



The Doctrine of Estoppel and Its Exceptions under the Bharatiya Sakshya Adhiniyam 2023: Continuity, Change and Critical Reflections

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Received 30 July 2026; Accepted 01 September 2026; Published 05 September 2026

The doctrine of estoppel prevents a person from denying a representation of fact that he has intentionally caused another to believe and act upon. Codified in Sections 121 to 123 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA), the principle largely continues the scheme of the repealed Indian Evidence Act, 1872 while introducing a significant temporal expansion in the tenant-estoppel rule. This long article undertakes a comprehensive examination of the conceptual foundations of estoppel in English and Indian law, the precise statutory language and policy of the new Code, the eight essential ingredients crystallised by the Supreme Court, the operation of the special estoppels applicable to tenants, licensees, bailees and acceptors of bills of exchange, and the principal exceptions recognised in Indian jurisprudence. Particular attention is devoted to the distinction between statutory estoppel by representation and the equitable doctrines of promissory and proprietary estoppel, the interaction of estoppel with public policy, statutory rights and governmental action, and the continuing relevance of pre-BSA authority. The article argues that while the BSA preserves valuable doctrinal continuity and usefully strengthens the position of landlords, the continued absence of an express statutory recognition of promissory estoppel leaves an important gap that Indian courts have been compelled to fill through judicial creativity. The paper concludes with concrete suggestions for legislative clarification, for a disciplined application of the statutory ingredients, and for the adaptation of the doctrine to contemporary commercial and digital contexts.

Keywords: *estoppel, section 121, section 122, tenant estoppel.*

INTRODUCTION

Estoppel is a principle of justice and of good faith. It prevents a person from asserting a fact or a right that is inconsistent with a representation which he has intentionally made and upon which another has acted to his detriment. Black's Law Dictionary defines estoppel as a bar raised by the law which precludes a person from alleging or denying a certain fact or state of facts in consequence of his previous allegation, denial, conduct or admission.¹ The underlying maxim is 'allegans contraria non est audiendus' – he who alleges contradictory facts ought not to be heard. The doctrine protects the integrity of transactions, discourages opportunistic behaviour, and promotes reliance upon the representations of others.

In India, the doctrine was first given statutory form in Sections 115 to 117 of the Indian Evidence Act, 1872. The Bharatiya Sakshya Adhiniyam, 2023 has retained the substance of those provisions, renumbering them as Sections 121 to 123 and placing them in a dedicated Chapter VIII on Estoppel.²³ The most notable textual change is the extension of the tenant-estoppel rule in Section 122 so that a tenant (or person claiming through him) remains barred from disputing the landlord's title even after the tenancy has come to an end. This article examines the doctrine in its full statutory and judicial context, analyses the exceptions that qualify its operation, evaluates the treatment of promissory and proprietary estoppel, and assesses whether the new Code has adequately addressed the limitations of the earlier law.

The discussion proceeds in nine parts. Part II traces the conceptual foundations of estoppel in English and Indian law and distinguishes it from related doctrines. Part III analyses the statutory scheme of Sections 121–123 in detail. Part IV examines the essential ingredients of the general rule as articulated by the Supreme Court. Part V considers the special estoppels created by Sections 122 and 123. Part VI surveys the principal exceptions and limitations. Part VII explores the equitable overlay of promissory and proprietary estoppel. Part VIII offers a critical evaluation of the BSA framework. Part IX concludes with suggestions for reform and future development.

¹ *Black's Law Dictionary* (11th edn, Thomson Reuters 2019)

² Bharatiya Sakshya Adhiniyam 2023, ss 121, 122 and 123

³ Indian Evidence Act 1872, ss 115, 116 and 117

CONCEPTUAL FOUNDATIONS OF ESTOPPEL

Estoppel is best understood as a rule of preclusion rather than as a pure rule of evidence or a free-standing cause of action. It disables a party from asserting a particular fact or claim because of his own prior representation or conduct. The classic English cases of *Pickard v Sears* and *Freeman v Cooke* established that a person who, by words or conduct, induces another to believe a certain state of facts and to act upon that belief cannot afterwards be permitted to deny the truth of that state of facts.⁴ The principle was later refined and expanded through a long line of authorities that emphasised the elements of representation, intention (or at least reasonable expectation of reliance), actual reliance, and detriment.

