

# COMPARATIVE ANALYSIS OF DOCTRINE OF LEGITIMATE EXPECTATION

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**Abstract:** To protect the interest of general public against the arbitrariness of administrative action it is essential to control the administrative discretion. Doctrine of legitimate expectation is a judicially evolved tool in the hands of judiciary to review executive action. Administrative action of government should be fair. Before any decision is taken by the government, all the relevant factors need to be considered through affording an opportunity to individuals likely to be affected by it. Doctrine is a tool in the hands of judiciary to keep in check administrative power of government. Doctrine of legitimate expectation is appreciated worldwide and applied in various other countries. There may be slight variation among different jurisdictions of the world, but primary formula is the same. This paper has explored the concept of doctrine of legitimate expectation applicable in three different jurisdictions. It limits itself to India, UK and France legal system. No other jurisdiction has been discussed in the paper.

**Keywords:** LEGITIMATE EXPECTATION, COMPARATIVE STUDY, FRENCH LEGAL SYSTEM, INDIAN LEGAL SYSTEM, COMMON LAW

## INTRODUCTION

Democratic nation works on the concept of separation of power. This means that, there are different pillars of the government and they have wide discretionary power in their respective fields. One such pillar of government is Executives, which deals with executive powers of the government and requires making of rules and regulations for immediate and efficient redressal of different problems that comes during the governance of the nation. Therefore, in order to ensure that this power is not misused and to protect the interest of individual subject of the state against any sought of arbitrary decision, doctrine of legitimate expectation was evolved by the judiciary. It is the duty of every government official to discharge their functions in fair manner, free from any arbitrariness. People have expectations from the Government and any reasonable expectation which is not against the interest of public at large shall be fulfilled. This doctrine restricts the discretionary power of executive and imposes an obligation to examine all the grounds to form such a reasonable belief. The expectation shall not be contrary to the statutory enactment. It has to be kept in mind that the doctrine of legitimate expectation does not create a substantive right. It merely provides for an insight that an executive will act in certain manner. Therefore, expectation shall not run against the interest of public or expressed statutory provisions.

Origin of doctrine of legitimate expectation can be traced back to German legal system from the concept of *Vertrauensschutz*, which means protection of trust. This type of expectation can be based on various grounds, such as express statement or some continuous practice, etc. Expectation can be with regards to substantive legitimate expectation or procedural legitimate expectation. In the former case, some substantive right is involved while in latter, expectation arises from the procedure of the Government actions, such as notice, consultation, etc. This give people sense of security that they will be given opportunity to be heard before any decision is taken against their interest by the state. On the other hand, substantive legitimate expectation assures that the certain substantive right shall be given and not unnecessarily varied when such representation of giving or continuing substantive right is made. From the procedural aspect the only requirement of hearing comes into to play, whereas under substantive part, action of executive can be judged from the damaged that has been done by not acting according to the reasonable expectation.

Confusion always arises with the principle of promissory estoppels. In case of estoppels, there is a broken promise on part of authority in question. However, under legitimate expectation, there is no question of promise. It is due to sudden change in policy or procedure followed by the authority that gives displeasure.

## DOCTRINE OF LEGITIMATE EXPECTATION UNDER ENGLISH LAW

This doctrine can be traced back to *Schmidt v. Secretary of State for Home Affairs*.<sup>1</sup> In this case, plaintiff along with other students was studying in college recognized by the government. They were given permission to stay in Britain. However, later recognition was withdrawn and permission for stay was only for some specific period. When the plaintiff applied for renewal, his application was rejected and he was also asked to leave. No opportunity to present his case was given to him. This amounts to violation of principle of natural justice. In this case, the court held that, there is no legitimate expectation because permission for stay was for certain time and on expiry of it, he was asked to leave. Further it was held that, the case would have been different if he was asked to leave before expiry of said period. In such a situation he shall be liable for an opportunity of hearing.

In case of *Breen v. Amalgamated Engineering Union*,<sup>2</sup> court held that opportunity to hear a person can be done away if it has something to do with the privilege. But if there is something more than mere privilege, reasonable legitimate expectation arises for hearing and upholding natural justice fairness.

<sup>1</sup> [1969]1 All E.R. 904.

<sup>2</sup> (1971) 1 ALL ER 1148.

However, in case of *R. v. Liverpool Corporation, ex parte Liverpool Taxi Fleet Operators' Association*<sup>3</sup>, there was no express mention of the doctrine but the principle on which this case was based is the legitimate expectation. This case revolves around the increasing number of licensing cab, which was restricted by the statutory act of parliament. Association of owners for private hire cabs were informed by the town clerk that an opportunity to make representation for increase in taxi hire service shall be given to interested parties. They were further assured by the council of consultation before any contemplation. An undertaking via a letter was also forwarded to association regarding the same. On receipt of knowledge of such recommendation made by the committee, association raised their concern. However, there was an increase in number of cabs but there was no occasion of hearing.

