CHAPTER – 4

DOCTRINE OF LEGITIMATE EXPECTATION –
A NEW DIMENSION OF JUDICIAL REVIEW

4.1 Introduction –

In the 19th and 20th centuries the scope of the State has progressively widened. New authorities with wide statutory powers have been created giving a new emphasis to the problems of reconciling the powers of the State with the liberties of the citizens. Governmental activities now penetrates almost each and everyday of life of an average citizen. Administration is all pervasive today. It is difficult to count its multifarious powers or even to classify them\(^1\). Therefore, many of the Statutes, principles relating to proper functioning of the administration have been evolved. Doctrine of legitimate expectation is one such principle which is being evolved to redress the public when their expectation are not fulfilled.

The doctrine of Legitimate Expectation has first been recognized in India under Article 14 of the Constitution. The doctrine of Legitimate Expectation belongs to the domain of public law and is intended to give relief to the people when they are not able to justify their claims on the basis of law in the strict sense of the term though they had suffered civil consequences because their Legitimate Expectation had been violated\(^2\).

4.2 Meaning of Legitimate Expectation -

Dictionary Meaning –

i) Legitimate: The word legitimate has been defined in Oxford English Dictionary as lawful, proper and conforming to standard type\(^3\).

Meaning according to Law Lexicon -

Jowith’s Dictionary defines legitimate as ‘lawful’. Mostly this word is used to children to signify that have been born in lawful wedlock\(^4\).

\(^1\) Jain, M.P., *Changing Face of Administrative Law in India and Abroad*; (1982) at 102


\(^3\) Oxford Dictionary, (1964) at 692

\(^4\) Jowith’s Dictionary of English Law, (1997) at 1081
Wharton’s Law Lexicon says legitimate in respect of child one between whose parents substituted the relation of marriage either at times of procreation or of birth, or at some intervening or subsequent period.\(^5\)

Encyclopedia Britannica says a child that is the issue of a father and mother lawfully married at the time of its birth is legitimate. Therefore, the word legitimate signifies that the thing which is lawful and legally accepted.\(^6\)

ii) Expectation- Dictionary Meaning: Expectation means awaiting, anticipation, and ground for expectation probability of thing.\(^7\)

Meaning according to Law Lexicon-

According to Law Lexicon it means a chance, a mere unfounded in any limitation, trust or legal act whatever, such as hope which an heir apparent has of succeeding to the ancestor’s estate. This is sometimes said to be a bare or mere possibility and at other times, less than a possibility.\(^8\)

In other Law Lexicon expectation has been defined in other way as relating to something in future, as to dealing with interests in expectancy.\(^9\)

Expectation means the act or the instance of expecting or looking forward something expected or hoped for probability of an event – and expectation is most often – relating to ones prospects.\(^10\)

iii) Legitimate Expectation-

Definition- The concept of legitimate expectation is a new comer ushered in by Lord Denning in 1969. Legitimate Expectation has been defined as the expectation which shall be protected must be ‘legitimate’ though it may not amount to a right in the conventional sense.\(^11\)

It means that even where a person has no legally enforceable right or interest, he might yet have some legitimate expectation, of which it would not be fair to

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\(^5\) Wharton’s Law Lexicon, (1980) at 1323

\(^6\) Encyclopedia Britannica, Vol. 13 (1966) at 909

\(^7\) Supra not 3 at 313

\(^8\) Venkatramiya’s Law Lexicon, Vol. 1 (1971) at 409

\(^9\) Wharton’s Law Lexicon, (1980) at 394

\(^10\) Judicial dictionary, (2001) at 819

deprive him without hearing what he has to say\textsuperscript{12}.

Another nomenclature of legitimate expectation is ‘reasonable expectation’, which includes “expectation which go beyond enforceable legal rights, provided they have some reasonable basis”\textsuperscript{13}.

Wharton’s Law Lexicon has defined legitimate expectation in different ways depending upon its application and these are\textsuperscript{14}:

i) The more important aspect is whether the decision-maker can sustain the change in policy by resort to \textit{Wednesbury} principle of rationality or whether the court can go into the question whether the decision-maker has properly balanced the legitimate expectation as against the need for a change.

ii) The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made.

iii) Means the expectation may be based on some statement or undertaking by or on behalf of the public authority which has the duty of making the decision, if the authority has, through its officers acted in a way that would make it unfair or inconsistent with good administration for him to be denied such an inquiry\textsuperscript{15}.

iv) Means 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. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protect able. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to aright in the conventional sense\textsuperscript{16}.

\textbf{Judicial Dictionary} has defined legitimate expectation in following ways:

i) The principle of legitimate expectation was confined mostly to right to a fair hearing before a decision is invoked or promise or understanding is

\textsuperscript{12} Schmidt v. Secretary of State, (1969)1 All ER 904(909), C.A.
\textsuperscript{13} A.G. v. Ng Yuen, (1983)2 All ER 346(350) P.C.
\textsuperscript{14} Wharton’s Law Lexicon, (2009) at 984-985
\textsuperscript{15} Supra note 13
\textsuperscript{16} Union of India v. Hindustan Development Corporation (1993)3 SCC 499
withdrawn, but not the grant of a boon which had not fructified into a right by administrator passing an order.\textsuperscript{17}

\textbf{ii)} A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment\textsuperscript{18}.

\textbf{iii)} The existence of a legitimate expectation may have a number of different consequences it may give \textit{locus-standi} to seek leave to apply for judicial review. But the requirements are:

\textbf{a)} A statement or undertaking or any act on the part of the public authority which would make it unfair or inconsistent with good administration to deny such opportunity\textsuperscript{19}.

\textbf{b)} The existence of a regular practice which the claimant can reasonably expect to continue\textsuperscript{20}.

\textbf{c)} The expectation should be legitimate, i.e., reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts or which is unreasonable, illogical or invalid cannot be a legitimate expectation\textsuperscript{21}. Expectation which shall be protected must be legitimate though it may not amount to be right in the conventional sense. But the hope or desire of a person to obtain a favorable order not withstanding that had not complied with necessary requirements may not amount to a legitimate expectation\textsuperscript{22}.

Legitimate expectation means that the authority ought not to act so as to defeat the consequence of the expectation without some overriding reason of public policy to justify its doing so, or it may mean that, if the authority proposes to act contrary to the legitimate expectation, it must afford the person either an opportunity to make representation on the matter or the benefit of some other requirement of procedural fairness\textsuperscript{23}.

\begin{flushleft}
\textsuperscript{17} Supra note 10 at pp 819, 820
\textsuperscript{18} Ibid
\textsuperscript{19} Mallick M.R., \textit{Writs Law and Practice} (2000) at 505
\textsuperscript{20} Ibid
\textsuperscript{21} Ibid
\textsuperscript{22} \textit{Govt. of A.P. v. HEH the Nizam VIII of Hyderabad} AIR 1993 AP 76
\end{flushleft}
According to Lord Templeman, “legitimate expectation is just a manifestation of the duty to act fairly. But the scope of the doctrine goes beyond the right to be heard.”

Therefore, legitimate expectation have very wide application, i.e., substantive as well as procedural expectation: In case of substantive legitimate expectation, even a non-statutory policy or guidelines issued by the State would be enforceable against the State if a person can show that he has been led to make certain action on the basis of or on the legitimate expectation that the government would abide by such policy or guidelines.

Thus, it can be said that this doctrine is a kind of check on the administrative authority not a drawback. When representation has been made, the doctrine of procedural legitimate expectation imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such legitimate expectation. It also adds a duty on the public authority not to act in a way to defeat the legitimate expectation without having some reason of public policy to justify its doing so.

4.3 Historical Background of Legitimate Expectation –

Law reflects to a large degree, the civilization of those who live under it. Its progress and development are mirrors not merely material prosperity but of the method of thought and of the outlook of the age. Though the doctrine of legitimate expectation is of recent origin but its principles were applied in legal systems of various eras and places. Therefore, it is important to understand the background of this doctrine in India and elsewhere.

4.3.1 Historical Background in England –

A. Ancient Era –

History of England gives account of its early inhabitants and of their conquest and rule by Rome. England was for more than three centuries a province of the Roman Empire, and as such governed by the Roman law.

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24 R. v. Secretary of State for the Home Department (1987) 2 All ER 518
25 Mallick M.R., Writs Law and Practice (2000) at 503
26 Naviyoti Co-op. Group Housing Society v. UOI 1992(4) SCC 494
27 Ibid
a. **Anglo-Saxon Period:**

Our starting place, is the invasion of England by the Anglo-Saxons about in 600 A.D. Ethelbret, King of Kenting set down in writing laws for his Wiseman. These laws were called dooms\(^{29}\), which were the oldest written English Law. Thus the law of England began simply as the customs which later on become English law\(^{30}\). Like all written laws the Anglo-Saxon dooms have to be interpreted in the light of their circumstances\(^{31}\). Written laws always represent supremacy of law.

Anglo-Saxon had proper judicial systems, which were primary local courts; the courts of hundred and other court were shire or county\(^{32}\). It means that delivery of justice was main aim of the State. English ancestors sought justice as a rule and it was allowed to seek justice at the Kings hand if one failed after due diligence to obtain it in the Hundred or the County Court. King and people alike were under the law and the king needed the cooperation of his people\(^{33}\). But in the later Anglo-Saxon period a great complexity was added i.e., the growth of private jurisdictions. Side by side with the courts of the Hundred and Shire i.e., large landowners held private law courts\(^{34}\) where customary rules were applied\(^{35}\).

b. **The Norman Period (1066-1164):**

Judicial system was consolidated and brought under the immediate control of the King, moreover rules and laws were made uniform which brought the society of England in order and this was the emergency of common law which was supplemented by Equity\(^{36}\).

i. **Reign of William-I (1066-1087):**

At once after the conquest he gathered around him a nucleus of his Royal court – the curiae Regis – a group of skilled administrators, such as no Anglo-Saxon King had at his command, and through them the Royal authority was made effective

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\(^{28}\) Cross Lord, Hand G.J Radeiff and Cross, *The English Legal System*, (1971) at 1
\(^{29}\) Dooms means judgment
\(^{30}\) Kulshreshtha, V.P., *A Text Book of English Legal History* (1999) at 1
\(^{31}\) Ibid
\(^{32}\) Id., at 2
\(^{33}\) Supra note 28 at 5
\(^{34}\) Id., at 10
\(^{35}\) Supra note 30 at 15
\(^{36}\) Supra note 28 at 9-10
in England\textsuperscript{37}. It means that the judges were learned hence justice can be said to be delivered. Initially this court dealt with the matters as revenue collection, while ordinary litigation that came before old local courts remained unhampered. But as it followed proper law and procedure and hence far superior to the ordinary courts so it gradually replaced them. Eventually, the common law of England, took the place of customary rules upon which justice had been administered in the local and private courts\textsuperscript{38}.

\textbf{ii. Reign of Henry II (1154-1215):}

The Reign of Henry II is of supreme importance in the history of law. The result of Henry’s reign was centralized and unified institution of a permanent court of professional judges\textsuperscript{39}.

Glanville who was one of the Statesman of Henry II’s Courts founded the common law and also wrote treaties between 1187 and 1189. Where he pointed out that the earliest branches of common law are the law of procedure, criminal law and land law\textsuperscript{40}.

During this period the forms of action (writ system) was introduced. The writ was a command of the King, in writing, to the sheriff, addressed to the defendant to appear in the court, within a certain period of time. It was by this system that King’s Court made the Royal justice supreme over the justice administered in other courts. The issuance of the writ was the symbolic recognition of the principle that no one should be condemned unheard and weight-age was given to the equity\textsuperscript{41}.

\textbf{iii. Reign of Edward I (1272-1307):}

Edward I can be said to be pioneer of English Legal System, Kings Court established their Supremacy, centralized the administration of justice and gradually the local courts disappeared. The Great Charter, i.e., Magna Carta was granted by King John in 1215 and was confirmed in 1225\textsuperscript{42}. The most important statutes of Edward I are Statutes of Westminster I (1275) Statutes of Gloucester (1278), Statute

\begin{itemize}
  \item\textsuperscript{37} Id., at 14
  \item\textsuperscript{38} Id., at 14-15
  \item\textsuperscript{39} Pollock, Sir Fredrick, Martland Fredrick William, \textit{The History of English Law}, (1968) at 136-138.
  \item\textsuperscript{40} Supra note 30 at 25
  \item\textsuperscript{41} Id., at 86-87
  \item\textsuperscript{42} Supra note 28 at 52
\end{itemize}
of Wales (1284), etc. and thus made the law uniform throughout the country.

iv. Reign of Edward II (1307-1327):

Edward II issued a proclamation of 1334 A.D. which gave power to the chancellor to administer legal relief when the plaintiff for some reason or other could not obtain it and also equitable relief was given when common law failed to provide a remedy. Equity in its technical sense may be said to be a provision of natural justice which lies at the root of doctrine of legitimate expectation.