Spencer Bower and Turner classified estoppel into three traditional categories: estoppel by record (*res judicata*), estoppel by deed, and estoppel in pais (by representation or conduct).⁵ Indian law has absorbed these categories with important modifications. Estoppel by record is treated primarily as a rule of procedure under Sections 11–14 of the Code of Civil Procedure and operates to extinguish the jurisdiction of the court over a matter already finally decided between the same parties. Estoppel by deed has never been accepted in its rigid English form; a representation contained in a formal instrument gives rise to estoppel only if the other party has altered his position in reliance upon it. Estoppel in pais, or by representation of existing fact, is the category that finds statutory expression in Section 121 of the BSA and is the principal focus of this article.

It is essential to distinguish estoppel from related doctrines. Waiver is a voluntary and intentional relinquishment of a known right and may itself found a cause of action; estoppel is generally defensive in character.⁶ *Res judicata* extinguishes the jurisdiction of the court over a matter already finally decided; estoppel merely prevents a party from asserting a particular fact or claim. Presumption is a rule of inference drawn from proved facts and operates independently of the conduct of any particular party; estoppel is a personal disability imposed because of the party's own conduct. These distinctions, though occasionally blurred in practice, remain doctrinally important and help to keep the boundaries of estoppel within manageable limits.

⁴ *Pickard v Sears* [1837] 6 Ad & El 469; *Freeman v Cooke* [1848] 2 Ex 654

⁵ Spencer Bower, *The law relating to estoppel by representation* (Gale, Making of Modern Law 2010)

⁶ *Dawsons Bank Ltd v Nippon Menkwa Kabushiki Kaisha* (1935) 37 Bom LR 544

THE STATUTORY SCHEME UNDER THE BHARATIYA SAKSHYA ADHINIYAM, 2023

Section 121 – The General Rule of Estoppel: Section 121 of the BSA provides: “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.”⁷ The language is virtually identical to the former Section 115 of the Indian Evidence Act. The illustration that accompanies the section—the classic case of a person who induces another to purchase land by falsely representing title and later seeks to set aside the sale—continues to guide interpretation and remains a useful teaching example of the doctrine’s operation.

The provision is confined to representations of existing fact. A mere statement of intention or a promise as to future conduct does not, by itself, attract Section 121. This limitation is deliberate and has led Indian courts to develop the equitable doctrine of promissory estoppel outside the strict statutory text. The distinction between a representation of existing fact and a promise of future conduct remains one of the most important fault lines in the modern law of estoppel.

Section 122 – Estoppel of Tenant and Licensee: Section 122 states that no tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy or any time thereafter, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property. The same rule applies to a person who came upon immovable property by the licence of the person in possession.⁸ The critical addition of the words ‘or at any time thereafter’ expands the temporal reach of the bar beyond the period of the tenancy itself. Under the old Section 116, a tenant could, after the tenancy ended, sometimes attempt to challenge the landlord’s title; the new language closes that avenue and strengthens the protection available to landlords and licensors.

The policy justification for this special estoppel is clear. A person who has obtained possession of property under a particular title ought not to be permitted to dispute that title

⁷ Bharatiya Sakshya Adhiniyam 2023, s 121

⁸ Bharatiya Sakshya Adhiniyam 2023, s 122

while continuing to enjoy, or after having enjoyed, the benefits of possession. The rule promotes stability of land transactions and prevents tenants from using the very possession granted to them as a platform for attacking the grantor's title. The extension of the bar beyond the currency of the tenancy is a logical and welcome clarification.

