



## DOCTRINE OF LEGITIMATE EXPECTATION IN INDIA: AN ANALYSIS

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**Abstract:** *Life of every individual is greatly influenced by the administrative process. In the actions of a Welfare State, the constitutional mandates occupy predominant position even in administrative matters. It operates in public domain and in appropriate cases constitutes substantive and enforceable right. The term legitimate expectation pertains to the field of public law. It envisages grant of relief to a person when he is not able to justify his claim on the basis of law in true sense of term although he may have suffered a civil consequence. It does not create any legal right as such. The concept of legitimate expectation is being used by the courts for judicial review and it applies the ethics of fairness and reasonableness to the situation where a person has an expectation or interest in a public body retaining a long-standing practice or keeping a promise. The courts have emphasized that legitimate expectation as such is not an enforceable right. However, non consideration of legitimate expectation of a person adversely affected by a decision may invalidate the decision on the ground of arbitrariness. The plea of legitimate expectation relates to procedural fairness in decision-making and forms part of rule of non-arbitrariness; and it is not meant to confer an independent right enforceable itself. The doctrine of legitimate expectation is not applicable in relation to a dispute arising out of a contract qua contract. Furthermore, this doctrine cannot be invoked to modify or vary the express terms of a contract, more so when they are statutory in nature. This paper throws light upon the new legal order which has influenced the administrative process greatly. This legal order in the Administrative Law has emerged in India in the middle of 20<sup>th</sup> century. An attempt has been made in this article to analyze the role of judiciary in India in checking the growing abuse of administrative powers and in this process role of judiciary in Europe and United Kingdom in developing this doctrine has also been studied. It reflects how reasonable opportunity of being heard is given to the affected parties against administrative action, although it does not create any legal right as such.*

**Keywords:** *Legitimate Expectation, Administrative Actions, Judiciary*

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## INTRODUCTION:

*“A man should keep his words. All the more so when promise is not a bare promise but is made with the intention that the other party should act upon it”<sup>1</sup>*

Legitimate expectation applies the principles of fairness and reasonableness to a situation where a person has an expectation or interest in a public body or private parties retaining a long-standing practice or keeping a promise. The doctrine of legitimate expectation pertains to the field of public law. It protects an individual from an arbitrary exercise of administrative action by the public body although it does not confer a legal right on the claiming individual. The term legitimate expectation was first used by *Lord Denning* in 1969 and from that time it has developed into a significant doctrine all over the world. Supreme Court in India has developed the doctrine of legitimate expectation in order to check the arbitrary exercise of power by the administrative authorities. As per this doctrine the public authority can be made accountable on the ground of an expectation which is legitimate. For example, if the Government evolves a scheme for providing electric poles in the villages of a certain area but later on changed it so as to exclude some villages from the purview of the scheme then in such a case what is violated is the legitimate expectations of the people living in the villages excluded from the scheme and the government can be held responsible if such exclusion is not fair and reasonable. Thus this doctrine becomes a part of the principle of natural justice enshrining right to hearing to a person to be affected by an arbitrary exercise of power by the public and no one can deprive a person of his legitimate expectations without following the principles of natural justice.<sup>2</sup>

The principle of legitimate expectation is concerned with the relationship between administrative authority and the individual. An expectation can be said to be legitimate in case where the decision of the administrative authority affects the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue until some rational grounds for withdrawing it are communicated to such an individual or party and the affected person/party has been given an opportunity of hearing, or (ii) the affected person has received assurance from the concerned administrative authority that it

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<sup>1</sup> Lord Denning “Recent development in the Doctrine of consideration” *Modern Law Review*, Vol. 15, 1956.

<sup>2</sup> Clerk, *In Pursuit of Fair Justice*, (1995) 11



will not be withdrawn without giving him first an opportunity of advancing reason for contending that they should not be withdrawn by the administrative authority. The principle means that expectations which are raised as a result of administrative conduct of a public body may have legal consequences. Either the administration must respect those expectations or provide reasons as to why the public interest must take priority over legitimate expectation. Therefore, the principle concerns the degree to which an individual's expectations may be safeguarded in the light of a changed policy which tends to undermine them. The role of the court is to determine the extent to which the individual's expectation can be protected with the changing objective of the policy.<sup>3</sup>

The doctrine of "Legitimate Expectation" plays an important role in the development of administrative law, in particular law relating to "Judicial review". Under the said doctrine a person may have reasonable or legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right to receive the benefit and in such a situation an expectation may arise either from the express promise or from regular practice which the applicant reasonably expects to continue.<sup>4</sup>

It cannot be over emphasized that the concept of legitimate expectation has now emerged as an important doctrine and in appropriate cases constitutes an enforceable right. The principle at the root of the doctrine is rule of law which requires regularity, predictability and certainty in Government's dealing with public.<sup>5</sup>

### **EVOLUTION AND DEVELOPMENT OF LEGITIMATE EXPECTATION:**

Legitimate Expectation is the latest concept being used in courts too often. In English Law, the concept arises from administrative law, a limb of public law. The concept of legitimate expectation is being used by the courts for judicial review and it applies the ethics of fairness and reasonableness to the situation where a person has an expectation or interest in a public body retaining a long-standing practice or keeping a promise. In terms of procedure, a person is entitled to a fair hearing before a decision is taken if he has a legitimate expectation of being heard. The fact that a person is entitled to make representations does not itself work as a constraint for the public bodies, being otherwise

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<sup>3</sup> Robert Thomas, 'Legitimate expectation and proportionality in administrative law', *1 European Public Law*, 224(2000)

<sup>4</sup> Confederation of Ex-Servicemen Assns. v. U.O.I AIR 2006 SC 2945.

