

expectation is based in India on Article 14 of the constitution of India and 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.

#### **1.4 CRITICAL APPRAISAL**

Undoubtedly, the doctrine of legitimate expectations is a new feature in the domain of public law. But even today, it is not possible to define the doctrine precisely in clear terms of the law. However, in order to ensure the true application of the doctrine of legitimate expectations, the study about the background of the doctrine, becomes most essential. Hence, the theoretical background about the doctrine of legitimate expectations, is discussed in the next chapter.

instrumentalities have to conform to Article 14 of the Constitution of which non- arbitrariness is a significant facet. There is no unfettered discretion in public law. A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is fairplay in action. To satisfy this requirement of non-arbitrariness in a state action, it is necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision and also that unfairness. In the exercise of the power may amount to an abuse or excess of power apart from affecting the bonafide of the decision in a given case. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

In other words, the concept of "legitimate expectation" means not merely "expectation" but provides that there should already be something superior to just "expectation" i.e. some kind of assurance or representation by the administration and that expectation has been recognized over a period of time. What needs to be realized is that the 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 is 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

The classification may be founded on different bases namely geographical or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

Now it is vehemently clear that the concept of legitimate expectation is not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shut the court out of review on the merits, particularly when the element of uncertainty and speculation is inherent in that very concept.

The mere reasonable or legitimate expectation of a citizen may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non- - arbitrariness, a necessary concomitant of the rule of law. Every legitimate; expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. The doctrine of legitimate expectation gets assimilated in the rule of law.

In *F.C.I. v. Kamdhenu Cattle Feed Industries*<sup>71</sup>, the court held that in contractual sphere as in all other state actions, the state and all its

expectation by showing some overriding public interest. Therefore, even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. Legitimate expectation being less than a right operates in the field of public and not private law and to some extent such legitimate expectation ought to be protected, not guaranteed.

There are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well known grounds attracting Article 14 of the Constitution of India but a claim based on mere legitimate expectation without anything more cannot 'ipso facto' give a right to invoke these principles.

In *Ram Krishna Dalmia v. Justice S.R. Tendolkar*<sup>70</sup>, the Supreme court held that it is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely.

- (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from other left out groups, and
- (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question.

In *CCSD v. Minister for Civil Service*<sup>68</sup>, the court held that administrative action is subject to control by judicial review under three heads i.e. illegality, where the decision making authority has been guilty of an error of law e.g. by purporting to exercise a power which it does not possess, irrationality, where the decision making authority has acted so unreasonably that no reasonable authority would have made the decision and procedural impropriety, where the decision making authority has failed in its duty to act fairly<sup>69</sup>.

Judicial review provides the means by which judicial control of administrative action is exercised. The subject matter of every judicial review is a decision made by some person or a refusal by him to make a decision.

The decision must have consequences which affect some person or body of persons other than the decision maker, although, it may affect him too. It must affect such other person either, by altering rights or obligations of that person which are enforceable by or against him in private law, or by depriving him of some benefit or advantage which either he has in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to enjoy until there has been communicated to him some rational grounds for withdrawing it on which he was to be given an opportunity to comment or, he has received assurance from the decision maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should be withdrawn.

Where a person's legitimate expectation is not fulfilled by taking a particular decision, then decision maker should justify the denial of such

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68 (1984) 3 All. ER 935

69 (1984) 3 All. ER 935

In England in *R v. Secretariat of State of Transport Exporter Greater London Council*<sup>66</sup>, the court held that legitimate, or reasonable, expectation may arise from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue. The expectation may be based on some statement or undertaking by or on behalf of the public authority which has the duty of taking decision, if the authority has through its officers acted in a way that would make it unfair or inconsistent with good administration for him to be denied such an inquiry.

Legitimate expectation gives the applicant sufficient locus stand, for judicial review. This doctrine is to be confined mostly to right of a fair hearing before a decision, which results in negating a promise or withdrawing an undertaking, is taken. The doctrine does not give scope to claim relief straightway from the administrative authority as no crystallised right, as such, is involved.

In *Madras City Wine Merchant's Association v. State of Tamilnadu*<sup>67</sup>, the court held that legitimate expectation may arise 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; such an expectation must be reasonable. The court also held that the doctrine of legitimate expectation arises only in the field of administrative decisions. If the plea of legitimate expectation relates to procedural fairness there is no possibility whatsoever of invoking the doctrine as against the legislation.

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66 (1984) 3 All. EA 935

67 Ibid at p. 540

the expectant person being heard. The court has to see whether it was done as a policy or in the public interest. A decision denying a legitimate expectation based on such grounds does not qualify for interference unless in a given case the decision or action taken amounts to an abuse of power. Therefore, the limitation is extremely confined and if the doctrine of natural justice does not condition the exercise of the power, the concept of legitimate expectation can have no role to play and the court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. In *Union of India v. Hindustan Development Corporation*<sup>65</sup>, the Supreme Court held that in a case where the decision is left entirely to the discretion of the deciding authority without any legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural unfairness to a person whose interest based on legitimate expectation might be affected. Legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. The principle of legitimate expectation is closely connected with a 'right to be heard'. Such an action may take many forms, one may be expectation of prior consultation and another may be expectation of being allowed time to make representations, especially where the aggrieved party is seeking to persuade an authority to depart from a lawfully established policy adopted in connection with the exercise of a particular power because of some suggested exceptional reasons justifying such a departure.

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65 (1993) 3 SCC 499

the sanction of law or custom or an established procedure followed in regular and natural sequence. Again, it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and projectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.

In *U.P. Awas Evam Vikas Parishad v. Gyan Devi*<sup>63</sup>, the Supreme court held that no order can be passed without hearing a person if it entails civil consequences. Where even though a person has no enforceable right yet he is affected or likely to be affected by the order passed by a public authority, the doctrine of legitimate expectation come into play and the person may have a legitimate expectation of being treated in a certain way by an administrative authority<sup>64</sup>.

