R. 1165
45 *Bowman v. Taylor*, 2 A & E 278, 291

98
is equally true (apart from fraud) in equity as at law except in those special cases
where there is an equitable ground for setting aside or rectifying the deed.

Estoppel by deed is based on the principle that when a person has entered into
a solemn engagement by deed under his hand, he shall not be permitted to deny any
matter which he has so asserted. It is a rule of Evidence according to which certain
evidence is taken to be of so high and conclusive proof.

3.3.3 Estoppel in Pais –

The third type of Estoppel is Estoppel by Conduct, is more frequently
invoked by the courts. It states: where one has either by words or conduct, made to
another a representation of fact, either with knowledge of its falsehood or with the
intention that it should be acted upon, or has so conducted himself that another
would, as a reasonable man, understand that a certain representation of fact was
intended to be acted on, and that other has acted on the representation and thereby
altered his position to his prejudice an estoppel arises against the party who made
the representation, and he is not allowed to cover that the fact is otherwise than he
represented it to be.

A branch of estoppel is frequently in vogue in modern time and presenting
itself in infinite variety is that form of estoppel in pais is now known as estoppel by
conduct or representation. As estoppel in pais is that which though not existing as a
matter of record, or under the solemnity of a deed may nevertheless under the
circumstances conclude equally with the higher species and averment. It may exist
in writing not being under seal.

The doctrine of estoppel in pais embraces all the acts or statements of a party
upon the faith of which another party had been led to act and to change his position
and which it would be unfair to permit the first party to deny. Although it is an
equitable in flavor, yet relies upon the fact that the representation which made and
then relied upon, is one of present facts.

This is revealed from the study of the traditional categorizations of estoppel
that it is limited to its existing fact but is silent on de-furto promise. To cover such
situations and to provide justice to the parties who have acted on reasonable reliance
of the promisor’s promise and changed his position against his prejudice or
disadvantage, new doctrine based on equity is coined by the courts. It is variously called viz. new estoppel, quasi-estoppel, equitable estoppel and promissory estoppel.

Similar to the promissory estoppel, there is one other called ‘Proprietary estoppel’. Both these estoppel have same origin, i.e., equitable estoppel.

Hence to the traditional three heads of estoppel there in now addition of –

• Proprietary Estoppel, and
• Promissory Estoppel.

3.3.4 Proprietary Estoppel –

“Proprietary Estoppel” which may give rise to an equity (the equity of acquiescence) to prevent a person from enforcing his legal rights if he ‘acquiescence’ in another’s conduct which leads that other person to believe that the strict legal rights, which would otherwise govern them, will not be insisted upon. Although, this equity is said to find its basis as an extension of the doctrine of estoppel46, it differs from the other branches of estoppel because it can form the basis of action47.

Lord Kingsdown in Ramsden v. Dysen 48, defines it as:

“if a man, under a verbal agreement with a landlord for a certain interest in land, or what amounts to for something, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him lays out money upon the land, a court of equity will compel the landlord to give effect to such a promise or expectation”49.

48 (1866) L.R. 1 H.L. 129
49 Id. per Lord Kingsdown
3.3.5 Promissory Estoppel –

Promissory estoppel which is often called ‘Child of equity’, is based upon the holding of Denning, J. as he then was, in High Trees case:

“Promise intended to be binding, intended to be acted upon and in fact acted upon, is binding in so far as its terms properly apply.”

What distinguishes promissory estoppel from ordinary estoppel by conduct (whether in equity or law) is that in the former the representation is as to the future. It is based upon the equitable notion that a person, who makes representations, must make his representation good, even if, these representations are consistent with formally contracted rights and obligations.

3.4 Promissory Estoppel – Judicial Definitions under different Legal Systems -

Though there is no dearth of definition of promissory estoppel either in encyclopedia or in various judicial definitions, yet it is devoid of any statutory definitions.

a) Meaning -

Where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations, as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the disqualification which he himself has introduced.

Promissory estoppel is the doctrine by which a contractual promise which is unsupported by valuable consideration will be enforced as a defence in an action,

---

50 Halsbury’s Laws (4th Ed.) 16 para 1514 although it is still regarded by some authors as a sub-heading of Estoppel in pais.
51 (1947)1 KB 130
52 Id.
53 Citizen’s Bank of Louisiana v. First National Bank of New Orleans (1873) L.R. 6 H.R. 352, 360 pr Selborne LC

101
provided that the defendant has acted on the promise to his detriment\textsuperscript{55}.

Where the parties enter into an agreement which is intended to create legal obligation between them and in pursuance of such agreement one party makes a promise to the other which he knows will be acted on and which is fact on by the promise the court will treat the promise as binding on the promisor to the extent that it will not allow him to act inconsistently with it even though the promise may not be supported by consideration in the strict sense\textsuperscript{56}.

\textbf{b) Judicial definition of promissory estoppel –}

\textbf{3.4.1 The English Legal System –}

Lord Crain’s in \textit{Hughes v. Metropolitan Railway Co.} \textsuperscript{57} held:

“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 – certain penalties or legal forfeiture – 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”.

Bowen, L.J., defines promissory estoppel\textsuperscript{58} in the following terms:

“……if persons who have contractual rights against others induce by their conduct those against whom they have such rights to believe that such rights will either not be enforced or will be kept in suspense or abeyance, for some particular time, those persons will not be allowed by a court of equity to enforce the rights until such time has elapsed, without at all events placing the parties in the same

\textsuperscript{56} Biswas Encyclopedic Law Dcitionary, 2\textsuperscript{nd} Ed., DE Books, Eastern Law House, (1982)
\textsuperscript{57} Lord Cairns in \textit{Hughes v. Metropolitan Railways Co.} (1877)2 App. Case 439 at p. 448
\textsuperscript{58} \textit{Birmingham and Distt. Land Co. v. London and North Western Railway Co.} (1888)40 Ch. D. 268, Bowen L.J. at p. 286
position as they were before”.

Lord Denning in *High Trees case*\(^59\) propounded the principle of promissory estoppel as:

“If a man gives a promise or assurance which he intends to be binding on him and to be acted on by the person to whom it is given, then, once it is acted upon, he is bound by it”.

Subsequently, in Charles *Richards Ltd. v. Oppenheim* \(^60\), Lord Denning while defining promissory estoppel extended the principle of promissory estoppel not only to actual promise or assurance but also to conduct Lord Denning held:

“If one party, by his conduct, leads another to believe that the strict rights arising under the contract will not be insisted upon, intending that the other should act on that belief, and he does act on it, then the first party, will not afterwards be allowed to insist on the strict rights when it would be inequitable for him so to do”.

In *Evendon case* the court defined the promissory estoppel as: “Promissory Estoppel applies whenever a representation is made, whether of fact or law, present or future, which is intended to be binding, intending to induce a person to act upon it and he does act upon it”\(^61\).

In *Ajayi v. R.T. Brisco (Nigeria) Ltd.*\(^62\), Lord Hodson held the view that the principle of promissory estoppel is that when one party to a contract in the absence of fresh consideration agrees not to enforce his rights, an equity will be raised in favour of the other party. This equity is, however, subject to the qualification: (i) that the other party has altered his position, (ii) that the promisor can resile from his promise on giving reasonable notice, which need not be a formal notice, giving the promise a reasonable opportunity of resuming his position, and (iii) the promise only becomes final and irrevocable if the promise cannot resume his position.

\(^{59}\) *Central London Property Trust Ltd. v. High Tree House Ltd.* (1947)1 KB 130
\(^{60}\) 1950 KB 616
\(^{61}\) *Evendon v. Guildford Football Club* (1975)1 Q.B. 917. In this case limited scope of promissory estoppel i.e. it applies to cases where the parties were contractually bound to one another was rejected.
\(^{62}\) (1964) W.L.R. 1326 per Lord Hodson at p. 1330
3.4.2 The American Legal System –

Cardozo, C.J., in Allegheny College v. National Chautauqua County Bank\(^{63}\) held that equitable estoppel is a rule of fairness by which the courts protects the reliance and expectations of innocent parties from defeat by those who have induced those reliance and expectations.

American Jurisprudence\(^{64}\) contains the following statement on the subject:

“...The doctrine of promissory estoppel is by no means new, although the name has been adopted only in comparatively recent years”.

According to that doctrine, “an estoppel may arise from the making of a promise, even though without consideration, if it was intended that promise should be relied upon and in fact it was relied upon and a refusal to enforce it would be virtually to sanction the perpetuation of fraud or would result in other injustice”. Promissory estoppel is sometimes spoken of as a species of considerations or as a substitute for, or the equivalent of, consideration, but the basis of the doctrine is not so much one of contract with substitute for consideration as on application of the general principle of estoppel, since the estoppel may arise, although the change of position of the promise was not in any way an inducement to the promise and was not regarded by the parties as any consideration therefore. Traynor, C.J. held in Drenan v. Star Paving Company\(^{65}\). A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promise or a third person and which does induce such action or forbearance is binding if injustice can be

\(^{63}\) (1927), 246 N.Y. 369; Santiago v. Immigration & Naturalisation Service (1975) 526 F (2nd Ed.) 488, 494, per choy J. dissenting.

\(^{64}\) A.J. vol. 19 para 53 pp 657-58; also Art. 90(1) of Restatement of Contract, 2nd Ed.

\(^{65}\) The Restatement (Second) of Contract Article 90(1) was adopted in Drenan v. Star Paving Co. (1958)31, Cal. 2nd 409; 333 p. 2nd 757. Travellers Indem Co. v. Holeman (CAS Tex) 330F and 142; Porter v. Commissioners (CA 2 NY)F 2nd 673; Fried v. Fisher, 196 A. 39, 328 Pa 497 ALR 147; Miller v. Lavelor, 245 Iowa 1144. 66 NW 2d 267, 48 ALR 2nd 1018. In America promissory estoppel is stated as: An estoppel may arise from making a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce, it would be virtually to sanction the preparation of fraud or would result in other injustice. Small v. Paulson, 187 or 76, 209, p. 2d 779, 29 or (L.R. v. 50). For invoking the doctrine of promissory estoppel, the promise which is sought to be enforced, must have induced action of a definite and substantial character by the promise. Also justifiable reliance and irreparable detriment to the promise are necessary facts to enable him to invoke the doctrine. Robert Gordon, Inc. v. Ingrrole Rand Co.(CA 71) 117 F. 2d. 654
avoided only by enforcement of the promise. The remedy for breach may be limited as justice requires.

3.4.3 The Australian Legal System –

Brenan, J. in Walton Stores (Interstate) Ltd. v. Mahr\textsuperscript{66} held in order to define promissory estoppel following ingredients is indispensable:

a) The plaintiff assumed or expected that a particular legal relationship exists between the plaintiff and the defendant or that a particular legal relationship will exist between them and in the latter case, that the defendant is not free to withdraw from the expected legal relationship;

b) The defendant has induced the plaintiff to adopt the assumption or expectation;

c) The plaintiff acts or abstains from acting in reliance on the assumption or expectations;

d) The defendant knew or intended him to do so;

e) The defendant has failed to act to avoid that detriment whether by fulfilling the assumption or expectation or otherwise.