<sup>5</sup> M.P oil extraction co. v. State of M.P, (1997)7SCC 592.



under obligation not to abuse their powers, to change their policies to reflect changed circumstances even though this may involve reneging on previous undertakings. If there is a substantive limitation on this right to make changes, it lies in a test of fairness where the public bodies are corresponding to a breach of contract or there have been representations that might have supported an estoppel and so caused legitimate expectations to arise.

One of the earliest cases where the expression 'legitimate expectation' occurred was *Schmidt vs. Secretary of State for Home Affairs*<sup>6</sup>. In that case, two scientology students were refused an extension of their permission to remain in the United Kingdom when their right to be there had expired. They complained that the extension of the right to stay had been denied to them without a hearing being granted. Lord Denning expressed the view that the students had no right to remain in the country; they could not, therefore, have any legitimate expectation of a hearing. In *McInners vs. Onslow-Fane*<sup>7</sup>, *Megarry VC* referring to situations where the right to be heard existed, court stated that there was a category of persons such as a license holder, who had held a license for many years and when the license expired, sought to renew that license. In such a case the individual concerned had a legitimate expectation of being granted a hearing before the renewal of license was denied. It should be noted however, that the expectation created was an expectation of a hearing prior to the refusal of a renewal of the license and is not an expectation of a particular outcome.

In a Sri Lankan case<sup>8</sup>, the petitioner was a German national holding a German Passport, arrived in Sri Lanka on a one month's visa. This visa was subsequently extended. An application for a further extension was refused by the Controller for Immigration and Emigration. Ismail J. in the Court of Appeal was clearly influenced by the dicta of Lord Denning MR in *Schmidt* and held: "A foreign alien has no right, and I could add no legitimate expectation of being allowed to stay. He can be refused without reasons given and without a hearing once his time has expired, he has to go."

While asserting the conclusion reached by Ismail J, it is difficult to agree with the reason in relation to the issue of a legitimate expectation. Judicial review in general and the doctrine of legitimate expectation in particular have developed greatly in recent times; it is,

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<sup>6</sup> (1969) 2 Ch.149

<sup>7</sup> {1979} 1 WLR 1520

<sup>8</sup> *Laub vs. Attorney General* (1995) 2 Sri LR 88



therefore, arguable that the excessive reliance placed upon the *Schmidt* case which was a 1969 decision, is unwelcome. What is at issue is the fundamental question as to whether a foreign alien has a legitimate expectation that his visa extension will not be refused before affording him an opportunity of being heard. It is true that a foreign alien does not have a statutory right to be heard prior to a decision being made to deny him an extension of his visa but it should also be noted that if he had such a right, the concept of legitimate expectation would be superfluous because the denial of a hearing in such circumstances would result in the decision being vitiated on the basis of *ultra vires*. J Silva in *Gooneratne and other vs. Premachandra*<sup>9</sup> addressed the redundancy of the concept legitimate expectation in a situation where a person has a statutory right to be heard. In that case, the petitioners who were members of the Democratic United National Front, refused to sign a motion of no confidence against the Chief Minister. The Executive Committee purported to expel the petitioners from the party as a result of a recommendation made by the Disciplinary Committee. The petitioners were not given a hearing prior to their expulsion, despite the fact that the constitution of the party provided for such a hearing. The stand of the Party was that the petitioners were aware of the consequences of non compliance with the direction given in the covering letter which accompanied the resolution of no confidence. Silva J. was unimpressed by this argument. His lordship adverted to the view that the *legitimate expectation principle* has no application where the petitioners already enjoy the protection provided in the constitution to a due enquiry. That principle has relevance only if the petitioners had no right of hearing. The same condition applies to the contention that an inquiry would be a useless formality. The said view represents a salutary development in judicial review for Sri Lanka; it represents a correct appraisal of the concept of legitimate expectation. The concept has no relevance when there is a statutory right to be heard; the denial of the right to a hearing would automatically vitiate the decision.

Ismail J. failed to note this distinction of having a statutory right to be heard and the creation of legitimate expectation of being heard. The statutory discretion given to the Controller for Immigration and Emigration for issuing visas and considering applications for extensions is not unfettered; the discretion must be exercised reasonably. However, principles of good administration might require that, before the Controller makes a decision

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<sup>9</sup> (1994) 2 SRI LR 137



to deny an extension of a visa he must consider all relevant matters; he must act fairly and reasonably. The applicant has a legitimate expectation of being heard because his visa has been extended once earlier. For comparison, it would require to examine the decision of the High Court of Australia in *Haoucher vs. Minister of State for Immigration and Ethnic Affairs*<sup>10</sup>. In this case, the relevant Minister decided to deport the appellant. The appellant made an appeal to the Administrative Appeal Tribunal which recommended reconsideration of his decision by the concerned Minister. The Minister nevertheless decided to deport the appellant after reconsideration. One of the issues that arose for determination was whether the appellant had a legitimate expectation of a hearing before the Minister's reconsideration. Dean J was of the view that regardless of whether one can identify a right in the strict sense or a legitimate expectation, the requirements of procedural fairness must be observed in any case where by reference to a particular statutory framework a legislative intent can be discerned that the donee of governmental and legislative power should be bound by them. In the words of His Lordship Dean J *"it is important to bear in mind that the recognition of an obligation to observe procedural fairness does not call into play a body of rigid procedural rules which must be observed regardless of circumstances. Where the obligation exists, its precise content varies to reflect the common law's perception of what is necessary for procedural fairness in the circumstances of the particular case"*.

