

Doctrine of legitimate Expectation: An comparative analysis of Indian legal system with Britain legal system¹

Abstract

A democratic system is based upon three organs of the government. Each organ has been delegated with its power to effectively fulfil its obligation. Executive one of the three organ has been conferred with the discretionary power. Many a time executive is free to exercise his power according to his judgement which creates a danger of arbitrariness. To mitigate the danger of arbitrary use of the power different methods are used. One of the method have evolved through this judicial decision Doctrine of Legitimate Expectation. It is not legal right but mere an expectation based on the promise. It evolved first in Britain in the case of Council of Civil Service Union V/s. Minister for the Civil Service and has adopted by different country. India also adopted the same in the case of “State of Kerala Vs. K.G. Madhavan Pillai”. Hence, the paper aims at analysing the India legal system with respect to Britain legal system.

Introduction

The doctrine of legitimate expectation is a concept which has been evolved to exercise control over the discretionary power conferred on executive. This doctrine imposes a duty on public authority taking into consideration the entire relevant factor relating to such expectation. The origin of legitimate expectation can be traced in German concept of *Vertrauensschutz* – the protection of trust. Legitimate expectation includes expectation which goes beyond an enforceable right, provided it has some reasonable basis. Expectation may be based upon some express statement, or undertaking by or on behalf of public authority which has the duty of making the decision or from the existence of regular practice which

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the claimant can reasonably expect to continue². The basic principle of legitimate expectation was explained by Lord Diplock in **Council of Civil Service Union V/s. Minister for the Civil Service**³ It was observed in that case that for legitimate expectation to arise, the decisions of the administrative authority must affect 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 to do until there has been communicated to him some rational grounds for withdrawing it and which he has been given an opportunity to comment

or

(ii) he has received assurance from the decision maker that they will not be withdrawn without giving him first an opportunity of advancing reason for contending that they should not be withdrawn.

In the case of **Madras city Wine Merchants Assn Vs State of T.N.**⁴ circumstances were laid down which may arise legitimate expectation - 1) if there is express promise held out or representation made by a public authority or 2) because of the existence of past practice which the claimant can reasonably expect to continue and 3) such promise or representation is clear and unambiguous.

Such legitimate expectations are commonly divided into procedural legitimate expectations, where the expectation is of a procedural benefit such as notice or consultation before any change of tack on the part of the public authority, following that procedural part of it relates to a representation that a hearing or the appropriate procedure will be afforded before decision is made.⁵ Whereas substantive legitimate expectations, where the expectation is that the public authority will act in accordance with its representation as a matter of substance. In other words, substantive part is that if representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit that it will be continued and not be substantially varied then the same could be enforced.⁶ The

² M.P.Jain & S.N.Jain, Principles of Administrative Law, (6th edition), lexis Nexis Butterworths Wadhwa, Nagpur, 2011

³ (1985) AC 374 (408-409) (commonly known as CCSU case)

⁴ (1994) 5 SCC 509

⁵ Constitution of India, Dr. J.N. Pandey, 45th edition, p. 87

⁶ Ibid 5

substantive aspects of the doctrine overlap with the doctrine of promissory estoppels, with the difference that in promissory estoppels, there is promise on behalf of the authority whereas in legitimate expectation, disappointment is caused by sudden change of policy or procedure.

In the doctrine's substantive sense it is another parameter for judging the validity of the exercise of administrative discretion. Where discretion is exercised in a manner not consistent with past practice or policy, its reasonableness is examined with reference to the detriment caused by the non-fulfilment of legitimate expectation. The procedural dimension of the doctrine brings into play the requirement of a hearing. Where persons are legitimately entitled to expect that certain entitlements would continue with them, but they are not continued, court insist that such decisions should be taken after giving to such person s an opportunity of being heard.⁷

The doctrine of legitimate expectation has to be consistent with statutory provision.⁸ In other words a right cannot be claimed on the basis of legitimate expectation when it is contrary to statutory provisions which have been enforced in public interest.⁹(delete)Similarly principal of legitimate expectation do not apply to public authorities when their mistaken advice or representation is found to be in breach of statute and is therefore not in public interest.¹⁰

Position in Britain

In the Common law jurisdiction the doctrine had been traced **Schmidt v. Secretary of State for Home Affairs**¹¹ in this case the home affair had a policy, according to which alien studying at the recognised institution were given permission to stay in the Britain. The plaintiff was studying at Hubbard College of Scientology and was given permits to stay in the country for a certain period of time. Later Hubbard college of Scientology would no longer be considered as recognised institution. When the plaintiff applied for renewal of the

⁷ S.P. Seth, Administrative Law, (7th edition), Lexis Nexis Butterworths, Wadhwa, Nagpur, 2006

⁸ A.Mahudeshwaran V. Govt. of Tamil Nadu, (1996) 8 SCC 617 para 12.

