

Doctrine of Legitimate Expectation

Authored By:-
Ankesh Kumar Sinha
Chanakya National Law University, Patna
LLM

Introduction

Legitimate expectation applies the standards of decency and sensibility to a circumstance wherever individual includes a need or interest in a very public body or private gatherings holding a long-standing follow or keeping a guarantee. It shields someone from a self-assertive exercise of restrictive activity by the general public body despite the actual fact that it does not provides a lawful right to the citizens. The term real need was 1st utilized by Lord Denning in 1969 and from that point it fashioned into a large precept all over the planet. Court in Republic of India has engineered up the regulation of real need to ascertain the self-assertive exercise of intensity by the social control specialists. In step with this precept the general public authority are often held accountable on the bottom of a need that is real .The philosophical system of legitimate expectation is disquieted regarding the association between social control position and also the person. A need is often purported to be real within the event that wherever the selection of the social control power influences an individual by denying him some advantage or favourable position that probably:

- (I) he had within the past been allowed by the chief to understand and that he will actually hope to be allowed to proceed till some discerning justification for coitus interrupts its square measure sent to quite individual or party and also the influenced individual/party has been given an opportunity of hearing. It could have been said that the individual enjoys the position only if there is a chance that he earlier was allowed by the government or by virtue of some act it has been granted and given an opportunity, or
- (II) The influenced individual has gotten affirmation from the involved authoritative position that it will not be removed while not giving him an initial

opportunity of dynamic purpose behind fighting that they ought not be removed by the restrictive position.

The rule of thumb implies that needs that square measure raised owing to authoritative direct of a public body might have lawful outcomes. Either the organization ought to regard those needs or offer reasons regarding why the general public interest ought to take want over real need. On these lines, the quality considerations what quantity a human needs may well be protected within the light-weight of a modified approach which can normally sabotage them. The ipart of the court is to make your mind up the degree to that the person's needs are often secured with the ever-changing target of the arrangement.

The philosophical system of "legitimate confidence" plays a vital role in the development of case law, particularly the law relating to "judicial review" under the same philosophical system or legitimate expectation of being excessively and safely treated by the authority, although they are not entitled to the service, and in such a case it can be expected from the specific commitment or regular monitoring that someone legitimately believes that it will continue.

EVOLUTION AND DEVELOPMENT OF LEGITIMATE EXPECTATION

The doctrine of legitimate expectation has been viewed as a branch of natural justice since its inception or origin. The duty to act fairly is a fundamental principle of administrative law and a predominant feature in the application of the rules of natural law. With the right of every individual to natural justice and equality, legitimate expectation strengthens the duty of public authorities to act fairly. this protection of justice, which has given way to the recognition of legitimate expectation is trusted by the courts. In developing the doctrine, UK courts have adopted other key aspects of judicial review, such as the irrationality of Wednesbury principles, fairness and abuse of power, to justify the existence and protection of legitimate expectations.

Legitimate expectation arises when an authority declares that it will follow a certain procedure before deciding on the matter. Legitimate procedural expectations include, for example, the expectation of being consulted and receiving a fair trial. A substantive expectation arises when an authority takes a stand on the final decision and the result that the authority will make in each individual case. When examining a claim to protection of legitimate expectations against the decision of an authority, the courts are advised on three key considerations:

1. The situations and circumstances in which reasonable expectations arise;
2. The cases in which it would be illegal for the authority to frustate such an expectation;
3. The legal remedies available to the injured party if it is established that the authority has unlawfully frustated a legitimate expectation.