In *Kio vs. West*<sup>11</sup>, Brennan J expressed that *"it is not the state of mind of an individual but the interest which an exercise of power is apt to affect that is relevant to the construction of the statute. Mason J of the opinion that what is required by way of procedural fairness depends on the circumstances of the case and they will include, inter alia, the nature of the inquiry, the subject matter, and the rules under which the decision maker is acting"*.

In *State of South Australia vs. O` Shea*<sup>12</sup>, "it was expressed that a legitimate expectation that a person will obtain or continue to enjoy a benefit must be distinguished from a mere hope that he or she will obtain or continue to enjoy a benefit or privilege. A hope that a statutory power will be exercised so as to confer a benefit or privilege does not give rise to a legitimate expectation sufficient to attract the rules of natural justice".

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<sup>10</sup> (1991) LRC (Const.) 819).

<sup>11</sup> (1985) 159 CLR 550

<sup>12</sup> (1988) LRC 673)



## **NATURE AND SCOPE OF LEGITIMATE EXPECTATION:**

The doctrine of legitimate expectation plays an important role in various fields of law. But it is not possible to draw a line about its scope and importance. Governments and its functionaries may craft expectations concerning the manner in which administrative powers will be exercised. Expectations of this nature can be generated in many different ways, such as by the issue of policies or procedures to funnel the exercise of discretionary powers. Expectations regarding the potential exercise of administrative powers may also be generated by public statements or representations, conceivable by the subjects through promises or by adoption and regular application of a certain practice. But just as expectations about the exercise of administrative powers may be created and conceived by an individual or party they may also be disappointed. They may be disillusioned when a governmental agency has acted in breach of a promise or undertaking made to a particular person or to a class of persons. They may also be disappointed when a government agency has not applied current policy or guidelines in determining a particular case and without good reason. In such a case, the complaint may be that the policy has been applied inconsistently, perhaps in a way which reflects improper discrimination. In other cases, an existing policy may be changed and a new one applied to the disadvantage of people who stood to benefit from the earlier policy and who may even have conducted their affairs in reliance upon it. Courts in England and some other jurisdictions have recently accepted that there can be circumstances in which government agencies should be required to accomplish the legitimate expectations of their subjects conceived by them. This approach endows an expectation with a substantive excellence because it enables the expectation to determine or strongly influence the outcome of, rather than simply the procedures for, administrative decision-making. Australian courts, in disparity, have by and large taken the view that expectations about the exercise of administrative powers may only give rise to procedural rights<sup>13</sup>. On this view, an expectation about the exercise of an administrative power might, at best, obligate a decision-maker who intends to act contrary to that expectation to notify pretentious people and provide them with an opportunity to argue against that course. But

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<sup>13</sup> Mark Aronson, Bruce Dyer and Matthew Groves, *Judicial Review of Administrative Action* (3<sup>rd</sup> Ed, 2004) 395–400; Ian Holloway, *Natural Justice and the High Court of Australia: A Study in Common Law Constitutionalism* (2002) 154–95.



the law in Australia imposes no restraints upon a decision-maker beyond these procedural requirements.

The scope of the duty to observe the requirements of procedural fairness is now extremely wide. It is well-settled that the duty extends to virtually every exercise of a statutory power which might have an adverse effect on an individual unless there is a very clear legislative indication to the contrary<sup>14</sup>. While making decisions, the state/decision makers have to take care of the possible limitation or exclusion of the duty to observe the requirements of procedural fairness<sup>15</sup>. Therefore, in almost all cases the important question now is whether the requirements of procedural fairness have been applied in a particular instance. During the evolution of procedural fairness or natural justice, as the doctrine was commonly called in this earlier period, many cases focused on the 'threshold question' of whether the doctrine has been applied or not. The answer to this preliminary question often depended on whether the courts could identify a particular reason or circumstance why natural justice ought to apply.

As the legitimate expectation doctrine gained acceptance, it was invoked in a wider range of cases, which can be conveniently summarized into four categories<sup>16</sup>.

- i) The first was the category of cases in which a person had relied upon a policy or norm of general application but was then subjected to a different policy or norm.
- ii) The second category, which has a slight variation than the first, included cases in which a policy or norm of general application existed and continued but was not applied to the case at hand.
- iii) A third category arose when an individual received a promise or representation which was not honoured due to a subsequent change to a policy or norm of general application.
- iv) A fourth category, which too has a slight variation than the third, arose when an individual received a promise or representation which was subsequently

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<sup>14</sup> *Haoucher v Minister of State for Immigration and Ethnic Affairs* (1990) 169 CLR 648, 652 (Deane J) ('Haoucher'); *Annetts v McCann* (1990) 170 CLR 596, 598 (Mason CJ, Deane and McHugh JJ); *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 577 (Mason CJ, Dawson, Toohey and Gaudron JJ); *Minister of State for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273, 311 (McHugh J) ('Teoh').

<sup>15</sup> see generally Aronson, *Dyer and Groves*, 432–8)

<sup>16</sup> Craig, *Administrative Law*, , 641. See also *Secretary of State for the Home Department v The Queen (Rashid)* [2005] EWCA Civ 744 (Unreported, Pill, May and Dyson LJJ, 16 June 2005) [45] (Dyson LJ) ('Rashid').



dishonoured, not because there had been a general change in policy, but because the decision-maker had changed its mind in that instance.

