The object of every law is to render justice. But sometimes the strict implementation of law may result in injustice. Under such circumstances equity will step in to prevent the injustice. Estoppel is one such concept evolved by equity for rendering justice even deviating from strict legal principles. The idea that a man must keep his word and must be responsible for the consequences of his conduct when other men have trusted him is accepted by all civilizations. As law developed, this was recognized as a part of the legal system even though the same is not codified as such. Thus estoppel was used by the courts for preventing injustice in appropriate fact situations.

Ever since the principle of estoppel has been expounded and applied in judicial proceedings there has been a conflict of views as to whether estoppel is a rule of evidence or a rule of substantive law. Such a conflict is out of place now since estoppel has been recognized as a rule of law. If the principle is confined as a rule of
evidence it will only enable a party in a litigation to invoke the doctrine against his opponents as to prevent him from retracting the stand earlier taken by him in the course of their dealings and which led to a relationship between them. If the principle is treated as a rule of substantive law, it would enable the party to initiate legal proceedings founded on the principle. Thus as a part of substantive law, the principle of estoppel will provide a cause of action in itself. There are other distinctions also. For example, as a rule of evidence, the principle can be applied only to the present and past incidents whereas as a rule of substantive law the principle can be invoked in respect of a promise or assurance as to the future conduct of the promiser. Again, as a rule of evidence it can be applied in a cause only when the parties thereto have a pre-existing legal relationship while as substantive law it can be applied even if the parties have no such relationship. However, now it is almost settled by various judicial pronouncements that estoppel could be treated as a part of substantive law. It is based on equity and good conscience and is intended to secure justice between the parties by upholding honesty and good faith. The object is clearly to prevent fraud and manifest injustice.
In England the courts of equity were distinguished and different from the ordinary courts of law which administered common law. Thus, dual jurisdiction of the courts and the administration of law gave rise to various controversies. Later it was established that estoppel in equity is same as that in common law. For example, the doctrine of estoppel by representation is one and the same whether administered by the court of law or by courts equity. There is however a distinction between the principle of estoppel by representation and promissory estoppel. Estoppel by representation is a rule of evidence. Therefore the representation must be on an existing fact and not on mere intention or belief. Promissory estoppel is a comparatively new concept and is not depending on existence of a legal relationship. It is applicable even in the case of promise or future conduct. An early decision in the application of the principle was in Hughes Vs. Metropolitan Rail Company*1. But the said judgment was not applied in England for a long time. Thereafter the principle was again applied by Lord Justice Denning in High Trees Case in 1947*2. Having applied the rule of promissory estoppel in High Trees Case which involved a

*1(1877) 2 AC 448.
*2Central London Property Trust Ltd Vs. High Trees House Ltd (1956) 1 AER 256.
dispute between private individuals as land lords and tenants as regards tenants' liability to pay only reduced rate of rent as promised by the land lord. Dennig J. again applied the principle in a case involving representation made by public authorities to citizens and considered the binding effect⁴. In a subsequent decision, Denning J. further extended the principle of promissory estoppel by holding that the rule would be applicable and binding on the Government even if the Government officer, who made the representation exceeds his authority if the subject acts upon such representation⁵.

In India also this concept was prevalent from the origin of its civilization. Indian civilization projects the concept of truth and righteousness (Sathyam and Dharmam) as the basic virtue in all thoughts and acts. A person should not be allowed to resile from his words irrespective of another has relied on those words and acted accordingly. This is the principle behind the truth and righteousness. This concept is now statutorily recognized as estoppel, by Evidence Act in Section 115 of the Indian Evidence Act.

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⁴Robertson Vs. Ministry of Pension (1948) 2 AER 767
⁵Falmouth Boat Constructin Co. Ltd. Vs. Howell (1950) 2 KB 16.
Section 115 of the Indian Evidence Act, 1872 lays down the principle of estoppel as a rule of evidence. It provides that "when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing".

The illustration to this section reads as follows:

"'A' intentionally and falsely leads 'B' to believe that certain land belongs to A and thereby induced B to buy and pay for it. The land afterwards becomes the property of A and A seeks to set aside the sale on the ground that at the time of the sale, he had no title. He must not be allowed to prove his want of title". Thus as a rule of evidence the same is codified in India. As a rule of substantive law, it is entirely judge made, both in England and in India. The principle is evolved as a result of compulsions felt by the Judges when called upon to adjudicate
cases based on equity and good conscience in the absence of any statutory provision dealing with the subject matter of the case. The result is that the rule is invoked and applied even in cases where there is no pre-existing legal relationship between the parties to a cause either in the form of a contract or otherwise. The principles are applied even to a mere promise to perform an act in future even if the promise is not supported with consideration. All that is required to be established is that the promise made was intended to be acted upon and on that belief some one did act and altered his position. The promiser is then not allowed to resile from his promise.

*Indo Afgan Agency’s case* is one of the cases where the principle of promissory estoppel was applied by the Indian Courts as a substantive law. In this case the principle followed by Justice Denning in High Trees Case and Robertson’s case were applied by Justice C. Shah. While delivering the judgment, Justice Shah observed that “government was not exempted from liability to carry out the representation made by it as to its future conduct and it cannot on some indifinite and undisclosed ground of necessity or expedency fail to carry out the promise solemnly made by it”.

