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Fairness in Administrative Action: Comparative Analysis of the Doctrine of Legitimate Expectation in India and England

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ABSTRACT

The "doctrine of legitimate expectation" is a pivotal concept in administrative law signifying protection of trust. This doctrine plays a crucial role in connecting the rights of individuals and organizations with the powers of public authorities. It is based on the fundamental principle that when individuals have a reasonable expectation that public authorities will act fairly and follow established rules and procedures, such expectation even when it doesn't give rise to any legal right shouldn't be violated. By upholding this principle, the doctrine serves as an important protection against arbitrary and unfair administrative actions, ensuring that government decisions are predictable and consistent, and promoting trust among citizens.

In democratic nations, the separation of powers among the government's branches is considered a fundamental rule. The executive branch, which has been granted substantial discretionary authority, is responsible for creating rules and regulations to effectively govern the country. To prevent any potential abuse of this authority and safeguard the rights of citizens from arbitrary actions, the "doctrine of legitimate expectation" becomes relevant. It is the duty of public authorities to carry out their responsibilities fairly and without any arbitrary behaviour.

This paper aims to thoroughly examine this doctrine, comparing its application and impact in English and Indian administrative law. The author intends to illuminate the evolution and improvement of this doctrine through judicial decisions, highlighting its global importance in administrative justice systems.

I. INTRODUCTION

Vertrauenschutz- the German term for the protection of trust can be said to be the genesis of the "doctrine of legitimate expectation". The doctrine is a crucial concept in administrative law that aims to harmonize the rights of individuals and organizations with the powers granted to

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public authorities.[2] It embodies the principle that individuals have a reasonable expectation that authorities in power will act fairly, reasonably according to the established rules and procedures. This doctrine serves as a vital safeguard against arbitrary and unjust administrative actions, ensuring that citizens can trust in the predictability and consistency of government decisions. Legitimate expectations encompass expectations that extend beyond enforceable rights, as long as they have a reasonable foundation. These expectations can arise from a direct statement or an express undertaking made by public authorities responsible for decision making, or due to presence of previous practice that the claimant can reasonably anticipate will be continued.[3]

In democratic countries, one of the most fundamental principles is the separation of powers. The government has three branches, each possessing significant discretionary authority within its respective domain. The executive branch formulates rules and regulations to promptly and efficiently address various issues that arise during the governance of the nation. Consequently, to prevent the potential abuse of this authority and safeguard the rights of individual citizens against arbitrary decisions, the "doctrine of legitimate expectation" is employed. It is the responsibility of the public authorities to carry out their duties in an equitable manner, devoid of any arbitrary actions.[4]

Over time, this doctrine has been evolved and been refined through judicial decisions, becoming a cornerstone of administrative justice in various legal systems around the world. The UK courts were the first to formulate this doctrine and with the passage of time, the Indian judiciary, through precedents, has recognised this doctrine as an inalienable aspect of Article 14 of the constitution.[5] This research project aims to provide a comprehensive exploration of the doctrine, undertaking a comparative study of its application and impact in English and Indian administrative law.

II. ORIGIN AND DEVELOPMENT OF THE DOCTRINE

The UK is considered as be the birthplace of the legitimate expectation doctrine. This was first established in the 1968 case of "***Schmidt v Secretary of State for Home Affairs***[6]**".** In this matter, the plaintiff, along with fellow students, was enrolled in a government-recognized college and granted permission to remain in Britain. However, the government later revoked

[2] National Buildings Construction Corporation v. S. Raghunathan, (1998) 7 SCC 66.
[3] R. v. Secretary of State of Transport Exporte Greater London Council, (1985)3 All. ER 300.
[4] Seemeen Muzafar, *Doctrine of legitimate expectation in India: An Analysis*, 2 IJARMSS 115 (2013).
[5] Mahabir Auto Stores v. Indian Oil Corporation, AIR 1990 SC 1031.
[6] Schmidt v. Secretary of State for Home Affairs, [1969] 1 All E.R. 904

the college's recognition, limiting permission to a specific period. When the plaintiff sought to renew their permission, the application was denied, and they were instructed to leave the country without the opportunity to present their case. This revocation was claimed to be against natural justice. The court held that there was no legitimate expectation on the plaintiff's end because the permission to stay was clearly tied to a specified period, and when that period ended, the request to leave was in line with the agreed terms. The court emphasized that the outcome might have been different if the plaintiff had been asked to leave before the agreed upon period had lapsed. In such a scenario, the plaintiff would have been entitled to a hearing. In a subsequent case, the court established that for the "doctrine of legitimate expectation" to apply, an authority's decision must result in a significant alteration of an individual's rights, which are legally enforceable either for or against them.[7] This alteration should also entail the deprivation of a benefit or advantage that the individual could legitimately have enjoyed until the authority communicates its decisions to withdraw such benefits.