### **ESSENTIAL INGREDIENTS OF LEGITIMATE EXPECTATION:**

The following are the essential ingredients of Doctrine of Legitimate Expectation:

- a) This doctrine imposes a duty on public body/administrative authority to afford an opportunity of hearing to an affected party if the government or public body or public authority has acted arbitrarily in violation of their legitimate expectation. Thus, the affected party may get a chance of being heard by getting such administrative decision set aside through the writ of Mandamus<sup>17</sup> (or Certiorari).
- b) The doctrine of legitimate expectation extends protection of natural justice or fairness to the exercise of non-statutory administrative powers where the interest affected is only a privilege or benefit.
- c) The concept of legitimate expectation is a relevant factor for due consideration to make decision making process 'fair'.
- d) A person may derive a legitimate expectation of receiving benefit or privilege as a matter of public law even where a person claiming some benefit or privilege has no legal right to it (in private law).
- e) An individual can claim a benefit or privilege under the doctrine of legitimate expectation only when such expectation is reasonable.
- f) The doctrine of legitimate expectation extends to the exercise of even non-statutory or common law powers.
- g) The doctrine of legitimate expectation would arise from an express promise or existence of a regular practice.

### **TYPES OF LEGITIMATE EXPECTATION:**

The expectations that individuals may have are various<sup>18</sup>. However, expectations may broadly be divided in two types.

#### **1. Procedural Legitimate Expectation:**

It denotes the existence of some previous right the applicant claims to possess as a result of actions by the public body that generates the expectation. The Courts have accepted that

<sup>17</sup> N.C.H.S. v. U.O.I 1993, S.C. 155 (para 6, 15-16) [ case under Art.226]

<sup>18</sup> H.W.R. Wade and C.F. Forsyth, *Administrative Law*, (eight edition) 497.



procedural protection should be given where an individual has a legitimate expectation of procedural protection such as a hearing or of a consultation before a decision is made. Fairness means that the expectation of a hearing or other procedural protection be fulfilled. It is also accepted that where an individual has a legitimate expectation that a benefit of a substantive nature will be granted, or if already in receipt of the benefit, that it will be continued, then fairness too dictates that expectation of the benefit should give the individual the entitlement to be permitted to argue for its fulfillment. In this situation the decision maker merely has to hear what the individual has to say but does not have to give substantive benefit. What has been the subject of some controversy is whether or not a legitimate expectation can give rise to substantives protection.

## **2. Substantive Legitimate Expectation:**

It refers to the situation in which the applicant seeks a picky benefit or product. The claim to such a benefit will be founded upon governmental action which is said to validate the existence of the relevant expectation. Many legal luminaries believe that the substantive legitimate expectations would not only generate sprite in public administration but reliance and trust of the citizens in government in so far as principle of equality is concerned and will also uphold rule of law.

Procedural expectations are protected simply by requiring that the promised procedure be followed. Substantive expectations are often protected procedurally, i.e. by extending an opportunity to make representation to the person affected before the expectation is dashed. Thus where recommended the applications of the applicants for hospital posts were rejected in breach of a long established practice because they had complained about bad conditions, they were held entitled to a hearing before rejection.<sup>19</sup> The person affected is not entitled to a favorable decision but the trust which he has reposed in the decision maker's undertaking should be protected. But there are other cases in which procedural expectation cannot adequately be protected from the unfairness occasioned by the decision-maker's breach of his promise or established practice. Thus in case of a boy seeking admission with a view to adoption, the Court of Appeal found that refusing admission on an altogether different ground amounted to 'grossly unfair administration' and in the absence

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<sup>19</sup> Administrator, Transvaal v. Traub:1989(4) SA 731. For England; Schmidt v. Home Secretary:[1969] 2CH.149 (The first legitimate expectation case in English Law, English authority recognised this category)



of an 'overriding public interest' justifying the change from the old criteria should apply<sup>20</sup>. Although such substantive protection has been recognized several times in decided cases, it sits awkwardly with the need not to fetter the exercise of discretion, moreover, decision maker's must not, by substantive protection of expectations, be prevented from changing their policies. Two Court of Appeal decisions hold that substantive protection of expectations will only be possible where the change in policy is irrational<sup>21</sup>. The Court of Appeal in rejecting rationality as the appropriate standard of review held that it was for the court to judge 'whether there was a sufficient overriding interest to justify a departure from what has previously been promised or what has been previous practice. This approach is consistent with the European law which balances the protection of the general public interest against the individual's legitimate expectation<sup>22</sup>.

The study of above cases reveal that expectations may be more readily protected substantively when the expectation is given individually to a small group (such as the residents of a care home) than where a general announcement of policy is made to a large group (such as prisoners). In the first class of case the decision maker's freedom of action is being restricted only in exceptional cases, while in second a general restriction applicable in all cases is required. Therefore these decisions link the concepts of fairness and reasonableness in a fruitful way<sup>23</sup>.

### **EXCEPTIONS TO DOCTRINE OF LEGITIMATE EXPECTATION:**

Although legitimate expectation has assumed the position of a significant doctrine of public law in almost all jurisdictions, yet there are some exceptions to this principle of fair procedure.

1. There cannot be a legitimate expectation to a thing which would involve the violation of a statute, e.g., to run a cinema house without licence;<sup>24</sup> or interference with a public duty of the authority. Where a person other than a licensee was operating a cinema show, no hearing of such outsider would be required before

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<sup>20</sup> R v Home Secretary ex p. Ruddock ,(1987) 1WLR 1482.

