CHAPTER VIII

CONTROL OVER THE EXERCISE OF ADMINISTRATIVE DISCRETION

AND THE DOCTRINE OF PROMISSORY ESTOPEL*

8.1 INTRODUCTION:

In the previous chapters, control over exercise of discretion in the light of important principles arising out of the Constitutional & the statutory limits, has been discussed. In addition to above legal limits the doctrine of promissory or equitable estoppel has also been recognised as an important limit over exercise of discretion by the Supreme Court and the High Courts in various cases. Therefore the present chapter has been devoted to the study of this aspect of legal control.

The administration in a welfare state has to tackle various problems for which generally no guidance or little guidance is/can be provided by the statute or the Constitution. Therefore, the administration may make/declare policies, schemes, give opinions, assurances, promises regarding the manner of exercise of its discretion in these areas. Sometimes relying on the representation contained in the policies, schemes, opinions, assurances and promises

* An article based on this chapter has already been published in the XII Indian Bar Review, (1985) pp.9-26.
a person changes his position by investing a huge sum of money or by taking a particular course of action which he would not have otherwise taken. In such situations the crucial question which arises is whether the administration has an absolute discretion to disregard the representation made by it earlier, arbitrarily or at its whim? This question necessarily relates to the broader question of the limits of exercise of executive discretion. While dealing with such situations the courts are faced with one of the general principles of administrative law, that the administration cannot fetter its future exercise of discretion. This principle, it is submitted, has come into existence in the interest of maintaining flexibility and expediency in the exercise of executive functions. However, equally important is the consideration of justice to the concerned individual. If administration is allowed to be unjust to an individual by disregarding its own earlier promise or representation, a general feeling of distrust and insecurity may be generated towards it which can never be in the interest of good administration. It is in such situations where the doctrine of promissory estoppel has been applied by the courts in India.

The doctrine of promissory estoppel is an "Equitable principle evolved by the courts for doing justice".
An attempt is made in this chapter to examine the role of the doctrine of promissory estoppel as a technique to control the exercise of administrative discretion. Some of the questions which have been examined in this connection are: How and on what principle the doctrine has been applied by the courts? What has been the basis of its application? What are the limitations to its application? Should it be extended to the cases of ultra vires representation? How far have the courts succeeded in controlling administrative discretion through this device? For this purpose the discussion on this topic has been divided into two main parts namely the application of the doctrine and the limitations on the doctrine. However, before starting discussion under these two broad headings it may be worthwhile to point out in brief the approach adopted by the English and American Courts towards this doctrine. Therefore, in the following discussion firstly a brief view of English and American approach to this doctrine has been given and then Application and limitation of doctrine in India has been discussed.

8.2 APPLICATION OF THE DOCTRINE BY ENGLISH COURTS:

The doctrine of promissory estoppel is applied by the courts in England against the Crown and other public authorities. In the leading case of Robertson v. Minister of Pensions the Crown was estopped from going back on the
representation of the war office, made to Col. Robertson, accepting his disability as attributable to military service. Speaking for the court Denning J. observed:

"The Crown cannot escape by saying that estoppels do not bind the Crown, for that doctrine has long been exploded..."6

However, there are two distinguishing features of the English law relating to applicability of the doctrine.

(i) The doctrine has been applied mostly7 in cases of assumed authority. Thus, in Robertson v. Minister of Pensions8 though it was admitted that Crown could be estopped by the representation of its agent, it was contended that the Crown could not be bound by the representation of war office since the war office had no authority to deal with pension claims. Holding the Crown bound by the representation of war office Denning J. observed:

"In my opinion, if a Government department in its dealings with a subject takes it on itself to assume authority on a matter with which he is concerned, he is entitled to rely on it having the authority which it assumes. He does not know, and cannot be expected to know, the limits of its authority"9.
These observations of Denning J. invoked the famous principle of company law in Royal British Bank v. Turquand\textsuperscript{10} in the field of Administrative law\textsuperscript{11}. Though the principle of availability of promissory or equitable estoppel against the administration is not disputed\textsuperscript{12}, extension of its scope to the cases of assumed authority has been a controversial topic in England\textsuperscript{13} and that is why it is commented by a well known authority that the law as to applicability of equitable estoppel is not clear in England\textsuperscript{14}.

The courts in India have not ventured so far as to extend the scope of this doctrine to cases of assumed authority\textsuperscript{15}.

Another distinguishing feature of English position on promissory estoppel is that in England the doctrine cannot operate as cause of action\textsuperscript{16}. It can only be pleaded by way of defence to an action. In India, this technicality has not impeded the courts from giving relief to the individual. As a matter of fact, in most of the cases the action against administration is based on this doctrine of equity\textsuperscript{17}.

