



LEGITIMATE EXCEPTION IN INDIA : A CRITICAL ANALYSIS

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ABSTRACT:

In the field of Administrative law, it is age of Welfare State today in which the State performs all functions necessary for the welfare of the citizens. In the of Police State, the functions of the State were confined only to protect the country from war and maintain law and order. But, with the emergence of age of Welfare State, the functions of the State were increased unprecedently and, in order to perform its functions successfully, the State was given more power. Due to increase in the powers of the State, the chance for the arbitrariness also increased. Therefore, various means in the form of doctrine ware also evolved to control the arbitrariness. The Doctrine of legitimate Expectation is one of them. Various aspects of the Doctrine are discussed in this research paper. The study is divided into following heads: I. Introduction, II.Origin of Doctrine of Legitimate Expectations, III. Doctrine of Legitimate Expectation in India and IV.Conclusion & Suggestion.



KEYWORDS: *Legitimate Exception, field of Administrative.*

I. INTRODUCTION

In Modern times, the power and Jurisdiction of State Authorities or officers has been obtained the recognition.The administrative authorities are discharging the multiple functions in Modern Welfare States; and the life, liberty and rights of the person are being affected by those functions. Such administrative powers and functions are needs of present time. Therefore, it is not matter of discussion whether the administrative powers are justified or notin present time.The only considerable thing is how to control the arbitrary administrative powers.To achieve, this objective, following principle and doctrine are evolved- Rule of Law, Natural Justice, Judicial Review and Legitimate Expectations.

Every Administrative action is subject to control by Judicial Review under three heads-*Illegality, Irrationality and Procedural Impropriety.*¹

Judicial review, is the power of judiciary to scrutinize the administrative functions. Judicial review provides the means by which the judicial control of administrative action is exercised. The

¹ *'Illegality'* means where the decision making authority or body or institution or agency, has been guilty of an error of law e.g. by purporting to exercise a power which it does not posses or confirmed ; *'Irrationality'*, means where the decision making authority has acted so unreasonably that no reasonable would have made the decision ; procedural in impropriety, means where the decision making authority has failed in its duty to act fairly.

preceding mention '*decision*' must have consequences which effect some person or body of person either

(a) by altering rights or obligations of that person which are enforceable by or against him in private law or,

(b) by depriving him some benefit or advantage either (i) he has in the past been permitted by decision maker to enjoy and until there has been communicated to him some rational ground for withdrawing it on which he was to be given an opportunity to comment or, (ii) He has received assurance from the decision maker that it will not be withdrawn without giving him first an opportunity advancing reasons for contending that they should be withdrawn.²

The doctrine of legitimate expectation belong 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 any basis of law, in the strict sense of the term, though they has suffered a civil consequence because their, Legitimate Expectation had been violated. It is something between a "right" and "no right" and is different from anticipation, desire and hope.

The word "Legitimate Expectation" is not defined by any law. It is a doctrine evolved by the Court to review the administrative action. The term Legitimate Expectation was first used by Lord Denning in 1969 and from that time it has assumed the position of a significant doctrine of public law in almost all jurisdictions.³

II. ORIGIN OF THE DOCTRINE OF LEGITIMATE EXPECTATIONS

The term Legitimate Expectation was first used by the Lord Denning 1969.⁴ For the First time, an attempt was made to establish the doctrine in the case of *Council of Civil Service Unions and others v. Minister of the Civil Service*.⁵

In *Schmidt v. Secretary of Home Affairs*,⁶ American corporation was running the Hubbard College of Scientology, where the 234 students took the admission out of which 100 were aliens. Among those aliens, two citizens were of United States. The Home Secretary, in August, 1967, allowed the Andrew Schmidt enter the country and like other persons. Subsequently, all these applied to extension to stay in July 1968. The Home Secretary rejected the application.

Lord Denning held that the Home Secretary was exercising an administrative power and not doing a judicial act. In *Ridge vs. Baldwin*.⁷ It was held that an administrative body may, in a proper case, be bound to give a person, who is affected by their decision, an opportunity of making representations. It depends on whether he has some right or interest, or, I would add, some Legitimate Expectation according to which 'it would not be fair to deprive him without hearing what he has to say'.

