



## FACULTY OF JURIDICAL SCIENCES

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# Lecture-34



### **Estoppel:**

Estoppel is that provision which prohibits a person from giving false evidence by preventing them from making contradicting statements in a Court of Law. The objective of this doctrine is to avert the commission of fraud by one person against another person. This doctrine holds a person accountable for false representations made by him, either through his words or through his conduct.

### **Meaning of Estoppel:**

Section 115 of the Indian Evidence Act, 1872 incorporates the meaning of estoppel as when one person either by his act or omission, or by declaration, has made another person believe something to be true and persuaded that person to act upon it, then in no case can he or his representative deny the truth of that thing later in the suit or in the proceedings. In simple words, estoppel means one cannot contradict, deny or declare to be false the previous statement made by him in the Court.

### *Example:*

1. Simran, a leading entrepreneur, wants to buy a car. Raj is her good friend who owns a classic car of great worth. When Simran contacts Raj to help her in purchasing a car, he says that she can buy his car which he has been planning to sell for some time now. Simran buys his car. Later on, the car becomes Raj's property. Raj takes the defense that when he sold that car to Simran, he had no title over it. The court held that Raj would be liable and will have to prove his want of title.
2. If Thanos is an employee of company XYZ but in court, he denies to be an employee of that company, then, later on he could not claim the salaries and emoluments from that company.
3. A, an agent of C, mortgaged his property to B which he was in the possession of but was not the owner. B, the mortgagee, in good faith, believing the representation to be true took the mortgage. Thereafter, he obtained a decree and the property was sold. The real owner of the property, C, claimed that it was his property and that A had no

power to mortgage them. The court would stop A from making such a claim under the doctrine of estoppel.

4. M, a tenant in the house of N, falsely representing to Q that he had transferable rights over the property and thereafter transferring property to N, later on, cannot claim that he had no transferable interest in the property. He would be estopped from doing so under the doctrine of estoppel.

### **Principles of Estoppel:**

### **Conditions for application of Doctrine of Estoppel**

The following conditions are to be satisfied in order to apply the doctrine of estoppel:

- The representation must be made by one person to another person.
- The representation made must be as to facts and not as to the law.
- The representation must be made as to an existing fact.
- The representation must be made in a manner which makes the other person believe that it is true.
- The person to whom the representation is being made must act upon that belief.
- The person to whom the representation would be made should suffer a loss by such representation.

### **Nature of estoppel**

The legal principle of the doctrine of estoppel is viewed as a substantive rule of law, *albeit*, it has been described as a principle under the Indian Evidence Act, 1872.

### **Types of Estoppel**

### **Estoppel by a matter of Record or Quasi-record:**

Alike *res judicata* once a court has given the judgement, the parties, their representatives, their executors, etc. all are bound by that decision. This doctrine stops the parties to a case, from raising another suit in the same matter or to dispute the facts of the case after the decision has been made by the court.

Situations where estoppel by record or quasi record arises are as follows:

1. Where the dispute between the parties on the facts have been decided upon by the tribunal which was entitled to take decision in the particular case, and when the same dispute arises again in the matter subsequent to the first one, between the same parties;
2. Where the issue raised between the parties which has been resolved by the judiciary, incidently comes again into question in the subsequent proceedings between the same party.
3. Where an issue raised on the facts, affecting the status of the person or thing, has been willing determined in a manner that in the final decision it be included as a substantive part of the judgment *in rem* of the tribunal that has been setup to decide the particular case. This should take place when the same issue comes directly in question in subsequent civil proceedings between any party whatever.

For example, if Nano has been held guilty in a murder case, then neither he, nor his representative, Mantro, nor his executor Berna, would be allowed to raise a suit again in the same matter. Parties are stopped from doing so under this doctrine.

This doctrine has been dealt in:

- Section 11 to 14 of the Code of Civil Procedure, and
- Section 40 to 44 of the Indian Evidence Act, 1872.

The judgements by the court can be of two types

### *Judgements in rem*

Delivered by a competent jurisdiction, this type of judgements tells about the status of the person or a thing. For example, family court dissolving or establishing a marriage. Irrespective of whether the parties belong to the case or not, a judgement *in rem* is binding on all.

### *Judgement in personam*

The judgements which are binding on the parties and their privies, and which determines the rights of the parties to a suit or the proceedings are called judgements *in personam*.

### Judgement not falling under the said jurisdiction

In case if the judgement given by the court does not fall under the respective jurisdiction then the application of the doctrine of estoppel will have not effect. Section 44 of the indian Evidence Act, 1872 states that in case the party wants to avoid the application of the doctrine of estoppel, he/she can plead that the court delivering the judgement has no jurisdiction over the matter or that it is fraudulently doing so.

### **Estoppel by Deed:**

It is the concept where two parties enter into an agreement by way of a deed as to certain facts. This implies that neither he nor his representatives or any person claiming under him can deny the facts mentioned and agreed in the deed.

For example, Mickey Shroff decided to make his will in favor of his two sons, Lion Shroff and Wolf Shroff, and his daughter's son Deer Shroff. Lion Shroff induced some third person to buy Deer Shroff's share of the property. This deed was attested by Wolf Shroff who was not aware of the facts mentioned in the deed. Deer Shroff died without giving birth to a male child. Lion Shroff filed a suit to recover the property from the third party. Here Lion Shroff would be estopped but not Wolf Shroff as Wolf was not aware of the facts of the deed.

### **Estoppel by Pais or Estoppel by Conduct:**

The elucidated meaning of 'Estoppel by Pais' is 'Estoppel in the Country' or 'Estoppel before the public'. It has been discussed in Ss. 115 to 117.

Estoppel by conduct means when a person through agreement, misrepresentation or negligence makes the other person believe in certain things upon which the other person had taken some action causing a change in their current situation, then the first person cannot deny the veracity of the statements given by him in the latter stages.

In the case of *Sardar Chand Singh v. Commissioner; Burdwan Division*, [1] Chand Singh, the Managing Director of Messrs., was denied any revolver license as he was accused in a gruesome murder case and other cases. When the District Magistrate issued an order that he could not hold any revolver license on the grounds of public order and safety, Chand made no appeal. This planted a reasonable belief that he has consented to it. Later on when he makes an application to the District Magistrate to reconsider his case, it was denied following the doctrine of 'Estoppel by Conduct'.