This doctrine evolved within the realm of public law drawing parallels with the private law "doctrine of promissory estoppel".[8] However, over time, English law has made a clear distinction between promissory estoppel in private law and legitimate expectation in public law, treating them as separate remedies. The doctrine is firmly rooted in the principles of fairness and the non-arbitrary actions of government authorities. It becomes relevant when a public entity gives an individual any reason to believe that they will receive a substantial benefit.[9]

In India, the doctrine was adopted at a later stage, drawing inspiration from the British judicial system's application of this doctrine. The Indian perspective aligns closely with the constitutional approach of Indian courts when it comes to other aspects of administrative law. The Indian judiciary has established a very strong causal connection between Article 14 and the "doctrine of legitimate expectation" explaining that "*the doctrine cannot be claimed as a right in itself, but can be used only when the denial of legitimate expectation leads to the violation of Article 14."*[10]

It was first introduced in India in the case of "***State of Kerala v K.G. Madhavan Pillai*[11]*".***

[7] Council of Civil Service Unions & Ors v. Minister for Civil Service, 1985 AC 374.
[8] Prachi Bhardwaj, *Legitimate Expectations: Evolution and application of the doctrine in India and how it is different from promissory estoppel as explained by Supreme Court*, SCC ONLINE (Dec. 2, 2020), https://www.scconline.com/blog/post/2020/12/02/legitimate-expectations-evolution-and-application-of-the-doctrine-in-india-and-how-is-it-different-from-promissory-estoppel-as-explained-by-supreme-court/, (last visited Sep. 18, 2023, 03:05 AM).
[9] Nicholas Bamforth, *Legitimate Expectation and Estoppel*, 3 Jud. Rev. 196 (1998).
[10] Union of India v. Lt. Col. P. K. Choudhary, (2016) 4 SCC 236.
[11] State of Kerala v. K G Madhavan Pillai, (1998) 4 SCC 669.

Herein, the respondent had received sanction to upgrade the already existing schools and establish a new aided-school. However, post 15 days, the state government issued an order suspending the earlier permission pending further investigation. This order was challenged and the Supreme Court ruled that the earlier sanction had created a reasonable expectation for the respondent, and the subsequent order infringed upon the Principle of Natural Justice. The Indian judiciary has, with time, widened the scope of application of this doctrine. It was initially only applied in private law matters but now it is accepted as being parallel to claims under Article 14 of the Indian constitution, thus solidifying the position and increasing the usage of the "doctrine of legitimate expectation" by a huge scale in matters relating to disputes between administration and individuals/corporations.

III. WHEN DO LEGITIMATE EXPECTATIONS ARISE

A scenario involving legitimate expectation arises when an authority, through either explicit representation or past practices, fosters the belief that it will undertake an action within its authority.[12] Legitimate expectations can take diverse forms and result from various circumstances. For instance, this could encompass expectations related to routine promotions, contractual agreements, governments' allocation of benefits, or similar situations, such as discretionary grants of licenses or permits. While legitimate expectation can serve as one of the grounds that could possibly trigger judicial review, the extent of remedies granted is typically limited.[13] The "doctrine of legitimate expectation" is closely intertwined with the "right to be heard."

Legitimate expectations can generally be categorised into two groups, depending on how they originated. One category pertains to procedural legitimate expectations, which emerge when an individual holds the belief, that a specific process will be adhered to by the public authority prior to reaching a decision. These procedures can encompass various forms, such as consultation, inquiry, hearing or the opportunity to make representations, if the same is deemed necessary.[14] This is rooted in the principle that actions of public authorities should not be capricious, self-serving or abusive, but rather should align with the commitments given by those whose decisions will impact individuals. It serves to ensure the observance of natural justice and the promotions of sound administrative conduct.[15]

Conversely, substantive legitimate expectations revolve around the anticipation that a public

[12] Halsbury's Laws of England, 4th Ed. Vol. 1(1) 151.
[13] "Union of India v. Hindustan Development Corporation", (1993) 3 SCC 499 at 548.
[14] DR. J. N. PANDEY, CONSTITUTIONAL LAW OF INDIA 87 (45th ed.).
[15] Iain Steele, *Substantive Legitimate Expectations: Striking the Right Balance*, 121 L. Q. REV. 300 (2005).

authority will act in alignment with its representation in terms of substantial actions. In simpler terms, the substantive aspect entails that if a commitment has been made that a substantial benefit will be conferred, or if an individual is already enjoying such a benefit with the understanding that will persist without significant alterations, then this expectation can be legally enforced.[16]

The case of "***R v North and East Devon Health Authority, ex party Coughlan***[17]*"* is one of the most impactful decisions with respect to substantive legitimate expectation wherein it was categorised into two types:

"1. Decision-maker brings about a change in policy- the court assesses the rationality of the public authority's decision to not abide by a promise and if adequate investigations were carried out with respect to the result of such non-fulfilment of promise before making that decision.

