

LEGITIMATE EXPECTATIONS

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

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

The expression Legitimate Expectation in its present form, first emerged as a Doctrine in the Judgement of Lord Denning in 1969 in *Schmidt - Vs Secretary of State for Home Affairs*¹, wherein a student challenged Home Secretary's decision not to grant him extension of his stay in the United Kingdom to continue his education contending that he ought to have been given a hearing by the Authority.

It is a strange coincidence that the Doctrine of Legitimate Expectation, first time used in India in 1988, also concerned matters of education i.e. *Kerala Education Rules 1959 regarding opening of New Schools* before, AP Sen and S Natrajan JJ wherein right of Legitimate Expectation was upheld²

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¹(1969) All ER 904, 1969-2 Ch 149

²(Kerala Vs K G Madhavan Pillai - (1988) - 4 SCC 660).

Legitimate Expectations, generally, relate to procedural fairness in decision making and forms part of the rule of non-arbitrariness and it is not meant to confer an independent right enforceable by itself³

In an appropriate case, however, 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 practise.⁴ A

Legitimate Expectation must be induced by the conduct of the decision maker. It does not follow from any generalised expectation of Justice; based on the scale or conduct of the decision.⁵

*The Doctrine does not give scope to claim relief straightaway from the Administrative Authorities as no crystallised right, as such, is involved*⁶

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. The Legitimate Substantive Expectation merely permits the Court to find out whether, the change in policy, which is the root cause for defeating the Legitimate Expectation, is irrational or perverse or one which no reasonable person could have made. Substantive Legitimate Expectation is rooted in the theory of Legal Certainty. The judgement whether Public Interest over rides Substantive Legitimate Expectation of individuals will be for the decision maker who has made the

³(Ghaziabad Devp. Auth. Vs Delhi Auto and General Finance Pvt. Ltd. (1994) 4 SCC 42.)

⁴(M P Extraction Vs State of M P. (1997) 7 SCC 592)

⁵(De Smith, Woolf and Jowell: Judicial Review of Administrative Action, Para 8-050 as quoted by Mallick M R in writs - Law and Practice, Eastern Law House, 2000 at p. 503.

⁶(Union of India Vs Hindustan Development Corporation (1993) 3 SCC 499)

change in policy and *the courts will intervene in that decision only if they are satisfied that the decision is irrational or perverse.*⁷

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 Doctrine -Principles of State Policy of the Constitution.

It has been said that Power, 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.

A case search on West law, incorporating the terms “Legitimate Expectation” and “Judicial Review”, produced

158 results for all dates prior to 1st January 1990,

403 between 1st January 1990 and 1st January 2000, and

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

In spite of its expanding recognition its parameter and characteristic continue to be undefined. The legitimacy of Legitimate Expectation is directly linked with the issues of fairness of the Public Body’s decision to thwart the Expectation and Abuse of power invoked, if any. Some of the factors which relate specifically to the question of Legitimacy are,

- Legitimacy in an Expectation that a Public Body will not breach its statutory duty.
- Representation made must be by Actual or Ostensible Authority.
- High fact Specific Exercise be conducted in respect of Purely Subjective Adjudication.
- Unwieldy attempt to thwart claim of Legitimate Expectation under the guise of overriding Public Interest must be weighed against the Fairness of the Interest.
- National Security measures and those of National Justice provide a separate basis for requiring some form of consultation prior to the making of an Adverse Decision.
- Government, while Formulating and Reformulating Policy must consider constitutional Principles vis-à-vis Legitimate Expectation

To sum up in short, the concept of Legitimate Expectation vis-à-vis Doctrine of Legitimate Expectation, which, it has come to be lately known as, is as below.

⁷(G. Screen V Iron Vs Principal, Regional Engineering College, Rourkela. AIR 2000 are 56)

As per M P Jain: Quote : 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.

In UK the concept of Legitimate Expectation has developed both in the content of Reasonableness and Natural Justice. It has been held *Re: West Minister C.C.*⁸, that the duty of consultation may arise from a Legitimate Expectation of consultation aroused either by a promise or by an Established Practice of Consultation. The precursor of the new trend started with *Schmidt Vs Secretary of State for Home Affairs*⁹ Since then the Doctrine has been invoked in a number of cases.