4.3.2 Natural Justice and its development –

Until this stage it was the study of introduction of written laws which represent the supremacy of law or rule of law which are at the root of doctrine of legitimate expectation similarly the natural justice is also one of the principle of doctrine so its development is also an important factor in the development of the doctrines of legitimate expectation.

Justice Krishna Iyer is of the view that law of England is founded upon the law of nature and thus revealed law of God. If the right sought to be enforced is inconsistent with either of these the English Municipal Courts cannot recognize it. Thus, it can be inferred that natural justice played major role in development of common law and had its impact on doctrine of legitimate expectation. B.N. Banerjee has placed natural justice and natural law at par.

A. Law of Nature is basis of Law:

When any case came before the Court for whom no law could be applied, then the Court applies the natural law to decide the matter.

B. Law of Nature Immutable:

It was observed in the Calvin’s case that law of nature is part of the Law of

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43 Id at 34-35
44 Ahmed Aquil, A Textbook of Equity, (1952) at 13-14
45 Id., at 3
England, thirdly, that law of nature was before any judicial or municipal law, and
that the law of nature is immutable. The law of nature is that which God at the time
of the creation of nature of man infused into man’s heart, for his preservation and
direction\(^{49}\). The procedural legitimate expectation is based on the procedural
fairness, one of the basic principles of natural justice.

C. **No Man can be judge in his own cause:**

In 1614 A.D. it was held that even an Act of Parliament made against nature,
equity, as to make a man judge in his own cause, is void in it\(^{50}\).

Justice Holt in 1701 observed that if an Act of Parliament should ordain that
the same person should be party and judge, or which is the same thing, as Judge in
his own cause, it would be a void Act of Parliament\(^{51}\).

D. **Conquered Country to be ruled According to Natural Equity:**

In the case *Blankard v. Galdy*\(^{52}\), it was held that…… that in the case of an
infidel country, their laws by conquest, do not entirely cease but only such as are
against the law of God, that in such cases where the laws are rejected or silent, the
conquered country shall be governed according to the rules of natural equity.

E. **No one should be condemned unheard:**

Justice Fortescue in 1723 in Chancellor of Cambridge case\(^{53}\) observed that
“Besides, the objection for want of notice can never be got over. The laws of God
and man both give the party an opportunity to make his defence, if has any…..
service of summon upon the party affected was regarded as a condition of the
validity of such proceedings, not only in criminal matters but also in application for
the issue of distress warrants and order for the levying of taxes and other charges
imposed by public authorities upon the subject. Justices who adjudicated summarily
without having issued summons were at one time punishable in the court of King’s

\(^{49}\) A.D. 1608 (2) 7 Cokes Report, as quoted by Chaturvedi; R.G., *Natural and Social Justice* (1970)
at 24.

\(^{50}\) *Day v. Savadge* (1614), Hobart 85 (87).

\(^{51}\) *City of London v. Wood* (1701) 12 Mod 669

\(^{52}\) (1694)2 Salk 411

\(^{53}\) *R. v. Chancellor of Cambridge* (1723), 1 Strange 557
Bench for misdemeanors\textsuperscript{54}.

The best example of rule of \textit{audi alteram partam} is in 1615 when James Bagg, a Chief Burges of Phymoth, was reinstated by mandamus because he had been removed without notice or hearing\textsuperscript{55}. Nineteen century decisions established that the \textit{audi alteram partam} rule was to govern the conduct of arbitrators of professional bodies and voluntary associations in the exercise of their disciplinary functions and indeed of every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals\textsuperscript{56}.

In this way the concept of natural justice kept on flourishing till the 20\textsuperscript{th} century when in 1969 Lord Denning gave a new dimension to it much wider than natural justice and having an immense scope of utilization i.e. doctrine of legitimate expectation\textsuperscript{57}.

\textbf{4.3.3 Origin and development of Doctrine of Legitimate Expectation –}

The concept of legitimate expectation stepped into the English Law stage in 1970’s in Schmidt case\textsuperscript{58} wherein Lord Denning observed that:

“The speeches in \textit{Ridge v. Baldwin}\textsuperscript{59} show that an administrative body may in proper case are bound to give a person who is affected by their decision an opportunity of making representations. It all depends on whether he has some right or interest or I would add some legitimate expectation of which it would not be fair to deprive him without hearing what he has to say…..”

The legitimate expectation referred to in Schmidt did not give the alien students an enforceable right to stay for the time originally permitted but an enforceable right to be heard before the decision to revoke his permit was taken as

\textsuperscript{55} Id., at 137
\textsuperscript{56} Id., at 138
\textsuperscript{57} Mallick, \textit{Writs Law and Practice}, (2000) at 501
\textsuperscript{58} \textit{Schmidt v. Secretary of State for Home Affairs} (1969) 2 Ch. 149
\textsuperscript{59} (1963)2 All ER 66: (194) AI 40
procedural only. Since then ‘legitimate expectation’ has played an important part in numerous decisions in United Kingdom.

It is important that in his judgment in Schmidt case Lord Denning makes no mention of any authority, judicial or otherwise, upon which the concept of legitimate expectation could be founded; indeed he has said, that he feels sure it came out of my own head and not from any continental or other source. The later cases do not suggest any other provenance (place of origin). Therefore, it can be presumed that the origin of the concept may be within Lord Denning’s justly framed creative mind and not elsewhere.

But it is very significant to note that prior to the introduction of this concept in England’s law, there was developing in the jurisprudence of the European communities a similar concept that also sought to protect the confidence of that subjects had placed in governments. This concept was known as “the rule of protection of legitimate confidence”. The study of this concept may provide some guidance in the development of doctrine of legitimate expectation. Even though it may be considered that the origin of doctrine of legitimate expectation may be with Lord Denning but an analysis of the European concept may had helped in the development of English Law. The case in European court is Re Civil Services Salaries. E.C. Commission v. E.C. Council in which the court held that rule of protection of the legitimate confidence which citizens may have in the respect by the authorities of the undertakings of the sort, implies that the decision (announcing the guidelines) bound the council in its future action. Hence, in this decision the court laid stress on protection of legitimate confidence which was applicable in the administrative law.

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61 Supra note 48 at 502-503.
64 (1973) E.C.R. 575
Although Re Civil Services Salaries\textsuperscript{65} was decided after Schmidt’s case but it was accepted that idea did not came from this case rather drawn from the administrative laws of the other member states particularly German Law, i.e., Vertauenschutz\textsuperscript{66}. The concept of Vertauenschutz arouse in German law in relation to the principle of the free revocation of administrative act at some position in English Law, where authority which makes a decision affecting private rights, has no power to revoke that decision once communicated to the parties\textsuperscript{67}. German Law considered that the trust laid down by the public in the administrative orders despite being unlawful, needs to be protected as they would gain benefit of their expectation and the relief available is the payment of compensation\textsuperscript{68}. Usually there had to be a weighing of the principles to determine whether the public interest in the legality of the administration outweighed the need to protect the trust placed by the citizen in the validity of the administrative act\textsuperscript{69}. Only in that event was an unlawful administrative act revocable.

Thus, it may be concluded that the concept of legitimate expectation was in existence in European Courts and even practiced. Though English Law may boost of introducing the doctrine of legitimate expectation in jurisprudence but often English Jurists have accepted its better development outside the country. Lord Diplock in 1977\textsuperscript{70} accepted that legitimate expectation has developed much better in other European Countries.

With the introduction of doctrine of legitimate expectation it gradually developed its teeth and has proved to be a check on the arbitrary use or abuse of power by the administrative authorities. The doctrine is mostly based on two principles; (i) assurance or representation by administrative authority; (ii) past practice\textsuperscript{71}.

These rights can be claimed even in the absence of any legal right. In the

\textsuperscript{65} Ibid
\textsuperscript{66} Supra note 53
\textsuperscript{67} Ibid at 243
\textsuperscript{68} Ibid at 244
\textsuperscript{69} Ibid
\textsuperscript{71} Supra note 48 at 503
case O’Reilly\textsuperscript{72} court observed that even where a person is claiming some benefit or privilege has no legal right to it, and also is in conflict with private law rights, he may have a legitimate expectation of receiving this benefit.

**A. Representation to be fulfilled**

Though, the doctrine originated in Schmidt case but it was further broadened in the case Attorney General of Hong Kong\textsuperscript{73}. In this case the applicant expectation of the benefit of a hearing was founded upon an undertaking expressly given on behalf of the government of Hong Kong, that, “certain categories of illegal immigrants from Macau will be treated in accordance with the procedures for illegal immigrants from anywhere other than China. They will be interviewed in due course”. But they did not guaranteed that they (immigrants) would not be deported. It was accepted by the Privy Council that this procedure had not been complied with before the removal of the respondent from the colony was ordered. Hence the respondent’s legitimate expectation was not fulfilled and the removal order against him was quashed.

**B. Past practice to be followed**

The second principle is that expectation of adopting a consistent practice over a sufficiently long period to justify anticipation, in all circumstances, that the practice would continue to be followed in the future. In the Council of Civil Services Unions Case\textsuperscript{74}, the Prime Minister issued an instruction that civil servants engaged on certain work would no longer be permitted to be members of trade unions. The House of Lords held that those civil servants had a legitimate expectation that they would be consulted before such action was taken as it was a well established practice for government to consult civil servants before making significant changes to their terms and conditions of service.

Similarly legitimate expectation can also be raised when there is duty to act fairly and applied by the Lord Morris saying that, “Natural Justice is to act fairly then a link is established between the duty to act fairly and legitimate expectation.

\textsuperscript{72} O’Reilly v. Mackman (1983) Z.A.C. 237 (H.L.)

\textsuperscript{73} A.G. of Hong Kong v. Ng Yuen Shin (1983) 2 AC, 629 P.C.

\textsuperscript{74} Council of Civil Services Unions v. Miniser for the Civil Services (1985), A.C. 318
Thus, legitimate expectation, extend beyond procedural protection\textsuperscript{75}.

Thus, it can be said that the doctrine of legitimate expectation developed considerably within few years of its origin in England.

4.4 Historical Background of Legitimate Expectation in India—

As it has been already mentioned that doctrine of legitimate expectation had its origin in England in the year 1969, but its principles were recognized in England much earlier. Similarly, in India too the doctrine finds its way into Indian Judicial System after the Schmidt case in 1969 but, its principles were followed since time immemorial.

4.4.1 Vedic Era -

The Rigveda is the oldest literacy record available to us. It contains poems sung by Rishis in praise of various Gods. The observation of these vedic Rishis were very keen and established that there exist order in the universe which was even followed by the Gods\textsuperscript{76}. For example the Sun rises in the east at a particular time everyday without fail, rain comes at a particular time every year and so on. Although these natural Gods were very powerful in this respective sphere they were not free to act as they wished and they had to perform their duties fairly and properly. They were bound by the laws\textsuperscript{77}. The Rishis argue that just as Gods were bound by certain laws, similarly human beings (including rulers too) also be bound by certain laws\textsuperscript{78}.

The first idea of law that aroused in the Indian minds is that of ‘Rit’ or ‘order’. This order is inclusive of physical as well as legal, social, moral and ritualistic ones\textsuperscript{79}. More than that it is also the order of ideas and signifies the very concept of idea or form by which alone comprehension or cognition can be possible of thought and actions\textsuperscript{80}. It is the course of things. Rit is an independent authority and also superior to Gods\textsuperscript{81}. Rit is not the expression of any divine will\textsuperscript{82}, rather it

\textsuperscript{75} Furnell v. Whangaru High School Board (1973), A.C. 660, D.C. at 674
\textsuperscript{76} Pandeya, R.C., \textit{A Panorama of Indian Philosophy}, (1966) at 3
\textsuperscript{77} Ibid
\textsuperscript{78} Ibid
\textsuperscript{79} Purohit, S.K., \textit{Ancient Indian Legal Philosophy}, (2001) at 18
\textsuperscript{80} Ibid
\textsuperscript{81} Gupta Uma, \textit{Materialism in the Vedas}, (1987) at 161
\textsuperscript{82} Ibid
can be said to be born on ordering principles of the universe\textsuperscript{83}, to which every thing including the Gods must conform\textsuperscript{84}, they are born to it and also its keeper or guardian. Thus, it can be said that the Rit or law was the supreme and it has to be obeyed as it provides them with happiness and prosperity.

Now, to understand ‘Rit’, let’s define it. It means ‘proper’ or ‘right’ a derivative of Rit, means literally straight and thus implies straight or right conduct\textsuperscript{85}. Keith points out the word ‘Rit’ has been used in a triple sense – the physical order of the universe, the religious order of the sacrificial rites and moral order of the right behavior\textsuperscript{86}. Rit was to be observed by everyone and it was believed that those who stick to it were righteous. Even the kings were to observe Rit and they were regarded as agents, whose duty was to protect the people and their ‘dharma’. Hence it can be said that even in the primitive era rule of law was prevalent. As the principle of legitimate expectation is at the raft of the rule of law\textsuperscript{87}, hence this principle was observed in the vedic era.

