



RELEVANCE OF THE PRINCIPLE OF ESTOPPEL UNDER INDIAN EVIDENCE LAW

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ABSTRACT

The doctrine of estoppel is mostly used in contract law. However, it is of utmost relevance in evidence law as well. Under this doctrine, when a person says something, making others believe that it is true, they cannot be allowed to back out of that statement or change their stance. While estoppel and its types has been explicitly defined in the Indian Evidence Act, the law in practice is much wider. This paper seeks to analyse the relevance of this doctrine in Indian evidence law today. First, the doctrine's history has been traced, in order to understand its true meaning. Thereafter, there is an in-depth analysis of the types of estoppel, something that has been compiled from a variety of laws and its practical application in cases, as well as other analytical material. This is followed by an attempt to demarcate the scope of this doctrine in terms of the categories of people it is applicable to. Additionally, the kinds of statements that form part of evidence law are looked through this lens. Lastly, there is a general conclusion, pointing out the benefits, limitations and then giving recommendations.

RESEARCH METHODOLOGY

The paper follows a doctrinal research, where mainly secondary sources are referred to. An analysis is given, based on the author's interpretation of the information. The sources have been cited in footnotes, adhering to the

fourth edition of Oxford University Standard for the Citation of Legal Authorities (OSCOLA).

Hypothesis

The principle of estoppel has been explicitly laid down in sections 115-117 of the Indian Evidence Act. Therefore, the principle is relevant in evidence law, similar to its use in contract law. The principle has its application beyond the provisions of the act.

Research Questions

1. How is the principle of estoppel used in Indian evidence law?
2. What is the scope of applicability of the principle of estoppel?
3. Can evidence given in one case be used for estoppel in another?

INTRODUCTION

The doctrine of estoppel is a key principle in both evidence and contract law that ensures integrity in human behaviour. In order to understand the true meaning of the doctrine, its etymology must be traced. The word estoppel is derived from the French word 'estoupail' or 'estoup' which means 'to stop'. The basic meaning of the principle is that once a person says something making others believe it to be true, he or she cannot act opposite to or back out of that statement later. For example, A, claiming to be the owner of a certain property, demands damages from B for vandalising it. She cannot later claim damages as the lessee. She would be estopped from doing so. It is based on the Latin maxim 'allegans contraria non audiendus est' (a person alleging



contradictory facts shall not be heard).¹ The doctrine is given in chapter 8 of the Indian Evidence Act (the act). It states that when a person makes another person believe something by a declaration or even implicitly through some act or omission, neither him/her or his/her representative is allowed to deny that thing later.²

In practice, this principle is majorly derived from the 1837 English case of *Pickard v Sears*.³ In this case, A had taken a loan from B for which a property was mortgaged. However, the actual possession of that property remained with A. A writ of fieri facias (writ to sheriff for executing judgement) was issued due to which the sheriff took the property from A. B talked to the sheriff about this, and even about the sale of that property. However, he did not mention the mortgage. The property was then sold to a third party, C. Now, B demanded possession of the property or payment of debt from C. The court ruled that this could not be allowed as he had failed to mention his mortgage before and so couldn't claim it later. The court further laid down that:

“But the rule of law is clear, that where one by his own words or conduct wilfully causes another to believe the existence of a certain state of things, and induces him to act on that behalf, so as to alter his own previous position, the former is concluded from averring against the latter a

different state of things as existing at the time.”

Here, it is important to note that only the ‘wilful’ conduct would attract estoppel. The act uses the word ‘intentional’ instead of ‘wilful’, but the meaning is essentially the same.⁴ Also, the section expanded the scope of the principle by adding a responsibility of the representative. Not just the person themselves, but their representatives are also estopped from disagreeing with a statement made by them.

The objective of this principle was explained in detail in the Australian case of *Thomson v Palmer*.⁵ When someone makes someone believe something, and the other person acts on that belief in a way that if that belief is not true, that act would be to his/her detriment, the person making him/her believe it should be estopped. A party should not be detriment because of such a belief, and when the person has made a statement to that effect, the fact that it is true or not is not relevant.

The doctrine of Estoppel has evolved through case laws in India, as well as abroad. While it was earlier considered to be only a rule of evidence, it is now argued to be a substantive law. This mainly came about with the development of promissory estoppel, which will be dealt with in the further sections. The substantive part of it also deals with law of contracts but that is not the subject matter of this paper.

¹ Dr V Nageswara Rao, *The Indian Evidence Act: A Critical Commentary Covering Emerging Issues and International Developments* (3rd edn, LexisNexis 2015).

² Indian Evidence Act 1872 s115.

³ *Pickard v Sears* (1837) 6 Ad and El 469.

⁴ AK Ganguli, ‘Principles of Estoppel and Ultra Vires in their application to the discharge of public duties by public authorities’ [1999] 41 *Journal of the Indian Law*

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<http://14.139.60.114:8080/jspui/bitstream/123456789/17793/1/008_Principles%20of%20Estoppel%20and%20Ultra%20Vires%20in%20Their%20Application%20to%20the%20Discharge%20of%20Public%20Duties.pdf> accessed on 23 October 2020.