### **Estoppel by election**

Kantabai offers his maid Meena Malhotra her second-hand car. Meena out of generosity says that she would not take it for free. Kantabai says to Meena that she has the freedom to take it as a gift or to make a payment as per her willingness. Meena has the option to either take it as a gift or claim a right over it by purchasing the car. Now, Meena makes the payment and takes the car in her possession. After a year, Meena becomes bankrupt and asks Kantabai to return the money which she had given to her as the payment for buying the car, as she now wants it as a gift.

According to the doctrine of estoppel by election the person receiving the gift or claiming the right can enjoy one of them and not both of them. So Meena cannot now go back upon it and take the other option.

In para 17 in the case of *Revision v. Lekshmy Sukesini Devi*,[2] the court clearly stated that: Parties should not take inconsistent pleas as it makes the conduct far from satisfactory. And also that parties should not take inconsistent stands and lengthen the proceedings unnecessarily.

In another case, the petitioner was given a land on licence and not on interest. In the terms and conditions of the contract it was stated that in case a dispute arises, the decision of the chairman would be the final one. The land was given to the petitioner to build an amusement park on it. While building the park it was found that the necessary actions have not been taken for the establishment of the park and as a result half of the land remained undeveloped, which went on to violate the conditions of the contract. In the suit filed, the court said that the doctrine of estoppel cannot be pleaded in the given circumstances.

### **Equitable estoppels:**

When a person tries to take a legal action that would conflict with his previously given statements, claims or acts, this legal principle would prohibit him from doing so. So, the plaintiff would be stopped from bringing a suit against the defendant who acted pursuant to the commands of the plaintiff.

Suppose Tetanus gives his gold jewellery to Vaccine, the most famous jeweller in the town, for repairing. Vaccine, while handing over the jewellery to Tetanus after repair informed that a mark has been made by mistake at the back of the jewellery. Tetanus didn't mind that and took the jewellery happily with her. Later on if she brings a suit against Vaccine, she would be stopped under this principle as her suit would run counter to her earlier statement of forgiveness for the damages caused to her jewellery by mistake.

### **Estoppel by negligence**

This principle allows one party to claim a right over the property of another party who might not be having the possession of it. This reflects that the person being estopped owes a duty to the other person whom he had led into wrong belief.



In the case of Mercantile Bank of India v/s The Central Bank of India Limited [3] a firm of merchants committed a series of fraud and until it came to the notice of the authorities, enjoyed high repute in the state of Madras. This firm was known for groundnuts-merchant and exporters. Both the plaintiff and defendant financed the consignments of ground-nuts purchased and each received a 'railway receipt' in respect of their consignment.

The merchants needed a loan so what they did was, at first pledged the railway receipt from the Central Bank to obtain a loan and then again fraudulently pledged it to the Mercantile Bank also. The plaintiff, the Central Bank had filed a suit for conversion of the goods against Mercantile Bank. It was held that there was no negligence as Central Bank didn't owe a duty to the Mercantile Bank and so Central Bank was not estopped from having a prior title as 'pledgees'.

### **Estoppel by Benami Transaction:**

Badrinath, the owner of land, decides to hand over the apparent ownership of his property to Kaju Rastogi. Badrinath does so and acknowledges that Kaju has paid him the consideration for the promise. Now, Kaju Rastogi sells this land to Tripti Sanoon, a film actress, in good faith and for a good amount of money, as by gaining ownership over the property Kaju has also gained the right of disposition over that property. Badrinath hates Tripti Sanoon and asserts his title over the property. But he would be estopped from doing so under the given legal principle. And this is what benami transaction means.

In Li Tse Shi v. Pong Tse Ching, [4] the husband died in the year 1925. His entire will was made in the name of his wife. In 1930 their son misrepresenting somebody else to be his father bought the property of his father from the same seller who had sold the land to the father. Later the grandson of the person who died, rented the land to a company and when the company stopped paying the rent and the grandson complaint, the wife or the mother claimed the title over the land as her husband had made the will in her name. But it was held that the principle of estoppel by benami transaction could be applied as she was already aware of the fraudulent selling and purchasing of land by her son.

### **Estoppel on a Point of law:**

The Doctrine of estoppel does not apply to statutes but only to the facts. Estoppel, if applied to the law would go against public policy and general welfare of the society. The principle of estoppel can never be invoked for the purpose of defeating the provisions of law.

For example, if a minor, representing himself to be a major, enters into an agreement with Mr Kanjilal for the sale of a plot of land, the agreement would be void. And nothing would stop the minor from taking the defence that the agreement was *void ab initio*, as it was true that at the time when he entered into the agreement he was a minor.

In *Jatindra Prasad Das v. State of Orissa & Ors.* [5] the High Court of Orissa laid down that estoppel cannot arise against statutes and statutory provisions. It was further said that statutory provisions cannot be disregarded in any case, not even on the grounds of precedent or previous administrative decision.

In the case of *Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.*[6], pavement dwellers who migrated to India, because of proximity to their place of work started living on the pavements in Bombay. Bombay Municipal Corporation (BMC) initially allowed them to stay as they constituted the major part of the population of Bombay.

Later on when the pavement dwellers were evacuated, Olga Tellis, a journalist raised questions against this action. It was upheld that no estoppel can arise against the Constitution of India or against the fundamental right, i.e. the right to life and livelihood in this case.

- **Estoppel and tax laws**

In *I.T. Commissioner v. Firm Muar* [7] the court upheld that doctrine of estoppel would not hold in the case where a non-taxable income under Income-Tax Act, has been taxed. Also once it has been said that a tax would be collected then one cannot give up on it. Further, stating that the tax would not be collected would not bind the state government from collecting it, as decided in *Mathura Prasad v. State of Punjab* [8].

- **Unambiguous laws cannot be dodged**

In *Sales Tax Officer v. Kanhaiya Lal* [9] it was formulated that the doctrine of estoppel would not arise in cases where the law clearly, without any ambiguity, states that the plaintiff should be given relief. When any law is absolute and has no exception clauses, than anybody acting against it would be acting beyond powers which would be void and the party getting affected by it can file suit claiming estoppel against it. Whereas if any exemption clause exists in the law then relaxation can be given based upon it. The party would not be said to be acting *ultra vires* and estoppel can be claimed as mentioned in the judgement of *Delhi university v. Ashok Kumar* [10].

