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Doctrine of Legitimate Expectation: An Overview

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ABSTRACT

Administrative law is the body of law which includes rule making, adjudication and the enforcement of a specific regulatory agenda that governs the activities of administrative agencies of government. There are certain principles of Administrative law which are evolved by courts with the object of preventing arbitrariness and abuse of power of court. One of the most popular and important principle of Administrative Law is 'Doctrine of Legitimate Expectation' which is a result of synthesis between the principle of administrative fairness and the Rule of Estoppels. The Doctrine of Legitimate Expectation is different from fair expectation but is expectation of benefits by which a person can seek judicial review of any action which are arbitrary, discriminatory, unfair and malicious in law, devoid of Rule of Law and violative of principles of Natural Justice. The main objective of this paper is to explain the concept of Legitimate Expectation in a detail manner describing its applicability and reasons for its formation. The paper also discusses about its origin and its development in Indian as well as English laws. Thus, at last in the paper, conclusion has been provided. In the process of making this paper, several journals, books and articles were referred and taken into consideration. Internet has also been a support in this process. Hence, this paper is a result of Doctrinal Research Methodology.

Keywords- rule making, adjudication, arbitrariness, abuse of power, fair expectation

“A man should keep his words. All the more so when the promise is not a bare promise but is made with the intention that the other party should act upon it”

I. INTRODUCTION

Administrative law is the body of law which includes rule making, adjudication and the enforcement of a specific regulatory agenda that governs the activities of administrative agencies of government. Considered as a branch of law, Administrative law has evolved itself to fulfill the needs and expectations of people and their rights and duties to maintain the equilibrium between the continuously evolving freedom from individuals and state authority. There are certain principles of Administrative law which are evolved by courts with the object

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of preventing arbitrariness and abuse of power of court. These principles ensure proper functioning of the administration and intend to provide safeguard to the citizens against the misuse of powers by the instrumentalities of the State. One of the most popular and important principle of Administrative Law is 'Doctrine of Legitimate Expectation' which is a result of synthesis between the principle of administrative fairness and the Rule of Estoppels. The Principle of Legitimate Expectation is not a legal right. It is different from fair expectation but is expectation of benefits by which a person can seek judicial review of any action which are arbitrary, discriminatory, unfair and malicious in law, devoid of Rule of Law and violative of principles of Natural Justice.

II. 'DOCTRINE OF LEGITIMATE EXPECTATION' IN GENERAL

The Doctrine of Legitimate Expectation is considered as one among the several tools which are incorporated by the court to review administrative action. This doctrine mainly determines the relationship between an individual and a public authority. As per this principle, the public authority can be made responsible in lieu of a 'legitimate expectation'. A person may have a legitimate expectation of being treated in a definite way by the administrative authorities owing to some regular practice in the past or an express promise made by the concerned authority. It is generally said to have been arise as a result of a promise, representation, practice or policy made, adopted or announced by or on behalf of government or public authority. It simply means that even if there is no legal right, still an individual has legitimate expectation of receiving the benefit of privilege. Hence, the government and its authorities are expected to honor consistent code of conduct by treating all citizens fairly and equally.

It's Origin

The Doctrine of Legitimate Expectation is not engraved in any particular statute or rule book; it is rather evolved by the courts to prevent abuse of power. The principle of Legitimate Expectation was applied for the first time in the case of Council of Civil Service Unions and Others v Minister for the Civil Service², where the court held that the decision taken by the public authority should affect the person such that his rights are altered which are enforceable by or against him and is deprived of some benefit or advantage which he could have legitimately enjoyed until the withdrawal of the same is communicated to him.

III. DEVELOPMENT IN INDIAN LAWS

The Doctrine of Legitimate Expectation was discussed in the Indian Context for the first time

² (1985) AC 374

in the case of State of Kerala v K.G. Madhavan Pillai³. In this case, a sanction was issued for the respondent to establish a new aided school and to upgrade the existing schools; however, an order was issued after 15 days to keep previous sanction in abeyance, i.e. suspension till further investigation. Such order was challenged considering the violation of Principle of Natural Justice. In this case, the Supreme Court ruled that sanction has entitled the respondent with legitimate expectation and the order however violated the Principle of Natural Justice. Similarly, in the case of Navjyoti Cooperation Group Housing Society v Union of India⁴, the new criterion for allotment of land was challenged. Here, the Supreme Court emphasized upon the availability of reasonable opportunity to those who were affected by the change in a policy which was consistent in nature and within the ambit of acting fairly. Thus, it was held that an opportunity should be given to the Housing Societies by way of a public notice. In another case of Food Corporation of India v Kamdhenu Cattle Feed Industries⁵, the Hon'ble Court discussed the nature of the doctrine of legitimate expectation and explained that the duty to act fairly on the part of public authorities entitles every citizen to have legitimate expectation to be treated in a fair manner in order to satisfy the requirement of non-arbitrariness in state action or otherwise it may result in the abuse of power. In the case of Union of India v Hindustan Development Corporation⁶, The Supreme Court studied the concept of Legitimate Expectation in great detail and held that a person can have a legitimate expectation of being treated in a certain manner even though he doesn't have a legal right to receive the same. In the case of Supreme Court Advocates on record association v Union of India⁷, the Supreme Court held that in recommending appointment to the Supreme Court due consideration of every legitimate expectation must be noticed by the Chief Justice of India.