⁵ *Thomas v Palmer* (1933) 49 CLR 507; [1933] HCA 61.



CHAPTER 1: TYPES OF ESTOPPEL

While the law of estoppel is not particularly codified, its application has been classified into various categories for the sake of convenience. Estoppel under evidence law can be basically classified into three types – res judicata, deed and conduct. Promissory estoppel is another concept that has developed over the years, and mainly deals with civil cases.

Res Judicata or Estoppel by Record

The principle of Res Judicata dictates that when a matter has been decided by a competent court, it cannot be further pursued by the same parties. The objective here is to bar ‘re-litigation’ as it would waste time and resources of the court. It has its origins in Roman law, where three major principles guarded it – no man should be vexed twice for the same cause, and end to litigation is in the interest of the state and a court’s decision should be accepted as correct. They believed that one suit is enough for a single dispute.⁶ It also existed in ancient Hindu law, under the concept of Purva Nyaya (former judgement). From this principle, the concept of ‘estoppel by record’ is derived.

Estoppel by record is the clearest form of estoppel. When someone has claimed something in a previous suit and the court has decided on it, it exists as a ‘record’. Here, the person cannot claim the opposite of that in

another suit. This has been dealt with under sections 40-44 of the evidence act. When a previous judgement exists with regard to a certain suit, it will be considered to be a relevant fact if the suit is asked to be taken up again.⁷ The procedure for the same is dealt with in the civil and criminal procedure codes for civil and criminal cases respectively.⁸ The scope with respect to civil and criminal trials has been further clarified in the case of *KG Premshanker v Inspector Police*,⁹ which laid down specific guidelines regarding this.

Secondly, if there is a previous judgement deciding the issue brought up, it is relevant.¹⁰ This is called ‘estoppel by issue’. When a certain issue between two parties has been decided upon by the court, and it comes up in another case between the two parties, the previous decision is relevant and should be referred to. This was laid down in the case of *Sabasivam v Public Prosecutor, Federal of Malaya*,¹¹ where the court stated that a verdict given in a case between two parties is binding on all further cases between those two parties. Here, the accused had been previously convicted for having ammunition. This has to be considered relevant in the second trial. It was affirmed by the Supreme Court in the case of *Pritam Singh v State of Punjab*.¹² However, it is important that the same issue between the same parties has been decided before. If the parties are different, the rule cannot be applied.¹³ This was explained

⁶ Kevin M Clermont, ‘Res Judicata as Requisite for Justice’ (2016) Cornell Law Faculty Publications. <<https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2599&context=facpub>> accessed on 26 October 2020.

⁷ Indian Evidence Act 1972, s40.

⁸ Code of Civil Procedure 1908, s11-14; Code of Criminal Procedure 1973, s300.

⁹ *KG Premshanker v Inspector Police* (2002) 8 SCC 87.

¹⁰ Indian Evidence Act 1872, s42.

¹¹ *Sabasivam v Public Prosecutor, Federal of Malaya* (1950) AC 458.

¹² *Pritam Singh v State of Punjab* AIR 1956 SC 415.

¹³ AK Ganguli, ‘Principles of Estoppel and Ultra Vires in their application to the discharge of public duties by public authorities’ [1999] 41 Journal of the Indian Law Institute

<http://14.139.60.114:8080/jspui/bitstream/123456789/17793/1/008_Principles%20of%20Estoppel%20an



in the case of *Mohar Rai v State of Bihar*.¹⁴ Here, the appellants had been convicted for assaulting a party. They claimed to be framed. The appellants had previously been acquitted in a case under the Arms Act. That acquittal is not relevant in the present case because the previous case did not involve the state as a party. Therefore, this issue has not been litigated upon between the parties in this case and so the principle cannot apply.

There is an exception to this rule. If the previous judgement or order was delivered by a court not competent to do so, or was obtained by fraud or collusion, it is not relevant. However, this has to be proved by the adverse party.¹⁵ If the order is obtained by fraud, it is a nullity or ‘non-est’ in the eyes of law and has to be treated like that by all courts—whether superior or inferior.¹⁶ In the case of *Union of India v Ramesh Gandhi*,¹⁷ the court further clarified that an inferior court can look into whether a judgement given by a higher court was given by fraud because it is assumed that the judgement is void because of fraud. Secondly, when the court is not competent to try the matter in the first place, the judgement is considered null. Even an inferior court can treat it as null and not consider it relevant.¹⁸

Estoppel by Deed

When a party enters into a contract or a deed, and acts upon it, he/she or their representatives cannot deny the truth of that deed. In fact, they cannot back out of any

statement made as a part of the contract. In the recent case of *Bihar State Credit and Investment Corporation Limited v Pine Builders Private Limited*,¹⁹ A had taken a loan from corporation B and couldn’t pay it. After certain negotiations, the parties reached an ‘Agreement of Settlement’, wherein B received a part of the loan over a period of time. However, B later initiated proceedings against A for recovery of debt. A contended this, stating that B had taken benefit of the settlement, and could not back out of it after so much time. The court ruled in favour of A, stating that B had agreed to something as part of a deed and so could not go back on it.

