

THE DOCTRINE OF LEGITIMATE EXPECTATION: FROM DEVELOPMENT IN ENGLAND TO INDIAN SCENARIO

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ABSTRACT

The doctrine of legitimate expectation, since its origin, has great relevance in the judicial diaspora. The doctrine keeps the abuse of power by public authorities in check. As per this doctrine, the public authorities are responsible to act according to the legitimate expectations borne out of their express promise or consistent past actions. Through this paper, the author traces the evolution of the doctrine from its origin in the United Kingdom to its eventual osmosis in Indian jurisprudence. The paper examines whether the doctrine actually serves a public purpose or it allows for the public authorities to benefit out of their ultra vires actions.

Keyword: *Doctrine of Legitimate expectation, non-arbitrariness, administrative power, Public policy, India, England*

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3. Development in India
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I. Introduction

THE DOCTRINE of “legitimate expectation” is a new addition to the list of doctrines to review the administrative action of a public authority.¹ The doctrine is adjacent to the rules of natural justice, non-arbitrariness, promissory estoppel, rule of law, and proportionality to check the abuse of the exercise of administrative power. The term legitimate expectation was given by

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¹ *State of M.P. v. Hazarilal* (2008) 3 SCC 273.

Lord Denning in 1969 in *Schmidt v. Secretary of state for home affairs*². Since then, it has gained a remarkable position in public law in every jurisdiction.

The principle of legitimate expectation relates to the relationship between public administration and the individual. The principle elaborates the expectations raised due to administrative conduct that might have legal consequences. Such expectations may arise either from an express promise or from a consistent past practice that may reasonably be expected to continue with the applicant³. Such established practice should be regular, consistent, predictable, and certain conduct, process, or activity of the decision-making authority. The administration must respect those expectations or provide compelling reasons why the public interest must take priority. Thus, authority can override the legitimate expectation only if the public interest requires so. The legitimate expectation is not a legal right. The doctrine provides space between 'no claim' and 'legal claim' where, based on a legitimate expectation, a public authority can be held responsible. Any expectation based on any sporadic act is not enforceable.

The genesis of the doctrine lies in the requirement of fairness in administrative decision-making. The doctrine's main aim is that discretion must be exercised reasonably in furtherance of public policy, public good, and for a public cause. On the part of public authorities, ignoring the policy or changing the practice would be unfair without informing the public at large. The violation of the doctrine would be similar to that of the principle of natural justice. Wade rightly states that “the doctrine of legitimate expectation has been developed, both in the context of reasonableness and natural justice”.⁴ The doctrine deters public authority from exercising their power arbitrarily. The principle at the root of this doctrine is the rule of law that requires the government's regularity, predictability and certainty in dealing with the public. The doctrine has both procedural as well as substantive aspects:⁵

1. Procedural - This doctrine's procedural aspect refers to the procedure that has been followed by the authorities and it remains consistent for everyone.
2. Substantive - Substantive legitimate expectation refers to the situation in which the applicant seeks a particular benefit or commodity. The claim to such a benefit is based on the governmental action which justifies the existence of a relevant expectation⁶. It, therefore, implies that if a substantial benefit is granted or if the individual is already in

² (1969) 1 ALL ER 904 (CA).

³ *Confederation of Ex-Servicemen Association v. Union of India*, (2006) 8 SCC 399, 416 para 33.

⁴ Wade & Forsyth, *Administrative Law* 500 (Oxford University Press, London, 11th edn., 2005).

⁵ M.P. Jain and S.N. Jain, *Principle of Administrative Law* 1446 (Wadhawa, Nagpur, 2007).

⁶ Craig, *Administrative Law* 647 (Sweet & Maxwell, London, 4th edn., 2008).

receipt of the benefit then it will be continued and not substantially varied, then the same could be enforced

II. HISTORY AND DEVELOPMENT IN ENGLAND

Even though the term legitimate expectation was coined by Lord Denning in a much later case law which will be discussed later, the foundations of this doctrine was laid in the case of *Associated Provincial Picture Houses Ltd v. Wednesbury Corp.*⁷ where the plaintiff was granted a license to run a cinema on the condition that children aged fifteen years and below will not be permitted on Sundays. However, according to the then law, cinema could run only from Mondays till Saturdays and not on Sundays, though the commanding officer of the military could grant permission to run cinema. The plaintiff, thus challenged the condition put by the public authority on the ground of unreasonableness. The courts held that in order to check the unreasonability of the decision should be fulfilled i.e.:⁸

- i. In making the decision, whether factors have been taken into account which ought not to have been considered;
- ii. Whether the defendant failed to take the factors that should have been considered into account; or
- iii. Whether the decision was so irrational that it would never be considered by any reasonable authority.

