



PROMISSORY ESTOPPEL: A DIVERSION FROM STRICT RIGOURS OF LAW

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ABSTRACT

After the abandonment of *laissez faire*, an escalation in the diverse socio-economic complexities have inevitably led to the granting of wide discretionary powers to the government or public authorities. At the same time the government has also been conferred with certain privileges and immunities in order to give them a wide horizon to establish the welfare state and perform their duties unambiguously with reason. A question arises, is the State immune to rights and liabilities which the statute seeks to impose on a person while taking commercial activities? However, Dicey's fear of encroachment upon the legal freedom of an individual by the government authorities exercising discretion or enjoying immunities seemingly true, had such authorities' representations, assurances or promises intending to create legal relationship, allowed to crop up without a check, as they would have certainly created a room for arbitrariness leading to tyranny.

Keywords: Promissory Estoppel, Rule of Law, Judiciary.

1. INTRODUCTION

Discretion is a principal source of creativeness between the government and law, which arises to meet variability of situations in the interests of the public. But this experiment cannot be allowed to continue thereby, making a person, placed in a position inferior to that of the government, a scapegoat. As against the rigid rules of law that postulate strict adherence, the inventory role of the courts has resulted into carving of the doctrine of promissory estoppel, a flexible rule of equity to be invoked for redress against the government for its assurances or promises made to private individuals who alters his position in the wake of such promises, thus showing empathy by stepping into the shoes of an ordinary person and realizing his agony as against whimsical exercise of powers by the government. This rule facilitates the law in the administration of justice. Traditionally, the premise of promissory estoppel was viewed as a shield and not a sword. Nevertheless, such contemplation finds no place in the modern welfare state where the role of government undergoes a steep change when it enters into one or the other form of relationship with a person in a capacity similar to that of a private individual. Consequently, the government should equally be estopped from disclaiming the existence of some state of facts that it had previously affirmed and on which the other party has acted to its detriment.

A shift in the ruling political gospel of the nineteenth century from the *laissez faire*¹ to that of collectivism has led to the emergence of a social welfare state where the role of the state has undergone a tremendous change and its responsibilities increased manifold. In carrying out its various developmental and welfare activities, the state and its various instrumentalities make a number of promises or announce schemes or policy decisions or representations to its subjects as a part of the exercise of its executive powers. This shows that the executive functions of the state are not confined merely to implementing the laws enacted by the legislature, as has been laid down in *Ram Jawaya Kapur v. State of Punjab*,² but to determination of policy, initiation of legislation, the promotion of social and economic welfare, maintenance of law and order, etc. However, such actions do not dictate arbitrariness that may be prejudicial to the interest of an individual and rather deserve a reason to discern between right and wrong. While performing different roles as an entrepreneur, provider of services, ensuring social security etc., it exercises discretion and such exercise of power has to be in accordance to the law. The state has to be accountable to the people. Nonetheless, strict adherence to law while dealing with a private individual in the performance of its executive actions may lead to tyranny. Mostly difficulty arises where an innocent individual, who relying on the representation or advice made by the authorities acted upon it in good faith, suffers when the state repudiates any liability leading to conflict of interests between the two. This necessitates an amicable solution to promote justice for an individual on one hand and on the other, freedom of governmental actions required for achieving its objectives to build a welfare state. It is not only the duty of the courts but also within their power to preserve the rights of an individual against whimsical actions of state that may have disastrous effects. The courts in the course of finding answers to questions capable of arousing a desire to act upon such assurances or promises and a consequent action thereupon, evolved the doctrine of promissory estoppel. The doctrine which can now be applied to inflict liability upon the state, has proved to be a spanking boon for controlling the arbitrary promissory conduct of the state and for securing justice to an individual.

There is no gainsaying that the doctrine of promissory estoppel has already traversed a long way and has come to be recognized by the courts in India following the decision of the English courts. Without any doubt, it can be clearly drawn out from various judicial pronouncements that the courts apply this doctrine against the state actions and impose liability for the breach of its promise. But the real problem lies in the fact as to what extent the doctrine could be stretched so as to bring the state actions within its ambit. The rule of law dictates equality before law and there is no reason to place the state in a privileged position, but the courts have not been successful to provide relief to an individual under certain circumstances where the state acts are immune to liability. While applying the doctrine against the government, the courts have evolved certain exemptions where no relief can be allowed.

