



Doctrine of Legitimate Expectation- Vistas and Boundaries

Abstract

Legitimate expectation is a relatively new but a very important doctrine of Administrative law; it covers a central space amidst a no claim and a full claim situation. Application of the doctrine is a difficult task as defining and delimiting the concept of legitimacy of expectation is fraught with challenges. The doctrine is based on the concept that if an administrative action leads to certain expectations as regarding future course of conduct in similar actions or some expectation arises due to a representation, than such expectations must be fulfilled unless there are some compelling reasons for nonfulfillment. The edifice of the doctrine is built on consistent past practice or representation. The present article examines the concept of the legitimate expectation, it also makes an attempt to charter out the judicial journey in England as well as in India of defining the concept. The work also focusses on the possibilities and limits of the doctrine.

ORIGINAL ARTICLE



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Concept of Legitimate Expectation

It must be clear at the outset that legitimate expectation is not a legal right. The concept has developed from the expectation of consistency, predictability and certainty in administrative actions i.e. a person may have a reasonable expectation of being treated or dealt with in a particular way based on consistent past practice or a promise by administrative authorities. As per this doctrine, accountability can be fixed on a public authority in lieu of nonfulfillment of a legitimate expectation. This doctrine relates to the relationship between an individual and a public authority.

In course of time one thing has become well established that a hearing can be claimed by an individual if he is deprived of his legitimate expectation. This term travels beyond right or interest. This concept has made the area of applicability of natural justice much broader. Legitimate expectation is an expectation of a benefit, relief or remedy that may ordinarily flow from a promise or established practice. Established past practice means a consistent practice not an isolated, random or sporadic act. Similarly there must be a clear promise or representation from an authorized administrative authority or a public body. Any expectation which is illegal or unreasonable cannot be considered as legitimate. "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”¹.

“In short, 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 normal course”².

Legitimate expectation may be procedural or substantive. Procedural legitimate expectation arises when a public authority promises that a particular procedure shall be followed before making a decision on merits of a case e.g. promise or an established practice of giving a hearing. The substantive legitimate expectation arises when a person is promised some benefit due to a representation. This sort of legitimate expectation is generally considered to be weak and may be defeated on various grounds e.g. overriding public interest. The former category leads to an expectation of a particular process and the latter to a particular outcome or result.

Judicial Journey in England and India

In Britain Legitimate expectation was introduced as a ground of judicial review in administrative law when any individual’s interest- substantive or procedural, is affected on a public or administrative authority rescinding from an established past practice or a representation. It was in year 1969 that the concept of legitimate expectation was introduced in the case of *Schmidt v. Secretary of State for Home affairs*.³ In the given case Lord denning propounded that an administrative authority should accord a hearing when a person’s liberty, interest or even legitimate expectation is being affected. In the instant case it was said that if foreigner’s stay permit expires, he does not have a right to be heard as there is no basis of his stay after expiry however if his permit was being revoked prematurely, then he could claim hearing as he was being deprived of the legitimate expectation of being allowed to stay in Britain for the period of permit. This case introduced the concept in British administrative law and since then it has been invoked in many cases.

The concept of legitimate expectation found its due place in *Breen v. Amalgamated Engineering Union*⁴. In the instant case the District committee of a trade union had refused to endorse a member’s election, it was held that if only mere privilege is being claimed than there is no remedy, however if a person has a legitimate expectation, the principles of natural justice are attracted to the case in order to ensure fairness.

The concept of legitimate expectation was well illustrated by the court in the case of *Melnes v. Onslow Fane*⁵, it explained the concept in reference to license cases, it said that on one extreme there are application cases, where person has no a right(no claim) over grant of his application, on the other end there are forfeiture cases which a person’s existing right is violated(full claim situation), where he is entitled to a hearing and in between lies the cases of renewal of licenses which is a situation of legitimate expectation i.e. an individual can legitimately expect that his license shall be renewed and in case of non-renewal principles of natural justice shall be attracted.

In *Attorney General of Hongkong v. Ng Yuen Shiu*⁶ there was no statutory provision laying down the requirement of hearing before making a deportation order of illegal immigrants, however the Government had a given a general undertaking that each case would be decided on merits. The Privy Council held in this case that due to the representation made by the government that an immigrant is entitled to be heard before getting deported. It is clear that the privy council relied on the concept of legitimate expectation as there was no entitlement or right of hearing in favour of illegal immigrants.

In *Re Liverpool Taxi Owner’s Association*⁷, the city corporation had a right to decide the number of licenses for the taxi cabs it would issue, it had the power of increasing or decreasing the number. For few years the number was fixed at three hundred, in fact an undertaking was given by the corporation to the taxi association that it would not increase the number beyond 300 without giving an opportunity to the association

to make representations, it was held that due to an established past practice as well as a representation, the corporation was bound to give a hearing to the association before deciding to increase the licenses beyond three hundred.

Similarly on *O'Reilly v. Mackman*⁸ it was held that though remission of sentence is not a matter of right, a prisoner does have a legitimate expectation of getting remission based on his knowledge of established general prison practice. In *Council of Civil Services Union v. Minister of Civil Services*⁹ the House of lords invoked the doctrine of legitimate expectation when a long standing practice was withdrawn by an administrative authority by a mere oral instruction, it was held "that legitimate expectations may arise from an expression or promise made by authority or from an established past practice which cannot be violated without good reasons".

