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## Interplay between the doctrine of Legitimate Expectations and Administrative Discretion: Legitimate Expectation as a ground for Judicial Review

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### Abstract

The evolution of the Welfare State has significantly expanded administrative functions, making constitutional mandates central to administrative actions and enforceable through judicial review. Within this framework, the doctrine of legitimate expectation plays a crucial role in ensuring fairness, accountability, and adherence to principles of natural justice. Although not an enforceable right, legitimate expectation serves as a vital ground for reviewing administrative discretion, preventing arbitrariness and abuse of power. Indian courts, through various judgments, have affirmed both procedural and substantive aspects of this doctrine, ensuring that administrative authorities act reasonably, consistently, and in conformity with Article 14 of the Constitution. By reinforcing transparency and protecting individuals from abrupt policy changes or unfair decisions, the doctrine strengthens the rule of law and upholds citizens' trust in public administration.

**Keywords:** Legitimate Expectation, Administrative Discretion, Judicial Review, Welfare State, Natural Justice, Procedural Fairness, Substantive Legitimate Expectation, Rule of Law, Administrative Law, Constitutional Mandates

### Introduction

Every aspect of human life is influenced by administrative processes, which has indeed given rise to the concept of a Welfare State <sup>[1]</sup>. In the actions of a Welfare State, the constitutional mandates continue to occupy a predominant position even in administrative matters and hence, become enforceable rights. The term Legitimate Expectation belongs to the field of administrative law and acts as a tool to secure accountability of administrative actions <sup>[2]</sup>. In a situation where a person has an expectation or interest in a public body retaining a longstanding practice or keeping a promise, this doctrine of legitimate expectation may become a ground for judicial review considering the principles of natural justice and reasonableness. Although the courts have emphasized that legitimate expectation is not an enforceable

right, the non-consideration of this doctrine may invalidate the decision of an administrative authority on the ground of abuse of Administrative Discretion <sup>[3]</sup>.

### Administrative Discretion - Meaning

Discretion is used only when alternative choices can be made. It has been instinctive to choose between right and wrong and to put decisions into place based on reason rather than whims and inclinations. Due to the rapid growth of Administrative the concept of the Administrative Discretion has not only been developed but also is felt to be in much demand.

Administrative discretion is a power conferred on the executive authority to act administratively upon its judgment <sup>[4]</sup>. Importantly, it has to be remembered that administrative discretion may include either taking some

<sup>1</sup> C.F. Forsyth & W. Wade, Administrative Law 3-4 (Oxford Univ. Press 2014)

<sup>2</sup> P.P. Craig, Administrative Law 638-40 (7th Ed. 2003)

<sup>3</sup> Takwani & Thakker, Lectures on Administrative Law 275 (2010)

<sup>4</sup> D.D. BASU, COMPARATIVE ADMINISTRATIVE LAW 112 (1998)

form of action or refusing to act. It embraces such vast areas of administrative activity as the regulation of private enterprise, the creation, manufacture, and distribution of requirements among other things needful for social security of the people. Other powers of such authorities include inquiry, imprisonment, seizure, confiscation, and destruction of property.

The Supreme Court called administrative activities "residuary activities" in *Ram Jawaya Kapoor case* as the executive function, quite apart from its judicial and legislative functions, is surrounded by a variety of duties [5]. The word "may" and phrases such as "if he is satisfied," "if he is of the opinion," and "if he has reason to think" are employed in the legislation to confer on the executive discretion. Dicey also believed that the executive should not have discretionary power because it would lead to arbitrariness and anarchy [6].

### Discretionary power and judicial review

Judicial review is one of the weapons which judges can use. It gives power to the court to declare invalid and unenforceable any legislation or directive founded on such law, and any other action by a state agency, if contrary to or inconsistent with the basic law. Overall, the system of judicial review in India can be broadly categorized under three heads: First, it reviews the legislative actions; second, it reviews the decisions made by the judiciary itself; and third, it reviews the actions taken by the executive.

An independent judiciary, capable of exercising judicial review to test the constitutionality of administrative actions as well as the validity of legislation passed by such authorities was gifted with the Constitution, as emphasized by the Supreme Court in *Minerva Mills Ltd. v. Union of India* [7]. Thus, the main aim of judicial review is thus to safeguard citizens from abuse and misuse of power by administrative authorities.