3.4.4 The Indian Legal System –

Bhagwati, J. extensively discusses the promissory estoppel in M.P. Sugar Mill v. State of U.P. \textsuperscript{67} and defined promissory estoppel in following words:

“The true principle of promissory estoppel, seems to be that where one party has by his word or conduct made to the other a clear and unequivocal promise which is intended to create 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, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties or not”.

\textsuperscript{66} (1986)76 AIR 513
\textsuperscript{67} AIR 1979 SC 625; In Union of India v. Godfrey Philips India Ltd. & others (1985)2 SCJ
Garth, C.J. in *Ganges Manufacturing Co. v. Sourujmull* ⁶⁸, observed that……...

“……a man may be estopped not only from giving particular evidence, but also from doing any act or relying upon any particular argument or contention, which the rules of equity and good conscience prevent him from using as against his opponent. Jenkins, C.J. in *Bombay v. Secretary of State* ⁶⁹ held that the Doctrine of Promissory Estoppel eventually differs from doctrine embodied in Section 115 of The Indian Evidence Act, which is not a rule of equity but is a rule of evidence that was formulated and applied by court while promissory estoppel takes its origin from the jurisdiction assumed by courts of equity or intervene in the case of, or to prevent fraud”.

Chanderesekhara Aiyar, J. observed⁷⁰:

“Whether it is the equity recognized in *Ramsden’s* case, or it is some other form of equity, is not of much importance, courts must do justice by the promotion of honesty and good faith, as far as it lies in their power”. Shah, J. while delivering judgment in *Union of India v. Anglo Afghan Agencies* ⁷¹ defines the principle of promissory estoppel as: whenever a representation is made, whether of fact or law, present or future which is intending to be binding, intending to induce a person to act and he does act on it, the doctrine of promissory estoppel comes into picture.

3.5 Conceptual Origin of the Doctrine of Promissory Estoppel under the Various Legal Systems –

Modern contractual Jurisprudence in common law countries abounds in a concept generally styled as promissory estoppel⁷². Samuel Williston of the Harvard Law School may be credited with its invention in the earliest edition of his work on

---

contract\textsuperscript{73}. The promissory estoppel, as an exception to the requirement of consideration on the enforceable agreement, is not in fact based on the principle of estoppel. But it is a doctrine evolved by equity in order to prevent injustice caused because of technical requirements of consideration in every enforceable promise. This principle may be called the \textit{child of equity} brought into the world with a view to promote honesty and good faith and bringing law closer to justice. The principle though commonly known as promissory estoppel is neither based on contract nor on the common law doctrine of estoppel. The early cases did not speak of this doctrine as estoppel. They spoke of it “raising equity”.

\subsection*{3.5.1 The English Legal System –}

The conceptual origin of doctrine of promissory estoppel in English legal system dates back to the year 1877, when Lord Crains for the first time made reference to the broad rule of justice in \textit{Hughes v. Metropolitan Railway Co. case}\textsuperscript{74}. After ten years of this case, the court once again recognized this principle of equity in \textit{Birmingham and Distt. Land Co. v. London and North Railway Co.} \textsuperscript{75}. Brown, L.J. extended the doctrine to all cases of contractual rights. The court took the view that it is a principle which lies outside forfeiture, as well as is seen in a moment by reflection, it was applied in \textit{Hughes case} in which equity could not relieve against forfeiture upon the mere ground that it was forfeiture, but could interfere only because there had been something in the nature of acquiescence or negotiations between the parties which made it inequitable to allow the forfeiture to be enforced. By 1920, the doctrine continued to remain a nebulous concept.

Lord Denning found two fences barring the path\textsuperscript{76}. One was that estoppel applies only in respect of representation of fact, and not of statements and intention\textsuperscript{77}. The other was that a representation in order to work estoppel must be one of fact and not of law. Denning’s difficulty was how to leap these fences. Then he got a good horse, i.e., the Report of the Law Revision Committee on the Doctrine

\textsuperscript{74} (1877)2 App. Cases H.L. 448
\textsuperscript{75} (1888)40 Ch. D. 268
\textsuperscript{76} Lord Denning, ‘The Discipline of Law’, Butterworth 1979 at p.202
\textsuperscript{77} Jorden v. Money (1845)5 HL Cas 185
of Consideration of the year 1937. He found in these reports the way to get over the two major hurdles and thus paved the way to hammer over a new doctrine of promissory estoppel in his celebrated judgment in *Central London Property Trust Ltd. v. High Trees House Ltd.* 78, popularly called High Tree case. Thus Doctrine of Promissory Estoppel burst into sudden blaze in 1946 and flashed a new trial in the horizon of equity Jurisprudence when Lord Denning highlighted the principle as it become legendary because for the first time a new trend was set in motion in English Law in the domain of equity.

3.5.2 The American Legal System –

An American Legal System, Williston of the Harvard Law School may be credited with its invention in the earliest edition of his work on contract79. The origin of this doctrine is supported by so many considerations of public policy and reasons, and have not been overruled to have the symmetry of the concept of the consideration which itself came into the law not so much from any reasoned conviction of its justice but as a historical accident of practice and procedure80.

It is interesting to note that in United State of America, this doctrine does not derive its origin in any way from the decisions of Denning, J. in *High Trees* case81, but antedates this decision by a number of years, perhaps, indeed it may be said to have helped to inspire that decision if all were known. So, long ago as in 1932, the American Law Institute’s Restatement of the Law of Contracts in its Article 90 proposes that82:

“A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promise, and which does induce such action or forbearance, is binding if injustice can be avoided only by enforcement of the promise”.

Though the Restatement has in itself not the same weight, as source of law,
as actual decisions of courts of high standing, yet the principles conveniently to be found set out in Article 90 has in fact formed the basis of a number of decisions in various states in different departments of the law of Contract\textsuperscript{83}.

In \textit{Allegheny College v. Natural Chantanque Country Bank} \textsuperscript{84} Jt. Kellogg speaking for this doctrine in English law said that it was held sufficient by Lord Mansfield and his fellow judges in \textit{Pilloms v. Van Microp} \textsuperscript{85}. James Bass also suggests that prior to Lord Eldon, Equity did not relieve a promise upon a gratuitous past promise but chancery Courts did provide remedy in same situations\textsuperscript{86}. He expressed that equity gave relief to a plaintiff who had incurred detriment on the faith of the defendant’s promise, is reasonably clear, although there are three reported cases\textsuperscript{87}. These cases occurred in the years 1377, 1438 and 1468\textsuperscript{88}. They relate respectively to the agreement to convey property in a case where the plaintiff had incurred expenses in reliance on the agreement, breach of marriage promise by defendant who had agreed to marry the plaintiff and has accepted some money from him in this connection, and lastly breach of a promise of indemnity. In all these cases remedy was of reparation for the loss sustained. Anyhow the principle of natural justice bound the promisor in all these cases.

\textbf{3.5.3 The Australian Legal System –}

In Australia, the doctrine of promissory estoppel is of recent origin. It was in 1983 when in \textit{Legione v. Hateley} \textsuperscript{89}, the High Court considered the doctrine extensively. Before this, position was that Australian Courts have referred to the doctrine or principle of promissory estoppel without any apparent animadversion, but without discussing it in detail or expressly accepting it as part of the law of Australian Legal System. In Legion’s case the court held that in Australia there was strong English authority for a limited doctrine of promissory estoppel, albeit a doctrine restricted to precluding departure from a representation by a person in a

\textsuperscript{83} Corbin on Contract (1963), vol. IA, p.195 at Seq.
\textsuperscript{84} 246 N.Y. 369 (1927)
\textsuperscript{85} (765) S Buss 1663
\textsuperscript{86} Ames: Parol Contract Prior to Assumpntr, 8 Harv. L.R. 252 at 255(1897)
\textsuperscript{87} Ames: The Histry of Assumpntr, 2 Harv. L.R. 14(1886)
\textsuperscript{88} (1887) 2 App. Cases H.L. 448
\textsuperscript{89} (1983)57 A.L.J.R. 292 at 303
pre-existing contractual relationship that he will not enforce his strict contractual rights.

However, in latest decision in Walton Stores case\textsuperscript{90}, the Australian High Court held that the doctrine of promissory estoppel can be used both sword as well as defense and in circumstances where neither a pre-existing contractual relationship exist between the parties.

\subsection*{3.5.4 The Indian Legal System –}

In the Indian Legal System, the conceptual origin of promissory estoppel can be traced to as far back as 1880 to \textit{Ganges Manufacturing Co. v. Sourjumull}\textsuperscript{91}, when a promise devoid of consideration was held enforceable on the basis of reliance & interest, by the Calcutta High Court. In 1892 Madras High Court in \textit{Schoulank v. Mulhunaryan}\textsuperscript{92} rejected the basis of reliance, interest and reverted back to traditional – conservative approach of technicality of requirement of consideration and the one contemplated for the application of estoppel under provisions of Indian Evidence Act. Since the estoppel contemplated in section 115 of Evidence Act is based on conduct, past or present but not \textit{de furto} promise. It was in \textit{M.P. Sugar Mill case}\textsuperscript{93}, this doctrine is fully explained by Jt. Bhagwati and the decision laid the foundation for the application of this doctrine in India.

It is a principle evolved by equity to avoid injustice and though commonly named promissory estoppel; it is neither in the realm of contract nor in the realm of estoppel. “The true principle of promissory estoppel seems to be 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 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, if it would be inequitable to allow him to do so having regard to the dealing

\textsuperscript{90} (1986)76 ALR 513
\textsuperscript{91} \textit{Ganges Manufacturing Co. v. Sourjumull} (1880)ILR 5 Cal 667
\textsuperscript{92} 2 Md. L.J. 57(1892)
\textsuperscript{93} \textit{M.P. Sugar Mills v. State of U.P.}, AIR 1979 SC 621
which have taken place between the parties, and this would be so irrespective of whether, there is any pre-existing relationship between the parties or not.

This case laid the foundation of doctrine of promissory estoppel in India and opens the gate for the wider application of doctrine in different fields of laws.

3.6 Development of Promissory Estoppel in India –

It is heartening to find that India has accepted the doctrine of promissory estoppel in its fullness without the shackles of the concept of consideration and also recognized it as affording a cause of action to the parties to whom the promise is made. The doctrine binds the promisor because the promise, on reasonable reliance on the promise had altered his position to his detriment or prejudice. Problem relating to the doctrine of promissory estoppel seems to have arisen from equating the common-law principle of estoppel with this equitable principle. Because, if it is a contractual problem, the issue is whether there is an agreement and consideration; if it is a problem of equitable doctrine of estoppel it must have representation and act after reliance on it. More often the two get mixed up and the doctrine of consideration or pre-existing contractual relation at times get upper hand over representation and created confusion. In the Judicature Act, 1872, in England, with the fusion of law and Equity the voices for reconsideration of the principle were raised. One such principle suggested was that of equitable doctrine of estoppel. In England, *High Trees* 94 principle founded the basis of promissory estoppel, the Legal policy behind the principle was to mitigate the rigor of the law with the application of the principle of equity.

3.6.1 Historical Retrospect –

The doctrine of promissory estoppel is of ancient vintage in India. The development of this doctrine in India can be studied in following phases:

A. Ancient Historical Development,

B. Modern development.

A. Ancient Historical Development – In India the doctrine of promissory estoppel had its crude beginnings in the Hindu scriptures. A vow or a promise

94 (1947) KB 130, (1956) All.E.R. 25
once uttered, by a person was regarded as Dharma (Law)\textsuperscript{95}. It is notable that although promissory estoppel as a concept is a product of modern age yet in the ancient history in India it was existed as a value – a moral value, i.e. “My word is my bond”\textsuperscript{96}.