Section 123 – Estoppel of Acceptor, Bailee and Licensee: Section 123 provides that no acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw or endorse the bill, and that no bailee or licensee shall be permitted to deny that the bailor or licensor had, at the time the bailment or licence commenced, authority to make the bailment or grant the licence.⁹ Two explanations preserve limited defences. Explanation 1 allows the acceptor to deny that the bill was in fact drawn by the person by whom it purports to have been drawn. Explanation 2 permits a bailee who has delivered the goods to a third person to prove that such person had a right to them as against the bailor. These qualifications prevent the statutory estoppel from producing unjust results in specific commercial situations and demonstrate a careful legislative calibration of the doctrine.

ESSENTIAL INGREDIENTS OF ESTOPPEL UNDER SECTION 121

The Supreme Court in *Chhaganlal Keshavlal Mehta v Haribhai Lallubhai Patel* crystallised the requirements that must be satisfied before the general rule of estoppel can be invoked.¹⁰ Although decided under the old Section 115, the decision remains the leading authority for the interpretation of Section 121 of the BSA. The Court identified eight essential conditions that continue to structure judicial analysis:

- (i) There must be a representation by a person or his authorised agent. The representation may take the form of a declaration, an act, or an omission. Silence may amount to a representation where there is a duty to speak.
- (ii) The representation must relate to an existing fact and not to a mere promise or statement of future intention. This limitation is fundamental and explains why promissory estoppel has developed as a separate equitable doctrine outside the strict text of Section 121.

⁹ Bharatiya Sakshya Adhiniyam 2023, s 123

¹⁰ *Chhaganlal Keshavlal Mehta v Patel Narandas Haribhai* (1982) 1 SCC 223

(iii) The representation must have been intended to be acted upon by the person to whom it was made, or at least made under such circumstances that a reasonable person would expect it to be acted upon.

(iv) The person to whom the representation was made must have believed it to be true.

(v) That person must have acted upon the representation and thereby altered his position. Mere belief without corresponding action is insufficient to found an estoppel.

(vi) The alteration of position must have been caused by the representation; a clear causal link is essential.

(vii) The party claiming the benefit of estoppel must have been ignorant of the true state of affairs. Knowledge of the truth destroys the foundation of reliance and prevents the doctrine from operating.

(viii) The doctrine operates only between the parties to the representation or their privies or representatives. It does not bind strangers to the representation.

In *R S Madanappa v Chandramma*, the Supreme Court further emphasised that courts should not travel beyond the statutory requirements of the provision when determining whether an estoppel has arisen.¹¹ The decision underscores the need for a disciplined, text-based approach rather than an expansive, free-floating equitable discretion in the application of Section 121. Subsequent decisions have largely adhered to this framework, requiring proof of each of the ingredients before the bar is allowed to operate.

SPECIAL ESTOPPELS UNDER SECTIONS 122 AND 123

Sections 122 and 123 create statutory estoppels that operate with fewer of the formal requirements demanded by Section 121. Once the relationship of landlord and tenant, or bailor and bailee, is established, the bar arises almost automatically. The policy justification is straightforward: a person who has obtained possession of property under a particular title ought not to be permitted to dispute that title while continuing to enjoy the benefits of possession. The same logic underpins the rule applicable to acceptors of bills of exchange.

¹¹ *R S Madanappa & Ors v Chandramma & Anr* (1965) SCR (3) 283

These provisions reflect a legislative judgment that certain commercial and proprietary relationships require a heightened degree of finality and reliability.

The expansion of Section 122 is particularly noteworthy. By extending the bar beyond the currency of the tenancy, the legislature has removed a potential source of uncertainty and litigation. A former tenant can no longer, after surrendering possession, turn around and challenge the title that formed the very basis of the tenancy. This change is consistent with the broader policy of the BSA to promote clarity and reduce technical disputes.

EXCEPTIONS AND LIMITATIONS TO THE DOCTRINE OF ESTOPPEL

No Estoppel Against Statute or Public Policy: It is a settled principle that there can be no estoppel against a statute. A party cannot be prevented from asserting a statutory right or from challenging an arrangement that is prohibited by law. Estoppel cannot be invoked to validate an illegal contract or to defeat a mandatory legislative provision. This limitation preserves the supremacy of legislation and prevents private arrangements from undermining public policy. Courts have applied this principle rigorously in a variety of contexts, including rent-control legislation, land-reform statutes, and regulatory schemes.

