



## ESTOPPEL AS AGAINST THE STATE ACCORDING TO INDIAN EVIDENCE ACT, 1872.

By Sharlin Puppal

From Maharashtra National Law University  
Mumbai

### Introduction

*He who seeks equity must do equity.*<sup>1</sup> Estoppel being an equitable doctrine must yield when equity so requires.<sup>2</sup> Rule of estoppel is regarded as a rule of evidence based on equity and good conscience. The object is to prevent fraud and secure justice between the parties by promotion of honesty and good faith.<sup>3</sup> Estoppel is based on the maxim, *'allegans contraria non est audiendus'*, a person alleging contradictory facts should not be heard and is that species of *'proesumptio juris et de jure'*, where the fact presumed is taken to be true, not as against all the world, but as against a particular party, and that only by a reason of some act done, it is in truth a kind of *'argumentum ad hominem'*, which means fallacious argument that attacks not an opponent's belief but his motives and character.<sup>4</sup>

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."*<sup>5</sup>

Estoppel is the rule of evidence and the general rule is enacted under section 115 of the Indian Evidence Act, 1872 which lays down that when one person has by his declaration, act or omission 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.<sup>6</sup> Estoppel is the rule of exclusion, making evidence in proof or disproof of a relevant fact inadmissible.<sup>7</sup>

Estoppel deals with questions of fact and not question of right.<sup>8</sup> Estoppels can be classified into three kinds: (1) estoppel by matter of record; (2) estoppel by Deed; and (3) estoppel by *matter in pais*. The first two are sometimes referred to as technical estoppels as distinguished from acquirable estoppels or *estoppel in pais*. All these kinds have been discussed under Indian law in various cases.<sup>9</sup>

<sup>1</sup> Delhi Clothes General Mills Ltd. v Union of India AIR 1987 SC 2414.

<sup>2</sup> Indira Bai v Nand Kishore AIR 1991 SC 1055.

<sup>3</sup> R.S Maddanappa v Chandramma AIR 1965 SC 1812.

<sup>4</sup> The Law of Evidence, Chief Justice M. Monir, 10<sup>th</sup> Edition, Universal Law Publication.

<sup>5</sup> Section 115 of The Indian Evidence Act, 1872.

<sup>6</sup> Section 115, Indian Evidence Act, 1872.

<sup>7</sup> Vepa Sarathi, Law of Evidence, 7<sup>th</sup> Edition, pp. 245-250 Eastern Book Publication.

<sup>8</sup> The Law of Evidence, Chief Justice M. Monir, 10<sup>th</sup> Edition, Universal Law Publication.

<sup>9</sup> The Law of Evidence, CJ M Monir, 10<sup>th</sup> Edition, Universal Law Publication, pp 445-450, 2015.



To invoke the Doctrine of Estoppel, four conditions are necessary. One party should make a factual representation to the other party. Secondly, the other party should accept and rely upon the aforesaid factual representation. Thirdly, having relied on the aforesaid factual representation, the second party should alter his position. Fourthly, the instant alteration of position, should be such, that it would be iniquitous to require him to revert back to original position. Therefore, the Doctrine of Estoppel would apply only when based on a representation by the first party, the second party alter his position, in such manner, that it would be unfair to restore the initial position.<sup>10</sup>

An estoppel cannot have the effect of conferring upon a person a legal status expressly denied to him by a statute. Where the rights are involved estoppel may with equal justification be described both as a rule of evidence and as a rule creating or defeating rights.<sup>11</sup>

### Estoppel as against the State

The doctrine of estoppel as against the state or government is one that is based on equity and accordingly it applies with respect to the circumstances of the case. Therefore, there are no such predictive rules as far as the position of estoppel against the state is concerned, in some cases the court has stated that the plea of estoppel can be accepted against the state whereas it has completely denied the estoppel against the state or government. In that essence, the

courts will have to examine whether the injustice done to an individual outweighs the disadvantages to public interest. Hence, as the doctrine is a principle of equity, the courts have taken a prerogative to lay emphasis on equity and justice and have examined the doctrine of estoppel in various cases.<sup>12</sup>

