

## AN ANALYSIS OF SECTION 115 OF INDIAN EVIDENCE ACT

<sup>1</sup>SWEATHA KASI

<sup>1</sup>Student, BBA. LLB (HONS), 3th year, Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences, Saveetha University, Chennai-77, Tamilnadu, India.

<sup>2</sup>ARYA R

<sup>2</sup>Assistant Professor, Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences, Saveetha University, Chennai-77, Tamilnadu, India.

<sup>1</sup>kasisweatha@gmail.com, <sup>2</sup>adv.aryar@gmail.com

### ABSTRACT

This paper deals with section 115 of the Indian Evidence Act, The aim of the researcher is to analyse and study the implementation and the conditions of the Doctrine of Estoppel which is given under the same. Ever since the principle of estoppel has been expounded and applied in judicial proceedings there has been a conflict of views as to whether estoppel is a rule of evidence or a rule of substantive law. The principle of estoppel is recognized in India as a rule of evidence incorporated under the purview of Section. The rule of estoppel depends for its application on certain of fact. It should, therefore, be specifically, pleaded unless there is no opportunity of doing so, e.g., in cases where there are no pleadings, in which case the party relying on estoppel must raise it by an objection in other form at the earliest possible stage of the proceeding.

As per the principle recognized in The Doctrine of Res Judicata-“Where one person (representor) has made a representation to another person (represented) by acts or by conduct or by silence or by any action, with the intention and with the result of inducing the represent on the faith of such representation to alter his position to his detriment the representor in any litigation which may afterwards take place between him and the represented, is estopped as against the representor making or attempting to establish by evidence any averment substantially at variance with his former representation, if the represented at the proper time and in the proper manner objects thereto.

**KEY WORDS :** Evidence , Estoppel , Res Judicata , Representation , Detriment

## INTRODUCTION

The law for estoppel or the rule of exclusion of certain evidence under certain circumstances, like between tenant and landlord, licensee of person in possession and licensor (s. 116), or as between acceptor and drawer of a bill of exchange, as between Bailee and bailor and licensor and license (s. 117). Estoppel is a procedure of proof.

Section 115 of evidence act reads: “When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing”.<sup>1</sup>

Estoppel is based on the maxim, Allegan’s *contraria non est audients* (a person alleging contradictory facts should not be heard) and is that kind of presumption *juris et de jure*, where the fact presumed is taken to be true, not as against all the world, but as against a particular party, and that only by reason of some act done, it is in truth a kind of *argumentum ad hominin*. Hence it appears that estoppels' must not be understood as synonymous with "conclusive evidences"—the former being conclusions drawn by law against parties from particular facts, while by the latter is meant some piece or mass of evidence, sufficiently strong to generate conviction in the mind of a tribunal, or rendered conclusive on a party, either by common or statute law.<sup>2</sup>

Section 116 reads - Estoppel of tenant; and of licensee of person in possession: No tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

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<sup>1</sup> <http://www.mondaq.com/india/x/262648/landlord+tenant+leases/Doctrine+Of+Estoppel+Overview>

<sup>2</sup> <https://blog.ipleaders.in/overview-n-doctrine-estoppel/>

**OBJECTIVES**

1. To study the real-world implementation of estoppel
2. To know the meaning of representation
3. To analyse the conditions of estoppel
4. To examine the types of estoppel
5. To examine the nature and scope of estoppel in India

**HYPOTHESIS**

**HO:** Estoppel itself does not create cause of action or tittle

**HA:** Estoppel itself is the cause of creation of cause or tittle

**METHODOLOGY:**

The researcher has used descriptive and analytical methodology making the study doctrinal in nature and also the data is collected through mainly secondary sources such as books, articles, books, e- sources. and case laws