A case of legitimate expectation would arise when a body, by representation or by past practice, aroused expectation which would be within its power fulfil. The protection is limited to that extent and the judicial review can be within those limits. A person, who bases his claim on the doctrine of legitimate expectation. in the first instance must satisfy that there is a foundation and thus has locus standi to make such a claim. Legitimate expectations may come in various forms and owe their existence to different kinds of circumstances e.g. cases of promotions which are in normal course expected, contracts, distribution of largess by the Government and some what similar situations i.e. discretionary grants of licences, permits or the like, carry with it a reasonable expectation though not a legal right to renewal or non - revocation, and to summarily disappoint that expectation may be seen as unfair without

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63 (1995) 2 SCC 326

64 Ibid at p. 328



concerned authority cannot act arbitrarily so as to defeat the expectation unless demanded by over-riding reasons of public policy.

In another landmark judgment in *MP Oil Extraction Co. v. State of Madhya Pradesh*<sup>60</sup> the Supreme Court while dealing licence renewal claims of certain industries has held that extending an invitation on behalf of the State was not arbitrary and the selected industry had a legitimate expectation of renewal of licence under the renewal claims. Again in *National Building Construction Corp. v. S. Raghunathan*<sup>61</sup>, the court held that legitimate expectation is a source of both, procedural and substantive rights. The person seeking to invoke the doctrine must be aggrieved and must have adhered his position. The doctrine of legitimate expectation assures fair play in administrative action and can always be enforced as a substantive right. Whether or not an. expectation is legitimate is a question of fact.

In *Union of India v. Hindustan Development Corporation*<sup>62</sup>, the Supreme Court explained the nature and scope of the doctrine of legitimate expectation and held that for legal purposes, the expectation cannot be the same as anticipation. It is not different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere, a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled. They, by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on

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60 (1997) 7 SCC 592

61 AIR 1998 SC 2776

62 (1993) 3 SCC 499

courts will intervene in that decision only if they are satisfied that the decision is irrational or perverse

In *Food Corporation of India v. Kamdhenu Cattle Feed Industries Ltd*<sup>55</sup>, the Supreme Court has observed that the doctrine of legitimate expectation cannot be invoked to alter the terms of a contract of a statutory nature.

In *Howrah Municipal Corporation v. Gauges Road Company Ltd*<sup>56</sup> the court held that no right can be claimed on the basis of legitimate expectation which is contrary to statutory provisions and which have been enforced in public interest.

In *Madras City wine Merchants Association v. State of Tamil Nadu*<sup>57</sup>, the court held that the doctrine of legitimate expectation has to be inoperative when there was change in public policy in public interest.

In *Union of India v. Hindustan Development Corporation*<sup>58</sup>, the Supreme Court has elaborately considered the reverence of this theory. In the estimation of the Supreme Court, the doctrine does not contain any crystallised right. It gives to the applicant a sufficient ground to seek judicial review and the principle is mostly confined to the rights to a fair hearing before any decision is given.

In *Navjoti Co-op Housing Society v. Union of India*<sup>59</sup>, the court held that the doctrine of legitimate expectation imposes in essence a duty on public authorities to act fairly by taking into consideration of the relevant factors bearing a nexus to such legitimate expectation. The

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55 AIR 1993 SC 160

56 (2004) 1 SCC 663

57 (1994) 5 SCC 509

58 AIR 1994 SC 988

59 AIR 1993 SC 155

A legitimate expectation must be induced by the conduct of the decision maker. It does not follow from any generalised expectation of Justice; based on the scale or conduct of the decision.

In *Union of India v. Hindustan Development Corporation*<sup>53</sup> the court held that the doctrine does not give scope to claim relief straightaway from the Administrative Authorities as no crystallised right, as such, is involved. The Court also said that the concept of legitimate expectation is not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shut the court out of review on merits particularly when the element of speculation and uncertainty is inherent in that very concept. The Courts should restrain themselves and restrict such claims duly to the legal limitation. The principle of legitimate expectation, which is still at the stage of evolution, is at the root of rule of law and requires, regularity, predictability and certainty in the government's dealings with the Public. Change in policy can defeat a substantive legitimate expectation if it can be justified on Wednesbury reasonableness. The decision maker has the choice in balancing the pros and cons relevant to the change in policy. In *G. Screen v. Principal, Regional Engineering College, Rourkela*<sup>54</sup>, the court held that the substantive legitimate expectation merely permits the court to find out whether, the change in policy, which is the root cause for defeating the legitimate expectation, is irrational or perverse or one which no reasonable person could have made. Substantive legitimate expectation is rooted in the theory of legal certainty. The judgement whether public interest over rides substantive legitimate expectation of individuals will be for the decision maker who has made the change in policy and the

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53 (1993) 3 SCC 499

54 AIR 2000 SC 56

The expression legitimate expectation in its present form, first emerged as a doctrine in the Judgement of Lord Denning in 1969 in *Schmidt v. Secretary of State for Home Affairs*, wherein a student challenged Home Secretary's decision not to grant him extension of his stay in the United Kingdom to continue his education contending that he ought to have been given a hearing by the authority.

It is a strange coincidence that the doctrine of legitimate expectation, first time used in India in 1988, also concerned with matters of education i.e. Kerala Education Rules 1959 regarding opening of New Schools in the case of *Kerala v. K G Madhavan Pillai*<sup>50</sup> wherein right of legitimate expectation was up held.

In *Ghaziabad Devp. Auth. v. Delhi Auto and General Finance Pvt. Ltd.*<sup>51</sup>, the court held that legitimate expectations, generally, relate to procedural fairness in decision making and forms part of the rule of non-arbitrariness and it is not meant to confer an independent right enforceable by itself

However, in *M P Extraction v. State of M P.*<sup>52</sup>, the court held that the doctrine of legitimate expectation constitutes a substantive and enforceable right. When there is a renewal clause in the agreement for distribution of State largesse to selected Industrial Units, as a protective measure, such Industrialists will have legitimate expectation of extension of their protection by giving effect to the renewal clause in usual manner and acceding to past practice.