<sup>21</sup> R. v Inland Revenue Commissioners ex p. Unilever plc [1996] STC, 681.

<sup>22</sup> Mulder v. Council and Commission (1996) 55 CLJ, 286.

<sup>23</sup> Wade and Forsyth, *Administrative Law*, (8<sup>th</sup> edition) 370.

<sup>24</sup> Ved Gupta v. Apsara, 1983 SC, 978 (para 19).



making an order suspending such show. For the same reason, legitimate expectation cannot preclude legislation<sup>25</sup>.

2. No legitimate expectation can be founded on an application which has been rejected for failure to comply with the conditions imposed for its consideration<sup>26</sup>.
3. In the matter of appointment to Government service since a candidate doesn't acquire any right to be appointed merely because his name appears in Select List made by a Selection Board. In the absence of any specific Rule entitling him to such appointment, the Court or Tribunal cannot fetter the discretion of the appointing authority by the doctrine of legitimate expectation, in the absence of arbitrariness or malades. Even the doctrine of natural justice cannot be invoked if he is not heard before canceling such Select List for bona fide reasons<sup>27</sup>.
4. The legitimate expectation of an individual is subject to the larger consideration of public interest. Whenever such question arises, it is to be determined not according to the claimant's perception but in larger public interests wherein other important considerations may outweigh e.g., in the matter of non-acceptance of the highest bid at a public auction or a tender relating to a government contract or license.

Lastly, legitimate expectation doesn't give rise to any substantive right straight away. It gives a locus standi to a person to seek judicial review by challenging an administrative action and to have it quashed only if the decision is arbitrary, unreasonable or not taken in public interest and a failure to give a hearing to such affected person has resulted in failure of justice<sup>28</sup>.

#### **LEGITIMATE EXPECTATIONS, WHEN MAY ARISE:**

Legitimate expectations may arise in the following situations:

- (a) If there is an express promise given by a public authority or because of the existence of a regular practice which the claimant can reasonably expect to continue. The Punjab State Knitwear Development Corporation<sup>29</sup>, a body controlled by the State Government, invited applications for allotment of industrial plots to knit wear manufacturers. The appellants applied and deposited the earnest money. The Managing Director of the

<sup>25</sup> State of H.P v. Kailash, 1992 S.C.C, 351 (para.87) .

<sup>26</sup> Govt of A.P v. the Nizam, 1993 S.C , 76 (paras. 36,42).

<sup>27</sup> Union Territory v. Dilbagh, 1993 S.C 431 (para 12)

<sup>28</sup> Union of India v. H. D. C, (1993) 3 S.C.C 499 (para's 33,35)

<sup>29</sup> Bharat Wools, Ludhiana v. State of Punjab (1997) ILR 1 P&H, 121.



Corporation allotted plots to the applicants without consulting the Allotment Committee and they deposited the balance of the price of the plot. In the meantime, the Minister concerned called for the record and after hearing the parties cancelled the allotment in their favour. The applicant who were favoured with allotment orders challenged the cancellation of the allotment on the ground that they were deprived of their legitimate expectation by the Minister. The contention failed because the power to allot industrial plots was vested in the Allotment Committee. Instead, the power of allotment was usurped by the Chairman of the committee who himself made the allotment without reference to the Committee thereby converting himself into sole repository of power and made offers of allotment whimsically and arbitrarily. During the course of adjudication of the matter by the court it was also argued that no fresh applications be invited and the plots be allotted to the applicants who had earlier made the applications for the purpose. The argument was sought to be justified on the basis of the legitimate expectation. The plea of promissory estoppel was also raised. By inviting applications, the government simply invited the individuals to come in a queue for competition and no promise was made by the Government. The plea of promissory estoppel cannot bar the government from taking a decision in larger public interest. The court pointed out that more than one and half year had elapsed since the applications were invited for allotment of plots and in the meantime prices of land had shot up substantially. It would be against public interest to allot the land amongst original applicants only at the price advertised then. Public interest warrants that the Government and the Corporation get maximum price and the most competent entrepreneur is given opportunity. Element of speculation did not help the aggrieved person. It was held that the courts themselves must respect the legal limitations and ruled against review of administrative decisions<sup>30</sup>.

- (b) Where there is a change in policy or in public interest, the position is altered by a rule or legislation no question of legitimate expectation may arise. Under the Tamil Nadu Prohibition Act (i) 1937, two sets of rules were promulgated, viz. the Tamil Nadu Liquor (Retail Vending )Rules 1989 and the Tamil Nadu Liquor (Retail Vending in Bar) Rules 1992. Both introduced licensing systems-one for retail liquor vending and the other for operating a bar. The latter license could be had only by one who had a license under the

<sup>30</sup> *Bharat Wools, Ludhiana Vs. State of Punjab, AIR 1996 P&H 215*



former rules. The validity of the bar license was one year. In 1993, the Bar Rules 1992 were rescinded. The question arose whether the holders of the bar licenses had a legitimate expectation that their licenses would be renewed after one year, the period for which the licenses were initially issued. Refusing to apply the doctrine of legitimate expectation in the given facts, the court pointed out that there was absolutely no promise of renewal of bar licenses. The bar rules were subordinate legislation and no fetter could be imposed on repeal of subordinate legislation needed in public interest. The decision not to renew these licenses had been taken much before the time-limit for renewing the licenses. It became necessary to repeal the bar order in public interest<sup>31</sup>.