It is this reasonability that becomes the pillar on which the doctrine of legitimate expectation stands. As mentioned earlier the term legitimate expectation was first used by Lord Denning in *Schmidt v. Secretary for home affairs.*⁹ The case concerned two US citizens who had travelled to the United Kingdom for academic purposes. When their permits expired, the home secretary refused to extend it without affording them a hearing. The court of appeal deemed it unnecessary to allow the applicant an opportunity to make representation. A hearing would only have to take place where an individual had some right or interest as Lord Denning added, “any legitimate expectation that it would not be fair to deprive him of, without hearing what he has to say”. Lord Denning then said that such a legitimate expectation would arise if the applicant’s permits has been revoked before the time has expired, in such a case the applicant

⁷ (1948) 1 KB 223. (Hereinafter referred to as Wednesbury case/Wednesbury unreasonableness).

⁸ M.P. Jain and S.N. Jain, *Principle of Administrative Law* 1446 (Wadhawa, Nagpur, 2007).

⁹ *Supra* note 2.

should, I think, be given the opportunity to make representations¹⁰; for it would have a legitimate expectation that it would be able to remain for the period allowed to say so.¹¹ Thus, Lord Denning used the phrase legitimate expectation to ensure procedural fairness in administrative decision making.

The next decision on the procedural aspect was the *R. v. Liverpool Corporation Ex p. Liverpool Taxi Fleet Operators Association*¹². The Council pursued a policy of limiting the number of licensed taxis to 300 in this case. The applicants were repeatedly assured that, without their consultation, the figure would not increase, but the council did so nonetheless. It is not clear if that was found by the court, in the absence of the original council assurances, the applicant would have had any procedural right. The content of the applicants' procedural rights was enhanced by the representations. Thus, Lord Denning M.R. stated that the council ought not to depart from the undertaking, except after the most serious consideration, and after hearing what is appropriate for the public interest, Roskill L.J. held that the council would not change from their undertaking, "without notice to and representations from the applicants", and only after "due and proper consideration of the representation of all those interested."

Then in a leading case of the attorney general of *Hong Kong v. Ng Yuen Shiu*¹³, Lord Fraser quashed the removal order passed by the Hong Kong immigration authority without notice and hearing. He held that:¹⁴

When a public body has agreed to follow a certain practice, it is in the interests of good governance that it should behave reasonably and fulfil its commitment, as long as it does not conflict with its statutory obligation.

In *Council of civil services union, v. Minister of civil services*¹⁵, Lord Diplock stated that legitimate expectation arises from:

1. What person has been allowed to enjoy by the authority concerned and which he can legitimately expected to continue to enjoy until he has been informed of some rational reasons for withdrawing the legitimate examination on which he has been permitted to comment.

¹⁰ Bharti Chhabra, "Doctrine of legitimate Expectation: An comparative analysis of Indian legal system with Britain legal system" 1(6) *IJLLJS* 4

¹¹ *M.P. Jain and S.N. Jain, Principle of Administrative Law* 1446 (Wadhawa, Nagpur, 2007).

¹² (1972) 2 Q.B. 299.

¹³ (1983) 2 AC 629.

¹⁴ (1982) 2 All ER 346 (PC).

¹⁵ (1984) 3 All ER 935.

2. He has been assured by the competent authority that the benefit would not be withdrawn without first giving him the opportunity to give advance reasons for the withdrawal of the benefit.
3. It may also extend to a future benefit that has not been enjoyed yet, but it has been promised.

Lord Fraser also observed in the same judgement that “Legitimate expectation may be based on an explicit commitment or representation, or on past or agreed actions but the representation must be transparent and unequivocal.”¹⁶ Thus, from this case, it was very well established that authority while changing the policy is not only required to give a fair hearing to concerned people or individual, but is also required to give a rationale for withdrawing that policy or benefits.

In *R v. Secretary of State for the Home Department, ex parte Khan*,¹⁷ a circular letter offering advice to citizens in the United Kingdom who wished to adopt children from abroad was issued by the Home Office. It said that “For a child to be brought to the UK for adoption, there is no provision in immigration regulations, however, the home secretary may exercise his discretion and exceptionally permit a child to be brought here for adoption if he is satisfied that the intention to adopt under UK law is genuine and not merely a means of gaining entry; that the welfare of the child is assured in this country and that an adoption order is likely to be granted by the court here, moreover, one of the intended adopters must also be domiciled here”.

In the aforesaid case, the applicant who met the conditions set out in the circular was denied admission for the child whom he wished to adopt. The home office applied conditions that were distinct from and much more stringent than those set out in the circular; namely, that entry would be denied unless severe and compelling family or other factors made exclusion undesirable. The court of appeal granted certiorari by a majority. Parker, LJ said: ¹⁸

The Secretary of State is, of course, free to change the policy, but in my opinion, a new policy can be considered after it has been given serious consideration whether there is a certain overriding public interest justifying a deviation from the procedure referred to in the letter.

¹⁶ *Supra* Note 7.

¹⁷ (1985) All ER 40.

