

Review of Doctrine of Estoppel as Substantive Rule of Law and Its Application in Civil and Criminal Law

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Abstract

This article will focus on some of the basic practical uses of “Estoppel Doctrine” not as a mere rule of evidence but a substantive nature. Due to its strong legal background, it has acquired the status of “Substantive Rule of Law.” This enlarges the ambit of its application into civil and criminal cases. This article will focus on applying the Estoppel Doctrine in criminal and civil cases followed by basic legal justifications, opinion juristic and case laws. Many research papers have studied the history of Estoppel and its application and the existing conditions and legal discussions about it. The legal debate of dividing basic legal principles categorically and logically witnesses its emergence after the innovation of modern jurisprudence. The debate of declaring “Doctrine of Estoppel” as a mere “Rule of Evidence” or “Rule of Substantial Law” was one of those innovations. We also recommend more application of this doctrine in criminal and civil cases in order to achieve the best out of it.

Keywords: Estoppel, The substantive rule of law, Application, Civil law, Criminal law

The Old Myth regarding “Estoppel Doctrine

In past, it was an old presumption that Estoppel is a mere “Rule of Evidence”(Stephan.12th Edition) but wasn’t supported by any strong legal argument, and this myth was as it is presented by some of the commentators (Jurists) like Stephan and Taylor. Later, with the emergence of innovations and deliberations, almost every authentic commentator¹ and Jurist regarded “Estoppel Doctrine” as a

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“General Rule”, “Rule of Law” instead of a mere “Rule of Evidence” thereof. The abovementioned argument is supported by these lines of famous Jurist Lord Wright “the entire concept of Estoppel is a rule of Substantive Law” (AC. 1947).

However, why is there such a need for such a debate about the nature of Estoppel? After all, a "Rule of Evidence" or "Substantive law" is a "Rule of Law." Because the issue is only one of legal semantics, the debate and myth dispelling are not without merit. Because evidence law has incorporated its body from constitutional doctrines (Ganguli, 2020), declaring and restricting it to a mere rule of evidence will result in a clear breach and transgression of fundamental constitutional doctrines and the constitution itself (AIR 1938).

Estoppel as a “Rule of Evidence” OR “Substantive Rule”

Let us examine the estoppel doctrine as a mere rule of evidence. If we apply the aforementioned rule in a constrained environment, it would only allow a party in a litigious action before a court of law to invoke the doctrine against his opponent, preventing him from questioning and contradicting a stand previously taken by him in the course of their dealings and which led to a relationship between them, as per the provision of Qanoon-e-Shahadat 1984(Art 114 QSO).

Notwithstanding article 114 of QSO 1984, the doctrine of Estoppel can't be declared as a mere rule of evidence because declaring it will result in a contradiction, a desuetude with other provisions of QSO 1984 itself, because there are other provisions enabling estoppel in respect of their course and application, including the whole “Chapter on Relevancy” viz Admissions, Confessions, (Art 45 QSO).Examinations to that here in before contradiction doesn't even prevent a party from a representation made earlier but could result in a Cause of Action arising, determination and Conviction or Acquittal. Thus, Estoppel acts as a basic doctrine too in adjudication and trial, regarding it as a mere rule of evidence is none other than a wrong factious myth (Munir, 2016).

Difference between “Rule of Evidence and Substantive Rule”

- Rule of Evidence only applies in evidence procedure while Substantive rule itself creates a cause of action (Singh, 2020).
- Rule of Evidence applies to past and present facts while Substantive rule has its wider application like past, present and future (Karim, 2010).
- Rule of Evidence is only restricted to those persons in previous relationships while Substantive rule is independent of it (Ganglia, 1999).

Thus, the doctrine of Estoppel is a general principle of law which can't be confined to a sense of mere rule of evidence but is much wider than that (Lloyd's Law Reports 36).