⁹ Howrah Municipal Corporation Vs. Ganges Road Company Limited, (2004) 1 SCC 663

¹⁰ Hira Tikkoo V. Union Territory of Chandigarh, (2004) 6 SCC 765

¹¹ [1969]1 All E.R. 904

stay, he was refused. He alleged that this constitute the denial of natural justice, i.e right to hear. Lord Denning said that the plaintiff had “legitimate expectation of which it would not be fair to deprive him without hearing what he has to say.”In this case there was no legitimate expectation because the permits were for a limited time, which had expired. However, Lord Denning stated that the plaintiffs would have been entitled to a hearing if their permits had been revoked before they expired. This was the case, they would have had a legitimate expectation of being allowed to remain in the country for the time specified, which would have entitled them to a hearing.

However, in **Breen Vs. Amalgamated Engineering Union**¹², the doctrine of legitimate expectation found its legitimate place. In this case the district committee of trade union was refused to endorse a member’s election as shop steward. The court held that if a person claims a privilege he can be turned away without hearing but here a person has something more than a mere privilege-a legitimate expectation that his election would be approved unless there are relevant reasons for not doing so, therefore, the natural justice principles are attracted to the case in order to ensure fairness.

The further case in which doctrine of legitimate expectation come up was **R. v. Liverpool Corporation, ex parte Liverpool Taxi Fleet Operators’ Association**.¹³ Although the word legitimate expectation was not used in the judgment. In this case, the number of taxi licences in Liverpool had been limited by the county council to 300 for some time. When the taxicab owners’ association heard that the council was considering increasing the number of taxi licences, it expressed concern, and received letters from the town clerk assuring it that there would be opportunities for the taxicab owners to make representations and that “interested parties would be fully consulted.” The city council subcommittee did recommend an increase in the number of licences. After the city council meeting which approved these minutes, the subcommittee chair announced that the number of licences would not be increased until national legislation, then pending, to restrict “private hire cabs” was in force. This undertaking was confirmed in a letter to the association. Nevertheless, several months later, without informing the association, the committee and the city council decided to begin increasing the number of licences almost immediately. Although the

¹² (1971) 1 ALL ER 1148

¹³ CA 1972

owners asked for a hearing when they indirectly heard about the pending resolution, this was denied to them.

Lord Denning held that this promise gave the plaintiffs a right to another hearing if a decision was to be made contrary to it. He wrote:

“....So long as the performance of the undertaking is compatible with their public duty, they must honour it. And I should have thought that this undertaking was so compatible. At any rate they ought not to depart from it except after the most serious consideration and hearing what the other party has to say: and then only if they are satisfied that the overriding public interest requires it.....”¹⁴

This passage establishes that if an undertaking has been given by a public body, it cannot be changed without at least giving the affected person a chance to be heard.

The same proposition has been reiterated by the Privy council in **Attorney General of Hongkong Vs. Ng Yuen Shiu**¹⁵ in the said case an alien, an illegal immigrant in Hong Kong was sought to be deported without being heard. There was no statutory provision requiring hearing before making a deportation order, but the government had given a general undertaking that each case would be decided on merits. In spite of this assurance, the immigrant in the instant case was sought to be deported without being heard. The Privy Council held that the alien applicant was entitled to be heard before being deported because of the government undertaking to that effect. In other words it was only the legitimate expectation arising from the assurances given by the government that enabled the court to intervene on behalf of the illegal immigrant: his status as an illegal immigrant would not of itself create an entitlement to a hearing.

The basic principles relating to “legitimate expectation” were enunciated by Lord Diplock in the case of **Civil Service Unions Vs. Minister for the civil service**¹⁶ it was observed in that case that a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which either 1) he had in the past been permitted by decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational

¹⁴ Regina v Liverpool Corporation Ex Parte Liverpool Taxi Fleet Operators Association, 1972, 2 Q.B. 299 C.A.