Rit in another sense is also an expectation of the subject that the King would make efforts for the welfare of the subject and trust. The two deep seated principles in the administration of justice according to Kane were following:

i) fulfill your promises,

ii) cause injury to none.

Keeping your promise is only an aspect of truth as truthfulness in words and deed, and causing injury means violating law or rightfulness, and in respect of King is to be arbitrary\textsuperscript{88}. As the principle of legitimate expectation too revolves around these two principles, i.e., promise or undertaking when withdrawn and also right to fair hearing therefore, it is very much clear that though it is not in expressed terms the doctrine of legitimate expectation being implemented impliedly.

\begin{footnotesize}
\begin{thebibliography}{9}
\item Supra note 79
\item Supra note 81
\item Supra note 79 at 19
\item Keith as quoted by Gupta Uma, \textit{Materialism in the Vedas}, (1987) at 158
\item Mallick, Rajesh, Relevance of Doctrine of Legitimate Expectation in India, MDU Law Journal Vol XII, (2007) at 82
\end{thebibliography}
\end{footnotesize}
The concept of Rit is significant because they reveal that there is a law in the world, which must workout itself. It gives hopes to those who are victims of disorder and injustices and the triumph of the wicked is not absolute\textsuperscript{89}. Thus, Rit was against arbitrariness. The concept of Rit, being the universal essence of things, formed the basis for a principle which could affect unity in diversity\textsuperscript{90}.

4.4.2 Later Vedic Era -

During dharamshastra period Rit was substituted by dharma. Dharma is a Sanskrit word that defies all attempts at an exact rendering in English or any other language\textsuperscript{91}. It is a very elastic term like jus, sect and droit having more than one meaning\textsuperscript{92}. Sanskar has given its five meanings in different sense, first is religion. Second is virtue as opposed to sin or vice, third it means law, fourth is justice and fifth is duty\textsuperscript{93}. In jurisprudence Dharma means law, justice and duty and these three are the ingredients of the legitimate expectation. Dharma can be defined differently in different aspect, religiously if the sacrificial act or ritual, socially it is complete constitution of Hindu Society and signifies those principles which are said to uphold society and so on\textsuperscript{94}. As in early vedic times, the concept of Rajdharma or Dharma of the State was considered to be main function of the vedis King\textsuperscript{95}. Law or Dharma is not a body of rules practiced for its own sake, Dharma has a definite end. When it is used in the sense of obligation, its purpose is to keep everybody within his assigned role, prescribed by Dharamshastra. The visible end is to maintain the status quo in the society and the ultimate end lies in providing to each one in the society an opportunity to realize his ultimate goal of human existence\textsuperscript{96}. Again, it can be said that post vedic era was run according to Dharma or Law, i.e., there existed rule of law.

The emergence of the King in Hindu jurisprudence has been created to


\textsuperscript{90} Sharma, S.D., *Administration of Justice in Ancient India*, (1988) at 24 & 34.

\textsuperscript{91} Id. At 35

\textsuperscript{92} Sarkar, U.C., *Eposhs in Hindu Legal History* (1958) at 19

\textsuperscript{93} Ibid

\textsuperscript{94} Supra note79 at 35

\textsuperscript{95} Ibid

\textsuperscript{96} Supra not 90 at 39
uphold and protect ‘dharma’. In chapter VII, Manusmriti explains the importance of the King or the rulers and declares that the King is God in human form as it is he who gives full protection to the people against external enemies and internal wrongdoers and looks after their welfare. The King also has got to be strictly dutiful, as otherwise he himself would be punished. There was undoubted supremacy of the rule of law which was binding on the rulers and the ruled alike. Therefore the King did not administer justice arbitrarily. The status of the ancient Hindu King was as that of duty bound servant. The King has been advised repeatedly to follow Dharma because the King and dharma were deemed to be reciprocally protective. The King had various duties i.e. Praja palana (maintenance, nourishment and protection), Praja Ranjana (please subject and its development), Praja Rakshana (protection of subject from natural dangers invasions), duties as a judge (not to act arbitrarily) observation of Trivaiga i.e. dharma, artha and kama.

A. King and his duty which was an expectation –

Protection of the ruled was deemed to be one of the most important functions of a State as opined by the ancient Indian authors. People used to pay taxes because it assures them protection, also the maintenance of Dharma for the latter is held to be necessary to save the State from unseen and supernatural dangers. The work of ancient Indian state were education, poor relief, the police, criminal and civil justice, legislation, medical staff and relief, public works, the Army and the Navy and Counselor and diplomatic services. The State itself was based on dharma or law. The function of the State was due to belief that Dharma/ law helped the government to be more stable in every sense and under all circumstances. There was a sort of

97 Id at 42
98 Jois, M. Rama, Ancient Indian Law Eternal Values in Manusmriti, (2004) at 103
99 Supra note 92 at 20
100 Ibid
101 Jauhari, Manorama, Politics and Ethics in Ancient India, A Study based on the Mahabharata, (1968) at 69
102 Id. at 62
103 Id. at 123
104 Ibid
mutualism between the State and Dharma\textsuperscript{105}. These are only certain expectation which was not in expressed terms but Mahabharata gives elaborate instruction to a King about the duties which he should perform in order to strengthen his hold on the people, lead them to prosperity, earn name and fame here and enjoy the regions. One of the important duties of the King was to act as judge and to maintain justice and impartiality inflict punishments upon the culprits according to the gravity of their crime\textsuperscript{106}. A king who gives wrong judgment is made to starve at the gate of his kingdom\textsuperscript{107}. Thus, there were the expectation of subject from the King that these duties would be performed and even accountability has been placed on the King to do his duty judiciously.

Natural justice i.e. one should be given fair hearing was also practiced in the era of Mahabharata, where in a case; where Mandavya Rishi was in tapasya, a thief placed some stolen articles at his place and he was sentenced by the king as the Rishi remained silent, subject revolted and said that there was no legal and judicial trial and merely because of silence of Mandavya Rishi he can not be held liable and hence it can be said that natural justice was prevalent in that era too\textsuperscript{108}.

B. Vashistha (600-300 BC) -

Rules of Natural Justice, similar to those existing at present times, expressed by Vashistha were\textsuperscript{109}:

a) no decision should be taken singly,

b) the business of deciding disputes should be transacted:

i) on the dias,

ii) in the open,

iii) without bias,

iv) by giving reasons for finding.

\textsuperscript{105} Ibid
\textsuperscript{106} Ibid
\textsuperscript{107} Ibid
\textsuperscript{108} Jha, Chakradhar, History and Sources of Law in Ancient India, (1987) at 197
\textsuperscript{109} Vardhachari J., Hindu Judicial System (1946) at 52 as quoted by Gandhi, B.M., Landmark in Indian Legal and Constitutional History (1992) at 424

172
v) after hearing both the parties.

C. Kautilya (300-100 BC) –

The Kautilyan theory of contract introduced certain new elements. The Kautilyan speculation is in keeping with an advanced economy where the King laid claim to a fixed part of all grain produce and in return King assures security and well being to his subjects by eliminating wrongful acts through coercion hence Kautilya rationalizes the King’s authority in terms of service in return for grain and merchandize. Thus, the subject has placed trust in the King that he would protect them and it was a sort of duty to protect the public trust\textsuperscript{110}. This trust of subject has arisen with a contract between the sages who approached Brahma (the creator) to protect them. In return they promised to pay the protector/ King One fifth of their cattle and gold and one tenth of their grains\textsuperscript{111}. Thus, there was a representation by the Brahma, the Lord on behalf of the King that it would be his duty to protect the subject which gives rise to the legitimate expectation. He also held law above all and confirmed the rule of law\textsuperscript{112}.

D. Manu Smriti (200-100 BC) -

Manu Smriti explains the importance of King or the rulers and declares that the King is God in human form as it is he who gives full protection to the people\textsuperscript{113}. But he did not left King as supreme and has tried to bring the King within the ambit of law and defined his duties. People or subject was considered the source of strength\textsuperscript{114} and referred it as Praja Vishnoo therefore; the highest duty of a King towards his subject is to protect them\textsuperscript{115}. All these acts of welfare of subject have to be reciprocated by giving taxes\textsuperscript{116}. Thus, it can be concluded that the people gave tax to the King or State with an expectation of protection and welfare. Those Kings who do not fulfill such an expectation of the subject could be killed or overthrown by the subjects. Thus, it is an example of substantive legitimate expectation.

\textsuperscript{110} Pankaj, N.Q., \textit{State and Religion in Ancient India}, (1987) at 197
\textsuperscript{111} Ibid
\textsuperscript{112} Supra note 92 at101
\textsuperscript{113} Supra note 99 at 103
\textsuperscript{114} Jois Rama, \textit{Legal and Constitutional History of India}, (1970) at 606
\textsuperscript{115} Supra note 98 at 104
\textsuperscript{116} Supra note 92 at 109
Legal justice is the most important of virtues for the maintenance of a social order and if this virtue is sacrificial then the whole social order would collapse\textsuperscript{117}. In ancient Indian jurisprudence the concept of justice carried with it, by necessary implications, the underlying philosophy of modern doctrines, like ‘rule of law’, ‘justice according to law’, ‘doctrine of separation of power’ and all other allied doctrines\textsuperscript{118}. When the word ‘dharma’ is used in context of the word ‘Rajya’ it means law and ‘Dharma Rajya’ means ‘rule of law’ and not religion or a theocratic State\textsuperscript{119}. It is binding both on the King, the Ruler and the people, the ruled i.e. King was not fountain of law nor above the law.

\textbf{E. Yajnavalkaya (100-300 AD) -}

The Smriti of Yajnavalkaya has initially become the guiding work for the whole of India as it has scientific attitude and freedom from prejudices\textsuperscript{120}. The King is primarily responsible for administration of justice with the help of learned and virtuous assessors. The proper procedure was laid down and it had to be followed strictly. The King had to decide the case on the basis of reason\textsuperscript{121} i.e. decision should not be arbitrary.

The whole Philosophy of Yajnavalkaya could be understood by the oath which King should take, which is as follows:

“Considering always as good whatever is law and whatever is in accordance with ethics and whatever is not opened to police, I will act according to that and will never act arbitrarily”\textsuperscript{122}.

Thus, it was a clear indication that there was no room for arbitrariness.

\textbf{F. Narad and naradiya Dharamshastra (100-400 AD) -}

Narad also favored rule of law and due procedure of law. He said that judicial procedure has been instituted for the protection of human race as a safeguard

\footnotesize{\textsuperscript{117} Supra note 90 at 44  
\textsuperscript{118} Id. at 47  
\textsuperscript{119} Gandhi, B.M., \textit{Landmarks in Indian Legal and Constitutional History}, (1992), 424  
\textsuperscript{120} Jayaswal, Manu & Yajnavalkya, Tagore Law Lecture, 1979 p. 61-62 as quoted by Sarkar U.C. \textit{Epochs in Hindu Legal History}, (1958) at 113  
\textsuperscript{121} Supra note 92 at 114  
\textsuperscript{122} Bhatia, H.S., \textit{Origin & Development of Legal & Political System in India}, vol. I (1976) at 74.}
of law. Justice was given supreme position and duty was placed on judges to extract dart (wrong) and truth to be declared openly by fair procedure.

G. Shukracharya -

Shukacharya was very much scientific in his approach. He did not think that the State is only machinery for the protection of life and property rather he was of the view that ethics and politics are inseparable and that justice of the State and the justice of the Individual are identical. He constantly insists upon the practice of virtue/ reason by the King and he prescribes checks and limitations which keeps King bound to the right track.

4.4.3 Medieval Period -

Administration of justice during the Mughal Period has been a controversial theme with the historians, but it has been declared baseless that there was no system of administering justice, for them justice was supreme and inevitable. The law was commandment of the God and the Sovereigns in the Muslim State were regarded as his servants on the earth who were responsible for seeing that his laws were duly obeyed. The administration of justice was considered by them as an essential act. The King as the representatives of the people discharged his duties either personally or through officers appointed for this purpose. The King and his affairs were to do what was just and right in the eyes of the God to whom alone the king was responsible.

It is true that justice was administered according to the Mohammedan law and the ‘Kazis’ administered that law in conformity with a code. Thus the King was under the law. Law being of the divine origin demands as much the obedience of the King as the peasant. The law applied equally to all and the officers of the State were

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123 Jolly Julius, Naradiya Dharamshastra, *Judicial System in Ancient India* (1981) at 4
124 Id., at 5
125 Id., at 14
126 Nagar, Vandana, *Kingship in the Sukraniti*, (1985) at 18
127 Id., at 19
128 Jain, B.S., Administration of Justice in Seventh Century India, (1970) at 141
as much answerable for wrongs committed by them as ordinary citizens\textsuperscript{130}. The muslim law did not favour any distinction between ruler and his subjects. If any wrong was done by the state towards any citizen then in that case the State could be sued in the same manner as an ordinary citizen for the wrong committed by the officers of the State under the command of the sovereign the amount of fine was paid by the State or the officer concerned and the accused officer could be sentenced to imprisonment by the courts\textsuperscript{131}.