- Principles determining that there cannot be any estoppel against statute

Categories under which the doctrine of estoppel cannot be applied against the state:

- By entering into bilateral agreement parties can contract himself out of the statutory provisions,
- There must exist some provision in the statute which prevents the parties from entering into such types agreements which the parties would have entered into,
- The provision should be such that it satisfies the interest of the public at large,
- The provisions should not be such that only a particular category of people can avail its benefits, and,
- Merging of the agreement between the parties into a court's order where the parties have been discouraged from performing its obligation imposed on them by law, because of certain actions by the parties.

By saying that there can be no estoppel against the statute it is meant that where the converse of a provision mentioned in a statute exists, the party would not be estopped by his previous given statement(s).

In *Jai Jai Ram v. Srimati Laxhmi Devi* [11] the court gave a verdict that what appears to be a law is actually a law or not is dependent on the truth of the facts and on the situation of the

parties which keeps on changing. Whether what impersonates a law is really a law or not has to be decided by the courts.

In *National Oxygen Ltd., Madras v. Tamil Nadu Electricity Board* [12] relying on the Schedule mentioned in the Act a new industry was given concession on tax for the next five years from the days of its commencement. The state Government of Madras under a section of the Act had the power to bring amendments to the schedules of the Act. Pursuant to this, the State government brought an amendment to the above-mentioned schedule and made it a subject to certain conditions. This was done before the completion of 5 years of that industry. The industry in his suit pleaded estoppel to which the court said that no estoppel would arise against the government.

### **Proprietary Estoppel**

We often see promises being made and later broken. While in some cases we can do nothing about it, but in certain circumstances, particularly in matters related to land or property, there is a possibility to bring a claim to enforce a broken promise. This is called proprietary estoppel. In *Thorner v. Major* [13] it was laid down that in order to claim a right under proprietary estoppel these things have to be proved:

- That representation has been made.
- That the party believed it to be true and acted upon it.
- That the party suffered a loss as a result of such representation.

In *James v. James* [14] Allen and Sandra had two daughters and one son. The son worked for the major part of his life with his father eventually becoming a partner. When making the will, Allen gave some land to one of his daughters which created a dispute in the family leading to the dissolution of the partnership. Later Allen distributed his property amongst the three ladies of his house, cutting down the name of his son. Son brought a case of proprietary estoppel against the women and also challenged the validity of Allen's will. It was held that nothing has been shown or said with clarity that Aleen would transfer his entire will to him.

In *Gyarsi Bai v. Dhansukh Lal*, [15] it was established that in case the first two conditions are met but the third one is not and hence the doctrine of estoppel cannot be evoked.

### **Estoppel by Convention:**

In the case of the *Republic of India v. India Steam Ship Company Limited*, [16] it was observed that estoppel by convention arises when parties to a transaction assume the facts or the law. This assumption might be made by both the parties or either of the parties. Under this principle, parties to an agreement could not deny to the assumed facts, because if the party or parties are allowed to go back on their assumptions, it would be unfair and lead to injustice.

In a meeting between the landlord and the lessees, it was decided that the landlord would send demands at the end of the year and the receipt would be given to any one of the lessees. However, certification was not made a requirement for the recovery of the service charged under the agreement. The doctrine of estoppel by convention would apply whereby the landlord could recover the service charges which could not be challenged by the lessee as there was no certification. This was decided in the case of *Clacy & Nunn v. Sanchez & Others*. [17]

### **Estoppel by Acquiescence:**

When one party, through a legitimate notice, informs the other party about the facts of a claim, and the other party fails to acknowledge it, that is, neither he/she challenges it nor does refute it within a reasonable period of time. The other party now would be estopped from challenging it or making any counterclaim in the future. The other party is said to have accepted the claim though reluctantly, that is, he/she has acquiesced it.

### **Contractual Estoppel:**

Pappi Lahari from Bihar entered into a contract with Batman from Chennai whereby Pappi would supply 100 bales of cotton to Batman in exchange of 25,000 rupees. While signing the contract they agreed to the fact that in case of any dispute between them, the case would be filed

in the court of in Tamil Nadu. Once agreed the parties cannot, later on, assert to change the jurisdiction in the particular case. They are bound by the principle of contractual estoppel.

This principle would apply even when the original statement made by the parties is not true.

In Peekay Intermark Ltd. v. Australia and New Zealand Banking Group Ltd. [18] it was laid down that when the parties to the contract gives consent to a fact, neither of them can deny the existence of such facts to which they have agreed, especially when considering those aspects of their relationship towards which the agreement had been directed. The contract would itself give rise to contractual estoppel.

### **Conflict Estoppel**

When one person through his speech or conduct makes the other person believe in a particular thing and induces him to act upon it, he would be estopped from taking any conflicting or contrary or erratic position, which could cause loss to the other party.

For example, Sattu in an agreement with Kabir says that he would not roam with his girlfriend if he offers him a ride on his bike every day until his birthday. Kabir follows his instructions. Sattu after few days says that the number of rides would be two per day and only then will he not chase Kabir's girlfriend. After 2 months he asks that the bike ride be replaced with a ride in his car. Here Sattu cannot take conflicting positions. Once there has been an agreement to offer one ride everyday on the bike, he cannot contradict that and make other demands, he would be estopped from doing so.

### **Issue Estoppel**

Father of Neena had given words to his friend that Neena would get married only to his son, Thangabali when they become adults. When they grew up, Thangabali went for a court marriage with Neena. Just before the signing of the documents, Neena ran with her lover Rahul. Thangabali filed a case stating that Rahul has forcefully taken Neena with her and that there was an agreement whereby they were supposed to get married to each other only. But Neena

confessed that her father and Thangabali were forcing this marriage on her and that she wanted to marry her childhood friend Rahul. The court said that the agreement is void and the matter was dismissed.

After 5 years it was found that Rahul has filed a suit where he claims that Thangabali has been following him and his wife everywhere taking the plea that it was because of his work. It was found that Thangabali has been meeting Neena over a period of time. This case again raises the issue of whether Neena was forced by Rahul or Thangabali for marriage. Here issue estoppel would apply and re-litigation of the said issue would be not be allowed.

