CHAPTER - 7
CONCLUSION AND SUGGESTIONS

This chapter is of immense importance because it deals with the conclusion of the whole study and the suggestions which comes out of that. They have already been mentioned at the appropriate places but here an attempt has been made to put them simultaneously.

7.1 Conclusion –

The survey of this study has led to a number of conclusions about the functions and consequences of the doctrines of promissory estoppel and legitimate expectation. The administrative function of the State has increased tremendously and it requires a proper check so that there may not be abuse of the excess of power. Doctrines of promissory estoppel and legitimate expectation are the principles so evolved.

The doctrine of Promissory Estoppel is an emerging concept in the field of law. It took its present form substantially by the latter half of the 19th century. In Common Law legal system viz. the English, the American, the Australian and the Indian; this doctrine is recognized and applied by the Courts in its one or another form but the genesis remains the same, i.e., it is an equitable principle.

The analysis of the definition of estoppel though its etymological, statutory and judicial definitions, it appears that the estoppel is limited in application to the representation of the existing facts. The categorization of estoppel reveals that it has no remedy for de-fiatro relations. In order to cover such situations where representation is as to the future, the courts expounded the new principle called promissory estoppel based upon the equitable notion that a person who makes the representation must make his representation good, even if those representations are inconsistent with formally contracted rights and obligations.

Where one party has by his word or contract made to other a clear and unequivocal promise or representation which is intended to create a legal relationship or affect the legal relationship to arise in future, knowing or intending that it would be acted upon by the other party to whom the promise or representation
is made and it is in fact, so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings, which have taken place between the parties.

Broadly speaking the characteristics of promissory estoppel are substantially similar in the American, the English and the Australian Legal System. The scope of the doctrine, however, is not similar in these legal systems. Under American Legal System, the doctrine of promissory estoppel in the American Legal System does not derive its origin in any way from the decision of Denning, J. in *High Trees Case*¹, but ante – dates this decision by a number of years. Samuel Willston of Harvard Law School may be credited as the inventor of the doctrine of Promissory Estoppel in 1920. Long back in 1932, the American Law Institute’s Restatement of the law of contract in its Article 90, proposed a principle akin to the promissory estoppel, though this Article did not mention any name, yet it covers the situations like that of promissory estoppel. Under the English Legal System the application of Promissory estoppel dates back to a case decided in 1877 popularly called *Hughes*² case but it was precisely rediscovered in 1947 in *High Trees Case* and in Australian Legal System it dates back to case decided in 1983, namely, *Legione v. Hateley*³ when the doctrine of promissory estoppel was accepted by the High Court.

The essential requirement for liability on a promissory estoppel theory has traditionally been some specific action in justifiable reliance on the promise. Present trends reveal that the requirement of an identifiable detriment, no longer defines the boundary of enforceability of the promissory estoppel. It is worthwhile to say that in recent years, the courts, in U.S.A. are of the opinion that to define detrimental reliance even mere taking of action suffices and there is no need to inquire to compare the promisee’s position before and after taking action in reliance on the promise. The court has extended the doctrine of promissory estoppel beyond its traditional function of protecting a promisee that has changed his or her position for the worse as a result of the promise. Promissory estoppel conceivable only if the

¹ (1956)1 All ER 256
² (1877)2 AC 439
³ (1983)57 A.J.L.R. 292
promise has induced action or forbearance by the promisee, on the other hand, if the promisee’s action, forbearance induced the promise, the doctrine is not applicable. In English Legal System, the preponderance of the judicial opinion is that it is not necessary for the promisee to show that on reasonable reliance, he has suffered some detriment, what is necessary is, only, and that the promisee should have altered his position in reliance on the promise. Alteration of position for that purpose means that the promisee must have led to act differently from what he could have done otherwise. Like that of English and American Legal System, the Australian Legal System the Court accepted the view that it is an alteration of position coupled with material disadvantage by the promisee on reasonable reliance on the promise which makes the difference for the application of promissory estoppel and not the mere detriment or damage caused to the promisee. Promissory estoppel is distinct principle of equity which precludes in certain circumstances the enforcement of strict rights arising under a contract, where there has been a promissory representation that they would not be enforced. The importance of this principle lies in the fact that here equity comes to the relief of plaintiff who has acted to his detriment on the basic assumption in relation to which the other party to the transaction has played such a part in the adoption that it would be unfair or unjust if he were left free to ignore it.

Under American Legal System, the doctrine will not be invoked against State, when the latter is working in its governmental, public or sovereign capacity except where the fact, justified preventing fraud or manifesting injustice. Similarly, in English Legal System the Court took the view that Crown cannot take refuge under its so called privileges and escape liability. The Courts in England are all out for equity and fair deal to the citizens by the State. If an officer acting within the scope of his ostensible authority makes a representation on which another acts, then a public officer may be bound by it just as much as private concern would be. Doctrine of promissory estoppel binds both the Crown and the public authority.

In India, the application of promissory estoppel dates back to a case decided by Calcutta High Court in 1880 in the Ganges Mfg. Co. v. Sourajmul⁴ case. Though

---

⁴ (1880)ILR Cal 667 SCLR 533
this principle had its crude beginnings in Ancient History where the Hindu scriptures have lots of examples resembling promissory estoppel of today, yet as a set principle it attained its fullness in *M.P. Sugar Mill* case, when Justice Bhagwati expounded this principle. It is remarkable to note that promissory estoppel as a principle of modern age or that is to strengthen the precept “My word is my bond”.