8.3 APPLICATION OF THE DOCTRINE BY AMERICAN COURTS:

Statement of the law relating to applicability of equitable estoppel against the administration, in American
Jurisprudence runs thus,

"there is considerable dispute as to the application of estoppel with respect to the State..... Thus, as a general rule, the doctrine of estoppel will not be applied against the State in its governmental, public, or sovereign capacity, unless its application is necessary to prevent fraud or manifest injustice."\(^{18}\).

This general statement of law in *American Jurisprudence* has been quoted in some of the judgements\(^ {19}\) of the Supreme Court of India while making a similar observation; this seemingly had created some confusion in the area\(^ {20}\).

It is submitted that such a general and wide statement should not be resorted to by the courts. As pointed out by K.C. Davis, the verbiage that a governmental unit cannot be estopped has been clearly harmful, for it has often led courts to palpably unjust holdings. Such verbiage should be supplanted with the simple observation that the doctrine of estoppel will be applied against governmental bodies where justice and right require it\(^ {21}\). It may be noted that even though the courts in America commonly assert without qualification that equitable estoppel does not apply to governmental units and some important holdings are based on such assertions, but the number of holdings in which governmental units are
estopped is substantial and is growing, both in federal
and state courts.\textsuperscript{22}

8.4 APPLICATION OF THE DOCTRINE IN INDIA:

8.4.1 Application against the Government:

The Government is estopped in equity from going
back on its representation relying on which a person has
changed his position to his detriment. \textit{Collector of Bombay v. Bombay Municipal Corporation}\textsuperscript{23} seems to be the first case
after Independence where the doctrine of promissory estoppel
was applied against the Government by Chandrasekhara Ayer, J.,
one of the majority judges of the Supreme Court, in 1951.
The facts giving rise to this case were that Bombay Government
asked the Bombay Municipal Corporation to remove the old
market from a certain site and vacate it; and granted to it
another site by a resolution. In the same resolution it was
mentioned that "the Government do not consider that any rent
should be charged to the Municipality." The Municipal Corpo-
ration gave up the old site and spent a sum of about Rs.17
lakhs in erecting and maintaining markets on the new site.
Subsequently the Collector of Bombay assessed the new site
to land revenue. This was challenged by the Municipal
Corporation. The High Court of Bombay held in favour of the
Municipal Corporation. On an appeal by Collector of Bombay
to the Supreme Court, the majority judges held that the
Government was not under the circumstances of the case entit-
led to assess the land revenue on the land in question, be-
cause the Municipal Corporation had taken possession of the
land in terms of the Government resolution and had continued
in such possession openly, uninterruptedly and of right for
over seventy years and thereby acquired the right to hold
the land in perpetuity free of rent. Chandrasekhara Aiyer, J.
agreed with the conclusion reached by majority 24 but rested
his decision on the doctrine of promissory estoppel. Pointing
out that the Government could not be allowed to go back on the
representation made by it, he observed that even if

"there was merely the holding out of a promise
that no rent will be charged in the future, the
Government must be deemed in the circumstances
of this case to have bound themselves to fulfill
it. Whether it is the equity recognised 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" 25.

The above opinion of Chandrasekhara Aiyer, J., was
unanimously approved by the Supreme Court in Union of India
v. Anglo Afghan Agencies 26 which is a leading case on the
subject. The textile commissioner published a scheme under
the Import and Export Control Act, 1947 called export promotion scheme on October 10, 1962 under which the exporters were entitled to import the raw material for a total amount equal to 100% of f.o.b. value of exports. This scheme was extended to exporters of woolen goods in 1964. A firm dealing in woollen goods in Amritsar exported woollen goods of f.o.b. value of about Rs.5 lakhs but was granted entitlement certificate only for about Rs.1.99 lakhs. The question was as to whether the Government could reduce the entitlement arbitrarily. Absolute discretion was claimed by the Union Government alleging that it was free to change its policy from time to time in view of expediency and necessity of situation. The Supreme Court negatived this claim unanimously holding the Government bound by its scheme. It was held that the Government is not free to go back on its representation where the individual has changed his position to his detriment. Shah, J., speaking on behalf of the Court (consisting of himself, S.M. Sikri and J.M. Shelat JJ.) observed:

"under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot 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 on an ex parte appraisement of the circumstances in which the obligation has arisen.  \(^{27}\)

What the Court did in this case was to estop the Government from going back from its representation contained in the scheme arbitrarily or whimsically against the individual who relying on it changed his position to his detriment. The Court did not claim to estop the Government from changing its policy for genuine reasons. The case signifies a healthy development in the area of control of exercise of administrative discretion which admirably balances need of administrative flexibility with the need of justice towards an individual. The principle laid down in this case has been followed in many subsequent cases in the area of policy making \(^{28}\), education \(^{29}\) and grant of largesse \(^{30}\).