Estoppel by Deed is used more in contract law. It is important to understand that much like the contract itself, this principle can only apply to the contracting parties and their privies. There is an exception, where the deed is entered into by fraud. An agreement entered into by fraud is not a binding contract in the first place.²⁰ Therefore, it cannot be used for estoppel.

Estoppel by conduct

When a person acts in a way to make another person believe something, and the other person acts on this belief in a way he/she wouldn’t have acted in general, he/she cannot then deny that. This was laid in the English case of *Pickard v Sears*,²¹ which has been discussed earlier. For example, A asks B to relay grass on a certain property. B, assuming that the property belongs to A, goes there and

¹⁴ *Mohar Rai v State of Bihar* AIR 1968 SC 1281.

¹⁵ Indian Evidence Act 1872, s44.

¹⁶ *AV Papayya Sastry v Government of AP* (2007) 4 SCC 221.

¹⁷ *Union of India v Ramesh Gandhi* (2012) 1 SCC 476.

¹⁸ *Sarthakram Maiti v Nundo Ram Maiti* (1906) 11 CWN 579.

¹⁹ *Bihar State Credit and Investment Corporation Limited v Pine Builders Private Limited* 2019 SCC Pat 2880.

²⁰ Indian Contract Act 1872 s17.

²¹ *Pickard v Sears* (1837) 6 Ad and El 469.



starts working. Here, A conducted himself in a way to make B believe he was the owner, and so cannot back out of that statement. It is covered under the act, which states that if a person, through an act or omission, intentionally makes another believe it's true, cannot take a different stance later.

To establish estoppel by conduct, there are three essentials:

1. An induced assumption by one party by his/her conduct.
2. The other party's reliance on that assumption to his/her detriment.
3. Reasonableness of that reliance and subsequent action.²²

An assumption can be induced by many different types of conduct. The first, and the one most common, is by negligence. This means that the person, by evading some duty, made another person believe a certain fact and act on it. This was explained in the case of *The New Marine Coal Company v Union of India*.²³ In this case, the appellants had delivered a certain amount of coal to the respondents on the basis of a contract, which was later found to be invalid. The respondents used the coal and now the appellants demand compensation. Both parties alleged negligence by each other. The court elaborated on the concept of negligence in general and how it is different in estoppel by negligence. When a plea of estoppel by negligence is made, it has to be proved that there was a duty that was omitted. Negligence, here, has to be understood in the technical sense and not in the way it is

understood in general. Additionally, it should be in the transaction itself and should be deeply connected with the result.

The second type of conduct is silence. If there was a duty to speak but the party remains silent, it is assumed that the party has just accepted and agreed to the present circumstances. That party cannot later claim to have a problem with it. In the case of *Sardar Chand Singh v Commissioner, Bardwan Division*,²⁴ A's revolver license was cancelled in favour of public safety because he had been accused in a murder case. After the cancellation, he made no appeal. However, he later made a petition to the District Magistrate asking to reconsider the decision. The court rejected this petition, stating that his silence had led the court to believe his acceptance of the decision. This is closely connected to the doctrine of acquiescence, which states that when a person lets someone infringe their right for a long period without objecting to it, the person is believed to have waived that right and so cannot claim it later. In the recent case of *Make My Trip (India) Private Limited v Make My Travel (India) Private Limited*,²⁵ the plaintiff alleged trademark infringement by the defendants. The defendant contended that there had been e-mail exchanges between the two parties, via which the plaintiffs were aware of the defendant's use of their trademark. However, they had not objected to it for the past five years. The court ruled in favour of the plaintiffs, stating that to prove

²² Andrew Robertson, 'Reasonable Reliance in Estoppel by Conduct' [2000] 23 University of New South Wales Law Journal 87 <<http://www.austlii.edu.au/au/journals/UNSWLJ/2000/27.html>> accessed on 24 October 2020.

²³ *The New Marine Coal Company v Union of India* AIR 1964 SC 152.

²⁴ *Sardar Chand Singh v Commissioner, Bardwan Division* AIR 1958 Cal 420.

²⁵ *Make My Trip (India) Private Limited v Make My Travel (India) Private Limited* 2019 SCC Del 10638.



acquiescence, the consent to use trademarks should have been explicit.

In general, detriment due to any false belief induced by conduct is considered an important factor in determining whether estoppel can be granted. However, it is important to note that section 115 of the act does not make any such specific condition. It just says that the party should 'act on such belief'. Whether such act is to their detriment or not is irrelevant.²⁶

Promissory Estoppel

Promissory Estoppel dictates that when a party makes a legally binding promise to another, based on which the other party acts, he/she cannot then go back on it. This principle first evolved in English Law, specifically the case of *Hughes v Metropolitan Railway Co*²⁷. Hughes leased a property to the railway company for some repairs, with an agreement that if the repairs are not done within 6 months, the lease would automatically end. In the course of these 6 months, the parties started negotiating upon a contract for the railway company purchasing the property. Assuming the sale would take place, they did not conduct the repairs as those repairs were not important for the railway company's use of the property. At the last minute, the negotiations broke down, and Hughes sent a notice for conducting repairs at the end of 6 months. The House of Lords ruled that the company should get more time for conducting repairs, and the time taken for negotiations should not be counted in the 6

months meant for repairs. This is because even Hughes was under the impression that the sale would be conducted and then there would be no need for repairs. He went back to the lease contract only when the negotiations broke down. Even though the principle was not explicitly laid down, it was the first time something like promissory estoppel was envisaged.