(c) The doctrine of legitimate expectation is not applicable in relation to a dispute arising out of a contract qua contract. The Government announced a scheme of advance licensing for import of raw materials subject to export of finished goods being made within a specified time and value added was 1000 per cent. The petitioner entered into an export contract and thereupon made application for grant of advance import license. Pending his application, the scheme was modified and now the value added was to be 1900%. The petitioner argued that since he had made application before the date of modification of the policy it ought not to apply to him. The Supreme Court rejected his contention arguing that mere making of an application does not create any right that the license would be granted to him. The court also rejected the plea of 'promissory estoppel' as the necessary conditions for the same as laid down in the case were not fulfilled<sup>32</sup>.

(d) Furthermore, the doctrine of legitimate expectation cannot be invoked to modify or vary the express terms of a contract, more so when they are statutory in nature. The contracts are entered into voluntarily pursuant to public action, i.e., floating of tenders or by negotiation and hence there is no compulsion on anyone to enter into these contracts. The agreement between the company, the Electricity Board and the State fixing concessional rate for supply of electricity to the company, a manufacturer of aluminum was superseded by an Act of the state legislature. The Act empowered the Electricity Board to increase tariff rates notwithstanding any agreement with the

<sup>31</sup> *Madras City Wine Merchants' Association vs. State of Tamil Nadu*, (1994) 5 SCC 509.

<sup>32</sup> *S.B. International Ltd. Vs. Assistant Director General of Foreign Trade*: AIR 1996 SC 2921.



consumers. The increase in electricity rates was challenged by the company on the ground of legitimate expectation. The Supreme Court refused to apply the legitimate expectation principle to the situation on the ground that when relationship between the parties is contractual, there is no scope for application of legitimate expectation. The agreement was not the outcome of any unilateral promise or assurance held out by the State or the Board to the Company. The agreement was the result of negotiations between the parties. Hence, the foundation for application of legitimate expectation was absent. It was held further that a tenderer has a right to have his tender considered and he cannot conceive legitimate expectation that his tender will be accepted<sup>33</sup>.

### **CONSEQUENCES OF APPLYING DOCTRINE OF LEGITIMATE EXPECTATION:**

The legal consequences of allowing a claim based on legitimate expectation in a situation where the provision of regulation is otherwise depends on the court giving the judgment. If the claim is allowed in proceedings before an administrative court it would amount review of the regulation as part of an appeal against a decision based on that regulation and the disputed regulation is declared to be not binding and deemed to be quashed. A declaration that a regulation is not binding is of legal relevance only in the case in which the judgment is given; it applies only between the parties to the action (inter parties)<sup>34</sup>. In fact, this dictum has a more far-reaching effect because it may be expected that other courts will come to the same decision in similar cases. Proceedings against legislation may also be instituted before the civil courts. If a civil court allows a claim based on the principle of legitimate expectation, it can choose between varieties of judgments. The following judgments occur in the civil courts<sup>35</sup>.

- (a) A declaratory judgment; the court may issue a declaration giving its opinion on whether a disputed regulation is binding;
- (b) A judgment suspending the unlawful regulation; the court then issues an injunction preventing the administrative authorities from performing acts based on such disputed regulation;

<sup>33</sup> *Indian Aluminum Co.Ltd. vs. Karnataka Electricity Board: AIR 1992 SC 2169.*

<sup>34</sup> *A.J.Bok. , Administrative Law, [1991], 214-219*

<sup>35</sup> *Id at 168-181.*



- (c) An injunction preventing application in certain cases; a relative injunction of this kind prevents the administrative authorities from applying the unlawful regulation in relation to one or more individuals;
- (d) Compensation; the administrative authorities are in principle liable for the damage that the individuals have suffered as a result of unlawful legislation. This liability is a form of strict liability. If a government body commits a tort by promulgating a regulation that is contrary to the law and therefore not binding, this is in principle proof of its culpability.

In practice, suspensions of regulations and their relative application, injunctions are generally sought from the courts and sometimes granted in interim injunction proceedings. This prevents a situation in which the relevant regulation can cause damage. Compensation is generally applied in proceedings on the merit

#### **ARTICLE 14 AND DOCTRINE OF LEGITIMATE EXPECTATION:**

Once discretionary powers are vested with Executive/Administration, abuse or misuse of these powers are to be guarded in order to save the individual from the resultant damage for which State is vicariously liable. In order to eliminate factor of discrimination, the Constitution has to guarantee fundamental right to equal treatment irrespective of cast, creed and sex enforceable by the State through administrative laws. In certain cases *legitimate expectation* of the subjects from the State may require a public body to confer substantive benefit to its subjects rather than procedural one and failure of the public body to consider the legitimate expectations of its subjects amounts to abuse of power<sup>36</sup>, attracting the role of Court. Failure of the government to exercise its discretion on the expected lines invokes the plea of *legitimate expectation* which though itself is not a right but certainly is a test of arbitrariness and this plea of *legitimate expectation* cannot be involved against higher public interests of the State of causing higher revenue. In India this doctrine of *legitimate expectation* has been founded on Art. 14 enshrined in Constitution of India which imposes a duty upon the state and its functionaries to act fairly on all public authorities and therefore, people can have legitimate expectation that they will be treated fairly by state. Article 14 of the Indian Constitution provides that *"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory*

