

● DOCTRINE OF LEGITIMATE EXPECTATION: CRITICAL ANALYSIS

Vijay Kumar*

I. INTRODUCTION

The doctrine of legitimate expectation belongs to the domain of public law and it 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 suffered a civil consequence because their legitimate expectation had been violated. The term 'legitimate expectation' was first used by Lord Denning in England in 1969. '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 the claimant can reasonably expect to continue. When an expectation arise either from express promise or from existence of regular practice which the applicant can reasonably expect to continue the court may protect his expectation by invoking principle similar to Natural Justice a '*fair play in action*'. A legitimate expectation is not the same thing as anticipation. It is the distinct and different from a desire and hope. Legitimate Expectation is considered to be a part of the principles of natural justice. This doctrine would be applicable, if by reason of existing state of affairs, a party is given to understand that the other party shall not take away the benefit without complying with the principles of natural justice.

Therefore this doctrine provides a central space between 'no claim' and a 'legal claim' wherein a public authority can be made accountable on the ground of an expectation which is legitimate. A natural habitat for this doctrine can be found in article 14 of the constitution which cancel arbitrariness and insist on fairness in all administrative dealings.

When a person who bases his claim on the doctrine of legitimate expectation, in the first instance he has to satisfy that he relied on the said representation and denial of that expectation has worked to his detriment. The court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principle of natural justice and not taken in public interest.

II. DEVELOPMENT OF LEGITIMATE EXPECTATION

The term 'legitimate expectation' was first used by LORD DENNING in *Schmidt v. Secretary of state for Home Affairs*.¹ In this case the government had cut short period already allowed to an alien to enter and stay in England. The court held that person had legitimate expectation to stay in England which cannot be violated without following a procedure which is fair and reasonable. LORD DENNING used the term 'legitimate

*LL.M., Law College Dehradun, Uttarakhand University, Dehradun

¹[1969] 2 WLR 337

expectation¹ as an alternative expression to the word 'right'. However, In *Breen v. Amalgamated Engineering Union*² the doctrine of legitimate expectation found its legitimate place. In this case the District Committee of a trade union had 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 reason for not doing so, therefore the natural justice principles are attracted to the case in order to ensure fairness.

In the case of *A.G. of Hongkong v. Ng. Yuen Shieu*³, there was an announcement by the authority that while examining the case of illegal immigration each case would be decided on its merits and therefore, removal cannot be passed without fair hearing. The Privy Council in this case quashed the removal order passed by Hongkong Immigration Authority without notice and hearing also held that there is a violation of the legitimate expectation of immigrant based on announcement. The concept of natural justice in U.K. has been developed in the context of reasonableness with the development of new trends of natural justice. It has been held that duty of consultation may arise from a legitimate expectation of consultation aroused by a promise or by an established practice of consultation.⁴ Though the doctrine as evolved in England is still in an evolutionary stage yet one thing is certain that it is an equity doctrine and therefore, the benefit of doctrine cannot be claimed as a matter of course. It is a flexible doctrine which can be molded to suit the requirements of each individual case.

In India, the Supreme Court has developed this doctrine in order to check the arbitrary power exercised by administrative authorities. In a private law a person can approach the court only when his right based on statute or contract is violated but in public law, the rule of *locus standi* is relaxed by the Doctrine of Legitimate Expectation that it allows standing before the court when legitimate expectation from a public authority is not fulfilled. So, the administrative authority could be made accountable on the ground of an expectation which is legitimate but not fulfilled by the authority.

This doctrine is a part of 'Principle of Natural Justice' and anyone could not be deprived of his expectation without following the principle of natural justice. Legitimate Expectation is the creativity of the judiciary, although this doctrine has natural habitat in the Article 14 of the Constitution which very much dislike the arbitrariness and insist on fairness in administrative dealings. The protection of Article 14 is always available to the arbitrary action of state. Thus, the 'doctrine of legitimate expectation' is applied to check the administrative authorities from violating the legitimate expectation of the people and on second face compelled the administrative bodies to fulfill the legitimate expectation of the people. It is the capacity of the apex court to import legal doctrines and to plant them in different environment and judicial ecosystem and to make them flourish. In India the first reference to this doctrine is found in the case:

In *State of Kerala v. K.G. Madhavan Pillai*⁵ the government had issued a sanction to the respondent to open a new un-aided school to upgrade the existence ones. However after

²(1971) 2 QB 175

³(1983) 2 AC 629

⁴Re Westminster CC, (1986) AC 668

⁵1988 SCR Supl (3) 94

fifteen days direction was issued to keep the sanction in suspension. The court held that the sanction order, created legitimate expectation in the respondents which was violated by the second order without following the 'principle of natural justice'. In the leading case of *Navjyoti Co-operative Group Housing Society v. Union of India*⁶ in this case the development authority without notice and hearing had changed the order of priority for the allotment of land to co-operative societies from *serial number of registration to the date of approval of list of members*. The court quash the order on the ground of violation of legitimate expectation and held that where a person enjoying certain benefits or advantage under old policy of government, derive a legitimate expectation even though they may not have any legal right under private law.