B. Modern developments –

a) Pre-Independence – It is remarkable to note that as far as back 1880, long before the doctrine of promissory estoppel was formulated by Denning, j. in England, a Division Bench of two English Judges in Calcutta High Court applied the doctrine of promissory estoppel and recognized a cause of action founded upon it in the \textit{Ganges Mfg. Co. v. Sourajnill} case\textsuperscript{97}. In this case promise devoid of consideration was held enforceable on the basis of reliance & interest. The doctrine of promissory estoppel was applied against the government in a case subsequently decided by the Bombay High Court in \textit{Bombay v. Secretary of State}\textsuperscript{98}. In this case the Government of Bombay, with a view of constructing an arterial road, requested the Municipal Commissioner to remove certain fish and vegetable markets which obstructed the construction of the proposed road. The municipal commissioner replied that the markets were vested in the Corporation of Justices but that it was willing to vacate certain municipal stables that occupied a portion of the proposed site, provided the government would rent other land mentioned in its letter, to the municipality at a nominal rent (the latter undertaking to bear the expenses of leveling the same) and also to permit the municipality to erect on such land “stables of wood and iron with rubble foundation to be removed at six months’ notice on the other suitable ground being provided by government”. These were accepted by the government. The Municipal Commissioner, thereafter, entered into possession of land and constructed stables, workshops, chawls at great expenses. Twenty four years later the government served a notice on the municipal corporation determining the tenancy handing over possession of the land back to the State within 6 months

\textsuperscript{95} To cite an example Bhishma’s vow in Mahabharta, another example from Ramayana, where King Dashratha grants three boons to his third wife.

\textsuperscript{96} Also see, Lord Denning, \textit{Discipline of Law} at P.223 where he suggested the same.

\textsuperscript{97} 1880 ILR 5 Cal 669

\textsuperscript{98} 1905 ILR 29, 580

112
and in the meantime to pay rent at the rate of Rs. 12,000/- per month. On refusal, the
State instituted a suit for a declaration that the tenancy stood terminated and directed
the payment of rent at the rate of Rs.12000/- per month.

The High Court upheld the defence of municipality that the events which
transpired from 24 years ago had created an equity in favor of the municipality
which afforded an answer to the plaint by way of promissory estoppel. Jerkins, C.J.
observes:

“…….The municipality gave up the old stables, leveled the ground and
erected the movable stables in 1866 in the belief that they had against the
government an absolute right not to be turned out until not only the expiration of 6
months but also other suitable ground was that this belief is referable to an
expectation created by the government that their enjoyment of the land would be in
accordance with this belief; and that the government knew that the municipality was
acting in this belief so created. Equity was created in favor of the municipality which
entitled it to appeal to the court for its aid in assisting them to assist the secretary of
State’s claim that they should be ejected from the ground……”. Thus, doctrine of
promissory estoppel took its origin from the jurisdiction assumed by courts of equity
in the case of or to prevent fraud….. (After referring to Ramsden v. Dyson 99 and the
crown also came within the range of this equity). This decision made it clear that the
document of promissory estoppel applies to any promise which is not even recorded in
the form of formal contract is enforceable at law.

b) Post-Independence - A vast body of case-law had accumulated in India
after its Independence on the question of applicability of administration and in the
recent times the dimensions of promissory estoppel had touched almost all fields of
law. The law in this area is still evolving, and the present day judicial tendency
appears to be more towards the applying of the doctrine against the administration.
There are five distinct phases in the development of the doctrine of promissory
estoppel, viz., pre Anglo Afghan, Anglo Afghan and after, Motital Padampat and
after, Jit Ram and after and Godfrey Philips and after.

i) Phase –I : Pre Anglo-Afghan –

In this phase the court was of the opinion that there would be no estoppel

99 1866 LR IHL 170
against the governments in the matter of operation of a statute\textsuperscript{100}. This rule of non-application of estoppel against the government at times produced very harsh results for a person who, acting on official advice or representation, later found that the advice given to him was wrong and not binding on the government. In a few situations of this type, the court took a liberal view of the matter and held the government is bound by its representation on the basis of which the person concerned had adversely changed his position. The basis of this liberal rule was ‘equity’. Thus in \textit{Collector of Bombay v. Bombay Corporation}\textsuperscript{101}, the court held that “courts must do justice by the promotion of honesty and good faith, as far as it lies in their power”. In this case in1865, the Government of Bombay called upon the corporation of Bombay to remove some markets from a certain site and vacate it. In turn the government did not consider that any rent should be charged to the Municipality as the markets will be like other buildings for the benefit of the whole community. Thereafter, the corporation invested huge sum of money to erect and maintain markets on the new site.

More than half a century later the government sought to assess the new site under section 3 of the Bombay City Land Revenue Act, which gave a right to assess the rent, since the corporation did not have a right, in limitation of the right of the Government. Chandersekhar Ayer, J. speaking for the court held:

“Merely because the grant was valid for non-compliance with statutory formalities does not wipe out the existence of the representation of the fact that it was acted upon the Corporation”.

Majority of the opinion that the government had lost its right to assess by reason of the equity arising in favor of the Corporation and on the basis of doctrine of promissory estoppel, the state cannot go back on the representation made by it.

Aiyer, J. in his concurring opinion observed that even if it be assumed that there was no representation of the fact that the land was rent-free at the time when it was given to the municipality, if there was a holding out of the promise that no rent

\textsuperscript{100} Jetmull Bhojraj v. State, AIR 1967 Pat 287, 294, Amar Singh v. Rajasthan AIR 1955 SC504; Mathra Pd. & Sons v. Punjab, AIR 1962 SC 745; Also see Hindustan Motors Ltd. v. India, AIR 1954, Cal 151; P.H. Avari v. West Bengal, AIR 1958, Cal 203, 205

\textsuperscript{101} AIR 1951 SC 469
would be charged in future, the Government must be deemed in the circumstances of
the case, to have bound itself to fulfill it, and the court of equity must prevent the
perpetration of a legal fraud.

ii) Phase –II: Anglo-Afghan and After –

In *Union of India v. Anglo-Afghan Agencies Ltd.* 102 case, the Supreme Court
applied promissory estoppel against the Government on equitable grounds. It was in
this celebrated case the doctrine found its most eloquent exposition. This appreciates
the ratio of this decision, the facts of the case must be clear.

Indo-Afghan Agencies acting in reliance on the Export promotion scheme
issued by the Central Government, exported woolen goods to Afghanistan and on
the basis of their exports claimed to be entitled to obtain from the Textile
Commissioner import entitlement certificate for the full of F.O.B. value of goods
exported as provided in the scheme. It was not a statutory scheme having the force
of law but it provided that an exporter of woolen goods would be entitled to import
raw material to the total amount equal to 100 percent of the F.O.B. value of his
exports. It was pleaded in the Court that relying on the promise contained in the
scheme Indo-Afghan Agencies Ltd. had exported woolen goods to the Afghanistan
and was therefore entitled to enforce the promise against the Government to obtain
import entitlement certificate for the full F.O.B. value of the goods exported on the
principle of promissory estoppel. This contention was opposed by the State on the
plea of executive necessity103, as it is not competent for the government to fetter its
future executive action which must necessarily be determined by the needs of the
community when the question arises. The respondent company in reply cited
Denning, J. in *Robertson v. Minister of Pensions*104.

The Crown cannot escape by saying that estoppel do not bind the Crown, for
that doctrine has long been exploded. Nor can the crown escape by calling in aid the
doctrine of executive necessity propounded by Rowlatt, J. in *Amphitrite case*105-
where it was unnecessary for the decision because the statement there was not a

102 AIR 1968 SC 718
103 Rediriakitebolaget Amphitute v. King (1921)3 KB 500; 126 Lt.63
104 1866 LR 1HL 170
105 Supra note 103
promise which was intended to be binding but only an expression of an intention…… But those cases must now be read in the light of the judgment of Lord Atkin in *Reilly v. The King*\(^{106}\). In his opinion the defense of executive necessity is of limited scope. It only avails the crown where there is an implied term to the effect or that is the true meaning of the contract. It has to be reiterated that this opinion of Denning, J. was in no sense overruled in *Howell v. Falmouth Boat Construction Co. Ltd.*\(^{107}\), which only stated that the doctrine of promissory estoppel cannot be invoked to “bar the crown from enforcing a statutory prohibition or entitle the subject to maintain that there has been no breach of it”. Barring this, the doctrine of promissory estoppel did apply to the crown also which cannot escape liability for the consequences of its representation to a third party who did act on it to his own detriment so as to justify the equitable claim he had earned thereby against the Government.

Shah, J. on behalf of the courts in the Indo-Afghan Agencies case accepted the Denning formula and said:

“We are unable to accede to the contention that the executive necessity releases the Government for honoring its solemn promises relying on which citizens have acted to their detriment. Under our constitutional set up, no person may be deprived of his right or liberty except in due course of and the authority of law, if a member of the executive seeks to deprive a citizen of his right or liberty otherwise then in exercise of power derived from the law – common or statute – the courts will be competent to and indeed would be bound to protect the rights of the aggrieved citizen”.

The court made the following pithy observation:

“Under our jurisprudence the Government is not exempted from liability to carry out the representation made by it as to its future conduct and it cannot be on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen or an *ex-parte* appraisement of the circumstances in which the obligation has arisen”.

---

\(^{106}\) 1954 AC 176, 179

\(^{107}\) AIR 1951 AC 837 (1951)2 All ER 278
The court invoked the principle of equity on the facts of the case because the exporter, acting upon the representation made by the government had exported goods in the hope of getting an import license for the full value and thus earned foreign exchange for the country. The promise made by the government to give an import license in consideration of export did not contravene any statutory provision and so the court could apply the doctrine of promissory estoppel against the government on equitable grounds.

The Anglo-Afghan case depicted a new judicial trend. The key to this trend was to be found in the following statement of Shah, J. in Century Spinning & Manufacturing Co. Ltd. v. Ulhasnagar Municipality. In this case the court held 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 obligation arising against an individual out of his representation amounting to a promise may be enforced ex-contractual by a person who acts upon the promise; when the law requires that a contract against a public body shall be in a certain form or be executed in the matter prescribed by statute, the obligation may be, if the contract be not in that form, enforced against it in appropriate case in equity. The court added:

“If our nascent democracy is to thrive different standards of conduct for the people and public bodies cannot ordinarily be permitted. A public body is in our judgment, not exempted from liability to carry its obligation arising out of representation made by it relying upon which a citizen has altered his position to his prejudice.

The court refused to make a distinction between private individual and a public body so far as the doctrine of promissory estoppel is concerned. Thus, in this case government and public bodies were considered well within the ambit of the application of promissory estoppel.

Thus, these cases reveals that the government or a public authority would not be exempted from the equity arising out of the acts done by the citizens to their

---

108 AIR 1971 SC 1021 p. 1025; see also Kusheshwar Singh v. State of Bihar, AIR 1974 Pat. 267
prejudice relying upon the representation as to the future conduct made by the
government. The court stressed that if democracy was to thrive in India different
standards of conduct for the people and the public bodies cannot ordinarily be
permitted”.

