

# The Doctrine of Promissory Estoppel

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## ABSTRACT

The Doctrine of Promissory Estoppel is an equitable doctrine evolved to avoid injustice and though commonly named Promissory Estoppel, it falls in the sphere of neither contract nor estoppel. This principle is commonly invoked in common law in case of breach of contract or against a Government. The doctrine is popularly called as Promissory Estoppel, Equitable Estoppel, Quasi Estoppel and New Estoppel. It can be said that if the Government in 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. In this article there have been discussed the evolution of the doctrine, the doctrine as it stands in UK and US, the problems faced, and the suggestions given by the 08<sup>th</sup> report of Law Commission of India. The article also draws a distinction between the Doctrines of Proprietary Estoppel and Promissory estoppels. The Supreme Court of India has said that acting on the assurance or representations 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 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.

## INTRODUCTION- CONSIDERATION AND PROMISSORY ESTOPPEL

Under The Indian Contract Act, 1872, the term 'contract' has been defined as an agreement enforceable by law in s. 2(h). Under s. 2(e), every promise is an agreement. But, unless the agreement is supported by 'consideration' the agreement would be void except in *the* three instances mentioned in s. 25.

Therefore, unless a promise is supported by 'consideration' it will not, ordinarily, be enforceable by law. S. 2(d) defines 'consideration' as follows:—

*"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do, or abstain from doing, something, such act or abstinence or promise is called a consideration for the promise."*

Hence, when a person makes a promise, unless the promisee does, has done or promises to something, ***at the desire of the promisor***, the promise would be without consideration and the promise cannot be enforced in a court of law.

Suppose a person promises a subscription to a charitable institution with the knowledge that a building will be constructed with the money received, from the subscribers, but does not desire the institution to do so; the institution however, on the faith of the promise, incurs expenditure in putting up a structure. If the promisor does not honor his promise, the institution may not be able to sue him successfully for the amount promised, because, the promise is not supported by consideration.

Take the case of the Government making an announcement relating to some relief such as a sales-tax holiday if something is done by the citizen such as opening a new factory in a specified area. On the faith of the announcement, a citizen may do the necessary thing and thus change his position. The Government thereafter changes its policy. Even if it is assumed that the citizen acted at the desire of the Government there cannot be a conduct enforceable against the Government, because, contracts, which can be enforced against the Government, should be in a particular form.<sup>1</sup>

In other words, an act shall not be a good consideration for a promise unless it is done at the desire of the promisor. In *Durga Prasad v Baldeo*<sup>2</sup>

The plaintiff, on the order of the Collector of the town, built at his own expense, certain shops in a bazaar. The shops came to be occupied by the defendants who, in consideration to the plaintiff having

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<sup>1</sup> Art 299 of the Constitution of India.

<sup>2</sup> (1880) 3 All 221, OLDFIELD J at p. 228

expended money on the construction, promised to pay him a commission on articles sold through their agency in the bazaar. The plaintiff's action to recover the commission was rejected.

On the question whether the person promising, the subscription to the institution or the Government, the second example, could be held to the promise and representation respectively, that is, whether the court could compel them 'to honor their representation, one view is that the court could do so on the basis of the doctrine of Promissory Estoppel. The doctrine has been expressed by a Bench of two Judges of the Supreme Court of India<sup>2</sup> as follows:-

"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<sup>3</sup> 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."<sup>4</sup>

Apart from the fact that the above decision, holding that the doctrine can be invoked against the Government in all cases, has been expressly dissented from by another Bench of two Judges of the Supreme Court,<sup>5</sup> there are observations in the first case which are contrary to the views expressed in earlier larger Benches of the Supreme Court and to the law in the U.K. and the U.S. from which the countries inspiration has been drawn for propounding the doctrine.

In practice, the most significant limit to the rule in Pennel's Case is to be found in equitable principle of estoppels, in this context promissory estoppels which as noted neutralizes the effect of rule in many cases. Here we consider the extent to which promissory estoppels operates in effect as an alternative to consideration in the discharge or modification of existing duties and its potential to operate in this way in the formation of contracts.

Before turning to the requirements for the establishment of promissory estoppels it should be noted that it is only one form of estoppels. Promissory estoppels is one strand in a broader equitable principle whereby parties to a transaction who have conducted their dealings in reliance on an underlying assumption as to a present, past or future state of affairs, or a promise or representation by words or conduct by one that strict legal rights will not be insisted upon will not be allowed to go back on that assumption, or promise, or representation when it would be unfair or unjust to do so.

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<sup>3</sup>*M.P. Sugar Mills v. State of UP*, A.I.R. 1979 S.C. 621 (Bhagwati and Totzparlutr JJ)

<sup>4</sup>*M.P. Sugar Mills v. State of U.P.*, A.I.R. 1979 SC. 621, P. 631.

<sup>4</sup>*Jit Ram Shiv Kumar v. State of Haryana*, A.I.R 1980 S.C. 1283. (Murtaza Fazal Ali and Kailasam J J).

The Court will do what is necessary, but not more, to prevent a person who has relied upon such an assumption, promise, or representation from suffering detriment.<sup>6</sup> Promissory estoppel also has similarities to the common law principle of waiver by which right to performance in accordance with the contract may be lost by a party who in effect promises (albeit without consideration) not to insist on strict adherence to the contract.