The English decisions pertaining to the application of promissory estoppel appear to be the guiding force for the decisions in India involving the application of this doctrine. Sometimes American decisions and texts also seem to guide the Indian Courts on the subject. It is heartening to find that India has accepted the doctrine of promissory estoppel in its fullness without the shackles of the concept of consideration and where in case requirement of justice and equity warrant it may be allowed to rest a cause of action too. The principle of promissory estoppel has been developed outside the Indian Contract Act as a principle of equity and good conscience in the equity jurisprudence. As this principle was established and developed under the tutelage of Lord Denning in England, in a similar fashion, the principle of promissory estoppel attained its fullness under the guardianship of C.J. Bhagwati and the research work of Prof. I.C. Saxena, a reckoned constitutional jurist, in India. Mr. Justice Bhagwati of Supreme Court of India in a remarkable decision in *M.P. Sugar Mill* case has boldly and with great ability attempted to define the contours and demarcate the parameters of the doctrine of promissory estoppel. The learned judge has remarked that the doctrine is potentially so fruitful and pregnant with such vast possibilities or growth that it might upset existing doctrines which are looked upon almost reverentially and which have held for a long number of years. With the zeal of an iconoclast our Supreme Court has exploded and thrown light on the much debated speculation about the detriment and has very explicitly cleared up some of the confusion about it. The promissory estoppel and consideration are antithesis of each other. As a matter of principle, a promise without consideration is not enforceable and which in certain situations may cause injustice to the promisee. The doctrine of promissory estoppel has steeped in to help such a promise.

Before Independence there were two cases decided on this principle. After

\(^{5}\) (1979) SCC 409

\(^{6}\) Ibid
Independence huge mass of cases accumulated and were decided by the courts. Now
the doctrine of promissory estoppel is widely recognized in various field of law
raging from Administrative law, Law of Contract to service jurisprudence. This
principle was invoked as a safeguard against the arbitrariness, personal whims and
fancy of administrative discretion. It is applicable against the individuals, State,
Public bodies and administration, but it cannot be used to compel the State or the
public body to make law. It is not enough for the State to avoid its application by
merely pleading the harm caused to public interest but it has to place facts before the
court and has to explain and convince it that, having regard to the fact as they have
been transpired, it would be inequitable to hold the State or public bodies
answerable for the assurance, promise or representation made by it to the promisee.
The government has not been allowed to escape from its obligation under the
docine of promissory estoppel “by pleading in aid the doctrine of executive
necessity”. Because the Government is not exempt from liability to carry out the
representation made by it as to its future conduct and it should not on some
undefined and undisclosed ground of necessity or expediency fail to carry out the
promise solemnly made by it, nor claim on an ex parte appraisement of the
circumstances in which the obligation has arisen.

Public bodies are as much bound as private individuals to carry out
representations of facts and promises made by them, relying on which other persons
have altered their position to their position to their prejudice. In India, the courts
have rightly opined that for the progress of our nascent democracy, different
standards of conduct for the people and the public bodies should not ordinarily be
permitted.

In India, the doctrine of promissory estoppel has completely been established
in the field of promises made for charitable subscription, and administrative law.
The pre – ponderance of Indian Judicial opinion lies in the facts that like those of the
English, the Australian and the American Legal System, the pre – existing legal
relationship or pre – existing contractual relationship need not be essential for its
application. In Indian Legal System, like the legal system of America, England and
Australia, it is not the detriment, prejudice damage or disadvantage but the alteration
of position is an indispensible requisite condition of promissory estoppel. It is not necessary to prove further any damage, detriment or prejudice to the party asserting the promissory estoppel when government wants to resile from its promise that the promisee has attained substantial benefit after altering his position on the assurance and he is misusing the assurance or promise, then the government has to prove the facts in a Court. Promissory estoppel is being used by the Indian Courts to deter a promisor from changing his mind when the other party has bonafidely changed his position.

In case of government contract certain formalities as required vide the provisions of Article 298 and the Article 299 of the Constitution of India is to be satisfied by the parties making contract. State being a legal person has to act within the limits and on the basis of the law regulating its contractual behavior, whereas as, the natural person has comparatively more liberty in their contractual behavior. The court has time and again reiterated its position that contractual formalism under Article 299(1) is mandatory and is inserted to protect general public. In view of the provisions of Article 298 and 299 of the Constitution of India, the government is not ordinarily liable for its informal promises unless it is coupled with the circumstances giving rise to the application of doctrine of promissory estoppel. The government cannot be allowed to refuse to perform its informal promises if the mutual conduct necessitates the application of promissory estoppel on some excuses of certain undisclosed grounds. Where a party who has, acting in reliance on a promise or representation made by the government altered his position is entitled to enforce the promise or the representation against the government even though the promise or a representation is not in the form of formal contract as required by Article 299 of Constitution of India, Article 299 of Constitution does not militate against the applicability of the doctrine of promissory estoppel against the government. In this way, in India, the supremacy of the rule of law is maintained in which nobody howsoever high or low, is above the law. Anyone is subject to the law as fully and completely as any other private individual and the government is no exception.