Administrative Direction –

In Amrat Lal v. State\(^\text{109}\), the administrative directions were enforced on the
basis of estoppel Gujarat High Court stated: “If a claim in equity arises in favor of a
person as a result of the representations made on behalf of the government and the
action taken by the person acting upon that representation, and acting upon the belief
that the government would carry out the representation made by it the right in equity
is enforceable”. The instant pronouncement was doubly significant. In the first
place, it applied promissory estoppel against the government and in second place it
denotes that, in certain circumstances, even administrative directions could become
enforceable against the administration.

In a case where trust had been created to develop housing colony for some
specific person and made promise to the society and in pursuance of the trust’s
promise, the society went ahead to and got sale deed executed in its favor; then the
trust could not receive back its earlier resolution.

In a larger number of cases, however, the court refused to apply the doctrine
on one ground or other. In Sankaranarayan v. State of Kerala\(^\text{110}\), the court held that
statutory rule could not be curtailed by any alleged agreement or by the invoking of
promissory estoppel. In Sham Lal v. Dy. Commissioner of Patiala\(^\text{111}\), the court is of
the opinion that the principle of Anglo-Afghan case is applicable only when in a
case where party had acted to his detriment in pursuance of the said promise.

But in Turner Morrison & Co. Ltd. v. Hungerford Investment Trust Ltd.\(^\text{112}\),
the doctrine of promissory estoppel was once again affirmed by Supreme Court.

Later it had occasion to consider the dimension of this doctrine in M.

\(^{109}\) AIR 1972 Guj 260
\(^{110}\) AIR 1971 Guj 1997
\(^{111}\) AIR 1972 P&H 126
\(^{112}\) AIR 1972 SC 1311
Ramanatha Pillai v. State of Kerala\textsuperscript{113}, the court observed: “as a general rule the doctrine of promissory estoppel will not be applied against the State in its governmental, public or sovereign capacity. An exception however arises in the application of estoppel to the State where it is necessary to prevent fraud or manifest injustice”.

The Supreme Court adverted to this doctrine of promissory estoppel in Asst. Custodian v. Brij Krishna\textsuperscript{114} and also in State of Kerala and Gwalior Rayons Silk Mfg. (wing) Co. Ltd.\textsuperscript{115}. The next decision of the Supreme Court which may be usefully referred to is the case of Excise Commissioner, U.P., Allahbad v. Ram Kumar\textsuperscript{116}. In this case court held; “It is now well settled by a catena of decisions that there can be no question of estoppel against the government in the exercise of its legislative sovereign or executive powers”.

As a comment\textsuperscript{117} on this statement, it can be said that it was broader than what the court said earlier in Ramanatha case\textsuperscript{118}. In the later case the court had expressly held that estoppel could apply in a case where it was necessary to prevent fraud or manifest injustice. In Ram Kumar\textsuperscript{119}, the exclusion of estoppel was absolute without any exception. And it is not clear what “catena of decisions the Supreme Court had in mind, for no earlier Supreme Court cases supported such an extreme view. Such a broad statement did not represent the true picture and was inconsistent with the S.C. pronouncement in Anglo-Afghan\textsuperscript{120} and Century Spinning\textsuperscript{121} cases.

In Bihar E.G.F. Co-op. Society v. Sipahi Singh\textsuperscript{122}, the Supreme Court refused to apply the doctrine of promissory estoppel. The court held that if Article 299 was contravened, promissory estoppel could not be invoked to cure the defect. Similarly when there is no proof that respondent had suffered any damage by change in the

\textsuperscript{113} AIR 1973 SC 264
\textsuperscript{114} AIR 1974 SC 2235
\textsuperscript{115} AIR 1973 SC 2734
\textsuperscript{116} AIR 1976 SC 2237
\textsuperscript{117} M.P. Jain, Principles of Administrative Law, 6\textsuperscript{th} Ed., 2007
\textsuperscript{118} AIR 1973 SC 264
\textsuperscript{119} AIR 1976 SC 2237
\textsuperscript{120} AIR 1968 SC 718
\textsuperscript{121} Supra note 108
\textsuperscript{122} AIR 1977 SC 2149; Asstt. C.C.T. v. Dharmandra Trading Co.(1988) 3 SCC 750
government’s position, promissory estoppel could not be invoked. Also promissory estoppel is not applied against the government as ‘it is well settled that there cannot be any estoppel against the government in exercise of its sovereign legislative and executive functions.

It is interesting to note that while in *Ram Kumar* the court had used the words “legislative sovereign or executive powers” in *Sipahi Singh case* the courts changed these words into sovereign, legislative and executive function. Prima facie, the two phrases differ from each other vitally. However, in *Radhakrishna Agarwal v. Bihar* 123, the court cited with approval in Anglo-Afghan ruling without applying it to the facts of the case. The court ruled that Anglo-Afghan principle was not applicable as there the obligation arises out of equity and not contract. Subsequently in *Atma Nagar Co-operative and House Building Society v. State* 124, the court applied the doctrine of promissory estoppel and gave relief to the petitioner. The court relied on the reasoning that the petitioner had materially changed his position to his detriment on the reliance of an assurance from trust and the latter was stopped from going back on the solemn assurance given by it earlier.

In *Union of India v. P.M. Pillai* 125, the Madras High Court refused to apply the doctrine of promissory estoppel against the Government of India in the circumstances of the case. The court held that:

“Mere statement made by the Government or a Minister of Government cannot give rise to a cause of action to any citizen to find a right thereupon and to seek to enforce such a right…..”

So as the various judicial pronouncements reveal that the state of law as regards to the application of promissory estoppel against the government was in utter confusion. On the whole, by the end of 1978 the position was that, by and large, the application of the doctrine of promissory estoppel against an administrative authority was more a matter of exception than a rule.

123 AIR 1977 SC 1946
124 AIR 1979 P&H 196, also see *Poona Municipality v. Bijlee Products*, AIR 1979 SC 304, where court decided in favor of petitioners is without, however invoking the doctrine of promissory estoppel.
125 AIR 1979 Mad. 207
In 1979, the entire gamut of the doctrine was brilliantly expounded by Bhagwati, J. in *M.P. Sugar Mill v. State of U.P.* 126 case.

iii) **Phase –III: Motilal Padampat and After –**

This celebrated decision infused new life and vigor into the doctrine of promissory estoppel against the administration and gave it a new dimension. In this case the government of U.P. gave an assurance through a statement published in the newspaper, and also individually to the petitioners, that new industrial units in the State would be exempt from sales tax for a period of three years to enable them to find firm footing in the development stage. Acting on this assurance, the petitioner has established a mill in the State. Later, the Government retracted its assurance & sought to impose tax on the petitioner. This was challenged through a writ petition. The Supreme Court after the exhaustive study of the law relating to promissory estoppel in the United States, U.K. and India made a historical judgment and it removes all the doubts on the application of a promissory estoppel against the administration. The Supreme Court held that the Government was bound by the promise or assurance given by it to the petitioners on the ground of equity. The government had made a categorical representation knowing or intending that it would be acted upon by the appellant and since they acted upon the representation and altered their position, the factual basis for setting up the doctrine of promissory estoppel was present and the Government was bound to make good the representation made by it. The court conceded that promissory estoppel could not be invoked to compel the Government to do any act prohibited by law. But the doctrine could be invoked in the instant case as the relevant statute (viz. the U.P. Sales Tax Act, 1948) had a provision providing the Government to grant exemption from Sales Tax through a notification to such goods as were manufactured in a new unit. The government could therefore legitimately hold bound by its promise to exempt the applicant from the payment of Sales Tax. Had the statute not have such provisions then applicant would not have the right to compel the government to act contrary to statute. The court thus ordered the government to honor its promise and refused the

126 AIR 1979 SC 621
tax money paid by the appellants to the government by way of sales tax which the government was not entitled to charge.

The court did not accept the argument of the State that the appellant had not suffered any detriment after acting in reliance on the promise rather made profit and hence the doctrine of promissory estoppel could not be invoked. The court made clear that what was material in the situation was “the altering of the position” by the petitions acting in reliance on the promise and not the ‘prejudice’ caused to them. “The detriment in such a case is not some prejudice suffered by the promise by acting on the promise, but the prejudice which would be caused to the promise, if the promisor were allowed to go back on the promise”\(^{127}\).

Bhagwati, J. expounded the relevant principle promissory estoppel as follows\(^{128}\). “......... 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 affect 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, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not”.

The court observed when the government makes a promise knowing or intending that it would be acted upon by the promise and when the promise in fact does act upon the promise and changed his position then government could not take the plea that there was no consideration for the promise and it will have to bind its promise. In a vigorous observation Justice Bhagwati defended this position as follows:

“It is elementary that in a republic governed by the rule of law, is above the law. Everyone is subject to the law as fully and completely as any other and the government is no exception. It is indeed the pride of constitutional democracy and

\(^{127}\) Ibid at p. 651

\(^{128}\) AIR 1979 SC 621, p. 631
rule of law that the government stands on the same footing as a private individual in 
so far as the obligation of the law is concerned: the former is equally bound as the 
latter. It is indeed difficult to see on what principle can governments, committed to 
the rule of law, claim immunity from the doctrine of promissory estoppel? Can the 
government say that it under no obligation to act in a manner that is fair and just or 
that it is not bound by considerations of ‘honesty and good faith’? Why should the 
government not be held to a high “standard of rectilinear rectitude while dealing 
with its citizens”?’

Bhagwati, J. called it the eternal glory of the court that it emphatically 

effective the doctrine of executive necessity which was regarded sufficient 
justification for the government to repudiate even its contractual obligations and 
there is rule of law was established. It was laid down by the court that government 
cannot claim to be immune from the applicability of the rule of promissory estoppel 
and repudiate a promise made by it on the ground that such promise may fetter its 
future executive action. If the Government does not want its freedom of executive 
action to be hampered or restricted then, government need not make a promise 
knowing or intending that it would be acted on by the promise relying upon it.

The court draws the contour of the principle of promissory estoppel in 

following manners:

i) Being an equitable doctrine it must yield when the equity so requires. If the 
government can show that having regard to the facts as they have 
subsequently transpired it would be inequitable to hold the government to the 
promise made by it, the court would not raise equity in favor of the promisee 
and enforce the promise against the government.

ii) The court would not also enforce the promise if public interest suffers in 
fulfilling the promise made by the government. But it is the court to decide, 
on the basis of the facts disclosed by the government, whether it would be 
inequitable to enforce the liability against the government.

129 Ibid at 643
130 Express Newspaper Pvt. Ltd. v. UOI AIR 1986 SC 814; M/S D. Navinchandra & Co., Bombay 
iii) Mere claim of change of policy would not be sufficient to exonerate the Government from the liability.

iv) The doctrine cannot be applied in the teeth of an obligation or liability imposed by law.

The whole discussion on Motilal Padampat case reveals the fact that the Supreme Court in this case had re-initiated, re-expound and invigorated the doctrine of promissory estoppel applicable to government and its agencies. The court evolved the doctrine on the basis of equity in order to protect the innocent and honest persons from being injured by acting on the representations made by government officials.