Further, it held that; "He has no right to enter this country except by leaves and if he is given leave to come for limited period, he has no right to stay for a longer time than permitted. Except in such case, a foreign alien has no right and he would no Legitimate Expectation of being allowed to stay.

The Lord Denning was of the opinion that the proposition that administrative authority should give a hearing when a person's liberty, property, right, interest or even some Legitimate Expectation was being affected.

² CCSD Vs Minister of Civil Service, (1984) 3 All E.R. 935.

³R. C Lerk, "In pursuit of fair Justice", Air 1996 (J) 11. see also I.P. Massey's Administrative law, by 8th Ed (EBC) P. 344.

⁴Schmidt v. Secretary of State For Home Affairs (1969) 1 All E.R. 904, but not applied in facts of the case; subsequently in O Reilly v. Mackman (1983) 2 AC 237, the doctrine of Legitimate Expectation was recognized as a part of Judicial Review in Public Law.

⁵(1985) AC374.

⁶(1985) All E.R. 904 decided Dt./- 22 Oct. 1968.

⁷(1964) AC40.

The Doctrine of Legitimate Expectation was further discussed, in the case of *A.G. of Hong Kong vs. Ng Yeien Shiv*⁸ where Lord Fraser observed that *if a public authority has vowed to follow a procedure, it is imperative that it acts in fair manner and fulfills its promise, in the interest of good administration. He explain that an expectation can only be said to be legitimate only if it has a legal sanctioning or is backed by a procedure or custom that has been followed consistently. It does not involve a crystallized right and, thus, does not pave way for direct claim for relief and the doctrine can be confined to right of fair hearing in situation where a promise has been withdrawn or negative.* (Emphasis Supplied)

In the light of cases decided on Legitimate Expectation, it is clear that the purpose of this doctrine is to make an administrative authority answerable where there lies a legitimate Expectation. Though, this doctrine may not necessarily flow from legal right, there exists an expectations that flows from a promise or an established practice.

III. DOCTRINE OF LEGITIMATE EXPECTATION IN INDIA

This doctrine, for the first time, was discussed in the case of *State of Kerala v. K.G. Madhavan Pillai*,⁹ where the administrative authority issued the sanction to open a new aided school and to upgrade the existing schools. However, an order was issued to keep the previous sanction in abeyance for 15 days which was challenged by the respondent on the basis of the violation of Principle of Natural justice. The Supreme Court held that the respondent was entitled to the sanction on the Legitimate expectation and second order violated Principles of Natural Justice.

The Supreme Court of India again considered this doctrine in another case - *Navjyoti Co-operative Group Housing Society v. Union of India*¹⁰ where the policy for getting House/Plots in housing society was on the basis of seniority from the date of registration. Later on, in 1990, the policy was changed and criteria for deciding seniority was from the date of approval of the final list. The change in policy to allotment was challenged before the Court. The Court observed that the Housing Society was entitled to Legitimate Expectation owing to the continuous and consistent practice in the past in matters of allotment. The Court, further observed, that presence of Legitimate Expectation can have different outcomes and the authority should not fail 'Legitimate' Expectation unless there is some justifiable public policy.

In *Food Corporation of India vs. Kamadhenu Cattle Feed Industries*¹¹ the Supreme Court elaborated the nature of this doctrine. In this case, the Court held that the duty on the part of public authorities to act fairly entitles every citizen to have Legitimate Expectation to be treated in a fair manner and it is imperative to give due importance to such expectation in order to satisfy the requirement of non arbitrariness in State action or otherwise it may amount to abuse of power. The Court further made the notable point that such a reasonable or Legitimate Expectation may not be directly enforceable as legal right but failure in taking it into account may deem a decision arbitrary.

In *Union of India vs. Hindustan Development Corporations*¹², the Supreme Court considered in detail the nature and scope of this doctrine and held that person can have a legitimate expectation of being treated in a certain fashion even though he does not have a legal right to reserve the same.

Recently, the Hon'ble Dr DY Chandrachud & Indu Melhtra JJ. explained the application of the Legitimate Expectations, in the *State of Jharkhand vs. Bramhputra Meltalics Ltd.*¹³ Where the Government has failed to give effect to Industrial policy and subsequent notification that promised 50% rebate to industrial Units on Electricity duty.