One of the earliest cases wherever the expression 'legitimate expectation' occurred was **National Leader vs. Secretary of State for Home Affairs**¹. In this case, 2 Church of Scientology students were refused extension of their permission to stay within the UK once their right to be there had expired. They complained that the extension of the correct to remain had been denied to them while not a hearing being granted. Lord Denning expressed the view that the scholars had no right to stay within the country; they might not therefore have any legitimate expectation of a hearing. In **McInners vs. Onslow-Fane**², **Megarry VC** touching on things wherever the correct to be detected existed, court expressed that there was a class of persons like a license holder, World Health Organization had controlled a license for several years and once the license expired, wanted to renew that license. In such a case the individual involved had a legitimate expectation of being granted a hearing before the renewal of license was denied. It ought to be noted but, that the expectation created was Associate in Nursing expectation of a hearing before the refusal of a renewal of the license Associate in Nursing isn't an expectation of a specific outcome.

In a Sri Lankan case³, the petitioner, a German national holding a German Passport, arrived in country on a 1 month's visa. This visa was later on extended. Associate in nursing application for an additional extension was refused by the Controller for Immigration and out-migration. Ismail J. within the Court of attractiveness was clearly influenced by the dicta of Lord Denning adult male in national leader and held: "A foreign alien has no right, and that I might add no legitimate expectation of being allowed to remain. He may be refused while not reasons given and while not a hearing once his time has expired, he has got to go."

As declarative as Ismail J's conclusion may be, it is problematic to accept it as true, since the rationale lies in the relevance of the legitimate expectation problem especially the normal revision and also the philosophical system of the legitimate expectation have developed enormously in recent times; Hence, it is debatable that excessive reliance on the case convened in 1969 is not something to depend upon. What's in hand is the elementary question on whether or not a far off alien incorporates a legitimate expectation that his visa extension won't be refused before affording him a chance of being detected. It's true that a far off alien doesn't have a statutory right to be detected before a call being created to deny him Associate in Nursing

¹ (1969) 2 Ch.149

² {1979} 1 WLR 1520

³ Laub vs. Attorney General (1995) 2 Sri LR 88

extension of his visa, however, it ought to even be noted that if he had such a right, the conception of legitimate expectation would be superfluous as a result of the denial of a hearing in such circumstances and would lead to the choice being vitiated on the premise of being ultra virus. J. Timber in *Gooneratne and others vs. Premachandra*⁴ self-addressed the redundancy of the conception of legitimate expectation in a scenario where someone incorporates a statutory right to be detected. In this case, the petitioner, the World Health Organization was a member of the Democratic United National Front which refused to sign a motion of no confidence against the Chief Minister. The Manager Committee speculated to expel the petitioners from the party as a result of a recommendation of the Disciplinary Committee. The petitioners weren't given a hearing before their expulsion, despite the fact that the constitution of the party provided for such a hearing. The stand of the Party was that the petitioners were aware to the results of non compliance with the direction given within the letter that accompanied the resolution of no confidence. Silva J. was unaffected by this argument and his lordship adverted to the read that the legitimate expectation principle has no application wherever the petitioners already relish the protection provided within the constitution to a due enquiry. That principle has connexion as long as the petitioners had no right of hearing. Identical condition applies to the rivalry that Associate in nursing inquiry would be a useless formality. The aforementioned read represents a healthful development in review for Sri Lanka; it represents an accurate appraisal of the conception of legitimate expectation. The conception has no connexion once there's a statutory right to be heard; the denial of the correct to a hearing would mechanically vitiate the choice. Ismail J. didn't note this distinction of getting a statutory right to be detected and also the creation of legitimate expectation of being detected. The statutory discretion given to the Controller for Immigration and out-migration for provision visas and considering applications for extensions isn't unfettered; the discretion should be exercised fairly. However, principles of fine administration would possibly need that, before the Controller makes a call to deny Associate in nursing extension of a visa, he should think about all relevant matters and should act fairly. The mortal incorporates a legitimate expectation of being detected as a result of his visa has been extended once earlier. For comparison, it might need to look at the choice of the tribunal of Australia in *Haoucher vs. Minister of State for Immigration and Ethnic Affairs*⁵. During this case, the relevant Minister set to deport the appellant. The appellant created attractiveness to the executive attractiveness assembly that counseled reconsideration of his call by the