There are different kinds of discretionary powers that the administration is provided with. Their duties can range from simple everyday ones like recording births and deaths up to more important matters such as dealing with property matters, regulation of businesses and industries, companies supervising, investigating, and seizing activities. Courts generally do not have power to review action taken under discretionary authority [8]. They generally allow the decision of local authorities to stand because they lack required experience necessary to balance the considerations underlying the various solutions to a practical problem.

Similar concept is maintained in India also and it has been held by the Supreme Court in many cases that courts cannot interfere with the decisions made by administrative authorities exercising discretionary power. However, this does not mean that there vests absolute discretion with the administrative authorities. The executive cannot be trusted with full power; otherwise, the exercise of arbitrary power would occur on the part of the administration owing to its immense discretionary powers. The more discretion, the greater the likelihood of it being abused. Instead, courts

must have the power and obligation to prevent the executive from abusing the discretion and ensure that discretion is exercised in the best interest of the people.

Unlimited discretion that is beyond judicial scrutiny does not exist [9]. It is a basic principle that a government by law cannot be arbitrary. This asserts that no matter where the governing authority is located, it must adhere to the core constitutional provision. Virtually every democratic country realizes that the power of the government is not unlimited, uncontrolled, or not susceptible to review by the judicial branch. Courts have, therefore made principles, enforced requirements and formulated tests. These prevent the executive from misusing discretionary powers or from acting arbitrarily.

### Under such circumstances, courts would intervene in the discretion exercised by the administrative authorities in India

1. Failure through failure to exercise discretion.
2. Overreaching or abuse of discretion.

### The doctrine of legitimate expectations

In India the concept of Legitimate Expectation was first considered in the case of *State of Kerala v. K.G. Madhavan Pillai* [10], where permission was granted to the respondents to open a new aided school and upgrade existing ones; however, an Order was issued after 15 days to reinforce the decision taken initially. The contestants complained that this judgment was against the principles of natural justice. The Supreme Court held that the sentence had given legal expectation to the respondents and the later order was against the principles of natural justice.

A claimant would genuinely, expect an administrative authority to treat him or her in a particular manner-even though he or she might not be lawfully entitled to such treatment by civil law. If an administrative decision denies a person statutory rights, there is an implied duty to act judicially. He may not be legally entitled to it, but he could still look for the benefit or advantage. Expectations can arise from a clear promise or consistent pattern that the applicant can reasonably expect to continue [11]. In such cases, the courts could uphold his expectation based on principles like those of natural justice and common fairness in practice. The court cannot compel an administrative authority to become a judge, but it can require that from it to be treated reasonably.

The idea of Legitimate expectation is widely established and applied in the field of administrative law. It has no application in private law because it is not an enforceable right. The government and its ministries are supposed to follow a uniform code of conduct when conducting the country's affairs, which includes treating all residents fairly and equitably. Every decision of the State must be reasonable and consistent with Article 14 of the Constitution [12]. The notion of legitimate expectation is therefore integrated into the doctrine of rule of law.

<sup>5</sup> Ram Jawaya Kapoor v. State of Punjab, AIR 1955 SC 549

<sup>6</sup> A.V. Dicey, Introduction to The Study of The Law of The Constitution 193 (10th ed. 1959)

<sup>7</sup> Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625

<sup>8</sup> FORSYTH & WADE, supra note 1, at 355

<sup>9</sup> BASU, supra note 4, at 119

<sup>10</sup> State of Kerala v. K.G. Madhavan Pillai, (1988) 4 SCC 669.

<sup>11</sup> CRAIG, supra note 2, at 641-42.

<sup>12</sup> E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3

## Types

### Procedural legitimate expectation

When the applicant is reasonably entitled to expectation of procedural protection, which may be a fair hearing or being consulted before some adverse decision or policy change that may adversely affect the applicant, the court would provide procedural protection to the applicant<sup>[13]</sup>. Implementation of the concept of "procedural legitimate expectation" ensures the fact that the decision-maker is informed and given a fair chance before decisions are taken.

### Substantive legitimate expectation

For instance, governmental officials have provided assurances on an individual's rights, as a result, the individual will have a reasonable expectation that his or her enforceable right will not be violated. However, the right has been infringed owing to the actions of government officials, such as policy changes. Because of such a violation of rights, the injured person may claim the law of legitimate expectation. After reviewing the circumstances of the case, the court may grant the rights that were denied. This is known as the "principle of substantive legitimate expectation<sup>[14]</sup>".