In *Food Corporation of India v. Kamdhenu Cattle Feed Industries*⁷ the court held that legitimate expectation cannot be claimed if hearing was given. The court observed that that the concept of Legitimate Expectation has now gained importance in administrative law as a component of natural justice, non- arbitrariness and rule of law. In *Union of India v. Hindustan Development Corporation*,⁸ in the absence of any fixed procedure for fixing price and quantity for the supply of food-grains, the Government adopted a dual price system that was lower price for big suppliers and higher price for small suppliers in the public interest in order to break the cartel (agreement to fix price). The court held that there is no denial of legitimate expectation as it is not based on any law, custom or past practice. In *Supreme Court Advocate-on- Record v. Union of India*⁹, the Supreme court held that in recommending appointment to the Supreme court, due consideration of every legitimate expectation has to be observed by the Chief Justice of India. [Just as a High court Judge at the time of his initial appointment has the legitimate expectation to become Chief Justice of High court in his turn in ordinary course, he has the legitimate expectation to be considered for appointment to the Supreme court in his turn according to his seniority.]

II. CONDITIONS WHEN DOCTRINE OF LEGITIMATE EXPECTATION CLAIMED

On a general note the doctrine of legitimate expectation may arise or claimed; if there is an express promise held out or representation made by a public authority; or because of the existence of past practice which the claimant can reasonably expect to continue; and Such promise or representation is clear and unambiguous.

Lord Denning propounded the view in *Schmidt v. Secretary of State for Home Affairs*¹⁰ that an administrative authority should give a hearing when a person's liability, interest or even some legitimate expectation is being affected. If a person has some legitimate expectation, it would not be fair to deprive him without hearing what he was to say.

First time Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service*¹¹

⁶(1992) 4 SCC 499

⁷AIR 1993 SC 1601

⁸AIR 1994 SC 988

⁹AIR 1994 SC 268

¹⁰1969) 2 WLR 337

¹¹1985 AC 374

laid down two conditions, when the legitimate expectation arises. He observed that, the decision of the administrative authority affect the person by depriving him of some benefit or advantage which either; (i) a person had 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 on which he has been given an opportunity to comment; or (ii) he has received assurance from decision-maker that the benefit and advantages given will not be withdrawn without giving him an opportunity for advancing the reason for contending the benefit or advantage, that they should not be withdrawn.

*In Re Liverpool Taxi Owners Association*¹² it was proved that legitimate expectation may arise from express promise made by a public authority. In this case it was held that though determining the numbers of taxi cabs license to be issued was a purely a policy matter yet the corporation should have acted fairly having due regard to the conflicting interests. The city corporation was bound to give a hearing to the association before deciding to increase the cab license beyond 300. In *R v. Home Secretary Exp. Ruddock*¹³ it was held that where there was a published criterion for regulating the case of telephone tapping it created a legitimate expectation that criteria would be properly observed and court may enforce the criteria if it was violated without any published change in policy.

III. WHEN DOCTRINE OF LEGITIMATE EXPECTATION CANNOT BE CLAIMED

The doctrine of legitimate expectation has its limitations; it has procedural impact and has no substantive impact. In *Attorney General for New South Wales v. Quinn*¹⁴, one stipendiary Magistrate in charge of Court of petty session, that court was replaced by local court by an Act of legislature but the Magistrate was not appointed under new system. That action was challenged but the Court dismissed the claim observing that if substantive protection is to be accorded to legitimate expectations, it would result in interference with administrative action on merits which is not permissible.

In *R. v. Ministry of Agriculture, fisheries and food, exp Jaderow Ltd.*,¹⁵ under a new policy, conditions were imposed on fishing licenses. The said action was challenged contending that new policy was against the legitimate expectation, but the Court rejected the argument and held that the doctrine of legitimate expectation can not preclude legislation. Likewise, in *Srinivasa Theatre v. Govt. of Tamil Nadu*¹⁶ the method of taxation was changed by an amendment in provisions of the Tamil Nadu Entertainment Tax Act, 1939. The validity of amendment was challenged that it was against the legitimate expectation of law in force prior to the amendment. The Supreme Court rejected the argument and followed the Council of Civil Service Unions (CCSU) case, held that a legislation cannot be invalidated on the basis that it offends the legitimate expectation of the person affected thereby. So the doctrine of legitimate

¹²(1972) 2 All ER 589

¹³(1988) 1 WLR 972 (HL)

¹⁴(1990) 64 Aust LJR 327

¹⁵(1991) I All ER 41

¹⁶AIR 1992 SC 999

expectation cannot be claimed if it is against the public policy or security of the state.