⁴ (1994) 2 SRI LR 137

⁵ (1991) LRC (Const.) 819

involved Minister. The Minister still set to deport the appellant once reconsideration is being done the question was whether or not the appellant had a legitimate expectation of a hearing before the Minister's reconsideration. Dean J was of the view that in spite of whether or not one will establish a right within the strict sense or a legitimate expectation, the wants of procedural fairness should be ascertained in any case wherever by relevance a specific statutory framework a legislative intent may be discerned that the beneficiary of governmental and legislative power ought to be sure by them. Within the words of His Lordship Dean J "it is very important connected in mind that the popularity of Associate in Nursing obligation to watch procedural fairness doesn't decision into play a body of rigid procedural rules that should be ascertained in spite of the circumstances. Wherever the duty exists, its precise content varies to replicate the common law's perception of what's necessary for procedural fairness within the circumstances of the actual case".

In **Kio vs. West**⁶, Brennan J expressed that "it isn't the state of mind of a person however the interest that Associate in Nursing exercise of power is apt to have an effect on that's relevant to the development of the statute. Mason J of the opinion that what's needed by method of procedural fairness depends on the circumstances of the case and that they can embody, inter alia, the character of the inquiry, the topic matter, and also the rules underneath that the choice maker is acting".

In **State of South Australia vs. O' Shea**⁷, "it has been expressed that a legitimate expectation that someone can acquire or still relish a profit should be distinguished from a mere hope that he or she is going to acquire or still relish a profit or privilege. A hope that statutory powers are exercised thus on confers a profit or privilege doesn't make to a legitimate expectation sufficient to draw in the foundations of natural justice".

NATURE AND SCOPE OF LEGITIMATE EXPECTATION

The belief of legitimate expectation plays a crucial role in varied fields of law. However it's unattainable to draw a line concerning its scope and importance. Governments and their functionaries might craft expectations regarding the way by which body powers are going to be exercised. Expectations of this nature are generated in many alternative ways in which, like by the difficulty of policies or procedures to funnel the exercise of discretionary powers. Expectations relating to the potential exercise of body powers may additionally be generated by

⁶ (1985) 159 CLR 550

⁷ (1988) LRC 673)

public statements or representations, conceivable by the themes through guarantees or by adoption and regular application of a particular follow. However even as expectations concerning the exercise of body powers could be created and formed by a personal or a party, they will also be unsuccessful. They will be disenchanted once a governmental agency has acted in breach of a promise or endeavor created to a selected person or to a category of persons. They will even be unsuccessful once an administrative unit has not applied current policy or tips in crucial a selected case and while not smart reason. In such a case, the criticism is also that the policy has been applied inconsistently, maybe during a means that reflects improper discrimination. In different cases, an existing policy is also modified and a brand new one applied to the disadvantage of individuals WHO stood to learn from the sooner policy and WHO might even have conducted their affairs in reliance upon it. Courts in England and a few different jurisdictions have recently accepted that there is a circumstance during which government agencies ought to be needed to accomplish the legitimate expectations of their subjects formed by them. This approach endows an expectation with a substantive excellence as a result of it allows the expectation to work out or powerfully influence the end result of, instead of merely the procedures for, body decision-making. Australian courts, in inequality, have by and huge taken the read that expectations concerning the exercise of body powers might solely make to procedural rights⁸.

BURNISHED LAW JOURNAL

The scope of the duty to look at the necessities of procedural fairness is currently extraordinarily wide. It's well-settled that the duty extends to nearly each exercise of a statutory power which could have an adverse impact on a personal unless there's a really clear legislative indication to the contrary. Whereas creating choices, the state/decision manufacturers ought to watch out of the potential limitation or exclusion of the duty to look at the necessities of procedural fairness. Therefore, in most cases the necessary question now's whether or not the necessities of procedural fairness are applied during an explicit instance. Throughout the evolution of procedural fairness or natural justice, because the belief was normally referred to as during these times of yore, several cases centered on the 'threshold question' of whether or not the belief has been applied or not. The solution to the current preliminary question typically trusted whether or not the courts might establish a selected reason or circumstance why natural justice has to be compelled to apply.