¹⁵ (1983) 2 AC 629

¹⁶ 1985 AC 374

grounds for withdrawing it on which he has been given an opportunity to comment or 2) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.

Though the doctrine as evolved in England is still in an evolutionary stage yet one thing is certain that it is an equality doctrine and therefore, the benefit of the doctrine cannot be claimed as a matter of course. It is a flexible doctrine which can be moulded to suit requirement of each individual case. The court did not apply where applicant's own conduct was unlawful or claim was unworthy.

In **Lloyd Vs. Mahon**¹⁷ the House of Lords further held that the doctrine does not include within its ambit a right of oral hearing. Courts have also not protected expectation by authority or legitimate public interest demanded otherwise.

In the case of **R v. North and East Devon Health Authority ex parte Coughlan**¹⁸ the substantive aspect of doctrine was explained "Where 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 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."

Position in India

The doctrine of legitimate expectation is only an aspect of Article 14 of the constitution in dealing with the citizens in a non-arbitrary manner and thus by itself does not give rise to enforceable right but in testing the action taken by the government authority whether arbitrary or otherwise, it would be relevant.¹⁹

¹⁷ (1987) 1 All ER 1118(HL)

¹⁸ 2001 QB 213

¹⁹ State of W.B. v. Niranjan Singha, (2001) 2 SCC 326, 329 (para 4)

The doctrine of legitimate expectation first comes up in the case of **State of Kerala Vs. K.G. Madhavan Pillai**²⁰ in this case the government had issued a sanction to the respondent to open a new unaided school and to upgrade the existing ones. However, after 15 days a direction was issued to keep the sanction in abeyance. This order was challenged on the ground of violation of Principles of Natural Justice. The court held that the sanction order created legitimate expectation in the respondents which was violated by the second order without following the principles of natural justice which is sufficient to vitiate an administrative order.

The doctrine was further applied in **Schedule Caste and Weaker Section Welfare Assn. Vs State of Karnataka**²¹ in this case the government had issued a notification notifying areas where slum clearance scheme will be introduced. However, the notification was subsequently amended and certain areas notified earlier were left out. The court held that the earlier notification had raised legitimate expectation in the people living in an area which has been left out in subsequent notification and hence legitimate expectation cannot be denied without fair hearing. Thus way which falls short of enforceable right, the administrative authority cannot deny him legitimate expectation without a fair hearing.

Navjyoti Co-Op. Group Housing Society V. Union of India²² in this case supreme court held that the doctrine of legitimate expectation imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factor 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. In this case it was also held that the that person enjoying certain benefits/advantage under the old policy of the Government derive a legitimate expectation even though they may not have any legal right under the private law in the context of its continuance. Allotment of the land by the development authority to co-operative societies was done in the order of seniority of such societies. The seniority was determined on the basis of the date of registration. New criteria were laid down whereby seniority was to be determined with reference to the date of approval of the members of the society by the registrar. The doctrine of legitimate

²⁰ (1988) 4 SCC 669

²¹ (1991) 2 SCC 604

²² (1992) 4 SCC 477.

expectation provides that the policy of government or its department should be without discretion

In the **Food Corporation of India V/s M/s Kamadhenu Cattle Feed Industries**²³ the corporation invited tender for sale of damage food grains. K's bid was highest. All bidders were, however, invited by the corporation for negotiation. K did not raise bid but filed a petition contending that since he was the highest bidder, he ought to have been awarded the work. He relied on the doctrine of legitimate expectation. The High court allowed the petition. Revising the decision, the SC held that negotiations were held and all bidders were afforded equal opportunity of revising bids. K ought to have raised the bid if he was interested in getting the contract reliance on the doctrine, on the facts of case was not well-founded. SC further stated that non-arbitrariness, fairness in action and due consideration of legitimate expectation of the affected party are the essential requisites for a valid state action. It has also been held that whether expectation is legitimate is a question of fact which has to be determined in the larger public interest.

In **Union of India Vs. Hindustan Development Corporation**²⁴ in this case in the absence of any fixed procedure for fixing price and quantity for the supply of food grains, the government adopted a dual pricing system in the public interest in order to break the cartel. The court held there is no denial of legitimate expectation as it is not based on law, custom or past practice. The court said that it is not possible to exhaustively list wherein legitimate expectation arise but by and large they arise in promotion cases, though not guaranteed as a statutory right in cases of contracts, distribution of larges by the government.