¹⁸ *Ibid.* It was further stated in this case that If the new policy is to continue in operation, the sooner the home office letter is redrafted and false hope ceased to be raised in those who may have a deep emotional need to adopt, the better it will be. To leave it in its present form is not only bad and grossly unfair administration but, in some instances at any rate, positively cruel.

In the aforesaid case, Dunn LJ went even further and held that it would be unfair and unjust to apply standards other than those provided in the circular. In a way, the circular is treated as a form of administrative regulation by Dunn LJ. According to him the minister must be free to make the new rule, but it is substantively unfair to apply new rules retrospectively. Thus, in this case, it is to be found that the court has accepted the substantive aspect of doctrine and has struck down the decision of the secretary of state on the grounds of unreasonableness and unfairness.

Therefore, the doctrine of legitimate expectation imposes an obligation on the authority to act fairly and is not limited to a situation in which a person is to be consulted or allowed to be represented. In *R. v. Secy. of State for Home Department ex parte Ruddock*¹⁹, the applicant sought judicial review of a decision to intercept her telephone calls. Taylor J. accepted her argument that fairness might require more than procedural protections and that she could legitimately expect that the police would comply with published criteria for when telephone interception would take place unless a departure from those criteria was required for reasons of national security. Though in this case no relief was granted to the claimant, but a duty to act fairly where legitimate expectations are involved was firmly established.

In *Regina v. Inland Revenue Commissioner, ex parte MFK Underwriting Agents Ltd*²⁰, Inland Revenue commissioners gave some advice to the taxpayer about his tax liability on some transactions and he acted on it. Later, the commissioners refused to follow the advice. Bingham, L.J., stated that:²¹

If a public authority conducts itself in such a way that it generates a reasonable expectation that a certain path would be pursued, it would always be unreasonable if the authority were allowed to follow a different trajectory to the disadvantage of one who entertained the expectation, especially if he acted on it.

Though in this case no relief was granted as the court refused to hold that the revenue commissioners were bound by their advice as on fact there was no abuse of power by them but it can be found that court has accepted the principle of fairness which is required in the administration. The substantive aspect of the doctrine is rooted in fairness.

¹⁹ (1987) 1 WLR 1482.

²⁰ (1987) 2 All ER 518 (QBD).

²¹ *Ibid.*

In *R v. Secretary of State for Transport, ex parte Richmond upon Thames London Borough Council*²² Laws J. sought to confine the doctrine of legitimate expectation to a mere procedural matter of the hearing. He stated that “when there is any representation from a public authority or when there is any past practice, the authority can change that practice, however, before doing so, the authority is required to give a chance to affected people to make representation”. He further states that:²³

There can be no bar against any change in policy as such because such a doctrine will put an obvious and unacceptable fetter on the power of authority to change the policy whenever it is required. In the court’s opinion, legitimate expectations only envisaged a right to be heard before a change in policy.

The court in the aforesaid case took a very restrictive view by stating that legitimate expectation is only concerned with the procedural aspect of giving chance for representation before a change in policy. The court has undermined the need for fairness in administrative decision making and has overemphasized the procedural aspect.

In *R v. Ministry of Agriculture Fisheries and Food, Ex parte Hamble (Offshore) Fisheries Ltd.*²⁴ Sedley J. argued strongly in favour of substantive legitimate expectation. He said that the test to be used to examine the legality of policy change was not pure irrationality. If the expectation 'as a legitimacy that equitably tops the policy choice' in all the circumstances of a case, the court would intervene. He further noted that while the policy is for the policymaker alone, the fairness of his or her decision not to accommodate reasonable expectation which the policy will thwart remains the court’s concern. Thus, it can be inferred that to change the policy or not is the discretion of the public body. But the fairness of the decision not to accommodate the reasonable expectation of people within the new policy, will remain the concern of the court. It can be thus said that courts will interfere in the decision of the public body when new policy entirely ignores legitimate expectations.

The sudden change of conduct by the public body is not only an unfair breach of the applicant's legitimate expectation but it also amounts to an abuse of power. This proposition was laid by a court of appeal in the case of *Regina v. Commissioners of Inland Revenue, ex parte Unilever*

²² [1994] 1 All ER 577.

²³ *Ibid.*

²⁴ (1995) 2 All ER 714.

*plc*²⁵, where the court reached the findings of abuse of power because it felt to be unfair for the administration to resile from an administrative practice.

In *R v. Secretary of State ex parte Hargreaves*²⁶, because of apprehensions over crimes perpetrated by prisoners on leave, the home secretary changed policy on the home leave of prisoners with immediate effect. The court acknowledged, this change had a severely traumatizing effect on prisoners. The Court of Appeal, however, ruled that the home office was legitimately acting. The Court of Appeal rejected Hamble Fisheries' approach as hearsay and incorrect in principle and stated that the court could interfere only if the decision of the administration to apply a new policy was perverse or unreasonable as held in the *Wednesbury* case²⁷. The court in this case has taken an approach different from the above cases where the court has said that if the decision of the public body amounts to unfairness then the court can interfere in that decision. Here, the court held that it would only interfere if the decision is irrational or amounts to *Wednesbury* unreasonableness²⁸.