Keeping in view the need to fix liability upon the state against its arbitrary promises to an individual, the doctrine of promissory estoppel and extent of limitations subject to which relief may be granted by the courts, an attempt is made in this article to analyze law in light of the judicial elucidations and their role in the construction and development of the rule of equity established to strike down such whims and fancies of the sovereign.

2. PROMISSORY ESTOPPEL: EVOLUTION AND CONCEPT

The passing of the Supreme Court of Judicature Act 1873 marks the beginning of a new era of administrative or procedural fusion of the systems of law with equity in England, where historically separate courts of common law and equity were combined to establish Supreme

¹ An eighteenth century theory of economics opposed to governmental control and interference in private entrepreneurship.

² AIR 1955 SC 549: The Supreme Court observed that executive function ordinarily connotes the residue of governmental functions that remain after the legislative and judicial functions are taken away

Court of Judicature. Though such a fusion was not complete, the equity division retained a distinct existence from the common law division within the new court. The procedure of the common law courts had developed along highly technical and stylized lines, but the Court of Chancery, an equity court, that ran separately and parallel to the common law courts emphasized the need to do justice on the basis of Lord Chancellors' conscience as against the rigid instrument of common law following a set of standard forms. Thus the Judicature Act resulted in reconsideration of certain principles, one such being the equitable doctrine of promissory estoppel, thereby, administratively fusing the judicial system.³

Promissory estoppel practically, does not fit into the attire of either contract or the estoppel as a principle of law of evidence.⁴ The basis of the doctrine is interposition of equity. *Ubi jus ibi remedium*, the courts rely on this maxim and for creating a binding obligation, the existence of a consideration is necessary in any contractual relationship to make it enforceable under the common law. Absence of consideration in an agreement, if promisor goes back upon his promise, despite the fact that the promisee has altered his position to his detriment by relying on the promise, would not make the promisor liable, as an agreement without consideration holds no validity under the common law. The House of Lords, in a well known case held that a bargain between the two parties to an agreement to pay a smaller sum in lieu of the large sum to discharge of liability, would not be enforceable as such promise was considered to be without consideration.⁵ It was due to such kind of decisions that the doctrine of promissory estoppel evolved to calm down the woes of the strict rule of common law. In any civilized society, it would be harshly unjust and unfair if a promise made with an intention to create legal relationship subsequently allowed to crash without any redress to the promisee acting thereon for the dishonest conduct on the part of the promisor. In the case of *Huges v. Metropolitan Railway Co.*⁶, Lord Cairns held that if the parties have entered into definite and distinct terms involving legal consequences, then a fresh negotiation made subsequently, which has the effect of leading one party to believe that strict rights arising under the original contract would not be enforced or be kept in suspense or abeyance, then that person could not be allowed to enforce them as the same would be inequitable having regard to the dealings between the parties.⁷

Estoppel as a rule of evidence is distinctively separate from the doctrine of promissory estoppel. Estoppel as a rule of evidence implies that a person in certain cases would not be permitted to plead the converse of a fact or state of things which he has previously asserted by his words or conduct. In other words, a person shall not be allowed to deny or withdraw his previous assertions, though false but in the contemplation of law have been established as the truth, either by the acts of judicial or legislative officers, or by his own deed, acts or representations, either express or implied, on the fact that the other person would not have acted, had he not relied on such statement or representation made by that other person. The underlying principle is that it would promote fraud and litigation if a man is allowed to speak against his own act or representation of the faith of which another person was induced. Estoppel as a rule of evidence has been founded upon the doctrine as laid down in the case of *Pickard v. Sears*⁸ where the court held that where one person by his words or conduct intentionally causes

³ Fiona Burns, "The 'Fusion Fallacy' Revisited," *Bond Law Review*, Vol.5, Issue 2, Article 2(1993) at 154.

⁴ In *M/S Motilal Padampat Sugar Mills v. State of Uttar Pradesh and Ors*, AIR 1979 SC 621 at 643, the Court held ".....The doctrine called 'promissory Estoppel', 'equitable estoppel', 'quasi estoppel', and 'new estoppel'Though commonly named promissory estoppel it is neither in the realm of contract nor in the realm of estoppel..."