A. Akbar -

He believed that King must be an impartial ruler of all his people, non-muslims as well as muslims. Akbar introduced the theory of divine origin of the monarchy and aimed at benevolent despotism suited to the age\textsuperscript{132}. He was a great administrator of justice and equity. According to him justice was divine element in monarch and his views were reflected in his words that, “If I were guilty of an unjust act. I would rise in judgment against myself. What shall I say then of my sons, my kindred and others”\textsuperscript{133}.

Akbar evinced very high standard for administering justice. He used to insist upon clear finding by through investigation. Thus, Akbar was great administrator of justice also the rules of natural justice, i.e., rule against bias was followed in every trial\textsuperscript{134}.

B. Jahangir -

Jahangir also had a great love for administration of justice. Administration of Justice was as if it were a part of his life and religion. Jahangir was also responsible for having installed a ‘golden chain of justice’. The system underlined by the ‘golden chain’ was an exemplary one, as it was a very powerful instrument in putting an end to all sorts of injustice and oppression by the government officers belonging to the different ranks and grades. Thus, any arbitrary act of the

\textsuperscript{130} Supra note 122 at 186
\textsuperscript{131} Supra note 129 at 19
\textsuperscript{132} Id., at 34
\textsuperscript{134} Supra note 128 at 217
government officials could be brought in the notice of emperor and victim shall be relived\textsuperscript{135}.

C. Shah Jahan -

He had a very efficient system of judicial administration. His sense of justice was very stern and impartial. Even the officials were subjects to rather unusually cruel punishment for any act of oppression on the subjects. Shah Jahan was very particular about the disputes in the subjects and devoted every Wednesday in administering justice. He did not discriminate between the riches, officers or the poor thus acknowledge equality before law\textsuperscript{136}.

D. Aurangzeb -

Aurangzeb was one of the most ardent followers of Islam in administering Justice with impartiality and equity according to the strict principles of Mohammedan law as enjoined by the Shora. His main business of life was to govern the subjects with equity\textsuperscript{137}. Aurangzeb considered himself to be the guardian of people\textsuperscript{138}.

E. Concept of Public Trust Doctrine in Mohammedan Era –

The head of the State among the Mohammedan was the trustee of public property and in no sense its owner. Such public property consists first of all of revenues which when allocated were to be deposited in the public treasury i.e., baitul mal literally the house of property. Imam was the custodian of such public property and earlier even Imams were not allowed to take anything but later with the increase in complexity Imam had no time to earn his livelihood, the law permitted him to draw upon the public funds for his own use. The Imam was also the custodian of such public property as rivers, public roads, waste lands and institutions intended for the benefits of the community or of a section of the community such as mosques, madrassas, inns and the like\textsuperscript{139}. Thus, the doctrine of public trust has its origin in Mohammedan jurisprudence.

\begin{itemize}
  \item \textsuperscript{135} Supra note 92 at 221
  \item \textsuperscript{136} Id at 224
  \item \textsuperscript{137} Id at 225
  \item \textsuperscript{138} Supra note 122 at 190
  \item \textsuperscript{139} Rahim, Abdur, \textit{Mohammedan Jurisprudence} at 25
\end{itemize}
F. Estoppel (*Bayan – daruata*) –

It is a plea which a person could raise to establish that the conduct of the adversary was such as to debar him from giving evidence of a certain fact e.g., if the owner of a horse kept quiet seeing someone else selling it, he would not be allowed to prove that the seller was not authorized to sell it\(^{140}\).

4.4.4 British Era -

There existed in India from early times a system of both administrative legislation and adjudication. The object of early British Administration was to maximize profit and for this efficiency in the administration was the chief necessity. Therefore during the Company’s days, the courts were tools in the company’s hands the executive and overriding powers in the matters of administration of justice\(^{141}\). During the days of the rule of the East India Company it was nothing but uncontrolled administration of law. The powers of Government were then concentrated in Governor General and four chancellors while for the due administration of justice, a Supreme Court of judicature was established at Fort Williams, to consists of a Chief Justice and three other judges. During the period the organization of various administrative departments and the nature of duties and status of administrative officials were framed\(^{142}\).

The British Era can be divided into the following two parts:

A. East India Company’s rule (1600-1858)

B. India under the British Crown (1858-1947)

A. East India Company’s rule (1600-1858) -

The period from 1600 to the passing of the Regulation Act of 1773 is known as the period of Royal Charter. The Charter of 1600 which gave the company an exclusive right to trade in the east was issued by Queen Elizabeth. This period was marked by the rules of various princely states and there existed no particular law for

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\(^{140}\) Supra note 122 at 38
\(^{142}\) Ibid
the whole of the country\textsuperscript{143}.

a) Charter of 1609 -

It permitted and empowered the company to make laws and issue orders and ordinances for its internal administration in its factories in India. Those laws were to be reasonable and not contrary to customs and statutes of British realm. To some extent it was indirect import of English Law in India\textsuperscript{144}.

Principles of Justice, Equality and Good Conscience –

The basic meaning of equity is evenness, fairness, justice and the word is used synonymously for natural justice. The term is also used as contrasted with strict rules of law, \textit{acquitatus} as against \textit{strictum jus} or \textit{rigor juris}. In this sense equity is the application of particular circumstances of the standard of what seems naturally just and right, as contrasted with the application to those circumstances of a rule of law, which may not provide for such circumstances or provide that what seems unreasonable or unfair. A Court or tribunal is a court of equity as well as of law in so far as it may do what is right in accordance with reason and justice\textsuperscript{145}. It was by the late 17\textsuperscript{th} century in England that equity principle first introduced into a system\textsuperscript{146}, and along with East India Company, this principle crept into Indian judiciary which was later on developed by British.

b) Charter of 1726 -

It authorized the Company to establish three Crown’s Court, i.e., Mayor’s Court, one in each of the three Presidency Towns of Bombay, Calcutta and Madras which was authorized to try, hear and determine all civil suits, actions and pleas party and to give judgment and sentence according to justice and right\textsuperscript{147}.

Thus, in this way, the English Common Law and the principle of natural justice found its way into the Indian Judiciary.

\begin{flushright}
\textsuperscript{143} Sudha, Jyoti Prasad, \textit{Indian Constitutional Development} (1773-1947) at 14-15.
\textsuperscript{144} Supra note 119 at 275
\textsuperscript{146} Supra note 119 at 275
\textsuperscript{147} Ibid
\end{flushright}
c) **Charter of 1753 -**

The Charter of 1753 provided that Mayor’s Court would try the natives by their own laws, customs and usages\(^{148}\). It is the natural system to apply in a conquered country that is to say in a state where complete sovereignty has not been assumed by the dominant power. It is the system which involves the least disturbance\(^{149}\).

d) **Regulating Act of 1773 -**

For the first time United Kingdom considered Indians as its subject and took the responsibility for the welfare of Indians\(^{150}\). It provided for the establishment of Supreme Court of Justice at Fort Williams consisting of a Chief Justice and three other judges. They were independent of the Company and could punish its servant without fear of consequences and adjudicate or claim against it. Thus, in this way judiciary or law was made supreme and the concept of appeal which was introduced is an ingredient of legitimate expectation that every person has a right for fair and just justice. Along with this there were modifications of criminal law, e.g., enforcement of law of relationship for murder, of stoning for sexual immoral act or of mutilation for theft or to recognize the incapacity of unbelievers to give evidence in cases affecting Mohammedans were removed which were not only barbaric but also reflected arbitrariness\(^{151}\).

e) **Charter of 1833 –**

Once again with the Charter Act of 1833, the protection of natives was considered as main objective of Government. Moreover, centralization of power in the hands of Governor General in Council made the situation clear as to the source of law as earlier there was a situation to chaos. It empowered the Governor General in Council to appoint a Law Commission from time to time\(^{152}\); hence, the first Indian Law Commission was set up. It also declared that, “No Indian subject of the Company in India shall by reason only his religion, place of birth, color or any of them, is disabled from holding any place, office or employment under the


\(^{149}\) Bhatia, H.S., *Origin & Development of Legal & Political System in India*, vol. II (1976) at 13

\(^{150}\) Supra note 143

\(^{151}\) Ibid at 21

\(^{152}\) Section 53 of Charter Act of 1833
Company. Thus, it was a step ahead to attain equality.

f) **Constitution of First Law Commission – 1834**

i. **Penal Code:**

As the system of administration of criminal justice was most unsatisfactory, the members of the commission prepared a draft penal code which they submitted to the lord Auckland, the Governor-General on 2nd May, 1873.

ii. **Lex Loci Report or Law of Land Report:**

There was no *lex loci* or law of the land for persons other than Hindus and Mohammedans in the Moffusil while the Presidency town had a *lex loci* in English Law, so it recommends that an Act should be passed making the substantive law of England the *Lex Loci* i.e. law of land outside the Presidency Towns, except Hindus and Mohammedans. Thus it clears the position of people living in India of other religion.

iii. **Code of Civil Procedure:**

The commission drafted a Code of Civil Procedure and suggested various reforms in the procedure of civil suits. Through these Law Commissions English Common and Statutes Law and Equitable principles were injected into the expanding structure of Indian Jurisprudence.

**B. India under the British Crown (1858-1947) –**

a) **Government of India Act, 1858 -**

It assured the people of India that there will be no interference in religious matter, no distinction in regard to caste or creed would be practiced, internal tranquility would be restored, industry and public activity works would be stimulated and administration of the Government would be for the benefit of all the subjects. In their prosperity will be our strength, in their contentment our security and in their gratitude our best reward. These words reflect very high ideas of the British Government and these words were based upon the rule against arbitrariness.

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153 Section 87 of Charter Act of 1833
154 Supra note 131 at 247
155 Ibid at 248
and any kind of racial discrimination, which leads towards equality.\footnote{157}

b) \textbf{Indian Council Act, 1861 -}

It provided for the provisions for the extension of Central Legislative Council and inclusion of natives to the Council\footnote{158} which provided an opportunity for the representation of Indians as a deciding or law making body, which further raised the aspirations of the public that laws in favor of Indians would be framed.

c) \textbf{August Declaration, 1917 -}

Mr. Montague made the historic declaration in the House of Commons which said that, “that there will be increased association of Indians in every branch of administration and the gradual development of self-governing institutions with a view to progressive realization of the responsible Government in India”\footnote{159}. It reflects the intentions of the British Government that Indians would be considered at par with British for administrative services and also fulfilled the aspirations of the Indians.

C. \textbf{Codification of Law -}

The picture of the system of law prevailing in India near about the beginning of the 19\textsuperscript{th} century as it emerges from the discussion that was, one of confusion and chaos. There was uncertainty whether a particular proposition of law was applicable or not, either in the Mofussil or in the Presidency Towns\footnote{160} – there was not much legislative activity in the area of private law and thus gaps and inter space in laws were being filled in by the courts by an inarticulate adoption of the rules of English Law and also on the Doctrine of Equity, justice and good conscience but there remained a lot of lacunae in the administration of justice therefore there was a need for the codified laws in the country. In the words of Lord Macaulay, “only through codification it was possible to achieve certainty for uncertainty, a written and a stable law instead of wilderness of judicial precedents which were bewildering to the litigants and confusing to the courts”\footnote{161}. These words of Macaulay show that the way for the stability of a society and a situation were made clear through

\footnotesize{\begin{itemize}
\item \footnote{157} Supra note 148
\item \footnote{158} Ibid
\item \footnote{159} Report on Indian Constitutional Reforms, 1918 at 1
\item \footnote{160} Jain, M.P., \textit{Outlines of Indian Legal and Constitutional History}, (2009) at 418
\item \footnote{161} Ibid at 417
\end{itemize}}
codification of laws, Macaulay has tried to satisfy the Indian subjects that the situation of chaos and confusion is prevalent only due to the non codified laws. As been earlier stated that it is an expectation of the subjects from the State that it would protect them and also maintain stability in the society, hence Macaulay has expressed that they are duty bound. Bentham in favor of codification said that, “to be without a code, is to be without justice”\textsuperscript{162}. It means that the codified law is only a means towards the justice which is one of the greatest expectation of human being.