Under certain situations however, the doctrine of promissory estoppel cannot be invoked against the government, such as it cannot be applied against the State in
exercise of its legislative functions and discharge of its functions under the law. It
cannot be applied to remove the *vires* of the Act. Whereas the liability or obligation
is imposed by Statute, or where there is a statutory prohibition or where there is no
representation or promise made out by the government, the principle of promissory estoppel does not apply. The doctrine does not operate at the level of government policy; however it operates against public authority in minor matter of formality where no question of *ultravires* arises. Where there is fraud or collusion and when the public interest is affected on the application of promissory estoppel, and when it would be inequitable to endorse the doctrine, the doctrine of promissory estoppel would not be applicable.

The doctrine of promissory estoppel has no doubt grown in dimensions over the years but its expansion has not come to an end either in the Indian Legal System or in the American, the English and the Australian Legal System as well.

Doctrine of Legitimate expectation supposes to protect the expectation which is raised due to the representation or promise which is raised due to the representation or promise by an administrative officials and the person has altered his position. Secondly, it may arise due to the existence of a regular practice which the claimant can reasonably expect to continue.

The doctrine of legitimate expectation though of recent origin but its principles where widely applied in the history both in India and England. In England, the Kings gradually tried to bring the country under the umbrella of one single law and single judicial system. With the advent of time there were legislations in England so that the situation of chaos may be removed. The introduction of writs was a milestone in English Legal System. Natural justice was too practiced in England.

Similarly in India, the King was not the supreme but he was under an obligation to follow it in early vedic period and Dharma in later vedic period. Duty has been cast upon the King to protect his subject and to act judiciously. There were the directions of all the ancient law givers whether it is Manu, Vashistha or Kautilya. The King could not act arbitrarily but his decisions were supposed to be based upon the principles of Natural Justice.
Similarly in the Medieval Era; this was the reign of the Muslim rulers, the Muslim too considered King as the servants on the earth who were responsible to see that the Law of God is properly obeyed. The King and the subject were on the same footing as far as applicability of the law was considered. The Muslim rulers such as Akbar, Shahjahan, and Jahangir were known for the high standard adopted by them to administer justice. The officials’ of the Court were also accountable.

The British era made an altogether change in the judicial system in India. With the advent of the British, English legal system was introduced in India. It removed the chaos already existing in India where numbers of personal laws were in existence and even the barbaric forms of punishment were practiced. The British initially very cautiously applied the same rules which were in existence but gradually as Supreme Court was established and thus formed basis for strong judiciary and the recommendations of the Law Commission for codified laws were accepted. And the results are Indian Penal Code, Code of Criminal Procedure etc. which were mostly based on the rules of natural justice.

With the independence of India, Constitution was adopted and it had in Article 14, the ground for the doctrine of legitimate expectation. Constitution through various provisions has been successful to fulfill the expectation of the millions of the people.

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.

Constitution was enforced with objectives of justice – social, economic and political, equality of status of opportunity, freedom of thought, expression, belief, faith worship, vocations. These objectives are clearly being laid down in the Preamble. With the enforcement of the Constitution it was the end of tyranny, misery of the Indians and rule of law was established.

Article 14 guarantees Right to Equality and it is this Article which has in itself the root of doctrine of legitimate expectation. As the equality is the greatest expectation of a man that regardless of their differences all men shall be treated at par.
Article 14 when interpreted broadly strikes at arbitrariness, unreasonableness which is the basic principles of legitimate expectation. It has also been declared that arbitrariness in State action is violative of Article 14 of the Constitution (the right to equality). The doctrine requires regularity, predictability and certainty in government’s dealing with public.

Right to Equality also provides scope for protective discrimination for the socially economic backward classes as they are not able to participate in the socio-economic activities of the nation on an equal footing.

Article 19 provides certain freedoms but these freedoms are not absolute as they are subject to reasonable restriction. The term reasonable is very wide and this creates space for reasoned decision. Along with it, it also minimizes the arbitrariness which is generally expected as a legitimate expectation. But the widest article is right to life. Life has various dimensions which can be earning livelihood, speedy trial, healthy environment etc. though Right to life can be curtailed but the proper procedure has to be followed which again assures that the legitimate expectation of one that he would be given proper opportunity to present his case before any adverse decision against him is taken.

Constitution not only provides certain fundamental right but has also provided with remedy in the form of writs in case the fundamental rights are being violated. Even the locus standi has been relaxed in order to mitigate corruption, or to seek social justice.

As the Fundamental Rights are guaranteed but the Directive Principles of the State Policy are not enforceable but these are the pointer to the government to act towards the achievement of goals of social, economic and political justice and the realization of the reasonable expectation of common citizens of the country.

Therefore, it can be said that Constitution has provided within it ample scope for the protection of the legitimate expectation of the general people. Administrative law has the immense use of the doctrine of legitimate expectation as this doctrine is evolved to check the arbitrary, unreasonable decisions and abuse of the power by the administrative authority.