Fraud, Misrepresentation and Knowledge of the True Facts: If the representation itself was induced by fraud, or if the party seeking to rely on estoppel was aware of the true state of affairs, the doctrine does not apply. Knowledge of the truth negates the element of detrimental reliance that is central to estoppel. Courts have consistently refused to allow a party who knew the real facts to claim the benefit of a representation that he never genuinely believed. This exception protects the integrity of the doctrine and prevents its misuse by sophisticated litigants.

Criminal Proceedings: Estoppel is essentially a rule of civil litigation. It has no direct application in criminal trials. The Supreme Court has held that the doctrine of issue estoppel does not preclude the prosecution from leading evidence against an accused in a subsequent trial for a different offence. While the same factual matrix may sometimes make a contradictory defence practically untenable, the formal bar of estoppel does not operate in the criminal sphere. This limitation reflects the distinct policies and burdens of proof that govern criminal justice.

Necessity of Pleading and Procedural Requirements: Estoppel must be specifically pleaded. A party who fails to raise the plea at the appropriate stage of the proceedings may be precluded from relying upon it later. This procedural requirement ensures that the opposite party has a fair opportunity to meet the allegation of representation and reliance, and that the court is not taken by surprise. Indian courts have insisted on proper pleading even while recognising that the precise form of the plea may vary according to the nature of the proceedings.

Sovereign and Governmental Functions: While the State can be bound by estoppel in ordinary commercial dealings, courts have been cautious in applying the doctrine to pure sovereign or legislative functions. The leading cases on promissory estoppel against the Government illustrate both the reach and the limits of the principle in the public-law sphere.¹² The Supreme Court has recognised that the Government may be estopped from resiling from a clear representation that has induced detrimental reliance, yet it has also insisted that estoppel cannot fetter the exercise of legislative or essential sovereign powers. The resulting jurisprudence seeks a balance between the protection of legitimate expectations and the need for governmental flexibility in the public interest.

PROMISSORY ESTOPPEL AND PROPRIETARY ESTOPPEL: THE EQUITABLE OVERLAY

Section 121 is confined to representations of existing fact. Promises as to future conduct fall outside its scope. Indian courts have therefore developed the doctrine of promissory estoppel as an equitable principle that prevents a party from resiling from a clear and unambiguous promise that has induced detrimental reliance.¹³ The doctrine has been particularly influential in the field of governmental promises and administrative assurances. In *Motilal Padampat Sugar Mills*, the Supreme Court held that the Government could be bound by a promise of tax exemption that had induced the establishment of an industry. Subsequent decisions have refined the conditions under which promissory estoppel will operate against the State, emphasising the need for a clear representation, reasonable reliance, and detriment, while recognising limited public-interest exceptions.

¹² *M/S Motilal Padampat Sugar Mills Co Ltd v State of Uttar Pradesh & Ors* (1979) 2 SCC 409

¹³ *Central London Property Trust Ltd v High Trees House Ltd* [1947] KB 130

Proprietary estoppel, developed more fully in English equity, arises where one party has been encouraged to believe that he will acquire an interest in land and has acted to his detriment on that belief.¹⁴ Although less frequently invoked by name in Indian decisions, similar reasoning appears in cases involving long possession, improvements made on the faith of an expected interest, and informal family arrangements concerning property. The English authorities, including *Crabb v Arun District Council*, *Thorner v Major* and *Cobbe v Yeoman's Row*, continue to provide useful comparative guidance, even while Indian courts adapt the principles to local conditions and statutory frameworks.

The continued vitality of these equitable doctrines outside the text of the BSA demonstrates both the limits of statutory codification and the capacity of Indian courts to adapt equitable principles to contemporary needs. At the same time, the absence of an express statutory provision on promissory estoppel creates a degree of uncertainty that could usefully be addressed by legislative clarification. A carefully drafted provision recognising promissory estoppel, while preserving the requirement of consideration in ordinary contractual settings and the special position of the State, would enhance doctrinal coherence without sacrificing flexibility.