Some of the important features of Indian Penal Code, 1860 are laid down on the principles of natural justice.

a. \textit{Mens rea} -

One of the main characteristics of Indian Penal Code is that the individual’s liability to punishment for crimes depends among other things, on certain mental conditions. The absence of these conditions where they are required negatives the liability. The liability to conviction of an individual depends not only on his having done some outward acts which law forbids, but on his having done them in a certain frame of mind or with certain will\textsuperscript{163}, therefore, an act in order to be a crime must be committed with a guilty mind, \textit{actus non facit reum nisi mens sit rea}, i.e., acts alone does not make a man guilty unless his intentions were so, is a well known principle of natural justice.

b. \textit{Principle of Legality} -

A person accused of an offence is put under the peril of his life and liberty. Therefore, it becomes necessary that certain safeguards should be provided to him. These protections are almost common to all civilized legal systems of the world which was introduced in Indian Legal System with the introduction of English Common Law through various enactments. One of such principle is \textit{nullum crimen sine lege, nulla poena sine lege} which means that there must be no crime or punishment except in accordance with fixed procedure established by law which is known as the principle of legality\textsuperscript{164}. The maxim \textit{nullum crimen sine lege, nulla poena sine lege} conveys four different rules, namely:

\textsuperscript{162} Ibid at 420
\textsuperscript{164} Mishra, S.N., Indian Penal Code, (2007) at 11
(i) Non retroactivity of penal laws,

(ii) Penal Statutes should be constructed strictly,

(iii) Certainty of Legislation,

(iv) Accessibility of Law.

c. General Exceptions -

Chapter IV of Indian Penal Code deals with the General Exceptions which provides with various defenses which a person accused of an offence under the code or any special local law can plead. These provisions in the Indian Penal Code are the greatest example of natural justice and Doctrine of Legitimate Expectation. This chapter has fulfilled the expectation of a person whose life and liberty were at stake.

It deals with the circumstances which preclude the existence of mens rea. If the existence of facts or circumstances bringing the case within any of the exceptions is proved, it negatives the existence of the mens rea necessary to constitute the offence and thereby, furnishes a ground for exemption from criminal liability.\(^{165}\)

The two broad classes of exceptions are:

- excusable (Sec. 76-95)
- justifiable (Sec. 96-106)

d. Indian Evidence Act, 1872 -

In the process of delivering justice the courts have not only to go into the facts of case but also to ascertain the truthfulness of the assertions made by the parties. The areas of assertions and ascertainments of its truthfulness are governed by the law of evidence. It helps in proving the fact. It also provides both the parties equal opportunity to prove the fact, i.e., audi alteram partem in order to remove the chances of arbitrariness.

e. Motive, Preparation and Previous or Subsequent Conduct (Sec. 8) –

This section looks for the motive behind the act because there is hardly any act without a motive which is generally proved by the previous or subsequent

\(^{165}\) Ibid at 150

\(^{166}\) Lal, Batuk, The Law of Evidence, (2009) at 1
conduct of the accused before or after committing crime. This section is based on the principle of fair hearing and procedure.

f. Indian Evidence Act and Natural Justice –

It can certainly be said that Indian Evidence Act was a very far sighted enactment. This Act has removed all kinds of discrepancies which were there in Hindu and Mohammedan legal system. By laying burden of proof on the prosecution it has given a larger scope for fair hearing. Moreover, most of the provisions in the Evidence Act are based on the principles of natural justice where it is said that justice should not only be done but must appear as it is done. The provisions such as confession caused by inducement, threat or promise when relevant in criminal proceeding\(^{167}\) confession to police officer not to be proved\(^{168}\), is not admissible or confession by accused while in custody of police not to be proved against him\(^{169}\).

g. Promissory Estoppel Recognised –

There is said to be an estoppel where a party is not allowed to say that a certain statement of fact is untrue, whether in reality it is true or not. The Doctrine of estoppel applies in cases affecting rights. Estoppel can be described as a rule of creating or defeating rights. Though estoppel is described as merely rule of evidence it may have the effect of creating substantive rights as against person estopped. Section 115 of the Indian Evidence Act recognized for the first time the doctrine of estoppel. It is not essential that an act or to abstain from acting should have been fraudulent or that he should not have been under mistake or misapprehension\(^{170}\). The doctrine of estoppel has brought the Government within its reach and even during the British era, no escape was provided to the crown for any representation made by the government agencies\(^{171}\).

Along with this there were enactments which not only simplified and put certainty in Indian Legal System and also based on the principle of natural justice,

\(^{167}\) See Section 24, The Indian Evidence Act, 1872  
\(^{168}\) See Section 25, The Indian Evidence Act, 1872  
\(^{169}\) See Section 26, The Indian Evidence Act, 1872  
\(^{170}\) Sharat Chandra Dev v. Gopal Chandra Lal ILR 22 at 296 PC  
\(^{171}\) Panmer v. Mayor R.C. of Wellington, (1843), 9 App. Cas. 609
equality, justice. These enactments were Code of Criminal Procedure (1861), Civil Procedure Code (1859), Indian Contract Act (1872) etc.

4.4.5 Post – Independence Era –

A. Constitution –

India won independence on 15th August, 1947 and it became a welfare State having a mixed economy. The Indian nation on 26th January, 1950 gave a constitution to itself. It undertook a vast program of social and economic upliftment and restitution. The Constitution of India, laid its objective –

Justice – social, economic and political,

Equality – of status and opportunity,

Liberty – of thought, expression, belief, faith and worship and

Fraternity – assuring the dignity of individual and unity of the Nation172.


Part IV of the Constitution regarding Directive Principles of State Policy guarantees protection of the some liberties to an individual considered as a part of the community and the State Policy guarantees protection of the some liberties to an individual considered as a part of the community and the State can pass measure strengthening them. Part III of the Constitution indicates the present basis of the Rule of Law while Part IV is the pointer for the future law173.

No person is deprived of his life and personal liberty except according to procedure established by law or of his property saves by the authority of law (no person is above the law, not even the government). The maxim that, “The King can do no wrong” has not been made applicable to India because there is equality before the law and equal protection of law. Doctrine of Equality is also maintained in

172 Supra note 148 at 425-426
173 Supra note 117 at 401
public services\textsuperscript{174}.

**B. Promissory Estoppel in India -**

A vast body of case law has accumulated in India over the years on the question of applicability of the doctrine of promissory estoppel against the administration. The law in the area is still evolving but the present day judicial tendency appears to be more towards applying the doctrine to the administration\textsuperscript{175}. In *Anglo – Afghan*\textsuperscript{176} the Supreme Court applied promissory estoppel against the government on equitable grounds. The *Anglo – Afghan case* depicted a new judicial trend. The key to this trend was to be found in the following statement of the Supreme Court.

“If our nascent democracy is to thrive, different standards of conduct for the people and public bodies cannot ordinarily be permitted”. In this way government were held responsible for its representation and no immunity would be provided\textsuperscript{177}.

**C. Introduction of Legitimate Expectation in Indian Judicial system -**

The capacity of the Apex Court to import Legal doctrines and to plant them in a different soil and climate and to make them flourish and bear fruit is tremendous\textsuperscript{178}. The importation of the doctrine of Legitimate Expectation is recent. The first reference to the doctrine is found in *State of Kerala v. K.G. Madhavan Pillai*\textsuperscript{179}. In this case the government had issued a sanction to the respondents to open a new aided school and to upgrade the existing ones. However, after 15 days a direction was issued to keep the sanction in abeyance. This order was challenged on the ground of violation of the principle of natural justice. The Court held that the sanction order created legitimate expectation in the respondents which was violated by the second order without following the principles of natural justice which is sufficient to vitiate an administrative order.

The doctrine was further applied in the case where government had issued

\textsuperscript{174} Ibid
\textsuperscript{176} *Union of India v. Anglo (India) Afghan Agencies*, AIR 1968 SC 718
\textsuperscript{177} *Century Spinning & Mfg. Co. v. Ulhasnagar Municipality*, AIR 1971 SC 1021
\textsuperscript{178} Massey, I.P., *Administrative Law* (2005) at 303
\textsuperscript{179} AIR 1989 SC 49
notification notifying areas where slum clearance scheme will be introduced. However, the notification was subsequently amended and certain areas notified earlier were left out. The court held that the earlier notification had raised legitimate expectation in the people living in an area which had been left out in a subsequent notification and hence legitimate expectation cannot be denied without a fair hearing\(^{180}\). Thus, where a person has legitimate expectation to be treated in a particular way which falls short of an enforceable right, the administrative authority cannot deny him his legitimate expectation without a fair hearing\(^{181}\). Legitimate expectation of fair hearing may arise by a promise or by an established practice\(^{182}\).

The same principle was followed by the Apex Court in *Navjyoti case*\(^{183}\). In this case the development authority, without notice and hearing had changed the order of priority for the allotment of land to co-operative societies from ‘serial number of registration’ to the date of approval of list of members. Quashing the order on the ground of violation of legitimate expectation the court held that where persons enjoying certain benefits or advantage under old policy of government derive a legitimate expectation even though they may not have any legal right under private law in regard to its continuation but before changing that policy affecting adversely that benefit or advantage the aggrieved persons are entitled to a fair hearing.

**a. Constitutional Parameters –**

A constitution is the body of rules written or unwritten which establishes institutions of government for a particular country and specifies the ways by which the political process are to function. The governance of countries is done in accordance with constitution\(^{184}\).

A constitution has been broadly defined as the basic law of a country which outlines the framework and mechanism of governance, defines its powers and functions provides as to how a constitution changes. In democracy, the citizen’s


\(^{181}\) Supra note 168 at 304

\(^{182}\) *State of H.P. v. Kailash Mahajan*, 1997 Supp (2) SCC 351

\(^{183}\) *Navjyoti Co-operative Group Housing Society v. Union of India* (1992) 4 SCC 471

fundamental rights are guaranteed against possible arbitrary governmental action, by way of judicial intervention and services.\textsuperscript{185}

A constitution is an embodiment of principles according to which the powers of the government, the rights of the governed and the relation between the two are being defined and arranged according to Prof. A.V. Dicey, “the expression Constitution includes all rules which directly or indirectly affect the distribution or exercise of sovereign power in the State”\textsuperscript{186}. In the words of Wade and Phillips\textsuperscript{187}, “By a constitution is normally meant a document having a special legal sanctity which sets out the framework and the principle function of the organs of government or a State and declares the principles governing the operations of those organs, such a document is implemented by decision of the particular organ normally the highest Court or the State which has power to interpret its content\textsuperscript{188}.

The views of Pt. Jawaharlal Nehru, who said that first and foremost task of Constituent Assembly, was to draft a Constitution that could serve the ultimate social goal of social revolution\textsuperscript{189}. Nehru was also aware of the future and warned the Assembly, “we cannot solve this problem soon, all our papers of Constitution became useless and purposeless.........”\textsuperscript{190}

Thus, the Constitution can be said to be a culmination of the aspiration and the expressed form of the will of the people of India.

b. The Objectives and Aims of the Constitution –

Taking notice to the views of great leaders of independence, struggle and operations of the common mass, Pt. Jawaharlal Nehru moved a resolution in front of

\textsuperscript{187} Wade & Phillips, Constitutional Law, as quoted by Baruah Aparajita, Preamble of the onstitution of India, (2007) at 12
\textsuperscript{188} Ibid
\textsuperscript{190} Khanna, H.R., Making of India’s Constitution (1981) at 5 as quoted by Pal, A.C., Mehta Runa, Constitutional Foundation of Social Change in India’s Synoptic View, Civil & Military Law Journal, vol. 41(2005) at 5
the Constituent Assembly. Few of the objectives are as follows:

i) To guarantee and secure justice- social, economic and political, equality of status of opportunity and before the law, freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality;

ii) To provide adequate safeguards for minorities, backward and tribal areas and depressed and other backward classes;

iii) To maintain integrity of the Republic and its sovereign rights on land, sea and air according to justice and law of civilized nations\textsuperscript{191}.

Thus, through the objective resolution the aspirations of the masses of the country were given the words and R.V.Dhulekar expressing views about the resolution said that:

“The Resolution gives them complete freedom in regard to their internal administration and assures that all their just and legitimate rights will be safeguarded”\textsuperscript{192}. On the similar note Sir S. Radhakrishnan said that, “we are here to bring the real satisfaction of the fundamental needs of the common man of this country, irrespective of race, religion or community”\textsuperscript{193}.

The resolution before the house was an expectation of the millions of people of country.

c. Preamble –

The objective resolution was later modified in the preamble. Since Constitution of India is an elaborate document. The Constitution has completely been framed keeping in mind the expectation of the people and is a complete document. But the crux of the Constitution lies in the preamble and it is the key to understand the constitution\textsuperscript{194}, as the constitution has been built upon the concepts crystallized in it\textsuperscript{195}, i.e., objective resolution.

\textsuperscript{191} CAD Vol. I at 59
\textsuperscript{192} CAD Vol. II at 301
\textsuperscript{193} Id, at 269
\textsuperscript{194} Re Berubari Union, AIR 1960 SC 854 (856)
\textsuperscript{195} Supra note 184 at 78
i. Definition -

A preamble of a statute is a preliminary statement of the reasons which have made the passing of statute desirable and its position is located immediately after the title and date of issuing the presidential assent. A preamble may also be used to introduce a particular section or group of section\(^{196}\).

ii. Contents of Preamble Having Spirit of Legitimate expectation –

a. We the People of India –

The preamble begins with the words, “we, the people of India………”, thus clearly indicating the source of all authority of the constitution. It emphasizes that it is the people of India who are the authors of the Constitution\(^{197}\).