The doctrine of promissory estoppel as expounded in Motilal Padampat was affirmed with its full vigor and applied in Bhim Singh v. State of Haryana keywords: Motilal Padampat case in 1980. In this case the State Government held out certain specific promises as inducement for its employees to move into a newly created department. The Supreme Court ruled that the employees having believed the representations by the State Government and having acted thereon could not be denied the rights and benefits promised to them. But the impact of Motilal Padampat ruling was for shaken by Jit Ram Shiv Kumar v. State of Haryana case in 1980.

iv) Phase – IV: Jit Ram and After –

Jit Ram Shiv Kumar case is most significant case on promissory estoppel because in this case Kailasam, J. held that Bhagwati, J. decision in M.P. Sugar Mill case is not in accordance with the view consistently taken by the Supreme Court. In both cases the two benches of the court, both having two judges each, have taken different attitude on the question of applicability of the doctrine of promissory estoppel against administration. The conflict really was between traditionalist and futuristic approaches. Kailasam, J. made it very clear when he observed:

“We feel we are in duty bound to express our reservations regarding the ‘activist’ jurisprudence and the wide implication thereof which the learned judge

---

132 AIR 1980 SC 768
133 AIR 1972 Guj. 260
(Bhagwati, J.) has propounded in his judgment”.

In this case, the Municipal Committee of Bhadurgarh established a mandi at Fateh. The Committee resolved in 1916 that the purchases of the plots in the mandi would not be required to pay octroi duty on goods imported within the mandi. Handbills were distributed for the sale of plots on this basis.

In 1917, the committee passed another resolution immunizing the mandi from payment of octroi forever. This state of affairs continued till 1953. In 1954, the committee reiterated its position and State government confirmed it. Thereafter, the committee changed its mind and resolved to levy octroi in the mandi, but State government annulled this resolution. In 1965, again the committee resolved to levy the octroi and then the Haryana government approved the resolution. Thereupon the committee started charging octroi duty on the goods imported into the mandi. The petitioner challenged the committee’s resolution and government’s action as illegal, *ultra-vires* and without jurisdiction.

The court held that the action of the government could not be questioned because: (i) it was an exercise of its statutory function, (ii) even on facts, the plea of estoppel was not available as against the government as it made no representation to the petitioners. It has been held that since the municipality has no statutory authority to exempt the market from octroi, its resolution was *ultra-vires* to its powers.

In this case Justice Kailasam took a conservative view with regard to the inter-relation of consideration and promissory estoppel by emphasizing more on the provisions of Indian Contract Act, he says that it should be borne in mind that the Indian Contract regulates the rights of parties and expressly insists on the necessity for lawful consideration which cannot be dispensed with by invoking some equitable doctrine.

When a public authority acts beyond the scope of its authority the plea of promissory estoppel is not available to prevent the authority from acting according to law. It is in public interest that no such plea should be allowed.

The Court laid down the following proposition while defining the scope of promissory estoppel against the administration:

i) The plea of promissory estoppel is not available against the exercise of the legislative functions of the State.
ii) The doctrine cannot be invoked for preventing the government from
discharging its functions under the law.

iii) When the officer of the government acts outside the scope of his authority,
the plea of promissory estoppel is not available.

iv) When the officers act within the scope of his authority under a scheme and
enters into an agreement and makes representation and person acting on that
representation puts himself in a disadvantageous position, the court is
entitled to require the officer to act according to the scheme and agreement
or representation. The officer cannot arbitrarily act on his mere whim and
ignore his promise on some undefined and undisclosed grounds of necessity
or change the conditions to the prejudice of the person who had acted upon
such representation and put himself in a disadvantageous position.

v) The officer would be justified to changing the terms of the agreement to the
prejudice of the other party on special considerations, such as difficult
foreign exchange position or other matters which have a bearing on general
interest of the state.

The above propositions leave a very limited scope for the dimensions of the
doctrine of promissory estoppel in administrative law as a safeguard on the undue
exercise of its powers by the administration.

_M.P. Sugar Mill’s_ pronouncement seems to be both principled and pragmatic
as it promotes the concept of rule of law as well as legitimate public interest. This
view is preferable to _Jit Ram_, in the latter case instead of flatly repudiating the
doctrine in its fullness in the fact of the case, the court ought to have investigated the
point whether the factual position of the case in hand brought it or not under any of
the exception laid down by Bhagwati, J. in _Motilal Padampat_ case.

v) **Phase –V: Godfrey Philips and After –**

In the _Union of India v. Godfrey Philips India Ltd._, Bhagwati, C.J. has
rehabilitated his decision of _Motilal_ case and discarded Kailasam, J.’s views on _Jit
Ram_ case. This case removes all the controversies and doubts created by _Jit Ram_
case. It was observed by Bhagwati, C.J. that the decision in _Motilal_, “marks a

---

134 (1985)2 SCJ p. 498
significant development in the law relating to the doctrine of promissory estoppel” and that it would now be used not only as shield but also as a sword. The doctrine of promissory estoppel is equitable doctrine and based on any contract\textsuperscript{135} and for the application of this doctrine, no distinction could be made between a private individual and public body. The application of the doctrine of promissory estoppel against the government in exercise of their governmental public or executive functions could not be defeated on the plea of executive necessity or freedom of future executive action. It was held that doctrine of promissory estoppel is not of universal application. It had no application against the legislature, in exercise of its legislative functions. The government or public authority could not be enforced against law or which was outside the authority or powers of the government. Moreover, the doctrine being equitable, must yield when equity so required.

In \textit{D.R. Kohli v. Atul Products Ltd.}\textsuperscript{136}, Venkataramiah, J. has reiterated the position that the doctrine of promissory estoppel is applicable only when on a representation/ promise the promisee had relied and acted and suffered a detriment. If a person merely took the benefit of the promise/ representation without any detriment, the government could not be stopped from withdrawing the benefit.

The Supreme Court applied the doctrine of promissory estoppel even in Service Jurisprudence. In \textit{Surya Narain Yadav v. Bihar State Electricity Board}\textsuperscript{137}, the court held that where statutory bodies made representation to its employees that they would be permanently absorbed and encoded without taking any examination and would be confirmed after two years probation period and when employees relying upon and acted to their own prejudice, subsequently Board, refused to perform its promise, by virtue of promissory estoppel the board is bound to honor its representation. It cannot avoid it on ground of any rules to contrary as the trainees employees formed a special class in a particular fact situation entitled to the special benefit assured to them. The court held that the doctrine of promissory estoppel in peculiar circumstances behaves as sword and not shield.

\textsuperscript{135} \textit{Gujarat State Financial Corporation v. Lotus Hotels Pvt. Ltd.}, AIR 1983 SC 848 in which even a contract was enforced on the ground of promissory estoppel.
\textsuperscript{136} AIR 1985 SC 537
\textsuperscript{137} 1985 (3) SCC p. 38
In a recent case, Sabyasachi Mukherji, J. in Delhi Cloth & General Mills Ltd. v. Union of India\textsuperscript{138} while explain the nature, scope and development of promissory estoppel in India observed that the doctrine of promissory estoppel is now well established doctrine in administrative law of India. It is a doctrine based on equity and is invoked to prevent fraud or manifest injustice. For the invoking of this doctrine detriment, damage or prejudice to the promise as a result of acting upon the assurance or representation of the government need not be proved, rather the alteration of position is enough. It is not the question of detriment but whether it appears unjust, unreasonable or inequitable that promisor should be allowed to resile from his assurance or representation, having regard to what the promisee has done or refrained from doing in reliance on the assurance or representation, having regard to what the promisee has done or refrained from doing in reliance on the assurance or representation. The entire doctrine proceeds on the premise that it is reliance based and nothing more. The court would compel the opposite party to adhere to the representation acted upon or abstained from acting\textsuperscript{139}.

For invoking the doctrine of promissory estoppel promise must induced to act on the representation or promise made by the promisor. However, the doctrine cannot be used to compel the public bodies or the government to carry out the representation or promise which is contrary to law or which is outside their authority or power. Secondly, the estoppel stems from equitable doctrine it therefore, requires that he who seeks equity must do equity. The doctrine, therefore, cannot also be invoked of it found to be inequitable or unjust or in its enforcement. Lastly, for the purpose of finding whether estoppel arise in favor of the person acting on the representation it is necessary to look into the whole of the representation made. The representation must be clear and unambiguous and not tentative or uncertain\textsuperscript{140}.

It is true that there can be no promissory estoppel against the legislature and

\textsuperscript{138} 1988 (1) SCC 86
\textsuperscript{140} Halsbury’s Law of England, 4\textsuperscript{th} ed. Vol. 16 p. 1071
the ultra vires of the Act cannot be tested by invoking the plea of promissory estoppel but as far as the State Government is concerned the rule of promissory estoppel does apply.141

In recent case the Supreme Court extended the doctrine of promissory estoppel to administrative action of State also which does not give rise to contractual obligation between the parties in normal time, but if the parties acted upon an administrative assurance of an administrative action and alter his position to his disadvantage then State can be pinned down to its promise with the help of promissory estoppel142.

3.7 Pre-Existing Legal Relation and Promissory Estoppel –

To determine pre-existing legal relation as a basic content of promissory estoppel, Bhagwati, J. before reaching final conclusion scrutinizes the decision of English cases. In the early cases on promissory estoppel in England, the court suggested that the doctrine was limited in its operation, the parties were already bound by contractual relation and subsequently one of the parties induces the other to believe that rights under such contract shall not be enforced and as a result of such inducement of representation such other party has altered its position to his own detriment. Thus in Hughes case143 where the parties were bound by contractual relation it was observed: “If the parties who have entered into definite and distinct terms involving certain legal results afterwards…….. enters upon a course of negotiation”. This principle was affirmed in Birmingham & Distt. Land Company144 and Tool Metal Co. v. Tungsten Electric Co.145. In all these cases there was a pre-existing relationship between the parties. In a subsequent case Dunham Fancy Goods Ltd. v. Michal Jackson (Fancy Goods) Ltd.146, it was observed that “although pre-existing contractual relationship was not necessary for the application of the

---

143 (1877)2 AC 439
144 (1880)40 Ch. D. 268
145 (1955)2 All ER 657
146 (1968)2 QB 839
doctrine but there must be pre-existing legal relationship which could in certain circumstances give rise to liabilities and penalties”.

However Lord Denning has not suggested any such limitation for the application of the doctrine in High Trees case\(^{147}\) and in Evenden v. Guildford City Association Football Club Ltd.\(^{148}\), Lord Denning in Toto repudiated the necessity of pre-existing legal relationship between the parties and refused to introduce any such limitation for the operation of the doctrine of promissory estoppel, provided other compelling circumstances for its applicability are present in a particular case.

In India, Supreme Court refused to introduce any kind of such limitation on the operation of doctrine of promissory estoppel. Referring to the requirement of the pre-existing legal or contractual relation for the applicability of the doctrine of promissory estoppel Supreme Court observed in M.P. Sugar Mill v. State of U.P.\(^{149}\).

“We do not think any such limitation can justifiably be introduced to curtail the width and amplitude of this doctrine. We fail to see why it should be necessary to the applicability of this doctrine that there should be some contractual relationship between the parties”.

