

# Legitimate Expectations in India

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## *Abstract*

*The principle of legitimate expectation has evolved in case law as an unwritten principle of law or an unwritten principle of fair administration. Even today it is still mainly an unwritten principle of law. As such, it takes precedence over individual decisions and subordinate legislation. However, judicial review of acts of parliament by reference to the principle of legitimate expectation may be possible. The doctrine of legitimate expectation confers upon person a right which is enforceable in case of its denial. But whether an expectation is legitimate or not is a question of fact which has to be determined not according to claimant's perception but in the larger public interest.*

**Keywords:** Legitimate expectation, unwritten principle of law.

## INTRODUCTION

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. The principle that the rights must have remedies is ancient and venerable. In 1703, in the case of *Ashby v. White*<sup>1</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. 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

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<sup>1</sup>92 Eng. Rep. 126 (K.D. 1703)

Sine Damnum” means injury without actual loss or damage. “Injuria sine damnum” is actionable per se and plaintiffs need not to prove anything. 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 someone 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 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 *Schmidt v. Secretary of State for Home Affairs*<sup>2</sup> 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. 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 from a representation or promise made by the authority including an implied representation or from consistent past practice. 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

<sup>2</sup>(1969) 1 All ER 904

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 20th century. The role of judiciary in India in checking the growing abuse of administrative powers and in this process role of judiciary in Europe and United Kingdom in developing this doctrine 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" 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 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. 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>3</sup>In *Confederation of Ex-Servicemen Association v. Union of India*,<sup>4</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>5</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. In spite of its expanding recognition about its parameter and characteristic continue to be undefined. The legitimacy

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

<sup>4</sup>AIR 2006 SC 2945

<sup>5</sup>(1997) 7 SCC 592

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 concept of legitimate expectation has made the area of applicability of Natural Justice much broader. 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>6</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 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. 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

<sup>6</sup>(1992) 4 SCC 477

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.

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

The following are the essential attributes of doctrine of legitimate expectation:

(i) 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>7</sup>

(ii) 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.

(iii) The concept of legitimate expectation is a relevant factor for due consideration to make decision making process 'fair'.

(iv) 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.

(v) An individual can claim a benefit or privilege under the doctrine of legitimate expectation only when such expectation is reasonable.

(vi) The doctrine of legitimate expectation extends to the exercise of even non-statutory or common law powers.

(vii) The doctrine of legitimate expectation would arise from an express promise or existence of a regular practice.

### **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*

<sup>7</sup>AIR 1993 SC 155

*Affair v. Teoh*,<sup>8</sup> the defendant, a Malaysian citizen, married an Australian citizen while in Australia pursuant to temporary entry permit. The respondent 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 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 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. 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

<sup>8</sup>(1995) 183 CLR 276

substantial investment or expenditure was made. Another substantial point is that public interest is not justifiable.

## **TYPES OF LEGITIMATE EXPECTATION**

The expectations that individuals may have are various.<sup>9</sup> However, legitimate expectations may broadly be divided into two types.

### ***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 fulfilment. 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>10</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 had complained about bad conditions, they were held entitled to a hearing before rejection. The person affected is not entitled to a favourable 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. In *Ghaziabad Development Authority v. Delhi Auto and General Finance Pvt. Ltd.*,<sup>11</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

<sup>9</sup>H.W.R Wade and C .F. Forsyth, *Administrative Law*,(8th edition) 497

<sup>10</sup>(1989) 4 SA 731

<sup>11</sup>(1969) All ER 904



confer an independent right enforceable by itself.

## ***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>12</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. The doctrine of substantive legitimate expectation was crystallized principally in the case of *R v. North and East Devon Health Authority ex parte Coughlan*, 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. However, in *M P Extraction v. State of M P*,<sup>13</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.

## **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,

<sup>12</sup>(1987) 1WLR 1482

<sup>13</sup>(1997) 7 SCC 592

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. In *Union of India v. Hindustan Development Corporation*<sup>14</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 *Food Corporation of India v. Kamdhenu Cattle Feed Industries Ltd*<sup>15</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>16</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>17</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>18</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 crystalised 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 *U.P. Awas Evam Vikas Parishad v. Gyan Devi*, 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

<sup>14</sup>(1993) 3 SCC 499

<sup>15</sup>AIR 1993 SC 160

<sup>16</sup>(2004) 1 SCC 663

<sup>17</sup>(1994) 5 SCC 509

<sup>18</sup>AIR 1994 SC 988

come into play and the person may have a legitimate expectation of being treated in a certain way by an administrative authority. 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>19</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.