The law, thus being in a state of uncertainty, the Law Commission has, *suo motu*, undertaken a study of the doctrine in order to define precisely its scope and ambit.

## **EVOLUTION OF THE DOCTRINE OF ESTOPPEL**

In order to understand the precise scope of the doctrine of promissory estoppels, it is necessary to trace its evolution. Such a study will help us to understand the judicial process by which the doctrine has been enlarged or contracted and to formulate a precise rule.

Estoppel is a rule of equity. That rule has gained new dimensions in recent years. A new class of estoppel i.e. promissory estoppel has come to be recognised by courts in the country, as well as in England. The full implication of 'promissory estoppel' is yet to be spelled out ... The principle was stated and invoked in *Central London Property Trust Ltd. v. High Trees case*<sup>7</sup> that, when 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 party who gave the assurance or promise cannot afterwards be allowed to revert to the previous relationship as if no such promise or assurance has been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced even though it is not supported in point of law by any consideration, but only by his word. But that principle does not create any cause of action which did not exist before so that, where a promise is made which is not supported by consideration, the promisee cannot bring an action on the basis of the promise.... The rule laid down in these decisions undoubtedly advances the cause of justice and hence we have no hesitation in accepting it.

Promissory estoppel is a relatively new development. In order to trace the evolution of the doctrine in England, we need to refer to some of the English decisions. The early cases did not speak of this doctrine as estoppel. They spoke of it as 'raising equity'. Lord Cairns stated the doctrine in its earliest form in the following words in *Hughes v. Metropolitan Railway Company*<sup>8</sup>:

*"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 afterwards by their own act or with their won consent enter upon a course of negotiation which has the effect of leading one of the*

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<sup>6</sup> *Crabb v Arun D.C* [1976] Ch. 179, at p. 198; *Commonwealth v. Verwayen* (1990) 170 C.L.R. 394, at p. 413 (Australia)

<sup>7</sup> [1947] K.B. 130.

<sup>8</sup> [1877] 2 A.C. 439

*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.”*

This principle of equity made sporadic appearances but it was only in 1947 that it was restated as a recognized doctrine by Lord Denning in *Central London Properties Ltd. v. High Trees House Ltd.*<sup>9</sup>, who asserted:

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

The correctness of Denning J.’s *dictum*<sup>10</sup> has however been subject of considerable controversy.<sup>11</sup>In particular, two criticisms have been leveled against it.

First, it was argued that the concept of ‘Promissory’ estoppels offends against the rule in *Jorden v. Money*<sup>12</sup> in which it was held that only a representation of existing or past fact, and not one relating to future conduct, will ground an estoppels. Estoppel would not therefore apply, as in the *High Trees case*, to a promise as to the future. The rule in *Jordan v. Money*, however is not an absolute one, and it is qualified by a number of exceptions.<sup>13</sup> One of this exception is that the principle expressed in *Hughes v. Metropolitan Railway Co.*, which applies where two parties stand together in a contractual or other similar legal relationship, and one of them makes to the other promise to forbear from enforcing its strict legal rights. To this situation the rule in *Jorden v. Money* has no application.

Secondly, it was that the dictum of Denning J. is inconsistent with the decision of the House of Lords in *Foakes v. Beer*. But the principle upon which he relied in the High Trees was that of estoppels, which must be specially pleaded. A plea of estoppel was never raised in *Foakes v. Beer*.

‘Estoppels’ in the sense in which the term is used in English legal phraseology, are matter of infinite variety, and are by no means confined to subjects which are dealt with in Chapter VIII of **The Indian Evidence Act**. A man may be estopped not only from giving particular evidence, but from doing acts, or relying upon any particular arguments or contention which the rules of equity and good conscience prevent him from using as against his opponent.

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<sup>9</sup> [1947] K.B. 130.

<sup>10</sup> Being based on hypothetical facts, it is *obiter dictum* and not *ratio decidendi*.

<sup>11</sup> Cheshire and Fifoot (1947) 63 L.Q.R. 283; (1948) 64 L.Q.R. 28; Wilson (1951) 67 L.Q.R. 330; Lord Denning (1952) 15 M.L.R. 338; Bennion (1953) 16 M.L.R. 441; Wilson [1965] C.L.J. 257.

<sup>12</sup> (1845) 5 H.L.C. 185, and applied in *Citizen’s Bank of Louisiana v. First National Bank of New Orleans* (1873) L.R. 6 H.L. 352; *Maddison v. Alderson* (1853) 8 App. Cas. 467, at p. 473.

The law relating to estoppel, as stated above, appears to be too widely stated in the following observation of the Supreme Court:<sup>14</sup>

It is doubted whether the Court while determining whether the conduct of a particular person amounts to an "estoppels", could travel beyond the provisions of s. 115 of **The Indian Evidence Act** and rely upon what is sometimes called 'equitable estoppel'. But assuming that the law as stated by the Calcutta High Court, is correct, the point to be noted is that it was a case between private parties.

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 that promissory estoppel did not apply against the Government. But the position altered with this case. In *Union of India v. Anglo Afghan Agencies*,<sup>15</sup> the Government of India announced certain concessions with regard to the import of certain raw materials in order to encourage export of woollen garments to Afghanistan. Subsequently, only partial concessions and not full concessions were extended as announced. The Supreme Court held that the Government was estopped by its promise. Thereafter the courts have applied the doctrine of promissory estoppel even against the Government.