In this case Supreme Court further stated:

“The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other, a clear or unequivocal promise which is intended to create legal relations or affect a legal relation to arise in future, knowing or intending that it would be acted upon by the other party, the promise would be binding on the other party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealing which have taken place between the parties and this would be so irrespective of whether there is any pre-existing legal relationship between the parties or not”.

Doctrine of promissory estoppel is an equitable doctrine and the government or the public bodies cannot claim immunity from the applicability of the doctrine. It

\(^{147}\) (1947) KB 130
\(^{148}\) (1968)2 QBD 839
\(^{149}\) (1979)2 SCC 409
can only be applied in a case where there is no concluded contract but promise has been made by one party intending to create legal relationship arise in the future and the other party has acted upon such promise or representation and changed his position or that the other party relying on such promise has acted to its detriment.

Similarly in Mahavir Prasad case\textsuperscript{150} Supreme Court held that in Indian Legal System the condition of pre-existing legal relation is not essential for the application of the doctrine of promissory estoppel, if otherwise the circumstances exist for its applicability.

3.8 Detriment and Promissory Estoppel -

In the formative period it was generally said that the doctrine of promissory estoppel cannot be invoked by the promise unless he has suffered ‘detriment’ of ‘prejudice’. It was usually said simply that the party asserting the estoppel must have been induced to act to his detriment. But this has now been explained in so many decisions that all that is required is that the party asserting the estoppel must have acted upon the representation made to him. This means, the party has changed or altered the position by relying on the assurance or the representation. The alteration of position by the party is the only essential requirement of the doctrine. It is not necessary to prove further any damage, detriment or prejudice to the party asserting the estoppel\textsuperscript{151}. The Court, however, would compel the opposite party to adhere to the representation acted upon or abstained from acting. The entire doctrine proceeds on the promise that it is reliance based and nothing more. This principle would be clear if we study the cases in which the doctrine has been applied ever since it burst into sudden blasé in 1946 by Lord Denning in *High Trees case* \textsuperscript{152} in England, in the latter case, the court observed:

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

The history of the *High Trees* principle is too well known to bear repetition. It

\textsuperscript{150} Nagarmal Mahavir Prasad v. Manager, United Bank of India, AIR 1987 Cal 85

\textsuperscript{151} Delhi Cloth & General Mills Ltd. v. Union of India (1988)1 SCC 86; Raj Kumari Chopra v. Delhi Development Authority, 40(1990) DLT 216.

\textsuperscript{152} 1947 KB 130; (1956)1 All ER 256
well suffices to make the following points:

The promisor is bound because he led the promise to commit himself to change the position. If the promise has acted upon the promise, the promisor is precluded from receded his promise; no further detriment to the promise on his temporary interest need be established. This position has been made clear by Lord Denning himself in his article “Recent Developments in the Doctrine of Consideration”\textsuperscript{153}. A man should keep his words. All the more so, when the promise is not a bare promise, but is made with the intention that the other party should act upon. It just as contract is different from tort and estoppel, so also in the sphere now under discussion may give rise to a different equity from other conduct.

The difference may lie in the necessity of shoeing ‘detriment’ where one party deliberately promises to waive, modify or discharge his strict legal rights, intending the other party to act on the faith of promises, and the other party actually does act on it, then it is contrary, not only to equity but also to good faith, to allow the promisor to go back on his promise. It should not be sufficient that he acted on it. The principle governing this branch of the subject cannot be better put than in the words of a great Australian Jurist Dixon, J. in Grundt v. Great Boulder Party Gold Mines Ltd.\textsuperscript{154}, he said: “it is often said simply that the party asserting the estoppel must have been induced to act to his detriment. Although substantially such a statement is correct and leads to no misunderstanding, it does not bring out clearly the basal purpose of the doctrine. That purpose is to avoid or prevent a detriment to the party asserting the estoppel by compelling the opposite party to adhere to the assumption upon which the former acted or abstained from acting. This means that the real detriment or harm from which the law seeks to give protection is that which would flow from the change of position if the assumption is adhered to, the party who altered his complaint is that when afterwards the other party makes a different state of affairs the basis of an assertion of right against him then, if it is allowed, his own original change of position would operate as a detriment. His action or inaction must be such that, if the assumption upon which he proceeded were shown to be

\textsuperscript{153} M.L.R. vol. 15 at p. 5
\textsuperscript{154} (1938)58 CLR 641 Australia
wrong, and an inconsistent state of affairs were accepted as the foundation of the rights and duties of himself and the opposite party, the consequences would be to make his original act or failure to act as a source of prejudice.

This passage was referred to with approval by Lord Denning in Central Newbury Car Auctions Ltd. v. Union Finance Ltd.\(^{155}\) and also been quoted with approval by Bhagwati, J. in M.P. Sugar Mill Co. Ltd. v. State of U.P.\(^{156}\) the learned Judge had said\(^{157}\):

“We do not think that in order to invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promisee which could result if the promisor were to recede from his promise, then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the progress: if the promisor were allowed to go back on the promise”.

The view taken in M.P. Sugar Mill case has been reiterated in Union of India v. Godfrey Philips India Ltd.\(^{158}\) and again in Express Newspaper Pvt. Ltd. v. Union of India\(^{159}\) and Delhi Cloth and General Mills Ltd. v. Union of India case\(^{160}\).

In concluding part the concept of detriment as we now understand it is whether it appears unjust, unreasonable or inequitable that the promisor should be allowed to resile from his assurance or representation having regard to what the promise has done or refrained from doing in reliance on the assurance or representation.

In Delhi Cloth Mill case the Supreme Court held that for the applicability of the doctrine of promissory estoppel against the government – alteration in position


\(^{157}\) Ibid, p. 452

\(^{158}\) (1985)4 SCC 369; 1985 Supp. 2 SCR 123

\(^{159}\) AIR 1986 SC 874

\(^{160}\) (1988)1 SCC 96
by acting on the assurance or representation is enough – consequent detriment, damage or prejudice to the promise need not be proved, and it is irrespective of whether each representation was wholly or partly responsible for such alteration in the position, but the representation must be clear, certain and unambiguous and must not be contrary to law or beyond the power or authority of the promisor.

3.9 Promissory Estoppel and Cause of Action and Defence Plea –

There had been a controversy of quite a long-standing whether the doctrine of promissory estoppel can itself give rise to a cause of action, or can be a defence in a law suit. In the beginning in England, the parochial perception describes it as a shield and not as sword. This approach has been as a result of assumption that this doctrine emerged from the branch of law of estoppel. Since the estoppel has been traditionally a principle invoked by way of defence, the doctrine of promissory estoppel has also come to be identified as a measure of defence. The other reason for not allowing promissory estoppel to found a cause of action was the apprehension of English Judges that in that case the doctrine of consideration would otherwise be completely eroded and displaced. Lord Denning had uttered word of caution in *Combe v. Combe*\(^1\) that principle of promissory estoppel should not be stretched too far lest it should be endangered. It does not create new cause of action where none existed before. However, in 1975 *Crabb. v. Arun Distt. Council*\(^2\) it was stated that in the species of estoppel called ‘propriety estoppel’, it was stated that it gives rise to a cause of action. Also, Luckoo J.A. in *Jamaica Telephone Co. Ltd. v. Robinson*\(^3\), held that present trend in U.K. seems to be in favor of a cause of action.

It is fortunate to note that Supreme Court of India has come out with broader approach, that is promissory estoppel has not only been held to provide a weapon of defence to the promise but has been held to afford him a weapon of offence e.g. affording him a cause of action too. Highest court of the country held that the doctrine of promissory estoppel has been evolved by the equity and it should not be inhibited by those limitations by which the common law doctrine suffers. In India as

---

\(^1\) (1951)1 All ER 767 at 769 referred in *M.P. Sugar Mill* case.
\(^2\) (1975) All ER 865
\(^3\) 1970 W.L.R. 174 at 179
back as in 1880\textsuperscript{164} long before it was formulated by Justice Denning in England, Division Bench of Calcutta had applied the doctrine of promissory estoppel and also recognized it as to afford a cause of action too. Bhagwati, J. in M.P. Sugar Mill v. State of U.P.\textsuperscript{165} while laying its importance observed:

“........having regard to the general approbation to which the doctrine of consideration has been subjected by eminent jurists we need not be unduly anxious to protect this doctrine against assault and erosion nor allow it to dwarf or stultify the full development of equity of promissory estoppel or inhibit or curtail its operational efficacy as a Justice for preventing injustice”.

At this juncture, it may be pointed out that law Commission of India in its 13\textsuperscript{th} report adopted the similar approach and recommended that, by way of exception to Section 25 of Indian Contract Act,1872, a promise, express or implied which the promisor knows or reasonably should know, will be relied upon by the promisee, should be enforceable if the promise has altered his position to his detriment in reliance on the promise, Supreme Court of India finds no valid reason not to allow promissory estoppel to find a cause of action where in order to satisfy the equity, if it necessary to do so.

The limitation on the application of promissory estoppel to the defence plea only may be characterized was a ghost of traditional estoppel. It must not forget that promissory estoppel is an equitable estoppel and hence it should not be limited in its application by way of defence but it should be available as cause of action if it is necessary to satisfy the equity. As there is no qualitative difference between proprietary estoppel and promissory estoppel and both are the offspring of equity so they must yield when the Justice demanded for them. Chief Justice, as he then was, Bhagwati in Union of India v. Godfrey Philips India Ltd.\textsuperscript{166} reiterated his observation held in M.P. Sugar Mill case that it is true to allow promissory estoppel to found a cause of action would seriously dilute the principle which requires

\textsuperscript{164} Ganges Manufacturing Co. v. Sourajmull (1880) ILR 5 Cal 667 SCLR 533
\textsuperscript{165} (1979)2 SCC 409 at 430
\textsuperscript{166} (1985)4 SCC 369; Surya Narayan Yadav v. Bihar State Electricity Board (1985)3 SCC 38; application of promissory estoppel in Service Jurisprudence, in order to prevent injustice it can be basis of cause of action.
consideration to support a contractual obligation but that is no reason why new principle which is a child of equity brought into the world with a view to promote honesty and good faith and bringing law closer to justice should be held in fetter and not allowed to operate in its magnitude. So, the doctrine of promissory estoppel should not be limited in its application only to defence but it can also found a cause of action. This doctrine is applicable against the government in the exercise of its government, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of this doctrine.

3.10 Promissory Estoppel and Public Interest –

    The State can avoid the application of promissory estoppel against itself by making public interest as defence plea, but it is not sufficient for the State to avoid the application of promissory estoppel to plead the public interest being damaged if the same be allowed against it, but the State has to place before the court the relevant fact it considers damaging the public interest. It is for the court to decide by taking the facts placed before it whether allowing the promissory estoppel against it under the circumstances would damage the public interest. In many cases, the courts have refused to apply the doctrine against administration in the name of public interest. But it needs to be pointed out that the public interest is not a magic formula. The court must be satisfied that public interest is really served by departing from the promise made by the government in this connection may not be regarded as sufficient. References may be made in this connection to what Bhagwati, J. said in Motilal Padampat 167 on this point:

        “When the government is able to show that in view of facts which have transpired since the making of the promise, public interest would be prejudiced if the government were required to carry out the promise the court would have to balance the public interest in the government carry out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the government and

167 AIR 1979 SC 625
determine which may the equity lies. It would not be enough for the government just to say that public interest requires that the government should not be required to carry out the promise or that the public interest would suffer if the government were required to honor it. The government cannot, as Shah, J. pointed out in *Indo-Afghan Agencies case*¹⁶⁸, claim to be exempted from the liability to carry out the promise, nor can the government claim to resist the liability, it will have to disclose the court what are the subsequent events on the ground of which the government claim to be exempted from the liability and it would be for the courts to decide whether those events are such as to render it inequitable to enforce the liability against the government. Mere claim of change of policy, the government would have to show what precisely are the changed policy and also its reason and justification, so the court can judge for itself which way the public interest lies and what equity of the case demands¹⁶⁹. The court would not act on the mere *ipse dixit* of the government, for it is the court which has to decide and not the government whether the government should be held exempt from liabilities. “This is the essence of the rule of law”¹⁷⁰.