CRITICAL EVALUATION OF THE BSA FRAMEWORK

The decision of the legislature to retain the classic formulation of estoppel in the BSA is both a strength and a limitation. Continuity of doctrine provides certainty and allows the large body of existing case law to remain relevant. Practitioners and courts can continue to rely on the well-established ingredients articulated in *Chhaganlal Mehta* and subsequent decisions. The modest but significant expansion of Section 122 is a welcome clarification that closes a long-standing loophole in the protection of landlords and promotes greater stability in land transactions.

Yet the failure to codify promissory estoppel leaves an important equitable principle outside the statute book. Indian courts have developed promissory estoppel into a robust doctrine, especially in the field of administrative law and government contracts. Its precise relationship with Section 121 remains unsettled, and the boundary between a representation

¹⁴ *Crabb v Arun District Council* [1976] Ch 179; *Thorner v Major & Ors* [2009] UKHL 18; *Cobbe v Yeoman's Row Management Ltd* [2008] UKHL 55

of existing fact and a promise of future conduct continues to generate litigation. A statutory recognition of the doctrine, carefully confined so as not to undermine the requirement of consideration in contract law or to fetter essential governmental functions, would enhance clarity and reduce the need for case-by-case judicial innovation.

A further area of concern is the application of estoppel to modern forms of communication. Electronic messages, digital platforms, automated systems and algorithmic representations generate statements that may not fit neatly within the traditional categories of 'declaration, act or omission.' Courts will need to develop nuanced approaches to intention, reliance and alteration of position in these new contexts. The BSA itself offers little guidance on these emerging issues, leaving the development of principle largely to judicial creativity.

Overall, the BSA maintains a pragmatic balance. It preserves the core protective function of estoppel while leaving room for judicial discretion through the recognised exceptions. The real test of the new provisions will lie in their application to novel commercial, technological and administrative situations that the framers of the 1872 Act could not have anticipated. The success of the doctrine in the coming decades will depend on the willingness of courts to apply the statutory ingredients with discipline while remaining sensitive to the demands of justice in a rapidly changing legal and commercial environment.

CONCLUSION AND SUGGESTIONS

The doctrine of estoppel under Sections 121 to 123 of the Bharatiya Sakshya Adhiniyam, 2023 continues to serve as an important safeguard against inconsistent and opportunistic conduct. The general rule in Section 121, reinforced by the special estoppels in Sections 122 and 123, promotes reliability in legal and commercial relations. The judicially crafted exceptions ensure that the doctrine does not become an instrument of injustice. The expansion of the temporal reach of tenant-estoppel is a useful improvement upon the earlier law and reflects a legislative concern for greater certainty in property relationships.

The following suggestions are offered for the further development of the law:

- The legislature should consider inserting an express provision recognising promissory estoppel, at least in the context of governmental and administrative representations,

so that the doctrine rests on a clearer statutory foundation while preserving necessary public-interest exceptions.

- Courts should continue to apply the ingredients of Section 121 strictly, particularly the requirements of intentional representation and detrimental reliance, so that the doctrine is not diluted into a vague equitable discretion.
- Greater attention should be paid to the interaction between estoppel and modern forms of communication, including electronic messages, digital platforms and automated systems, where the traditional notions of representation and reliance may require refined analysis.
- Training programmes for judicial officers and legal practitioners on the nuanced application of estoppel would help reduce inconsistent outcomes and promote a more uniform understanding of the doctrine across different jurisdictions.

In the final analysis, estoppel remains a living doctrine. Its continued vitality depends on the ability of courts and the legislature to apply and refine it with both firmness and sensitivity to the demands of justice in a rapidly changing legal and commercial environment. The BSA provides a solid foundation; the task of the coming years is to build upon that foundation with clarity, consistency and a continuing commitment to fairness.