In *R. v. North and East Devon Health Authority, Ex. p. Coughlan*,²⁹ a health authority wanted to close a specially built home for seriously injured long term patients due to logistical and financial difficulties. The court ruled that it was in breach of a promise to the resident that this would be a home for life. The court prevented the authority from doing so. Rejecting the rationality test the court held that it was to judge "Whether the overarching interest was sufficient to justify a deviation from what was previously promised". The court of appeal distinguished between three situations.

In the *first situation*, the court may decide on that, before changing the course, the public authority only needed to determine its previous policy giving it only enough weight that it felt fit. In such cases, on *Wednesbury* grounds³⁰, the court was limited to reviewing the decision.

²⁵ (1996) S.T.C. 681.

²⁶ (1997) 1 WLR 906.

²⁷ [1947] EWCA Civ 1.

²⁸ *Ibid.*

²⁹ (2000) 2 WLR 622.

³⁰ *Supra* note 9. As per the *Wednesbury* case, the courts held that in order to check the unreasonability of the decision should be fulfilled *i.e.*

- i. In making the decision, whether factors have been taken into account which ought not to have been considered;
- ii. Whether the defendant failed to take the factors that should have been considered into account; or
- iii. Whether the decision was so irrational that it would never be considered by any reasonable authority.]

In the *second situation*, the court may decide that a legitimate expectation of being consulted before the particular decision is taken has been induced by the promise or practice. To exemplify, the decision in *Ng Yuen Shiu*³¹ was cited.

The *third situation* is where court may consider that a substantive legitimate expectation has been brought by a lawful promise or practice. The courts can decide whether it is so unfair to frustrate the expectation that misuse of authority will be a new course until the validity of the expectation is defined here, the court will have the task of balancing the fairness criteria against any overarching interest based on the policy change.³² MFK (a company)³³ and Unilever³⁴ were cited authority for the court's power to review the cases within the third category. Khan,³⁵ Ruddock³⁶, CCSU³⁷ were seen as recognizing substantive legitimate expectation.

The aforesaid case fell under the third category. This is because of the significance of what was promised to the applicant: because the promise was limited to a few people and because it was only financial difficulties for the health authority to honour its promise. Thus, this decision has again inducted back the concept of fairness in legitimate expectation which was undermined in Hargreaves's case³⁸.

In the recent case of *R (Nadarajah), v. Secretary of State for the Home Department*³⁹ Laws L.J. said that: ⁴⁰

...The pledge or practice of a public body as to future actions can only be rejected, and so. It may only be departed from, in cases where the legal responsibility of the public authority is to do so, or is otherwise. Proportionate reply (of which the court is the judge or the last judge) with regard to a valid purpose sought in the public interest from the public authority. If the statute does not insist that any inability or reluctance to comply is logically justified as a proportionate measure in the

³¹ *Supra* note 15. The case was about an illegal entrant into Hong Kong claiming the entitlement of legitimate expectation for being heard. Lord Frances interpreted the term "legitimate expectation" in this context which goes beyond enforceable legal rights provided they have some reasonable basis.

³² *Supra* note 25.

³³ *Ibid.*

³⁴ *Supra* note 33.

³⁵ *Supra* note 21.

³⁶ *Supra* note 24.

³⁷ *Supra* note 19.

³⁸ [1997] 1 WLR 906

³⁹ (2005) EWCA Civ1363.

⁴⁰ *Ibid.*

circumstances, the idea that good management allows public officials to be held to their commitments would be weakened.

This view of Laws L.J. applies to both substantive and procedural legitimate expectation. The stance of proportionate reply taken by Laws L.J. is the best option as it will come into play if the applicant manages to establish that there is a substantive legitimate expectation in the first place. If the applicant does surmount this hurdle then it would be on the part of the courts to apply the proportionality test to determine the legality of action that purports to resile or depart from the substantive rule of legitimate expectation. The proportionality test provides a structured analysis that facilitates the review, and force the agency to reasonably justify their course of action.⁴¹

Courts in England have also upheld the doctrine of legitimate expectation in a case where the claimant has not relied on the representation or policy or promise. In the *Rashid v. Secretary of State for the Home Department*⁴² case, the applicant who was Iraqi Kurd was initially denied asylum. However, this decision was erroneous. But in this case, the applicant was not aware of the past practice or policy. The home office nonetheless sought to uphold the decision, arguing that it could be regarded as valid in light of the situation now prevailing in Iraq and because the applicant had not relied on the home office policy, since he did not know of it. The Court of Appeal held that an abuse of power had occurred. The applicant has been unable to apply the correct policy and there has been no countervailing public interest to justify this. It was irrelevant that the applicant did not rely on the policy, since it would have been grossly unfair if the court's ability to intervene depended on whether or not the applicant had heard of the policy. Especially given that some of the home office officials were themselves unaware of the policy.