It was held by the court, that this amounts to promise on part of authority, which give right to hearing to the plaintiffs. Therefore, occasion to hear them out shall be provided unless it is injurious to public interest on some reasonable considerations. Court considered the history of matter especially public undertaking and regarded conduct of council as unfair.

In the case of *Attorney General of Hongkong v. Ng Yuen Shiu*<sup>4</sup>, decision given in “*R. v. Liverpool Corporation, ex parte Liverpool Taxi Fleet Operators' Association*” was reiterated. Facts of the case were, an illegal immigrant was to be deported. There was no statute providing any opportunity of hearing before passing deportation order. But the Government had made a general undertaking at large to give opportunity of hearing and decide the case on the basis of facts and circumstances of each case. However, despite this assurance by the authority, deportation order of plaintiff was passed without affording him an opportunity of hearing. It was held by the court that because of the undertaking by the government legitimate expectation emerges and right of hearing was created and due to this reason court has to intervene.

Doctrine of legitimate expectation was first time evolved properly in the case of *Civil Service Unions v. Minister for the civil service*<sup>5</sup>. In this case, court was of the opinion that, in order to bring doctrine of legitimate expectation into picture some amount of benefit of aggrieved person should be affected by the decision taken by the administrative authority. The expectation to get this type of benefit or advantage should be based on the previous decisions of the maker. There should be reasonable grounds to form a belief that such a decision shall be taken in future until some rational reasons furnishes while making it absolutely necessary to withdraw, provided occasion to present the case to person whose interest is being affected is given. Such type of legitimate expectation may also be based on the assurance given by the authority making decision that without affording an opportunity of hearing, as to why they should not withdraw such a benefit or advantage, such benefit or advantage in question will not be withdrawn.

However one has to keep in mind that doctrine of legitimate expectation does not include right of hearing within its ambit.<sup>6</sup> Court has also held in the case of *R v. North and East Devon Health Authority ex parte Coughlan*<sup>7</sup>, that whether due to some promise made or any practice followed by the administrative authority there is rise of legitimate expectation with respect to any substantive right and not any sought of procedural benefit, court will have to decide fairness of such decision and have to look whether this amount to an abuse of power.

## **DOCTRINE OF LEGITIMATE EXPECTATION UNDER INDIAN LAW**

Doctrine of legitimate expectation does not by itself create an enforceable right. It is merely a tool to look into the fairness of administrative decision. To decide whether an action taken by the administration is arbitrary or not.

The doctrine first time surfaces and become matter of discussion in the case of *State of Kerala v. K.G. Madhavan Pillai*<sup>8</sup>. In this case, respondent wanted to obtain sanction for a school from the Government and also, to upgrade the ones already in existence. The permission for the same was given. However, after few days' permission was revoked. It was held by the court that such validation by the government created a legitimate expectation in the mind of respondent and subsequently revoking the same amounts to violation of principles of natural justice, which sufficiently affects the quality of the decision taken by the administration. In case the of *Schedule Caste and Weaker Section Welfare Assn. v. State of Karnataka*<sup>9</sup>, slum clearance scheme was launched by the government. However, after some time a notification was issued amending the earlier scheme in which certain areas which were earlier under the slum clearance scheme were now left out. Court held that earlier notification created a legitimate expectation in the mind of the people living in left out area and not giving occasion of hearing to them by the administration was unfair. In this way they were denied an enforceable right without fair hearing.

*Navjyoti Co-Op. Group Housing Society v. Union of India*<sup>10</sup>, Supreme Court held that doctrine of legitimate expectation imposes duty on authority to conduct its affairs fairly taking into account all those relevant factors which are necessary for fair dealing. This may include following principles of natural justice and therefore, providing an opportunity of being heard before taking any administrative decision which may deprive a person of any benefit, due to sudden change in past policies. Under the doctrine a person enjoys some benefit or advantage irrespective of any statutory right for continuance of such expectation.

In this case some piece of land was to be allotted on the basis of seniority which is indeed decided on the basis of date of registration. Subsequently amendments were made and new policy provide for the determination of seniority on the basis of date of approval of

<sup>3</sup> CA 1972.

<sup>4</sup> (1983) 2 AC 629.

<sup>5</sup> 1985 AC 374.

<sup>6</sup> Lloyd v. Mahon (1987) 1 All ER 1118(HL).

<sup>7</sup> 2001 QB 213.

<sup>8</sup> (1988) 4 SCC 669.