The Application of Estoppel in Criminal Law

Previously, the commentators suggested that the Doctrine of Estoppel as enumerated in the Evidence Act and Qanoon-e-Shahadat can't be applied upon criminal law. However, it was widely criticized, and the above idea was nullified because it doesn't possess any applicability feature. The old belief that Estoppel has no application in criminal law is analogous to the debate over whether it is a rule of evidence or general law. According to "General Principles of Law," the Doctrine of Estoppel is also applicable in criminal cases because Estoppel is a constitutional doctrine rather than a mere rule of evidence (AIR, 1958). As a result, it can be concluded that, as a common standard of law, Estoppel is also valid in criminal cases due to the "Social Justice and Justice on Merit Doctrine" as incorporated in Pakistan's constitution in 1973.

Estoppel in Criminal Cases (Constitutional & Equity Rooting)

The application of Estoppel in criminal cases is backed by constitutional doctrines that are well interpreted and widely recognized by educated legal systems of the world. In Pakistan herein, we have same incorporated fundamental doctrines in our constitution. A constitution is like an atom from where all laws derive their souls (Mahajan 2021). Similarly, Estoppel is a result of Equity and Good Conscience, and it is intended to secure justice between the parties by encouraging honesty and good faith. The goal is to prevent fraud and obvious injustice.

Aforesaid Doctrines are witnessed as follows:

The Doctrine of Due Process

It is an important component of justice in all civil and criminal cases, particularly in the courts. To avoid unfair or uneven treatment, each individual must follow all legal measures set by statute and court practice, containing notice of rights. While the phrase is rather unclear, it can be characterized by its objective of safeguarding both private and public rights from unfairness. The right to a fair trial is established in the United Nations Charter.

- Fifth Amendment to the United States

- Constitution Article 6 of the English Legal System
- Article 4 and 10A of the Constitution of the Islamic Republic of Pakistan.
- Article 21 of the Indian Constitution

It provides that no person shall be deprived of life, property, or liberty without due legal process. Many legal decisions determining procedural and substantive rights in civil and criminal matters flow from this fundamental principle (CLC, 2013).

The Doctrine of Social Justice

Social justice is a philosophical and political theory that states that the idea of justice has components that go beyond those restricted in civil and criminal law, economic demand and supply, or traditional ethical contexts. More than individual behavior or individual justice, social justice is concerned with just connections between groups within society. Nearly all legal systems across the world have adopted this principle or philosophy. In Indo-Pak, it's as follows:

- “To eradicate social evils and to promote social justice. Article 37 of the Islamic Republic of Pakistan's Constitution
- “State to secure a social order to promote the welfare of the people.” Article 38 of the Indian Constitution

Doctrine of Peripheral Rights

According to this doctrine, all rights including civil and criminal trial, which are auxiliaries of fundamental rights as embodied in the constitution, shall be considered fundamental rights, and though are not expressed in the constitution but, the violation would cause a detriment to respondent therein. Thus, the right of Estoppel is an auxiliary of self-incrimination law too, which will result in a fundamental right of any single national of our country.

Analysis of Estoppel Provision in QSO 1984

According to the context of Article 114 Qanoon Shahadat Ordinance, it reads as follows: “114. Estoppel: 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” (Art 11. QSO).

Words like “act, omission, intentionally, belief, etc.” are also defined under the definition clauses of Pakistan Penal Code 1860. Thereby, it is not expressly mentioned anywhere that Estoppel could not be used in criminal law, and the same presumption has been put on by various eminent writers of Pakistan and India like M. Mahmood, Dr. Avatar Singh, and Ratanlal Dhirajlal in their workings.

Hereby, an Estoppel is a general principle of law protected by solid constitutional background of any legal system of this world. This principle is not just limited to the text of Article 114-116 of QSO 1984 but is dependent on various provisions of the constitution, the civil procedure code, the criminal procedure code and the law of evidence itself. The nature of aforesaid doctrine is “Rider” one; by rider, it shows dependency on its relative statutes. Thereby, there is no bar on Estoppel's application to criminal cases, but this application is subjected to the circumstances.