In this case the Government of India promulgated an Export Promotion Scheme for providing incentives to exporters of woollen goods. The respondent exported goods of a certain value and claimed import entitlement, equal to the full value of exports as notified in the scheme, but the Textile Commissioner reduced the import entitlement. The Supreme Court held in favor of the respondent on the ground that the Textile Commissioner and the Union of India did not act in exercise of the power under cl. 10 of the scheme under which the Textile Commissioner may assess the value of the goods exported and issue an entitlement certificate on the basis of such assessed value, and that on the contrary, the Textile Commissioner reduced the import entitlement without giving an adequate opportunity to the respondent to present its case. The Court also observed :

We hold that the claim of the respondent is appropriately founded upon the equity which arises in their favour as a result of the representation made on behalf of the Union of India in the Export Promotion Scheme, and the action taken by the respondent acting upon that representation under the belief that the Government would carry out the representation made by it.

Having held in favour of the respondent on the ground that the provisions of the Scheme had not been followed by the appellants, any reference to promissory estoppel for using against the Government was totally uncalled for and the observation must be treated as *obiter* pure and simple.

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<sup>14</sup> *Maddappa v. Chandramma*, A.I.R. 1965 S.C. 1812.

<sup>15</sup> AIL 1968 SC 718

## **JURISPRUDENCE BEHIND THE DOCTRINE**

The doctrine of promissory estoppel is an equitable doctrine. Like all equitable remedies, it is discretionary, in contrast to the common law absolute right like right to damages for breach of contract. The doctrine has been variously called 'promissory estoppel', 'equitable estoppel', 'quasi estoppel' and 'new estoppel'. 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 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 promisee 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 provision, as under Article 299, which affords exemption from personal liability of the person making the promise or assurance.

Hence, as the doctrine is a principle of equity, the courts have taken a prerogative to lay emphasis on equity and justice and have explained the doctrine of promissory estoppel in India. The ingredients for the application of the doctrine are:

- That there was a representation or promise in regard to something to be done in the future,
- That the representation or promise was intended to affect the legal relationship of the parties and to be acted upon accordingly, and,
- That it is, one on which, the other side has, in fact, acted to its prejudice.

In the formative period the doctrine of promissory estoppel could not be invoked by the promisee unless he had suffered 'detriment' or 'prejudice'. All that is required is that the party asserting the estoppel must have acted upon the assurance given by him. The alteration of position by the party is the only indispensable requirement of the doctrine.

## THE CONCEPT OF ‘PROMISSORY ESTOPPEL’ IN UNITED KINGDOM AND UNITED STATES

- The law in the **United Kingdom** is stated succinctly in text books<sup>1</sup> as follows:

**SNELL** : *Promissory estoppel*:

“Where by his words or conduct one party to a transaction makes to the other a promise or assurance which is intended to affect the legal relations between idem, and the other party acts upon it, altering his position to his detriment, the party making the promise or assurance will not be permitted *to* act inconsistently with it-Like estoppel at common law, promissory estoppel may provide a defense, but it can create no cause of action.”

The difference between promissory and proprietary estoppel is that the effect of promissory estoppel may be only temporary whereas that of proprietary estoppel is not only permanent but is also capable of operating positively so as to confer a right of action.

**HANBURY** : *Promissory estoppel* :

“Where, by words or conduct a person makes an unambiguous representation as to his future conduct, intending the representation to be relied on and to affect the legal relations between the parties, and the representee alters his position in reliance on it, the representor will be unable to act inconsistently with the representation if by so doing the representee would be prejudiced.”

Promissory estoppel contains a number of features which distinguish it from estoppel by representation of fact. First, in that the representation may be one of intention and not one of fact; which raises the question whether it is inconsistent with the House of Lords decision in *Jordan v. Money*.<sup>16</sup> But the doctrine is now well established. Secondly, the requirement of detriment to the representee is less stringent in the case of promissory estoppel. Financial loss or other detriment is of course sufficient; but it seems that it is not necessary to show more than that the representee committed himself to a particular course of action as a result of the representation. Thirdly, the effect of the estoppel may not be permanent. The representator may escape from the burden of the equity if he can ensure that the representee will not be prejudiced. But, consistently with estoppel by representation, promissory estoppel does not create a cause of action; it operates to give a negative protection. It is a shield and not a sword.

- In the **United States** the law is stated as follows:

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<sup>16</sup> (1845) 5 H.L.C. 185

**Restatement:**<sup>17</sup> A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee, and which does induce such action or forbearance, is binding if injustice can be avoided only by enforcement of the promise.

**American Jurisprudence :** There is considerable dispute as to the application of estoppel with respect to the State. While it is said that suitable estoppel will be invoked against the State when justified by the facts, clearly the doctrine of estoppel should not be lightly invoked against the State. Generally State is not subject to an estoppel to the same extent as is an individual, or a private corporation. Otherwise it might be rendered helpless to assert its powers in government. Therefore, as a general rule" the doctrine of 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 when it is necessary to prevent fraud or manifest injustice.