⁵ See, *Foakes v. Bear* (1884) 9 A.C. 605

⁶ (1877) 2 A.C. 439

⁷ *Id.*, at 442, Also see, *Birmingham and District Land Co. v. London and North Western Railway Co.* (1886) 40 Ch. D. 268. Cotton LJ said, "....what passed did not make a new agreement, but.....what took place...raised an equity against him." Available at: www.swarb.co.uk. (Last visited: 1 May 2012)

⁸ (1837)6 Ad. &El. 469

another to deem the existence of a certain state of things and induces him to act in such a way so as to alter his position, the former is prevented to avow against the latter a different state of things as existing at the same time.⁹

In India, the doctrine of estoppel is enshrined in Section 115 of the Indian Evidence Act, 1872. It is different from the doctrine of promissory estoppel, as the aforesaid provision¹⁰ very succinctly considers it as a rule of evidence as against the rule of equity, where the court considers any representation made earlier as a piece of evidence and consequently decides in favour of the person who has altered his position due to such promise or assurance given by the other, thereby creating a substantive right in favour of such person placed at a detriment. However the Supreme Court in the case of *Dhiyan Singh v. Jugal Kishore*¹¹ has explained the estoppel as a rule of evidence by stating that the representation contemplated under the aforesaid provision must be of an existing fact as against a mere promise de futuro¹² capable of inducing the person so represented to act on its faith to his detriment.¹³ Explaining the doctrine of promissory estoppel, the Supreme Court of India, in the case of *M/S Motilal Padampat Sugar Mills v. State of U.P.*,¹⁴ laid down: “Where one party has by its own words or conduct made to the other a clear and unequivocal promise intended to create 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 if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, irrespective of whether there is any pre-existing relationship between the parties.” Thus estoppel as a rule of evidence has no operation or efficacy whatsoever except as a bar to testimony and is incapable of becoming a cause of action in itself and it can be a shield and not a sword. Traditionally, the estoppel has always been raised as a defence; the doctrine of promissory estoppel has also come to be identified as a measure of defence.¹⁵

This now necessitates determining the true position of promissory estoppel as to if it doesn't fall within the realm of contract or evidence, what is its actual status? And what is its scope?

3. TRACKING DOWN FAIRNESS

In English Law, there are several varieties of ‘estoppel’. This has consequently resulted in debate as to whether they are the species of the same genus or are different in principle to be treated wholly independently. It is important to identify the common underlying idea behind the varieties of estoppel. This was explained by Lord Denning MR in the case of *McIlkenny v. Chief Constable of West Midlands*¹⁶ the following words:¹⁷

⁹ *Id.*, at 474

¹⁰ Section 115 of the Indian Evidence Act of 1872 provides: “When one person by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act on such belief, neither he nor his representatives shall be allowed in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.”

¹¹ (1952) S.C.R. 478

¹² House of Lords in the case of *Jordan v. Money*, (1854) 5 H.L. Cas. 185 available at: www.insitelawmagazine.com/ch15Waiver.htm (last visited 10 May 2012), In this case the House of Lords held that only a representation of past or existing fact could establish an estoppel or in other words, there could be no estoppel except that of estoppel by representation as to the existing facts and would not extend to promises de futuro.

¹³ *Id.*, at 483

¹⁴ *Supra*, note 4 at 643, Also *See*, Dr. U.P.D. Kesari, *Administrative Law*, Allahabad: Central Law Publications, Eighteenth Edition, 2010 at 333.

¹⁵ *See*, Dr. J.J.R. Upadhayaya, *Administrative Law*, Allahabad: Central Law Agency, Seventh Edition, Reprint 2011, at 325.

¹⁶ (1980) QB 283

“The word “estoppel only means stopped. You will find it explained by Coke in his *Commentaries on Littleton* (19th ed. 1832), vol. II, s. 667, 352a. It was brought over by the Normans. They used the old French “estoupail.” That meant a bung or cork by which you stopped something from coming out. It was in common use in our courts when they carried on all their proceedings in Norman- French. Littleton writes in the law-French of his day (15th century) using the words “pur ceo que le baron est estoppe a dire,” meaning simply that the husband is stopped from saying something.