Unique Application of Pure QSO 114 in within Pakistan

According to Qanoon-e-Shahadat and Criminal Procedure Code, any statement or confession given in police custody or before police won't be admissible in a court of law. But, at the same time in the Anti-Terrorism Act under section 21-H, “Statement or Confession before the police may be admissible, subject to court discretion”. What does Estoppel say? Is to not alter your position of statement. Thus, a pure usage of Estoppel (114 QSO) is subjected to the discretion of courts in Pakistan's Legal System, if we talk about statement under ATA, because once a statement has been admitted by ATC, given before police, the person who made such statement would be Estopped from altering his position or stance taken in said, whereof the same as QSO 114. *For instance, see Chapter V, VA, VI, VII, IX-A, XI, XII, XVII, XVIII, XIX, and XXI of PAKISTAN PENAL CODE, relating directly to “Estoppel Usage”.*

Practical Examples of Estoppel in Criminal Cases

Generally, there are various kinds of Estoppel, as it's a principle of general law ((Mahmoud 2017) deliberations and new research is evolving it (Singh.2020). The doctrine of Estoppel is variously applied over criminal trial and cases since this doctrine is not confined to civil law only, we'll be discussing some kinds of Estoppel, with the criminal application under the relevant provisions of Qanoon-e-Shahadat 1984 and Indian Evidence Act. The application of Estoppel in criminal law will depend upon the following principles as follows:

- This is of much essence that, discretion of court and application of this doctrine is subjected to undervalued circumstances or trial (United States v. Dellinger, 472 F.2d 340, 408 (7th Cir. 1972).
- This doctrine is both available to the prosecution and the accused(360 U.S. 423 (1959).
- It will also depend upon the heinous of involved crime(YLJ, 1969).
- The extraordinary “Good Faith” will also be read over accordingly.48 U. Miami L. Rev. 627 (1993-1994).
- It should not be inconsistent with any statutes.
- It should not detriment the basic “Justice” Doctrines.

Relevant Provisions dealing with Estoppel in Criminal Law (QSO Context)

- See the chapter of “Privileged Communications” in Qanoon-e-shahadat or Evidence act
- Article 45 of QSO 1984 reads as follows, “admission not conclusive proof but may estop: admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained”.
- Statements by persons who cannot be called as witnesses (article 46 & 47)
- Statements made under Special Circumstances (article 48-52)
- Judgments of Courts of Justice when relevant

For this heading, all the provisions of this chapter shall be read over.

Article 54. Previous judgments relevant to bar a second suit or trial: the existence of any judgment, order, or decree that by law prevents any court from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such court ought to take cognizance of the suit or hold a trial.

Article 57. Judgments, etc., other than those mentioned in articles 54 to 56, when relevant: Judgments, orders or decrees, other than those mentioned in articles 54, 55, and 56 are Irrelevant unless the existence of such judgment order or decree is a fact in issue or is relevant under some other provision of this order. From the above provisions, any judgment, decree, or order could estop in a subsequent proceeding or criminal trial.

Estoppel by Record

Estoppel by record generally deals with situations where anything produced earlier in any document, may oppose any claim, any right, any fact, or any subsequent litigate action in future proceedings or criminal trial. It is used under section 403 Cr.Pc (Act V of 1898), which read for “Double Jeopardy” in criminal cases. Thus, the record of a previous trial or any suit may create an estoppel. The record of any admission in a criminal case will save a person previously acquitted from the retrial (PLD 1978 SC 21). This theory has the consequence of nullifying a second prosecution. The following are the principles that apply to this type of Estoppel and its use in criminal law:

Based on the same facts, he has been sentenced or acquitted by a court for the similar fault, or one for which he could have been prosecuted or sentenced at that trial.

For Instance, See

- 2007 P.Cr.L.J. 139
- PLD 2002 S.C 572
- 1979 P.Cr.L.J. 24
- Green V. US (355 US 184)
- PLD 1978 SC 121

Relevant provisions for Estoppel by Record

- Section 403 of the Criminal Procedure, 1898
- Article 13(a) of the Constitution of Pakistan, 1973
- Section 11 of the code of Civil Procedure, 1908
- Section 26 of the General Clauses Act, 1897
- Above said provisions of Qanoon-e-Shahadat. (See “Relevant Provisions dealing with Estoppel in Criminal Law” portion).