However, the law laid down in Anglo-Afghan Agencies case was sought to be shaken by the Government in \textit{M.P. Sugar Mills v. State of U.P.} \(^{31}\). This case related to tax exemption. The State of U.P. in the exercise of its discretion under Section 4A of U.P. Sales Tax Act represented to the petitioner firm, unambiguously, that if it sets up a Vanaspati factory, its finished products will not be charged sales tax for three years. The firm invested a large amount in setting up of
Vanaspati plant. Subsequently its product was assessed for sales tax in violation of the representation. In an action brought by the appellant (original petitioner) the Government claimed that it was free to change its policy at any time at its will. Relying upon certain pronouncements\(^{32}\) of the Supreme Court, it contended that the doctrine of promissory estoppel has no application against the Government so as to inhibit it from formulating and implementing its policies in public interest. This claim of an absolute discretion was rejected by the Supreme Court distinguishing the cases relied upon by the Government\(^{33}\). The Court also held that if the necessity to change the policy in public interest was claimed by the Government the reasons for claiming necessity must be disclosed to the court. Following and reiterating the law laid down in Anglo Afghan Agencies, Bhagwati, J., speaking on behalf of the Court (consisting of himself and Tulzapurkar JJ.) observed:

"The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable"
against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one howsoever high or low, 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 rule of law that the Government stands on the same footing as a private individual 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 a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel? Can the Government say that it is 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 high standard of rectangular rectitude while dealing with its citizens.  

It was further observed by him that though a taxation is a sovereign function of the Government is bound by its policy.
of exemption and no distinction could be made between different functions of Government so far as ingredients of promissory estoppel are satisfied.\textsuperscript{35}

The law laid down in M.P. Sugar Mills has been followed in subsequent cases by the Supreme Court\textsuperscript{36} and various High Courts\textsuperscript{37}.

The cases decided by the courts reveal that in applying the doctrine of promissory estoppel the exercise of discretion by the Government is fettered only in a very limited sense. The Government is estopped from going back on its representation as against that person only. For instance neither in M.P. Sugar Mills case nor in Anglo-Afghan case did the court say to the Government that you cannot change your old policy. What they said was that changed policy was to be applied in such a way that it did not cause injustice to an individual. Even if the case of the individual acting to his detriment, the court is prepared to allow the application of changed policy if the court is shown the reasons for such necessity and the reasons thus shown indicate that the administrative interest requires the individual interest to be sacrificed\textsuperscript{38}. What the court tries to prevent is injustice in the garb of expediency.
However, in *M/s. Jit Ram Shivkumar v. State of Haryana* some confusion seems to have been created by the general and very wide observations of Kailasam, J., that "....the principle of estoppel is not available against the Government in exercise of legislative, sovereign or executive power*.

Commenting upon the above passage, Dr. M.P. Jain has pointed out that the law in the area has become muddled. It is submitted that this view of Dr. Jain does not seem to be fully justified because the observation that no estoppel is available against Government in exercise of legislative, sovereign, or executive function, are in the nature of obiter, since the decision in that case was based on the principle of non-availability of estoppel in cases of unauthorised or *ultra vires* representation and against the statute. Similar observations in *Excise Commissioner, U.P. v. Ram Kumar* and *Ramanatha Pillai v. State of Kerala* on which reliance was placed by Kailasam, J. were also in the nature of obiter. Further, the statement of law in *American Jurisprudence* which was relied on by the learned judge, itself recognises that the doctrine is available against the Government in the exercise of its sovereign and executive function to prevent manifest injustice. The important English and *American cases*
relied upon by him did not exclude the application of the doctrine against the Government. It has also to be noted that the interpretation of the ratio of the leading cases or M.P. Sugar Mills and Anglo-Afghan Agencies, in the subsequent cases in the area does not reveal that the law laid down has been affected in any way. In addition it may be noted that Kailasam, J. himself while making the above observation did not mean to make the law unsettled which is evident from the conclusion on which he arrived at after a lengthy discussion. He observed,

"When the officer acts within the scope of his authority under a scheme and enters into an agreement and makes a representation and a 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 the 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 disadvantageous position."