⁸(1983) 2 AC 629.

⁹(1992) 4 SCC 669.

¹⁰(1992) 4 SSC 477.

¹¹(1993) 1 SSC 71.

¹²(1993) 3 SCC 499.

¹³(2020) SCC online SC 968 decided on dated 01.12.2020.

The Supreme Court held that the doctrine of principles of fairness is founded on the principles of fairness in government dealings. It comes into play in public body and leads individuals to believe that they will be recipient of a substantive benefit.

The Court further opined that the scope of the doctrine of Legitimate Expectation is wider than promissory estoppels, because it does not only take into consideration of promise made by public body but also official practice as well. Basis of the doctrine of Legitimate Expectation in public law is promised on the principles of fairness and non-arbitrariness surrounding the conduct of public authorities.

"When public authorities fail to adhere to their representations without providing an adequate reason to the citizens for this failure, it violates the trust reposed by citizens in the State. The generation of a business-friendly climate for investment and trade is conditioned by the faith which can be reposed in government to fulfill the expectations which it generates."

In *National Building Construction Corporation vs. S. Raghunathan*,¹⁴ a three-judge Bench, speaking through Justice S. Saghir Ahmad, held that :

"The doctrine of "Legitimate Expectation" has its genesis in the field of administrative law. The government and its department, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizen with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of "legitimate expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "legitimate expectation" have been held to require reliance on representations and result detriment to the claimant in the same way as claims based on promissory estoppels."

However, it is important to note that this observation was made by the Court while discussing the ambit of the doctrine of legitimate expectation under English Law, as it stood then. Since then and since the judgment in *National Buildings Construction Corporation*, the English Law in relation to the doctrine of Legitimate Expectation has evolved. More specifically, **it has actively tried to separate the two doctrines and to situate the doctrine of legitimate expectations on a broader footing.**

In concurring opinion in *Monnet Ispat and Energy Ltd. vs. Union of India*,¹⁵ Justice H L Gokhale, highlighted the different considerations that underline the doctrines of promissory estoppels and legitimate expectation. He said :

"..... for the application of the doctrine of promissory estoppels, there has to be a promise, based on which the promisee has acted to its prejudice. In contrast, while applying the doctrine of legitimate expectation, the primary considerations are reasonableness and fairness of the State actions."

To make a decision in fact the administrative action, judicial review provides the means by which Judicial control of administrative action is exercised. This precedes on some person or body of persons, either (a) by altering my rights or obligations of that person which are by or against him in private law or, He has in the past been permitted by decision maker to enjoy and which he can legitimately expect to be permitted to continue to enjoy until there has been communicated to him some rational ground for withdrawing it on which he was to be given an opportunity to comment or, (ii) he has received assurance from the decision maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should be withdrawn.

Union of India vs. Lt. Col. P.K.Choudhary,¹⁶ speaking through Chief Justice T S Thakur, the court discussed the decision in *Monnet Ispat*¹⁷ and held: ".....the doctrine of Legitimate Expectation cannot be claimed as a right in itself, but can be used only when the denial of a legitimating expectation leads to the violation of Article 14 of the Constitution."

¹⁴(1998) 7 SCC 66.

¹⁵(2012) 11 SCC 1.

¹⁶(2016) 4 SCC 236.

¹⁷Supra.

Hence, in an attempt to provide a cogent basis for the doctrine of legitimate expectation, which is not merely grounded on analogy with the doctrine of promissory estoppels, the Court, in the present case, concluded:

"... The doctrine of legitimate expectation cannot be claimed as a right in itself, but can be used only when the denial of a legitimate expectation leads to the violation of Article 14 of the Constitution. The doctrine of substantive legitimate expectation is one the ways in which the guarantee of non-arbitrariness enshrined under Article 14 finds concrete expression."

IV. CONCLUSION AND SUGGESTION

The study reveals that the Doctrine of Legitimate Expectation is one of the means to control the arbitrariness of the administrative power. It is humble suggestion to the administrative authorities to exercise power in proper perspective so that the goal of the Welfare state can be fulfilled.

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