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50 (1988) - 4 SCC 660

51 (1969) All ER 904

52 (1997) 7 SCC 592

The adoption of substantive legitimate expectation is now firmly rooted in public law but subject to certain very important qualifications, in particular, that of overriding issues of public policy. However, where regulatory bodies and disciplinary bodies are seeking to rely upon such a defence to claimant's claim for a review of such a decision, they would be wise to put into place appropriate systems of review and challenge to those decisions to resile from policies which might give rise to a substantive legitimate expectation. In doing so, that review should be if possible independent and give the prospective claimant or appellant appropriate opportunities to make representations before the relevant tribunal or reviewing body. A failure to put into place such processes might give rise to a successful claim that the processes were not proportionate and were exercised in some capricious or high-handed or arbitrary manner.

### **1.3 NATURE OF LEGITIMATE EXPECTATION**

Expectations of a person can be conceived in various forms and degrees. Some of the common expressions expanding the horizon of the expectation are, apprehension, assumption, likelihood, supposition, belief, probability, employees/employer's and parent / child expectations, Company's expectation to expand and make profit, a hard working efficient person's expectation of out of turn promotion and recognition etc.

Legitimate expectations, are different from expectations at large, are not Legal rights, but are expectation of benefits, relief/remedy that accrues from a promise or established practices, and give rise to locus-standi to a person to seek judicial review of any action, of State or its subsidiaries, which are arbitrary, discriminatory, unfair, malicious in law, devoid of rule of law and violative of the principles of natural justice.

the right to make representations, a right which the claimant exercised, but also the involvement of an expert panel chaired by an eminent and respected person from outside the department. It should also be noted that the procedures which the Secretary of State devised included the opportunity to have a face to face assessment rather than just a paper based one.

Counsel for the Secretary of State submitted that another reason for rejecting the challenge to its decision to bar the claimant, was that an appeal can be brought against such a decision. He relied in particular on the decision of the court of Appeal in *R v. London Borough of Bromley*<sup>49</sup>, where M's counsel attempted to extend the matters beyond the procedures grounds into substantive grounds before the court. This was rejected by the court by stating that the opportunity to make that decision should in its view not be likely held from the tribunal. The court also stated that the judgments in M also tend to support the Secretary of State's submission that in its assessment of proportionality, this court should be slow to stop a case being considered on its merits by the relevant tribunal. Otherwise, there was a real risk that the case may be one where, although the reasoning process which led to the decision to bar an individual may be criticized in some way, the tribunal would have upheld the barring order on its merits. If that were to be the case, the public interest would be undermined. It was further stated that this did not mean that every decision to reconsider a case will always be proportionate and that much will depend upon the facts of each particular case.

those advising the Secretary of State in the process leading up to his decision to impose the bar, in is rigorous and sustained criticism. This is because the claimant submitted that since it is for the Secretary of State to satisfy the court that his conduct accorded with the principle of proportionality, he would fail in that task if the claimant could show that the reasoning process was defective in material respects. Furthermore, and in particular, the claimant submitted that the reasoning process failed to comply with the Secretary of State's own policy. The court concluded that it would not be appropriate to accept the Court's invitation by the claimant because the Judge accepted the central submission made on behalf of the Secretary of State that there was an important distinction to be drawn between the decision to reconsider the claimant's case and the resulting decision to make a barring order against him. The availability of an appeal on the merits of the barring order was relevant to the question whether the Secretary of State's decision to resile from the claimant's legitimate expectation satisfies the principle of proportionality. It was also relevant that the appeal will be held by an independent judicial body. Another very important reason why the availability of an appeal is relevant is that, in the present context, there were not only the interests of the parties involved but also an important public interest in the protection of children, in particular protection from sexual abuse by people who are in positions of trusts such as teachers.

Another important consideration in the assessment of proportionality was that the Secretary of State did not simply resile from the legitimate expectation that had been created in this case without more. The review was well aware of the sensitivity of reviewing cases which had been thought to be closed and sought to devise fair procedures which would be followed before a barring order was imposed. It was not only

while the initial burden lies on the applicant to prove the legitimacy of his expectation, in particular that it was clear, unambiguous and devoid of relevant qualification, and that in order to support the legitimacy of that expectation, he may be able to show that he relied on the promise to his detriment, once those elements have been proved by the applicant, the onus then shifts to the public authority concerned to justify the frustration of the legitimate expectation.

The court accepted the claimant's submission that the representations made by the Secretary of State in 2005 created a legitimate expectation that he would not have taken further action against him unless further misconduct came to the department's attention. The court opined that the letter did condone a representation to the effect which was "clear and unambiguous and devoid of relevant qualification". That is how it would reasonably have been understood by the person to whom it was addressed. Although this point was not conceded by the Secretary of State, in substance the submission that was made on his behalf was that he was entitled to change his mind because there was an overriding reason in the public interest to do so.

The main dispute in the present case is about, whether the Secretary of State was right in that submission that he was entitled to change his mind in the public interest. In order to satisfy this test, there were two issues. Firstly (a) that there was a legitimate aim in the public interest and (b) the conduct of the Secretary of State satisfied the principle of proportionality. The court concluded as to (a), there was and could be no real dispute, there was clearly a legitimate aim. The public interest in protecting children in particular in protecting them from the risk of sexual abuse is manifest and pressing. As to (b), the principle of proportionality, the claimant invited the court to subject the reasoning to



application of that policy to the facts of the present case. The Secretary of State contended that any challenge to the change in policy as such would have been unsustainable because it lay within the “macro political field” rather than the field of general policy. In *R v. Secretary for Education ex parte Begbie*<sup>46</sup> where court drew a contrast between cases which fall within the macro political field and others such as the case before the court which concerns a relatively small identifiable number of persons. In those circumstances, the court said that if there had been an abuse of power, it would grant appropriate relief unless an overriding public interest is shown. On the facts of the present case, the Secretary of State was content to accept that the claimants' challenge could properly be brought against the decision in this particular case since that did not lie in the “macro political field”.