It seems the lengthy discussion was entered into by the learned judge to warn against too much expansion of the
scope of this doctrine of equity. The recent decision of the Supreme Court in Gujarat State Financial Corporation v. M/s. Lotus Hotels Pvt. Ltd.⁴⁸ (1983) emphasises the point that the doctrine of promissory estoppel constitutes an important check against arbitrary exercise of discretion by the administration even after Jit Ram Shivkumar. In this case the Gujarat State Financial Corporation, which was an instrumentality devised to provide medium and long term credit to industrial concerns, sanctioned a loan of Rs.29.93 lakhs to M/s. Lotus Hotels Pvt. Ltd. for construction of a four-star hotel. Consequently M/s. Lotus Hotels Pvt. Ltd. created an equitable mortgage of the land purchased for the purpose of construction of the Hotel in favour of the Corporation as a security for loan and proceeded to undertake and execute the project of setting up the four-star hotel in Baroda. However, the Corporation refused to disburse the loan subsequently. Relying upon the doctrine of promissory estoppel as expounded in M.P. Sugar Mills the Court held that agreement to advance the loan was entered into in performance of the statutory duty cast on the Corporation by the statute under which it was created and set up. On its solemn promise M/s. Lotus Hotels incurred expenses, suffered liabilities. Presumably, if the loan was not forthcoming, the respondent may not have undertaken
such a huge project. Therefore the Corporation is bound by its promise. The Corporation was directed to release Rs.10 lakhs within one month's time in favour of M/s. Lotus Hotels and to pay the balance within a reasonable period.

D.A. Desai J, speaking for the Court (consisting of himself and R.B. Misra, JJ.) rightly distinguished Jit Ram's case and pointed out that Jit Ram Shivkumar cannot save the corporation from its liability because it only lays down that the principle of promissory estoppel cannot be invoked for preventing the Government from discharging its functions under law. In view of the observation of Kailasam, J. in conclusion in Jit Ram quoted above, he further pointed out that even in Jit Ram it was held that when the officer authorised under a scheme enters into an agreement and makes a representation and a person acting on that representation puts himself in a disadvantageous position, the court is entitled to direct the officer to act according to the scheme and the agreement or the representation. Therefore it may be said that Jit Ram Shivkumar does not dilute the authority of the decisions of the Supreme Court in Anglo-Afghan and M.P. Sugar Mills.

It is submitted that the doctrine of Promissory Estoppel has become an established technique of control over exercise
of discretion and it has been applied by the courts where equity arises in favour of an individual. In a recent case of *Tapti Oil Industries v. State of Maharashtra* 49 (1984) the Bombay High Court held the State Government was bound to provide incentives to an industrial concern which complied with the conditions specified in a scheme, and significantly pointed out that representation need not be a specific written representation or assurance to a specific individual. The scheme contained in a Government resolution of general applicability may also constitute a representation by the authority. Similarly Jammu and Kashmir High Court bound the State Government by its policy contained in G.O.S. towards the person who acted to his detriment relying upon them and invested crores of rupees 50.

8.4.2 **Application against Local Authorities:**

The doctrine of promissory estoppel has been applied on the same principle against local authorities 51. In *Century Spinning and Manufacturing Co. v. Ulhasnagar Municipality* 52 applying the doctrine of promissory estoppel, Shah J, speaking for the Supreme Court (consisting of himself, Hegde and Grover, JJ) observed:
"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".53

8.4.3 Application against Universities:

Applying the principle against universities the Supreme Court and the High Courts have laid down that when the University Authorities make a representation either in the exercise of their discretion54 or by a clerical or technical mistake55 and the student to whom such representation is made changes his position to his detriment, the University Authorities are bound by such representation and are estopped from going back from such representation.

Application of the above principle against Universities in cases of mistake presents peculiar problem, if the permission to appear in exams or eligibility for admission or declaration of result is obtained by a student fraudulently. Will the court be assisting such a non-deserving student under the umbrella of this doctrine? Such situations are not uncommon in the present climate of university education. It seems that the courts are conscious of this problem and have refrained from applying the doctrine in case of fraud or
collusion. For example in *Satish Kumar v. Gorakhpur University* where on the basis of the forged letters issued on the letterheads of the University to the Principal the petitioners obtained fresh marksheets declaring them to have passed. The Allahabad High Court refused to estop the University from declaring the petitioners to have failed in the exams. The court held that estoppel presupposes equity in the representee. The further requirement is that he who raises an equitable estoppel must do equity himself. The court observed further, 'he who wants to rely on the principle of estoppel on the basis that he acted upon the representation of the other side must come to the court of law with clear hands.'

If due to the negligence or mistake on the part of University, an innocent student has changed his position in such a way that he will suffer by the cancellation of admission, result, or eligibility the doctrine should apply. This is what was done by the Madras High Court in *Registrar, University of Madras v. Sundara* which aptly illustrate the application of the doctrine of equitable estoppel to two different situations. In one situation, where the students who were issued eligibility certificate for the admission to college by mistake took admission in a college and completed
about two years of college education by the time the mistake was discovered by the University, the University was estopped from cancelling their admission and was directed by mandamus to forbear from preventing the petitioner to complete the intermediate course and appear for intermediate examination. In another situation, where the student who was issued a similar eligibility certificate completed not even two months before the mistake was discovered, the University was not estopped from cancelling his admission.