<sup>9</sup> (1991) 2 SCC 604.

<sup>10</sup> (1992) 4 SCC 477.

the members of society by registrar. This was against the doctrine of legitimate expectation which requires government policy should be without any discretion.

In case of *the Food Corporation of India v. M/s Kamadhenu Cattle Feed Industries*<sup>11</sup>, Supreme Court was of the view that, in order to decide whether expectation in question is a legitimate or not, one has to look into all the facts and circumstances of each and every case in the light of general public interest at large. Court further observed that for a valid action of state it has to be based on the various essentials, some of which are considering the legitimate expectation before making any decision, free from any kind of biases and arbitrariness. But this does not mean that court have the authority to bind the government to its earlier decisions by invoking the doctrine of legitimate expectation.<sup>12</sup>

*Union of India v. Hindustan Development Corporation*, court held that there is no exhaustive list of cases in which doctrine of legitimate expectation can be applied. Also, doctrine apply to changes in policy or public interest rather than some rule or legislation.<sup>13</sup> When a policy decision making is involved which grant a benefit in substantial nature it fabricates legitimate expectation which is substantive in nature. Usually, this is binding subject to change in public interest.<sup>14</sup> The decision maker has to justify his action on the basis of overriding public interest.<sup>15</sup>

Supreme Court of India held that doctrine of legitimate expectation acts as an addition tool for delivering justice. It's a growing addition to the branch of natural justice which embraces rule of law within its ambit.<sup>16</sup> More or less this doctrine is a constitutional principle to check and balance various power of the organs of the government, which require predictability, certainty and regularity within the actions of government when dealing with ordinary citizens.

### **DOCTRINE OF LEGITIMATE EXPECTATION UNDER FRENCH LAW**

Under French legal system, doctrine is popular by the expression of “*protectio de la confiance legitime*” which means protection of legitimate expectation. Doctrine was applied first time in the case popularly known as **FORTUNE CASE**.

#### **Fortune case:**

Fact of the case were, a person who was willing to give a competitive exam was not allowed to sit in the examination because his confidential file had some adverse remarks. Court asked the secretary to appear before the court and justify the decision taken by him. To this he pleaded that this was the action of state (‘Act de Government’) and court does not have any jurisdiction in the matter and therefore, he is not answerable before the court. But court ordered to bring the entire file before it and after going through the relevant order, judgment for quashing the decision was passed.

It was held that administration while exercising their administrative discretion should not affect the ordinary citizens overnight by changing the rules which is not justified on the grounds of necessity due to changes occurred in the interest of public. Administration has the authority of making changes in the policy but this should be done only when the persons likely to be affected are given opportunity of hearing as to why these sudden changes shall not be made.

The position is somewhat different under the English law. Wherein, common court of law has no jurisdiction to intervene within the affairs of the state. Court cannot order production of secret documents before the court of law.

### **CONCLUSION**

Doctrine of legitimate expectation is birthed by the Judiciary and act as an aid to render justice. It acts as a tool in the hands of the court to review administrative discretion and protect the interest of ordinary people against the arbitrary action of state. Expectation arises either due to promise made by the authority or continuous past action of authority. If this legitimate expectation is supposed to give any benefit or advantage, the same cannot be taken away by the administration without giving opportunity to the person likely to suffer consequences from such discretion. Opportunity to justify as to why such decision shall not be made. This is subject to overriding interest of public at large. Doctrine cannot be claimed as an enforceable right. It is an equality doctrine and flexible in its application. Doctrine of legitimate expectation is a question of facts and circumstances. Outcome of which varies from case to case. Not only it varies on changing facts and circumstances but in change of jurisdiction. Under English law, procedural legitimate expectation is applicable where as in India, both procedural legitimate expectation and substantive legitimate expectation are applicable. Thus, scope of doctrine is wider under Indian Laws.

Doctrine is different under French law from the English legal system and Indian legal system on the ground that in latter set of jurisdictions, court of law does not have jurisdiction to intervene into the affairs of state and pass order for bringing confidential matter before the court. However, in the former, administration does not have defense of ‘act of state’.

<sup>11</sup> (1993 ) 1 SCC.

<sup>12</sup> PTR Exports Madras v. Union of India (1996) 5 SCC 268.

<sup>13</sup> Madras city wine Merchants association v. State of Tamil Nadu (1994) 5 SCC 50.

<sup>14</sup> National building construction corporation v. V. S. Ragunathan (1998) 7 SCC 66.

<sup>15</sup> Bannari Amman Sugars Ltd. v. CTO (2005) 1 SCC 625.

<sup>16</sup> Official Liquidator v. Dayanand AIR (2008) 10 SCC 1.