From the above cases, it can be inferred that courts in England have again and again stated that there must be fairness in administrative decision making. A public body is required to take into consideration the past policy before changing the policy and it is also required to give an appropriate reason along with the chance of representation to a person who is going to be affected by the departure from the policy. However, courts in England have said that the public body can depart from the past practice or policy if it has to change for the greater public interest.

III. DEVELOPMENT IN INDIA

⁴¹ *Supra* note 5.

⁴² (2005) EWCA Civ 744.

In India doctrine of legitimate expectation is a fine example of the judicial creativity of the Supreme Court. Importation of this doctrine is very recent and has mainly developed in the last three decades. This does not mean that doctrine is extra-legal or extra-constitutional. This doctrine in India is well based on Article 14 of the Constitution. This constitutional mandate imposes a duty on the public authority to act fairly and which abhors arbitrariness in administrative dealing.

This doctrine was first used in *Scheduled Caste and Weaker Section Welfare Assn. v. The State of Karnataka*.⁴³ In this case, a notification informing about the areas where slum clearance schemes would be introduced, was issued by the government. Subsequently, however, the notification was revised and certain prior notified areas were left out. The court held that legitimate expectations among the people living in that area have been raised by earlier notification. Therefore, without a fair hearing, this legitimate expectation cannot be denied. Thus, Supreme Court accepted the procedural aspect of the doctrine and made it clear that legitimate expectations cannot be denied without giving the people, who are going to get affected, a fair hearing.

In *Navjyoti Co-op. Group Housing Society v. Union of India*⁴⁴, there was an application for the principle of procedural fairness. In this case, by subsequent decision, the seniority according to the existing list of cooperative housing societies for land allocation was altered. As per the previous policy, the seniority of land allocation was based on the date of the company's registration with the Registrar. However, on January 20, 1990, the policy was changed by basing the seniority on the Registrar's date of approval of the final list. This altered the incumbent seniority of corporative housing societies. The Supreme Court held that societies were entitled to a 'legitimate expectation' that even if there was no right in private, past consistent practice in the matter of allocation would be followed. Without any overriding reason of public interest to justify a change in the criterion, the power could not go *ultra vires* to the legitimate expectation of the societies. No such overarching interest in the public was seen. Under the 'legitimate expectation' theory, if the authority proposes to defeat the legitimate expectation of an individual, it should enable him to represent himself in the matter. Reference was made to Halsbury's Laws of England⁴⁵ and to the *CCSU*⁴⁶ case. It was held that the doctrine placed on the public authority, is in effect, an obligation to act reasonably by taking into account

⁴³ (1991) 2 SCC 604.

⁴⁴ (1992) 4 SCC 477.

⁴⁵ DN Clarke, *Halsbury's Laws of England* 151 (LexisNexis, UK 4th edn. 2006).

⁴⁶ *Supra* note 19.

all the relevant factors relating to that reasonable expectation. The rational opportunity to render representation against the change in policy fell within the framework in fair dealing.

The next case which talked about 'legitimate expectation' was *Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries*⁴⁷. In this case, Food Corporation of India invited tenders for the sale of stocks of damaged food grains. The respondent's bid was the highest of all. The respondent did not lift his offer during the negotiating process, although others did. The respondent filed a writ petition alleging that it had a fair intention, which was the highest, of accepting the offer. The writ petition was approved by the High Court. But the Supreme Court held that though the respondent's bid was the highest, still there was no legitimate expectation to have it accepted. There was no question that the respondent's tender could not be arbitrarily refused, but the failure to approve the respondent's tender could not be held to blame if the company fairly found that the amount the respondent offered was insufficient. The negotiation process itself required giving due weight to the highest bidder's reasonable aspirations and this was necessary.

Verma, J., while delivering the judgment on behalf of the bench said that: ⁴⁸

In the contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to Chilling worth ground of arbitrariness...

Thus, this case made it very clear that the act done by the public authority in furtherance of public interest may exclude legitimate expectation. Court clearly said in this case that the state and its instrumentalities have to consider and give due weight to the legitimate expectation of

⁴⁷ AIR 1993 SC 1601

⁴⁸ AIR 1993 SC 1601 [The Court further noted that In any case, whether the claimant's requirements are fair or valid in the sense is a matter of fact. Whenever the problem arises, it is not to be decided according to the interpretation of the applicant but in greater public interest where other more significant factors which overshadow what otherwise would have been the reasonable expectation. The public agency's bona fide decision in this way would meet the non-arbitrary criterion and withstand judicial review.]

persons likely to be affected by the decision and failure to this may amount to unfairness, making the decision arbitrary in nature.

