

# Doctrine of Legitimate Expectation in India

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*“A man should keep his words. All the so when the promise is not a bare promise but made with an intention that the other party should act upon it” – Lord Denning*

*The concept of legitimate expectation is a doctrine which is an evolved principle that aims to redress the public when their expectations are not fulfilled and are recognized under our Indian judicial system. This concept has also been observed in various legal systems in countries such as England, Germany, and France. With regard to its applicability in India, it is usually applied in the cases where there was an expectation created by a promise or representation which was made by any person who has public power or any public authority and has not acted in a manner which will lead to non-fulfillment of the promise. If such expectation has been created and is defeated then the affected individual can seek a legal remedy in the court of law. This doctrine restores fairness and reasonability a principle which is enriched under Article 14 of the Indian constitution. This article covers the evolution of the doctrine and its applicability in India along with the legality of the expectation, essential elements and the exceptions to the doctrine in light of some judicial decisions.*

## Introduction

We all know that there are three organs of a state- the legislature, the executive and the judiciary. The functions of each organ are clearly well defined in our Indian constitution i.e. the primary function of the legislature is to make the laws for the welfare of the society keeping in mind the goal of today’s democratic government which is the welfare state. The executive implements these laws and the judiciary interprets such laws. In a law making process, the legislature may delegate a few law-making powers to the executive which is permissible as the daily course business of the parliament is increasing on day to day basis. Moreover, there are certain things which require technical and practical knowledge. Thus the laws made by the executive are also as binding as it just like the laws made by the legislature. But there will be a reasonable check on the executive authority and it is the duty of the administrative authorities to make sure to negate arbitrariness.

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## **Legitimate Expectation**

In order to understand the concept of legitimate expectation, it is of utmost importance to understand the meaning of the term legitimate expectation.

### **Meaning**

The legitimate expectation is the expectation which shall be protected must be legitimate though it may not amount to a right inappropriate rationality<sup>1</sup>.

### **The concept of Legitimate Expectation**

The concept of legitimate expectation, in a nutshell, means and includes the right of an individual to seek judicial remedy when his/her right of legitimate expectation has been defeated. It is the paramount duty of the court to determine the legality of the issue while granting an appropriate remedy.

### **Evolution of the Doctrine of Legitimate Expectation**

#### **Position in England**

The doctrine of legitimate expectation is not a new concept it has been observed in a greater view in England where a greater emphasis was given in judicial review and it was also seen as a part of public law which restored fairness and reasonability in the administrative process. The doctrine of legitimate expectation was discussed and a reference was made to reasonability and rationality. In the case of *Schmidt v. Secretary of Home Affairs*<sup>2</sup> Lord Denning during the pronouncement of the judgment established the occurrence of legitimate expectation. In this case, two college students were not allowed to extend their stay in the United Kingdom since their right to stay had expired. The students claimed that such a refusal was granted without hearing them and during the course of the case the incidence of legitimate expectation was discovered and was brought into light by Lord Denning.

Before the introduction of this concept this concept was observed in the European jurisprudence as a rule of protection of legitimate protection. In the European judicial decision in a case of *Re civil service salaries v. E.C council* which elucidated more upon the protection of the legitimate confidence of the citizens and also highly suggested its applicability in the administrative law.

#### **Position in Germany**

Not only in the European law there exists the doctrine of legitimate expectation

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<sup>1</sup> D.D Basu, *Human Rights in Constitutional Law*, 3<sup>rd</sup> edition, Lexis Nexis, India, 2003.

but it is also scrutinized in the German law by the name of ‘Vertrauensschutz,’ which literally means protection of the trust. Even in the German law, it was believed that the trust which was developed based on the words of the public authority must be protected and the citizens have

a right to enforce based on the trust which has been blemished.

### **Position in France**

The doctrine of legitimate expectation is also present in the French administrative system commonly known by the name of ‘Droit administratif’. The conseil d’Etat is a Court which exclusively deals with administrative matters and has time and again applied the doctrine of legitimate expectation to restore fairness and reasonability.

### **Position in India**

The doctrine of legitimate expectation can be invoked by any citizen when the expectation that was created by the government or public authority by a way of promise was rescinded. In other words, the legitimate expectation is nothing but an expectation that arises out of the promise, action, declaration or policy which was made by the government or any person who is in public power. When such expectation has been not fulfilled by the government or the public authority, the citizen(s) can seek judicial redress/relief. A breach of expectation can be considered as a valid ground to approach the Court. In India, this doctrine has been put into the application to strike the arbitrary action of the administrative authorities, and the principles of natural justice must be respected and practiced in all forms in all appropriate cases and circumstances. The concept of legitimate expectation enhances and stands as a great pillar of support along with the principles of natural justice which thereby help the court to maintain checks and control over the acts of the administrative authority. The doctrine of legitimate expectation is a supplement to the principle of natural justice and is viewed greatly in the judicial review process and brings relief and remedy to the affected citizen<sup>2</sup>.