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<sup>36</sup> ( *HALSBURY'S laws of England, 4<sup>TH</sup> EDITION ADMINISTRATIVE LAW, PAGE 92*)



of India". Legitimate expectation flows from principle of non-arbitrariness under Art.14 of Constitution of India and it becomes an enforceable right in case where state or its functionaries fail to give due weight to it. As observed by Hon'ble Supreme Court the doctrine of legitimate expectation falls within the purview of the rule of non-arbitrariness integrated in Article 14 of the Constitution<sup>37</sup>. Undoubtedly the public authority has an 'unfettered discretion' but the same has to be used for public good. In a constitutionally governed society when reasonableness of an action of the State is called in question, the rule of law is to be determined not according to the claimant's perception but in the large public interests and the public interest shall have to be more central consideration and may overshadow the legitimate expectation of an individual/claimant and bona fide decision of the public authority reached in this style would gratify the requirement of non-arbitrariness and shall stand the test of judicial scrutiny. The doctrine of legitimate expectation operates in the domain of public law and in fitting cases, constitutes a substantive and enforceable right<sup>38</sup>. The basic idea behind doctrine of legitimate expectation is "Rule of Law" which requires promptness, predictability and certainty in the actions of government while dealing with the public<sup>39</sup>.

A person can derive legitimate expectation for being treated in a certain way by an administrative authority even though he has no legal right but for representation or promise made by the authority, impliedly or from consistent past practice. Certainly legitimate expectation of a person based on some promise or undertaking by an authority will get satisfied if the person claiming is given a fair hearing by the authority before a decision is taken to alter his position, consequent upon withdrawing an undertaking earlier given. The core point thus is that though legitimate expectation derived by a person from the promise or undertaking given by an authority but denial to act upon in consonance with such promise or undertaking has to be justified by the authority by showing some overriding public interest<sup>40</sup>. However, the doctrine of legitimate expectation does not give scope to claim straightaway from the administrative authorities as no crystallized right as such is involved. The protection of legitimate expectation does not require the fulfillment of the

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<sup>37</sup> *Food Corporation of India v. Kamadhenu Cattle Feed Industries Ltd. [AIR 1993 SC 1601]*

<sup>38</sup> *(M.P.Oil Extraction case, supra)*

<sup>39</sup> *(Chanchal Gayal (Dr.) vs. St. of Rajasthan AIR 2003 SC 1713).*

<sup>40</sup> *(D.D.BASU, COMMENTARY ON THE CONSTITUTION OF INDIA, Vol.1 8<sup>th</sup> EDN. 2008, page1262)*



expectation where an overriding public interest requires otherwise. Though the doctrine of legitimate expectation is based on the mandate enshrined in the provisions of Constitution of India but whether an expectation is legitimate or otherwise has to be inferred from the concept as to whether an expectation is founded on the sanction of law<sup>41</sup> and the concept itself is not the key which unlocks the treasure of natural justice that too when the elements of speculation and uncertainty are inherent in that concept. Undoubtedly the doctrine of legitimate expectation is a source of procedural as well as substantive rights and the Government/state and its departments responsible for administering the affairs of the country are expected to honour their promises or undertaking through their statements of policy or intention and are bound to treat all the citizens by affording full personal consideration without any iota of abuse of discretion. The policy statements given by the representatives of the State cannot be disregarded unfairly or applied selectively because unfairness in the form of unreasonableness is akin to violation of natural justice. Claims based on legitimate expectation have been held to require reliance on representations and resultant detriment to the claimant in the same way as claims based in promissory estoppels. Unfairness in the purported exercise of power can amount to an abuse or excess of power<sup>42</sup>.

Where a non-statutory memorandum is followed in certain cases and refused in other similar cases, the action would amount to violation of Article 14 of Constitution of India. Increasing the age of retirement has been followed in some cases; refusing to extend the same in some other cases would be violative of Article 14. The defense taken by the government increasing the age of retirement is a mere executive instruction is not valid<sup>43</sup>. The Hon'ble Supreme Court has held that a decision would be regarded unreasonable if it is partial and unequal in its operation as between different classes<sup>44</sup>.

In *State of W.B vs. Niranjana Singha*<sup>45</sup>, the Court observed that the doctrine of 'legitimate expectation' is only an aspect of Art.14 of the Constitution requiring to deal the citizen in non-arbitrary manner but by itself does not give rise to an enforceable right. Whether an action of the government or the authority or functionary of the state is arbitrary or not, the

<sup>41</sup> (*Bannari Amman Sugars Ltd. Vs/. CTO (2005) 1 SCC 625*).

<sup>42</sup> (*D.D. BASU, supra, page 1263*).

<sup>43</sup> (*Union of India vs. Pardasone (1972)3 SCC 273*);

<sup>44</sup> (*New Horizons Ltd., vs. Union of India (1995)1 SCC 478*)

<sup>45</sup> (*2001) 2 SCC 326*



principle of *legitimate expectation* would be relevant despite the fact that earlier in *M.P.Oil mill case* (supra), the Court was of the opinion that in appropriate cases legitimate expectation which operates in the domain of public law, constitute a substantive and enforceable right. The Hon'ble Supreme Court of India in number of cases upheld the fortitude of equality enshrined in the Constitution of India while dealing with the application of doctrine of *legitimate expectation* and thereby made the doctrine as a device to enforce a fundamental right. In *Tamil Nadu Tamil & English Medium Schools Association vs. St. Of TN*<sup>46</sup>, facts show that schools upto matriculation in the state have been teaching in English Medium for over fifty years and recognition was given to them by the government without any condition. Suddenly, there was a change in the policy introducing *Tamil* as (mother tongue) medium of instruction and this policy was sought to be introduced without affording opportunity of hearing to the affected schools. The Court held that the Management of such affected schools is reasonable in claiming that they expected that English medium will be allowed to continue on the basis of legitimate expectation and that it is not necessary that there should have been a representation by the government and that the schools were opened by the management only believing on those representations. In the matter of settling a Government lease or contract which otherwise is governed by statute, if the government adopts an ad hoc procedure which discriminates against a particular person, the court held that it offends Art.14<sup>47</sup>.