From that simple origin there has been built up over the centuries in our law a big house with many rooms. It is the house called Estoppel. In Coke’s time it was a small house with only three rooms, namely, estoppel by matter of record, by matter in writing, and by matter in pais. But by our time we have so many rooms that we are apt to get confused between them. Estoppel per rem judicatum, issue estoppel, estoppel by deed, estoppel by representation, estoppel by conduct, estoppel by acquiescence, estoppel by election or waiver, estoppel by negligence, promissory estoppel, proprietary estoppel, and goodness knows what else. These several rooms have much in common. They are all under one roof. Someone is stopped from saying something or other, or contesting something or other. But each room is used differently from the others. If you go into one room, you will find a notice saying, “Estoppel is only a rule of evidence.” If you go into another room you will find a different notice, “Estoppel can give rise to a cause of action.” Each room has its own separate notices. It is a mistake to suppose that what you find in one room, you will also find in the others.’

At the heart of the concept of promissory estoppel is the fact that the promisee had relied on the promise. It is this that provides the principal justification for enforcing the promise. However, it is generally accepted that promissory estoppel operates to alter existing legal relationships, rather than to create new ones, though Lord Denning was of the view that promissory estoppel could apply in a situation where there appeared to be no existing relationship at all between the parties.¹⁸

The doctrine of promissory estoppel has its genesis in equitable ‘waiver’. It is thus regarded as an ‘equitable’ doctrine. The consequence of this is that a judge is not under an obligation to relate the principle automatically, as soon as it is proved that there was a promise modifying an existing contract which has been relied upon. Rather, it is a residual discretion of the judge whereby he can decide whether it is fair to allow the promise to be enforced and would it be inequitable for the promisor to withdraw the promise, especially where the promisee has extracted the promise by taking advantage of the promisor? Thus the existence of consideration, as required under law of contract, may not be required for the application of doctrine of promissory estoppel. However, the doctrine is only available as a shield and is incapable of being used as a sword. Explaining the contours and parameters of the promissory estoppel, the Supreme Court held, “to the applicability of the doctrine of promissory estoppel it is not necessary that there should be some contractual relationship between the parties. Nor can any such limitation, namely, that the doctrine of promissory estoppel is limited in its operation to cases where the parties are already contractually bound and one of the parties induces the other to believe that the strict rights under the contract would not be justifiable introduced to curtail the width and amplitude of the doctrine. The parties need not be in any kind of legal relationship before the transaction from which the promissory estoppel take its origin. The doctrine would apply even where there is no pre-existing legal relationship between the parties, but the promise is intended to create legal relations or affect a legal relationship which will arise

¹⁷ *Id.*, at 316-17, See, John Cartwright, “Protecting Legitimate Expectations and Estoppel in English Law,” *Electronic Journal of Comparative Law*, vol.10.3 (December 2006), available at: <http://www.ejcl.org> (last visited: 10 May 2012).

¹⁸ *Evenden v. Guildford City AFC* (1975) QB 917

in future.”¹⁹ The Law Commission of India in its report has also advocated promissory estoppel to be beneficial doctrine based on equity.²⁰

The emergence of promissory estoppel as a principle of equity though seemingly very akin to the common law doctrine of estoppel, nevertheless possesses certain unique features dictating less strict requirements. *Firstly*, the estoppel demands representation as to the existing fact; on the other hand, the promissory estoppel extends its arms to cover promises as to future or representation with regard to an assurance as to future conduct or intention. *Secondly*, estoppel is merely a rule of evidence whereas the promissory estoppel has an effect of creating substantive rights against the representee, thus being viewed as a rule of substantive law. Thus a case may still fall under the ambit of promissory estoppel, though not covered being a mere promise and not statement of fact. *Thirdly*, the requirement of harm to the representee is less stringent in the case of promissory estoppel. *Fourthly*, estoppel as a rule of evidence is used to prevent a person from alleging or denying a fact which is an outcome of his own previous allegation or denial. On the contrary, the doctrine of promissory estoppel creates substantive rights in favour of the person to whom a representation is made with an intention that he would act upon it and in fact he acts, which consequently gives rise to cause of action in his favour,²¹ however, such a fact is independently incapable of giving rise to a cause of action so as to invoke the rule of estoppel. Lastly, the doctrine of promissory estoppel is susceptible of generating enforceable promises and binding legal obligations even where there is no consideration.

So we find that the doctrine of promissory estoppel neither lies in the realm of contract, that is draws its force from the promises, nor lies in the realm of law of evidence. This new concept of estoppel emerging as a rule of substantive law, unlike codified law on estoppel, is a uniquely carved out by the judges both in India and England. It creates legal obligation by its own force without taking any aid of doctrine of consideration. Travelling beyond the restrictions of evidentiary estoppel, it derives its existence from equity with the sole object of doing justice by preventing fraud and promoting morality.