### **Difference Between Issue Estoppel and Res Judicata**

Res judicata is the final decision made by the court. It prevents the parties from relitigation the issues that were or could have been raised in the specific case.

Whereas, the issue estoppel is a legal principle which says that even if the court has made a decision the relitigation of that issue would be prohibited on a different course of action involving either of the parties from the first case.

Sl. No.	Estoppel	Res judicata
1.	Estoppel is that rule which prohibits a person from contradicting what was earlier said by him in a court of law.	<i>Res judicata</i> is that principle which prohibits the other courts from deciding on the same matter, between the same parties which has already been decided by a competent court.
2.	Estoppel is based upon the rule of equity which is the natural law of the land.	<i>Res judicata</i> has been recognized by the law as a legal procedure.

3.	The rule of estoppel looks into the aspects of equity, justice and good conscience.	<i>Res judicata</i> deals only with the aspect of public policy.
4.	Estoppel arises from the words or the action or conduct of the party.	<i>Res judicata</i> arises out of the decision taken by the court, that is the final decision of the court.
5.	Estoppel bans a person from rebutting what has been once said by him before the court.	In this case, the court is banned from hearing the cases which has already been decided by a competent court.
6.	Estoppel prevents the parties from performing certain acts which is denying to what was earlier said by him.	<i>Res judicata</i> prevents the court from performing certain action which is dealing with the same case which has already been decided by some other court.
7.	The principle of estoppel has been incorporated from sections, 115 to 117 of the Indian Evidence Act, 1872.	The principle of <i>res judicata</i> has been incorporated under <u>section 11</u> of the Code of Civil procedure, 1908.
8.	Estoppel is implied through the actions or the conduct of the parties.	Based on previous decision given by a competent court, <i>Res judicata</i> is claimed by the parties.

### **Collateral Estoppel**

The doctrine of collateral estoppel safeguards a criminal from being prosecuted for the same issue as raised in the earlier trial in more than one criminal trial.



In the case of Ashe v. Swenson [19] six men who were playing poker when they were robbed by three or four men. They stole one of the victim's cars and ran away. Next morning 3 men were found near the stolen car and Ashe was found at some distance. Ashe was put to trial and was found not guilty due to lack of evidence. Weeks later he was called for trial in case of robbery against the second victim. It was held that the second trial be dismissed as the prosecution of a crime arising out of the same course of events is not permissible by the law.

### **Judicial Estoppel**

It prevents a party from making conflicting or contradicting statements as to what was previously said in the court as this would adversely affect the court proceedings and also cause disrepute to the court. It was held in First National Bank of Jacksboro v. Lasater [20], a bankrupt person by not following the schedule and preventing from giving all the information of his property finally lead the estate to shut down due to bankruptcy. After this, he started claiming a title over the property on the ground that the trustee never took any action against it. It was held that the creditors were automatically entitled to the property and asserting title over the property in such manner is not permissible.

### **Legal Estoppel**

It means that the assignor or the grantor, in the subject matter of assignment or grant, cannot in the latter stage deny the validity of title. In Westinghouse Elec. & Mfg. Co. v. Formica Insulation Co. [21] the court reached a conclusion that the legal principle of estoppel by deed should apply to the patent right as well. Law clearly recognizes that assignor of the patent for novelty or utility cannot say that a patent is void.

He would be estopped by law from doing so. In such cases court is allowed to view the art or work in order to understand what that thing was which was assigned and to decipher the primary and secondary character of the assigned patent. This would also assist them in determining the extent to which the doctrine of equivalents could be invoked against the one infringing it. It is believed that the court would not make any assumptions other than that the invention presented a sufficient degree of utility and novelty which would justify the issuing of the patent assignee.

Overview

## **Evolution of Doctrine of estoppel**

The study of the evolution of the doctrine of estoppel can be done by comparing its development in English law and Indian law.

### **Development in English Law**

The foundation for this doctrine was first laid down in English Law, in the case of *Hughes v. Metropolitan Railway Co.* [22] In the particular case, Hughes leased his land to Metropolitan Railway Company to carry out repair work. The defendants were required to complete it in 6 months time period, and if it failed the lease would stand forfeited. The parties to the agreement negotiated another agreement by which the railway company was to purchase the freehold of the land.

Both the parties were under the delusion that transfer of property would take place and therefore the defendants didn't carry out the repair work. He believed that sooner he would be having the freehold of the property and those repairs are of no use to him. But towards the end of the 6 months period, the negotiation dissolved and the plaintiff gave the notice to forfeit the lease.

The court upheld that when negotiation was initiated there was an implied promise to forfeit the lease with respect to the limited time period. The Railway company acted upon this promise which proved out to be detrimental to them. The doctrine of estoppel was thus applied and the railway company was given more time to complete the repair work.

Even after this case, the doctrine of estoppel had not gained much attention until Lord Denning delivered his judgement in the case of *Central London Property Trust Ltd. v. High Trees House Ltd.* [23] The defendants, High Trees, rented his flat to the plaintiff in return for a certain amount of money. Due to the outbreak of World War II this amount was reduced to half as his occupancy rate was decreasing. When the war ended the defendant continued to pay half of the

amount of rent, claiming that the plaintiff had not mentioned any time period while entering into the agreement. Plaintiffs sued the defendant for payment of the full amount of rent.

Applying the principle of estoppel laid down in the case of *Hughes v. Metropolitan Railway Co.* [24] the court said that it was implied that the reduced rate is limited to the time till the war continues, and so the defendants are liable to pay the full rent.

### **Development in Indian Law**

The Doctrine of estoppel in general and promissory estoppel, in particular, was recognized in India from the case of *Sourujmull And Ors. v. The Ganges Manufacturing Co.*[25], where the Calcutta High Court determined that this doctrine would also apply in other situations where a person can be estopped from performing certain acts or depending completely upon particular arguments or claim or contention. This implies, as laid down in the judgement, that the doctrine of estoppel is not limited to the law of evidence.

### **Estoppel Example**

#### **Estoppel Example Real Estate**

A real estate contract is the one where purchase and sale, or exchange, or transfer of the real estate, i.e. land, building, etc. takes place between the parties. The sale and purchase of the land(s) are governed by the laws of the state to which the particular land belongs. The essential elements required to bring such contract into force is similar to that required in contracts under the Indian Contract Act, 1872.