As discussed earlier doctrine of Legitimate Expectation has its place besides
Rule of Law, Natural Justice, and Promissory Estoppel etc. Rule of Law as explained to mean is that the same law is being observed throughout the territory of the State. It is also closely related to the liberty and when the rules are just they raise legitimate expectation. These expectations are that enactment of law and order given will be in good faith. All the cases will be treated similarly. The laws enacted will be properly publicized and that the principles of natural justice will be followed. These all expectations are genuine and necessary for the establishment of Rule of Law.

Natural justice is very similar to the procedural legitimate expectation. Procedural legitimate expectation and natural justice both are grounded in Article 14 and hence can be said to be inter twined. It is quite impossible to discuss procedural legitimate expectation separately from the natural justice. Both these principle demands for fairness in any kind of decision and act as a tool against arbitrariness, biasness, unreasonableness and abuse of power. The principles followed are rule against biasness and audi alteram partem. The procedural part of legitimate expectation relates to a representation that a hearing or other appropriate procedure will be afforded before decision is made.

The substantive part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit that it will be continued. Similar is the principle of promissory estoppel and therefore it can be said that the substantive legitimate expectation is entangled with doctrine of promissory estoppel.

Doctrine of legitimate expectation though a new recruit but has grown immensely. It operates in public law filed and also provides locus standi for judicial review. When the legitimate expectation is denied it creates a ground for challenge but legitimate expectation is not guaranteed it can only be protected. Legitimate expectation can be denied when there lies some overriding public interest.

The scope of the duty to observe the requirements of procedural fairness is now extremely wide. It is well – established that the duty extends to virtually every exercise of a statutory power which might have an adverse effect of an individual unless there is a very clear legislative indication to the contrary. The doctrine of legitimate expectation contributed to the expansion of the duty to observe the
requirements of natural justice by extending the duty beyond the relatively narrow range of rights and interests to which natural justice had traditionally applied.

Further expanding the scope of the doctrine in *Punjab Communication Limited v. Union of India*\(^7\) the court observed that the legitimate expectation might be procedural and substantive both. 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 substantive part of the principle relates to the representation that a benefit of a substantive nature will be granted or will be continued. Procedural legitimate expectation cannot be withdrawn without giving a person some opportunity of advancing reason for contending that it should not be withdrawn. In the same manner substantive expectation cannot be withdrawn unless some rational grounds for withdrawing it has been communicated to the person and on which he has been given an opportunity to comment. The principle of legitimate expectation in the substantive sense that the decision – making authority can normally be compelled to give effect to his representation unless overriding public interest demands otherwise has become the part of Indian Law, no matter it has still not been accepted in many jurisdictions.

The doctrine has been recognized by Singapore Courts also in both procedural and substantive dimensions. Nonetheless the scope of the doctrine in Singapore is not clear due to the dearth of cases and lack of definite pronouncements by the Court in judgments that have been rendered. Whether the Courts will adopt the UK approach with regard to measuring Legitimate Expectation with the ruler of proportionality remains an open question.

The doctrine of Legitimate Expectation has developed in Britain over the last forty years. Time to time the Courts dealt with the situations which generate legitimate expectation and lead to the implication of a duty of procedural fairness when a decision is at the discretion of an administrative body. First, where the nature of the interest is such that the person has a right to expect that the privilege will continue (as in, e.g., the case of a license) a hearing of some sort is required before

\(^7\) AIR 1999 SC 1801: 1999 AIR SCW 1394
the benefit can be withdrawn. Second, if the decision maker has made a representation that a procedure in accordance with natural justice will be followed, this will be respected. In addition, if there is a regular practice of according a hearing or other in the future. Finally, if a representation is made that a certain decision will be made or certain criteria will be applied, the agency will be bound to accord natural justice to a person before applying different criteria or making a different decision. Nevertheless, the British cases have been careful to avoid specific definitions of what constitutes a Legitimate Expectation, so there has never been a clear, coherent judicial definition of the legal doctrine.

Although legitimate expectation is generally considered to have begun its development in Canada in the late 1980’s and early 1990’s the phrase itself appeared in some earlier decisions. Several cases considered the application of the doctrine in the sense in which it was originally developed in the British Cases, as a device for determining whether a duty of fairness was owed. In 1990’s the Supreme Court of Canada first ruled on the issue of legitimate expectation in Old St. Boniface. In this case Sopinka, J. in obiter, confirmed the doctrine’s place in Canadian law and proceeded to give a basic definition of it. He held:

“The principle developed in these cases is simply an extension of the rules of natural justice and procedural fairness. It affords a party affected by the decision of a public official an opportunity to make representations in circumstances where there otherwise would be no such opportunity. The Court supplies the omission where, based on the conduct of the public official, a party has been led to believe that his or her rights would not be affected without consultation”.

But Sopinka, J. did not even consider whether applying the duty of fairness to legislative functions might be a possible ‘extension’ of the duty of fairness. Legitimate expectation is best seen as a doctrine whose function is to increase the content of the duty of fairness where a certain procedure has been regularly followed, or a representation has been made to the plaintiff.

In Australia, the duty to observe the requirements of procedural fairness is now extremely wide. It is well – settled that the duty extends to virtually every exercise of a statutory power which might have an adverse effect on an individual
unless there is a very clear legislative indication to the contrary. Initially, the
doctrine was not accepted as part of Australian Law. But, with the passage of time
the doctrine managed to make its place in the Australian legal system.