In **Madras city wine Merchants association Vs. State of Tamil Nadu**²⁵ in this case matter relates to the renewal of liquor licenses rule which were statutorily altered. The court held that the legitimate expectation does not arise where there is change in policy or public interest, the position is altered by a rule or legislation.

²³ (1993) 1 SCC

²⁴ (1993) 3 SCC 499

²⁵ (1994) 5 SCC 509

In **PTR Exports Madras Vs. Union of India**²⁶ in this case the applicant for an export license has no vested or accrued right to grant of license, the court would not bind the government to its old policy by invoking the doctrine of legitimate expectation.

In **M.P. Oil Extraction V/s State of M.P.**²⁷ in this case court held that the State's Policy to extend renewal of an agreement to selected industries which came to be located in Madhya Pradesh on the invitation of the State, as against the local industries was not arbitrary and the said selected industry had a legitimate expectation of renewal under the renewal claims

In **National building construction corporation V. S. Ragunathan**²⁸ it was held that the legitimate expectation is source of procedural as well as substantive right.

The Supreme Court restated that a policy decision making representation that benefits of substantive nature will be granted, creates legitimate expectation which is substantive in nature and is normally binding on the decision maker. But such policy can be changed in overriding public interest, since choice of policy is for the decision-maker.

In **Bannari Amman Sugars Ltd. Vs CTO**²⁹ certain tax benefits which were granted by the state earlier were withdrawn. The action was challenged. The Apex court upheld the state. The court said; “ the protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, where a person’s legitimate expectation is not fulfilled by taking a particular decision then the decision-maker should justify the denial of such expectation by showing some overriding public interest.

In recent case **Official Liquidator Vs. Dayanand**³⁰ , Supreme Court held that “the doctrine of legitimate expectation is a nascent addition to the rules of natural justice. It goes beyond statutory right by serving as another device for rendering justice. At the root of principles of legitimate expectation is the constitutional principle rule of law, which requires regularity, predictability and certainty in government dealing with the public.

²⁶ (1996) 5 SCC 268

²⁷ (1997) 7 SCC 592

²⁸ (1998) 7 SCC 66

²⁹ (2005) 1 SCC 625

³⁰ (2008) 10 SCC 1

In **west Bengal Vs. Niranjan Singha**³¹ the SC said “the doctrine of legitimate expectation is only aspect of Article 14 of the Constitution in dealing with the citizen in a non-arbitrarily manner and thus, by itself, does not give rise to an enforceable right but in testing the action taken by the government authority whether arbitrary or otherwise, it would be relevant.

In the **T. Vijayalakshmi Vs. Town planning Member**,³² in this case owner of agricultural land who were entitled by law to use the same for residential purposes. They filled an application for the approval of building plan before the planning authority. Their application was rejected on the ground that the land in question would form part of valley zone within the proposed comprehensive development plan which will come into operation in near future. Upholding the contention of the appellants, the court observed that the doctrine of legitimate expectation would have a role to play in case of this nature. Therefore administrative authority cannot postpone decision on any important right for an indefinite period. It must take decision within statutory time limit, if any, or within the reasonable time. The rights of the parties must be decided on the basis of existing law and cannot be postponed, much less taken away, on ground of any postponed future law or change of po

Conclusion

The emerged concept of legitimate expectation in administrative law has now undoubtedly gained sufficient importance. It is observed that legitimate expectation is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action. The Legitimate expectation would arise when there is an express promise given by a public authority that there is a regular practice of certain thing which the claimant can reasonably expect to continue. It therefore follows that the concept of legitimate expectation consists in inculcating an expectation in the citizen that under certain rules and scheme he would continue to enjoy certain benefits of which he shall not be deprived unless there is some overriding public interest to deprive him of such an expectation. The concept of legitimate expectation followed in India and Britain is different, in Britain procedural aspect of legitimate expectation is followed whereas in India both the substantive aspect and procedural aspect is followed which increases the periphery of the doctrine to curb the

³¹ (2001) 2 SCC 326, 329

³² (2006) 8 SCC 502

misuse of the power. So, it can be stated that the doctrine of legitimate expectation in India has wider application than in Britain and has been an effective tool in curbing the power of the executive.