Estoppel in a real estate contract only means that the estoppel letter issued by the association or its management company would be legally binding on the parties. Such letters would contain the dues, and other assessments and fees that the closing owner would be responsible to pay and the coming owner owes.

## **Exceptions to Estoppel:**

Following are the exceptions to the doctrine of estoppel

- This doctrine does not apply when both parties have the entire knowledge of the things in their matter.
- Estoppel cannot be applied against statutes and regulations. It should not come in conflict with the statutes and regulations.
- It would not apply to cases where one party has exceeded his power while acting or taking a decision.
- It cannot be applied against the sovereign acts or the government.

## **Difference between Estoppel and Promissory Estoppel:**

The Doctrine of promissory estoppel binds a party by his promise made to the other party, having faith in which the other party has taken an action. The party cannot make contracting or conflicting statements later on, neither he can go back on his words. In Motilal Padampat Sugar Mills v. State of Uttar Pradesh And Ors. [26] the state of Uttar Pradesh first promised to exempt the new industrial units from paying sales tax for an initial period of 3 years.

Based on this the plaintiff took a huge amount of loan to set up a new industrial unit. Later on the government made a change in its promise and said that only partial concession would be allowed to which the plaintiff agreed. But the government yet again changed the policy and this time said that no concession would be given.

The court said that the defendant made a representation to the plaintiff. Laying his trust in it, plaintiff took a large sum of money as a loan. So, now the government would have to exempt the plaintiff from paying taxes for an initial period of 3 years as per the principle of the doctrine of promissory estoppel.

Sl. No.	Estoppel	Promissory Estoppel
1.	Representation is made to an existing fact.	Representation of a future intention is made.
2.	It is supported by parties consideration.	It is supported by parties future conduct and not a consideration.
3.	Estoppel has been dealt in section 115 to 117 of the Indian Evidence Act, 1872.	There exists no provision in the Indian Evidence Act, 1872 which defines promissory estoppel.
4.	It is only available as a defence	It can be used as a cause for action to obtain damages.
5.	Estoppel has been dealt in tort law.	Promissory estoppel has been dealt in the Indian Contract Act, 1872.

### **Difference between Estoppel and Waiver:**

A waiver is the deliberate or voluntary relinquishment or abandonment of a known right or privilege. For example, an insurance company in its policy has stated that the policy would stand cancelled in case of non-payment in 30 days after the notice for the same has been given. Mr. X failed on payment and requested the company to consider his application soliciting an extension of one week. The company considers Mr. X's application and by doing so has waived the original deadline for payment.

The difference between estoppel and waiver was explained by the Supreme Court in the case of *Provash Chandra Dalui and Ors. v. Biswanath Banerjee and Ors.* [27]. The court held that the most important element in case of waiver is that there must be intentional relinquishment of a known right and should be willingly done by the party. Where waiver asks for an involvement of

intention by the party to surrender a right, in the doctrine of estoppel the element of intention is irrelevant. And what becomes important in estoppel is that the party must suffer loss as a result of the false representation made to him. In case of estoppel it is not required that the party give up on the right, the doctrine of estoppel would anyway arise.

The Doctrine of estoppel prevents a person from denying his previous statement made in a court of law as it could cause injury or loss to the other party.

Sl. No.	Estoppel	Waiver
1.	Estoppel cannot be the cause of action although it can facilitate or aid the enforcing of a cause of action by preventing the defendant from not denying what was earlier said by him.	Since waiver is contractual, that is, it is an agreement to release somebody out of an agreement by waving the previous set policy or to assert a right. Therefore, a waiver can be a cause of action.
2.	In this, the injured party will have to prove that injury, loss or harm occurred.	No such requirement is there in the waiver.
3.	It is not necessary for the parties to know the truth or have the knowledge of the reality.	In the case of waiver the parties involved have the knowledge of the real facts and they know the truth.
4.	There might be situations where acquiescence would amount to estoppel.	In case of waiver, along with acquiescence, some act or conduct is also necessary.
5.	Parties use the doctrine of estoppel as a defence in a court of law and not as a cause of action.	Waiver can be used as a cause of action for claiming damages.

6.	<p>Illustration:</p> <p>In <u><i>Dawsons Bank Limited v. Nippon Menkwa Kabushiki Kaisha</i></u>, [28] the principal gave the right to his agent to make an agreement on behalf of him. While making an agreement the agent waived the principal's right. The principal now becomes bound by the contract.</p>	<p>In the same case, the principal would become bound by the contract and not estoppel as the agent actually had the powers to do so, i.e. he can waive the rights of the principal, by the previous contract made between them.</p>
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### **No Estoppel Against Minor**

Section 3 of The Maturity Act, 1875 defines a minor to be a person who is under the age of 18 years and Section 11 of the Indian Contract Act, 1872 says that parties entering into a contract should be competent, i.e. should be a major, of sound mind and barred by no law to enter into a contract. A contract with a minor is void ab initio which means void from the very beginning.

So when a minor misrepresenting himself to a major enters into a contract, then he cannot be made liable for it, not even on the grounds of estoppel. The minor can always plead that at the time of entering into the contract he was a minor.

In the case of *Ajudhia Prasad And Anr. v. Chandan Lal And Anr.* [29] two minors fraudulently entered into a mortgage deed by concealing the fact that they were minor as a guardian has been appointed for them under the Wards Act. The court held that no estoppel would arise in this case.

## **Estoppel Cases**

### Provisions

There are three sections under the Indian Evidence Act, 1872 which talks about the situations where the plea of estoppel can be taken and where it cannot be taken, and they are Section 115, 116 and 117.

### **Section 115**

It defines estoppel as a principle which prohibits a person from denying what was earlier said by him in the Court. The court in *Pickard v. Sears* [30] said that estoppel is where:

- One party by his words or actions makes a representation
- The other party believing in his words acts on that
- Or alters his position

then the party would not be allowed to deny the things he previously said.