The most recent case relating to substantive legitimate expectation is the decision of the Judicial Committee of the Privy Council in *Paponette v. Attorney General of Trinidad and Tobago*<sup>47</sup>. The court affirmed the judgment passed by court in *R v. Secretary of State for Foreign and Commonwealth Affairs*<sup>48</sup>, when the court also said that it is not essential that the applicant should have relied upon a promise to his detriment, although, this is a relevant consideration in deciding whether the adoption of a policy in conflict with that promise would be an abuse of power. The court held that the question whether a representation is “clear, unambiguous and devoid of relevant qualification” depends on how, on a fair reading of the promise, it would have been reasonably understood by those to whom it was made. The court made it clear that

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46 (2001) WLR 1115

47 (2011) 3 WLR 2019

48 2009 AC 453

be suggested that special principles of public law applied to the revenue or to taxpayers, nevertheless what appears to have happened is that different and apparently contradictory lines of authority had emerged in other fields of public law raising similar challenges. The court synthesised the relevant principles drawing on the relevant major cases in various fields of public law in particular those in the tax context including *R v. Inland Revenue Commissioners ex parte MFK Underwriting Agents Limited*<sup>44</sup> in which it was stated that, for a statement to give rise to a legitimate expectation, it must be “clear, unambiguous and devoid of relevant qualification”.

In the present case, the court of Appeal made it clear that the doctrine of substantive legitimate expectation does exist in English public law and that the arbiter of whether there is an overriding public interest which justifies the failure to honour that expectation is the court itself. The court is not confined to the review of the executive’s decision on the grounds of irrationality only. The court also referred to the useful review of the state of English public law in relation to substantive legitimate expectation in the judgment of *Nadarajah v. Secretary of State for the Home Department*<sup>45</sup> in which the Court firstly made it clear that there is no distinction in principle as to the approach to be taken by the court between procedural and substantive expectations. The second is that, the standard of review which the court could adopt where the executive seeks to resile from its previous promise is that of proportionality. In the present case, the claimant accepted that the Secretary of State was entitled in principle to adopt the change of policy which was reflected in the historical cases review. What he sought to challenge was the

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44 (1991) WLR 1545

45 (2005) EWCA Civ. 1363

decided that no action would be taken to bar him. In particular, he was sent a letter which the claimant submitted and made it clear that no further action would be taken against him in the absence of further misconduct coming to the department's attention. It was common ground between the parties that there was no evidence or allegations of any misconduct since that time. In those circumstances, the claimant submitted that the decision to bar him in October 2009 was unlawful on a number of grounds principally that the decision was an abuse of power because it was taken in breach of a substantive legitimate expectation. This case is confined to this aspect of the application.

The doctrine of substantive legitimate expectation was crystallized principally in the case of *R v. North and East Devon Health Authority ex parte Coughlan*,<sup>41</sup> where it was stated that when the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too, the court will in a proper case will decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy.

While referring to the review of substantive legitimate expectation by the House of Lords in *R v. Inland Revenue Commissioners ex parte Preston*<sup>42</sup> and by the court of Appeal in *R v. Inland Revenue Commissioners ex parte Unilever Plc*<sup>43</sup>, the court observed that it cannot

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41 (2001) QB 213

42 (1995) AC 835

43 (1996) STC 681

change in policy is irrational. The Court of Appeal while 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 and the same was reiterated in *Mulder v. Council and Commission*<sup>38</sup> which reveals 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>39</sup>.

In *R v. The Secretary of State For Education*<sup>40</sup> a claim for judicial review was made. In the claim for judicial review, the claimant challenged the decision of the secretary of state taken under section 142 of the Education Act, 2002 to bar him from working with children. As the claimant has spent his entire professional life as a teacher, the serious consequences of such a bar due to the adverse impact on the claimant's reputation as well as on his employment prospects were manifest.

The claimant's complaint inter alia was that the case was investigated by the department between 2003 and 2005 for which he was held responsible by the Secretary of State. But at that stage, it was

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38 (1996) 5 CLJ, 286

39 Wade and Forsyth, Administrative Law, (8th Edition 370)

40 UKHL 152 AC 246

had complained about bad conditions, they were held entitled to a hearing before rejection. 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 situations in which procedural expectation cannot adequately be protected from the unfairness occasioned by the decision-maker's breach of his promise or established practice.

### 1.2.2 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.

Thus in case of a boy seeking admission with a view to adoption, the Court of Appeal in *R v. Home Secretary Ex. P. Ruddock*<sup>36</sup>, found that refusing admission on an altogether different ground amounted to 'grossly unfair administration' and in the absence of an 'overriding public interest' justifying the change from the old criteria should apply. 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. In *R v. Inland Revenue Commissions Ex. P. Unilever*<sup>37</sup> the Court of Appeal held that substantive protection of expectations will only be possible where the

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36 (1987) 1WLR 1482

37 (1987) 1 WLR 1482

## 1.2 TYPES OF LEGITIMATE EXPECTATION

The expectations that individuals may have are various<sup>34</sup>. However, legitimate expectations may broadly be divided in two types.

### 1.2.1 Procedural legitimate expectation

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

In *Administrator, Transvaal v. Tranb*<sup>35</sup>, the court held that 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 applications of the applicants for hospital posts were rejected in breach of a long established practice because they

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34 H.W.R. Wade and C.F. Forsyth, *Administrative Law*, (8th edition) 497  
35 (1989) 4 SA 731

investments on the basis of the Kerala government's promise for exemption, which was later withdrawn. The Supreme Court of India observed that the government had clearly held out a promise to these new industries which had admittedly got established in the region, acting on such promise, the same in equity would bind the government.

This has been interpreted by the jurists that the doctrine of legitimate expectation has been upheld by the Supreme Court once again in contrast to some of the earlier restrictive court judgments. But that is not the correct position. In the instant case, the state of Kerala did not even take the plea of public interest.

The court, in fact, has observed that since there is no issue of public interest involved, the change in policy in exercise of executive power cannot go against the legitimate expectation contained in the promise in pursuance of which huge investments were made. It is quite clear that the Supreme court of India upheld the principle that the existence of public interest would have entitled the government to withdraw the exemption, that is to say, act against the so-called legitimate expectation. So the judgment of this court is not contrary to the tenor of the series of previous court judgments.