Again in *State of Himachal Pradesh v. Kailash Chand Mahajan*¹⁷ the age of superannuation was provided by an amended act which was challenged and contended that when appointment was made by fixing a tenure, there was a right to continue and the legitimate expectation would apply, but the Court rejected the argument and observed that a legislation could not be prevented by legitimate expectation.

In *Ram Pravesh Singh v. State of Bihar*¹⁸ The Supreme court held that 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 an established practice. The Supreme Court observed the 'Established practice' refers to a regular, consistent predictable and certain conduct. In *Confederation of Ex-serviceman Association v. Union of India*¹⁹ The Supreme Court observed that, a person is 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 there is regular or consistent practice by the authority. On the question that can Legitimate Expectation be postponed by the administrative authorities for an indefinite period on the ground of any future proposed plan or change of policy which has not yet come into existence? In *T. Vijayalakshmi v. Town Planning Member*²⁰ the Supreme Court held that the administrative authority cannot postpone the decision on any right for indefinite period. The decision must be taken within reasonable time or statutory time limit. The right of parties must be decided on existing laws and cannot be postponed on the ground of any proposed future law or change in policy.

IV. CRITICISM OF DOCTRINE OF LEGITIMATE EXPECTATION

The doctrines of legitimate expectation as an equity doctrine are not rigid and operate only in area where the injustice is clearly visible or understandable. It enforces certain public morality in all public dealings. This doctrine as a part of equity has very weak application to correct the injustice because it depends on the clear visibility of the injustice. Although it has habitat in the Article 14 of the constitution however, it is the last and least recourse to correct the injustice. Consideration of public interest would disadvantage this doctrine application. The Supreme Court in recent decision, speaking through J. PASSAYAT, held that a Government promise cannot be enforced on the ground of legitimate expectation. Doctrine can be applied only if decision is not arbitrary or unreasonable and is taken in public interest. The court further

explained that if promise is a question of policy, even then the court cannot interfere unless it is irrational, perverse or one which is no reasonable man could have made. A legitimate expectation without anything more cannot give a right, same as in manifestos of political parties do not attract the Legitimate Expectation.²¹

V. CONCLUSION

The 'doctrine of legitimate expectation' emerged as an important concept and the latest recruit in the various concepts by the court to review an administrative action. The root

¹⁷ AIR 1992 SC 1277

¹⁸ (2006) 8 SCC 381

¹⁹ (2006) SC 513

²⁰ AIR 2007 SC 25

²¹ *The Hindu*, 19th April 2008, at 13

of this doctrine is the 'Rule of Law' which requires that no person would be made to suffer except for the breach of law means, there should be equality before law. Article 14 of the Constitution which provides 'equality before law' and 'equal protection of law' insists on the 'principle of non- arbitrariness' and fair play in administrative action; is the home of the doctrine of legitimate expectation. For this an expectation should be based on an express promise or representation or by established past action or settled conduct now it is clear that doctrine of legitimate expectation in essence imposes a duty to act fairly. Legitimate Expectation may come in various forms and exist in different kinds of circumstances. It is not possible to give an exhaustive list in the context of vast and fast expansion of government activities, but the trend which the Indian judiciary has adopted, it helped in application of this doctrine beyond the law which does not create a legal right but may justify a claim on the basis of person's legitimate expectation.

The Supreme Court in *Official Liquidator v. Dayanand*²² Observed that the doctrine of legitimate expectation is a recent addition to the rule of natural justice. It goes beyond the statutory right by serving as another device for rendering justice. No fresh right can be created by invoking the doctrine of legitimate expectation. Only the existing right is saved, subject to the provisions of statute.²³ Consistent past practice adopted by the state can furnish grounds for legitimate expectation.²⁴ It is well settled that the concept of legitimate expectation has no role to play where the state action is a public policy or in public interest unless the action taken amounts to an abuse of power.²⁵ But, now Doctrine of legitimate expectation shares spaces with the *principle of promissory Estoppels*. In the *Southern Petrochemicals Industries Co. Ltd. v. Electricity Inspector & ETIO*²⁶ ordinarily the doctrine of legitimate expectation would not have any application where the legislature has enacted a statute, but in this case resulting in the application of promissory estoppels the court observed that there may not be any reason as to why the doctrine of legitimate expectation would not apply.

²²(2008) 10 SCC 1

²³*State of Tamil Nadu v. Seshachalam*, (2007) 10 SCC 137

²⁴*State of Haryana v. Jagdish*, (2010) 4 SCC 216

²⁵*Sethi Auto Service Station v. Delhi Development Authority*, (2009) 1 SCC180

²⁶(2007) 5 SCC 447