### **The doctrine of Legitimate Expectation In Light Of Article 14 of the Indian Constitution**

In India, the concept of rule of law is considered to be supreme and its concept is enshrined under Article 14 of the Indian constitution. Art.14 of the Indian constitution states that “*The State shall not deny to any person equality before*

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<sup>2</sup> *Confederation of Ex-servicemen Assam v. Union of India*, Writ Petition (Civil) 210, 1999.

*the law and equal protection of laws within the territory of India*” It also focuses on the principles of natural justice which is guaranteed to everyone and must be applied in abundance.<sup>3</sup> The rights guaranteed under this article can be frozen when there is reasonable classification, i.e. there must be an intelligible differentia and it must have a rational nexus to the object sought. Otherwise, the classification will not be considered as a reasonable classification.<sup>4</sup> The doctrine of legitimate expectation is used in appropriate cases as a vital part of the concept of rule of law which dominates the realm of Indian judiciary and the same has been established in many decisions. Reasonability and fairness is a factor which is always enriched in Art. 14 and must be realized in all possible manner and it also plays a strong and pivotal role in a democratic country.<sup>5</sup>

In the case of *Official Liquidator v. Dayanada* the Apex court held that the concept of legitimate expectation and the principle evolved in this concept revolves around and has deep roots in rule of law<sup>6</sup>.

There must be reasonability and fairness and it must be realized and re-established in every administrative action or else will lead to arbitrary use of power. This was viewed in the case of *Food Corporation of India v. M/S. Kamandheu cattle feed industries*<sup>7</sup>.

### **When Is An Expectation Legitimate?**

- I. When it is formed on the promise, practice or norm by any person or authority who is in public power and says to fulfill an expectation.
- II. There must be a change in the policy which should have destroyed the expectation.
- III. There must be a reasonable and fair approach by the individual seeking protection of the expectation while dealing with the public authority.

The above conditions were also observed and were determined to be valid by the courts and it was also held that while dealing with such cases that involve the concept of legitimate expectation there is a duty on the part judicial officer to examine the legality of the expectation<sup>8</sup>.

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<sup>3</sup> *Jagdish Lal v. State of Haryana*, AIR, 1997, SC, p. 2366.

<sup>4</sup> *State of West Bengal v. Anvar Ali*, AIR, 1952, SCR, p.289.

<sup>5</sup> *D.C. Bhatia v. Union of India*, AIR, 1995, SC, p.104.

<sup>6</sup> *Official Liquidator v. Dayanada*, AIR, 2008, SC, p.1.

<sup>7</sup> *Food Corporation of India v. M/S. Kamandheu Cattle Feed Industries* Food Corporation of India, AIR, 1993, SCC, p.1.

<sup>8</sup> *CCSU v. Minister of civil service* [1983] UKHL, p. 9.

In the case of *SC and Weaker Section Association v. State of Karnataka*<sup>9</sup> it was held that every public authority creating the legitimate expectation in the individual must adhere to the promise made which led to the formation of such expectation in the minds of the individual.

The doctrine of legitimate expectation is a cardinal relationship between an individual and the administrative authority. Any act or any promise of the administrative authority would have established a reasonable belief or expectation of any benefit or right in the mind of the individual and if the benefit is deprived after a legitimate expectation is made without valid and fair reasoning then it amounts to the violation of the concerned individual's rights.

### **The Categories Where the Doctrine of Legitimate Expectation Can Be Invoked**

The doctrine of legitimate expectation has been accepted by the courts to grant justice and can be invoked in various circumstances and it can be classified into four different categories<sup>10</sup>.

Firstly, in the cases where a person has relied on any policy regulation or norm and then is subjected to a different policy, regulation or norms, under this category the person should have had the reasonable expectation of the policy or norm and then the policy or norm could have been changed.

Secondly, with a slight variation from the above, where the policy, norm or regulation existed and continued and was not applied to the case at hand, here the expectation will be created based upon the applicability of the policy, norm or the regulation which exists as per its continued application in the society.