In other words, the protection of 'legitimate expectation' does not require the fulfilment of such expectation where an overriding public interest requires otherwise. That is to say, the public interest is overriding. If public interest is not involved, the doctrine of legitimate expectation has its full sway. However, it must be proved that a legitimate authority made a promise, which was acted upon and substantial investment or expenditure was made. Another substantial point is that public interest is not justiceable.

existence of a regular practice which the claimant can reasonably expect to continue.

The doctrine of legitimate expectation based on established practice as contrasted from legitimate expectation based on a promise, can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognized legal relationship with the authority. A total stranger unconnected with the authority or a person who had no previous dealings with the authority and who has not entered into any transaction or negotiations with the authority, cannot invoke the doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly.

The doctrine of legitimate expectation has an important place in developing the law of judicial review. It has taken a concrete shape in the law of equitable or promissory estoppel, which is not based on any statute but on successive court judgments given by the higher judiciary. In the days of this principle, it was held in a series of court judgments that promissory estoppel applies in the case of the exercise of executive power by the government.

The concept fell on bad days in India when the Supreme Court held that a time-bound notification, though it can be taken as a promise, could be withdrawn before the time period expired, in public interest.

One of the latest judgments of the Supreme Court in India in the case of *MRF Ltd Kottayam v. Asst Commissioner, Sales Tax*<sup>33</sup>, has generated a lot of interest. The court through its judgment has upheld the plea of promissory estoppel on the ground that MRF had effected huge

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33 (2006) 8 SCC 702



back upon it is thus a breach and unfair for a public authority to do so, with legitimate expectation thus being the public law equivalent to the doctrine of estoppel. The judgment passed in *R v. North and East Devon Health Authority, Ex parte Coughlan*<sup>29</sup> showed that legitimate expectation is recognized in cases where the relevant authority had made an unequivocal promise to provide the disabled woman with a home for life on which she subsequently relied on that promise and sold her house. Thus the court specifically made reference to the parallel with contract and the doctrine of estoppel. The clearest mention of the doctrine of legitimate expectation comes from the judgment in the case of *R (Nadarajah) v. Secretary of State for the Home department*<sup>30</sup> in which the court held that 'the principle of good administration required public authorities to be held to their promises would be undermined if the law did not insist that any failure of refusal to comply is effectively justified as a proportionate measure in the circumstances' with proportionality depending on the interests being balanced on each case. The important thing to note from the judgment is that it is effectively recognizing the doctrine of estoppel as a legitimate grievance on its own.

Reference to legitimate expectation was also made in the early eighties in a famous case titled as *Council of Civil Service Union v. Minister for the Civil Service*<sup>31</sup> by the court when it summed up the courts decision in *O'Reilly v. Mackman*<sup>32</sup> in regard to legitimate expectation as being legitimate or reasonable expectation may arise either from an express promise given on behalf of a public authority or the

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29 (1999) EWCA GV 1871

30 (2003) EWCA GV 1768

31 (1985) AC 374

32 (1982) 3 WLR 1096

itself, constrain public bodies which, subject to a duty not to abuse their power, are entitled 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 equivalent to a breach of contract or there have been representations that might have supported an estoppel and so caused legitimate expectations to arise. It is, of course, difficult to prove such a legitimate expectation unless fairly specific representations as to policies affecting future conduct have been made. The form of generalised understandings that ordinary citizens might have will not be sufficient for this purpose. And, even if, there are legitimate expectations, there is no absolute right to have those expectations met. Fairness may require no more than a hearing or consultation before any change is finally decided and if the citizen's expectation is real, the courts might require the public body to identify an overriding public interest to trump the particular expectation.

This supplements the *Wednesbury* approach but it may not be advancing judicial review very far, since, even in cases where an estoppel might otherwise have arisen, it will be difficult to convince a court that going back on a specific representation relied on to produce detriment will be unreasonable, unfair or irrational.

The idea of legitimate expectation has received sufficient mention both academically and in case law, so as to effectively merit being referred to as the doctrine of legitimate expectation. Legitimate expectation has been said to be a new category of fairness, stating 'the categories of unfairness are not closed, and precedent should act as a guide not a cage. Thus the principle idea behind it, is that once a public authority makes a promise, it effectively amounts to a contract and to go

detrimental reliance should not therefore be a condition precedent to the protection of a substantive legitimate expectation. It may be relevant in two conditions; first it might provide evidence of the existence or extent of an expectation. Second, detrimental reliance may be relevant to the decision of the authority whether to revoke representation. The case of *A.G. Hongkong v. Ng Yein Shiu*<sup>27</sup> is relevant for the above view in which the legitimate expectation has been held to arrive in the absence of any proof of detrimental reliance.

The traditional constraint on a public body has been the test of irrationality, also known as Wednesbury unreasonableness following the law laid down in *Associated Provincial Picture Houses Ltd v. Wednesbury Corp*<sup>28</sup> which stated that a decision would be unreasonable if no reasonable authority could ever have come to it. But, if, the courts are to establish a justification for a more interventionist approach, irrationality will always be defeated if the particular decision has sufficient qualities of reasonableness, i.e. it should never be irrational to prefer the good of the many to the interests of the few. Hence, when faced with claims of a legitimate expectation, the courts have begun to require public officials to adopt the same approach as in making decisions affecting fundamental human rights which are now formally protected through the Human Rights Act, 1998, which incorporated the European doctrine of legitimate expectation to protect the public interest in consistency and certainty through a test of proportionality.

In procedural terms, a person is entitled to a fair hearing before a decision is taken if he or she has a legitimate expectation of being heard. But the fact that a person is entitled to make representations does not, of

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27 (1983) 2 AC 629

28 (1948) 1 KB 223

of the convention or should personally entertain the expectation. It is enough that the expectation is reasonable in the sense that there is adequate material to support it. The comments of High Court of Australia through Mason CJ were quoted with approval by the Court of Appeal in England in *R v. Secretary of state Ex. P. Ahmed*<sup>23</sup>. In *R v. Secretary of State for Wales Ex. P. Emery*<sup>24</sup> the court held that a claimant is not barred from asserting a legitimate expectation just because he was unaware of the public authority's statement or practice at the relevant time.