Issue Estoppel and Criminal Law

Issue Estoppel indicates that if a court of competent jurisdiction has previously tried an issue of fact and made a finding on that issue, the finding will serve as an Estoppel in a subsequent criminal trial or any action where evidence is sought to be brought to overturn that earlier finding of fact (Singh, 2020). Thus, in a

criminal trial, the principle of issue estoppel is invoked against the trial not so much as a bar to trial, as in "Estoppel by Record," but to prevent the reception of evidence intended to overturn a prior judgment of fact. It is critical that the problem decided earlier directly relates to the question raised in the future trial; by direct relation, we mean that the facts are comparable, that the evidence is similar, and that the issues decided on those facts are similar (Bhajan, 2020).

Let's have a practical example of it; in *Gurcharan Singh v. State of Punjab*, *Gurcharan Singh* (AIR 1963 SC 340) stood his trial for murder in one case and under the Arms Act in the other for being in unlawful possession of gun belonging to the victim Arjun Sing. However, the two cases were tried by the same session's judge, who, delivering both the judgments on the same day, acquitted the accused in the Arms Act case disbelieving the evidence of recovery of the weapon; but convicted him in the murder case believing the same evidence as true. In the Appeal before the Supreme Court, it was argued on behalf of the convict that the High Court ought to have considered the findings of the session's court in the Arms Act case that the convict was not in possession of the gun. The finding of the session court in the murder case regarding the recovery of the gun from him should not have been accepted. The Supreme Court Accepted in principle such application of the issue estoppel by observing that "there is no doubt that the order of acquittal was pronounced first, then in the latter case the prosecution can't contend that the accused was in possession of illegal arms". In this case, the use of Issue Estoppel was made applicable.

Collateral Estoppel and Criminal Law

Res Judicata is always in conflict with Collateral Estoppel. The broad theory of "res judicata" exists in the domain of civil litigation. (CPC.sec 11)

This principle states that "an existing final judgment or decree rendered on the merits by a court of competent jurisdiction is conclusive of the parties or their privies' rights in all subsequent actions in the same or any other judicial tribunal of concurrent jurisdiction, on the points and matters in issue and adjudicated in the first suit(FREEMAN, JUDGMENTS. 1322).

As this comprehensive principle was applied and enlarged, it split into two distinct principles or doctrines, namely, "The terms "res judicata" and "collateral estoppel" are used interchangeably. The following are the essential features of the previous doctrine:

1. Each proceeding must have the same cause of action; and
2. The parties must be the same.

Not only does the final verdict or decree on the merits decide the questions that were contested, but it also determines the issues that could have been disputed. This ideology also serves as a barrier to further action. When "res judicata" is interpreted in this way, it mimics the notion of "former jeopardy" in every aspect. "This is something that exists in criminal proceedings," says the author.

"Collateral estoppel," alternatively, is significantly wider than "res judicata" in that the causes of action do not have to be same; nevertheless, it is also narrower in that only those matters that were contested and decided in the preceding court are shut out in the succeeding case (Ohio, 1959). In utmost cases, the first proceeding is not a full bar to the later proceeding; nevertheless, in criminal cases (Harvard law review., 1942), the principle has on occasion functioned as a total nullification of the consequent trial. Collateral Estoppel is utilized in situations where "Double Jeopardy" is unavailable.