In *Jit Ram v. State of Haryana*¹⁷¹, Kailasam, J. said that to hold the government was not subject to the doctrine of promissory estoppel was in public interest.

In *Bombay C. & E. Ltd. v. K. Chandramouli*¹⁷², government had acted in public interest in first granting exemption from taxation and then withdrawing it. Court just accepted the *ipse-dixit* of the Government as regards public interest and did not look into the claim as critically as was envisaged by Bhagwati, J. in *M.P. Sugar Mill case*. The court appears to have been influenced by *Jit Ram* more than by *Motilal Padampat case*.

In *Bansal Export (P) Ltd. v. Union of India*¹⁷³, the court held government had to change its policy in public interest e.g. restricting the export of a precious metal.

---

¹⁶⁸ AIR 1968 SC 718
¹⁶⁹ Supra note 167
¹⁷¹ AIR 1980 SC 1305
¹⁷² Tax L.R. 2788(F.B. Delhi)
¹⁷³ AIR 1983 Del 447
like silver which is not produced indigenously. Promissory estoppel is always subservient to public interest.

Thus in last, the State can throw equity in its favor by showing the court that public interest shall be injured by carrying out the promise, assurance or representation by the State.

3.11 Promissory Estoppel and Indian Contract Act –

Equitable estoppel bear striking similarities to the law of contract; it involves a detriment to the representee which is analogous to the type of detriment which may furnish consideration for a contract. It is trite law that consideration under the law of contract may consist merely of a detriment suffered by the promisee. There does not need to be any benefit to the promisor. In the same way, there will be no equitable subject, unless there is some detriment suffered by the representee in reliance upon the promissory statement made to him.

However, the differences are more striking than this similarity. There is no intention to create contractual relations – in fact there is almost always an intention not to. More importantly, there is no fixed result agreed upon by the parties which is enforced by the court, either specifically or by way of damages. Rather, the representer is simply unable to exercise a legal right either for a period or permanently. It is important to note, however, that the early fear that the doctrine of equitable estoppel would result in an erosion of the necessity for a consideration in a contract has not in any way been realized.

3.11.1 Inter relation of Promissory Estoppel and Consideration -

In a true sense, promissory estoppel and consideration are an antithesis of each other and cannot go together. A promise which may be enforced on the ground of promissory estoppel would definitely not require any consideration. The hostility of consideration to promissory estoppel is born out by the following remarks of Stephen, J. in Alderson v. Madison:

“If this view were adopted in its entirety, every promise on which a person acted, even if there were no consideration would be binding by way of estoppel, and such a doctrine would alter the present law by giving legal force to that class of
representation which at present are only morally binding”.

There can be no doubt that the decision of Lord Denning in the High Trees case\(^{174}\) represented a bold attempt to escape from the limitation imposed by the House of Lords in \textit{Jorden v. Money}\(^{175}\) and it rediscovered an equity which was long embodied beneath the crust of the old decision in \textit{Hughes v. Metropolitan Rly. Co.}\(^{176}\) and \textit{Birmingham & North Western Rly. Co.}\(^{177}\) and brought out remarkable development in the law with a view to ensuring its approximation with justice, an ideal for which the law has been constantly striving. But it is interesting to note that Lord Denning was not prepared to go further, as he thought that having regard to the doctrine of consideration which was so deeply entrenched in the jurisprudence of the country, it might be unwise to extend promissory estoppel so as to found a cause of action and that is why he uttered a word of caution in \textit{Combe v. Combe}\(^{178}\) that the principle of promissory estoppel should not be stretched too far, lest it should be endangered. The learned law Lord proceeded to add:

“Seeing that the principle never stands alone as giving a cause of action in itself, it can never do away with the necessity of consideration when that is an essential part of the cause of action. The doctrine of consideration is too firmly fixed to be overthrown by a side wind”.

Spencer Bower and Turner also point out in their treatises\(^{179}\) that how in case of promissory estoppel a promise can be used to found a cause of action without according to it operative contractual force and it is for this reason that

“A contention that promissory estoppel may be used to found a cause of action must be regarded as an attack on the doctrine of consideration”.

The learned authors have also observed\(^{180}\):

“To give a plaintiff a cause of action on promissory estoppel must be little less than to allow an action in contract where consideration is not shown”.

\(^{174}\) (1956) All ER 256
\(^{175}\) (1854) 5 HLC 185
\(^{176}\) (1877) 2 AC 439
\(^{177}\) (1888) 49 Ch. D. 268
\(^{178}\) (1951) KB 215
\(^{179}\) Spencer Bower & Turner, \textit{The Law relating to Estoppel by representation} 3rd Ed. 1977 at p.384
\(^{180}\) Ibid p. 387
And that cannot be done because consideration still remains a cardinal necessity of the formation of contract. It can hardly be disputed that over the last three or four centuries the doctrine of consideration has come to occupy such a predominant position in the law of contract that under the English Law it is impossible to think of a Contract without consideration and therefore it is understandable that English Courts should have hesitated to push the doctrine of promissory estoppel to its logical conclusion and stopped short at allowing it to be used merely as a weapon of defence.

It has been said that the principle of promissory estoppel has been employed to obviate the necessity of consideration in cases where parties are already bound contractually one to the other and one of them promises to waive, modify or suspend his strict legal rights. The question therefore arises whether the principle might similarly be employed to replace consideration as a necessary element, so that a person who made to another a promise, intended to affect legal relations and intended to be acted upon by the promise, could be compelled by the promise – at least if he had altered his position in reliance on the promise\textsuperscript{181} - to fulfill the promise, notwithstanding that the promise had incurred no detriment and conferred no benefit in return for the promise. Although certain cases might suggest that promissory estoppel could be used as cause of action\textsuperscript{182}. The better view is “that it would be wrong to extend the doctrine of promissory estoppel whatever its precise limits at the present day, to the extent of abolishing the back-handed way the doctrine of consideration.

It should be remembered that the modern altitude towards the doctrine of consideration is, however, changing fast and there is considerable body of justice thought that this doctrine is something of an anachronism. Prof. Holdsworth\textsuperscript{183} observed:

“the requirement of consideration in its present shape prevent the enforcement of many contracts, which ought to be enforced, if the law really wishes

\textsuperscript{182} Durrham Fancy Goods Ltd. v. Michael Jackson (Fancy Goods) Ltd. (1968)2 Q.B. 839
\textsuperscript{183} Holdsworth’s, History of English Law.
to give effect to the lawful intentions of the parties to them; and it would prevent the enforcement of many others, if the Judges had not used their ingenuity of considerations, by reasoning which is both devious and technical, adds to the difficulties of the doctrine”.

The doctrine of consideration has also received severe criticism at the hands of Dean Roscoe Pound\(^\text{184}\) in USA, “the reason is that promise as a social and economic institutions become of the first importance in a commercial and industrial society and it is an expression of the moral sentiment of a civilized society that “a man’s word should be as good as his bond” and his fellowmen should be able to rely on the one equally with other. Law Revision Committee in England in its 6\(^{th}\) report as far as back as 1937 accepted Prof. Holdsworth’s view and advocated that “a contract should exist if it was intended to create or affect legal relations and either consideration was present or the contract was reduced to writing”. This recommendation however did not fructify into law with the result that the present position remains what it was.

In India Justice Bhagwati has considered the interplay of consideration and promissory estoppel at length and observed how the former has thwarted the growth and full development of promissory estoppel. After discussing the American law on the subject, he observed the leading textbook writer’s view with disfavor the importance given to ‘consideration’. The learned judge preceedes that\(^\text{185}\):

“Having regard to the general opprobrium to which the doctrine of consideration has been subjected by eminent jurists, we need not be unduly anxious to protect this doctrine against assault on erosion nor allow it to dwarf or stultify the full development of the equity of promissory estoppel or inhibit or curtail its operational efficacy as a Justice device for preventing injustice”.

In *Jit Ram v. State of Haryana*\(^\text{186}\) Justice Kailasam took a conservative view with regard to the inter-relation of consideration and promissory estoppel, by emphasizing more on the provision of Indian Contract Act regulated the rights of

\[^{184}\text{Roscoe Pound, An Introduction to the Philosophy of Law, 1975at pg. 152}\]
\[^{186}\text{AIR 1980 SC 1285}\]
parties and expressly insists on the necessity for lawful consideration which cannot be dispensed with by invoking some equitable doctrine. Section 10 of Indian Contract Act says all the agreements are contract, if they are made by free consent of parties competent to contract for a lawful consideration and with a lawful object, are not hereby expressly declared to be void. But with due regard to Jt. Kailssam should be reminded of the fact that promissory estoppel has come to play to avoid injustice which may be caused by asking for the technical requirement of consideration in every enforceable promise when the factual situation of it is such as is equitable to ask for it. It is only under such circumstances that the promissory estoppel is required to be invoked to avoid injustice by curtailing the rigorous of the statute. In Godfrey Philips India Ltd. v. Union of India\textsuperscript{187}, the Supreme Court of India set rest the controversy raised in Jit Ram case and now the ruling of M.P. Sugar Mill case is the standing law.

As the legal history of promissory estoppel in England has shown that consideration is sine qua non for its application with regard to the promise modifying the existing contractual relations\textsuperscript{188}, only whereas, its history in USA has shown that consideration is not only sine qua non for its application but in case of promise modifying the existing contractual relations but in appropriate cases the creations of new contractual relations too\textsuperscript{189}. Therefore, in India, there is no valid reason why consideration should be sine qua non for the application of promissory estoppel with regard to the promise modifying the existing contractual relations but in appropriate cases where the demand of justice require, it should be applied with regard to the promise creating new contractual relations\textsuperscript{190}.

\subsection*{3.11.2 Promissory Estoppel and Section 63 of Indian Contract Act –}

In the \textit{Joseph Valamangalam v. State of Kerala}\textsuperscript{191}, the Court referred to the dictum of several English cases including \textit{Combe v. Combe}\textsuperscript{192} and the \textit{Foakes v.}

\begin{footnotesize}
\begin{itemize}
  \item\textsuperscript{187} AIR 1986 SC 806
  \item See Jorden v. Money, 6 HLC 185 (1854), Hughes case (1877) App case 439, Birmingham & Distt Land Co. v. London & North W. Rly. Co. (1866)40, Ch. D. 268 etc.
  \item See Article 90 of restatement of Law of Contract 234 N.Y. 470, 421 N.Y. 231, 12 N.Y. 18, 74 N.Y. 72, 103 N.Y. 600 and 167 N.Y. 96 etc.
  \item Hughes v. Metropolitan Rly. Co. (1877)2 AC 439
  \item AIR 1958 Ker 290
  \item (1951)2 KB 215(CA)
\end{itemize}
\end{footnotesize}
Beer\textsuperscript{193} and observed: In fact\textsuperscript{194} the doctrine goes further than section 63 of Indian Contract Act and therefore, there is no occasion for us to borrow it”. Section 63 of Indian Contract Act says that:

“Every promisee may dispensed with or remit wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit”.