The doctrine of legitimate expectation was authoritatively accepted as part of
South African administrative law in the landmark case of *Administrator, Transvaal
v. Traub*<sup>8</sup> in 1989. In that case Chief Justice Corbett extended the scope of
application of the rules of natural justice, specifically the *audi* principle, beyond the
traditional “liberty, property and existing Rights” formula to cases where something
less than an existing right, a legitimate expectation, required a fair procedure to be
followed. This acceptance followed the trend in other Commonwealth jurisdictions
to extend the application of the rules of natural justice and hence afford greater
procedural protection to individuals affected by administrative decisions. It is now
an established principle of South African administrative law that a person, who has a
legitimate expectation, flowing from an express promise by an administrator or a
regular administrative practice, has a right to be heard before administrative action
affecting that expectation is taken. The doctrine, has however, by and large,
remained one that provides procedural in South Africa. In a number of recent
decisions by South African Courts, ranging from the High Court to the Supreme
Court of Appeal and the Constitutional Court, there have been increasing calls for
the application of legitimate expectation beyond procedural claims.

The analysis of South African law shows that substantive legitimate
expectation is still in an early stage of development. This doctrine is only starting to
find its way into South African Law. The courts have suggested that a careful
analysis of the development of the doctrine in English Law is required before it can
be accepted in South African Law.

7.2 *Promissory Estoppel related to Legitimate Expectation* –

As being already said that the doctrine of legitimate expectation is a
principle evolved, to check the abuse of the exercise of administrative power. The
doctrine of legitimate expectation can be enforced against the administrative

---

<sup>8</sup> 1989(4) SA 731(A)
authorities on the following occasion.

When the administrative authority promises certain privilege or benefit or concessions to the public but later on refuses to provide these benefits then to compel the administration to fulfill its promises the doctrine of promissory estoppel is applied. In the case *National Building Construction Co. v. S. Raghunathan*\(^9\), the Supreme Court held that enforcement of any legitimate expectation required:

- Reliance on representation
- Resultant detriment.

And in the case *Punjab Communications Ltd. v. Union of India*\(^10\), the Apex Court observed that legitimate expectation may be procedural and substantive both. The procedural part is already being discussed the substantive nature will be granted or will be continued. The substantive expectation like that of promissory estoppel cannot be withdrawn unless some rational grounds for withdrawing it have been given an opportunity to comment. The principle of legitimate expectation in a similar way to promissory estoppel can compel any decision – making authority to give effect to his representation unless overriding public interest demands otherwise.

This new doctrine of legitimate expectation is the by-product of a synthesis between the principle of administrative fairness (a) component of the principles of natural justice and (b) the rule of estoppel also the essence of this doctrine has much in common with natural justice and promissory estoppel\(^11\).

### 7.3 Common features of Promissory Estoppel and Legitimate Expectation –

Legitimate expectation shares much in common with the promissory estoppel:

1. Both the promissory estoppel and legitimate expectation aims at achieving fairness in administrative action\(^12\).
2. Legitimate expectation as well as claim for promissory estoppel arises when an authority makes certain representation and later on withdraws the

---

\(^9\) (1998)7 SCC 66  
\(^10\) (1994)4 SCC 727  
\(^12\) Annual Survey of Indian Law, (1999) at 16
representation\textsuperscript{13}.

3. Person who seeks to invoke this doctrine must be an aggrieved person and should have altered his position acting upon state action or inaction\textsuperscript{14}.

4. The limits of the doctrine of legitimate expectation and promissory estoppel are that government can revoke the earlier promise on the ground of public interest\textsuperscript{15}.

5. The demand of right of legitimate expectation and promissory estoppel must be reasonable\textsuperscript{16}.

7.4 Differences between Doctrine of Promissory Estoppel and Doctrine of Legitimate Expectation –

1. The doctrine of legitimate expectation is a new recruit to the administrative law while doctrine of promissory estoppel is a settled law.

2. The doctrine of legitimate expectation cannot be claimed but promissory estoppel can be claimed under Indian Evidence Act, 1872 under section 115.

3. A person may has a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in law to receive such treatment whereas estoppel is studied in the law under the Indian Evidence Act, 1872.

4. The doctrine of legitimate expectation being an equity doctrine, will be invoked only wherever equity so demands and its application cannot be reduced to the rule of the thumb.

7.5 Judicial behavior towards both doctrines –

Promissory Estoppel –

The concept of promissory estoppel has assumed importance. In all too simple words a promissory estoppel is said to arise when there is a promise should

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{13} Annual Survey of Indian Law, (1996) at 19
\item \textsuperscript{14} Annual Survey of Indian Law, (1997)
\item \textsuperscript{15} Supra note 7
\item \textsuperscript{16} Ibid
\end{itemize}
\end{footnotesize}
reasonably expect to induce action or forbearance of a definite and substantive character on the part of a promisee and which does not induce such action or forbearance and such promise is binding if injustice can be avoided only by enforcement of the promise. The principle which Supreme Court enunciated in various cases was that even though the case would not fall within the terms of Section 115 of the Indian Evidence Act which relates to the rule of Estoppel, still it would be open to a party who had acted on a representation made by the Government to claim that the Government should be bound to carry out the promises made by it even though the same was not reduced in the form of a formal contract as required by Article 299 of the Constitution.