The apex court in *Union of India v. Hindustan Development Corpn.*⁴⁹ got a chance of laying down the meaning and scope of the doctrine. In this situation, tenders had been called for the supply of railway wagons. The railways then introduced a dual pricing strategy that provided counter-offers to the larger manufacturers who had established the cartel at a lower rate and provided others a higher rate to encourage healthy competition. The three main producers were claiming that they too were entitled to a higher salary. The Apex Court held that it did not vitiate the shift to a dual pricing strategy and was focused on fair and reasonable reasons. The court commented on the legitimate expectation doctrine, in this case, noting that:⁵⁰

For legal purposes, the expectation cannot be the same as anticipation.⁵¹ It does not even amount to wish, desire or hope. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence.

From the aforesaid case, it is clear that the doctrine of legitimate expectation gives the claimant sufficient *locus standi*. Supreme Court also stated that expectation should not be mere anticipation but should be found on customs and established practice. The Supreme court while accepting the substantive aspect of doctrine has made it clear that substantive relief can be granted to an applicant only if he can prove that the decision taken by the public authority is arbitrary, unreasonable and is not taken in the public interest.

If the policy change is in the public interest or the situation is changed by statute or regulation, there is no question of valid expectations. In *Madras City Wine Association v. State of Tamil Nadu*⁵² where the 1992 bar rule that implemented a licensing system was abolished, the question arose whether the holder of the bar licenses was legally supposed to renew their

⁴⁹ (1993) 3 SCC 499.

⁵⁰ *Ibid.* [In this case, the SC also explained the remedies flowing by the application of legitimate expectation doctrine and stated It is widely accepted that legitimate expectation provides the claimant with ample locus standi for judicial review and that the doctrine of legitimate expectation is primarily restricted to the right to a reasonable hearing before a decision is made that results in the negative or removal of a commitment. As no crystallized right is involved as such, the doctrine does not provide scope to demand relief immediately from the administrative authorities. The protection of such reasonable expectations does not require that expectations be met where the overarching public interest otherwise requires. In other words, if the reasonable expectation of a citizen is not met by taking a specific action, the decision-maker can justify the denial of that expectation by explaining some overarching public interest. Consequently, even if a substantive security of such expectations is envisaged, that does not confer an absolute right on a specific individual.]

⁵¹ *Jaitinder Kumar v. State of Haryana* (2008) 2 SCC 161.

⁵² (1994) 5 SCC 509.

licenses after one year. This also raised the question of whether rescinding the bar rules was legal? Supreme Court pointed out that bar rules were subordinate legislation and no fetter could be imposed on the repeal of subordinate legislation whenever needed in the public interest.

In *National Building Construction Co v. S. Raghunathan*⁵³, the Supreme Court came up with the concept of detriment in legitimate expectation theory. It held that enforcement of any legitimate expectation requires (i) reliance on representation and (ii) resultant detriment. The apex court has again reiterated the proposition stated in the earlier case of the Food Corporation, that government can change its policy in need of public interest. The Court also claimed that it would not intervene with the government's decision unless it was so outrageous that no reasonable individual could have arrived at who had applied his mind to the issue to be determined. The interpretation of the court goes well with the concept of legitimate expectations. The principle's base is not changing but the changing need of the society may call for the alteration by the government and thus, the opinion of the court goes in line with the doctrine.

In *Punjab Communication Ltd. v. Union of India*⁵⁴, The Supreme Court noted that the concept of legitimate expectations is still at an evolutionary level.⁵⁵

Thus, it can be concluded that the public body decides whether the need to formulate a new policy in the wake of public interest is so high that substantive legitimate expectation must be side-lined. The decision of policy is for the decision-maker, not the court, but the court will interfere with the decision of the public authority if it violates the legitimate expectations of the persons who are to be affected. However, this can be done only if it is irrational or perverse or if the decision does not comply with the test of Wednesbury principle⁵⁶.

This doctrine of legitimate expectation can only be invoked by a person who is affected by the decision of the authority. Any stranger cannot approach the court claiming it is a general

⁵³ (1998) 7 SCC 66.

⁵⁴ 1999 (4) SCC 727.

⁵⁵ *Ibid.* [The court observed that the principle is at the heart of the rule of law and enables the government to interact frequently, predictably, and with confidence with the public. The procedural element of it relates to the representation that a hearing or other fair procedure would be provided before the decision is made. However, the more relevant issue is whether the decision-maker can sustain the policy change by resorting to Wednesbury's principles of rationality or whether the court can address the question of whether the decision-maker has sufficiently balanced the fair expectation against the need for a change. In short, this means that the decision-maker who has made the policy change will determine whether the public interest overrides the significant reasonable aspirations of individuals.]