The principle was laid down concretely only in the 1947 case of *Central London Property Trust Limited v High Trees House Limited*.²⁸ A had rented a flat from B. B agreed to reduce the rent in light of the ongoing World War. However, the parties did not decide the time period of this reduced rent. A kept paying a reduced amount even after war. B sued for the full amount. A alleged that B had made a promise to reduce the rent, and so could not back out of it. The court considered the questions before it and ruled in favour of B, stating that the reduced rent was meant to be only for the period of war. However, the court concretely laid down the principle of promissory estoppel, stating that when a promise is made, even if it is for no compensation, as in this case, the person making the promise cannot back out of it.

Under Indian Law, promissory estoppel is considered to be a part of contract law, and is also given statutory recognition under the Indian Contract Act.²⁹ However, it can also be invoked under section 115 of the evidence act. Promissory estoppel can also be held against the government, and even educational institutions.³⁰ In the case of *The*

²⁶ Dr V Nageswara Rao, *The Indian Evidence Act: A Critical Commentary Covering Emerging Issues and International Developments* (3rd edn, LexisNexis 2015).

²⁷ *Hughes v Metropolitan Railway Co* [1877] 2 AC 439.

²⁸ *Central London Property Trust Limited v High Trees House Limited* [1947] KB 130.

²⁹ Indian Contract Act s159.

³⁰ IC Saxena, 'The Twilight of Promissory Estoppel in India: A contract with English Law' [1974] Journal of Indian Law Institute 187



Annavarappadu Hut Peoples Association, Ongole v Government of Andhra Pradesh,³¹ the Railways, after receiving the entire sales consideration for a certain land, now demanded a higher price for it. The court discussed the scope of the doctrine of promissory estoppel, stating that the objective is to avoid injustice to the person to whom the promise was made. In order to evoke estoppel, it is not necessary to show that the person suffered some detriment. It will add to the case, and show clear injustice, but is not necessary. The mere fact that the promise has, acting in reliance of the promise, altered his position is enough to evoke promissory estoppel. The court further stated that the doctrine is applicable to the Central Government, including the Railways and that in this case, the railways was estopped from demanding a higher price and asked the parties to reach a settlement.

CHAPTER 2: WHO CAN BE ESTOPPED?

For understanding the doctrine and its relevance, it is important to look into its scope. This has been dealt with in two parts. Firstly, the kind of people it is applicable to, and secondly, the kind of statements that can be used for estoppel. While some of these categories of people has been laid down explicitly in the law, the others have evolved through practice. The second aspect is dealt with in the subsequent chapter.

Tenant, Licensee or person in possession

Tenant is a person who occupies a certain property for a temporary period in lieu of a fixed payment to the owner on regular intervals. Here, the landlord rents the property to the tenant in lieu of rent. Maintenance and repairs are the responsibility of the landlord. Rental agreements are generally for a shorter period of time and are renewed automatically after one ends. In India, tenancy is governed by separate rent control acts for different states. A rental agreement facilitates such a relationship.³²

Indian evidence law dictates that a tenant cannot deny that the landlord had title to the property at the beginning of the tenancy. This also extends to licensees.³³ A relationship of lease is slightly different from that of tenancy. It is for a longer period, and is governed by the Transfer of Property Act.³⁴ The rationale behind this is that when a tenant or licensee enters into a rental contract with a landlord, he/she believes that the landlord is the owner of that immovable property. This is evident by the fact that the contract was entered into in the first place. This has been affirmed in many cases, and the scope has been further expanded. In the case of *Bilas Kunwar v Desraj Ranjit Singh*,³⁵ the court clarified that this estoppel extends to those tenants who are still occupying the property despite a notice to quit. In the case of *Bhogadi Kannababu v Vugguna Pydamma*,³⁶ the

<<https://www.jstor.org/stable/43950356>> accessed on 25 October 2020.

³¹ *The Annavarappadu Hut Peoples Association, Ongole v Government of Andhra Pradesh* 2018 SCC Hyd 2; (2018) ALT 536 (DB).

³² Satvik Dev, 'Rent Control Laws in India: A Critical Analysis' (2006) Centre for Civil Society Sir Ratan Tata Trust
<https://www.ccs.in/internship_papers/2006/Rent%20Control%20Act%20-%20Satvik.pdf> accessed on 26 October 2020.

³³ Indian Evidence Act 1872, s116.

³⁴ Transfer of Property Act 1882, s105-117.

³⁵ *Bilas Kunwar v Desraj Ranjit Singh* 1915 SCC PC 34.

³⁶ *Bhogadi Kannababu v Vugguna Pydamma* (2006) 5 SCC 532.



tenants stopped paying rent when the property was inherited by the landlord's daughter from his second marriage on his death. They contended that the title of the property was disputed. The court ruled that irrespective of whether the plaintiff was entitled to inherit the property or not, the principle of estoppel would apply and the tenants cannot deny her title.