8.5 LIMITATIONS ON THE DOCTRINE OF PROMISSORY ESTOPPEL

It is evident from the above discussion that the doctrine of promissory or equitable estoppel is applied by the courts to prevent injustice towards an individual. The question which arises at this juncture is how far the courts have been able to give relief to the affected person against arbitrary exercise of administrative discretion? This question can be answered in the light of the following limitations on the doctrine, evolved by the courts.

8.5.1 Executive Necessity and Promissory Estoppel:

Need for justice towards an individual has been the underlying principle for the application of the doctrine of promissory estoppel. Does it mean that the courts have been
oblivious to the needs of administration? Application and acknowledgement of the doctrine of executive necessity by the courts in India answers this question in the negative. Where in the light of changed situation or circumstances the administrative expediency requires that the Government should not be held bound by its promise, the courts do not hold the administration bound by their representation. In Indo-Foreign Commercial Agency v. Union of India the question was whether the Union Government was bound by its scheme of cash assistance to walnut exporters which was pronounced with a view to provide subsidy for loss. It was held by the High Court of Delhi that the Union Government was not bound by its policy in view of the changed position of national and international market as, according to changed situation, the exporters were earning a large margin of profit.

The doctrine of executive necessity constitutes an important limitation to the doctrine of promissory estoppel as it ensures a flexible approach by courts towards the problem of control of administrative discretion. However, the question arises, can the administration claim the exemption from its obligation under this equitable doctrine just by mentioning that 'executive-necessity' exists. The Supreme
Court in *Union of India v. Anglo-Afghan Agencies* held that the administration cannot claim exemption from its obligation under the doctrine of promissory estoppel on some "undefined and undisclosed grounds of necessity or expediency". It must disclose to the court the reasons or grounds on which existence of executive necessity is claimed. It is only if the court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the court would refuse to enforce the promise against the Government. In the recent case of *M/s. R.B. Jodhmal Bishen Lal v. The State of Jammu and Kashmir* (1984), where the Jammu and Kashmir High Court held the Government bound by its policy to extend the time of lease for three years, the claim of executive necessity was rejected by the court on the ground that mere allegation of change of policy in public interest will not be enough to disentitle the contractors from invoking the Doctrine of Promissory Estoppel. The Government is further required to show what exactly that policy was, what were the reasons for bringing about the change, and how far was the change justified, so that the court could be in a position to judge for
itself which way the public interest lay and what the equity of the case demanded.

8.5.2 **Ultra Vires Representation and the Doctrine of Promissory Estoppel**:

Relief on the basis of promissory estoppel is refused by the courts when the representation by which the administration is sought to be bound is beyond the powers of the officer or the public authority\(^\text{68}\). Thus in *Jit Ram Shivkumar v. State of Haryana*\(^\text{69}\) it was held that since neither the Municipal Committee nor the Government have power to grant exemption from octroi to anyone, forever, under the concerned statute, the declaration in the advertisement did not bind either the Municipal Committee or the government.

Refusal by the courts to apply this doctrine of equity in cases of ultra vires representation has caused injustice in many cases. For example, where a person, who was required to carry out certain construction work under a contract with Government, carried out some additional constructions on the assurance of Assistant Executive Engineer was refused payment for additional work by the Government on the ground that the Assistant Executive Engineer had no authority to sanction additional work, the court refused to apply the doctrine of equitable estoppel on the
ground that the representation was ultra-vires. The question is as to how the contractor could have known that Assistant Executive Engineer was not authorised, how is a layman to know the intricacies of the law? Since in this case there was a clear holding out by the Government by its conduct that the concerned officer had the authority, the court could have given relief to the contractor. It is submitted that by refusing the relief, injustice was caused to the petitioner. In England, however, the doctrine of equitable estoppel was applied in a similar situation in Lever Finance Ltd. v. Westminster (City) L.B.C. where the developers who had obtained planning permission changed their plan slightly. The local authority planning officer said no further consent was required. The developers went ahead with their altered plan. Subsequently the construction was questioned on the ground that no planning permission was obtained. It was contended by the local authority that since the planning officer's assurance was ultra-vires it was not bound by it. It was held by the court that since the local authority allowed its planning officer to deal with such cases, it was bound by his representation. Speaking for the majority, Lord Denning M.R. propounded the following principle:
"There are many matters which public authorities can now delegate to officers. If an officer acting within the scope of his ostensible authority makes a representation on which another acts, then the public authority may be bound by it, just as much as a private concern would be." 73