In the third clause, the altering of the position should be such that going back would be unjust or unfair in the eyes of law, as established in the case of *Pratima Chowdhury v. Kalpana Mukherjee*. [31]

### **Necessary Elements of Representation:**

The representation made can be done in two ways:

- By words
- Through conduct which includes negligence

In *Bhagwati Vanaspati Traders v. senior Superintendent of Post Offices, Meerut* [32] the plaintiff purchased one N.S.C. for which he paid only a certain amount and not the entire amount



of money. The defendant closed the account of the plaintiff and refunded the amount without any interest on the ground that it was not opened in according to the rules and regulations. On the plea of estoppel, the court said that the plaintiff himself had purchased the N.S.C. and that no misrepresentation was made to him by the defendant.

### ***Intention to deceive***

The main requirement of estoppel is to bring the person into action based on the representations made to him. It is not important that the person making the representation has the knowledge or motive behind the representation being made. It is also not necessary that the representation being made is fraudulent in nature or that it has been made under a mistake or misapprehension. [33]

### ***Only the person to whom the representation is being made can act***

The principle of estoppel would not apply to a person who got a piece of second hand information about the representation, unless the representation was intended to be made towards him or that it was a general representation where anybody could act upon it. [34]

For example, Tarak Mehta, head of a telecom company, makes an announcement that upon a recharge of 200 rupees one would get unlimited talk time for one year. Mr. Atmaram, a vendor, seeing the add started working hard and collect the required amount. Now, acting upon it got the recharge done of the said amount. After 2 months he complained that the offer has stopped on his phone. Later on, he finds that the company has terminated its earlier policy and reduced the time limit to 1.5 months. The doctrine of estoppel would apply as he had relied on the representations made to him.

### ***Should be based on existing facts***

In order to apply this doctrine, it has to be ensured that the representation made should be based upon the existing facts and must not be a representation relating to a future promise.

For example, if Donkey Pandey promises to his friend Monkey Pandey that whenever he would be making his will, he would be signing it in his name. Later on, when Donkey makes his will,

not even a part of his will was in monkey's name. Now, such promises have no legal consequences as it is a *de future* promise.

In *Steel Authority of India Ltd. v. Union of India* [35] it was held that once the party has claimed that they are contractors and not employees of the company, although they were one, they cannot, later on, change the plea and say that they are the employees of the company.

### ***Party is required to plead estoppel***

Since the doctrine of estoppel is a rule under the Indian Evidence Act, it is required that it should be pleaded. The party claiming the plea of estoppel must clearly mention in its pleading the facts which point that he had acted upon the representations made to him by the other party. In case the party does not mention this in its pleading the above said requirement, then it cannot claim the doctrine at a later stage.[36]

### ***Representation includes representation of law***

Representation includes representation of facts as well as representation of the law. Suppose, the director of a company withdrew bills on the grounds that a private law gives them the power to do so. In this case, while the statement of facts is true there has been an error in the inference of the law. The person making the representation, i.e. the director, in this case, would not be estopped from denying that the inference of the law was not correctly made. However, in the particular case, the fraudulent representation made as to the legal effect of those bills and gained some advantages out of it would be estopped from retaining the advantages gained.

### ***Representation being made should not be debatable***

The representation being made should be clear and bereft of any ambiguity. It might be that the representation has more than one interpretation but those interpretations should be such that the purpose for which the representation is being made should not be defeated, that is, the sense for which the representation contended should not be destroyed.

### ***Acting ultra vires is not permitted***

If a party through representation succeed at creating a state of things which he is otherwise barred from creating by the law then he would be stopped from acting beyond its powers. “Thus, a corporate or statutory body cannot be estopped from denying that it has entered into a contract which was ultra vires for it to make.”[37]

### ***If the Truth is known to both the parties***

If the party to whom the representation was being made somehow recognizes that it was a false representation then he would not be entitled to the claim of the doctrine of estoppel as decided in the case of Permanand v. Champa Lal. [38]

In Madhuri Patel v. Addl. Commissioner, Tribal development [39] the party who took admission in a school by fraud was not allowed to continue studying in that school upon the claim of estoppel.

### ***Representation by the party seeking advantage***

The plea of the doctrine of estoppel cannot be sought in a case where the representation has acted as a breach of duty on the part of that party who was to take advantage of such representation. If a party who was to make use of a representation conceals certain facts than the doctrine of estoppel won't apply.

**Intention:** If the party making the representation-

- Has the intention to act upon it in the same manner in which it was represented to be acted upon
- Has made it in such a way that any reasonable, prudent person would consider it as true, and makes the other person believe that he also has to act upon it in the same manner

In that case it would not be necessary that the representation be false to the knowledge of the party who is making it.

In *B. Coleman & Co. v. P.P. Das Gupta* [40] it was observed that the doctrine of estoppel does not apply unless the representation being made amounts to the contract or license of the party who is making it.

### **The other party acted upon the representations made to him :**

It is an essential requirement for the claim of estoppel that the party to whom the representation was made acted upon it by having faith in it. The party must make a change in his position based on the representation made. [41]

It has to be ensured that no other party or say, some third party take advantage of representation being made to some party. For example, if A has made a false representation to B and planting his faith in it, B has acted upon the representation, then only he can claim the plea of the doctrine of estoppel. Some third party, suppose C cannot take advantage of the same.

Also, it is not sufficient that the party to whom the representation was made has acted upon it by believing it to be true, it has to be proved that the representation has influenced him and based on that influence he has altered his position.

### ***The party making the representation can also revoke it***

The party making the representation can anytime withdraw it even if it has been acted upon by the party to whom it was made. After withdrawal the party can make the same representation to some other party, acting in a manner that it has never been previously made.

### ***Representation after alteration in position***

It is important that the party to whom the representation was made had altered his position based on his belief in the representation made to him. Representation after alteration in position would not allow a party to seek the claim of estoppel.

### ***When an agent makes a representation***

Representation made by the agent who was appointed by the principal to act on behalf of him will invite the plea of estoppel and it would be as much effectual as it would have been when made by the principal himself.

### ***Party must act***

It is imperative that the party to whom the representation is being made acts upon it by having considered it to be true. The motive and knowledge of the subject on which the representation is being made may not be known to the party who is making it.

### ***Representation by words***

Cases of representation made through conduct or made negligently by the party are more common than that of those made through words or statements. In a case where the reversioner of the widow along with the widow fraudulently misrepresented that the widow was a major and competent to handle her deceased husband's business. The plaintiff believing this to be true entered into a contract with the widow. In the suit filed, the defendant was estopped from claiming that at the time of entering into the contract, the widow was a minor.