## **THE CONCEPT OF PROPRIETARY ESTOPPEL**

Proprietary Estoppel is said to arise in certain situations in which a person has done acts in reliance on belief that he has, or that he will acquire, rights in and over another's land. Usually, but not invariably, these acts consist of erecting buildings on, or making other improvements to, the land in question. Where the requirements of proprietary estoppel are satisfied, the landowner is precluded from denying the existence of the rights in question, and may indeed be compelled to grant them. Because the estoppel precludes him from denying the existence of rights in property, it has come to be known as "proprietary estoppel".<sup>18</sup> It is distinct<sup>19</sup> from promissory estoppel both in the conditions which must be satisfied before it comes into operation and in its effects. But under both doctrines some legal effects are given to promises which are not contractually binding for want of consideration; and it is in this aspect of proprietary estoppel which confuses it sometimes with the doctrine of "Promissory Estoppel".

### **• PROPRIETARY AND PROMISSORY ESTOPPELS CONTRASTED**

Proprietary and promissory estoppels have a number of points in common. Both can arise from promises; consideration is not, while action in reliance is a necessary condition for their operation; and both are within limits revocable.

The scope of proprietary estoppel is in two aspects narrower than that of promissory estoppel. First, proprietary estoppel is restricted promises relating to property (generally the land) of another. Promissory estoppel may on the other hand arise ( if other necessary conditions are satisfied) out of any promise that strict legal rights will not be enforced: there is no need for

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<sup>17</sup> Article 90, American Law Institute's Restatement of the law of Contracts.

<sup>18</sup> *Jones v. Jones* [1977] 1 W.L.R. 438 at 442; *Pascoe v. Turner* [1979] 1 W.L.R. 431 at 436; *Re Sharpe* [1980] 1 W.L.R. 219 at 233; *Greasley v. Cooke* [1980] 1 W.L.R. 1306 at 1311; cf. *Midland Bank plc v. Cooke* [1955] 4 All E.R. 564 at 573 ("equities in nature of estoppel")

<sup>19</sup> *Fontana NV v Moutner* (1980) 354 E.G. 199 at 207.

those rights to relate to land or other property. Secondly, proprietary estoppel requires the promisee to have acted to his detriment, while promissory estoppel may operate even though the promisee merely performs a pre-existing duty and so suffers no detriment in the sense of doing something that he was not previously bound to do. This difference between the two doctrines follows from the fact that promissory estoppel is unlike proprietary estoppel concerned only with the variation or abandonment of rights out of a pre-existing legal relationship between promisor and promisee.

On the other hand, the scope of proprietary estoppel is in two respects wider than that of promissory estoppel. First, promissory estoppel arises only out of a representation or promise that is “clear” or “precise and unambiguous”. Proprietary estoppel on the other hand can arise where there is no actual promise: for example, where one party makes improvements to another’s land under a mistake and the other either knows of the mistake<sup>20</sup> or seeks to take unconscious advantage of it.<sup>21</sup> Secondly, (and more significantly), while promissory estoppel is extremely defensive in nature, proprietary estoppel can give rise to a cause of action.<sup>22</sup> The promisee is not merely entitled to raise the estoppel as a defense to an action of trespass or to a claim for possession: the court can make an order for the land to be conveyed to him,<sup>23</sup> or for compensation<sup>24</sup> or for such other remedy as appropriate.

Although the authorities support this second distinction between these two kinds of estoppel, they do not make any attempt to explain or justify it. It is submitted that the explanation is in part historical and terminological. Proprietary estoppel was originally explained in terms of *acquiescence*<sup>25</sup> or *encouragement*.<sup>26</sup> Hence, no requirement that *promises* must be supported by consideration was perceived; or whether it was perceived the facts were said to give rise to a contract.<sup>27</sup>

Promissory estoppel on the other hand, dealt principally with the renegotiation of contracts; it obviously depended on giving binding effect to promises, and it did so in the context of releases and variations, in which the common law requirement of consideration had long been established. The rule that promissory estoppel gives rise to no cause of action was evolved to prevent what would otherwise be an obvious conflict between the doctrines of promissory estoppel and consideration. In cases of proprietary estoppel there was no such conflict where

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<sup>20</sup> *Wilmott v Barber* (1880) 15 Ch. D. 96 at 105 (the claim in that case failed as the party against whom it was made did not know of the extent of his own rights or of the other party’s mistake).

<sup>21</sup> *Taylor’s Fashions Ltd. v Liverpool Victoria Trustees Co Ltd.* [1982] Q.B. 133 n.

<sup>22</sup> *Crabb v Arun DC* [1976] Ch. 179 at 187; *Taylor’s Fashions Ltd. v Liverpool Victoria Trustees Co Ltd.* [1982] Q.B. 133 n. at 148; *Durant v Heritage* [1994] E.G.C.S. 134, where the words “promissory estoppel” appear to be a misprint for “proprietary estoppel”.

<sup>23</sup> *Dillwyn c v Llewelyn* (1862) 4 D.F. & G. 517.

<sup>24</sup> *Eves v Eves* [1975] 1 W.L.R. 1338.

<sup>25</sup> *Wilmott v Barber* (1880) 15 Ch. D. 96 at 105

<sup>26</sup> *Ramsden v Dyson* (1866) L.R. 1 H.L. 129 at 170.