However, it is important to understand that mere payment of rent does not give rise to a relationship of tenancy. In the case of *Mahila Samiti v Shri Hola Ram Sindhi*,³⁷ the tenant was paying rent to an agent, whose title he denied. The court held that this was allowed, as he was denying the title of the landlord. Additionally, this section does not cover the whole law of estoppel between the landlord and tenant.³⁸ In the case of *Sri Gangai Vinaynagar Temple v Meenakshi Ammal*,³⁹ the plaintiffs had taken a property on lease from S. A succeeding lease of the same property was executed in their favour, but this time through a trust whose president is S. Later, the trust transferred its title but filed for rent arrears during the time it was the owner. The plaintiffs deny this as the title is disputed. The court held they are estopped from denying title of the trust. The court further held that the lessee/licensee is barred from challenging the title of the lessor/licensee if it is the latter that has put the former in possession.

The court further expanded the scope of the section in the case of *JJ Lal Private Limited*

v MR Murali,⁴⁰ stating that the section is not exhaustive. For operating against the tenant as a ground for eviction, a mere denial is not enough. The landlord has to prove that such a denial was not bona fide. The application was further extended to a mortgage. When a property has been mortgaged to a person, both the parties cannot deny each other's rights with respect to the property.⁴¹

Acceptor of bill of exchange, Bailee or Licensee

A bill of exchange is a document issued by a person ordering another person to pay a particular amount to the maker or a third person within a certain time period.⁴² When a bill of exchange is issued, the acceptor cannot deny the drawer's authority to draw the bill or endorse it. However, the acceptor may deny that the bill was really drawn by the person by whom it purports to have been drawn.⁴³ However, there is an exception in case of forged instruments. Forged instruments are null and so the receiver can make any claim.⁴⁴

When a person delivers some goods to another for a particular purpose, which are to be returned when the purpose is accomplished, it is called bailment.⁴⁵ A Bailee or a licensee is also barred from denying the title of the Bailor on the property bailed. In the case of *Calcutta Credit Corporation Limited v Prince Peter of Greece*,⁴⁶ a person gave his car to a garage owner for certain repairs. Here, the court held

³⁷ *Mahila Samiti v Shri Hola Ram Sindhi* (2006) 1 MPLJ 123.

³⁸ Ratanlal & Dhirajlal, *Law of Evidence* (27th edn, LexisNexis 2019).

³⁹ *Sri Gangai Vinaynagar Temple v Meenakshi Ammal* (2015) 3 SCC 624.

⁴⁰ *JJ Lal Private Limited v MR Murali* AIR 2002 SC 1061.

⁴¹ *Arjun Singh v Mahasaband* AIR 1932 437.

⁴² Negotiable Instruments Act 1881, s5.

⁴³ Indian Evidence Act 1872, s117.

⁴⁴ *Banku Behari Sidkar v Secretary of State for India* (1909) ILR 36 Cal 239.

⁴⁵ Indian Contract Act 1872, s148.

⁴⁶ *JJ Lal Private Limited v MR Murali* AIR 1964 Cal 374.



that the garage owner has received the car as a bailment and so cannot challenge the person's title over that car. However, an exception is given in the explanation to the section. If the Bailee gives the goods bailed to a third party, he/she may prove that this third person actually had the right to the bailed property rather than the bailor. This is in sync with the contract act, which states that if a person other than the bailor claims the bailed goods, he/she can ask the court to decide upon the title.⁴⁷

Minors: an exception?

Minors refer to children below the age of 18.⁴⁸ A minor is not competent to contract, and a contract made with a minor is void ab initio.⁴⁹ This was also confirmed in the landmark case of *Mohori Bibee v Dhurmodas Ghose*,⁵⁰ where a minor had mortgaged a property to get a loan. The mortgage was held to be void, and the court stated that a minor is not competent to contract and so money paid to him cannot be recovered. There is a considerable amount of debate on whether estoppel applies to a minor. Minors often misrepresent them as majors to enter into a contract. The question is, when a minor convinces someone that he/she is a major or any purpose, can he/she then plead that they are a minor?

Here, there can be two cases. If the person or his/her agent knew that the other party is a minor, there is no estoppel. In *Mohori Bibee*,⁵¹ the attorney of the moneylender had been informed that the mortgagee is a minor. The court held that section 115 does not apply

where the untrue statement relied upon is made to a person who knows the real facts, and so is not misled by that statement. The second case is where the other party did not know of someone being a minor and the misrepresentation led them to believe he/she is a major. They then acted believing this. In English law, a minor can be partially estopped. If he/she misrepresents themselves as a major to enter into a contract, which they derive some benefit from, they can be asked to restore such benefit as long as it is traceable. This was held in the case of *Leslie v Sheill*.⁵² The defendant, a minor misrepresenting himself as a major, took a loan from the plaintiff, which he failed to return. When the plaintiff sued for recovery, the defendant pleaded that he was a minor and so the contract is void. The court held that the money could be recovered only if it was traceable. In this case, since the minor had spent the money, it could not be recovered. It was also incorporated in the Minor's Contract Act.⁵³ This is called the concept of 'equitable relief'.