Traditionally, the doctrine of promissory estoppel was applied to private individuals only. The question arises now is would the state be subjected to it while performing its functions in governmental, public or sovereign capacity. Generally, the state would not be placed under its scrutiny. But it is also true that conferment of wide discretionary powers to the administrative bodies with their no duty to pronounce the manner, in which they are going to exercise their discretion, would be like proving Lord Acton’s saying “power tends to corrupt, and absolute power corrupts absolutely.” Thus, if at times, the administrator makes promises or announces schemes or policies, is he bound by the official representation, assurance, promise or advice if an individual acts upon it in reliance? Would it be justified not to apply the doctrine of promissory estoppel against the government and exempt it from the liability to carry out its promises made to an individual? It would be squarely unjust to exempt the state from its liability under such circumstances. ‘Justice is the end of government’, said *The Federalist*.²² ‘It ever has been and ever will be pursued until it is obtained, or until liberty is lost in pursuit.’²³ Additionally, the concept of ‘*la principe de legalite*’ (the principle of legality) refers to a government on principles of law and not of men, in a way opposing arbitrariness. However, a careful analysis of the Rule of Law reveals that it has developed many facets which are not only negative providing limitations on the governmental action but affirmative also imposing an affirmative duty on the government.²⁴

¹⁹ *Supra*, note 4 at 643.

²⁰ Law Commission of India, *108th Report* 16 (1984)

²¹ *Supra*, note 4 at 643

²² See, M.V. Pylee, *Constitutional Government in India*, New Delhi: S. Chand & Company Ltd. 2003, (Fifth Edition), at 26.

²³ *Id.*

²⁴ I.P. Massey, *Administrative Law*, Lucknow: Eastern Book Company, 1995, (Fourth Edition), at 22-23.

The scope and content of the requirements of natural justice have varied from time to time according to the interpretations given by the courts. The courts have always insisted upon fairness in the administrative actions. The Rule of Law conception has been in addition unfailingly protracted to secure the individual fair dealing by the state in its commercial activities by way of promissory estoppel. Henceforth, Dicey's conception of Rule of Law, where discretion implied absence of rules leaving room for arbitrariness doesn't hold correct where conferment of discretion is inevitable as to meet the objectives enshrined in the Constitution of India emphasizing upon the concept of welfare state. The need of administrative discretion arises to encounter the variability of situations in the interests of public. But it would be anti-thesis of law, if an unrestrained power is exercised to pursue socialistic objectives. Therefore, there is a need to establish system of checks and balances. However, every action of the government cannot be negated as it enjoys certain privileges and immunities, despite the fact that the equality clause of the Constitution envisages absence of any special privilege to anyone including the government. But since government is at different footing in contradistinction to a private individual, law allows certain privileges to the government as a litigant for its effective working.

In India, though the doctrine of promissory estoppel has not been adopted in its depth and breadth, nonetheless, it has been recognized as a measure affording a cause of action to the person to whom such representation or assurance or promise has been made by the public authority. The rule of estoppel has also been applied against the government and the defence based on executive necessity has not been accepted.²⁵ But the judicial behavior consistently specifies that that promissory estoppel would not be available against the government in violation of a statute as in *Thakur Amar Singhji v. State of Rajasthan*²⁶, the Supreme Court refused to apply estoppel against the government where the collector had given the assurance that the jagir of the petitioner would not be acquired during his lifetime under the Rajasthan Land Reforms Act of 1952, because the assurance was in clear violation of the provisions of the statute.²⁷ Besides that, the courts have refused to apply this doctrine against the government, if it jeopardizes the constitutional powers of the government²⁸ or has the effect of repealing any provision of the Constitution.²⁹ On the contrary, the doctrine of promissory estoppel has been applied in case of written and unwritten contracts even though the requirements of Articles 298 and 299 of the Constitution were not satisfied on the ground that the assurance was extended but subsequently curtailed.³⁰ However, a new trend was established in *Union of India v. Anglo (Indo) - Afghan Agencies Ltd.*,³¹ the Court upheld the application of promissory estoppel to the executive acts of the state by negating the plea of executive necessity. The Court held "the government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances in which the obligation had arisen."³² However, in *Jit Ram Shiva Kumar and Ors. Etc. v. State of Haryana and Anr. Etc.*³³ the Court made it clear in the following words:³⁴ "The scope of plea of doctrine of promissory estoppel against the government is as follows:

²⁵ *Supra*, note 4.