While implementing recommendations of Pay Commission by the Government to one set of employees only thereby making discrimination as against other set of employees though governed by the said recommendations, it is held that the Government has exercised discretion arbitrarily in violation of Art.14<sup>48</sup> and the affected person or aggrieved person can challenge such act of the Government. Similarly, the Court held that in case where employees are denied equal pay for equal work it will be treated to amount to their exploitation by taking advantage of their poverty and helplessness and will amount to infringement of right of equal treatment as guaranteed under Art 14. In a case where a large number of persons were recruited temporarily though being fully qualified to hold the post are thrown out of employment after long years of service the action was found to be against

<sup>46</sup> (2000) 2 CTC 344

<sup>47</sup> (*Balaji vs. State of Mysore* (1963) Supp.1 SCR 439).

<sup>48</sup> (*See Purushottam vs. Union of India* (1973) 1 SCC 651.)



the spirit of constitution and they were directed to be regularized<sup>49</sup>. The Supreme Court extended this principle of protecting the legitimate expectation under Article 14 to several instances viz., to the matter of granting a lease or a privilege like government contract unfettered by any statutory condition<sup>50</sup>; if a passport is issued at the discretion of the executive, not governed by any statute<sup>51</sup>; if a Pension scheme is declared by an office Memorandum<sup>52</sup>; or the conditions of service are unreasonable e.g., an Air Hostess will lose her job on marriage or first pregnancy whichever occurs earlier, even though such conditions of service are embodied in the award of Industrial Tribunal or in an agreement between the employer and employees Union<sup>53</sup>; in relation to land matters the Supreme Court dealt with a situation where the government has taken a policy decision, though it did not create any right, to restore the land acquired by the state as per standing orders and has also implemented the same in favour of some persons, refusing to restore the land to similarly placed person, it has been held that such action is arbitrary and discriminatory<sup>54</sup>. The Apex Court of India is very affirmative in holding that the policy decisions of the state should be free from the vice of arbitrariness and must conform to the well-settled norms, both positive and negative, underlying Articles 14 and 16 together with Article 15 which form part of constitutional code of equality<sup>55</sup>. Where certain rules have been framed for absorption of the employees on deputation, but denying the benefit of the rule to others without justifiable reasons was held to be arbitrary<sup>56</sup>. Where arbitrariness is demonstrated in giving permission to incorporate engineering college in private domain, in spite of policy making to that effect, the same was struck down on the ground of arbitrariness<sup>57</sup>.

### TO SUM UP:

The concept of “legitimate expectation” means not merely “expectation” but provides that there should already be something superior to just “expectation”- some kind of assurance or representation by the administration and that expectation has been recognized over a

<sup>49</sup> (*State of Haryana vs. Piara* (1992) 4 SCC 118. & *Jacob M. Puthuparambil vs. Kerala Water Authority* AIR 1990 SC 2228. But later in *Secretary, State of Karnataka vs. Umadevi*, (supra) The SC took the view that an ad hoc employee cannot have legitimate expectation of getting his employment regularized)

<sup>50</sup> (*Ramana vs. IAAI*, AIR 1979 SC 1628)

<sup>51</sup> (*Satwant vs. Asst. Passport Officer* AIR 1967 SC 1836)

<sup>52</sup> (*Nakara vs. Union Of India* AIR 1983 SC 130)

<sup>53</sup> (*Air India vs. Nargesh* AIR 1983 SC 1829)

<sup>54</sup> (*State of Haryana vs. Gurucharan Singh* (2004) 12 SCC 540)

<sup>55</sup> (*See Kailash Chand Sharma vs. State of Rajasthan* AIR 2002 SC 2877).

<sup>56</sup> (*Rameshwar Prasad vs. Managing Director U.P. Rajkiya Nirman Nigam Ltd.* AIR 1999 SC 3443).

<sup>57</sup> (*Vellore Educational Trust vs. State of A.P.* AIR 1988 SC 130)



period of time. What needs to be realized is that “legitimate expectation” is not equivalent to a legal right. The concept is more of an equitable rather than legalistic in nature. It is an expectation of benefit, relief or remedy that may ordinarily flow from a promise or established practice. The expectation should be legitimate, i.e., reasonable, logical and valid. It is the concept of legitimate expectation that the courts consider while required for judicial review of an administrative action. A person can be said to have a “legitimate expectation” of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. The concept of the doctrine of legitimate expectation is at times based in India on Article 14 of the constitution of India and the emerged concept of this doctrine is gradually gaining importance. This constitutional provision imposes the duty to act fairly on all public authorities and, therefore, people can have legitimate expectation that they will be treated fairly by the state. There is constitutional assurance for equal treatment and for providing equal opportunities to the citizens. Reflection of legitimate expectation forms part of principle of non-arbitrariness under Article 14 and it becomes an enforceable right in case of failure of the state or its instrumentality to give due weight to it.