Specifically with regard to application of section 115 in such cases, in the case of *Dhurmo Dass Ghose v Brahma Dutt*,⁵⁴ the court held that 'person' in this section means a person of majority, competent to enter into a contract and so a minor cannot be estopped. The same has been followed in a number of subsequent cases. Even in the case of *Ajudhia Prasad v Chandan Lal*,⁵⁵ it was held that there can be no estoppel against a minor. Even though there have been one or two cases where the court has estopped the minor from when there is fraud on behalf of him/her,

⁴⁷ Indian Contract Act 1872, s167.

⁴⁸ Majority Act 1875, s3.

⁴⁹ Indian Contract Act 1872, s11.

⁵⁰ *Mohori Bibee v Dhurmodas Ghose* 1903 SCC PC 4.

⁵¹ Ibid.

⁵² *Leslie v Sheill* [1914] 2 KB 607.

⁵³ Minors' Contract Act 1987, s3(1)(b).

⁵⁴ *Dhurmo Dass Ghose v Brahma Dutt* (1898) ILR 25 Cal 616.

⁵⁵ *Ajudhia Prasad v Chandan Lal* AIR 1937 All 610.



these cases are mostly pre-independence. The general view still remains that no estoppel can be made against a minor.

Government and government agencies

In general, there is no estoppel against the government. However, this exception has a defined scope. It is when the government is acting in legislative, executive, judicial or sovereign capacity. For example, if the Supreme Court overrules its previous judgement, or the legislature amends a law, it cannot be said that they are changing their stance and so have to be estopped. This was clarified in the case of *Bihar Eastern Gangetic Fishermen Co-operative Society v Sipahi Singh*,⁵⁶ where the court held that there can be no estoppel against a government acting in a sovereign capacity. Estoppel cannot restrict a government from carrying out its legal duties.

However, promissory estoppel can apply to government and its agencies in certain cases. This was explained in detail in the case of *Motilal Padampat Sugar Mills v State of UP*.⁵⁷ In this case, the government granted a tax concession for 3 years, acting on which the plaintiff set up a new plant. The government later rescinded the concession. The court analysed the laws relating to promissory estoppel on government in the US and UK in depth. Considering this, they settled the law for India, stating that promissory estoppel can be applied to the government. When the government makes a promise on which the other party acts, the government is bound by that promise and cannot back out of it later. The court further

said that everyone, whether private individuals or the government, are subject to the same law. If the government does not want its freedom of executive action to be restricted by this, it should be careful while making promises. The court also stated that even if the government is performing a sovereign function, if the ingredients of estoppel are fulfilled, it can be estopped. This is in conflict with the case mentioned earlier, but that case was not overruled in this one. The court made three major exceptions to this application – equity, public interest, and if keeping the promise would mean breach of law. The current accepted stance is the one ruled in this case, as has been further confirmed in many subsequent cases. In the 2006 case of *Vairavikulam Lime Products Private Limited v Government of India*,⁵⁸ the Madras High court not just upheld this decision, but elaborated on it. It stated that the burden to explain their backing out is on the government. It reiterated the three exceptions and held that the government is expected to give sufficient and bona fide material to prove it. It has also been confirmed in the 2018 case of *The Annavarappadu Hut Peoples Association, Ongole v Government of Andhra Pradesh*⁵⁹ which has been dealt with in the earlier sections.

CHAPTER 3: WHAT KIND OF STATEMENTS CAN BE USED FOR ESTOPPEL?

The second aspect to cover when it comes to the scope of the doctrine is the kind of statements it covers. Estoppel is applicable in both civil and criminal cases. While most of the earlier sections have dealt with its

⁵⁶ *Bihar Eastern Gangetic Fishermen Co-operative Society v Sipahi Singh* (1977) 4 SCC 145.

⁵⁷ *Motilal Padampat Sugar Mills v State of UP* (1979) 2 SCC 409.

⁵⁸ *Vairavikulam Lime Products Private Limited v Government of India* AIR 2006 Mad 353.

⁵⁹ *Annavarappadu Hut Peoples Association, Ongole v Government of Andhra Pradesh* 2018 SCC Hyd 2.



applicability in civil cases, this will deal with its applicability in criminal cases.

Estoppel from confession

Confessions are statements made by the accused in a case wherein he/she admits to committing the offence. The accused must admit either the offence or all the facts constituting the offence. However, confessions are only those statements that go against the accused. They cannot be exculpatory.⁶⁰ Confessions have to be made voluntarily. If it is made due to an inducement, threat or promise, in regard to the charge made against the accused, it is irrelevant.⁶¹ The onus to prove that it was involuntary is on the accused.⁶²

An accused has the right to retract confessions. After making a confession, either judicial or extra-judicial, the accused can later claim that he/she did not make that statement. In such a case, the confession is seen to be retracted.⁶³ Theoretically, it seems that confessional statements cannot act as estoppels. This is because the accused is allowed to go back on their word and later claim the exact opposite of what they had said before. However, if one looks into the practical application and actual evidentiary value of retracted confessions, it is evident that confessional statements can be used as estoppel.