### ***Representation through action or conduct***

Representation under estoppel means that a party through his actions or conduct has intimated the other party that his actions is true and needs to be acted upon. The act should induce the other person to perform the act which he would otherwise have not done.

In *Mohammad Imdadullah v. Mt. Bishmillah* [42], Mohammeden acquired a piece of land in order to construct a school. For many years he made others believe that he has been carrying out this work under the authority of some other school. When he wanted to transfer the school building for making it an orphanage, the court estopped him from doing so.

In *Mahboob Sahab v. Syed Ismail* [43] the son of the Muslim father attested the deed in the sale of land by his father. The son at the time of attesting the deed raised no questions although he

knew that it was not in his interest. So, later on when he filed a suit, he was estopped from challenging the sale.

### ***Who can take advantage***

Under the doctrine of estoppel the party who is making the representation, to whom the representation was made or to whom it was intended to be made can seek advantage. In case the representation is general in nature then any party can take advantage.

### **Evidence as a rule of law:**

As laid down in the case of *Maritime E. Co. v. General Diaries* [44] that estoppel is only a rule of evidence which can bring the party to an action. It cannot give rise to a cause of action.

In *Hard M.B. v. H. Electricity Supply Co.* [45] the court held that since estoppel is only a rule of evidence which can be pleaded under certain circumstances, it cannot be used to discharge a party from the legal obligation to obey a law.

Case Laws [46]:

### ***Estoppel when applied to Insurance Company***

In *Life Insurance Corporation v. O.P. Bhalla and Ors.* [47], the assured failed to pay the second installment and the policy lapsed. Later, the corporation accepted 3rd and 4th installment and also the 2nd installment with an interest. This policy ultimately came to an end with the death of the assured. The nominee of the assured claimed the insured amount from the corporation. It was found that before entering into a contract with the corporation, the assured had undergone an operation about which he didn't inform the insurer. The court said that the assured's act of keeping the information with him would not allow him to take the plea of estoppel. The defence that disclosing it would not have made any difference if it was not accepted.

### ***Estoppel when applied to Educational Institutions***

In *Sanatan Gauda v. Bharampur University* [48], the student took admission in a law college and successfully complete his two years. In his final year university objected from releasing his result of the pre and intermediate examination on the ground that he is not eligible to do so. The Student had submitted all the required documents at the time of admission and also has obtained the card for writing his final examination. The court declared that the university would be estopped from doing so, i.e. declaring the result of that student.

In *Kumar Nilofar Insaf (Dr.) v. State of Madhya Pradesh* [49], while taking the admission in the medical college, the college released a merit list for house-job. When the same merit list was released for the admission in the M.D. course, the plaintiff filed a suit. The court estopped the plaintiff since he had consented to the first merit list.

### ***Estoppel when applied to tenancy:***

In *Dataram S. Victore v. Tukaram S. Victore* [50], the tenants while filling the form for an agreement clearly stated that he would be living along with his brother and his wife and it was accepted. The court dismissed the order of eviction and estopped the landlord from terminating the tenancy on the ground of lease.

### ***Estoppel when applied to employers***

In *Shiv Kumar Tiwari deceased represented by L.R. v. Jagat Narain Rai and Ors.* [51], the plaintiff was a lecturer in college. He was appointed on a temporary basis and was given approval on a yearly basis. After some years the college stopped giving approval to him and a new lecturer who is the defendant in the case was appointed by the education department.

The plaintiff filed a suit against the college. The civil court decided in favour of the plaintiff and said that the plaintiff was a permanent lecturer. This decision was taken in the absence of the education department and the defendant. Subsequent to this, the Deputy Director of that locality, basing his decision on the judgement of the Civil court, declared that the plaintiff was the permanent lecturer of the college.

The plaintiff's plea of estoppel was not considered acceptable as the Deputy Director was not a party to the decision taken by the court and therefore he has no authority to make such decisions. Further, the judgement given by the civil court could be challenged under the Specific Relief Act.

In Anil Bajaj (Dr.) v. Post Graduate Institute of Medical Education and Research [52], the plaintiff was allowed to go abroad on the condition that within 2 years he will have to resume office else his service would be terminated. He did not return within 2 years and as said he was terminated from the job. The plaintiff cannot rely on the doctrine of estoppel as he was aware of the consequences that would follow.

#### ***Estoppel when applied to employees***

In State of Maharashtra v. Anita [53], the court upheld that once the person has been appointed as an employee under a contract and has accepted all its terms and conditions, he would be estopped if in the later stage he challenges the term of the appointment.

#### ***Estoppel when applied to the selection board***

In Central Airman Selection Board v. Surendra Kumar Das [54] the apex court laid down that if the person himself has made false representation and induced the authority to act upon it then he could not challenge it on the grounds of promissory estoppel. The authority upon finding that it has been misled can cancel the agreement.

#### ***Estoppel when applied to Development Authority***

In H.V. Nirmala v. Karnataka State Financial Corporation [55], an inquiry officer was appointed with appellant's consent. He participated in the inquiry proceeding and cross-examined a number of witnesses and still found nothing in favour of the appellant. The appellant could not question his appointment.



## **Section 116:**

The section states that during the continuance of the tenancy, the tenant of the immovable property or any person claiming through such tenancy can deny to the fact that at the beginning of the tenancy it was the landlord who had the title over the immovable property. Further, the Section also explains that a person who came upon an immovable property by the license cannot deny the fact that the person from whom he got the license, that is, in whose possession the immovable property, had the title at the time when he got his license.

### **Tenant- landlord relationship**

A relationship between a tenant and a landlord can be created either by written contract or verbal contract. The beginning of the tenancy can be marked by the taking of possession of the land, or by the payment of rent, or other circumstances.

If X leases his land to Y and Y takes the possession and starts paying the rent and later on X sales the land to Z, then Y can make his payment to Z. Here, Y and Z have formed the tenant-landlord relationship.