*Union of India & ors Vs. M/s. Indo Afgan Agencies Ltd. 1968 (2) SCR 366.*
In a subsequent decision in *Century Spinning & Manufacturing Co. Ltd. & another V/s. Ulhasnagar Municipal Council and another* Justice Shah observed "If our nascent democracy is to thrive different standards of conduct in the people and the public bodies cannot ordinarily be permitted. A public body is, in our judgment, not exempted from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice". This view was followed by Justice Bhagavati in *MP Suger Mills Vs. State of UP*. The contention of the Government that it can withdraw the promise of tax exemption was rejected by the Supreme Court. While delivering the judgment Justice Bhagavati observed "it is indeed difficult to say on what principle can a government be exempted from the rule of law, claim immunity from the doctrine of estoppel? Can government say that it has no obligation to act in a matter of such affairs and contend that it is not bound by consideration of equity and good will? Even though the approach of Justice Bhagavati was reversed in subsequent decisions, later in 1986 Justice Bhagavati reiterated the principle in *Union of India Vs. Godfrey Philips India Ltd.* Justice Bhagavati applied the principle of promissory

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\*1 1970 (3) SCR 845  
\*2 AIR 1979 SC 621  
\*3 AIR 1986 SC 06
estoppel against the Government and held that value of the corrugated fibre boards cannot be included for the purpose of calculating the excise duty.

The question whether the new doctrine of promissory estoppel has any application to cases where the promisee does not suffer any detriment by acting upon the representation made by the promisor, Justice Bhagavati ruled that it was not at all necessary that the promisee should suffer any detriment while acting in reliance of the promise in order to attract the doctrine of promissory estoppel. This was stated to be the position impliedly admitted by Denning J. in the High Trees case. Even earlier to the judgment the Supreme court had occasion to consider in Motilal Padampat Sugar Mills Co.Ltd. Vs. State of Uttar Pradesh the extent to which the principle of estoppel could be applied against the government and governmental bodies. Supreme Court of India held that Government and its agencies were bound to honour their promise when the citizens had acted to their detriment relying on the promise made by such agents.

*2 1979 (2) SCC 409
But it is to be remembered that all functions of the Government as also the discharge of duties by public authorities, whether exercised under statute or otherwise, have to be for "public good". Even when the government or a public authority enters into a contract with a private individual, the contract has to be for "public good" and if that be so, the government or public authorities are bound to fulfil the terms of a contract as much as a private person would be, and that, by itself, would be for a "public good". It is, therefore, not open to the government or to a public authority to "escape from any contract which it finds disadvantageous by saying that it never promised to act otherwise than for the "public good".*1. However there could be certain circumstances which may justify the government to take action de hors the contract with a view to subserve a greater public interest. In such cases Supreme Court held that government cannot be restricted to frame its policy matters when neither fraud nor lack of bonafide is alleged or established against the government. Thus the government or public authority could not be bound down to a promise for all times if supervening public equity demands the government to resile from its promise or repre-

*1 Commissioner of Crown Lands Vs. Page (1960) 2 QB 274
sentation in the larger public interest. However a mere claim by the government or public authority that it has changed its policy in "public interest" and therefore was not bound by its earlier promise or representation, would not hold good as discussed in Chapter VI Supra. Since the court is the final arbiter of the question as to whether, in view of supervening manifest public interest, the government or a public authority would be justified in resiling from its promise, the government or public authority would be required to satisfy the court with sufficient materials brought on records before it that the change in policy had, in fact, been actuated by such manifest supervening "public interest". If the court accepts that the government's action was actuated by such consideration of supervening public interest, the superior equity would then over ride the individual equity and the government's changed policy would then stand. Even when there is no such over riding "public interest" the court may still adjust equities by permitting the government to resile from its promise, if it has given a reasonable notice to the promisee and afforded him a reasonable opportunity of resuming his position. If the promisee cannot resume his original position, the promise made by the government earlier would become final and irrevocable and would become enforceable on the basis of the rule of promissory estoppel.
In all welfare societies, the doctrine of promissory estoppel or equitable estoppel has been established as a principle of administrative law. Transformation of the principle of estoppel from a mere rule of evidence to a rule of substantive law is itself an indication of the invaluable role played by the courts not only in the preservation of individual rights but in sensitising governments, its officers and other public authorities of their duty to act fairly and honestly while dealing with the citizens. Such norms of accountability are necessary for preservation of a democratic society governed by the rule of law. Application of the principle of promissory estoppel against the government and other public authorities is necessary to prevent fraud or manifest injustice. The doctrine itself is founded on a sound public policy and is intended to secure justice between the parties by promotion of honesty and good faith. These considerations should no way warrant compelling the government or public authorities to carry out a representation or a promise, which is contrary to law or which is outside their authority or ultra vires their power. Refer Supra Page 186.
Ultra vires acts