The question of extension of the doctrine of promissory or equitable estoppel to cases of ultra-vires representation is a controversial topic. The supporters of extension of the scope of this doctrine by the courts to cases of ultra-vires representation, favour a flexible approach by the court which requires balancing of the interest of administration with that of individual 74. P.P. Craig argues that the ultra-vires principle is not an abstract notion. It has a definite purpose to fulfill in keeping public bodies within their powers, with the correlative that it protects the beneficiaries of those powers from an extension of them. Where, however, an individual has detrimentally relied upon an ultra-vires representation and the harm to the public would be minimal compared to that of individual, there would seem every reason to allow estoppel to apply 75. The other view represented by H.W.R. Wade 76 and De Smith 77 is that the law should not be strained too much, instead compensation may be provided to the person affected by such representation.
However, as pointed out by P.P. Craig the compensation though a proper solution in some cases may not be so for all types of cases. Therefore a flexible approach by the courts as pointed out above cannot be ruled out. There is one more suggestion that such problem also be solved by legislation, providing for governmental liability in certain cases of official opinion or representation. The importance of this suggestion cannot be denied, but the legislation has got its own limitations and it cannot foresee many situations beforehand.

8.5.3 Representation in the Face of Statute:

Where certain powers are conferred on the administration under a statute, it cannot fetter its exercise of discretion under those powers. The future exercise of discretion must be kept open. It is because of this principle that the courts have refused to apply the doctrine in the face of a statutory power. However, the vigour of this principle is diluted in Indian Aluminium Co. v. K.S.E. Board where the Supreme Court held that though generally the statutory discretion cannot be fettered but when the statute itself empowers the authority to bind itself in the exercise of its discretion, the authority is bound by agreement or contract entered into while exercising such discretion. The Court held the K.S.E. Board bound by its agreement, not to enhance
the rates of electricity, which it entered in the exercise of discretion under statute.

This principle is followed in many subsequent cases of assurances, promises, agreement or contract, given or entered into by the administration in the exercise of its discretion under statute, though generally without mentioning the case of Indian Aluminium v. K.S.E. Board. However, the doctrine of promissory estoppel has not been applied in the face of statutory prohibition.

8.5.4 Administration Owes a "Duty under Law":

The courts have excluded the application of the doctrine of promissory estoppel in the cases where administration owes a duty under law. What is meant by the term 'duty under law' has been made clear by the Supreme Court in Commissioner of Income Tax v. B.N. Bhattacharjee where Krishna Iyer J., speaking for the court (consisting of himself, and V.D. Tulzapurkar J.) observed:

"Where a statute, enacted for the benefit of a section of public imposes a duty of positive kind, the person charged with the performance of the duty cannot by estoppel be prevented from exercising his statutory powers."
Sometimes this rule is also applied by the courts where the statute bestows a discretion rather than duty. For example, in Ramanatha Pillai v. State of Kerala\textsuperscript{89} where the services of Vigilance Commissioner were terminated as a result of abolition of post of Vigilance Commissioner, it was contended by the petitioner that Government was bound by promissory estoppel to continue the post for five years. The Supreme Court held that it was the duty of the Government to exercise its discretion when necessary in public interest and if public interest required that post of Vigilance Commissioner should be abolished the Government could not be bound or fettered in the exercise of its discretion. What then is the "duty under law" in such cases? According to the cases decided on this ground, it may be inferred that it is the duty of the public authorities to keep open the exercise of their discretion in public interest. It is submitted that this statement is the same as saying that 'the administration cannot fetter its future exercise of discretion', which is a general principle and the courts fall back upon this principle when on facts they find promissory estoppel not applicable. For example, in the case of Ramanatha Pillai the Court did not want to interfere in the exercise of discretion of the Government in policy matter of creation and abolition of the post
of Vigilance Commissioner. The Court also held that there was no representation that the post will not be abolished for five years.

The term 'duty under law' sometimes has been interpreted in a way which gives a charter to the administration to be irresponsible in the exercise of its discretion. For example, in a case where some students relying on the statement in prospectus of Patna Medical College that admission to post-graduate medical course will be solely on merit, applied for admission, they did not try elsewhere because they were sure that if only merit was the criterion they would get admission. After written test being over and list of successful candidates published the Government changed its policy and made reservations of 14 per cent and 9 per cent seats for Scheduled Caste and Scheduled Tribe candidates. In a petition to the court for estopping the Government on the statement in prospectus, it was held that the Government could not be estopped in the face of a constitutional mandate under Article 46. It may be noted here that on fact it was found that the concerned statute did not impose any duty on the Government to reserve the seats. It is submitted that Article 46 of the Constitution of India is a directive principle of State Policy, it does not impose a duty but confers a discretion, and if the discretion was to be exercised by the
Government it should have been exercised well before the
time of admission.