The state is entitled to a plea of estoppel and in the case of *Assudibai v Haribai* 1943 S 177<sup>13</sup> It was held that the doctrine of detriment was by representation does not apply to a government department such as the court of Wards.<sup>14</sup> However, in cases where the public officers purposely neglect or omit their public duties, it will not work as an estoppel against state. A mistaken interpretation made by the government officers of a grant by the state and their consequent mistaken acts are not binding on the state and would not create an estoppel as against the state.<sup>15</sup> Even mistaken representation by an innocent party can apply as an estoppel against the party making the representation.<sup>16</sup> and the state is not bound by the doctrine of estoppel for acts of its subordinate done in violation of its direction on administrative instructions.<sup>17</sup>

<sup>10</sup> *Pratima Chaudhary v Kalpana Mukherjee* (2014) 4 SCC 196

<sup>11</sup> *B.L. Shreedhar v K.M. Munnireddy* AIR 2003 SC 578; *Criminal Law Manual*, Universal Law Publications, 2017.

<sup>12</sup> *Jit Ram Shiv Kumar v. State of Haryana* 1980 AIR 1285

<sup>13</sup> *Assudibai v Haribai* 1943 S 177;

<sup>14</sup> *Ibid.*

<sup>15</sup> *Secretary of state v Fareed Jijabhai Dwecha* 1934 B 434; *The Law of Evidence*, CJ M Monir, 10<sup>th</sup> Edition, Universal Law Publication, pp 445-450, 2015.

<sup>16</sup> *Jagari bai v Ram Khilawan* AIR 1976 MP 106; *The Law of Evidence*, CJ M Monir, 10<sup>th</sup> Edition, Universal Law Publication, pp 445-450, 2015.

<sup>17</sup> *Chetalal Sao v State of Bihar* AIR 1986 Pat 267; *The Law of Evidence*, CJ M Monir, 10<sup>th</sup> Edition, Universal Law Publication, pp 445-450, 2015.



In the case of State of Punjab And Ors. vs Amrit Banaspati Co., Ltd, the court relied on American Jurisprudence which stated<sup>18</sup>, “A sovereign State is not subject to an estoppel to the same extent as an individual or a private corporation. Otherwise, it might be rendered helpless to assert its powers in government. The doctrine of estoppel is not applied to the extent of impairing sovereign powers of a State such as it exercises, for example, in the enactment and enforcement of police measures. A State cannot be estopped by the unauthorised acts or representations of its officers. On the other hand, a contract or deed lawfully made by a State may create an estoppel against it if the effect of the estoppel will not be to impair the exercise of the powers of government. Moreover, an estoppel may arise against the State out of a transaction in which it acted in a governmental capacity if an estoppel is necessary to prevent loss to another and the perpetration of a fraud and if such estoppel will not impair the exercise of the sovereign powers of the State.”<sup>19</sup>

In *Mulamchand v. State of Madhya Pradesh* (1968) 3 SCR 214,<sup>20</sup> the Supreme Court did not apply estoppel against the Government in certain cases of contracts and the court stated that if the estoppel is allowed it would mean the repeal of an important constitutional provision, intended for the protection of the general public. Also, in case of *Jit Ram Shiv Kumar v State of Haryana*, It was held in this case that the

doctrine of estoppel is not available against the exercise of executive functions of the state.<sup>21</sup> The court did not allow the plea of estoppel against the Government if it had the effect of repealing any provision of the Constitution.<sup>22</sup>

In the case of Excise Commissioner, U.P. Allahabad v. Ram Kumar<sup>23</sup>, this was also a decision on which strong reliance was placed on behalf of the State. In this case, the court observed that, it is now well settled principle that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers.<sup>24</sup> In State of Kerala v. Gwalior Rayon Silk Manufacturing Co. Ltd. 1973 AIR 2734<sup>25</sup>, the court stated that the Government of its legislative powers to be used for public good cannot avail the company or operate against the Government as equitable estoppel. Generally, a state is not subject to an estoppel to the same extent as an individual or a private corporation. 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 where it is necessary to prevent fraud or manifest injustice.<sup>26</sup> Also in the case of *Express Newspaper Pvt. Ltd. v. Union of*

<sup>18</sup>State of Punjab And Ors. vs Amrit Banaspati Co., Ltd. And Ors AIR 1977

<sup>19</sup>American Jurisprudence, 1st Edition, Vol. 19, page 818, para 166

<sup>20</sup>*Mulamchand v. State of Madhya Pradesh* 1968] 3 SCR 214

<sup>21</sup>*Jit Ram Shiv Kumar v State of Haryana* 1980 AIR 1285

<sup>22</sup> Ibid.