⁸ Mark Aronson, Bruce Dyer and Matthew Groves, *Judicial Review of Administrative Action* (3rd Ed, 2004) 395–400; Ian Holloway, *Natural Justice and the High Court of Australia: A Study in Common Law Constitutionalism* (2002) 154–95

As the legitimate expectation belief gained acceptance, it absolutely was invoked during a wider vary of cases, which may be handily summarized into four classes.

- i) The initial was the class of cases during which an individual had relied upon a policy or norm of general application however was then subjected to a distinct policy or norm.
- ii) The second class, that encompasses a slight variation than the primary, enclosed cases during which a policy or norm of general application existed and continuing however wasn't applied to the case at hand.
- iii) A third class arose once a personal received a promise or illustration that wasn't worthy, thanks to a ulterior amendment to a policy or norm of general application.
- iv) A fourth class, that too encompasses a slight variation than the third, arose once a personal received a promise or illustration that dishonored, not as a result of there had been a general amendment in policy, however as a result of the decision-maker had modified its mind therein instance.

ESSENTIAL INGREDIENTS OF LEGITIMATE EXPECTATION

The essential ingredients of Doctrine of Legitimate Expectation are:

- a) this doctrine imposes an obligation on public body or the administrative authority to afford an opportunity of hearing to the party, if the government has acted arbitrarily in violation of their legitimate expectation. Thus, the affected party may get a chance of being heard by getting such administrative decision set aside through the writ of Mandamus⁹ (or Certiorari).
- b) the doctrine of legitimate expectation extends protection of natural justice to the exercise of non-statutory administrative powers where the interest affected is only a privilege.
- c) The concept of legitimate expectation could be a relevant issue for consideration to make fair decision making.
- d) A person can get benefit under the Doctrine of Legitimate Expectation as a matter of public law even if the person has no legal right to it under the law.
- e) an individual can claim a benefit under the doctrine of legitimate expectation only if such expectation is reasonable.
- f) The doctrine of legitimate expectation can extend to the exercise of even non-statutory or common law powers.
- g) The doctrine of legitimate expectation can arise from an express promise or from existence of a regular practice.

⁹ N.C.H.S. v. U.O.I 1993, S.C. 155 (para 6, 15-16) [case under Art.226]

TYPES OF LEGITIMATE EXPECTATION

The expectations that people could have square measure varied¹⁰. However, expectations could broadly speaking be divided in two sorts.

1. Procedural Legitimate Expectation:

It denotes the existence of some previous right that someone claims to possess as a result of actions by the general public body that generates the expectation. The Courts have accepted that procedural protection ought to run wherever a private incorporates a legitimate expectation of procedural protection like a hearing or of a consultation before a choice is created.

Fairness implies that the expectation of a hearing or different procedural protection be consummated. It is generally accepted that as long as a private individual has a legitimate expectation that something good of a material nature will be awarded, or if he has already received the profit, he continues, then fairness also dictates that expectation of profit must be given to the person to argue for its fulfillment. During this scenario the choice maker must just hear what the individual must say, however, he doesn't get to provide substantive profit. What has been the topic of some contestation is whether or not a legitimate expectation will bring about to substantives protection.

BURNISHED LAW JOURNAL

2. Substantive Legitimate Expectation:

It refers to the case during which someone seeks a fastidious profit or product. The claim to such a profit is going to be supported upon governmental action that is claimed to validate the existence of the relevant expectation. Several legal luminaries believe that the substantive legitimate expectations wouldn't solely generate faerie publicly administration however reliance and trust of the voters in government in thus far as principle of equality cares and can conjointly uphold rule of law.