A plethora of cases have explained the evidentiary value of retracted statements. A confession cannot be dismissed merely on the

grounds that it was retracted.⁶⁴ Even though a confession has been retracted, it can form the basis for conviction. This was first clarified in the case of *Pyare Lal Bhargava v State of Rajasthan*,⁶⁵ where the court stated that a retracted confession can be the basis of conviction if the court is satisfied that it was true, and was made voluntarily. The court, as a matter of prudence, is expected to examine the confession and corroborate it with some other evidence. If it can be corroborated, the accused can be convicted on the basis of it. This has been reiterated in many subsequent cases. In the case of *State (NCT of Delhi) v Navjot Sandhu Guru @ Afsan*,⁶⁶ the court elaborated upon the value of retracted confession. The court has to look into the reasons for retraction. If it finds that it was retracted because it was not true or voluntary, the confession becomes invalid. However, if the court finds it to be valid, and finds other evidence to corroborate it, it can form the basis for conviction.

If the court finds a confession to be involuntary, irrespective of whether it was retracted or not, it is invalid under section 24 of the Evidence Act. Therefore, in the practical sense, even though the accused are allowed to retract their confessions, those retracted confessions can be used against them. Technically, this means that once they have made a confession, the statement can be used to incriminate them, and so is an estoppel against them. However, this has not been concretely laid down anywhere.

⁶⁰ *Om Prakash v State of Uttar Pradesh* AIR 1960 SC 409.

⁶¹ Indian Evidence Act 1872, s24.

⁶² *KI Pavunny v Assistant Collector, Cochin* (1997) 3 SCC 721.

⁶³ *Abdul Ghani v State of Uttar Pradesh* (1973) 4 SCC 17.

⁶⁴ *State of Tamil Nadu v Kutty @ Lakshmi Marasimhan* AIR 2001 SC 2778.

⁶⁵ *Pyare Lal Bhargava v State of Rajasthan* AIR 1963 SC 1094.

⁶⁶ *State (NCT of Delhi) v Navjot Sandhu Guru @ Afsan* (2005) 11 SCC 600.



Estoppel from admission

Admissions are statements where a person voluntarily acknowledges a self-harming fact in a case. They can be made in oral, documentary and electronic form.⁶⁷ Admissions can be made by a party to the proceeding or their privies, a person interested in the subject-matter or from whom interest is derived.⁶⁸ Admissions are not conclusive statements, and need to be proved. However, they can be used as estoppels against the parties making them.⁶⁹ The rationale behind this is that admissions are self-harming statements, made voluntarily and, therefore, are presumed to be true. However, they still need to be proved. Even though they cannot be used for conviction, they are considered to be a substantial piece of evidence.

As discussed above, a statement becomes an estoppel when it induces another party to take some action they would not have taken otherwise. Similarly, admissions create estoppel when they induce another party to take some action. In general, admissions are good evidence, but not conclusive. A party can withdraw admissions by proving that they are mistaken, or untrue. In order to bring an admission under section 115 of the evidence act, certain conditions need to be fulfilled:

1. The admission has to be made by the person or his/her authorised agent in any acceptable form.
2. It must be related to a fact and its existence, and not promises enforceable in a contract.

3. It must have been made with the intention to be relied upon.
4. The other party must have believed the statement made to be true.
5. The other party must have acted upon such belief. This action can be alteration of a former position, although it can be to his/her prejudice or detriment.
6. The admission made must be the proximate cause that made the other party act in that way.
7. The other party, who is claiming the benefit of estoppel, has to prove that he/she was not aware of the real state of affairs and so acted on the statement.⁷⁰

In general, estoppel and admissions are different from each other. Admissions are made in the sense that even strangers can take advantage of admissions but estoppels bind only the parties and their privies.⁷¹

Estoppel in subsequent cases

Statements made and proved in one case can be used as estoppel in subsequent cases. The first type is Res Judicata. As discussed in the earlier sections, if a case has been decided upon in a court of competent jurisdiction, the parties are estopped from bringing that suit up again. This prevents re-litigation. The second type of estoppel applicable in subsequent cases is issue estoppel. Issue estoppel is a subset of res judicata. When a certain issue between two parties has been decided in a particular case, it cannot be raised again in a subsequent case. The decision on that particular issue will be

⁶⁷ Indian Evidence Act 1872, s17.

⁶⁸ Ibid s18.

⁶⁹ Ibid s31.

⁷⁰ *Chhaganlal Keshavlal Mehta v Patel Narandas Haribhai* (1982) 1 SCC 223.

⁷¹ Ratanlal & Dhirajlal, *Law of Evidence* (27th edn, LexisNexis 2019).



relevant in all further cases between the two parties.