### **Scope of section 116**

It is concerned with those estoppels which occurs between:

- Tenant and his landlord
- Licensor and licensee

### ***Title of the landlord cannot be denied***

Once a tenant enters into a relationship of landlord and tenant, receives the possession of the property and finally enters into the premise, during the period of such possession may deny to things or course of action by the landlord which is against to what was mentioned in the agreement. A tenant in no case claim that the landlord has no title over the property.

In *Moti Lal v. Yar Md* [56], the judge said that the tenant cannot say that the landlord has no more interest in the property when the landlord filed a suit for default payment and ejectment. It is only after leaving the possession can the holding of title by the landlord be questioned as mentioned in *Suraj Bali Ram v. Dhani Ram* [57].

In *Sri S.K. Sharma v. Mahesh Kumar Verma* [58], where defendant upon attaining a higher post was allotted a premise by the railway company. In the case, it was said that even when it was not known whether the land belonged to the railway company or not, the officer will have to evacuate the premises after retirement.

### ***Can landlord plead estoppel***

In the following situations, the landlord can plead estoppel:

- When the tenancy itself stands disputed then the tenant can challenge the landlord's title on the property. The tenant would not be estopped from doing so.
- In cases where the tenancy has been moved by fraud, coercion, misrepresentation or mistake.

If no such circumstances occur than the tenants would be restricted by the doctrine of estoppel. However, the tenants are always at liberty to overturn the lease or change its status as a lessee.

The Case is similar in the licensor- licensee relationship.

In *E. Parashuram v. V. Doraiswamy* [59], the Bangalore Mahanagar Palike owned land which was leased to Mr. Dhanpal for the period of next 10 years. It was found that Mr. Dhanpal had decreed the land to Mr. Doraiswamy. A decree was passed in the name of Mr. Dhanpal whereby the vendors were directed to execute the reconveyance of deed in Dhanpal's favour. Thereafter, pursuant to the orders, all the documents were to be kept in Dhanpal's possession. Sooner it was found that the vendors were trying to claim ownership over the property. This was brought to the notice of the assignee, Mr. Doraiswamy, who filed a suit of eviction in court.

In the second instance regarding the purchasing of land by Mr. Doraiswamy, it was found that at the initial stage, the signature of Mr. Doraiswamy was also taken along with Mr. Dhanpal and when this mistake was rectified by the corporation by deleting the signature of Mr. Doraiswamy, he challenged it.

The court in the first instance upheld that the landlord could not be denied the title to the land even though certain disputes still remain unresolved with the corporation. In the second instance, the court said that no jural relationship existed and thus exceptions under Section 116 of the Indian Evidence Act cannot be pleaded.

#### *Estoppel applied when tenancy is in existence*

In ***Udai Pratap v. Krishna Pradhan*** [60], the continuance of tenancy was defined as a period during which the tenant enjoys the possession of the property and is seeking benefits from it.

The Tenant cannot deny the title to the landlord, neither at the beginning of the tenancy nor during its continuance. The Tenant would be estopped from denying the title of the landlord only when the tenancy is continuing. Once the tenancy ceases to exist, the tenant will have the right to deny title to the landlord.

For example, HUM is the tenant of land which belongs to TUM. As soon as HUM takes possession of the property, the tenancy comes into existence and continues until it comes to an end. During this TUM cannot be denied title to the property by HUM. But once the tenancy lapses, HUM will have the right to question the interest of TUM in the property.

#### *Title at the beginning*

The tenant can not deny the title to the landlord at the beginning of the tenancy. However, tenants can exercise certain powers like:

- He would not be estopped from claiming that on the death of the landlord the property would be transferred or the title would be delegated to the tenant and not to some third party.

- He can prove that till the day before signing the lease, the landlord had no title over it.
- The tenant can prove that during the tenancy period the landlord lost his title over the property either through his acts or because he was barred by the law. [61]

### **Licensor- Licensee relationship**

In *licensor- licensee* relationship the same rule operates like that in the *landlord-tenant* relationship. When a licensee obtains the possession through licence cannot deny the title to the licensor unless the relationship ceases to exist.

A allowed B to use the washroom in his backyard. B fraudulently made the duplicate keys of those washrooms and refused to vacate. In court A cannot in his suit for ejection say that B holds no title over those washrooms as he was the one who gave him access to them.

### **Estoppel in mortgagor- mortgagee relationship**

When upon the contract of mortgage, a property has been mortgaged by one person to another and the person to whom it has been mortgaged, i.e. the mortgagee, has taken possession, then the parties to the contract cannot deny the right of each other under the contract as proposed in *Arjun Singh v. Mahasaband* [62].

In a situation where the mortgage is about the end and payment has to be made by the mortgagee, in that period if the mortgagee claims that the mortgagor seems to have no interest in the property, he would be estopped from doing so. The rule under mortgagor-mortgagee relationship gives rise to the doctrine of estoppel only when the claims under the suit filed is based on the contract of mortgage and in cases of repudiation of the mortgage.

### **Section 117 :**

The section states that the acceptor of the bills of exchange cannot deny the person who is supposed to draw the bills, from drawing it or endorsing it. Also no bailee or licensee can deny the fact that at the time when the bailment and license began, the bailor and the licensor had the authority to make bailment or to give license.

1. The person accepting the bills of exchange can deny that the bills of exchange were really drawn by the very person who showed to have drawn it.
2. If the bailor mistakenly delivers the goods to some third party instead of the bailee, he can prove that a third party has the right over the goods bailed against the bailor.

### **Scope**

This section demarcates that the person who accepts the bills of exchange although cannot deny that the person drawing the bills has the authority to draw or to endorse it but can deny that the bills were actually drawn by the person by whom it appeared to have been drawn.

The bailee or the licensor cannot deny the fact that at the beginning of bailment or grant, the bailor or the licensor had the authority to perform it. But a bailee can prove that the third party to whom the goods were delivered instead of the bailor had the right against the bailee.

### **Conclusion**

The Doctrine of estoppel is an important principle which protects people against fraud or misrepresentation. There are several instances where an innocent person becomes a prey to false representations made to them by some party. Sometimes the case may be such that the plaintiff suffered huge losses. This doctrine avoids such situations and charges the person for his wrongful conduct.

This legal principle gives an incentive to every one of those people who tries to make false representations to other and induces them to act upon it by planting their faith in them, and incur losses as a result of such false representations, by not performing such acts, else they would be held liable.

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