<sup>23</sup> Excise Commissioner, U.P. Allahabad v. Ram Kumar 1976 AIR 2237

<sup>24</sup> Ibid.

<sup>25</sup> State of Kerala v. Gwalior Rayon Silk Manufacturing Co. Ltd. 1973 AIR 2734

<sup>26</sup> State of Kerala v. Gwalior Rayon Silk Manufacturing Co. Ltd. 1973 AIR 2734



India<sup>27</sup> 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.<sup>28</sup> 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*.<sup>29</sup> the court said that a person, who has himself misled the authority by making a fake statement, couldn't invoke this principle.

However, in certain cases courts have made different with regard to the application of the estoppel against the government and state. It has also in some circumstances stated that the doctrine of estoppel is available as against the government or state. In the case of *Motilal Padampat Sugar Mills vs State of Uttar Pradesh And Ors*<sup>30</sup>, it was stated that estoppel may be applied against the state even in its governmental, public or sovereign capacity if its application is necessary to prevent fraud or manifest injustice. Further, it stated that there is considerable dispute as to the application of estoppel with respect to the state. It stated that equitable estoppel will be invoked against the state when justified by the facts. Similarly, in the case of *Century Spinning and Manufacturing Co. v. Ulhasnagar*

*Municipality*<sup>31</sup>, it stated that the supervening public interest would prevail over estoppel and the state was bound by its promise held out in such situation. Moreover, in the case of *Union of India & Ors vs Godfrey Philips India Ltd*<sup>32</sup>, the court appreciated the decision which was given in *Motilal's* case marks a significant development in the law relating to the doctrine of estoppel.

The general rule which is established in law is that there can be no estoppel against the government or against the state or any public authority. However, in certain circumstances the court have explicitly stated that the estoppel can be accepted against state if justified with proper facts.

#### **Case Analysis of Motilal Sugar Mills v. State of U.P. and Jit Ram Kumar v State of Haryana**

This is a landmark case regarding the applicability of the doctrine of the 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 them to establish themselves firmly.<sup>33</sup> Acting on this assurance the appellant sugar mills set up a 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

<sup>27</sup> *Express Newspaper Pvt. Ltd. v. Union of India* 1986 AIR 872

<sup>28</sup> *Express Newspaper Pvt. Ltd. v. Union of India* 1986 AIR 872

<sup>29</sup> *Central Airmen Selection Board v. Surender Kumar Appeal (civil) 251 of 1994*

<sup>30</sup> *Motilal Padampat Sugar Mills vs State of Uttar Pradesh And Ors* 1979 AIR 621

<sup>31</sup> *Century Spinning and Manufacturing Co. v. Ulhasnagar Municipality* AIR 1958 SC 86

<sup>32</sup> *Union of India v. Godfrey Phillips India Ltd* AIR 1986 SC 806

<sup>33</sup> *Motilal Padampat Sugar Mills vs State of Uttar Pradesh And Ors* 1979 AIR 621



loans only due to the assurance given by the Government.<sup>34</sup> The court discussed a very point issue which was ‘How far and to what extent is the State bound by the doctrine of promissory estoppel?’ it was observed by the court that if the acts or omissions of the officers of the Government are within the scope of their authority and are not otherwise impermissible under the law, they “will work estoppel against the Government”. The doctrine of estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negative, which means that its application could not be defeated by invoking defence of executive necessity.<sup>35</sup>

However, the decision was over looked in *Jit Ram Shiv Kumar v. State of Haryana*<sup>36</sup> where it was held that the doctrine of promissory estoppel is not available against the exercise of executive functions of the State. The court did not consider the decision which was given in *Motilal Padampat Sugar Mills v. State of U.P.*<sup>37</sup> It relied on other cases such as *A Bench of four judges of this Court in a decision Excise Commissioner, U. P. Allahabad v. Ram Kumar*<sup>38</sup>, after examining the case law on the subject observed that "it is now well-settled by a catena of decisions that there can be no question of estoppel against the Government in exercise of its legislative,

sovereign or executive powers." The earlier decisions of the court on *State of Kerala and Anr. v. The Gwalior Rayon Silk Manufacturing Co. Ltd*<sup>39</sup>.were followed. It may, therefore, be stated that the view of this Court has been that the principle of estoppel is not available against the Government in exercise of legislative, sovereign or executive power. It was stated that Government of its legislative powers to be used for public good cannot avail the company or operate against the Government as equitable estoppel.