**CHAPTER 1****SCOPE OF DOCTRINE OF ESTOPPEL**

Appearing initially as a negative aspect in the field of evidence, the principle has extended its scope.<sup>825</sup> Estoppel by deed can be described as "estoppel by matter in writing" which rests on the principle that written evidence is more conclusive than oral evidence.<sup>826</sup> Estoppel by deed is applicable in the court of law so as to cajole a party from taking an opposite stand. In estoppel by deed, it is the written document that is always given reliance.<sup>3</sup>

As per the principle recognized in The Doctrine of Res Judicata-“Where one person (representor) has made a representation to another person (represented) by acts or by conduct or by silence or by any action, with the intention and with the result of inducing the represent on the faith of such representation to alter his position to his detriment the representor in any litigation which may afterwards take place between him and the represented, is estopped as against the representor making or attempting to establish by evidence any averment

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<sup>3</sup> <http://www.shareyouressays.com/knowledge/doctrine-of-estoppel-under-the-indian-evidence-act-1872/119153>

substantially at variance with his former representation, if the represented at the proper time and in the proper manner objects thereto.”<sup>4</sup>

Ever since the principle of estoppel has been expounded and applied in judicial proceedings there has been a conflict of views as to whether estoppel is a rule of evidence or a rule of substantive law. The principle of estoppel is recognized in India as a rule of evidence incorporated under the purview of Section<sup>5</sup>

115 of The Indian Evidence Act, 1872. The section reads as follows: “When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe such a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.”<sup>6</sup>

In the case of R.S. Madanappa and ors. v.. Chandramma and Anr, the court made the following observation with regards to the principle of estoppel concerning Section 115 of the Indian Evidence Act, 1872-“We doubt whether the court while determining whether the conduct of a particular party amounts to an estoppel, could travel beyond the provisions of Section 115 of the Evidence Act.”

The court denied to accept the contention that the law of estoppel by representation is not confined to the provisions of Section 115 of the Evidence Act.<sup>7</sup>

In a landmark judgement the appellants in this case contended that Sections from 115 to 117 as given in Chapter VIII of the Indian Evidence Act, 1872 lay down the only rules of estoppel which are now implemented under the force of law in the then existing India under the British rule. They further contended that by virtue of Section of the aforementioned Act, all rules and doctrines of the Evidence Law shall be repealed except those that are in the Act itself. The court held the following opinion-

“The Courts here would then be debarred from entertaining any questions in the nature of estoppel which did not come within the scope of Sections 115 to 117, however important those questions might be to the due administration of the law.”<sup>8</sup>

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<sup>4</sup> <https://www.slideshare.net/prince70/doctrine-of-estoppel-e>

<sup>5</sup> <https://www.srdlawnotes.com/2016/04/the-doctrine-of-estoppel-under-indian.html>

<sup>6</sup> <http://manupatra.com/roundup/376/Articles/The%20Doctrine%20of%20Promissory.pdf>

<sup>7</sup> <http://ijldai.thelawbrigade.com/wp-content/uploads/2015/11/YuvrajShhaurya.pdf>

<sup>8</sup> *ibid*

They held that the argument becomes erroneous assumption that all rules of estoppel are also rules of evidence. But still, the Court recognized the principle of estoppel being a part of the Law of Evidence, by stating-

“Where a man has made a representation to another of a particular fact or state of circumstances, and has thereby wilfully induced that other to act upon that representation and to alter his own previous position, he is estopped as against that person from proving that the fact or state of circumstances was not true. In such a case the rule of estoppel becomes so far a rule of evidence, that evidence is not admissible to disprove the fact or state of circumstances which was represented to exist.”<sup>9</sup>

### **NATURE OF ESTOPPEL IN INDIA**

The precise and exact nature of an estoppel has lead different opinions. An estoppel has at least three aspects.