The doctrine of legitimate expectation is intended to give relief to the people when they are not able to justify their claims on the basis of the violation of legal right 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 1969 for the first time and from that time it has occupied the position of a significant doctrine of public law in almost all the in English Law systems of common law, countries of the world. In our country, the Supreme Court has also developed this doctrine in order to check the arbitrary exercise of power by the administrative authorities. In private law, a person can approach the court only when his legal right is violated but this rule of locus standi is relaxed in public law to allow standing even when a legitimate expectation from a public authority is not fulfilled. Therefore, the doctrine of legitimate expectation provides a central line between 'no claim' and a legal claim' wherein a public authority can be made accountable on the ground of an expectation which is legitimate. For example, if the Government has made a scheme for providing drinking water in villages in certain area but later on changed it so as to exclude certain villages from the purview of the scheme. Then in such a case is the legitimate expectation of the people in the excluded villages for tap water is violated and the government can be held responsible if exclusion is not fair and reasonable. Thus the doctrine becomes a part of the principles of natural justice and no one can be deprived of his legitimate expectations without following the principles of natural justice. The basic concept that it must be possible to rely on the statements of the counter party in legal matters applies not only

<sup>19</sup>AIR 1958 SC 538

in constitutional and administrative law but also in other fields of law, probably criminal law and private law. In other words, the doctrine of legitimate expectation can be traced back to the furthest in private law. For example, the decisive factor in the conclusion of a legal act in private law and the determination of the content of such an act has long been not only the will of the parties but also the legitimate expectations created by this act. It follows that the literature on the doctrine of legitimate expectations in constitutional and administrative law often refers to private law accounts of this doctrine.<sup>1</sup> However, there is a difference in the operation of the doctrine in the two fields of law. In relation to civil law, individuals are in principle free to give promises and make contracts. An administrative authority does not automatically gain this freedom. The authority must, after all, exercise its powers in the public interest and in accordance with the applicable public law rules. This may mean that it is not always entitled to make promises about the exercise of a power and, moreover, that the legitimate expectations created by a promise are overruled by other interests. The doctrine of legitimate expectations as it is currently interpreted in constitutional and administrative law has two roots historically, namely the principle of the protection of acquired rights and the principle of consistency. The constituent requirements for fulfilment of the doctrine of legitimate expectations in the case of the various executive acts can be traced back to these two roots. The first root is the principle of the protection of acquired rights which was recognized for the first time by the court in a judgment of the Central Appeals Court for the Civil Service and Social Security Matters passed on October 31, 1935. In this case, the salary of civil servants, including that of the town clerk of the municipality of Utrecht, was substantially reduced in March 1935, with retrospective effect to April 1934, in accordance with the statutory regulations in force at that time. This meant that the civil servant concerned was required to pay back a sizeable part of the salary that had already been paid to him in the previous year. The second root of the doctrine of legitimate expectations is the principle of consistency, which is derived from the American and English legal tradition. This principle was first applied in the judgments of the Food Supply Arbitration Tribunal although this tribunal did not actually give the principle a name.<sup>3</sup> A feature of the type of cases heard by the Arbitration Tribunal was the large measure of discretion conferred to by the competent administrative bodies. There were few if any statutory rules governing the taking of decisions in connection with the food supply. As it was necessary to observe a certain consistency in the application of these discretionary powers and as there had to be a degree of predictability about the decisions to be taken, the administrative authorities concerned adopted certain rules what were known as "policy rules", regulating the exercise of the powers in practice. These rules indicated the made for the administrative authorities that they would use their discretion in a specific situation. The case law of the Arbitration Tribunal shows that the adoption of policy rules was not an activity undertaken without engagement. The Tribunal took the view that the expectations created in the mind of the individual by the policy rules should in principle be fulfilled. If this were not the case, the decision was quashed as being contrary to the doctrine of legitimate expectations. This

second root of the doctrine of legitimate expectation has been developed further more in the case law of the various administrative courts. The meaning of the consistency principle has now been expanded to such an extent that administrative authorities are in principle not only obliged to fulfil the legitimate expectations created by policy rules, but may also even have a legal duty to adopt policy rules governing the exercise of their discretionary powers. In this respect the consistency principle has evolved as a necessary concomitant to the principle of legality. The background to this development is that the safeguards created by the principle of legality have to a considerable extent been undermined by the wide discretionary powers conferred to administrative authorities in legislation. The adoption of policy rules governing the exercise of these discretionary powers promotes consistent action by the administrative authorities and hence legal certainty. In this way, the consistency principle helps to compensate for the undermining of the principle of legality.