According to De-Smith, the fact that the applicant is in the class to which the representation is directed but happens not to be aware of it, should not deprive him of the benefit of representation. To do so, would involve unfair discrimination between those who were and were not aware of the representation and would benefit the well informed or well ad void. It would also encourage undesirable administrative practices by too readily relieving decision maker of the normal consequences of their actions to hold that actual knowledge on the part of the claimant should be a pre requisite, is to embrace the concept of reliance as the rationale for enforcement of legitimate expectation at the expense of recognizing the other factors which are in play. If it is correct that the claimant need not personally know of the expectation, then it must follow that detrimental reliance need not be established, since, it would clearly be impossible for a claimant to rely upon a representation of which he was ignorant<sup>25</sup>. In *R v. Secretary of State Ex. P. Begbie*<sup>26</sup>, the Court was of the view that detrimental reliance is of an absolute pre requisite, nevertheless, it acknowledged that it may be relevant and endorsed, although

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23 (1998) INLR 570

24 (1996) All ER I

25 J.R. of Ad. Law (1995) P. 426

26 (2000), IWLR 1115

and his wife had three children. After further temporary permit expired, he applied for a permanent entry permit. In the meanwhile, the respondent was convicted of a number of drug related offences and was sentenced to six years imprisonment. The application for permanent permit was later rejected. After reconsideration of request, original decision was confirmed, which was challenged in the court on the ground that relevant consideration relating to his wife and children were not taken into consideration. The court of first instance rejected his pleas. However, in appeal, his contention was unanimously accepted on the ground that Article 3 clause 1 of U N Convention on the Rights of the Child, ratified by Australia, which provides that in all actions concerning children, the best interest of child shall be a primary consideration and that ratification created legitimate expectation that this practice would be followed in relevant cases. The Minister appealed. The High Court of Australia held that it was contended that a convention ratified by Australia but not incorporated into the law could not give rise to legitimate expectation. No persuasive reason was offered to support this for reaching proposition. The Court also said that legitimate expectations are not equated to rules or principles of law. Moreover, ratification by Australia in an international platitudinous or in effectual act, particularly when the instrument evidences under nationally accepted standard to be applied by court and administrative authority in dealing with basic human rights, affecting family and children. That positive statement, is an adequate foundation for a legitimate expectation, absent statutory or executive indications to the contrary, that an administrative decision maker will act in conformity with the convention and treat the best interest of the children as a primary consideration. It is not necessary that a person seeking to set up such a legitimate expectation should be aware

- 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.

In English law, the concept of legitimate expectation arises from administrative law, a branch of public law. In proceedings for judicial review, it applies the principles 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.

### **1.1.1 Knowledge and Reliance**

It is a crucial question whether the claimant have a legitimate expectation that he will be treated in a particular way if he was not aware of the public authority's statement or practice, how it intended to act.

In the *Minister of State for Immigration and Ethnic Affairs v. Teoh*,<sup>22</sup> the defendant, a Malaysian citizen, married an Australian citizen while in Australia pursuant to temporary entry permit. The respondent

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22 (1995) 183 CLR 276

estoppel. It may only entitle an expectant to an opportunity to show cause before the expectation is dashed; or to an explanation as to the cause for denial. In appropriate cases, courts may grant a direction requiring the authority to follow the promised procedure or established practice. A legitimate expectation even when made out does not always entitle the applicant to a relief. Change in policy in public interest conduct of the applicant or any other valid or bonafide reason given by the decision maker, may be sufficient to negative the legitimate expectation. The doctrine of legitimate expectation based on established practice, as contrasted from legitimate expectation based on a promise, can be invoked only by some one who has dealings or transaction or by some one who has a recognized legal relationship with the authority. A total stranger unconnected with the authority and who has not entered into any transaction or negotiations with the authority, cannot invoke the doctrine of legitimate expectation merely on the ground that the authority has a general obligation to act fairly.

### **1.1 ESSENTIAL ATTRIBUTES OF LEGITIMATE EXPECTATION**

The following are the essential attributes 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 or Certiorari. The view was reiterated in *N.C.H.S. v. Union of India*<sup>21</sup>.

HWR Wade, a famous jurist has cautioned state to be reasonable in all administrative actions and categorized the scope of unreasonableness<sup>20</sup>.

Legitimate expectation concerns the relationship between public administration and an Individual. State has to ensure that the individuals expectation is fulfilled Mutatis Mutandis the governmental policies. The doctrine of legitimate expectation doctrine is also considered as enlargement of the principles of natural justice.

According to famous jurist *Y. Prakash*, legitimate expectation is not a legal right. It is an expectation of a benefit, relief or remedy that may ordinarily flow from a promise, or established practice which is regular, consistent, predictable and a certain conduct, process or activity of the decision making authority. The expectation should be legitimate, i.e. reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by Courts for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established

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 natural course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is fresh above fairness in action but far below promissory

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20 HWR Wade, Administrative Law, 3rd Ed. p. 463



legitimate expectation that it will be renewed unless there is some good reason not to do so, and may therefore be entitled to greater procedural protection than a mere applicant for a grant<sup>19</sup>.

It is to be ensured that the expectation should be legitimate i.e. reasonable, logical and valid. In procedural terms, a person is entitled to a fair hearing before a decision is taken if she has a legitimate expectation of being heard. That a person is entitled to make representation does not, of itself, constrain public bodies which, subject to a duty not to abuse their power, are entitled to change their policies to reflect changed circumstances even though this may involve renegeing on previous understanding.

If there is substantive limitation on this right to make change it lies in a test of fairness where the public bodies are equivalent to a breach of contract or there have been representation that might have supported an estoppel and so caused legitimate expectation to arise. It is different to prove a legitimate expectation unless fairly specific representation as to policies affecting future could have been made, the form of generalised understandings that ordinary citizen might have will not be sufficient for this purpose. And, even if there are legitimate expectation, there is no absolute right to have those expectations fulfilled. Fairness may require no more than a hearing or consultation before any change is finally decided and, if the citizen's expectation is real, the courts might require the public body to identify an overriding public Interest to trump the particular expectation. Legitimate or reasonable expectation may arise either from an express promise given on behalf of a public authority or existence of a regular practice which the claimant expect to continue.