The court stated that the scope of the plea of doctrine of promissory estoppel against the Government may be summed up as follows:

- (1) The plea of promissory estoppel is not available against the exercise of the legislative functions of the State.
- (2) The doctrine cannot be invoked for preventing the Government from discharging its functions under the law.
- (3) When the officer of the Government acts outside the scope of his authority, the plea of promissory estoppel is not available. The doctrine of ultra vires will come into operation and the Government cannot be held bound by the unauthorised acts of its officers.<sup>40</sup>

The Supreme Court in *Union of India v. Godfrey Phillips India Ltd.*<sup>41</sup> soon overruled the decision and stated that the law laid down in *Motilal* case represents the correct law on estoppel and further stated that it

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> *Jit Ram Shiv Kumar v. State of Haryana* 1980 AIR 1285

<sup>37</sup> *Motilal Padampat Sugar Mills vs State of Uttar Pradesh And Ors* 1979 AIR 621

<sup>38</sup> *Excise Commissioner, U.P. Allahabad v. Ram Kumar* 1976 AIR 2237

<sup>39</sup> *State of Kerala v. Gwalior Rayon Silk Manufacturing Co. Ltd.* 1973 AIR 2734

<sup>40</sup> *Jit Ram Shiv Kumar v. State of Haryana* 1980 AIR 1285

<sup>41</sup> *Union of India v. Godfrey Phillips India Ltd* AIR 1986 SC 806



marks as a significant development in the law relating to the doctrine of promissory estoppel.

### Conclusion

Estoppel is the rule of evidence and the general rule is enacted under section 115 of the Indian Evidence Act, 1872. Rule of estoppel is regarded as a rule of evidence based on equity and good conscience. The object is to prevent fraud and secure justice between the parties by promotion of honesty and good faith. The doctrine of estoppel is one that is based on equity and accordingly applied with respect to the circumstances of the case. Even mistaken representation by an innocent party can apply as an estoppel against the party making the representation and the state is not bound by the doctrine of estoppel for acts of its subordinate done in violation of its direction on administrative instructions. In certain landmark cases such as Motilal Padampat's case, State of Rajasthan v Mahavir mills and Century Spinning and Manufacturing Co. v. Ulhasnagar Municipality, Union of India v. Godfrey Phillips India Ltd etc. the court allowed the doctrine of estoppel against the government, but in certain cases such as State of Kerala and Anr. v. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd and Excise Commissioner. U. P. Allahabad v. Ram Kumar, it stated that plea of estoppel is not available against the exercise of the legislative functions of the State.

### Bibliography

#### Articles

- Raoul Berger, 'Estoppel against the Government' Vol. 21, No. 4 (Summer, 1954), pp. 680-707 The University of Chicago Law Review.

- American Jurisprudence, 1st Edition, Vol. 19, page 818, para 166.

#### Books

- The Law of Evidence, CJ M Monir, 10<sup>th</sup> Edition, Universal Law Publication, pp 445-450, 2015.
- 'Lectures on the Indian Evidence Act', Justice U.L. Bhat, Universal Law Publication, 2016. 228-240.

#### Case Law

- Delhi Clothes General Mills Ltd. v Union of India AIR 1987 SC 2414.
- Indira Bai v Nand Kishore AIR 1991 SC 1055.
- R.S Maddanappa v Chandramma AIR 1965 SC 1812.
- State of Kerala v. Gwalior Rayon Silk Manufacturing Co. Ltd. 1973 AIR 2734
- Jit Ram Shiv Kumar v. State of Haryana 1980 AIR 1285
- Supreme Court in Union of India v. Godfrey Phillips India Ltd AIR 1986 SC 806
- Excise Commissioner, U.P. Allahabad v. Ram Kumar 1976 AIR 2237
- State of Punjab And Ors. vs Amrit Banaspati Co., Ltd. And Ors AIR 1977
- Union of India v. Godfrey Phillips India Ltd AIR 1986 SC 806
- Pratima Chaudhary v Kalpana Mukherjee (2014) 4 SCC 196

#### Statute

- Section 115 of Indian Evidence Act of 1872.
- Criminal law Manual, Universal Law Publications, 2017.

\*\*\*\*\*