<sup>27</sup> *Dillwyn c v Llewelyn* (1862) 4 D.F. & G. 517.

liability was based on “acquiescence”; and was at least less obvious. There are, moreover, two aspects of proprietary estoppel which help to justify the distinction. These are that the acts done by the promisee are not ones which he was under any previous legal obligation to perform, and that generally their effect would be unjustly to enrich the promisor if he were allowed to go back on his promise.<sup>28</sup> In these respects, the facts on which proprietary estoppel is based provide more compelling grounds for relief<sup>29</sup> than those commonly found in cases of promissory estoppel.

While the two doctrines are in these respects distinct, it can also be agreed that they have a common basis, namely that they would be unconscionable for the promisor to go back on his promise after the promisee has acted upon it; and that the precise labels to be attached to them are “immaterial”.<sup>30</sup> It is perhaps for these reasons that the distinction between the two kinds of estoppel was described as “not...helpful” by Scarman L.J. in *Crabb v Arun DC*.<sup>31</sup> That decision was in a later case, said to illustrate “the virtual equation of promissory and proprietary estoppel”,<sup>32</sup> perhaps because it extended the operation of proprietary estoppel beyond the situations originally within its scope, namely those in which the promisor would be unjustly enriched by the work done by the promisee on the land unless some legal effect were given to the promise. Nevertheless, it is submitted that the doctrines are distinct in the respects stated above. Attempts to unite them by posing “simply” the question whether it would be “unconscionable”,<sup>33</sup> for the promisor to go back on his promise are, for reasons given earlier, unhelpful<sup>34</sup>; and they are also open to the objection that they provide no basis on which a legal doctrine capable of yielding predictable results can be developed.

## UNILATERAL PROMISES AND THEIR REVOCATION

A unilateral promise is a promise from one side and is intended to induce some action by the other party. The promisee is not bound to act, for he gives no promise from his side. But if he

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<sup>28</sup> *Ramsden v Dyson* (1866) L.R. 1 H.L. 129 at 170. (reference to the landowner’s “profit”)

<sup>29</sup> Fuller and Eisenberg, *Basic Contract Law* (3<sup>rd</sup> ed.), p. 70: “Unjust enrichment presents a more urgent case for judicial intervention than losses through reliance which do not benefit the defendant.” cf Fuller and Purdue, 46 Yale L.J. 52, 56 (1936)

<sup>30</sup> *Taylor’s Fashions Ltd. v Liverpool Victoria Trustees Co Ltd.* [1982] Q.B. 133 n. at 153, where however, a distinction is also drawn between “promissory estoppel” and the principle in *Ramsden v Dyson* (1866) L.R. 1 H.L. 129 (i.e. proprietary estoppel)

<sup>31</sup> [1976] Ch. 179 at 193

<sup>32</sup> *Taylor’s Fashions Ltd. v Liverpool Victoria Trustees Co Ltd.* [1982] Q.B. 133 n. at 153. The use of “promissory estoppel” to describe a typical proprietary estoppel situation in *Griffiths v Williams* [1978] E.G. Digest of Cases 919 at 921 may be a misprint.

<sup>33</sup> *Taylor’s Fashions Ltd. v Liverpool Victoria Trustees Co Ltd.* [1982] Q.B. 133 n. at 153; cf. *Habib Bank Ltd v Habib Bank AG Zurich* [1981] 1 W.L.R. 1256 at 1285; *Amalgamated Investment and Property Co Ltd v Texas Commerce International Bank Ltd.* [1982] Q.B. 84 at 104, 122.

<sup>34</sup> Cf. *Haslemere Estates Ltd v Baker* [1982] 1 W.L.R. 1009 at 1119 where Megarry V.-C., rejecting the argument that proprietary estoppel arises “whenever justice and good conscience requires it”, said “I do not think that the subject is as wide and indefinite as that”. Dicta emphasizing the flexibility of the remedy must be read subject to the requirement to adopt a “principle approach” to this aspect of the doctrine; and they should, in any event, not be taken to refer also to *conditions of liability*.

carries out the act desired by the promisor, he can hold the promisor to his promise. His act is at the same time an acceptance of and a consideration for the promise.

“An act done at the request of the offerer in response to his promise is consideration, and consideration in its essence is nothing else but response to such a request.”<sup>35</sup>

It should be noted that in all the above cases where liability arose, it arose only when the promisee had by doing some act, on the faith of the promise, altered his position. It follows, therefore, that where the promisee has done nothing, there is no consideration.

Accordingly, In *Abdul Aziz v Masum Ali*<sup>36</sup>, the defendant promised to Rs. 500 to a fund started to rebuild a mosque but nothing had been done to carry out the repairs and reconstruction. The subscriber was, therefore held not liable. Similarly, it has been pointed out in other cases that a mere promise to subscribe to a charitable institution cannot be sued upon.<sup>37</sup> Thus, where the defendant had agreed to pay from time to time, out of his own pocket certain sums proportionate to the value of the goods imported by him, to a charitable society, the promise was held to be not enforceable, being without consideration.<sup>38</sup>

There is yet another problem concerning unilateral promises. It is beyond doubt true that a promise which is given in return for an act is revocable before the promisee begins to alter his position by acting upon the promise. But may it be revoked after the promisee has commenced the performance?