Thirdly, in this case where the individual has received a promise or representation which was not honored due to the subsequent case in the policy, norm or regulation then under this category when a person has a reasonable trust built by a way of promise or representation and the trust was broken by subsequent change in the policy or norm.

Fourthly, in this case, it has slight variations than the third one where the individual has received any promise or any representation which was dishonored not by the subsequent change but by the decision maker who has changed his mind in respect to the circumstance. Under this category, the trust of the individual is broken not by the change in the policy but by the change of mind of the decision maker in the given circumstance.

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<sup>9</sup> *SC and Weaker Section Association v. State of Karnataka*, AIR, 1988, SC, p.669.

<sup>10</sup> *Secretary State of Home Department v. Queen* [2009] UKHL, p.23.

In the case of *Bannari Amman Sugar Ltd v. CTO*<sup>13</sup>, it was observed that in the doctrine of legitimate expectation there must be the fulfillment of the promise made by the person in a public power or any public authority.

### Essential Elements of Legitimate Expectation

#### 1. The duty of Hearing on The Part of the Public Authority

A duty of fair hearing is imposed on the part of the administrative authority to hear the affected party who has suffered or is suffering any violation of legitimate expectation by any act which might have been arbitrary on the part of the administrative authority<sup>11</sup>. Thus every individual must get a chance of fair hearing. It can be further elucidated as when an individual has been deprived of a chance of fair hearing when there is an infringement to the legitimate expectation he can claim it by way of judicial remedy which can be enforced through the writ of mandamus<sup>12</sup>.

In the case of *Navjyoti Co-operations Group Housing Society v. Union of India*, it was observed that it is a government duty to take care of the legitimate expectation so created in an individual's interest otherwise it amounts to a violation.<sup>13</sup>

#### 2. The principle of Natural Justice in Exercise of Non-Statutory Action and Fair Decision Making

The doctrine of legitimate expectation plays a vital part in the principle of natural justice and fairness in exercise of a non- statutory administrative power or duty where the affected is at benefit<sup>14</sup>. The concept of legitimate expectation has control over administrative action and also makes sure that every decision-making process is fair. In the case of *State of Kerala v. K.G Madhavan Pillai* where the government had issued a sanction to the respondent to upgrade the school and also opened a new unaided school, however, the same order was withdrawn by the government by another order within fifteen days of passing the approval order. This was challenged by the respondent in the court and claimed that the right of hearing was deprived and there was an infringement of principle of natural justice and the court observed that there was a legitimate expectation created when the approval order was passed and later it was violated by the subsequent order and there

<sup>11</sup> P P Criag, *Administrative Law*, 6th edition, Sweet & Maxwell, London, 2008.

<sup>12</sup> *NCHS v. Union of India*, AIR, 2003, SC, p.1.

<sup>13</sup> *Navjyoti Co-operations Group Housing Society v. Union of India*, AIR, 1992, SC, p.477.

<sup>14</sup> M.P Jain & N.M Tripathi, *Changing face of Administrative Law in India and Abroad*, Bombay, 1982.

was also infringement of the principle of natural justice<sup>15</sup>.

### 3. Reasonable Expectation

The doctrine of legitimate expectation can be applied where there is legitimate expectation being created and such expectation so created within the individual must be reasonable and must be ascertained with certainty. The expectation created must not be just a mere expectation but must be one which can be assured with reasonability<sup>16</sup>. In the case of *Madras City Wine Merchant Association v. State of Tamil Nadu* the court observed that the expectation cannot arise where there is a change in policy and the position is altered by the legislature or the rule of law and also viewed that the expectation must be reasonable and certain<sup>17</sup>.

The legitimate expectation can be created on an express promise made or valid representation. Hence we can say that only when there is an express promise made and a valid representation on the part of the public authority the legitimate expectation can be validated. In *State of West Bengal v. Niranjan Singha*<sup>18</sup> it was observed that the legitimate expectation can be taken into consideration by the court only when there is an express promise made by the public authority and where there is a valid representation.

### 4. Matter of Public Right

The legitimate expectation can be created on any benefit or privilege which is a matter of public law or right even when he cannot exercise or enjoy the privilege as a matter or legal right or private law. In the case of *Union of India v. Hindustan Development Corporation*<sup>19</sup> it was observed that there will be no denial of the legitimate expectation created to an individual when it is reasonable.

## Types of Legitimate Expectation

The doctrine of legitimate expectation has a twofold aspect, i.e. procedural legitimate expectation and substantial legitimate expectation

### Procedural Legitimate Expectation

Procedural legitimate expectation deals with the expectation which is created

<sup>15</sup> *State of Kerala v. K.G Madhavan Pillai*, AIR, 1988, SC, p.669.