The concept of Legitimate Expectation has also come to be recognized by Courts in India. In *Nav Jyoti Cooperative Group Housing Society*¹⁰ 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 come to be established 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 M A Sujan: Quote : As per Practice, Policy and Promise constitute the various components of the Doctrine of Legitimate Expectation. The Supreme Court in its Rulings¹¹ 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.

Administrative action is subject to control by Judicial Review under three heads.

- Illegality – when the decision making authority has been guilty of an error of law e.g. by purporting to exercise a power it does not possess;

⁸(1986) AC 668)

⁹1969 (2) WLR 337.

¹⁰(1992) 4 SCC 477 paras 15 & 16 p. 494)

¹¹(AIR 1990 SC 1031) (AIR 1994 SC 988)

- Irrationality where the decision making authority has acted so unreasonably that no reasonable authority would have made the decision and

- Procedural Impropriety where the decision making authority has failed in its duty to act fairly.

PC Markanda starts with the definitive of Legitimate Expectation in the words of Halsburg's Law of England as "A person may have a Legitimate Expectation of being treated in a certain way by an Administrative Authority even though he has no legal right in Private Law to receive such treatment. The expectation may arise either from a representation or promise made by the Authority, including an implied representation, or from consistent past practice.

According to *Markanda* the existence of a Legitimate Expectation may have a number of different consequences; it may give *LOCUS-STAND* to seek leave to apply for judicial reason; it may mean that the Authority ought not to act so as to defeat the expectation without some overriding reason of Public Policy to justify its doing so; or it may mean that, if the Authority proposes to defeat a persons' Legitimate Expectation it must afford him an opportunity to make representation on the matter, the Courts also distinguish, for example in licensing cases, between original applications, application to renew and revocation; a party who has been granted a license may have a Legitimate Expectation that it will be renewed unless there is some good reason not to do so, and may therefore be entitled to greater procedural protection than a mere applicant for a grant.

It is to be ensured that the Expectation should be Legitimate i.e. Reasonable, Logical and valid.

In procedural terms, a person is entitled to a fair hearing before a decision is taken if s/he has a Legitimate Expectation of being heard. That a person is entitled to make representation does not, of itself, constrain Public Bodies which, subject to a duty not to abuse their power, are entitled to change their policies to reflect changed circumstances even though this may involve renegeing on previous understanding.

If there is substantive limitation on this right to make change it lies in a test of fairness where the Public Bodies are equivalent to a breach of contract or there have been representation that might have supported an estoppel and so caused Legitimate Expectation to arise.

It is different to prove a Legitimate Expectation unless fairly specific representation as to policies affecting future could have been made, the form of generalised understandings that ordinary citizen might have will not be sufficient for this purpose. And, even if there are Legitimate Expectation there is no absolute right to have those Expectations

Fairness may require no more than a hearing or consultation before any change is finally decided and, if the Citizen's Expectation is real, the courts might require the Public Body to identify an overriding Public Interest to trump the particular Expectation. Legitimate or reasonable Expectation may arise either from an express promise given on behalf of a Public Authority or existence of a Regular Practice which the claimant expect to continue.

HWR Wade and CF Forsyth in their book "Administrative" Law have cautioned State to be reasonable in all administrative actions and categorized the scope of unreasonableness namely.

Opposition to Policy of Parliament	Infringement of Fundamental Rights
Penalising the innocent	Financial motives
Indiscriminate action	Misplaced philanthropy
Permissible philanthropy	Improper Licensing decision
Unreasonable planning decision	Compulsory purchase of land
Tax conclusions	Unreasonable regulation

Legitimate Expectation concerns the relationship between Public Administration and an Individual. State has to ensure that the individuals Expectation are fulfilled MUTATIS MUTANDIS the Governmental Policies.

The Legitimate Expectation Doctrine is enlargement of the Principles of Natural Justice.