2. promise made by authority like entering into a contract- the court deliberates whether in cases where a promise with the nature of contract is made, it will result in an abuse of power if such expectation is frustrated."

Substantive legitimate expectation goes a step beyond procedural expectation as it not only influences the process before the decision is taken, but also directly impacts the actual decision's outcome. While there may be some legal ambiguity and variations in its application across different jurisdictions, the "doctrine of legitimate expectation" is acknowledged as means to warrant that individuals as well as groups are governed by fair and responsible administration.[18]

IV. POSITION IN UK

The introduction of the legitimate expectation doctrine by Lord Denning can be traced back to the landmark Schmidt case. The doctrine solidified its position in English legal jurisprudence through the 1971 case of "***Breen v. Amalgamated Engineering Union***[19]***".*** The honourable court ruled that while an individual asserting an entitlement can be dismissed without a hearing, but if a person possesses more than privilege, namely a reasonable and justifiable expectation, then in the spirit of ensuring natural justice, an opportunity to present his case has to be given to the claimant.

The "doctrine of legitimate expectation" resurfaced in the case of "***R. v. Liverpool***

[16] *Id.*
[17] R v. North & East Devon Health Authority, 2001 QB 213.
[18] Paul Craig & Soren J. Schonberg, *Substantive Legitimate Expectations after Coughlan*, 4 P. L. 684 (2000).
[19] Breen v. Amalgamated Engineering Union, (1971) 1 ALL ER 1148.

Corporation, ex parte Liverpool Taxi Fleet Operators' Association[20]***".*** Regarding this issue, the county council had implemented a time limit on the amount of taxi licences in Liverpool. Upon discovery that the council was considering an expansion in the license count, the taxicab owners' association expressed their concerns and received reassuring letter from the town clerk. Despite the assurance, a few months later, without giving any information to the association, the city council decided to commence the increase in licenses immediately. When the cab-owners learned indirectly about this impending decision, they requested a hearing, which was denied. Lord Denning's judgement in this case established that when a public body provides an undertaking, it cannot alter without it affording the affected individual an opportunity to be heard. He wrote: "…*so long as the performance of the undertaking is compatible with their public duty, they must honour it. At any rate they ought not to depart from it except after the most serious consideration and hearing what the other party has to say: and then only if they are satisfied that the overriding public interest requires it*…[21]. This ruling underscored the principle that if a promise has been made by a public authority, no change can be made to it without granting the affected party a chance to represent his case.

The same principle was reaffirmed in the case of "***Attorney General of Hong Kong v. Ng Yuen Shiu***[22]***".*** Herein, an illegal immigrant in Hong Kong was facing deportation without being granted a hearing. Although there was no statutory requirement for a hearing before issuance of a deportation order, the government had made a general commitment to assess each case on its merits. The privy council held that the applicant had the right to a hearing before deportation due to the government's commitment to that effect.

"***Civil Service Unions v Minister for Civil Service****"* is also a landmark case wherein the fundamentals of the doctrine of legitimate expectation were outlined by Lord Denning.[23] In this matter, the House of Lords overwhelmingly recognised this doctrine as a likely basis for judicial review of actions of the administration. It was acknowledged that even when an individual seeking a particular benefit or privilege lacks a justifiable lawful right, they may possess a legitimate expectation of receiving that benefit. In such cases, the judiciary will safeguard this expectation through judicial review.

Further, in a later case of "***R v. Secretary of State for the Home Department, ex parte Hindley***[24]***"***, courts integrated the substantive and procedural aspects of legitimate expectations.

[20] Regina v. Liverpool Corporation Ex Parte Liverpool Taxi Fleet Operators Association, 1972, 2 Q.B. 299 C.A.
[21] *Id.*
[22] Attorney General of Hongkong v. Ng Yuen Shiu, (1983) 2 AC 629.
[23] Civil Service Unions v. Minister for Civil Service, (1984) 3 All. EA.
[24] R v Secretary of State for the Home Department ex parte Hindley [2001] 1 AC 410.