#### **(1) As a Rule of Evidence**

There is high authority for the view that estoppel is only a rule of evidence.<sup>831</sup> Estoppel has some similarity to an irrefutable presumption of law, and has been so treated for one of its effects is to prevent the rebuttal of facts alleged by the other party. But an estoppel has two characteristics of evidence to distinguish it from such a presumption which is a rule of substantive law. An estoppel may be waived by the party who would otherwise benefit by it; and frequently operates only between the parties to an action. <sup>832</sup>

#### **(2) As a Matter of Pleading**

As per the jurist Stephen fitzjames, estoppels belong rather to the law of pleading than to that of evidence. Subject to minor exceptions, a party who proposes to rely on an estoppel must raise this point and state the relevant facts in his pleading. This requirement involves an exception to the rule that evidence should not be pleaded, but it does not show that estoppel is not a rule of evidence. Failure to plead an estoppel may amount to a waiver, and thus may result in making admissible facts which would otherwise be excluded.

#### **(3) As Substantive Law**

The doctrine of estoppel belongs rather to substantive than to adjective law.<sup>834</sup> Yet it has been shown that estoppels are not on the same footing as the rules of Substantive law

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<sup>9</sup> <https://www.investopedia.com/terms/e/estoppel.asp>

embodied in irrefutable presumptions, and estoppels will not generally find a cause of action at common law, for they involve no claim. However, it is said that they may support claims to equitable relief and they may amount to a defense when they prevent a plaintiff proving some facts, essential to his case. Accordingly, estoppels have some characteristics of substantive law.<sup>10</sup>

## **GENERAL CONDITIONS OF ESTOPPEL**

### **1. Estoppels must be reciprocal or mutual**

This statement seems to mean that an estoppel must bind both parties to the litigation.

### **2. Estoppels cannot circumvent the Law**

Hence the contractual incapacity of a minor cannot be evaded by any estoppel against asserting his Infancy, even though he has obtained a loan by a false representation that he was an adult. And a tenant, who fails to raise a defense that his rent is in excess Of the standard rent permitted by statute, is not estopped from making a subsequent application to determine the lawful rent.<sup>11</sup>

### **3. Estoppels must be certain**

The statement that an estoppel must be clear, precise or unambiguous primarily refers to the representation on which an estoppel by conduct may be founded.<sup>840</sup>

### **4. Conflicting Estoppels Cancel each Other**

The classical example is Prof. Coke's statement that "estoppel against estoppel both put the matter at large".<sup>841</sup>

### **4. Fulfilling Doctrine of Estoppel**

The doctrine of promissory estoppel is an equitable doctrine and the petitioners cannot ask the Court to apply the same to compel something which is inequitable, one who seeks equity must do equity. In our society larger public must get precedence over individual interest or interest of comparatively smaller section of society.<sup>12</sup>

Estoppel, except as a bar to testimony, has no operation or efficacy whatsoever. Emphatically it is not a cause of action in itself; nor does it create one, though the application

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<sup>10</sup> <http://netk.net.au/Contract/07Estoppel.asp>

<sup>11</sup> [https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=8455&context=penn\\_law\\_review](https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=8455&context=penn_law_review)

<sup>12</sup> <https://etiennelawyers.com/5-elements-of-promissory-estoppel-in-contract-law-and-legal-agreements/>

of this, as of any other rule of evidence in the course of litigation, may result in a total or partial establishment or disestablishment of the case made by one or other of the parties.

Estoppel merely operates as a bar to the suit; it does not extinguish the right.<sup>844</sup> Estoppel deals with questions of fact and not question of right. In other words, there is no general rule of law that a man is estopped from asserting right which he has said that he will not. Estoppel by representation is one of those rules of evidence which are personal to the parties, and does not belong to that class of rules which relate to titles or rights against the world.

As between the parties to the representation, therefore, rule of estoppel may affect or create substantive rights. It may enable a party as against another party to claim a right of property which in fact he does not possess, and in this sense it may more correctly be viewed as a substantive rule of law.