i) **Necessary to prevent fraud** – As a general rule the doctrine of promissory estoppel would not be applied against State in its governmental, public or sovereign capacity. However, where it is necessary in order to prevent fraud or manifest injustice this doctrine will be allowed\(^\text{17}\).

ii) **Ultra vires act of Government officer** – When the officer of the government acts outside the scope of his authority, the plea of promissory estoppel is not available. The doctrine of *ultra vires* will come into operation and the government cannot be held bound by the unauthorized acts of the officers\(^\text{18}\).

iii) When there is fraud or collusion the doctrine does not operate\(^\text{19}\).

iv) **No application on Government Policy** – The doctrine of promissory estoppel does not operate at the level of government policy. However, it operates against public authority in minor matter of formality where no question of *ultra vires* arises\(^\text{20}\).

v) When the governmental and executive functions are performed by an authority in consonance with the existing circumstances, accords with public policy and in the interest of public order and peace and harmony, the doctrine

---

\(^{17}\) *Union of India v. Godfrey Philips India Ltd.* (1985)4 SCC 374

\(^{18}\) *Valsona Vich v. United States*, 335 FR (2d) 96 USA, AIR 1986 No. C 100(Kant)


\(^{20}\) *Express Newspaper Pvt. Ltd. v. UOI* (1986) SCC 133
of promissory estoppel cannot be invoked\textsuperscript{21}.

\textbf{vi)} In \textit{Mahavir Auto Stores v. Indian Oil Corp. Ltd.}\textsuperscript{22} it was held that the doctrine of promissory estoppel is also not invoked where there is no promise or representation intended to create legal relations or effect a legal relationship to arise in future.

\textbf{vii)} Doctrine of promissory estoppel is not available to acts of Parliament because there is no representation.

\textbf{viii)} In \textit{Delhi Cloth and General Mills Ltd. v. Union of India}\textsuperscript{23}, it was held that the Doctrine of Promissory Estoppel cannot be invoked if it is found to be inequitable or unjust in its enforcement.

\textbf{Legitimate Expectation –}

Legitimate expectation as already has been explained that it is a new recruit in the Indian Judicial System and has been accepted by the Courts with a great applaud. Legitimate expectation has its root in the Article 14 of the Constitution and its constitutional and administrative perspective has been studied. But as already said that legitimate expectation cannot be guaranteed it can only be protected and it is protected by the judiciary. Hence, it becomes important to study the judicial behavior towards the doctrine of legitimate expectation. The teeth of doctrine of legitimate expectation have been sharpened by the judiciary.

\textbf{i)} \textbf{Promises to be fulfilled} – In the case of \textit{State of Kerala v. K.G. Madhavan Pillai}\textsuperscript{24}, it was held that 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. Legitimate expectation of fair hearing may arise by a promise or by an established practice.

\textbf{ii)} \textbf{Legitimate Expectation cannot Defeat a legislation} – In the case, \textit{Sri Srinivasa Theatre v. Government of Tamil Nadu}\textsuperscript{25}, it was held that legitimate

\begin{itemize}
  \item \textsuperscript{21} \textit{S. Sukhdev Singh Gill v. State of Punjab}, AIR 1986 P&H 167
  \item \textsuperscript{22} AIR 1989 Delhi 328
  \item \textsuperscript{23} 1988 (1) SCC 86
  \item \textsuperscript{24} (1988) 4 SCC 669: AIR 1989 SC 49
  \item \textsuperscript{25} AIR (1992) SC 999
\end{itemize}
expectation cannot be brought into defeat or invalidate a legislation. It may at most be used against an administrative action, and even there it may not be indefeasible right.

   **iii) Doctrine of Legitimate Expectation imposes duty to act fairly** – In, *FCI v. Kamdhenu Cattle Feed Industries*\textsuperscript{26}, it was held by the Hon’ble Supreme Court that all public authority has a duty to act fairly and to adopt a procedure which is fair play in action. They must give due weight to the legitimate expectation of the person. The expectation of claimant is reasonable or legitimate is to be determined not according to the claimant’s perception but in larger public interest.

   **iv) Legitimate Expectation is protected not guaranteed** – It was held that legitimate expectation is something different from a wish, desire or hope in the case *Union of India v. Hindustan Development Corporation*\textsuperscript{27}. It can only be inferred if it is founded on sanction of law or custom of an established procedure followed in regular and natural sequence. Legitimate expectations may have various forms and exist in different kind of circumstances. It is not possible to give an exhaustive list. It gives sufficient *locus standi* for judicial review & is mostly confined to fair hearing before a decision which results in negative a promise or withdrawing an undertaking. It is less than a right and operates only in field of public law. It was also held that legitimate expectation is protected not guaranteed as it can be denied by giving same overriding public interest.

   **v) Legitimate expectation arise only at express promise or past practice** – In *Modern City Wine Merchant Assn. v. State of Tamil Nadu*\textsuperscript{28}, it was held that legitimate expectation arises in the following situations –

   ➢ If there is an express promise given by a public authority; or

   ➢ Because of the existence of a regular practice which the claimant can reasonably expect to continue; or

   ➢ Such an expectation must be reasonable.