⁵⁶ *Supra* note 8.

obligation on part of the authority to act fairly. In *Ram Pravesh Singh v. State of Bihar*⁵⁷ court reiterated the proportion that legitimate expectation is not a legal right.⁵⁸

The doctrine of legitimate expectation is related to the need for fairness in administrative decision making. Recently a constitutional bench of the Supreme Court in *Ex-Servicemen Association v. Union of India*⁵⁹ stated that “under the said doctrine, a person may have a legitimate expectation of being treated in a certain manner even though he doesn’t have any legal right”. If a decision of a public body adversely affects a reasonable expectation of an individual, then in view of the continued reception of the gain, he might have a justifiable grievance. Then in such a situation court may not ask the administrative body to act judicially but may still insist to act fairly. Furthermore, the Court noted that the doctrine is founded on the principle that good administration requires compliance with reasonableness and justice, and that where a particular practice has been followed for a long time, even in the absence of a provision of law, it should comply with that practice without depriving its citizens of the benefits and privileges they have received over the years. Thus, the Supreme Court made a point in this case that doctrine is rooted in the principle of fairness in administrative decision making.

IV. The doctrine of legitimate expectation does not apply in the contractual field

For a conflict arising out of a contract qua contract, the doctrine of rational expectation has no application. In addition, it is not necessary to rely on the theory of legitimate expectation to alter or adjust the terms of the contract, even more so when they are statutory. The contracts are entered into voluntarily through public intervention, i.e. through floating tenders or agreement, and there is also no duty on anybody to enter into these contracts⁶⁰.

In *Indian Aluminium co. ltd v. Karnataka Electricity*⁶¹ Board, a tripartite agreement setting the concessional rate for the supply of electricity to the company had been entered into by the

⁵⁷ 2006 (8) SCC 381

⁵⁸ *Ibid.* [In this case, the Court further observed that The doctrine of reasonable expectations on the basis of established practice (as opposed to reasonable expectations on the basis of a promise) can be applied only by someone who has contacts, transactions or contracts with any authority on which that established practice has an effect, or by someone who has a recognised legal relationship with the authority. A complete outsider who has no link with the authority or a person who has had no prior relations with the authority and who has not entered into any transactions or agreements with the authority cannot rely on the doctrine of legitimate standards simply on the ground that the authority has a general duty to behave reasonably.]

⁵⁹ JT 2006 (8) SC 547. [The Court further observed that it is an expectation of a benefit, relief, or remedy that may ordinarily flow from a promise or established practice. The term established practice refers to regular, consistent, predictable, and certain conduct, process, or activity of the decision-making authority.]

⁶⁰ Y. V. Chandrachud, *Halsbury's laws of India*, I 535 (Lexis Nexis, New Delhi, 1st edn., 2006).

⁶¹ AIR 1992 SC 2169.

company, the electricity board, and the state. Later, the agreement was superseded by an Act of the state legislature. Notwithstanding any compromise with customers, the act allowed the electricity board to lift tariff rates. The company opposed the rise in electricity prices on the ground that it was in excess of reasonable expectations. In the present case, however, the Supreme Court refused to extend the protection of legitimate expectation, arguing that there is no scope for the implementation of legitimate expectations in the contractual relationship between the parties. The agreement was not the result of any unilateral obligation or guarantee provided to the company by the state or the board. The agreement happened due to negotiations between the parties. Therefore, the foundation for application for legitimate expectation was absent.

Form the above discussion and by looking to different cases it is found that in India we have a related doctrine which ensures the need for fairness and reasonableness in the exercise of discretion by the public body. The court in India took the view that a decision by public bodies in violation of legitimate expectations can be overturned only if it is unjust or perverse, or if it is one which no rational individual could have taken. The public authority is obligated to consider the realistic or valid interests of individuals who are likely to be affected by the decision, otherwise it may be unjust.

V. Ultra vires representation and legitimate expectation

Discussion so far has been concerned with intra vires representations. It is now necessary to consider the law and policy relating to ultra vires representation. A representation is ultra vires if it is beyond the control of the public body. When the conduct of public authority which induced legitimate expectation is itself outside the legal powers of the authority, can legitimate expectations exist? This shall be discussed with help of Indian and English cases.

An expectation whose fulfilment involves an illegitimate decision to be taken by a decision-maker may not be a valid expectation. Thus, it is expressed in several decisions on the substantive legitimate expectation that expectation must be within the powers of the authority.⁶²

Sedley J. endorsed the view that the application of legitimate expectation is restricted by the jurisdiction of the public authority. The dual effect of applying the principle in this prohibited area would be to extend the statutory power of the public authority and destroy the ultra vires rule by permitting authority to extend their power at will⁶³. Keene L.J has observed that public

⁶² *Al Fayed v. Advocate General for Scotland* (2003) SLT 747.

⁶³ *Supra* note 32.

officers must act within their limits or authority only then they could be bound by a representation⁶⁴.