Third parties are not affected by the rule at all.<sup>847</sup> Waiver, as distinguished from estoppel, is contractual. It is an agreement to release or not to assert a right, and may, therefore, constitute a cause of action.<sup>8</sup> Estoppel is different from contract in its nature and consequences.<sup>13</sup>

## **CHAPTER 2**

### **WHEN ESTOPPEL IS NOT ATTRACTED?**

In case of *S. Sethuraman v. R. Venkataraman*, the appellant initially submitted himself to the jurisdiction of the Joint Director of School Education (appellate authority) regarding his promotion, but later on challenged the decision of the appellate authority. In these circumstances, the Supreme Court held that the appellant could not be estopped.<sup>14</sup>

#### **No Estoppel in Criminal Cases:**

Estoppel is a rule of civil actions. It has no application to criminal proceedings, though in such proceedings matters

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<sup>13</sup> <https://study.com/academy/lesson/doctrine-of-promissory-estoppel-definition-examples-elements.html>

<sup>14</sup> <http://www.legalservicesindia.com/article/88/Agency-By-Estoppel.html>

which in civil actions create an estoppel are usually so cogent that it would be almost useless to setup a different story. A petition was filed for quashing the proceedings under sections 498A and 304b of IPC and under the Dowry Prohibition Act because of an agreement between the parties. The petition was dismissed as the party to the agreement was not bound by an unlawful compromise and hence there was no question of estoppel either.<sup>15</sup>

### **Estoppel should be pleaded: Onus of proving the Plea**

The rule of estoppel depends for its application on certain of fact.<sup>853</sup> It should, therefore, be specifically, pleaded unless there is no opportunity of doing so, e.g., in cases where there are no pleadings, in which case the party relying on estoppel must raise it by an objection in other form at the earliest possible stage of the proceeding.

Where estoppel is not specifically pleaded, a party will not have permitted to rely it at a subsequent stage. A person's entitled to plead estoppel in his own individual character and not as a representative of his assignees.<sup>16</sup>

### **KINDS OF ESTOPPEL**

Spencer Bower and Turner have classified estoppels into three kinds:

- (i) estoppel by matter of record;
- (ii) estoppel by matter in writing; and
- (iii) estoppel by matter in pais.<sup>858</sup>

The first two are sometimes referred to as technical estoppels as distinguished from acquirable estoppels estoppel in apical these kinds have been discussed under Indian law in various cases

#### **I. Estoppel by Matter of Record or Estoppel by Res Judicata**

Estoppel by record means nothing more generally than that the matter is res Judicata.<sup>861</sup> It belongs more properly

<sup>15</sup> <http://docs.manupatra.in/newslines/articles/Upload/123E249D-6C00-493A-80EF-7A6E4EEA43E5.pdf>

<sup>16</sup> <https://www.slideshare.net/satyavrat1994/indian-contract-act-1872-minors-agreement>



to the province of the pure procedure and is so dealt with in the Indian legislation.<sup>862</sup> Res judicata is an estoppel by judgment. It embraces all those rules, the common characteristic of which is that final judicial decision of tribunal of competent jurisdiction, once pronounced between parties litigant, cannot be contradicted by anyone, as against any other of such parties, in any subsequent litigation between the same parties respecting the same subject-matter.

There is a difference in the principles upon which the doctrines of res judicata and estoppel by representation are based. Res judicata in this country is founded on the principle that there should be an end to litigation as to any issue between the parties when once that issue has been directly determined between them by a Court of competent jurisdiction, and it affects not only the original parties but all others afterwards claiming under them and litigating under the same title. It bars fresh litigation at the outset. Estoppel by representation is a rule of evidence based on the principle that a man, who by his acts or statements has induced another to believe a thing to be true, shouldn't afterwards be heard to deny the truth of that thing to the prejudice of the other who acted upon the belief induced. Res judicata ousts the jurisdiction of the Court, while estoppel merely shuts the mouth of a party.