In *Food Corporation of India¹² Vs Kamdhenu Cattle Feed Industries LTD* the Supreme Court have observed that the Doctrine of Legitimate Expectation cannot be invoked to alter the terms of a contract of a statutory nature.

In *Howrah Municipal Corporation¹³ Vs Gauges Road Company LTD* it has been held that no right can be claimed on the basis of Legitimate Expectation which it is contrary to statutory provisions which have been enforced in Public Interest.

In *Madras City wine Merchants Association Vs State of Tamil Nadu¹⁴*, the Doctrine of Legitimate Expectation was held to be inoperative when there was change in Public Policy or in Public Interest.

In *Union of India Vs Hindustan Development Corporation¹⁵* the Supreme Court has elaborately considered the reverence of this theory. In the estimation of the Apex Court the

¹² (AIR 1993 SC 160)

¹³ (2004) 1 SCC 663

¹⁴ (1994) 5 SCC 509

¹⁵ (AIR 1994 SC 988)

Doctrine does not contain any crystallised right. It gives to the applicant a sufficient ground to seek Judicial Review and the principle is mostly confined to the rights to a fair hearing before any decision is given.

It was held in *Navjoti Co-op Housing Society Vs Union of India*¹⁶, that the Doctrine of Legitimate Expectation imposes in essence is a duty on Public Authorities to act fairly by taking into consideration of the relevant factors bearing a nexus to such Legitimate Expectation the concerned Authority cannot act arbitrarily so as to defeat the Expectation unless demanded by over-riding reasons of Public Policy.

In another Landmark Judgment – *MP Oil Extraction Co. Vs State of Madhya Pradesh*¹⁷ the Supreme Court while dealing licence renewal claims of certain industries have held that extending an invitation on behalf of the State was not arbitrary and the selected industry had a Legitimate Expectation of renewal of licence under the renewal claims.

Again in *National Building Construction Corp. Vs S. Raghunathan*¹⁸ it was held that Legitimate Expectation is a source of both, Procedural and Substantive Rights. The person seeking to invoke the Doctrine must be aggrieved and must have adhered his position. The Doctrine of Legitimate Expectation assures Fair Play in Administrative Action and can always be enforced as a Substantive Right, whether or not an. Expectation is Legitimate is a question of fact.

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

A person can be said to have a Legitimate Expectation of a particular treatment if any representation or promise is made by an Authority either expressly or impliedly or if the regular and consistent past practice of the Authority gives room for such expectation in the

¹⁶ (AIR 1993 SC 155)

¹⁷ (1997) 7 SCC 592

¹⁸ (AIR 1998 SC 2776)

natural course. As a ground for relief, the efficacy of the Doctrine is rather weak as its slot is fresh above fairness in action but far below promissory estoppel. It may only entitle an expectant;

a) To an opportunity to show cause before the Expectation is dashed; or

b) To an explanation as to the cause for denial. In appropriate cases, courts may grant a direction requiring the authority to follow the promised procedure or established practice A Legitimate Expectation even when made out does not always entitle the expellant to a relief. Public Interest change in policy, conduct of the Expellant or any after valid or bonafied reason given by the decision maker, may be sufficient to negative the Legitimate Expectation. The Doctrine of Legitimate Expectation based on established practice, as contrasted from Legitimate Expectation based on a promise, can be invoked only by some one who has dealings or transaction or by some one who has a recognized legal relationship with the Authority. A total stranger unconnected with the Authority and who has not entered into any transaction or negotiations with the authority cannot invoke the Doctrine of Legitimate Expectation merely on the ground that the authority has a general obligation to act fairly.

*In Union of India Vs Hindustan Development Corporation*¹⁹ the Supreme Court explained the nature and scope of the Doctrine of Legitimate Expectation thus.

“For legal purposes, the Expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right”.

However earnest and sincere a wish a desire or a hope may be and however confidently one may look to them to be fulfilled, they, by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a Legitimate Expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and projectable. Every such Legitimate Expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.

¹⁹[1993] 3 SCC 499