In *Hira tikoo v. Union Territory Chandigarh*⁶⁵, administration of union territory of Chandigarh allotted plots under a development scheme and received full and part payment. However, subsequently, it was found that a portion of the area of land in question was already declared reserved under the forest act. Besides, it fell within the periphery of 900 meters from the air force and thus infringed the aircraft act. Consequently, the administration failed to deliver the land to the allotted people. Supreme Court observed that “the administration would not be liable when there is mistaken advice or when representation is found to be infringing the statute. Law does not oblige a man to do that which he cannot possibly perform”.

Recently Courts in England have taken an approach balancing the ultra vires representation and public interest or awarding compensation to aggrieved parties of such representation. In *Stretch v. U. K.*⁶⁶, the applicant was granted a lease for 22 years by an authority that could not do so. The Applicant was acknowledged at the advanced stage of negotiations. Even though the Court of Appeal agreed that the lease should not have been extended, it also stated that it was unreasonable for those authorities to be able to take advantage of their mistake. The European Court of Human Rights, however, did not agree to this contention and did not grant damages. It ruled that this action was not in the public interest, nor did it affect the constitutional duties of the authority concerned.

The *Rowland v. Environmental Agency*⁶⁷ case involved a part of the Thames River, known as 'Hedsor Water'. It was declared available by the authorities for the exercise of public navigation rights. Initially, however, it was agreed by the authorities that such privileges did not exist. The Court of Appeal ruled that the action would fail, although the standards are valid. According to Peter Gibson L.J., “the action failed as legitimate expectations could only be granted against lawful claims”. While May L.J. (like Menace L.J.) came to the same conclusion, they decline to recognize legal incapacity as an automatic response (amounting to the right of the convention) to valid expectations. They tried a sort of compromise where, while enabling the Hedsor water to be open to navigation rights, the authority would not actively promote such use. However, it was held that there was no need to restrict such 'balance' to cases where the

⁶⁴ *South Bucks DC v. Flanagan* (2002) 1 W.L.R. 2601, Para. 18.

⁶⁵ (2004) 6 SCC 765.

⁶⁶ (2004) 38 EHRR 12.

⁶⁷ (2003) EWCA Civ. 1885.

right had been obtained under the Convention. It should be applied to all cases where the unconstitutional act did not adversely impact the public interest.

Like in England, the Supreme Court of India is also of the same opinion that in certain situations, recourse to the doctrine of legitimate expectation can be taken even when the expectation is based on unlawful representation which is beyond the power of authority. The Supreme Court while referring to above decisions of courts of England opined in *M/S Ashok Smokeless Cool Co. v. Union of India*⁶⁸ held that in such a situation court would balance the public interest against individual interest. Hence the approach of the court to award compensation and balance public interest with individual interest is well needed to guard a person so affected against wrongful administrative action. Courts have found a novel way of doing justice to those people who are affected by the unlawful representation by the public body.

VI. CONCLUSION

It is evident that the doctrine of legitimate expectation is based on the need for fairness in administrative decision making. The essence of doctrine lies in fairness and it imposes an obligation on the public body to act fairly. The concept of legitimate expectation has certainly evolved as an important doctrine to review the decision of the public body. Courts have certainly developed this novel doctrine to review administrative action and to impose the need for fairness in administrative action. From mere procedural doctrine to substantive doctrine, the doctrine of valid anticipation has gradually evolved. This idea is the newest recruitment to a long list of ideas fashioned by the court for administrative action review. The doctrine of legitimate expectation is still evolving as observed by the Supreme Court in *Dr. (Mrs.) Chanchal Goyal v. The State of Rajasthan*⁶⁹.

The concept is at the core of the rule of law and involves regularity, predictability and certainty in the relationship between governments and the public⁷⁰. The public body who holds the office and who is vested with the power should act with reasonableness and fairness in their dealing with the citizens of the nation. In managing the country's affairs, the Government and its agencies are required to honour their policy or intention statements and treat the citizen fairly without an iota of violation of discretion. The policy statement cannot be arbitrarily disregarded

⁶⁸ (2007) 2 SCC 640.

⁶⁹ (2003) 3 SCC 485.

⁷⁰ De Smith, *Administrative Law* Para 8.038 (Penguin Publication, London, 5th edn. 2000). See also, (2003) 3 SCC 485.

or selectively implemented. Unfairness is akin to a breach of natural justice in the form of unreasonableness. It is in this context that the doctrine of legitimate expectation finds its origin. For those who are likely to be refused redress on the basis that they have no constitutional right to sue, the doctrine is a great help.

The courts at the same time should be extremely cautious while dealing with this doctrine. A court cannot assume jurisdiction to review the administrative act of decision making which is unfair in the opinion of the court. If that is allowed, the court would be exercising jurisdiction to do the very thing which is to be done by the repository of administrative power⁷¹. The Supreme Court in the case of *State of Arunachal Pradesh v. NE zone Law House, Assam*⁷² 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”.

⁷¹ *Attorney General for New South Wales v. Quin* (1990) 170 CLR 1

⁷² AIR 2008 SC 2045.