IV. DEVELOPMENT IN ENGLISH LAWS

With reference to English laws, the Doctrine of Legitimate Expectation was discussed in the case of Schmidt v Secretary of State for Home Affairs⁸, where the court observed that a foreigner was given the leave to enter the United Kingdom, has the right to be heard and legitimate expectation of being allowed to stay for the allowed time. Similarly, in the case of Breen v Amalgamated Engineering Union⁹, the Learned Judge, Lord Denning held that if a person has legitimate expectation then it would not be fair enough to deprive him without

³ (1988) 4 SCC 669

⁴ (1992) 4 SCC 477

⁵ (1993) 1 SCC 71

⁶ (1993) 3 SCC 499

⁷ AIR 1994 SC 268

⁸ (1969) 2 Ch 149

⁹ (1971) 2 QB 175

hearing, then he must be afforded with hearing. Further in the popular case of A.G of Hong Kong v Ng Yuen Shiu¹⁰, the learned judge, Lord Fraser, stated that an expectation can only be said to be legitimate if it has a legal sanctioning or is backed by a procedure or custom that has been followed consistently.

V. APPLICABILITY AND REASONABLENESS

The Doctrine of Legitimate Expectation can be made applicable when the representation is clear, unambiguous and does not have any relevant qualification. The expectation must be induced by the behavior of the public authority. The representation is expected to be made by someone who had actual or apparent authority and is made applicable to the aggrieved parties. Lastly, this doctrine can also be made applicable when there is violation of Principles of Natural Justice, i.e. *Nemo debet esse iudex in propria* which means no shall be judge of his own cause and *Audi Alteram Partem* or Rule of Fair Hearing or Fair Play Action. The reasonableness of the representation may arise either from the words used or by the behavior of the parties. The aggrieved party must not have utilized fraudulent measures to obtain the representation and must not have disclosed all relevant information. The representation should usually be “clear, unambiguous and devoid of all relevant qualification”. But, this is not required to establish the presence of a legitimate expectation if the public authority acted so unfairly such that its conduct constituted an abuse of power. In the case of Punjab Communications Ltd v Union of India and Others¹¹, the court referring to a large number of authorities on question stated that the principle of legitimate expectation permits the court to find out the change in the policy which is the reason for defeating the legitimate expectation is irrational or in other words which no reasonable person have made. Later, in the recent case of Jitendra Kumar and Others v State of Haryana and Others¹², the court observed that legitimate expectation is not same as anticipation rather it is different from desire and hope. In simple words, it is based on a right and is grounded in the rule of law requiring regularity, predictability and certainty in government dealings with the public.

VI. CIRCUMSTANCES FOR THE FORMATION OF LEGITIMATE EXPECTATIONS

In the case of Madras City Wine Merchants v State of Tamil Nadu¹³, the Supreme Court formulated the circumstances for the formation of legitimate expectations, which are-

¹⁰ (1983) 2 AC 629

¹¹ (1999) 4 SCC 727

¹² (2016) 2 SLR 452

¹³ (1994) 5 SCC 509

- If there is any express promise or representation made by the administrative body;
- If there is any regular practice in past which a person expects to operate in the same way; and
- If a promise is clear and unambiguous.

Further, in the case of P.T.R Exports (Madras) Pvt. Ltd. and Others v Union of India and Others¹⁴, the court held that the doctrine of legitimate expectation has no role to play if the authority has a power under law or under an executive policy. The doctrine can also not be applied in cases when there is question of public interest. Then, in the case of M.P Oil Extraction v State of M.P¹⁵, the Supreme Court held that doctrine of legitimate expectation works in the domain of public law and is regarded as a substantive and enforceable right in appropriate cases. According to this case, it was held that the industries also have legitimate expectation regarding the past practice and the renewable clause. The court in the case of National Buildings Construction Corporation v S. Raghunathan¹⁶, held that the doctrine of legitimate expectation has both substantive and procedural facets to it. According to substantive aspect, the government authorities should not act in unrestrained manner guided by abuse of choice. Similarly, as per procedural aspects, the legitimate expectation should be raised in the pleadings itself. Further, in the case of Bannari Amman Sugars Ltd. v CTO¹⁷, the court held that the legitimate expectation should not be applied at the cost of non-fulfillment of an overriding public interest.

VII. LIMITATIONS

The Doctrine of Legitimate Expectation is subject to certain limitations. They are-

- The Doctrine does not apply to legislative activities.
- The Doctrine cannot be made applicable if it is contrary to public policy or is against the security of the state.
- Lastly, the Doctrine of Legitimate Expectation has no substantive but only procedural impact.

VIII. CONCLUSION

The principle of legitimate expectation is a legal development that gives locus standi to an

¹⁴ AIR 1996 SC 3461

¹⁵ (1997) 7 SCC 592

¹⁶ (1998) 7 SCC 66

¹⁷ (2005) 1 SCC 625

individual who however doesn't have a lawful right but has a desire for the concerned authority carrying on with a particular goal in mind. The procedural part of the principle is settled. Be that as it may, the meaningful part of the principle is still in its developing stages. Concerning India, legitimate expectation might be believed to have an establishing in standards of natural justice which are incorporated by article 14 of the Constitution. Instead of fortifying the precept, the Courts have put assertion as the necessary edge for checking whether the disavowal of a legitimate expectation was justified. Such a perusing has made the regulation superfluous in India, since anything infringing upon the arrangements of the Constitution is void. Presenting a test that will guarantee that the bar isn't excessively high as to deliver the regulation superfluous is additionally fundamental from an Indian perspective. Appropriation of the thinking and test in Coughlan¹⁸ case would additionally fortify the remaining of the precept before the lawful network. Explaining the precept, especially considering the ongoing reference to the Constitutional Bench of the Supreme Court, and expanding the extent of substantive legitimate expectation are steps that can be taken by Courts in India. The ideas of reasonableness should apply standards of common equity for any adjustment in strategy choice too. Picking which petitions, which challenge change of strategy, to concede will be troublesome. Be that as it may, when used effectively, the regulation can be an instrument for guaranteeing reasonable regulatory activity.

¹⁸ (2001) Q.B 213