It has been underscored in this case, that court should primarily address three questions:

i. What commitment has the public authority made?

ii. Whether the public authority has acted or plans to act in an unlawful manner concerning the commitment?

iii. What is the appropriate course of action of the court in response to this action of the public authority?

Essentially, the court's evaluation revolves around the question that whether the authority's withdrawal from its promise was so unfair as to amount to an abuse of power.

There has been substantial shift in the UK judiciary since the introduction of the legitimate expectation doctrine in 1970s. Over the past four decades, this concept has firmly established itself as a fundamental principle of administrative law.[25] This has broadened the legal responsibility of the government in safeguarding the expectation of individuals. The extent and function of this principle is also well-established now, as protecting both procedural and substantive expectations.

V. POSITION IN INDIA

Taking inspiration from English legal principles, the "doctrine of legitimate expectation", has also become an integral part of admin law in India. It was first invoked in the 1980s and has since been referenced by the judiciary in many cases. The application of this doctrine can be justified based on both internal and external factors. Internally, it ensures that the state effectively upholds the freedoms and rights guaranteed by the constitution. Externally, the doctrine works to prevent any negative outcomes that may arise from the government's inability to deliver promised benefits.[26]

The concept of the "doctrine of legitimate expectation" was first introduced in the 1988 case of "***State of Kerala v. K. G. Madhavan Pillai***" case. Herein, the court invalidated an order that suspended a previous decision regarding the establishment of a new school. The court stated that this order went against the reasonable expectation of the entitled party.[27]

The doctrine was also recognised in another case of "***Schedule Caste and Weaker Section Welfare Assn. v. State of Karnataka***."[28] In this particular case, the government issued a

[25] Robert Thomas, THE PROTECTION OF LEGITIMATE EXPECTATIONS IN ADMINISTRATIVE LAW-A COMPARATIVE STUDY, (A K Spree & D Zacharias eds., Hart Publishing 2012).
[26] Sanjay Jain & Shirish Deshpande, *Public Law Foundation of the doctrine of legitimate expectations in India*, 3 I. L. Rev. 61 (2019).
[27] State of Kerala v. K G Madhavan Pillai, (1988) 4 SCC 669.
[28] Schedule Caste and Weaker Section Welfare Association v. State of Karnataka, (1991) 2 SCC 604.

notification that outlined the areas where the slum clearance scheme would be implemented. However, the notification was subsequently revised, and certain areas that had been previously mentioned were excluded. The court determined that the earlier notification had created a legitimate expectation among the residents of the areas that were subsequently excluded from the amended notification. Therefore, it ruled that legitimate expectations could not be disregarded without affording a fair hearing to those affected.

The case of "***Navjyoti Co-op Group Housing Society v. Union of India***" holds significant importance in India's legal landscape concerning the legitimate expectation doctrine.[29] In this particular scenario, adjustments have been implemented regarding the seniority criterion for the distribution of land by a cooperative society. The Supreme Court has emphasized that this principle necessitates authorities to conduct themselves with fairness, considering all pertinent aspects and affording those affected by the decision a chance to express their views.

In another case, "***Food Corporation of India v. Kamadhenu Cattle***", the court acknowledged that the expectation of the affected parties was legitimate.[30] However, it was determined that when the broader public interest outweighs such expectations, the doctrine may not apply. Similarly, in "***Bannari Amman Sugars Ltd. v. CTO***[31]***",*** the Supreme Court has emphasized that in cases where a decision regarding a specific policy, conflicts with the welfare of the public, it is necessary for the authority to provide a well-thought-out explanation for rejecting the valid expectation.

In the 2012 case of "***Monnet Ispat and Energy Limited v. UOI & Ors***", the petitioners raised objections against the state of Jharkhand for reneging on a MOU granting mining rights to specific companies.[32] However, the petitioners were unsuccessful in their case, as their main argument primarily relied on promissory estoppel, while the expectation even legitimate played a secondary role. In this case, essential principles pertaining to the doctrine were summarised by the apex court.