However, difficulties may arise when a citizen is mislead by representation made by an officer of the government or a public authority as regards his competence and power and acting on good faith on such representation, he alters his position. The question that arises for consideration of the court in such cases is not only complex, but difficult one to be resolved on the touch stone of equity and good conscience which is the foundation of the rule of estoppel. To insist that citizen who chooses to move the government and its officers and public authorities takes the accompanying risk if eventually the act of the government and its officers turn out to be ultravires, would not only negative the very presumption of legality attached to every act of the government and its officers, but would also impose a burden on the citizen which they would never be able to discharge. To insist that anyone who deals with the government acts at his risk would only put both the government and citizens in a quandery. In the face of multiferious activities that modern governments are involved in, this would virtually render impossible for the government to discharge its duties. In fact, much of the development and maintenance work, whether in the field of building infrastructure, provision of basic amenities, education and the like under-
taking by the modern governments are exercised through private agencies. Persistance of this attitude of depending private agencies would only hinder the functioning of the government and adversely affect every aspect of the nation building process.

Every society will have to make up its mind and determine the price it is willing to pay for the enjoyment of certain privileges by its members. It may possibly be preferable to insist that the government, its officers and other public authorities should not escape from a firm, clear and unambiguous promise made in favour of the citizens unless it is proved that the promise was vitiated due to fraud or misrepresentation. This would ensure faith of the citizen in a democratic representative government and would also protect the interest of the government. If a democratic representative government is permitted to ignore basic moral values how could individual members of the society in their dealing with their fellow beings be expected to maintain such values? It is the bounden duty of the government, its agencies and the other public authorities to honour its promises when they are relied upon by the citizens. Over riding public interest can be taken as a ground for the government to resile from its promise. But it shall not be at the detriment of the citizens who bestowed confidence on the government.
Government cannot be made a slave of its promises for all times to come particularly due to multiferious activities undertaken by the government. The needs of the society may be changing and the government is bound to honour such needs. Therefore a citizen who relied upon the promise made by the government and acted on the basis of such promise shall not be permitted to stand in the way of the government in protecting the larger interest. At the same time, the citizen, who relied on the promise made by the government shall not be left without a remedy. Government or its agencies or other public authorities are bound to protect the interest of even individual citizen. Therefore, government can be permitted to resile from its promise only after giving reasonable notice to the citizens who are affected by relying upon such promise. If they have suffered any detriment the same should be adequately compensated by the government. Thus a striking balance between public interest as well as private interest should be maintained for the smooth functioning of a democratic government.

If a citizen is relying on an assurance made by the government and is acting to his detriment, he shall not be blamed for the same. This is because in a democratic government public attributes
a greater confidence to Government than dealings between private citizen. Hence it is only just and reasonable that the citizen who suffered detriment should be adequately compensated by the government when over riding public interest compels the government to resile from its promise. The essential features of binding effect of a promise need not be looked into. If the promise is intended to be acted upon, and actually acted upon, the government should be made liable to honour the promise as far as possible. This will create confidence among the public to their own government. Refer page 202 Supra.

Need for statutory provision:

According to Harming Maine, in early law, substantive law is often secreted in the interstices of procedure. Salmond also points out instances where a procedural rule may gradually pass over into the area of substantive law*. He notes as important three instances

*1 Salmond, 12th edition (1966), page 463. These substantive rules are (1) a contract which would be proved only by writing has given rise to the rule that if writing is not there the contract is void. (2) A bond under a seal which was evidence of debt is now creative of debt and (3) Intimation of action is the procedural equivalent of prescription of rights.
in the law of evidence where substantive principles have emerged from procedural rules. Estoppel is also one such rule which starting as a procedural one has developed as substantive legal principle. The question is whether the time has not come to give statutory recognition to this change.

Estoppel, originated from the sense of justice, equity and good consciousness has since developed through various judicial pronouncements. The same has almost settled. Further Section 115 of the Evidence Act has statutorily recognized and laid down the principles of estoppel. But the modern development of estoppel in the form of promissory estoppel is not covered by Section 115 of the Evidence Act or any other statute. At the same time the occasions for the application of promissory estoppel have considerably increased due to the involvement of Government and its agencies in various social, cultural, economical and developmental activities. The indiscriminate application of the principle may cause irreparable damage and hardship to larger interest of the society as also individual interest of the citizens. Therefore, it is necessary to reconcile these two conflicting interests of public at large and individual rights as between individual and Government.
As on today there is no statutory provision compelling the government either to honour or to discard its promise except judicial decision. Similarly there is no limit presented to what extent the citizens can exercise his private right as against the Government invoking promissory estoppel. Therefore, it is necessary that the concept of promissory estoppel, which is created on the basis of equitable consideration, should be given statutory recognition. Suitable enactment should be made under what all circumstance and to what extent the government can be made bound by the principle of promissory estoppel and what relief could be granted to citizens if government want to resile from its promise. This statutory recognition can be given either by suitable amendments to the Evidence Act or Contract Act. Introduction into Contract Act would be advisable because the essentials for enforcibility of a contract are governed by the provisions therein. This could be introduced even as an exception to the general law of contracts. Such a codified law based on the various judgements has become the need of the society.