The decision in *Kedar Nath v Gorie Mohammad*<sup>39</sup> suggests though not in so many words, that such a revocation is impossible. The defendant, in that case was held liable as soon as the contract for the construction of the hall was entered into.

The same appears from the decision of Denning LJ in *Errington v Errington*.<sup>40</sup> The owner of a house had mortgaged it. The house was in the occupation of his son and daughter-in-law.. He told them that the house would become their property if they paid off the mortgage debt in installments and they commenced payments. In these circumstances, the court felt that it would be unjust if the promisor would revoke this promise at his pleasure. His Lordship said:

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<sup>35</sup> C.J. Hamson, *The Reform of Consideration*, (1938) 54 L.Q.R. 233, 234.

<sup>36</sup> AIR 1914 All 22:36 All 268.

<sup>37</sup> *Gopal (Dr) v Tribak*, AIR 1952 Nag 195; *Doraswami v Arunachala*, AIR 1936 Mad 135; *Jiban Krishna Mullick v Nirupama Gupta*, (1926) 53 Cal 922; *CIT v Kameshwar Singh*, AIR 1953 Pat 231. In this case an assessee purchased Government securities and had agreed that the amount of interest on them would be paid to the Viceroy's War Purposes Fund for the duration of war- held, that the agreement was not legally enforceable. For an English authority see *Hudson, Re*, (1885) 33 WR 819. Prejudice to the rights is essential for the representation to be actionable under this rule. *Societe Italio- Belge Pourle v Palm & Veg Oils*, (1982) 1 All ER 19.

<sup>38</sup> *Jamna Das v Ram Kumar*, AIR 1937 Pat 358: 169 IC 396.

<sup>39</sup> ILR (1886) 14 Cal 64.

<sup>40</sup> (1952) 1 KB 290 at p. 295.

*“The father’s promise was a unilateral contract...a promise of the house in return for their act of paying the installments. It could not be revoked by him once the couple entered on performance of the act, but it would cease to bind him if they left it incomplete or unperformed.”*

Either way there is some difficulty, if the promisor is at liberty to revoke, he can frustrate the promise at his pleasure. On the other hand, if he has no liberty, he will be found even though the promisee may stop performances at his sweet will.

The House of Lords, therefore, suggested in *Morrison Steamship Co Ltd. v The Crown*<sup>41</sup> that the mere commencement of performance does not convert an offer into a contract in the sense that the promisor is bound to stay with his promise, but that if he revokes it, he may be sued for damages or on a *quantum meruit*.<sup>42</sup>

## **PROMISSORY ESTOPPEL AND GOVERNMENT AGENCIES**

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.”*

- **Essential characteristics to make promise binding on Government**

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

1. The State makes the promise within the ambit of law.
2. There is an intention to enter into a legal relationship.
3. 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 estopped, 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

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<sup>41</sup> (1924) 20 LI LR 283.

<sup>42</sup> J.C Smith, *Unilateral Contracts and Consideration*, (1953) 69 LQR 99 and 106. The Supreme Court has also held in *Lakshmanswami Mudaliar v LIC*, 1963 Supp (2) SCR 887, 888: AIR 1963 SC 1185, 1190: (1963) 33 Comp Cas 420, that the mere acceptance or retention of donated money does not amount to consideration so as to prevent the donor from recovering back his donation. *Subhash Chandra v Nagar Mahapalika*, AIR 1984 All 228, where the donee promised to spend Rs. 100 on the maintenance of the gifted property. Held, no consideration; it was only a gift.

who relies on such a representation is at liberty to find out the position of 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 principles of estoppel can not override the provisions 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.

In *Jit Ram Shiv Kumar v. State of Haryana*,<sup>43</sup> 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 a 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 provision of law must be made for public interest and not pertain to a particular class of persons.
- 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 negated. 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 concerned. But if the promise is on behalf of the Government is unconstitutional, against any statute or against public policy the question of promissory estoppel against Government does not

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<sup>43</sup> A.I.R 1980 S.C. 1283

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 duty 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 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 of India**.

It is elementary in a republic, governed by a rule of law, no one howsoever 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 an equity in favor of the promise and enforce the 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 cannot be applied in 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 behaviour further indicates that estoppel cannot be applied against the Government if it jeopardizes the constitutional powers of Government. In the case of *C. Sankaranarayanan v. State of Kerala*, 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 Pradesh*,<sup>44</sup> 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 repeal 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.*<sup>45</sup> 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 assurance that total exemption from sales tax would be given for three years to all new industrial units in order for them to establish themselves firmly. Acting on this assurance the appellant sugar mills 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 a 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*,<sup>46</sup> the municipality agreed to exempt certain existing 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

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<sup>44</sup> AIR 1968 SC 1218; (1968) 3 SCR 214

<sup>45</sup> A.I.R. 1979 S.C. 621

<sup>46</sup> (1970) 1 SCC 582

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.