The principle of issue estoppel was first recognised in India in the case of *Pritam Singh v State of Punjab*.⁷² When an issue estoppel is applied, the correctness or incorrectness of the decision on that issue is not something to be considered. The fact that the issue was decided upon is enough.⁷³ The correctness of the decision would be looked into only in the case of an appeal, where issue estoppel would not apply. In *Gurcharan Singh v State of Punjab*,⁷⁴ the accused was tried for murder in one case and for unlawful possession of arms in another. Both the trials were progressing simultaneously. The two cases were heard by the same judge who delivered the judgements on the same day. While the accused was acquitted in the case of unlawful arms, he was convicted for the murder based on the same evidence. The accused then appealed to the Supreme Court. The apex court condemned the opposite judgements stating that the principle of issue estoppel would apply here and if it is proved in one case that the accused was not in possession of the illegal firearm, the court cannot decide otherwise in the second case of murder. However, there was no proof as to which case was decided first. This made the application of the principle difficult. The court then looked into the file numbers to see that the murder case was decided first and accordingly reversed the other judgement.

Generally, issue estoppel, like *res judicata*, is applicable only when the parties are the same. However, the court made an exception to this in the case of *Lalta v State of Uttar Pradesh*.⁷⁵

In a previous suit, Lalta had accused Swaminath of forgery. In that case, the court found out that stamps fixed on the headnote of a promissory note were forged. Based on this, the court filed a case accusing Lalta of forging a valuable security and using a forged document under sections 467 and 471 of the Indian Penal Code. Lalta appealed before the Supreme Court contending that he had been acquitted in a previous case filed by Swaminath in the same matter and so issue estoppel should apply. The court looked into the matter and observed that the accusations were based on the issue decided in the previous case with Swaminath. It, therefore, allowed the application of the principle of issue estoppel and dismissed the case. Here, we see that even though the first case was between Swaminath and Lalta, the decision taken was used as an estoppel in the second case between the court and Lalta.

The Supreme Court further clarified the realm of application of this doctrine in the case of *Masud Khan v State of Uttar Pradesh*.⁷⁶ Here the earlier case in which the issue had been decided was a criminal proceeding. However, the subsequent one was an action taken under the Foreigners (Internment) Order for deporting the petitioner. This could not be termed as a criminal proceeding. Therefore, the principle of issue estoppel could not be applied. The court further held that issue estoppel arises only if the earlier as well as the subsequent proceedings were criminal prosecutions. In a 2009 judgement, the Bombay High Court differentiated between precedents and issue estoppel. In case of an issue estoppel, the cause of action does not survive or be

⁷² *Pritam Singh v State of Punjab* AIR 1956 SC 479.

⁷³ *King v Wilkes* [1948] 77 CLR 511.

⁷⁴ *Gurcharan Singh v State of Punjab* AIR 1963 SC 340.

⁷⁵ *Lalta v State of Uttar Pradesh* AIR 1970 SC 1381.

⁷⁶ *Masud Khan v State of Uttar Pradesh* (1974) 3 SCC 469.



extinguished by virtue of the judgement. On the other hand, in case of precedents, the cause of action survives but the issue of law that has been decided upon by the court acts as a precedent for further cases.⁷⁷

The third type of estoppels in subsequent cases are admissions. A statement in a proceeding cannot be considered as evidence in a subsequent proceeding unless it amounts to an admission.⁷⁸ This was laid down concretely in the case of *Basant Singh v Janki Singh*,⁷⁹ where the court stated that admissions made by a party in a suit, which has signed and verified by him may be used as evidence in other suits. However, it cannot be regarded as conclusive and the party can still show it is not true. This would apply will the admission can be used as an estoppel under section 31 of the Evidence Act. If it fulfils the conditions given in the previous section, it can act as an estoppel against the party making it in a subsequent suit, since it is relevant nad has been presented as evidence.

CONCLUSION

The project covers nearly all aspects of the law of estoppel in evidence law. It starts with tracing the history of the law in England, as well as in India. This includes the meaning of the term itself and the difference between its interpretation in the two countries. The next part discusses the types of estoppel, not as divided in the evidence act, but as understood in general parlance by interpretation and more importantly, use. This includes the most common form, res judicata, which is also recognised under civil law. This is followed by estoppel by deed, conduct and lastly, promissory estoppel. The next chapter deals

with who all the law of estoppel can apply to. It covers section 116 and 117 of the Indian Evidence Act, and then discusses two other categories – minors and government agencies. Both these categories cannot be estopped, except in a few circumstances. The last part deals with the kind of statements that can be used as estoppel. Admissions can be used to estop. With regard to confessions, the position is not clear. However, I feel that estoppel does apply in practical use. Estoppel can also extend to subsequent cases.

There is a need to codify the law of estoppel. While the topic is very vast, most of it is covered under the single sentence of section 115. While interpreting it, the courts have mentioned that the section is ‘not exhaustive’. In that case, the act should be amended to define the different types of estoppel and explain its applicability clearly. Secondly, the types of estoppel are overlapping and are interpreted differently at different sources. Codifying the law would resolve this problem.

⁷⁷ *Scotch Whiskey Association v Khoday India Limited* MANU/MH/1633/2009.

⁷⁸ *Raj Kumar v Gopi Nath Varman* AIR 1971 All 273.

⁷⁹ *Basant Singh v janki Singh* AIR 1967 SC 341.