The phrase, we, the people of India infuses real strength into the minds of common people of India. It also states that India is united and throws the idea of national integration that the people of India do not wish to be divided into castes, religions etc.\(^{198}\). Thus, in the preamble, it clearly contains the ideals and aspiration\(^{199}\) or the objects which the constitution maker (who claimed to speak on behalf of the people of India) intended to be realized\(^{200}\).

b. Sovereign -

The word ‘Sovereign’ stands for the power which is absolute and uncontrolled within its own sphere\(^{201}\). One of the corollaries emanating from the doctrine of sovereignty is that of parens partial. It means that it is the power and obligation of the sovereign to protect the rights and privileges of its citizen\(^{202}\). In India though the doctrine of parens partial is not embodied in any express provision of the constitution, it has been derived from the Article 38, 39 & 39-A\(^{203}\).

Moreover, the powers of all organs of the State are defined by the


\(^{197}\) CAD Vol.I at 96

\(^{198}\) Id at 40

\(^{199}\) *Atam Parkash v. State of Haryana*, AIR 1986 SC 859 (864)

\(^{200}\) *I.C. Golak Nath V. State of Punjab*, AIR 1967 SC 1643


\(^{203}\) *Charanlal Sahu v. UOI*, (1990) 1 SCC 613
Constitution and neither the Executive nor the legislatives can claim any claim – any extra-constitutional power, i.e., any power which cannot be justified under any of the express provisions of the constitution. It confirms the rule of law in the country.

c. Justice -

The preamble of the constitution professes to secure to all its citizens social, economic and political justice. The concept of justice is already pregnant with various diverse notions of rights morality, welfare, happiness, liberty and equality. The expression justice is the harmonious reconcilement of individual conduct with the general welfare of society. Every man acts according to his self interest, but his act or conduct is said to be just only if it promotes the general well being of the community.

i) Social Justice -

Social justice means abolition of all sorts of inequalities which results from inequalities of wealth and opportunity, race, caste, religion and title. The Constitutional philosophy of social justice has been explained by S. Radhakrishnan as, “we are here to pledge to achieve full independence of India, where no individual will suffer from underserved want, where no group will be thwarted in the development of its cultural life.”

Also it was observed by Supreme Court that the aim of social, economic and political and constitutional goal. It was held that social justice was a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribal and deprived sections of the society and to elevate them to the level of equality, to live a life with dignity.

ii) Economic Justice -

Economic justice means securing and protecting a social order, which stands for the welfare of the people ‘pre-suppose people’ commitment to value of economic

\[\text{204} \quad \text{Magan Bhai v. UOI, (1970) 3 SCC 400} \]
\[\text{205} \quad \text{Supra note 184 at 50} \]
\[\text{206} \quad \text{Salmond, as quoted by Basu, D.D., Commentary on Constitution of India, Vol. A, (1982)} \]
\[\text{207} \quad \text{Supra note 201 at 147} \]
\[\text{208} \quad \text{Supra note 197 at 270} \]
\[\text{209} \quad \text{Air India Statutory Corporation v. United Labour Union, AIR 1997 SC 645} \]
value\textsuperscript{210}. Economic justice would require that the rich and poor are treated alike and that efforts are made to bridge the gap between them. Article 39-A means that the system of administration of justice must provide a cheap, expeditious and effective instrument for realization of justice by all sections of the people irrespective of their social and economic position or their financial resources\textsuperscript{211}, as economic empowerment is a basic human right\textsuperscript{212}. Thus, the constitution has casted duty on the administration that economic status may not stand as an obstacle to achieve justice and result into arbitrariness.

iii) Political Justice -  

Political justice means equal share to all citizens in the matter of participation in the political process without any distinction of race, caste, creed, religion or place of birth. It implies the absence of any arbitrary distinction between two citizens in the political spheres. Our constitution provides adult franchise to all her citizens and allows them to hold any public office without being discriminated on the basics of caste, religion, race, sex etc.\textsuperscript{213}.

iv) Liberty -  

Liberty was originally understood only as a negative concept, viz., and the absence of undue or arbitrary influence with individual action on the part of government. But now it is a positive concept, comprising ‘liberties’ or ‘rights’ which are essential to the development of the individual and the perfection on the national life, e.g., liberty of thought and expression\textsuperscript{214}. Liberty in the preamble to our constitution does not mean mere absence of restraint or domination\textsuperscript{215}. It is a positive concept of the right to liberty of thought, expression, belief, faith and worship. In order to be meaningful it had to be liberty for all, for the society as a whole\textsuperscript{216}. As Justice K.S. Hegde put it:

“In the modern world liberty is not, as is usually supposed, single, simple

\textsuperscript{210} Kashyap, Subhash C., Constitutional Law of India, Vol. I (2008) at 311\textsuperscript{211} Secretary, HSEB v. Suresh, (1999) 3 SCC 601\textsuperscript{212} Supra note 211 at 671\textsuperscript{213} Supra note 210\textsuperscript{214} Supra note 201 at 149\textsuperscript{215} Supra note 210 at 312\textsuperscript{216} Ibid
conception. It has four elements; national, personal, political and economic. Moreover, today the controversies and conflicts are not between power and freedom but between one form of liberty and another. That is why, checks and counter checks are necessary in every departments of Government, the Executive, Judiciary and Legislature\textsuperscript{217}.

In the constitution we have such checks in the form of Fundamental Rights and we have also laid down guidelines for legislative and State action in the form of Directive Principles. It is obvious that an unreasonable interference with a fundamental right would be void\textsuperscript{218}.

v) Equality -

D.D. Basu has quoted French Constitution to define the meaning of equality, “Law is the expression of the general will…. it must be same for all, whether it protects or punishes. All citizens being equal in its eyes are equally eligible to all public dignities, places and employment, according to their capacities and without any other distinction than that of their virtues and talents”\textsuperscript{219}.

In the words of Shastri Alguari:

“The resolution affirms the equality of men; we wish to eliminate all class distinction existing at present. The behavior of men with one another should be on the basis of equality”.

And this object is secured in the provisions of Part III and Part IV of the Constitution. The Indian Constitution not only guarantees the ‘liberty’ and ‘equality’ envisaged in the preamble as Fundamental Rights says Basu but also empowers the judiciary to enforce them against all State action, including Legislative judicial review over. Legislation is thus a feature of the Indian Constitution\textsuperscript{220}. In this way legitimate expectation is protected.

\textsuperscript{218} Supra note 210 at 312
\textsuperscript{220} Supra note 201 at 149
vi) Dignity of the Individual -

Though the dignity of the individuals, the forefathers wanted to improve the quality of life for the individuals by guaranteeing the fundamental rights of freedom, equality etc. through Directive Principles policies are oriented to provide all citizens, adequate means of livelihood, just and humane conditions of work and a descent standard of life\(^{221}\).

The whole scheme underlying the constitution is to bring about economic and social changes without taking away the dignity of the individual\(^ {222}\).

vii) Right to Equality –

Modern societies provide citizens with greater social and political rights a higher standard of living, better vocational opportunities. With the increasing democratization of governments the fundamental problems has been to pull down the barriers of segregation and to offer equal opportunities to all. Moreover, the liberal concepts of democracy indicates this what we expect and require from a democratic form namely is a free society which is not exposed to arbitrary and uncontrolled political power. In democracy, the relation between the governors and the governed is consistent with the principle that the State is at the service of the citizens and not the State, which the government exists for the people and not vice versa\(^{223}\). Therefore, it is an expectation of the citizen that democracy is to eliminate man made socially fostered, discrimination that has enlarged for some and has restricted for others and avenues that lead to education, income and advancement\(^{224}\) and this gave rise to the notion of right to equality. Equality is the greatest passion of man\(^ {225}\). In the absence of equality there can be no justice.

Moreover, the claim that men are equal is a claim that in fundamental respects, regardless of obvious differences between one man and another, all men deserves to be given certain treatment. They have a right to certain kinds of equal

\(^{221}\) Supra note 210 at 317
\(^{222}\) Ibid
\(^{223}\) Mathew, K.K., Democracy, Equality and freedom, (1978) at 165
\(^{225}\) Mathew, K.K.; The Right to Equality and Property under the Indian Constitution, (1980) at 11
treatment in crucial aspects of their lives, though not in all\textsuperscript{226} as it is the legitimate expectation of the people\textsuperscript{227}.

Another view is that in a society equal conditions should be provided to its members so that they can achieve the best with their efforts. This means that the society must at least maintain some minimum standard of living, education and security for all its members\textsuperscript{228}. This duty to maintain this standard in society is being cast upon the government as in the American Declaration of Independence says:

“We hold these truths to be self-evident that all men are created equal, that they are endowed by their creator with certain inalienable rights, which among these are life, liberty and the pursuit of happiness – that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed”\textsuperscript{229}.

Therefore, it is an expectation of the citizen that State shall always work towards attainment of equality, life and liberty and its protection too. So, certain provisions are provided in the Constitution and are asked against the State.

4.5 Article 14 and Legitimate expectation -

The doctrine of legitimate expectation in the substantive sense has been accepted as part of our law and that the decision maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or part conduct unless some overriding public interest comes in the way. The doctrine requires that reliance must have been placed on the said representation and the representee must have thereby suffered detriment\textsuperscript{230}. thus, the more important aspect is whether the decision maker can sustain the change in policy by revert to \textit{Wednesbury} Principles of rationality or whether the court can go into the question whether the decision maker has properly balanced the legitimate expectation as against the need for change. In the latter case the court would

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{226} Dennings, \textit{Problems of Social and Political Thought} at 256 as quoted by Mathew, K.K.; \textit{The Right to Equality and Property under the Indian Constitution}, (1980) at 7
\item \textsuperscript{227} Bentham as quoted by Raina SMN, \textit{Law, Judges and Justice} (1986) at 50
\item \textsuperscript{228} Supra note 216 at 9
\item \textsuperscript{229} Ibid at 4
\item \textsuperscript{230} Ibid
\end{enumerate}
\end{footnotesize}
obviously be able to go into the proportionality of the change in the policy. The Wednesbury reasonableness test may be applied to find out whether the change from one policy to another was justified. The court is not to judge the merit of decision maker’s policy. The public authority in question is the judge of the issue whether “overriding public interest” justifies such a change in policy. However, the change of policy like any discretionary decision by a public authority must not transgress the Wednesbury principles. While the policy is of the maker alone, the courts concern is to see whether there has been fairness in his decision.

The change of policy can defeat substantive legitimate expectation if it can be justified on Wednesbury reasonableness. The decision maker has the choice in balancing of the pros and cons relevant to the change in policy. It is, therefore, clear that the choice of policy is for the decision maker and not for the court. The Legitimate expectation merely permits the court to find out of the change in the policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made.

The principle of legitimate expectation is still at a stage of evolution. The principle is at the root of the rule of law and requires regularity, predictability and certainty in government’s dealing with the public. Dicey regards the rule of law as having both procedural and substantive effects “the rule of law enforces minimum standards of pureness, both substantive and procedure.”

The basic principles relating to legitimate expectation were enunciated by Lord Diplock in Council of Ministers for the Civil Services, whether his lordship observed that the case or legitimate expectation to arise, the decision of the administrative authority must affect the person by depriving him of some benefits or advantage either:

i) He had in the past been permitted by the decision maker to enjoy and continue to which ha can legitimately expect to be permitted to do until there has been

232 Ibid
233 Ibid
234 Dicey as quoted by Pandey, J.N., Constitutional Law of India, (2007) at 98
235 Council of Civil Services Union v. Minister for the Civil Services 1985 All 374
communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment.

ii) Has received assurance from the decision maker that they will not be withdrawn without giving him first opportunity of advancing reasons for contending that they should be withdrawn\textsuperscript{236}. The procedural part of it relates to a representation that hearing or other appropriate procedure will be afforded before the decision is made. The substantive part of the principle is that it will be continued and not be substantially varied then the same could be enforced.

4.5.1 Position in India -

The principles of substantive legitimate expectation have been accepted by the Courts in India:

A. Duty to act fairly –

In *Navjyoti Co-Op. Group Housing Society v. Union of India*\textsuperscript{237}, the principle of procedural fairness was applied. In that case the seniority as per existing list of co-operative housing societies for allotment was altered by a subsequent decision. The previous policy was that the seniority amongst housing societies in regard to allotment of land was to be based on the date of registration of the society with the registrar. But on 20.1.1990 the policy as changed by reckoning seniority as based upon date of approval of the final list by the Registrar. This altered the existing seniority of societies or allotment of land. The court held that the societies were entitled to a ‘legitimate expectation’ that the past consistence practice in the matter of allotment will be followed even if there was no right in private law for such allotment. The authority was not entitled to defeat the legitimate expectation of the societies as per previous seniority list without overriding reason of public polity to justify the change in the criterion. No such overriding reason of public policy was shown. According to principle of legitimate expectation, if, the authority proposed to defeat a person’s legitimate expectation, it should afford him an opportunity to make representation in the matters. It was held that the doctrine imposed in essence, duty

\textsuperscript{236} Ibid
\textsuperscript{237} (1992) 4 SCC 477
to act fairly by taking into consideration all relevant factors, relating to such legitimate expectation\textsuperscript{238}.