Entrapment by Estoppel Doctrine

"The "official statement" or "error of law" defense is another name for the "entrapment by estoppel" defense (OPM v. Richmond, 496 U.S. 414, 426-427 (1990). Setup by estoppel varies from customary frame-up in that a respondent does not need to establish that a government official "induced" his behavior; instead, all that is required is that the official expressed an honest, if the incorrect, belief that the activity was legal (Jeffrey, 1991). Similarly, the argument contrasts from the "outrageous government wrongdoing" defense that some courts have acknowledged as a matter of applicable due process in circumstances where the government-inspired or cooperated in the crime despite the defendant's criminal predisposition "Shatter the conscience"(YALE L.J. 1046, 1046, (1969). Entrapment through Estoppel has been successfully asserted by defendants in numerous recent cases.

Consider the following scenario:

Another Case involving Pakistan and the United States of America together(US v. Clegg 846 F.2d 1221, at Circuit 9th, Year 1988),states as follows;

Clegg taught at an American school in Pakistan. Claimed that high-ranking Army officers and other US officials solicited, encouraged, and assisted his efforts to ship weapons to Afghan rebels fighting the Soviet Union. It affirmed District Court CIPA ruling providing classified information to the defense and allowing the defense

to use it at trial (not a defendant appealing a conviction). As a result, a defense would be reasonably good faith reliance on US officials' comments that lead the defendant to believe he was lawfully transferring guns. Defense is entitled to information under CIPA and entitled to use it at trial. If the defense was available in Tallmadge, it is available here. Thus, the defense of "Entrapment by Estoppel" succeeded here.

The Application of Entrapment by Estoppel depends upon the following prerequisites followed by "Due Process Clause";

1. Involvement of Government agent (Can be direct official and Remote)(*Blum v. Yare sky*, 457 U.S. 991, 1001 (1982)
2. Misstatement or Misrepresentation of law by a concerned public official. (*Raley*, 360 U.S. at 432, 438.)
3. "Ignorance of Law is no defense" but Entrapment by Estoppel is a defense to it.(*Cheek v. the United States*, 498 U.S. 192, 199 (1991)
4. The respondent/accused/defendant must have reasonably relied on the misstatement given by that public official, the principle of "Good Faith" and "Intention/Voluntariness" to the circumstances (John, 1997).
5. An unfair conviction must have been witnessed(*Raley v. Ohio*, 360 U.S. 423, 426 (1959).

The Entrapment by Estoppel doctrine could be studied easily along with Chapter IV of the Pakistan Penal Code, namely "The General Exceptions".

The distinction between Estoppel by Record, Issue, Collateral & Entrapment.

These differences are deliberated in the context of a criminal trial.

1. **The Estoppel by record** is discussed above and precisely is a broader application of Estoppel amid previous judgments. It could be regarded as a clear "Double Jeopardy" ambit, which succinctly bars a second trial but with limitations of "Double Jeopardy" applicative principles.
2. **Estoppel by issue** is a type where any issue framed or framed in charge, litigated earlier, then upon reception of a subsequent litigative action or trial; similar issues won't be allowed for redetermination for the same offence, the same transaction, any other offence occurred in same transaction and peripherals. Thus, once an issue is adjudicated for the determination of final judgment as of Estoppel by Record, it will be barred from determination. An

end will be put forward by regarding it as a “once for all”. It doesn’t bar a subsequent trial but an issue.

3. **Collateral Estoppel** is confused with the principles of res judicata, Estoppel by record & double jeopardy. In fact, collateral estoppel is much wider than res judicata and Estoppel by record. Collateral Estoppel could even bar a subsequent trial without essentials required under Res judicata or Double Jeopardy. In its application, it doesn’t need a final determination of the issue as of issue Estoppel, or final adjudication like Estoppel by the record but, a mere fact or essential element of a trial which is supported by evidence previously used, could result in a bar to that particular fact or element usage in even a subsequent trial or if the subsequent trial is based on that element it could result in a bar to the new trial. The application of collateral Estoppel is subjected to the circumstances and discretion of the court.
4. **The Entrapment by Estoppel** doctrine is a modern concept of Article 114 of QSO 1984. It can bar a trial at the very first motions and change a well-adjudged conviction into acquittal. Constitutional doctrines strongly support the trilogy of this defense.