### Essential Elements

Following are some essential elements necessary to invoke the Doctrine of Legitimate Expectation

- a. The expectation must be legitimate
- b. Presence of an established and regular practice or express promise
- c. Relationship between expecting and administrative authority.
- d. Presence of an arbitrary decision by the administrative authority
- e. The claimant must have a *locus standi*<sup>[15]</sup>.

### Exceptions against legitimate expectation

- a. Contrary to law
- b. Unsuccessful applicant
- c. Non-appointment for *bona fide* reasons
- d. Public interest<sup>[16]</sup>

### Case Laws

#### (a) Dr. (Mrs.) Chanchal Goyal v. State of Rajasthan 2003<sup>[17]</sup>.

Dr. Chanchal Goyal was the appellant in this case. The government of Rajasthan chose her through the local self-government department and specified that her appointment is temporary, lasting either six months or until she is chosen by the Rajasthan Public Service Commission, whichever comes first. She was allowed to remain there for a maximum of six months without the service commission's approval.

Nevertheless, because of consecutive requests for prolongation, her tenure concluded just after twelve months. After that, in accordance with the appointment order, she was dismissed from her role. She acknowledged that a

genuine prediction had taken place. The Supreme Court rejected the appeal and decided that simply remaining in service does not mean the conditions of the appointment order have been abandoned.

#### (b) Punjab Communications Ltd. v. Union of India and Ors. (1999)<sup>[18]</sup>

In this instance, the Supreme Court determined that a valid expectation can encompass procedural and substantive elements, which are integral to the rule of law, ensuring fairness in both procedural and substantive issues. In this instance, the court stated that a legitimate expectation requires either a chance for a hearing or proper procedures to be followed before the authority changes a decision. The main aspect of the belief is giving or maintaining a significant advantage that is significant on its own. The person making the claim should receive both items; if not, officials must justify and offer a fair chance to the individual before making a decision or giving an order.

#### (c) Vandana v. State of Rajasthan, 2024<sup>[19]</sup>

In a petition filed by the petitioner for action against respondents for reimbursement of education fees under 'Jyoti Yojna' Scheme, Justice Anoop Kumar Dhand noted: It was the respondents who were depriving the petitioner and those similarly placed of the benefits in the so-called exercise of discretionary powers patently arbitrary, unreasonable and a clear abuse of power violating, the principles of natural justice and not legally tenable. The Court thus ordered the respondents to allow the petitioner to have the benefits of the Scheme along with the refund of the educational fees and other expenses incurred by her on her education which would carry nine percent interest per year from the date when the writ petition had been filed. The court also directed respondents and the Chief Secretary, State of Rajasthan, to constitute a committee under the leadership of the Secretary, Department of Medical and Health so that all these people who have had one or two daughters and who had themselves operated would be provided benefits of the Scheme.

### Conclusion

This principle has gained a great deal of value in Indian courts as it grants legal standing for people either with or without a direct legal claim. The scholars have debated whether the concept should apply in real rights. Others are of the view that resorting to the doctrine on intangible rights oversteps the boundaries of authority of the Judiciary, violating the principle of separation of powers.

Additionally, the principle of legitimate expectation in public law, specifically administrative law, was praised for enabling the court to grant relief to individuals unable to seek redress through the remedies outlined in the Act. It also guarantees that the state and its various agencies or departments are held accountable and are responsive to the country's citizens. Therefore, we can suggest that the concept of legitimate expectation is based on the idea that public authority is a responsibility that should be carried out for the advantage of its holders, specifically the citizens.

<sup>13</sup> FORSYTH & WADE, *supra* note 1, at 450

<sup>14</sup> BASU, *supra* note 4, at 205

<sup>15</sup> TAKWANI & THAKKER, *supra* note 3, at 280

<sup>16</sup> CRAIG, *supra* note 2, at 645

<sup>17</sup> Dr. (Mrs.) Chanchal Goyal v. State of Rajasthan, (2003) 3 SCC 485

<sup>18</sup> Punjab Communications Ltd. v. Union of India, (1999) 4 SCC 727

<sup>19</sup> Vandana v. State of Rajasthan, 2024 SCC OnLine Raj 301

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