B. Right to Fair Hearing –

The Supreme Court considered the question elaborately in Union of India v. Hindustan Development Corporation\textsuperscript{239}. In that case trends were called for supply of steel bodies to the Railways. The three big manufacturers quoted less than the smaller manufacturers. The Railway then adopted a dual pricing policy giving counter offers of a lower rate to the big manufacturers who allegedly formed a cartel and higher offer to other so as to enable to healthy competition. This was challenged by the three big manufacturers complaining that they were also entitled to higher rate. The court held that the change into a dual pricing policy was not vitiated and was based on reasonable grounds.

After citing various authorities and judgments the court observed that legitimate expectation was not the same thing as anticipation. It was also different from a mere wish or desire or hope. Nor was it a claim or demand based on right. A mere disappointment would not give rise to legal consequences. The court held that the legitimacy of an expectation can be inferred only if it is found on the sanction of law or custom or an established procedure followed in regular and natural consequences such expectation should be justifiable, legitimate and practicable.

4.6 Article 14 strikes at Arbitrariness –

The doctrine of reasonable classification has been for long, the undisputed touch stone to determine the scope and context of Article 14. Towards the end of 1973, in a concurring opinion in E.P. Royappa v. State of Tamilnadu\textsuperscript{240}, propounded a new approach to Article 14 in the following words:

“Equality is a dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined and confined within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies, one belongs to the rule of law in a

\textsuperscript{238} Ibid
\textsuperscript{239} AIR 1993 SC 155
\textsuperscript{240} AIR 1974 SC 555
republic while the other to be whim and caprice of an absolute monarch. When an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violation of Article 14”.

In Maneka Gandhi v. Union of India\textsuperscript{241}, quoting himself from Royappa case, Bhagwati, J. very clearly read the principle of reasonableness in Article 14. He said:

“Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The Principle of reasonableness which logically as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresent”.

4.6.1 Rules of Natural Justice, Article 14 and Legitimate Expectation –

It was the case Scheduled Caste and Weaker Section Welfare Association (Regd) and others v. State of Karnataka and others\textsuperscript{242}, where it was held that it is one of the fundamental rules of our Constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power and the rule of natural justice operates in areas not covered by any law validly made. It is only applied where there is nothing in the statute to actually prohibit the giving of an opportunity to be heard, but on the other hand, the nature of the statutory duty imposed itself necessarily implied obligation to hear before deciding, that could be imported.

4.6.2 Prohibition of Discrimination against Citizens –

Article 14 embodies the general principle of equality before the law. The specific application of the same principle is provided in Article 15. Article 15 concretizes and enlarges the scope of Article 14\textsuperscript{243}. The scope of the clause 15(1) is wide. It is attracted against any State action relating to the citizen’s rights, whether political, civil or otherwise\textsuperscript{244}.

\textsuperscript{241} AIR 1978 SC 597
\textsuperscript{242} (1991)2 SCC 604
\textsuperscript{243} Shukla, V.N., The Constitution of India, (2001) at 70
\textsuperscript{244} Ibid
4.6.3 Administrative law and its Dimensions –

Administrative law touches every facet of our lives and has become a major field of study and research. Government activities now penetrates almost each and every aspect of life and extends to the very of everyday life of an average citizen. Administration is all pervasive today. Before a person can undertake any activity he may need the sanction, permission, permit or a license from some administrative authority. The truth is that modern administration affects every individual. This raises the perennial question which has been bothering the jurists and philosophers from the dawn of the human civilization, viz., and the question of abuse or misuse of power.\textsuperscript{245} Doctrine of legitimate expectation is one of the remedy and has now emerged as an important doctrine. It operates in public domain and inappropriate cases constitute a substantive and enforceable right. As a doctrine it takes its place besides such principles as rule of law, non arbitrariness, rules of natural justice, reasonableness, fairness, promissory estoppel, fiduciary duty.\textsuperscript{246} The concept of legitimate expectation has now gained importance in administrative law as a component of natural justice, non arbitrariness and rule of law.\textsuperscript{247} The principles are at the root of the doctrine of Rule of Law which requires regularity, predictability and certainty.

4.7 Rule of Law –

The Rule of Law according to Dicey is one of the basic features of the English Constitutional system. It has a number of different meanings and corollaries. According to Edward Coke, it means: firstly, absence of arbitrary power on the part of the government, which means that the administration possesses no discretionary powers apart from those conferred by law. From this follows the corollary that no man is punishable or can be made to suffer in body or goods, except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of land.\textsuperscript{248}

\textsuperscript{245} Jain, M.P., Changing Face of Administrative Law in India and Abroad, (1982) at 2
\textsuperscript{246} Massey, I.P., Administrative Law, (2005) at 308
\textsuperscript{247} Food Corporation of India v. Kamdhenu Cattle Feed Ind (1993)1 SCC 71, 76
\textsuperscript{248} Kesari, U.P.D., Lectures on Administrative Law, (2007) at 24
4.7.1 Definition of Rule of Law -

Rule of law has been defined differently by different writers; some are of the view that sovereignty of Parliament is an illustration of the Rule of Law as it applies in the country. Garner has quoted Robsen and said the Rule of law can be explained as meaning no more than that law and order........the same law is observed throughout the territory of the State, and thus in this sense, every state having a reasonably competent and efficient police force is subject to the Rule of Law.\(^{249}\)

i) Dicey’s Meaning -

Dicey explained the following three meanings of the rule of law:

- Supremacy of law
- Equality of law
- Predominance of legal spirit\(^{250}\).

- In the words of Dicey it means, “The absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness, of prerogative or even of wide discretionary authority on the part of government”\(^{251}\).

- It means equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts, there is complete absence of any special privilege for a government official or any other person and everyone is under the same law\(^{252}\).

- The ‘rule of law’, Dicey says may be used as a formula for expressing the fact that the law of the Constitution, are not the source but the consequences of the rights of individual as defined and enforced by the courts\(^{253}\).

Harry W. Jones infers that the concept of rule of law embodies three essential ingredients\(^{254}\):

\(^{249}\) Robson, Justice and Administrative Law as quoted by Garner, J.F., Administrative Law, (1967) at 18


\(^{251}\) Ibid

\(^{252}\) Ibid

\(^{253}\) Ibid

\(^{254}\) Marry Jones, The Rule of Law and the Welfare State as quoted by Mathew, K.K., Democracy, Equity and Freedom, (1978) at 34
- Every person whose interest will be affected by a judicial or administrative decision has the right to a meaningful day in Court.

- That the deciding officer shall be independent and free from all external directions by political or administrative superiors; and

- Decision shall be reasoned rationally.

The idea of the Rule of Law, as a modern form of law of nature was formulated in some detail by the International Commission of Jurists, in their Declaration of Delhi, made at that city in January, 1959 the Declaration has been summarized as follows:

a) The function of the legislature in a free society under the Rule of Law is to create and maintain the conditions which will uphold the dignity of man as an individual. This dignity require not only certain recognition of his civil and political rights but also establishment of the social, economic, educational and cultural conditions which are essential to the full development of his personality.  

b) The Rule of Law depends not only on the provision of adequate safeguards against abuse of power by the Executive, but also on the existence of effective government capable of maintaining law and order and of ensuring adequate social and economic conditions of life for the society.

c) An independent judiciary and a free legal profession are indispensable requisites of a free society under the Rule of Law.

4.7.2 Legitimate Expectation and Rule of Law –

John Rawls says that the conception of formal justice, the regular and impartial administration of public rules, becomes the Rule of Law when applied to the legal system and he has called such fair administration of law as “justice as regularity”. He is of the view that rule of law is closely related to liberty. According to him legal system is a coercive order of public rules addressed to

256 Ibid, at 21
257 Ibid
258 Rawls, John, A Theory of Justice, (1976) at 235
rational persons for the purpose of regulating their conduct and providing the framework for social co-operation. When these rules are just they raise legitimate expectation. They constitute grounds upon which persons can rely on one another and rightly object when their expectation are not fulfilled. If the bases of these claims are unsure, so are the boundaries of men’s liberty\textsuperscript{259}. If the rules are fair or just, then once men have entered into the arrangements and accepted the benefit that result, the obligations which thereby arise, constitute a basis for legitimate expectation.

The legal order is a system of public rules addressed to rational persons, we can account for the precepts of justice associated with the Rule of Law. These percepts are those which would be followed by any system of rules which perfectly embodied the idea of a legal system\textsuperscript{260} and thereby formed the basis for the legitimate expectation.

4.7.3 The Percept of Justice Associated with Rule of Law which forms basis of Legitimate Expectation –

There are several obvious features of legal system which forms the basis for legitimate expectation. These are as follows\textsuperscript{261}:

i) The action which the Rule of Law requires and forbid should be of a kind which men can reasonably be expected to do or to avoid.

ii) The notion that ought to imply can conveys the idea that those who enact laws and give orders do so in good faith.

iii) The percept expresses the requirement that a legal system should recognize impossibility of performance as a defense, or at least as mitigating circumstances.

iv) The Rule of Law also implies the percept that similar cases be treated similarly.

v) The percept forces them to justify the distinctions that they make between

\textsuperscript{259} Ibid
\textsuperscript{260} Id., at 236
\textsuperscript{261} Id at 237-239
persons by reference to the relevant legal rules and principles.

vi) The percept demands that the laws be known and expressly promulgated, that their meaning be clearly defined, that the statutes be general both in statement and intent and not be used as a way of harming particular individuals who may be expressly named.

vii) The percepts also demands that the rules of natural justice be followed.

4.8 Locus Standi –

4.8.1 Meaning -

*Locus Standi* means the legal capacity to invoke the jurisdiction of the court. According to simple dictionary meaning it means ‘place of standing’ used to describe the right of appearing in court either as plaintiff or defendant262.

The traditional rule of *locus standi* is that judicial redress is available only to a person who has suffered a legal injury by violation of his legal right or legally protected interest by the impugned action of the State or a public authority or any other person who is likely to suffer a legal injury by reason of threatened violation of his legal rights or legally protected interest by any such action263. The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatened to the legal or legally protected interest of the person seeking such redress264. This is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born265.

The rule of law requires that poor and illiterate persons should be assisted in enforcing their rights. If the poor persons cannot enforce the right given to them by law because of poverty or other reasons, there will be no rule of law in the real sense. But the concept of *locus standi* could not meet the new challenges raised by new corners for the social rights and collective claims of the underprivileged and

262 Sinha, Hari Mohan, Legal Dictionary, (1997) at 149
263 *S. P. Gupta and Others v. President of India & others*, AIR 1982 SC 149
265 Supra note 265
deprived sections of the society.  

Along with this, there was a constant fear in the mind of jurists that the liberalization of the rule of *locus standi* will lead to a floodgate of litigation. This would lead to burdening of our judiciary a lot of useful time of our court would be wasted in entertaining these litigations. It would lead to further delay in the work of our courts which are already lagging behind.

But the argument in favor of relaxing the rule of *locus standi* is that violation of rights takes place, redressal should be there and for these traditional rules of *locus standi* should not come in the way to give justice to the aggrieved person. The traditional rule of *locus standi* was relaxed in favor of those who could not approach the court due to poverty or other reasons.

In the case *Municipal Council Ratlam v. Vardichand*, the Supreme Court allowed ‘standing’ to an ordinary citizen to initiate action under section 133 of the Code of Criminal Procedure, 1973 to initiate action. The Municipality, which failed to discharge its public duties such as maintenance of roads and providing sanitary facilities. The plea of municipality of lack of funds to carry out the amenities was rejected as an invalid defence and suggested several schemes to bring relief to the residents of the locality.

Thus, in Vardichand’s case Krishna Iyer, J. not only broadened the *locus standi* concepts but the affirmative action involved by the Court in this case opened up many new avenues for judicial action in the service of disadvantaged and deprived groups of people for whom the court had a distant dream and not a place of getting justice.

The traditional rule of *locus standi* resulted in the denial of equal access to justice to those who because of their poverty or socially or economically disadvantaged position are unable to approach the court for relief. “Lest the Golden key to unlock the doors of justice to remain only with the moneyed people”. Thus, the Supreme Court took a dynamic approach and liberalized the rule of *locus standi*

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266 Bhagwati, P.N., *Judicial Activism and PIL* (1985) at 12
267 Justice Julzapuskar has criticized the concept of PIL
268 AIR 1980 SC 1622
in a series of cases\textsuperscript{269}.

4.8.2 Legitimate Expectation and \textit{locus standi} –

Demarcating the scope of the doctrine the court hold that legitimate expectation gives sufficient \textit{locus standi} to the applicant for judicial review. The doctrine is too confined mostly to a right of fair hearing before a decision which results in negativating a promise or withdrawing an undertaking. Though the denial of legitimate expectation is a ground for the denial is arbitrary, unreasonable not in public interest and inconsistent with the principles of natural justice or where denial is in violation of a right\textsuperscript{270}.