Why Article 114 of QSO 1984 doesn’t have an expression for Criminal Cases

There are various other forms of ESTOPPEL which counsel ostensibly uses in criminal cases, so why is Article 114 of QSO 1984 silent on its application in criminal cases? The answer to this question is as simple as drinking a sip of water that there is a common principle used in contract act “Que Tacit Cons entire” (Silence implies consent), thus, one can’t deny the importance of Estoppel in criminal cases. This doctrine is rooted deeply in our constitution, and it should be read with the rider provisions or clauses.

Limitations on the invocation of Estoppel in Criminal Cases

1. Public Policy
2. Severity of Crime
3. Intention and Reasonableness
4. Perjury
5. Caveat Emptor
6. Conflict of Laws & Interests
7. Elements of Fraud

8. Specific Intent Crimes
9. Unresolved Issues
10. Same fact for different transaction offences
11. Acquiescence
12. Any other as per “Doctrine of Necessity”(Mitchell Law Review, 1997).

Conclusions

To sum up, it is submitted that, In Pakistan criminal law, the doctrine of Estoppel is incorporated in QSO 1984, with a strong background and protection hereunder constitution as discussed above. To safeguard the natural justice and prevent any detriment to justice, relevant provisions like protection of the law, fair trial, due process, social justice are safeguarded under the fundamental rights chapter of the constitution. In pursuance of this safety, subordinate substantial and procedural laws are codified. Evidence law is one of them that possess both substantial and procedural qualities. Thus, principles of evidence law are unto and unless expressly barred, applicable in both criminal and civil ambit. As our constitution is a mixture of Islamic, UK and USA laws, thus our legal system has recognized the binding or persuasive nature of said laws and it's a common practice in our courts to get persuasion by Indian, UK, or USA interpretations of statutes or doctrines. For this, the interpretation shall be consistent with our laws; otherwise, not. Succinctly, the doctrine of Estoppel being a common principle of law is pertinent in the civil and criminal world. Even this doctrine has been recognized by the International Court of Justice and the International Criminal Court. Estoppel by Record is thus mainly regarded as a “Res Judicata” or “Double Jeopardy” like principle, which protects a subsequent trial of the same elements as discussed. Estoppel by Record is mostly confined to “Judgments” only. The issue Estoppel operates to prevent the prosecution from leading evidence relating to an offence or any issue. The accused was previously acquitted, or was issue adjudicated. Though the notion of "collateral estoppel" has been accepted in many states federal courts, it has rarely aided the defendant.

Furthermore, in the broader international law doctrine, states have lost sight of this code ""before jeopardized." The court's most valuable tools are the evidence and proof from the first trial. However, the courts have taken into account the directions provided at the previous trial, the trial judge's words and opinions, counsel's stipulations and concessions, and counsel's oral arguments. The defendant's chances of success will be considerably increased as a result of this start. The court's

consideration of the defendant's plea is, of course, the following step. The pleas of "not guilty" or "past acquittal" have been allowed to raise the notion of "collateral estoppel" in several legal systems around the world". The constitutional defense is unnecessary where a criminal statute already demands explicit proof of culpable intent. The factual issue of whether the defendant relied properly on government advice is a jury question in such circumstances. Furthermore, the prosecution must prove that the defendant intended to conduct the crime beyond a reasonable doubt. Entrapment by estoppel has been used in several cases, and the burden of proof has been misplaced on the defendant. Over the last sixty years, the idea of criminal Estoppel has matured into a well-known defense. It is based on fairness principles that forbid the government from prosecuting a crime that one of its agents has condoned, and constitutional due process notification requirements bolster it. The Supreme Courts of India, the United Kingdom, Pakistan, and the United States have all upheld constitutional safeguards in their applications of the doctrine. The scope of criminal estoppel varies by jurisdiction at lower levels of the court system. The fact-specific inquiries surrounding the criminal estoppel defense, as well as the differences between jurisdictions, may make its application rather unexpected. Criminal Estoppel will probably continue to evolve, and its use will survive, given today's regulatory prosecution climate.

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