Procedural expectations square measure protected just by requiring that the secure procedure be followed. Substantive expectations square measure typically protected procedurally, i.e. by extending a chance to create illustration to the person affected before the expectation is broken. Therefore wherever counseled the applications of the candidates for hospital posts were rejected

¹⁰ W.R. Wade and C.F. Forsyth, Administrative Law, (eight edition) 497

in breach of an extended established apply, as a result of that they had complained concerning dangerous conditions, they were control entitled to a hearing before rejection¹¹. The person affected isn't entitled to a good call, however, the trust that he has reposed within the call maker's enterprise ought to be protected. Therefore just in case of a boy seeking admission with a read to adoption, the Court of charm found that refusing admission on an altogether totally different ground amounted to 'grossly unfair administration' and within the absence of an 'overriding public interest', justifying the amendment from the previous criteria ought to apply¹². Though such substantive protection has been recognized many times in set cases, it sits awkwardly with the requirement to not fetter the exercise of discretion. Moreover, call makers, should not, by substantive protection of expectations, be prevented from dynamical their policies¹³. Court of charm choices hold that substantive protection of expectations can solely be attainable wherever the amendment in policy is irrational. . This approach is in step with the law that balances the protection of the overall public interest against the individual's legitimate expectation¹⁴. The study of higher than cases reveal that expectations is also additional promptly protected substantively once the expectation is given separately to a little cluster (such because the residents of a care home) than wherever a general announcement of policy is created to an out sized cluster (such as prisoners). Within the top notch of case the choice maker's freedom of action is being restricted solely in exceptional cases, whereas in second a general restriction applicable all told cases is needed. Thus these choices link the ideas of fairness and reasonableness during a fruitful method¹⁵.

EXCEPTIONS TO DOCTRINE OF LEGITIMATE EXPECTATION:

Although legitimate expectation has assumed the position of a big belief of law in the majority jurisdictions, nevertheless there is a unit some exceptions to the present principle of honest procedure.

1. There can't be a legitimate expectation to a issue which might involve the violation of a statute, e.g., to run a cinema house while not license;¹⁶ or interference with a public duty of the

¹¹ Administrator, Transvaal v. Traub:1989(4) SA 731. For England; Schmidt v. Home Secretary:[1969] 2CH.149 (The first legitimate expectation case in English Law, English authority recognized this category)

¹² R v Home Secretary ex p. Ruddock ,(1987) 1WLR 1482

¹³ R. v Inland Revenue Commissioners ex p. Unilever plc [1996] STC, 681

¹⁴ Mulder v. Council and Commission (1996) 55 CLJ, 286.

¹⁵ Wade and Forsyth, Administrative Law, (8th edition) 370

¹⁶ Ved Gupta v. Apsara, 1983 SC, 978 (para 19).

authority. Wherever an individual, except a retailer was operating a cinema show, no hearing of such outsider would be needed before issuing an associate order suspending such show. For an equivalent reason, legitimate expectation cannot preclude legislation¹⁷.

2. No legitimate expectation is based on associate application that has been rejected for failure to adjust to the conditions obligatory for its consideration¹⁸.

3. Within the matter of appointment to Government service since a candidate doesn't acquire any right to be appointed simply as a result of his name seems in choose List created by a range Board. Within the absence of any specific Rule entitling him to such appointment, the Court or court cannot fetter the discretion of the appointing authority by the belief of legitimate expectation, within the absence of irresponsibleness or maladies. Even the belief of natural justice can't be invoked if he's not detected before canceling such chooses List for valid reasons¹⁹.

4. the legitimate expectation of a personal is subject to the larger thought of public interest. Whenever such question arises, it's to be determined not in keeping with the claimant's perception however in larger public interests whereby different vital issues could outweigh e.g., within the matter of non-acceptance of the very best bid at a public auction or a young with reference to a government contract or license.

Lastly, legitimate expectation doesn't create any substantive right at once. It offers a locus standi to an individual to hunt review by difficult associate body action and to own it quashed on condition that the choice is bigoted, unreasonable or not taken public interest and a failure to convey a hearing to such affected person has resulted in failure of justice.²⁰

CONCLUSION

What is legitimate expectation? Clearly, it's not a right . Not being a right, it's not enforceable per se. It's a plan designed by courts for the review of body action. It's procedural in character supported the need of the next degree of fairness in body action, as a consequence of the promise created, or observe established." The expectation ought to be legitimate, that is, reasonable, logical and valid.