8.5.5 Exercise of Legislative Powers:

The courts have refused to estop the State from
exercising its legislative function. In State of Kerala
v. Gwalior Rayon Silk Mfg. Co. Ltd., the State of Kerala
was not estopped from expropriating vast forest lands belonging
to the Company by passing a legislation even though the
Company had invested a large amount of money in purchasing
the land relying upon the undertaking of the State Government.
It is evident from the facts of the case that justice required
that the Government should have been bound. But in the face
of State legislature’s sovereign power, the individual interest
had to give way. It is submitted that though it may seem
hard but in view of their functional limitations the court
could not direct the legislature either to pass or not to
pass a particular legislation.

8.5.6 Fraud:

The doctrine of promissory estoppel has been excluded
in cases where the representation from the authorities is
obtained by fraud or misrepresentation. This limitation is
based on the principle of equity "He who seeks equity must
come to it with clean hands".
8.5.7 Absence of Necessary Ingredients:

It has been held by the courts that the doctrine of promissory estoppel is available only where there is clear and unambiguous representation⁹⁴. Mere admissions which are expressions of opinion limited to context and being rather vague hopes are not binding⁹⁵. It will depend on the facts of each case whether there was a representation.

The doctrine is also not available when no detriment is suffered by the person claiming it⁹⁶.

8.6 CONCLUDING REMARKS:

The problem of controlling the administration, particularly in the area of exercise of discretion, is very complex. The doctrine of promissory estoppel constitutes a very important and valuable technique in the hands of courts to do justice to an individual while not unnecessarily hampering the exercise of discretion by administration. The principle evolved by the courts in this area is that in the exercise of its discretion, the administration cannot go back from its representation made to the person, arbitrarily, unreasonably or whimsically where the person to whom representation is made has acted on it and changed his position to his detriment. It is a redeeming feature that the approach of the courts has not been peripheral. They try to go much deeper in the exercise
of discretion, while asking the administration not to change its policy at its whim. Where the courts have insisted on being satisfied about the existence of executive necessity, they tend to pronounce upon the merit of the decision of the administration as to whether executive necessity is such which requires it to change its policy as against the person affected. Against an individual adversely affected they also sometimes ask the administration to act or not to act in a particular manner. This is event from the fact that in most of the cases of application of the doctrine courts have been giving affirmative directions to the administration. It is submitted that in view of the absence of an institution like that of Ombudsman in India which is normally supposed to probe into questions of justness and propriety of State action, the attitude of the courts generally and the role played by them is commendable.

The courts have rightly refused to give relief to an individual in case of executive necessity and in cases where he claimed relief against statute. Similarly, in cases of fraud the courts have refused to assist the party guilty of fraud. Relief against legislative power has been refused, it is submitted rightly, on the principle that courts cannot ask the legislature to enact or not to enact a particular enactment.
However, the term "Duty under Law" has been widely interpreted by the courts and therefore the non-availability of the doctrine on that ground has not been proper. It is submitted that administration should be absolved from its obligation under promissory estoppel only where it is under some positive duty under law. It is also submitted that the scope of the doctrine of promissory estoppel should be extended to cases of representation by an officer who had ostensible authority if justice towards individual so requires. As rightly pointed out by P.P. Craig\(^9\) compensation or the legislation cannot answer all such questions and finally it is the court which can balance the interest of the administration with that of the individual.

The verbiage that the doctrine of estoppel is excluded against the Government in the exercise of sovereign or executive functions should not be resorted to by the courts even in passing or as an obiter lest the law of promissory estoppel becomes confused (as has happened in case of governmental liability for torts in India)\(^1\).

**FOOT NOTES**


3. M.P. Sugar Mills v. State of Uttar Pradesh, AIR 1979 S.C. 621 at p. 632. This doctrine is also called as equitable estoppel, quasi estoppel, new estoppel and estoppel.


5. (1948) 2 All E.R. 767

6. Ibid, at p. 770


8. Ibid.

9. Ibid, at p. 770

10. For this case and the principle under it, see, Gower, Principles of Modern Company Law pp. 190-204 (Stevens & Sons Ltd., London, 4th ed. 1979).


12. See supra n. 4


15. *Intra*, n. 68


17. For example, in the leading cases of Union of India v. Anglo Afghan Agencies, AIR 1968 S.C. 718; M.P. Sugar Mills v. State of U.P., AIR 1979 S.C. 621. The petition was based on the doctrine of promissory estoppel.