The facts of this case, are: In 1956 the appellant set up its factory Century in an industrial area. At that time no octroi was payable with respect to the goods imported into the industrial area. In 1960. Government constituted an Ulhasnagar municipality which included the industrial area. In 1962. the Government Municipality agrees to exclude the area but the District Municipality objected, agreeing however, to exempt the existing factories from payment of octroi for 7 years. In the 1965 the District Municipality became the Ulhasnagar Municipality which decided to levy octroi duty in 1968, and the appellant objected. Holding in favour of the appellant, the Supreme Court held :

There is undoubtedly a clear distinction between a representation of an existing fact and a representation that something will be done in future. The former may, if it amounts to a representation as to some fact alleged at the time to be actually in existence, raise an estoppel, if another person alters his position relying upon the representation. A representation that something will be done in the future may result in a contract, if another person to whom it is addressed acts upon it. A representation that something will be done in future is not a representation that it is true when made. But between a representation of a fact which is untrue and a representation, express or implied—to do something in future, there is no clear antithesis. A representation that something will be done in future may involve an existing intention to act in future in the manner represented. If the representation is acted upon by another person it may, unless the statute governing the person making the representation provides otherwise, result in an agreement enforceable at law; if the statute requires that the agreement shall be in a certain form, no contract may result from the representation and acting thereon but the law is not powerless to raise in appropriate cases an equity against him to compel performance of the obligation arising out of his representation.

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 not altered their position to their prejudice. The obligation against an individual out of his representation amounting to a promise may be enforced *ex contractu* by a person who acts upon the promise: when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by the statute, the obligation, if the contract be not in that form may be enforced against it in appropriate cases in equity.

The Court also observed:

If our nascent democracy is to thrive, different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is in our judgment, not exempt

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.

Three points have to be noted with respect to this case. First, the application of the principle of promissory estoppel in this case is obviously wrong. All the learned Judges who had referred to this principle, including Bhagwati and Tulzapurkar JJ., are agreed that there can be no promissory estoppel against the legislative power. Taxation, whether by the legislature or its delegate, is an exercise of the legislative power and octroi is nothing but tax. Secondly the reference to a 'nascent democracy' by Shah J. is again unfortunate. A democracy in a developing country cannot be ineffective and the Government or a municipality, which is only an extension of the government, can be effective only if they are free to formulate and reformulate their policies and augment their revenues. Thirdly, there is absolutely no equity in favour of the appellant. When the industrial area was included in the municipality, octroi became automatically payable with respect to the goods imported into the area. It was only by way of concession that the municipality agreed to exempt. If later on the concession was withdrawn, no grievance can be made of it. It is not as if the appellant was invited into the area with a promise of favourable treatment.

However, the case of *Jit Ram Shiv Kumar v. State of Haryana*, 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 Supreme Court in *Union of India v. Godfrey Phillips India Ltd.* 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* 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*. 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.

- **Role played by the doctrine of promissory estoppel in India**

In conclusion, it can be said that if the Government of India or of any State in 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 representations 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 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.

### **ESTOPPEL OF LICENSEE**

The party who was granted a liquor license was held to be stopped from saying afterwards that some of the restrictions imposed upon his trade freedom, particularly the one under which the Government reserved with it the power to vary issue prices, were unreasonable. Unreasonableness has to be considered in the totality of the circumstances including Public Interest. Liquor consumption has to be reduced and, therefore, free trade of such an item cannot be encouraged. The power to vary issue prices is a method of exercising control over this trade. The courts will prevent only a crushing use of this power. Such power does not also offend Section 29<sup>47</sup> of **The Indian Contract Act, 1872** because there is no uncertainty about the nature of the price variation clause. Its unreasonable use can always be prevented under writ jurisdiction.<sup>48</sup>

A person, who has acquired title to the land of a Council by adverse possession, agreed subsequently to hold the same under a term license from the Council. On the expiry of the term the Council told him to hand over the possession. He tried to assert his title by adverse possession. He was not allowed to do so. Whatever rights he had acquired became substituted under the new arrangement which he voluntarily accepted. The new arrangement constituted a “promissory estoppels” against him.<sup>49</sup>

### **NO ESTOPPEL AGAINST A MINOR**

Suppose that a minor by misrepresenting his age induces another to contract with him, will there be any estoppels against him, or, in other words, will he be precluded from disclosing his true age in a litigation resulting from the contract?

Even this question had at one time created a controversy. But it is now settled by a preponderance of authority that there is no such estoppels against a minor.<sup>50</sup>

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<sup>47</sup> Section 29 of The Indian Contract Act, 1872 is regarding the agreements that are void because of uncertainty and it states

“Agreements, the meaning of which is not certain, or is capable of being made certain, are void.”

<sup>48</sup> *Lekh Raj v. State of Rajasthan*, (1987) 1 Raj LR 661.

<sup>49</sup> *Colchester Borough Council v. Smith*, (1991) 2 All ER 29 Ch D.

<sup>50</sup> See, for example, *Jagar Nath Singh v. Lalta Pd*, (1908) 31 All 21, where the courts said: “The law of estoppel can not be invoked in aid to validate that which is void under the law”; *Tikki Lal Jaithu Teli v. Komalchand*, AIR 1940 Nag 327; *Manmatha Kumar Saba v. Exchange Loan Co. Ltd*, AIR 1936 Cal 567; *Brahmo Dutt v Dharmodas Ghose*, (1899) 26 Cal 381; *Sarada Pd Das v. Binay Krishna Dutta*, (1931) Cal 393; *Nawab Sadiq Ali Khan v. Jai Kishori*, AIR 1928 PC 142: 109 IC 387;

The infant is not stopped from setting up the defense of infancy.<sup>51</sup>The reason is very simple. There can be no estoppels against a statute. The policy of the law of contract is to protect persons below age from contractual liability and naturally the doctrine of estoppels cannot be used to defeat that policy. Thus, in a case before the Bombay High Court, Beaumont CJ reviewed the earlier authorities and concluded by saying:

*“The Court is of the opinion that where an infant represents fraudulently or otherwise that he is of age and thereby induces another into contract with him then in an action founded on the contract the infant is not stopped from setting up infancy.”*

## **PROBLEMS ENCOUNTERED**

We are now in a position to state the problems arising in the light of this doctrine.