4.9 Natural justice –

4.9.1 Procedural legitimate expectation based on Principles of Natural Justice -

Doctrine of legitimate expectation takes its place besides the principles of natural justice, rule of law\textsuperscript{271}, non-arbitrariness, reasonableness, fairness etc. As already mentioned legitimate expectation are of two types:

- Substantive legitimate expectation,
- Procedural legitimate expectation\textsuperscript{272}.

Substantive part of the principle relates to representation that a benefit of a substantive nature will be granted or will be continued\textsuperscript{273}.

The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before any change in decision is made. The procedural legitimate expectation cannot be withdrawn without giving a person some opportunity of advancing reason for contending that it should not be withdrawn\textsuperscript{274}. The fair procedural legitimate expectation will be used to denote the existence of some species of process right, whether in the form of natural justice, fairness or to a related idea of consultation, which the applicant claims to possess as the result of some behavior by the public body which generates the expectation.

\textsuperscript{269} People’s Union for Democratic Rights v. UOI, AIR 1982 SC 1473
\textsuperscript{270} UOI v. Hindustan Development Corp., (1993) 3 SCC 499
\textsuperscript{271} Supra note 256
\textsuperscript{272} Punjab Communications Ltd. V. UOI (1999) 4 SCC 727
\textsuperscript{273} Ibid
\textsuperscript{274} Ibid
Natural justice is an important component of the doctrine of legitimate expectation without following the principles of natural justice.

The minimum fair procedure which the administrative agencies have to follow refers to the principles of natural justice. Natural justice implies fairness, reasonableness, equity and equality. It represents higher procedural, principles developed by judges which every administrative agency must follow in taking any decision adversely affecting the rights of a private individual\textsuperscript{275}. Natural justice is another name for common sense justice. Rule of natural justice are not codified cannons, but they are principles ingrained into the conscience of men. Natural justice in the administration of justice is the common sense in liberal way. Justice is based substantially on natural ideals and human values\textsuperscript{276}. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form\textsuperscript{277}.

4.9.2 Natural Justice as enshrined in the constitution -

The principles of Natural Justice have enriched law and constitution the world over. Though the Indian Constitution does not use the expression natural justice, the concept of natural justice divested of all its metaphysical and theological trappings pervades the whole scheme of the Constitution. The concept of social and economic justice in the Preamble of the Constitution, conceptually speaking, is the concept of fairness in social and economic activities of society which is the basis of the principles of natural justice. Article 311 contains all the principles of natural justice without using the expression as such. Duty to act fairly is part of fair procedure envisaged under Article 14 and 21 of the Constitution\textsuperscript{278}. Every activity of a public authority or those under public duty or obligation must be informed by reason and guided by public interest\textsuperscript{279}. Exercise of jurisdiction by courts in India, in this behalf, is not something extra-constitutional. Now, the principles of natural

\textsuperscript{275} Supra note 246 at 164
\textsuperscript{277} Ibid
\textsuperscript{278} Supra note 246 at 166,167
\textsuperscript{279} \textit{LIC v. Consumer Education and Research Centre} (1995)5 SCC 482
justice are firmly grounded in Article 14 and 21 of the Constitution. With the introduction of the concept of substantive and procedural due process in Article 21 of the Constitution all that fairness which is included in the principles of natural justice can be read into Article 21 when a person is deprived of his life and personal liberty\(^{280}\). In other areas it is Article 14 which now incorporates the principles of natural justice. Article 14 now applies not only to discriminatory class legislation but also to State action, because violation of natural justice results in arbitrariness, therefore, violation of natural justice of the Equality clause of article 14. This all suggests that now the principles of natural justice are grounded in the Constitution.

There are usually two principles of natural justice. These are:

- \textit{Nemo in propria causa judex, esse debet} - rule against bias or no one should be made a judge in his own cause.

- \textit{Audi alteram partem} – hear the other party, or the rule of fair hearing, or the rule that no one should be condemned unheard.

\textbf{A. Rule against bias –}

A party cannot be judge in his own cause as it may lead to biasness. ‘Bias’ means an operative prejudice, whether conscious or unconscious, in relation to a party or issue. Such operative prejudice may be the result of a preconceived opinion or a predisposition or a predetermination to decide a case in a particular manner, so much so that it does not leave the mind open\(^{281}\). It means that a judge must be impartial. This is known as the rule against bias. That bias disqualifies an individual from acting as judge flows from two principles:

i) No one should be a judge in his own cause.

ii) Justice must not only be done but seen to be done.

An essential element of judicial process is that the judge has to be impartial and natural and to be in a position to apply his mind objectively to the dispute before him. Proceedings before a judge maybe vitiated if he is biased, if there are factors which may influence him to improperly favor one party at the cost of the other party.

\footnotesize
\(^{280}\) Supra note 246 at 167
\(^{281}\) Ibid at 179
in the dispute\textsuperscript{282}. Bias is usually of three kinds:

\begin{itemize}
  \item[a)] Pecuniary bias;
  \item[b)] Personal bias;
  \item[c)] Bias as to subject matter or policy bias\textsuperscript{283}.
\end{itemize}

\textbf{a. Pecuniary bias -}

A direct pecuniary interest, howsoever small or insignificant, will disqualify a person from acting as a judge\textsuperscript{284}.

\textbf{b. Personal bias –}

Personal biasness may rise as adjudicator may be friend or relation of the party, or has some business or professional relationship with him, or may have some personal animosity or hostility against him\textsuperscript{285}.

\textbf{c. Policy bias –}

Bias as to subject-matter or policy bias adjudicator may be associated in subject-matter as a member of association otherwise with a private body or with the administration of his official capacity\textsuperscript{286}.

\textbf{B. Audi alteram partem –}

This rule ensures that no one should be condemned unheard. It is the first principle of civilized jurisprudence that a person against whom any action is sought to be taken, or whose right or interest is being affected, should be given a reasonable opportunity to defend himself. There is no fixed standard of reasonableness of the opportunity being heard. The civil courts are bound by rules of procedure contained in the Civil Procedure Code, then the Indian Evidence Act, there is no such uniform body of procedural norms to be followed by adjudicatory bodies\textsuperscript{287}. Some of the procedures are:

\begin{itemize}
  \item \textsuperscript{283} Ibid at 231
  \item \textsuperscript{284} Ibid
  \item \textsuperscript{285} Ibid
  \item \textsuperscript{286} Ibid at 235
  \item \textsuperscript{287} Ibid at 248
\end{itemize}
a. **Notice** -

A Basic principle of natural justice is that before adjudication starts the authority concerned should give to the affected party a notice of the case against him so that he may adequately defend himself\(^{288}\). Absence of notice may frustrate expectation.

b. **Hearing** -

It is the requirement of natural justice that quasi-judicial bodies cannot make a decision adverse to the individual without providing him an effective opportunity of meeting any relevant allegations against him\(^{289}\).

c. **Right to Counsel** -

Allen says that, “experience has taught me that to deny persons who are unable to express themselves, the services a competent man is very mistaken kindness. Many times, unaided individual is no match against an expert and aided administrator. In many cases, the right to be heard would be of little avail if counsel were not allowed to appear. A lawyer can help delineates the issues, present the factual contentions in an ordinary manner, cross examine witness and otherwise safeguard the interests of the party concerned”.

In the Supreme Court case, *A.K. Roy v. UOI*\(^{290}\), it was held that if the government or the detaining authority was represented through a legal practitioner or legal advisor before the advisory board, the *detenu* will always have such a right because of Article 14 and 21.

d. **Reasoned order** -

If the deciding authority gives reasons for the decision it minimizes chances of irrelevant or extraneous considerations from entering his decisional process, and it will minimize chances of unconscious infiltration of personal bias or unfairness in the conclusion. Giving of reasons also gives satisfaction to the party against whom the decision is made. Justice should not only be done but should also see to be done.

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\(^{288}\) Id at 249
\(^{289}\) Id at 253
\(^{290}\) AIR 1982 SC 710
Unreasoned decision may be just but may not appear to be so to the persons affected. A reasoned decision, on the other hand, will have the appearance of justice.\(^{291}\)

In the *Maneka Gandhi v. UOI*,\(^{292}\) it was held that the authority is to record its reasons and furnish a copy of the same to the concerned individual on demand while impounding his/her passport. The authority may refuse to give reasons in public interest amongst other grounds. It was stated that authority would have to satisfy the court by placing proper material before it, that the giving of reasons would be clearly against the interests of the general public. If the court is not so satisfied it would require the authority to disclose the reasons.

e. *One who decides must hear* –

The position is uncertain in India but the divided responsibility of hearing and deciding violated the principles of natural justice. “This divided responsibility is destructive of the concept of judicial hearing” for in the opinion of the court, ‘personal hearing enables the authority concerned to watch the demeanors of the witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, than personal hearing becomes a formality.”\(^{293}\)

4.10 *Legitimate Expectation as a ground of Judicial Review* –

Legitimate expectation can be a major basis of judicial review of administrative action and developing sharply in recent times. The concept of legitimate expectation in administrative law has now, undoubtedly, gained sufficient importance. It is stated that the legitimate expectation is the latest recruit in a long list of concepts fashioned by the courts for the review of administrative action and this creation takes its place besides such principles as the rules of natural justice, unreasonableness, the fiduciary duty of local authorities and in future, perhaps, the

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\(^{291}\) Ibid

\(^{292}\) AIR 1978 SC 597

\(^{293}\) *Gullapalli Nageswara Rao v. APSRTC*, AIR 1959 SC 308
principles of proportionately\textsuperscript{294}.

It only operates in public law field and provides \textit{locus standi} for judicial review. Its denial is a ground for challenging the decision but denial can be justified by showing some overriding public interest. Denial does not by itself confer an absolute right to claim relief. The right to relief should be limited only to cases while denial amounts to denial of any right or where decision/ action is arbitrary, unreasonable, not in public interest and in consistent with principles of natural justice. The court will not interfere merely on the ground of change in government policy. In the instant case, question arose regarding the validity of the dual policy of the government in the matter of contract with private parties for supply of good. There was no fixed procedure for fixation of price and allotment of quantity to be supplied by the big and small suppliers. The government adopted a dual price policy, lower price for big suppliers and higher price for small suppliers in public interest and allotment of quantity by suitably adjusting the same so as to break the cartel. The court held that this does not involve denial of any legitimate expectation\textsuperscript{295}. The court observed: legitimate expectation may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of governmental activities. By and large they arise in cases of promotions which are normal course expected, though not guaranteed by way of statutory right, in cases of contracts, distribution of largess by the Government and in somewhat similar situations.

Legitimate expectation gives the applicant sufficient \textit{locus standi} for judicial review. The doctrine of legitimate expectation is to be confined mostly to right of fair hearing before a decision which results in negating a promise or withdrawing an undertaking taken. The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallized right as such is involved. The protection of such legitimate expectation does not require the fulfillment of expectation where an overriding public interest requires otherwise. In other words, where a person’s legitimate expectation is not fulfilled by taking a particular

\textsuperscript{294} \textit{UOI v. Hindustan Development Corp.} (1993)3 SCC 499

\textsuperscript{295} Ibid
decision then decision-maker should justify the denial of such of such expectation by showing some overriding public interest. Therefore, even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances which that expectation may be denied or restricted.\textsuperscript{296} Legitimate expectation being less than a right operates in the field of public and not private law and to some extent such legitimate expectation ought to be protected though not guaranteed. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfill. The protection is limited to that extent and a judicial review can be within those limits. A person, who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is foundation and thus he has \textit{locus standi} to make such a claim. There are stronger reasons as to why the legitimate expectation should not be substantively protected than the reason as to why it should be protected. Such an obligation exists whenever the case supporting the same in terms of legal principles of different sorts is stronger than the case against it. Therefore, the limitation is extremely confined and if according to natural justice does not condition the exercise of power, the concept of legitimate expectation can have no role to play and the Court must not usurp the discretion of the public authority which is empowered to take decisions under law and the Court is expected to apply an objective standard which leaves to the deciding authority the full range raise of choice which the legislature is presumed to have intended.\textsuperscript{297} Even in a case where the decision is left entirely to the discretion of the deciding authority without any such bounds and if the decision is taken fairly and objectively, the court will not interfere in the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected.\textsuperscript{298} If it is a question of policy even by way of change of old policy, the courts cannot interfere with a decision. If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same

\textsuperscript{296} Ibid
\textsuperscript{297} Ibid
\textsuperscript{298} Ibid
can be questioned on the well known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles warranting interference. It depends very much on the facts and the concepts of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in particular case, it follows that the concept of legitimate expectation is not the key which unlocks the treasury of natural justice and it ought not to unlock the gate which is shut, the court out of review on the merits, particularly when the element of speculation and uncertainty is inherent in that every concept. The court should restrain them and restrict such claims duty to the legal limitations.