Estoppel does not force and effect of judgment depend on (1) nature of proceedings (2) forum on which it was pronounced mean anything more than that a person shall not be allowed to say one thing at one time and the opposite of it at another time while res judicata means nothing more than that a person shall not be heard to say the same thing twice over. Estoppel by res judicata extends also to matters of admission fundamental to the decision. A judgment by consent or default is as effective an estoppel between the parties as a judgment whereby the Court exercises its mind on a contested case.

## **II. Estoppel by deed**

The rule of estoppel binds the parties to the instrument and those claiming through them by deed. An estoppel by deed is a preclusion against the competent parties to a valid sealed contract and their privies, to deny its force and effect by any evidence of inferior solemnity.<sup>868</sup> The tendency in modern times is, to treat estoppel by deed as resting upon contract and as merely a form of estoppel by representation.<sup>869</sup> The doctrine of estoppel by deed in its technical sense cannot be said to exist in India.<sup>870</sup> In Indian law, a representation contained in a document of

however formal a character, being merely an admission, is not conclusive, and does not operate as an estoppel, unless the party to whom the representation was made has acted upon it and thus altered his position. representation contained in a formal deed is not clothed with any special sanctity in this country, except that in certain cases it excludes oral evidence to the contrary.<sup>872</sup>

### III. Estoppel by Matters in pais

"Estoppel by matters in pais" (also, pais) is defined by Blackstone as an "assurance transacted between two or more private persons in pais, in the country, that, is, upon the very spot to be transferred". Estoppel in pais is said to arise, firstly, from agreement or contract; secondly independently of contract, from act or conduct of misrepresentation which has a change of position in accordance with the real or apparent intentions of the party against whom the estoppel is alleged.<sup>874</sup> The Act deals with the subject of in pais in sections

115-117. The rules contained in sections 116 and 117 are instances of the estoppel by contract. Other cases which have been included under that designation will be found to fall within the purview of section 115, which, however, primarily appears to refer to what is known as estoppel by representation.<sup>17</sup>

### IV. EQUITABLE ESTOPPEL

The modern law of estoppel owes immensely to the doctrine of equity being founded on the incidents of contractor relations analogous to contracts coupled with the representations of parties by a declaration, act, or omission. Estoppels that are not provided by statute law may, in this country, be termed equitable estoppels.

A man may be estopped not only from giving particular evidence, but from doing acts, or relying upon any particular arguments or contention which the rules of equity conscience prevent his using as against his opponent.

This doctrine also applies to a case where a person is given an unequivocal assurance and on the faith whereof, he acts detrimental to his interest and he then suffers an irretrievable injury in that pursuit. In such a case having made a promise, the maker thereof is precluded to resile therefrom.

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<sup>17</sup> <https://www.legalbites.in/promissory-estoppel/>

However it has been held that section 115 is not exhaustive and there may be rules of estoppel which may be applicable in India other than what is contained in that section.<sup>878</sup>

## V. PROPRIETARY ESTOPPEL

A legal precedent that will prevent a party from denying the right that another party has in the first party's property. The second party will have had costs in relation to the first party's property. Until 1986 the doctrine of proprietary estoppel was used as a way to bar litigants from asserting their strict proprietary rights. The doctrine had not been used to give effect to promises to leave property to someone in the future.

It has developed into one of equity's sharpest instruments in its intervention in the common law and statutory regulation of land and the distribution of assets on death.<sup>880</sup> In such a manner, there is a balance to be struck between the need to hold people for their bargains and promises.<sup>18</sup>

In the case of *Cobbe v Yeoman's Row Management*, the essentials of proprietary estoppels were taken into consideration. The House of Lords in this case stated that Cobbe cannot make a claim of proprietary estoppel, and also negated on the aspect of acquiring an interest as regards to a constructive trust.

## VI. PROMISSORY ESTOPPEL

The legal enforcement of a promise. Made by words or conduct to the promisee without the consideration of the detriment it may cause.