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19 PC Mankanda, Scope of Legitimate expectation, 1st Ed.p. 18

change of policy, it must be announced and published so that no one is taken by surprise and those concerned must be taken into confidence and given an opportunity of being heard<sup>18</sup>.

Administrative action is subject to control by Judicial Review under three heads i.e. illegality - when the decision making authority has been guilty of an error of law e.g. by purporting to exercise a power it does not possess; Irrationality where the decision making authority has acted so unreasonably that no reasonable authority would have made the decision and Procedural Impropriety where the decision making authority has failed in its duty to act fairly.

PC Markanda defines the doctrine of legitimate expectation in the words of Halsbury's Law of England and said that a person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. According to PC Markanda the existence of a legitimate expectation may have a number of different consequences; it may give locus-standi to seek leave to apply for judicial review; it may mean that the authority ought not to act so as to defeat the expectation without some overriding reason of public policy to justify its doing so; or it may mean that, if the authority proposes to defeat a person's legitimate expectation, it must afford him an opportunity to make representation on the matter, the courts also distinguish, for example in licensing cases, between original applications, application to renew and revocation; a party who has been granted a license may have a

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18 M.A. Sujana, Administrative Law & Practice, 9th Ed. p. 384

concept of legitimate expectation has made the area of applicability of Natural Justice much broader<sup>14</sup>.

In UK, the concept of legitimate expectation has developed both in the content of Reasonableness and Natural Justice. In *Re: West Minister C.C.*<sup>15</sup>, it was held that the duty of consultation may arise from a legitimate expectation of consultation aroused either by a promise or by an established practice of consultation. The precursor of the new trend started with *Schmidt v. Secretary of State for Home Affairs*<sup>16</sup> Since then the doctrine has been invoked in a number of cases.

The concept of legitimate expectation has also come to be recognized by Courts in India. In *Nav Jyoti Cooperative Group Housing Society v. Union of India*,<sup>17</sup> it was held that the doctrine of legitimate expectation imposes in essence, a duty on public authority to act fairly by taking into consideration all relevant factors relating to such legitimate expectation within the conspectus of fair dealing such as reasonable opportunity to make representation by the parties likely to be affected by any change of consistent past policy.

It has now become an established principle that no decision shall be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case subject to a few exceptions.

As per practice, policy and promise constitute the various components of the doctrine of legitimate expectation. The Supreme Court in its judgments says that, the past will repeat itself in the form of the present without any change is the crux of the concept and if there is

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14 M.P. Jain, Administrative Law, 5th Ed. p. 272

15 (1986) AC 668

16 (1969) 2 WLR 337

17 (1992) 4 SCC 477

results upto 1st January 1990, 403 between 1st January 1990 and 1st January 2000, and 975 between 1st January 2000 and 1st January 2010, which, though not precise but are suggestive.

In spite of its expanding recognition about its parameter and characteristic continue to be undefined. The legitimacy of legitimate expectation is directly linked with the issues of fairness of the Public Body's decision to thwart the expectation and abuse of power invoked, if any. Some of the factors which relate specifically to the question of Legitimacy are, legitimacy in an expectation that a public body will not breach its statutory duty. Representation made must be by actual or ostensible authority. High fact specific exercise be conducted in respect of purely subjective adjudication. Unwieldy attempt to thwart claim of legitimate expectation under the guise of overriding public interest must be weighed against the fairness of the interest. National security measures and those of natural Justice provide a separate basis for requiring some form of consultation prior to the making of an adverse decision and government, while formulating and reformulating policy must consider constitutional principles vis-à-vis legitimate expectation.

In short, the concept of legitimate expectation vis-à-vis doctrine of legitimate expectation, which, it has come to be lately known, has been recognized as the basis for judicial review of administrative actions.

Legitimate expectations may be based upon some express statements, or undertaking by or on behalf of the Public authority which has the duty of making the decision or from the existence of a regular practice which the claimant can reasonably expect to continue. The

In *Confederation of Ex-Serviceman Association v. Union of India*<sup>12</sup>, the Supreme Court said that 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.

In *M.P. Oil Extraction Co. v. State of M.P.*<sup>13</sup>, the Supreme Court held that 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.

In short, the doctrine of legitimate expectation imposes a duty on government to act fairly, more so, as the Government have to discharge its duty as a welfare state in consonance with the directive -Principles of State Policy of the Constitution.

It has been said that power i.e. judicial or executive, has a tendency to expand its parameter by stretching its limits. The doctrine of legitimate expectation owes its birth to screen this urge of expansionism. It is in fact a legal curiosity and gives sufficient locus-standi for judicial review. Thus it is a doctrine of Check and Balance.

The research on the law of Western Countries, incorporating the terms "legitimate expectation" and "Judicial Review", produced 158

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12 AIR 2006 SC 2945

13 (1997) 7 SCC 592

is not fair and reasonable. Thus this doctrine becomes a part of the principles of natural justice enshrining right to hearing to a person to be affected by an arbitrary exercise of power by the public authority and no one can deprive a person of his legitimate expectations without following the principles of natural justice.<sup>10</sup>

The doctrine 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 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>11</sup>

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10 Clerk, *In Pursuit of Fair Justice*, (1995) 11

11 Robert Thomas, 'Legitimate expectation and proportionality in administrative law', 1 *European Public Law*, 224 (2000)

growing abuse of administrative powers and in this process role of judiciary in Europe and United Kingdom in developing this doctrine is commendable. 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.

In the words of Lord Denning M.R., "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>9</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. The 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

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9 Lord Denning "Recent development in the Doctrine of consideration" Modern Law Review, Vol. 15, 1956.

from a representation or promise made by the authority including an Implied representation or from consistent past practice<sup>8</sup>.