In 2020, the Supreme Court clarified the distinction between the legitimate expectation and promissory estoppel in the case of "***State of Jharkhand & Ors v. Brahmaputra Metallics Ltd***[33]***".*** Herein, the respondent sought to enforce the Jharkhand Government's promise made in 2012 to grant a 50% exemption from electricity duty for five years to power plants. The Court observed that the State had indeed made a clear commitment for such a bargain in duty

[29] Navjyoti Co-Op Group Housing Society v. Union of India, (1992) 4 SCC 477.
[30] Food Corporation of India v M/S Kamadhenu Cattle Feed Industries, (1993) 1 SCC 71.
[31] Bannari Amman Sugars Ltd. V. CTO, (2005) 1 SCC 625.
[32] Monnet Ispat and Energy Limited v Union of India and Ors, (2012) 11 SCC 1.
[33] State of Jharkhand & Ors. v. Brahmaputra Metallics Ltd, 2020 SCC Online SC 968.

on electricity from 2012 for a 5-year period. There was no valid justification given for the inordinate delay in implementation of this policy, which only began in 2015 going forward. The court held that while the promissory estoppel is rooted in a promise made between two parties, legitimate expectation is grounded in the principles of fairness and non-arbitrariness governing the conduct of public authorities.

VI. NEXUS BETWEEN ARTICLE 14 AND THE DOCTRINE

In India, the "doctrine of legitimate expectation" finds its foundation in Article 14 of the Constitution of India, which mandates that the state and its officials must act fairly in all their dealings with the public. As per the affirmation made by the Hon'ble Apex Court, it can be stated that the "doctrine of legitimate expectation" is encompassed within the scope of the rule of non-arbitrariness enshrined in Art. 14 of the Indian Constitution.[34] While public authorities have discretionary powers, these must be exercised in the interest of the public good. Rule of law takes into account the broader public interest in determining reasonableness of action of a public authority, which may sometimes outweigh an individual's legitimate expectation.[35] A decision, which is bona-fide in nature, by a public authority satisfies the essentiality of non-arbitrariness and is subject to judicial review. The doctrine is rooted in the Rule of Law.[36]

The Supreme Court expanded the application of the principle of safeguarding legitimate expectations under Article 14 to various scenarios. These include matters such as granting leases or privileges like government contracts that are not bound by statutory conditions, discretionary issuance of passports not governed by any statute, declaration of pension schemes through office memoranda, or instances where conditions of service are deemed unreasonable. The apex court has taken a firm stance in emphasising that the state's policy decisions should be devoid of arbitrariness and have to adhere to well-established norms, encompassing affirmative and negative aspects, that underlie the basis for Articles 14 of the constitution of India.

VII. COMPARATIVE ANALYSIS

While examining the English laws, it is clear that initially the "doctrine of legitimate expectation" was closely intertwined with the idea of procedural irregularity. In this context, individuals could only invoke this doctrine and seek recourse in the courts if their procedural rights were violated. Although the doctrine has evolved to encompass substantive right as well,

[34] State of West Bengal v. Niranjan Singha, (2001) 2 SCC 326.
[35] Bajaj Hindustan Limited v. Sri Shirdi Lal Enterprise Private Limited, (2011) 1 SCC 640.
[36] Mahabir Auto Stores v. Indian Oil Corporation, AIR 1990 SC 1031.

it still has limitation, primarily because it does not delve as deeply into the issues of arbitrariness and absence of reasonableness in administrative actions.

The doctrine's application in England inspired the Indian judiciary. However, it wasn't until the mid-1980s that courts in India began to embrace this concept and expanded the scope of judicial review of admin actions. The doctrine is present in a relatively more balanced manner in India as compared to the UK. The Indian judiciary has interpreted it in a manner that allows public authorities and individuals alike to have a fair chance to express their perspectives. While the administration may try to bypass this doctrine by invoking public purpose, individuals whose rights are violated can also claim a breach of the equality under Art. 14 of the Indian Constitution. This underscores the Indian judiciary's commitment to safeguarding the rights of its citizens and reinforces the doctrine's integral role within the Indian Constitution wherein the doctrine can be invoked through Article 32 and 226 of the Constitution of India.

Both the English laws and Indian judiciary have given much required priority to the principle of natural justice being upheld through this doctrine and this similarity can be said to be derived from the basic principles that run the judicial system in these jurisdictions. However, the scope of application of this doctrine is clearly wider under Indian laws.

VIII. Conclusion

The doctrine of legitimate expectation continues to evolve through judicial decisions worldwide. Countries across the globe are employing this doctrine to ensure more effective functioning of their administrative bodies. However, it's important to note that the "doctrine of legitimate expectation" itself does not constitute a standalone right; rather, it serves as a tool for reviewing administrative actions. It functions as a shield against certain government actions rather than a mechanism to independently enforce remedies. Legitimate expectations can arise in various forms and result from diverse circumstances, making it impractical to provide an exhaustive list due to the ever-expanding scope of government activities. Therefore, considering the dynamic nature of administrative law in our nations, courts must maintain a flexible approach to this doctrine and periodically reassess its characteristics. Consequently, administrative actions should be scrutinized with these considerations in mind to better protect the rights and expectations of citizens.

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