They are:

- (a) Should promissory estoppel be allowed to be used as a cause of action?
- (b) Could the doctrine be used against the government and if so when? and
- (c) Should the promisee suffer detriment before he can invoke the doctrine?

These problems arise because,<sup>52</sup> in all systems of civilised administration, citizens expect the

concerned departments and agencies to act in conformity with the procedure they have established for themselves or promises they have made. Departure from that procedure or promise, be it a mere rule of practice, frustrates legitimate expectations, and the citizens turn to the courts for redress against arbitrary action. The courts will then have to decide whether the procedure or promise in question is enforceable against the body that has adopted or made it. To what extent can the private law principle that persons could be held to representations made by them and acted upon by others to their detriment, be applied against such bodies?. One view is that a public body entrusted with powers and duties for public purposes cannot divest themselves of these powers and duties by entering into contracts or making representations incompatible with the discharge of the power and duties. If a departmental official makes a representation which is relied on by a private party to his injury, the department can still go back on the representations because that may be necessary in the public interest. Another view is that the department can be held to the representation, unless it is shown to the satisfaction of the court that a departure will be justified by overriding considerations of public interest.

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*Golam Abdin v. Hem Chandra*, (1916) 20 CWN 418; *Kanbayalal v. Girdharilal*, (1912) 9 All LJ 103 pleading minority against a promissory note is allowed.

<sup>51</sup> *Gadigeppa Bhimappa Mets v. Balongowda Bhimangowda*, AIR 1931 Bom 561, where the court reviewed all authorities on this point.

<sup>52</sup>(1983) K.L.T. 1083, 1089 (*Govindan v. Cochin Shipyard*).

These problems can also be seen from the point of view that the recommendations already made in the Thirteenth Report of the Law Commission, promissory estoppel may be allowed to be used as cause of action.

The doctrine can be used against the government in its business and property activities. The position in this area is not similar to that of tortious liability where the distinction unfortunately is perpetuated by the courts themselves. To invoke the doctrine of promissory estoppel against the government in its governmental activities would be making the government and its agencies (public bodies) ineffective, and, therefore, it is that we recognize the dichotomy in this field.

On this aspect there should be detriment in the sense explained by Mr. Justice Dixon, that is, the person to whom the representation or promise is made, is likely to suffer some damage or loss if the person making the representation or promise is allowed to go back on his representation or promise.

## **RECOMMENDATIONS BY THE LAW COMMISSION OF INDIA IN ITS 108<sup>th</sup> REPORT**

The following were the recommendations suggested in the 108<sup>th</sup> Report of the Law Commission of India.

It is suggested that since the doctrine of promissory estoppel is a beneficial doctrine based on equity, exclusion of its operation may be allowed only where absolutely necessary. The proper course would be to hold the government bound by its promise which has been acted upon by the other party (promisee) subject to certain narrowly drawn exceptions. We are not recommending the test of 'sovereign' and 'non-sovereign' functions, because, it is not an easy test to apply. Our recommendation is that a new section may be inserted in the Indian Contract Act after s. 25 as suggested below.

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### *Suggested Section 25A, Contract Act*

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(1) Where

(a) a person has, by his words or conduct made to another person, an unequivocal promise which is intended to create legal relations or to affect a legal relationship to arise in the future; and

(b) such person knows or intends that the promise would be acted upon by the person to whom it is made : and

(c) the promise is, in fact, so acted upon by the other person, by altering his position, then, notwithstanding that the promise is without consideration, it shall be binding on the person making it, if, having regard to the dealings which have taken place between the parties, it would be unjust not to hold him to be so bound.

(2) The provisions of this section apply whether or not there is a preexisting relationship between the parties.

(3) The provisions of this section shall not apply:—

(a) Where the events that have subsequently happened show that it would be unjust to hold the promisor to be bound by the promise; or,

(b) Where the promisor is the Government and the public interest would suffer if the Government is held to be bound by the promise; or,

(c) Where the promisor is the Government, and enforcing the promise would be inconsistent with an obligation or liability imposed on the Government by law.

*Explanation* (1). Where a question arises whether public interest could suffer within the meaning of Clause (b), the court shall have regard to the amount of harm likely to be caused to the promisee if the promise is not enforced and the extent of injury to be caused to the public interest if the promise is enforced, and shall decide the matter on a balance of the two considerations.

*Explanation* (2). In this section 'Government' includes all public bodies.

## CONCLUSION

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.

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**Statutes Referred:**

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- The Indian Evidence Act, 1872
- The Indian Contracts Act, 1872
- 108<sup>th</sup> Report of Law Commission of India