<sup>16</sup> Robert Thomas, *Legitimate Expectations and Proportionality in Administrative Law*, 1<sup>st</sup> edition, Hart Publishing, Oxford, 2000.

<sup>17</sup> *Madras City Wine Merchant Association v. State of Tamil Nadu*, AIR, 1994, SC, p.509.

<sup>18</sup> *State of West Bengal v. Niranjan Singha*, AIR, 2001, SC, p.326.

<sup>19</sup> *Union of India v. Hindustan Development Corporation*, AIR, 1993, SC, p. 499.

within the individual that he has a right to a certain procedure. In every action, there will be a certain procedure which needs to be followed and if an act of the public authority has created a legitimate expectation within the individual that he has a right or claim to the procedural process and it has to be fulfilled by the public authority or any person in public power. In the case of *T. Vijayalakshmi v. Town Planning Member*<sup>20</sup> it was observed that the doctrine of legitimate expectation would have a role to play in the case in this nature. Therefore administrative authorities must follow the procedures prescribed and must be respected, and when such procedures are deprived, it amounts to a violation.

### Substantive Legitimate Expectation

Substantive legitimate expectation arises when an individual tries to seek benefits or privilege which is substantive in nature and is based on the expectation that is been entrusted. The substantive legitimate expectation is an informative stage in India. It is also observed that the substantive legitimate expectation is protected procedurally. In the case of *R. v. Inland Revenue commissioners*, it was observed that substantive legitimate expectation shall be protected in a procedural manner and every such expectation must be reasonable.

Also in the case of *National Building Corporation v. S. Ragunathan*, it was observed that the legitimate expectation is both procedural and substantive.<sup>21</sup>

### The exception to Legitimate Expectation

#### i. Violation of a Statute

There can be no legitimate expectation when there is a violation of any statute or any law. The legitimate expectation must always be in consistent with the law. If there is any expectation created in violation it would not be validated. Thus when such expectation is created it will not be upheld by the courts<sup>22</sup>.

#### ii. Failure to Comply With the Conditions

The legitimate expectation cannot be created on an application which has been rejected based on the failure to comply with conditions<sup>23</sup>. Thus when the application is being rejected for failure to comply with the conditions

<sup>20</sup> *T. Vijayalakshmi v. Town Planning Member*, AIR, 2006, SC, p. 502.

<sup>21</sup> *National Building Corporation v. S. Ragunathan*, AIR, 1998, SC, p.66.

<sup>22</sup> *State of Himachal Pradesh v. Kailash*, AIR, 1992, SC, p.331.

<sup>23</sup> Seemeen Mustafa, 'Doctrine of legitimate expectation in India: An analysis', vol. 2, *IJARMSS* p.115, 2013.



any expectation so created on it will not be supported and the court will not consider it to be maintainable.<sup>24</sup>

iii. Appointment in Government Service Employment

There cannot be a legitimate expectation for the appointment in any government service employment. If any expectation is so created based on the fact that the name of the candidate has appeared in the selected list made by the recommending board/ selection board it shall not be considered and such expectation shall be deemed to be null and void.<sup>25</sup>

iv. Infringement of Public Interest

If any expectation is created that would destroy or destruct the public interest it shall not be considered. Such expectation will not be brought into light or will not be given any right to enforce it.<sup>26</sup>

In the case of *Bharat Wools v. State of Punjab* it was observed that in the case of such legitimacy of expectation it must always favor the public interest and must not be in a manner which will negate the public interest or oppose it.<sup>27</sup>

## Conclusion

The doctrine of legitimate expectation has a greater ground of applicability in India and this doctrine is seen mostly to regulate and have a judicial control over the administrative authority and it strikes against any arbitrary abuse of power by the administrative authority in the decision-making process. Any individual can invoke this doctrine for the violation in an effective manner. Thus applicability of this doctrine restores trust in the public or the individual as the doctrine is governed by public interest.

<sup>24</sup> *Government of Andhra Pradesh v. The Nizam of Hyderabad*, AIR, 1993, SC, p.76.

<sup>25</sup> *Union Territory of Chandigarh v. Dilbagh Singh*, AIR, 1992, SC, p.431.

<sup>26</sup> *Union of India v. H. D.C.*, AIR, 1993, SCC, p.499.

<sup>27</sup> *Bharat Wools v. State of Punjab*, AIR, 1996, P H, p. 215.