18. 28 American Jurisprudence 2 d, Estoppel & Waiver, § 123 (1966)


20. See Infra n. 41


22. Ibid at p.541.

23. AIR 1951 S.C. 469

24. The other judges constituting majority were Kania C.J., Das and Bose, JJ.

25. Ibid, at p. 476

26. AIR 1968 S.C. 718. The doctrine of promissory estoppel was applied before this decision by Madras High Court in Registrar, University of Madras v. Sundara, AIR 1956 Mad 309, by A.P. High Court in Kumari Akhtar v. Principal, Osmania University, AIR 1959 A.P. 493 and by M.P. High Court in Purushottamdas v. Board of Secondary Education, Jabalpur, 1950 M.P.L.J. Notes 134.

27. Ibid, at p. 728


31. AIR 1979 S.C. 621


33. Bhagwati, J. speaking for the Court pointed out that these cases constitute exceptions to the doctrine of promissory estoppel.

34. AIR 1979 S.C. 621, at p. 643

35. Ibid at p. 651


38. AIR 1979 S.C. 621, at p. 644. It is submitted that in such cases compensation should be given to the person affected.

39. AIR 1980 S.C. 1285

40. Ibid, at p. 1291. Like M.P. Sugar Mills case, this case was also decided by two judge bench consisting of Kailasam & S.M. Fazal Ali, JJ.


42. AIR 1976 S.C. 2237

43. AIR 1973 S.C. 2641 at p. 2649

44. American Jurisprudence, op. cit.
45. Howell v. Falmouth Boat Construction Co. Ltd. (1951) 2 All E.R. 278, related to non-applicability of the doctrine in cases of ultra-vires representation. This case overruled the second statement of Denning J. in Robertson v. Minister of Pensions (1948) 2 All. E.R. 767 by which he sought to extend the scope of the doctrine of promissory estoppel, similarly the American case, Federal Crop Insurance Corporation v. Merrill (1947) 332 U.S. 38 did not refer to general application of the doctrine but related to its exclusion in cases of ultra vires representation.


49. A.I.R. 1984 Bom. 161 (F.B.)


52. A.I.R. 1971 S.C. 1021

53. Ibid at p.1024


56. Haripada Das v. Utkal University, A\LR.1978 Orissa 65; Satish Kumar v. Gorakhpur University, A\LR.1981 All. 377; See also Obiter in Shri Krishan v. Kurukshetra University, A\LR.1976 S.C. 376; Harphool v. State of Rajasthan, A\IR.1981 Raj. 8, is a questionable authority since there the doctrine has been applied in case of fraud; however, that is only one case and it has been specifically disapproved in Satish Kumar v. Gorakhpur University (above) by Allahabad High Court.

57. A\LR.1981 All. 377
58. Ibid, atp. 381
59. A\LR.1956 Mad. 309
60. The same approach is adopted in most of the cases giving relief against universities, See n. 34 Supra Rajkishore Senapati v. Utkal University, A\IR.1982 Orissa 188.

61. Indo Foreign Commercial Agency v. Union of India, A\IR.1976 Del. 4; Malhotra and Sons v. Union of India, A\LR.1976 J & K 41


63. A\IR.1976 Del. 4, It may be noted that in this case the court was shown the reasons for claiming executive necessity. See also Bansal Exports Pvt. Ltd. v. Union of India, A\LR.1984 Del. 445.

64. A\LR.1968 S.C. 718
65. Ibid, at p. 728.
66. A\LR.1979 S.C. 621 at p. 644
67. A\LR.1984 J & K 10


71. Similarly in M.S. Industry v. The Chief Controller, AIR 1977 Mad. 377, how the petitioner could have known that Jt. Chief Controller had no authority to grant a conditional entitlement certificate.
72. (1971) 1 C.B. 222
73. Ibid at p. 230
74. 2 K.C. Davis, op.cit. pp.551, 514, 519, 522, 542; P.P. Craig, Representation by Public Bodies, 93 L.Q.R. 398.
75. Ibid at p. 414.
77. de Smith, op. cit. p. 102
78. See supra, n. 74 at p. 419
81. AIR 1975 S.C. 1967
88. AIR 1979 S.C. 1725.
89. A.I.R. 1973 S.C. 2641
92. Ibid.
93. See supra notes 56 & 57
98. For example in Anglo-Afghan Agencies case A.I.R. 1968 S.C. 718 the court directed the administration to grant entitlement certificate for the full f.o.b. value of exports. Similarly in M.P. Sugar Mills case, A.I.R. 1979 S.C. 621 the Government was directed to exempt the petitioner from sales tax for three years.
99. See, supra, n. 74 at pp. 417-421.