   However, if there is a change in policy in public interest the position is altered

\textsuperscript{26} AIR 1993 SC 1601
\textsuperscript{27} (1993)3 SCC 499
\textsuperscript{28} (1994)5 SCC 509
by a rule or legislation, no question of legitimate expectation would arise.

vi) Public Interest outweighs Legitimate Expectation – In the case of *Ghaziabad Development Authority v. Delhi Auto & General Finance Pvt. Ltd.*29, the Supreme Court held that Legitimate Expectation is a part of the rule of non Arbitrariness to ensure procedural fairness of the decision and requirements of public interest can outweigh the legitimate expectation of private person.

vii) No Legitimate Expectation in case of Mistaken advice – In the case of *Hira Tikoo v. Union Territory, Chandigarh*30 on a representation that the land is available for allotment of industrial plots, the allottees staked their money and plans for setting up their industries. The representation was misleading. It was held that the doctrine of legitimate expectation and estoppel cannot be applied against the administration to compel it to allot the original plot.

viii) No role in formulation of policy decisions under law – The question in the case *Jitendra Kumar v. State of Haryana*31 was whether newly elected Government in the State of Haryana could suspend recruitment process by reducing cadre strength from 300 to 230 and denying the appointments to candidate who had already been selected by the public service commission. The Hon’ble Supreme Court held that legitimate expectation is different from anticipation, desire or hope. It is grounded in the rule of law but in this case where there were already more officers than required so the change in policy is valid therefore it cannot be invalidated.

ix) Policy supercedes expectation - The claim by the appellants for resitement of Petrol Pump was rejected in the case *M/S. Sethi Auto Service Station v. Delhi Development Authority*32, as there was change in policy and also the earlier policy did not cast any obligation upon the DDA to re – locate the petrol pump as it only lays criteria for re – location.

x) Legitimate expectation also exist in Medical Services – In the case *Malay Kumar Ganguly v. Sukumar Mukherjee*33, it was held that legitimate

---

29 AIR 1994 SC 2263
30 (2004)6 SCC 765
31 (2008)2 SCC 161
32 AIR 2009 SC 904
33 AIR 2010 SC 1162
expectation is raised by the reputation of the doctor and hospital. Therefore, it imposes a duty to take care in Medical services so in this case compensation amount equivalent to Rs. 6,00,000/- was ordered.

So to sum up it follows that the twin doctrines of “promissory estoppel” and “legitimate expectation” are just overlapping and areas of their operation can only be thinly delineated. Promissory estoppel arises when there is a promise which promises or should reasonably expect to induce action or forbearance of a definite and substantial character or part of promisee and which does induce such action or forbearance, and such promise is binding if injustice can be avoided only by enforcement of promise and the legitimate expectation would arise when there is an express promise given by a public authority that there is a regular practice of certain things which the claimant can reasonably expect to continue. The concept of legitimate expectation consists of inculcating an expectation in the citizen that under certain rules and schemes he would continue to enjoy certain benefits of which he would not be deprived unless there is some overriding public interest to deprive him of such expectation. In legitimate expectation doctrine no crystallized right is involved and a claim based on merely legitimate expectation without anything more cannot ipso facto give a right.

The emerged doctrines of promissory estoppel and legitimate expectation in administrative law interplay and interact but nevertheless they could be invoked if the benefits are withdrawn without a change in industrial policy warranted by the dictates of overriding and supervening public equity and if such an administrative act smacks of arbitrariness and malafides of ulterior criteria. The opportunity of hearing need not be given to the affected persons and that the power of the Court to review such administrative action is restricted by legal limitations as evolved by judicial verdicts but then the reasons for withdrawal must be spelled out and be fair, reasonable and non – arbitrary. It may be concluded that the newly emerged concepts of promissory estoppel and legitimate expectation has undoubtedly gained sufficient importance. In the modern progressive society with fast changing social values and new economic orders these doctrines can play an important role.
7.6 Suggestions –

From the broad survey of the cases decided by the application of promissory estoppel, it appears that a large number of them are either against the government or by the government. It maybe a case against the taxation authorities, collectorate or textile department or department granting lease or license or against a department declaring some scheme or projecting assurance, against the administrative order or actions, which prejudicially affects a citizen right. But on the whole, it appears that the government forms a major part of Administrative law. It is suggested that to cover the spate of cases against the administration there should be legislation on promissory estoppel, and its place should be made in the administrative law, for this doctrine is based on the principle of equity, good conscience and fairness, which is similar to the principle of natural justice. As in administrative law, natural justice is pleaded; promissory estoppel having the same basis can be including in the administrative law as an administrative estoppel. By virtue of this legislation moral value could be revitalized in the commercial society and by such principle of good faith and honesty the injustice can be curbed. It is the need of the time too. This will satisfy the notion.

“My word is my Bond”, irrespective of the fact whether there is consideration to support it”.