### **BACKGROUND OF PROCEDURAL LEGITIMATE EXPECTATIONS**

The procedural role of legitimate expectations has been reorganized in all over the world. Now the question is whether legitimate expectations can operate substantively as a constraint on the way in which discretion is exercised. The phrase procedural legitimate expectations denote the existence of some process right which the applicant claims to possess as the result of behaviour by the public body which generates the expectation. The phrase substantive legitimate expectations refer to the situation in which the applicant seeks a particular benefit or commodity, such as a welfare benefit, or a licence. The claim to such a benefit will be founded upon governmental action which is said to justify the existence of the relevant expectation. Precisely which forms of public action can be used as the basis for such an expectation need to be assessed. The connected concepts of legal certainty and legitimate expectations are to be found in all the Member States of the common wealth, as well as in EC law itself. Although their precise legal content may vary from one system to another.

### **TESTS OF WHETHER AN EXPECTATION IS REASONABLE AND LEGITIMATE**

The court has to consider a number of factors when determining whether an expectation was reasonable and legitimate. Such as:

(i) The most important relevant factor is the nature of the representation itself. A clear and unambiguous promise, undertaking or representation provides the strongest foundation for a claim. In *K v. Great Hritam Ex P. Kingsley*, the court held that the representation may arise from words or conduct or from a combination of the two. There is, however, authority that consistent conduct over a long period of time may give rise to an expectation,

even if it was not a clear and unambiguous representation.

(ii) A representation may be based on a variety of sources, including an individual statement, a circular, a report or an agreement. It will normally be easier to establish a reasonable expectation on the ground that the representation in question.

(iii) An expectation will not be regarded as reasonable or legitimate if the applicant could have foreseen that the subject-matter of the representation was likely to alter, or that it would not be respected by the relevant agency. Similarly if the person claiming the benefit knew that the representor did not intend his statements, etc., to create an expectation then this will tell against the expectation being reasonable or legitimate.

(iv) If an individual knew or ought to have known that an assurance could only be obtained in a particular way, and a purported assurance was obtained in a different way, it will not be an abuse of power to go back on the assurance.

(v) Detrimental reliance will normally be required in order for the show that it would be unlawful to go back on a representation. This is in accord with policy, since if the individual has suffered no hardship there is no reason based on legal certainty to hold the agency liable to its representation. It should not, however, be necessary to show any monetary loss, or anything equivalent thereto. There may be moral detriment flowing from disappointment when an expectation is not honoured, although disappointment will not be sufficient in this respect. While in a strong case, there will be both reliance and detriment, there may also be cases where there is reliance, without measurable detriment. It may still be unfair to thwart a legitimate expectation in such circumstances.

(vi) Where an agency seeks to depart from an established policy in relation to a particular person, detrimental reliance should not be required. Consistency of treatment and equality are considered at stake in such cases and these values should be protected irrespective of whether there has been any reliance as such or not.

(vii) An expectation will not be regarded as reasonable or legitimate if the potential beneficiary has not placed "all cards face up on the table". In other words, All relevant issues must therefore be disclosed.

## **CONCLUSIONS**

The doctrine of legitimate expectation has been developed both in the context of natural justice and reasonableness. 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 doctrine of legitimate expectation imposes a duty to act fairly. Where a decision of an administrative authority adversely affects legal right of an individual, duty to act judicially is implicit. But even in cases where there is no legal right, he may still have legitimate expectation of receiving the benefit or privilege. The court may protect his expectation by invoking the doctrines of natural justice and fair play in an action. The court may not insist on an administrative authority to act judicially but

may still insist him to act fairly. Thus nowadays the doctrine of legitimate expectation has come to play an important role in the field of law. With the above conclusion, there are certain remedial suggestions, which will be most effective to strengthen the application of the doctrine of legitimate expectation. Ultimately it will help in administration of justice. These remedial suggestions are such as,

(i) The legitimate expectation should be considered as a ground of judicial review in the same manner, as illegality, irrationality, procedural impropriety and proportionality, when any one has suffered as civil consequence and not able to justify his claim on the basis of law in the strict sense of the term.

(ii) The administrative authorities should give due consideration to the doctrine of legitimate expectation besides the principles of natural justice while taking any adverse decision against someone.

(iii) All the representations or promises or consistent past practice authority should be considered by that authority at the time of taking decision and any violation should give rise the ground of judicial review on the basis of violation of legitimate expectation.

(iv) Non-consideration of legitimate expectation of a person adversely affected by a decision must invalidate the decision on the ground of arbitrariness because legitimate expectation forms part of rule of non- arbitrariness.

(v) The doctrine of legitimate expectation should be applicable in relation to a dispute arising out of a contract /qua contract and should be invoked to modify or vary the express terms of a contract.

(vi) The judiciary should consider the doctrine of legitimate expectation for checking the growing abuse of administrative powers.