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 longstanding practice or keeping a promise. Basically, 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. Basically, the plea of legitimate expectation relates to procedural fairness in decision-making and forms part of rule of non-arbitrariness; and it does not 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 legal order in the Administrative Law has emerged in India in the middle of 20<sup>th</sup> century. The role of judiciary in India in checking the

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8 Halsbury's Laws of England Vol. I (1) 4th Ed. p. 152.



suffered a civil consequence because their legitimate expectation had been violated. The term 'legitimate expectation' was first used in England Law by Lord Denning MR in 1969. In India, the Supreme Court has developed this doctrine in order to check the arbitrary exercise of power of the administrative authorities.

The Word "Legitimate Expectation" is not defined by any law for, the time being in force. Yet it is another doctrine fashioned by the court to review the administrative action.

The concept of legitimate expectation in administrative law has now gained sufficient importance. This creation takes its place beside such principles as the principle of natural justice, unreasonableness, the judicial duty of local authorities and in future perhaps, the principle of proportionality

It was, in fact, for the purpose of restricting the right to be heard that 'legitimate expectation' was introduced into the law. It made its first appearance in an English case where alien students of 'Scientology' were refused extension of their entry permits as an act of policy by the Home Secretary, who had announced that no discretionary benefits would be granted to the alien students. They had no legitimate expectation of extension beyond the permitted time and so no right to a hearing, though revocation of their permits within that time would have been contrary to legitimate expectation. Official statements of policy may cancel legitimate expectation; just as they may create it<sup>7</sup>.

A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise

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7 HWR Wade, Administrative Law, 6th Edn. at p. 522

remedy is a fundamental right which cannot be abridged absent compelling circumstances. As a fundamental right, however, the right to a remedy can still be denied if that denial is necessary to compelling state interest. State action that abridged fundamental rights, including the right to remedy is subjected to strict scrutiny analysis that balances the interest of the state against the fundamental interest. Thus, the exceptional cases in which a remedy is denied weave into a legal justification for the fundamental right to a remedy under due process.

There are well known maxims under the law of torts to impose tortious liability i.e. *Damnum sine injuria* and *injuria sine Damnum*. *Damnum sine injuria* means damage without injury. *Damnum sine injuria* is not actionable per se and the plaintiff has to prove the injury in the eyes of law. *Injuria Sine Damnum* means injury without actual loss or damage. *Injuria sine damnum* is actionable perse and plaintiff need not to prove any thing. In other words, a person can claim remedy from the court only when the legal injury has been caused. The injury becomes legal when there is a violation of legal right. But there can be circumstances when some one suffers civil wrong but he is not able to justify his claim on the basis of law in the strict sense of the term. At this juncture, the doctrine of legitimate expectation can be invoked to get remedy from the court. Generally judicial review of any administrative action can be exercised on four grounds viz. illegality, irrationality, procedural in propriety and proportionality. The doctrine of legitimate expectation is a new concept recruited to a long list of grounds of judicial review of administrative actions. The concept has been created by the judiciary. The doctrine of legitimate expectation belongs to the domain of public law and is intended to give relief to the people when they are not able to justify their claims on the basis of law in the strict sense of the term though they had

Similarly, the Supreme Court of USA recognized the bedrock principle that deprivation of law requires remedies in *Marbury v. Madison*<sup>5</sup>, when it endorsed the common law requirement mandating a remedy for every wrong. The court said that, it is a general and indisputable rule that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded. For it is a settled and invariable principle in the laws of England, that every right, when withheld, must have remedy and every injury its proper redress. The historical presence of the right to a remedy is found in almost three fourths of the constitutions of the countries in the world, which contain express remedial guarantees. Furthermore, even assuming that the right to a remedy has not been historically recognized, it is a fundamental right that should be newly identified. Remedies perform two critical functions in the law i.e. they define abstract right and enforce otherwise intangible rights. Rights standing alone are simply expressions of social values. It is the remedy that defines the right by making the value real and tangible by providing specificity and concreteness to otherwise abstract guarantees<sup>6</sup>. Without remedies, rights are mere ideals, promises or pronouncements that may or may not be followed. A remedy is thus the integral part of each right that is ultimately necessary to the effectuation of the rule of law. For without a remedy, judicial decisions are merely advisory opinions

The normative description of the equitable principle of *ubi jus ibi remedium* finds doctrinal grounding that elevates it above a mere maxim to the status of the legal entitlement. The due process clause of the fourteenth amendment provides a basis for finding that the right to a

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5 5 U.S. (1 Cranch) 137, 163-166 (1803)

6 Thomas R. Phillips, Speech, *The Constitutional Rights to a Remedy*, 78, N.Y.U.L. Rev. 1309 (2003)

## **CHAPTER – I**

### **INTRODUCTION : MEANING AND NATURE OF LEGITIMATE EXPECTATION**

There is a well known maxim i.e. ubi jus ibi remedium which means that where there is a right, there must be a remedy. In other words, the right to a meaningful remedy is a fundamental right protected by the Constitution of a Particular Country<sup>1</sup>. In *Troxel v. Gramville*<sup>2</sup>, the Supreme Court of USA held that the due process protects fundamental rights against arbitrary abridgement and the fourteenth amendment provides that no state shall deprive any person of life, liberty or property without due process of law. It has been recognized that the amendments due process clause, like its Fifth Amendment counterpart, guarantees more than fair process. The clause also includes a substantive component that provides heightened protection against government interference with certain fundamental rights and liberty interests. The principle that the rights must have remedies is ancient and venerable<sup>3</sup>. In 1703, in the case of *Ashby v. White*<sup>4</sup>, the right to a remedy was expressly recognized when the Chief Justice of the Kings Bench held that if the plaintiff has a right, he must of necessity have a means to vindicate and maintain it and a remedy if he is injured in the exercise of enjoyment of it and indeed it is a vain thing to imagine a right without a remedy for the want of right are reciprocal. Here a man has but one remedy to come at his right, if he loses that he loses his right.

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1 William Blackstone, Commentaries on the Laws of England 23 (1768)

2 530 US 57 65 (2000)

3 Donald H. Zeigler Rights, Rights of Action and Remedies : An Integrated Approach

4 92 Eng. Rep. 126 (K.D. 1703)