It is further suggested that we should stop being so conveniently judgmental about the immunity of the concept being challenged, the Government, which resorts to withdraw the held out promise just usually, crawls with the hidden reasons and misconducts withdrawal proceedings. It is therefore suggested that the beneficiaries must challenge the unilateral withdrawal of concessions invariably on grounds of arbitrariness. We are ashamed of the Governments that take political decisions ignoring what is expedient in public good or industrialization of the State. Motivation for industries has its roots in incentives and sanctions, when neither is invoked there is no fire in the belly of an organization. The corporate world of today cannot meet the cut-throat global competition unless it is promised and provided sops concessions and incentives and which are not withdrawn without cogent reasons and public expediencies. If we have to be a part of global economy, we shall
have to follow its rules. The dilemmas of “to be or not to be” must end up for good. The authorities must be compelled to fulfill the promises.

Following suggestions about the effective implementation of Doctrine of Legitimate Expectation are made:

i) The essential principles of natural justice are to be followed by an authority dealing with any case. The following procedure must be followed:

➢ The person affected shall be given an adequate notice of the case against him. Notice must be adequate;
➢ he must be given an opportunity to make a representation; and
➢ the authority conducting the proceedings must not be biased and should act in good faith.

ii) The rules of natural justice or legitimate expectations are not embodied rules. It is open to the authority concerned to evolve its own procedure. The procedure followed may vary with the facts of the case and circumstances. So, there should be some set of rules for the uniform application of the doctrine.

iii) The administrative authority must fulfill their promises as it is the foremost requirement in democratic country. Otherwise people will lose faith on government officials which will be a situation of chaos as most of citizens’ decisions are dependent on government policies.

iv) Oral hearing, opportunity to cross-examine and right to legal representation which are indispensable requisite of judicial proceeding should also be followed in administrative proceedings.

v) The person against whom decision is to be taken should be given adequate opportunity to present his case and argue in favors of himself.

vi) The Courts should evolve a differential attitude while dealing with cases of legitimate expectation as it is difficult to decide whether to protect expectation or the public interest.

vii) It is also a matter of serious concern as to the applicability of such a concept as legitimate expectation in the arena of private laws. This is certainly a
matter of jurisprudential exploration, and what comes out as a consequence of such exploration should be applied, as far as, possible, on the present contemporary laws to make them more conducive and in tune with the vibrant and stupendous culture as they aim to represent.

viii) For all practical purposes, it has thus become possible to bring an individual within the genus of ‘State’ in order to apply the principle of administrative law like the notion of ‘legitimate expectation’.

ix) Party election manifestos released on the eve of polls make a slew of promises to the voters, most of which either go unfulfilled or left incomplete, even though, these may have helped the parties win polls. But, once elected to power there is no accountability for the politicians for the next five years – at the most they lose power for a few years till they make a comeback with a new set of promises, playing with the trust of the voters once again.

So, it is the need of the hour that the politicians must be made accountable for this “breach of trust” by making manifestos a legal document challengeable in the court of law. It is the legitimate expectation of the people that on which promises they choose the candidate and party those promises would be kept by them. But, when they don’t keep their words the confidence and trust of people breaks down.

If these suggestions are implemented this would be a step towards the strengthening of public confidence in the transparent administration of the public officers. And then we don’t see the day far when we will achieve the real goals set in the Constitution of India.
BIBLIOGRAPHY

BOOKS –


Austin, G.: The Indian Constitution.


Baxi, Upendra: Development in Indian Administrative Law in Public Law in India (1982, A.G. Noorani, Ed.).

Baxi, Upendra: Indian Supreme Court and Politics, (1980).
Bhagwati, P.N.: Judicial Activism and PIL (1985), Jagrut Barat, Dharwal.
Davis on Administrative Law, 3rd Ed.
Erichsen and Martens: Administrative Law.
Pvt. Ltd., New Delhi.
Jain, M.P.: Changing Face of Administrative Law in India and Abroad; (1982).
Jauhari, Manorama: Politics and Ethics in Ancient India, A Study based on the Mahabharata, (1968), Bhatriya Vidya Prakashan, Varanasi.


Philips O. Hood: Constitutional and Administrative Law.
Schwartz, Bernard: American Constitutional Law, (1955); Cambridge University Press.
Setalvad, M.C.: The Common Law in India.
Singh, Dr. Devinder: An Introduction to Administrative Law, First ed. 2007, Allahabad Law Agency.
Wade & Phillips: Constitutional Law.

ARTICLES –

Jain, Shantimal, ‘To Be or Not To Be’, All India Reporter Journal, 2005, pg. 349.


Constitution is Supreme; Judicial Review is a Basic Feature, The Business Standard, Wednesday, September 6, 2006.

REPORTS –

Annual Survey of India (1996), The Indian Law Institute, New Delhi.
Annual Survey of India (1997), The Indian Law Institute, New Delhi.
Annual Survey of India (1998), The Indian Law Institute, New Delhi.
Annual Survey of India (2004), The Indian Law Institute, New Delhi.
DICTIONARIES –

Judicial Dictionary.
P. Ramanath Aiyer’s The Law Lexicon, Reprint 2002.
Wharton’s Law Lexicon (1980).

NEWSPAPERS –

The Hindustan Times
The Indian Express
The Times of India
The Tribune.

MAGAZINES –

India Today
Lawyers Update
LawZ
The Practical Lawyers

INTERNET/WEBSITES –

http://www.britanica.com
http://www.constitutionofindia.nic.in
http://www.indiatimes.com
http://www.manupatra.com
http://www.supremecourtofindia.nic.in
http://www.timesofindia.com
http://www.wikipedia.com