The doctrine of promissory estoppel does not fall within the scope of section 115 as the section talks about representations made as to existing facts whereas promissory estoppel deals with future promises.<sup>19</sup>

## ESTOPPEL AND RES JUDICATA

Sometimes, the doctrine of "res judicata" is considered as a branch of law of estoppel. There is distinction between doctrine of "res judicata" principle of 'issue estoppel' and 'rule estoppel' under section 115 Of the Evidence Act. Doctrine Of res judicata creates legal embargo on hands of the court to a judicial determination of deciding the same question over

<sup>18</sup> <http://www.klelawcollege.org/kle/wp-content/uploads/2017/10/5.Capacity-of-Parties.pdf>

<sup>19</sup> <http://www.lawyersjurists.com/article/doctrine-estoppel-applicability-judicial-system-bangladesh/>

again even though earlier determination may be demonstrated erroneous. When the proceedings between the same parties have attained finality, they are bound by the judgment and cannot be permitted to re-agitate the same *lis*. The determination of the issue in the same set of facts in the previous between the parties would give rise to an issue of estoppel. It operates in any subsequent proceedings between the same parties.

The doctrine of *res judicata* is based on rule of procedure. However, doctrine of mere estoppel under section 115 Of the Evidence Act, there is embargo on the party to plead or prove a particular facts whereas in case of *res judicata*, the prohibition is operative against the court to deal with the same kind of issue again and again.

### **ESTOPPEL AND ADMISSION**

Though in both admissions and estoppels there are statements, an admission does not ripen into an estoppel unless the person to whom the representation is made believes it and acts upon such belief, whereas in the case of mere admission evidence can be given to show that the admission was wrongly made. Admission made in earlier suit as to the nature of property if proved valid in subsequent proceedings are binding as estoppel.<sup>20</sup>

### **CONCLUSION**

Estoppel has been defined in a general way as the "preclusion of a person to assert a fact which has been admitted or determined under circumstances of solemnity, such as by matter of record or by deed, or which he has, by an act in pais, induced another to believe and act upon to his prejudice." As appears from this definition, estoppel share of three general classes: (1) estoppels by record; (2) estoppels by deed; (3) estoppels in pais, or, as they are sometimes called, equitable estoppel. The latter, and, indeed, all of these are sometimes treated under the head of conclusive admissions. Estoppel of the first and second classes have been sufficiently treated elsewhere, and this chapter will be confined to the subject of estoppel in pais.

Estoppels have also been likened to solemn admissions and conclusive evidence. Formal admissions, conclusive evidence and estoppels have the common feature of affecting the admissibility, of evidence. In English law, estoppel by representation of fact is a term

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<sup>20</sup> [http://www.indialawjournal.org/archives/volume5/issue\\_2/article\\_2.html](http://www.indialawjournal.org/archives/volume5/issue_2/article_2.html)

coined by Spencer Bower. The law relating to estoppel, as stated above, appears to be too widely stated in the following observation of the Supreme Court of India: "It is doubted whether the Court while determining whether the conduct of a particular person amounts to an 'estoppel', could travel beyond the provisions of s. 115 of The Indian Evidence Act and rely upon what is sometimes called 'equitable estoppel'. But assuming that the law as stated by the Calcutta High Court, is correct, the point to be noted is that it was a case between private parties."

This species of estoppel is also referred to as "common law estoppel by representation" in Halsbury's Laws of England, vol 16(2), 2003 reissue.

A representation can be made by words or conduct. Although the representation must be clear and unambiguous, a representation can be inferred from silence where there is a duty to speak or from negligence where a duty of care has arisen. Under English law, estoppel by representation of fact usually acts as a defense, though it may act in support of a cause of action or counterclaim.

Estoppel was once regarded as a rule or branch of the law of evidence, but the better opinion, and that which now prevails, is that it is more properly a branch of the substantive law.<sup>898</sup> Although in some respects it might be regarded as within the field of procedure. In any event, however, it is customary to treat the subject to some extent works on evidence, and it is clearly within the scope of our plan to treat it so far as questions of evidence are concerned when estoppel is involved as a particular issue in a case.

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