¹⁷ State of H.P v. Kailas, 1992 S.C.C, 351 (para.87)

¹⁸ Govt of A.P v. the Nizam, 1993 S.C , 76 (paras. 36,42)

¹⁹ Union Territory v. Dilbagh, 1993 S.C 431 (para 12)

²⁰ Union Territory v. Dilbagh, 1993 S.C 431 (para 12)

In order to keep up the balance between the incessantly evolving freedom of people and state authority, the executive law has got to additionally evolve itself to suit the requirements and expectations of individuals and their rights and duties. There are many principles of law that are evolved by the courts for the aim of dominant the exercise of power in order that it doesn't cause irresponsibility or abuse of power. These principles are supposed to produce safeguard to the voters against abuse or misuse of power by the instrumentalities or agencies of the State. One in every of the newest and vital of those principles is that the 'doctrine of legitimate expectation', that is Associate in Nursing outcome of synthesis between the principle of body fairness (a element of the principles of natural justice) and therefore the rule of estoppel

Legitimate Expectations, are completely different from Expectations at massive, and don't seem to be Legal rights, however are expectation of advantages, relief/remedy that accrues from a promise or established practices, and provides rise to locus standi to someone to hunt review of any action, of State or its subsidiaries, that are capricious, discriminatory, unfair, malicious in law, empty Rule of law and offending the principles of Natural Justice.

BURNISHED LAW JOURNAL

BIBLIOGRAPHY

Books:-

- Doctrine of Legitimate Expectation: B.N Pandey
- Legitimate Expectations: Ijress
- Doctrine of Legitimate Expectation: B.N Pandey
- Mark Aronson, Bruce Dyer and Matthew Groves, Judicial Review of Administrative Action (3rd Ed, 2004) 395–400
- Ian Holloway, Natural Justice and the High Court of Australia: A Study in Common Law Constitutionalism (2002) 154–95

Case laws:-

- Schmidt v. Secretary of Home Affairs [1969] 2 Ch 149; (1969) 1.AllE.R. 904.
- M/S Sethi Auto Service Station vs Delhi Development Authority & Ors AIR 2009 SC 904
- National Leader vs. Secretary of State for Home Affairs (1969) 2 Ch.149
- McInners vs. Onslow-Fane (1979) 1 WLR 1520
- Laub vs. Attorney General (1995) 2 Sri LR 88
- Haoucher vs. Minister of State for Immigration and Ethnic Affairs (1991) LRC (Const.) 819)

- Administrator, Transvaal v. Traub: 1989(4) SA 731. For England
- Schmidt v. Home Secretary: [1969] 2CH.149 (The first legitimate expectation case in English Law, English authority recognized this category)
- Kio vs. West (1985) 159 CLR 550
- State of South Australia vs. O' Shea (1988) LRC 673)
- N.C.H.S. v. U.O.I 1993, S.C. 155 (Para 6, 15-16) [case under Art.226]
- W.R. Wade and C.F. Forsyth, Administrative Law, (eight edition) 497
- R v Home Secretary ex p. Ruddock ,(1987) 1WLR 1482
- R. v Inland Revenue Commissioners ex p. Unilever plc [1996] STC, 681
- Mulder v. Council and Commission (1996) 55 CLJ, 286.
- Wade and Forsyth, Administrative Law, (8th edition) 370.
- Ved Gupta v. Apsara, 1983 SC, 978 (Para 19).
- State of H.P v. Kailas, 1992 S.C.C, 351 (para.87)
- Govt of A.P v. the Nizam, 1993 S.C , 76 (paras. 36,42)
- Union Territory v. Dilbagh, 1993 S.C 431 (para 12)