²⁶ AIR 1955 SC 504

²⁷ *Supra*, note 24 at 334.

²⁸ See, *C. Sankaranarayanan v. State of Kerala* AIR 1971 SC 1997: (1971)2 SCC 361.

²⁹ See, *Mulamchand v. State of M.P.* AIR 1968 SC 1218.

³⁰ See, *State of Orissa v. Manglam Timber Product Ltd.*, (2004) 1 SCC 39.

³¹ (1968) 2 SCR 366 ; AIR 1968 SC 718

³² (1968) 2 SCR 366 at 367, Also see, *supra*, note 4.

³³ (1980) 2 SCR 689 ; AIR 1980 SC 1285

³⁴ (1980) 2 SCR 689 at 691-692.

- (a) The plea of promissory estoppel is not available against the exercise of the legislative or the executive functions of the State. There could not be estoppel against express provisions of the law nor could the State by its action waive its right to exercise powers entrusted to it for the public good.
- (b) The doctrine cannot be invoked for preventing the government from discharging its functions under the law.
- (c) When an 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 unauthorized acts of its officers.
- (d) When the officer acts within the scope of his authority under a scheme and enters into an agreement and makes a representation and a person acting on that representation puts himself in a disadvantageous position, the court is entitled to require the officer to act according to the scheme and the agreement or representation. The officer cannot arbitrarily act on his mere whim and ignore his promise on some undefined and undisclosed grounds of necessity or change the conditions to the prejudice of the person who had acted upon such representation and put himself in a disadvantageous position.
- (e) The officer would be justified in changing the terms of the agreement to the prejudice of the other party on special considerations such as difficult foreign exchange position or other matters which have a bearing on the general interest of the State.”

Nevertheless, the view established by the court in the above case was not correct and created uncertainty as to the applicability of the doctrine of estoppel, which later in the case of *Union of India v. Godfrey Philips, India Ltd.*,³⁵ was removed, whereby the court held that the law laid down in *Motilal's case*³⁶ was correct and reaffirmed its ruling by allowing the plea of promissory estoppel against the Central government and the Central Board of Excise and Customs. The Court did not approve the observations of *Jit Ram* to the extent that they were contrary to the earlier decision. Some aspects of promissory estoppel were further clarified by the court in *Delhi Cloth and General Mills v. Union of India*³⁷ wherein it was held that alteration in position by acting on the assurance or representation is a enough and consequent detriment, damage or prejudice to the promise is not to be proved.³⁸

4. CONCLUSION

The doctrine of promissory estoppel has its origin in equity and the very purpose of it is to prevent unfairness towards a promisee altering his position by relying upon a promise, by restricting the promisor from going back upon his promise, notwithstanding the fact that such promise is not supported by consideration. Thus, the judiciary has extended its tentacles upon the government by bringing it under the domain of a new concept of estoppel, called the promissory estoppel, aimed at thwarting injustice, and encouraging fairness, honesty and good faith. We can also say that it a *sui generis* law, owing its origin in the private law, developed by the courts to mitigate the inflexibilities of common law doctrine of consideration by providing a justified decision to the party placed at detriment even against the State provided the opposite party has altered his position. In India, the doctrine of promissory estoppel as evolved in England is being entreated by the Courts, *mutatis mutandis*, to suit the Indian conditions, keeping pace with the provisions of Section 115 of the Indian Evidence Act. The doctrine is also based on the fact that in a democratic society governed by rule of law, there appears to be

³⁵ AIR 1986 SC 806

³⁶ *Supra*, note 4.

³⁷ (1988) 1 SCC 86

³⁸ See, Kailash Rai, *Administrative Law*, Faridabad: Allahabad Law Agency, 2004 (Fourth Edition), at 428.

no reason for imposing liability on a private individual and exempting the government from the liability. Thus the doctrine has come to be recognized as a principle of public law and thereby also entangles the government to spread the message of fairness and justice by controlling its arbitrary promissory conduct. This attempt of the courts clearly establishes that in apt cases, where the government acts in an arbitrary manner by giving false assurances and to gratify the needs of justice towards the individual suffering as a result of such shakiness of its promise, there arises a need to invoke this principle.