It is clear that in case there is no consistent past practice of granting benefit or no representation has been made the principle of legitimate expectation shall have no application. Similarly any substantive change in the policy does away with the expectation based on previous policy.

Indian judiciary too imported this doctrine and the first reference to this doctrine finds place in the Apex court decision of *State of Kerala v. K.G. Madhavan Pillai*¹⁰, in the instant case, a sanction order was issued by the government to open a new unaided school and upgrade existing ones, a direction was however issued after few days to keep the sanction in abeyance. The Apex court held that the order created legitimate expectation which was violated by the second order, the court emphasized that the non following of natural justice in such a case is enough to vitiate an administrative order.

In *Navjyoti Co-operative Group Housing Society v. Union of India*¹¹ the development authority, changed the criterion for allotment of land to cooperative societies, without notice and hearing. The court held that "where persons enjoying certain benefits or advantage under old policy of government derive a legitimate expectation even though they may not have a legal right under private law in regard to its continuance but before changing that policy affecting adversely that benefit or advantage the aggrieved persons are entitled to a fair hearing".

In *Jatinder Kumar v. State of Haryana*¹² The Supreme court observed that legitimate expectation is different from mere anticipation, hope or desire. It said that the application of the doctrine is to be limited to mostly providing a right of fair hearing before, a decision in the event a promise is negated or an undertaking is withdrawn. Though the denial of legitimate expectation affords the ground for challenging an administrative Action, the court shall not interfere unless the denial is unreasonable, whimsical, arbitrary, not in public interest and inconsistent with the principles of natural justice.

Explaining the two types of legitimate expectation, the Apex court in the case of *Punjab communications ltd. V. Union of India*¹³, observed that the procedural part of such expectation deals with giving hearing or affording any other appropriate procedure before a change in decision is made. The substantive part deals with a representation on basis of which a substantive benefit will be granted or will be continued.

In *Ram Pravesh Singh and Ors. vs. State of Bihar and Ors*¹⁴, Bihar Government, the Electricity Board and Rural Electrification Corporation organized a cooperative society to implement an electrification scheme, however due to financial distress the society was merged with the board, though assets and liabilities were taken over, employees were not absorbed. Employees claimed violation of legitimate expectation. The apex court clearly held that legitimate expectation is not a legal right, it is an expectation based on an established past practice i.e. a consistent practice and not a casual act. The base of expectation has to be reasonable.

Though judiciary has broadened the base of natural justice by application of this principle it has time and again observed that legitimate expectation does not arise where there is a change in policy or in public interest, the position is altered by a rule or legislation.

Scope of the Doctrine.

There is no doubt that the doctrine has emerged as an important addition to the grounds of judicial review of administrative decision. Traditionally there have been three grounds for judicial review- illegality, irrationality and procedural impropriety. The doctrine relates to the public domain and governs the relationship between individuals and the government. It has successfully given *locus standi* to the individuals who do not have a direct legal right. In appropriate cases the doctrine has the capacity to constitute substantive and enforceable right. The doctrine induces care in public administration as it makes the administrative authorities accountable to public. It also shares a part with promissory estoppel where the representation or promise made by the authority is considered to be basis of legitimate expectation many a times.

The scope of procedural and substantive legitimate expectation is different, the courts are quick in giving effect to violation of procedural legitimate expectation as it deals with affording an opportunity of being heard or following any procedure based on consistent past practice or a promise made by a public authority. "The legitimate expectation entitles an expectant to an opportunity to show cause before expectation is dashed, to an explanation as to the cause of denial, to a direction requiring the authority to follow the promised procedure or established practice. A change of policy in public interest, conduct of the expectant or any other valid or bona fide reason given by the administrative authority may be sufficient to negate the legitimate expectation"¹⁵.

Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. The answer to the question is not be determined as per the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant.

Conclusion

The doctrine of legitimate expectation shares space with doctrines of public accountability and promissory estoppel. It is based on certainty and predictability of administrative decisions. It is now considered to be part of natural justice. It involves balancing the public interest with individual interest. The base of the doctrine is rule of law. It takes its place beside principles lie fairness, reasonableness, non-arbitrariness etc.

The doctrine is very well established in the procedural aspect but it is the substantive aspect of the doctrine which is still in an evolving stage primarily because it is difficult to determine the legitimacy of the substantive expectation. A claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke this principle. Mere reasonable or legitimate expectation of a citizen may not by itself be a distinct enforceable right, but failure to consider and give due weightage to it may render the decision arbitrary. The doctrine does not find application in the field of law of contract. Courts need to be extremely careful while giving effect to this doctrine. The Supreme Court in the case of State of Arunachal Pradesh v. NE zone Law House, Assam¹⁶ observed that "the definition of legitimate expectation is not the key for opening the treasure of natural justice, nor should it open the gates that shut the Court out of a merits review".

Though the doctrine treads on a thin ground whereby it can be defeated on showing a positive right, overriding public interest, change in rule, regulation or policy, it has come to occupy an extremely important place in administrative law as it infuses public trust and ensures certainty and fairness in administrative actions.

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