**Illustrations**

a) A promise to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

b) A owes B 5,000/-. A pays to B and B accepts, in satisfaction of the whole debt, 2,000/- paid at the time and place at which Rs. 5,000/- were payable. The whole debt is discharged.

c) A owes B Rs. 5,000/-. A pays to B, Rs.1,000/- and B accepts them in satisfaction of his claim on A. this payment is a discharge of the whole claim.

d) A owes B under a contract, a sum of money, the amount of which was not been ascertained. A without ascertaining the amount, gives to B and B in satisfaction thereof, accepts, the sum of Rs. 2,000/-. This is a discharge of the whole debt, whatever may be its amount.

e) A owes B Rs. 2,000/-, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a composition\textsuperscript{195} of eight annas in the rupees upon their respective demands. Payment of B of Rs. 1,000/- is a discharge of B’s demand.

Except (a) all other illustrations attached with this section deal with partial remission, completely discharge the promisor’s burden upon the promise’s acceptance of a smaller sum paid in present in satisfaction of the whole amount. It is the actual remission and not a mere agreement to waive which is effectual under this

\textsuperscript{193} (1884)9 A.C. 605(H.L.)

\textsuperscript{194} Keshav Lal v. Bhai T. Mills(1958)A.S.C. 512. also see Jit Ram v. State of Haryana AIR 1980 SC 1305; Kailasam, Jt. Made similar statement and held that there is no need of development of promissory estoppel in India.

\textsuperscript{195} Substituted for ‘Compensation’ by the Amending Act, 1891(XII of 1897)
section. But there is a complete waiver as in illustration (a) it does not require any section by the debtor to become effectual. But where it is partial or conditional it becomes effective only on the fulfillment of the terms of the waiver.

But the promise cannot extend the time for the performance of the promise on his own accord without the due acceptance of the promisor of the same.196

Thus, if A says to B if you give me Rs. 500/- within twenty-four hours in lieu of my due amount of Rs. 1,000/- you shall stand completely discharged. Doubtless the payment of the smaller sum and its acceptance would extinguish the debt in Toto.

But difficulty arises when the promisor withdraws such promise before its being acted upon in that case – the debtor can take recourse to promissory estoppel if under the circumstances of that case it may at all be attracted. It is stated that Section 63 illustration (a) governed the cases where waiver is complete and effective. But an agreement to waive without consideration shall be void and ineffectual under the existing law. The Law Commission has suggested an amendment to Section 63 to cover up this situation.

“An agreement made without consideration is valid if it is a promise to dispense with or remit the performance of a promise or to extend the time for its performance”197.

Dr. I.C. Saxena, a renowned authority on the law of contract has further suggested a modification to the suggestion of amendment proposed in section 63 in the report of the Law Commission of India, to add the words “wholly” or in “part” after the word “limit”. Otherwise, it is likely to be construed to mean complete remission or full waiver only.

It may be reminded that the parent Section 63 on which the language of this recommendation is based, has also used these words198.

---

196 Keshav Lal v. Lal Bhai T. Mills (1958) ASC 512
3.11.3 Recommendations of Law Commission –

The Law Commission after having detail discussion on doctrine of consideration in England and USA reached the conclusion that in recent years the doctrine of consideration were given bad names and it was criticized by the hands of eminent jurists, writers and courts itself because in number of cases this doctrine prevents the enforcement of many contracts which ought to be enforced, if the law really wishes to give effect to lawful intentions of the parties to them, if the judge had not used their ingenuity to invent it199. In America Deon Pound observes:

“It is significant, although we have been theorizing about consideration for four centuries, our texts have not agreed upon a formula of consideration much less our courts upon any consistent scheme of what is consideration and what is not. It means one thing in the law of simple contracts, another in the law of negotiable instrument, another in conveyance under the statute of uses and still another thing no one knows exactly what in many cases in equity200. According to him, promises as a social and economic institution becomes of the first importance in a commercial and industrial society. A man’s word should be “as good as his bond” and his fellowmen must be able to rely on the one equally with the other if our economic order is to function efficiently. This is the expression of the moral sentiments of the civilized society201.

In England, Law Revision Committee202 advocated that contract should exist if there was an intention to create legal relation and if either the contract was reduced to writing or consideration was present. In USA, too, the New York Revision Commission reached on conclusion which in many respect were similar to those of English Committee.

The Law Commission in India submitted that we are unable to recommend as abolition of the doctrine of consideration. It has become so, firmly rooted in our

199 Holdsworth, History of English Law, vol. 8 at 47, Lord Wright has suggested for abolition of this doctrine in an Article “ought to doctrine of consideration to be abolished from the common law”49 Harvard Law review at pp.1225, 1253 in 1936.
200 Roscoe Pound, An Introduction to the Philosophy of Law (Revised Ed.)
201 Ibid, 147
concept of contract, that a wholesale rejection of it would have the result of overthrowing the very structure on which our law of contract is based. We reach on conclusion that instead of abolishing the doctrine or introducing an alternative to it, we should make suitable changes in the existing law which will have the effect of preventing the inequitable and anomalous consequences resulting from a rigid adherence the doctrine of consideration. We propose to achieve this end by adding some clause to Section 25 of the Indian Contract Act which now enumerates the exceptional cases where a contract without consideration is valid. So in order to prevent injustice, caused by adherence to doctrine of consideration, Law Commission recommended to amend Section 25 of the Indian Contract Act so as to adopt promissory estoppel as a part of contractual jurisprudence vide this recommendation an agreement though without consideration an agreement though without consideration would be valid. It states:

“A promise which the promisor knows or reasonably should know, will be relied upon by the promisee, shall be enforceable if the promisee had altered his position to his detriment in relying on his promise”203.

For the purpose of this exception, a promise need not be an express promise but may be implied from conduct, i.e., from acts or omissions. The words “express” or “implied” should therefore be added after the word promise is adopting the above recommendation of the Law Revision Committee. Accordingly, the Law Revision Committee recommended that an agreement to keep an offer open for a definite period of time until the occurrence of some specific event should be enforceable even where there is no consideration to support.

Thus, it is evident that Law Commission has recommended the adoption of promissory estoppel.

The essential requirements which must be present are:

a) Express or implied promise, whether oral or in writing;

b) The promisor know or ought to have known that his promisor would induce an action on the part of the promise; and

203 6th Interim Report, Para 50, Recommendation No. 8, p. 31
c) A detrimental action by the promise.

By recommending an exception under section 25, the Commission has established that promissory estoppel is antithesis of consideration.

3.12 The Doctrine of Promissory Estoppel – Application to the Government

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 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. It is not necessary, in order to attract the applicability of the doctrine of promissory estoppel that the promise acting in reliance of the promise, should suffer any detriment. 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 scope 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 the constitutional provisions, as under Article 299 which affords exemption from personal liability of the person making the promise or assurance.

In India, there are two stages in the evolution of the application of this
doctrine; pre Anglo-Afghan case and post Anglo-Afghan case. Prior to this case, the position was the promissory estoppel did not apply against the Government. But the position altered with this case. In *Union of India v. Anglo Afghan Agencies*\(^{204}\), 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 stopped 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 –**

The following are the essentials to make any promise binding on the Government:

i) The State makes the promise within the ambit of law.

ii) There is an intention to enter into a legal relationship.

iii) 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 stopped, 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 the law on the matter and as the maxim says, ignorance of law is no excuse. So, a person cannot 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 principle of estoppel cannot override the provision of a statute. Where a statute imposes a duty by positive action, estoppel cannot prevent it. The doctrine cannot also be invoked to prevent the legislative and executive organs of the Government from performing their duties.

\(^{204}\) AIR 1968 SC 718
In *Jit Ram Shiv Kumar v. State of Haryana* ²⁰⁵, a municipality granted exemption from octroi for developing a mandi, but subsequently is revoked the exemption. Later it again granted the exemption in keeping with the terms of the original sale of plots, but levied taxes again. Even so, a claim of estoppel against its legislative power was not allowed.

So is the case with the tax laws. If the law requires that a certain tax be collected, it cannot be given up, and any assurances by the Government that 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.

The following conditions have been laid down as necessary to invoke the maxim of “No estoppel against the Statute”:

- 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 provisions of law must be made for public interest and not pertain to a particular class of person.
- 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.

The doctrine of promissory estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negative. 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

²⁰⁵ *(1981)1 SCC 11*
concerned. But if the promise is on behalf of the Government is unconstitutional, against any statute or against any 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 while the duties imposed by a promise are owed by the Government not to the public but to private individuals. Thus estoppel does not apply to contravention of a statute but applies to the breach of a promise by the Government.

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 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 elementary in a republic, governed by the Rule of Law, no one however high or low, is above the law. Everyone is subjected to the law as fully and completely as any other and the Government is no exception. 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. The Government cannot claim immunity from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action.

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 it against the Government. The doctrine of promissory estoppel will be displaced in such a case because equity would not require the Government to be bound by the promise. When the Government is able to show that due to the facts which have transpired subsequent to the promise being
made, public interest would be prejudiced if the Government were required to carry out the promise made, the court would have to balance the public interest in the Government carrying out the promise made to a citizen which has induced the citizen to alter his position to his prejudice and the public interest likely to suffer if the Government were to carry out the promise, and determine which way the equity lies.

The doctrine of estoppel cannot be invoked for preventing the Government from acting in discharge of its duties under the law. The doctrine of promissory estoppel cannot be applied in the 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. The legislature can never be precluded from exercising its legislative functions by resort to the doctrine of promissory estoppel.

An insight into judicial behavior further indicates that estoppel cannot be applied against the Government if it jeopardizes the constitutional powers of the Government. In the cases of C. Shankaranarayanan v. State of Kerala206, 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 Pradesh207, 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 repels 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.208 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

---

206 (1971)2 SCC 361
207 AIR 1968 SC 1218
208 (1979)2 SCC 409
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 Mill 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\textsuperscript{209}, 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\textsuperscript{210}, 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

\textsuperscript{209} (1970)1 SCC 582

\textsuperscript{210} Supra note 205
Supreme Court in *Union of India v. Godfrey Philips India Ltd.*\(^{211}\) 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*\(^{212}\), wherein 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. Surender Kumar*\(^{213}\). The Court said that a person, who has himself misled the authority by making a fake statement, couldn’t invoke this principle, if his misrepresentation misled the authority into taking a decision, which on discovery of the misinterpretation is sought to be cancelled.

Today we are living in a world where a promise of 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 and paralyzed. The judiciary in India has played a very significant role in making the State responsible and accountable and made it abide by its promise.

At last, it can be said that if the Government of 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 representation 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

\(^{211}\) (1985)4 SCC 369  
\(^{212}\) (1986)1 SCC 133; AIR 1986 SC 872  
\(^{213}\) (2003)1 SCC 152
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.