SUMMARY OF THESIS

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 functions of the State are increasing tremendously and it requires a proper check so that there may not be abuse of the excess of administrative powers conferred by the Constitution. The doctrines of Promissory Estoppel and Legitimate Expectation are evolved to achieve these principles.

The present study has been divided into seven chapters. Chapter-I is devoted to the introduction of Promissory Estoppel and Legitimate Expectation and other provisions of the Constitution regarding equality & Rule of Law.

Administrative law as a separate branch of legal discipline especially in India came to be recognized only in the middle of 20th century. Today the administration is ubiquitous and impinges freely and deeply on every aspect of an individual’s life. With the growth of the huge global administrative space due to globalization of economy administrative law has developed global dimensions.

In an absolutist State, whether of the feudal, the monarchical, the communist or the fascists’ pattern, the dichotomy of public and private law makes no sense, even though, in modern system of this kind, it may be maintained as a matter of form. Ultimately all law dissolves into administrative discretion.

A State is defined in International law as “an independent political entity” “occupying a defined territory” “the members of which are united together for the purpose of resisting external force and preservations of internal order”. This statement lays stress on what may be called ‘police function’ of the State, viz., preservation of law and order and defence of the country from external aggression. It needs to be emphasized however that no modern State today rest content with such a limited range of functions. A modern State does not rest content with being merely a ‘police’ or ‘law and order’ State. It is much more than that. It tends to become a social welfare State.

The legal system of a country is divisible into – i) Law governing the State; ii) Law by which the State governs or regulate the conduct of its members. Laws
like Contract, Torts, Property, Criminal law fall in the second category. Constitutional law, Administrative law and Public International Law fall in the first category. These are laws which seek to govern the State. Laws governing the State fall in the category of Public law. Laws governing the affairs of the citizens fall in the category of Private law. The ideals of Legal system can be achieved only with the Supremacy of Rule of Law. Rule of Law has no fixed or articulate connotation though the Indian courts refer to this phrase time and again. The broad emphasis of Rule of Law is on absence of any center of arbitrary and unlimited power in the country, on proper structure and control of power, absence of arbitrariness in the Government. Government intervention in many daily activities of the citizens is on the increase creating a possibility of arbitrariness in the State action. Rule of law is useful as a counter to this situation, because the basic emphasis of Rule of Law is on exclusion on the part of the Government.

Rule of law does not rule according to statutory law pure and simple, because such a law may itself be harsh, inequitable, discriminatory or unjust. Rule of law connotes some higher kind of law which is reasonable just and non-discriminatory. Rule of law today envisages not arbitrary power but controlled power. Constitutional values, such as constitutionalism, absence of arbitrary powers in the government, liberty of the people; an independent judiciary etc. are imbibed in the concept of Rule of Law.

The two great values which emanates from the concept of Rule of Law in modern times are:

i. No arbitrary government; and

ii. Upholding individual liberty.

A significant derivative from ‘Rule of Law’ is judicial review. Judicial review is an essential part of Rule of law. Judicial review involves determination not only of the constitutionality of the law but also of the validity of administrative action. The actions of the State public authorities and bureaucracy are all subject to judicial review; they are thus all accountable to the courts for the legality of their actions. In India, so much importance is given to judicial review that it has been characterized as the ‘basic feature’ of the Constitution, which cannot be done away with even by
the exercise of the constituent power.

The doctrine of equality before law is a necessary corollary of Rule of Law which pervades the Indian Constitution. The Constitution guarantees the Equality before law through Article 14. Equality is one of the magnificent corner-stone of Indian democracy.

The concept of Promissory Estoppel and Legitimate expectation are now gaining importance in administrative law as components of natural justice, non - arbitrariness and Rule of Law.

The Doctrine of Promissory Estoppel is premised on the conduct of the party making representation to the other so as to enable him to arrange his affairs in such a manner as if the said representation would be acted upon.

Doctrine of Legitimate Expectation supposes to protect the expectation 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 except to continue.

Both of these doctrines are to be invoked as a safeguard against the arbitrariness, personal whims and fancy of administrative discretion.

Researcher has tried to delve into the concept of Judicial Review of Administrative Action in the 2nd chapter. Judicial review is the power of courts to review statutes and the governmental action to determine whether they confirm to rules & principles laid down in constitution. Judicial review is based on the idea that a constitution which dictates the nature, functions and limits of a government – is the supreme law. Consequently, any action by a government that violates the principles of its constitution is invalid. In judicial review court is not concerned with the merits of the correctness of the decision, but with the manner in which the decision is taken or order is made.

The system of judicial review of administrative action has been inherited from Britain. It is on this foundation that the Indian Courts have built a superstructure of control mechanism. The whole law of judicial review of administrative action has been developed by judges on case to case basis. Judicial
review is an example of the functioning of separation of power in a modern government system (where the judiciary is one of three branches of government). This principle is interpreted differently in different jurisdictions, which also have differing views on the different hierarchy of government norms. As a result the procedure and scope of judicial review differ Country to Country and State to State. Constitutional judicial review is usually considered to have begun with the assertion by Chief Justice Marshall of the United States (1801-35), in *Marbury v. Madison*¹, that the Supreme Court of the United States had the power to invalidate legislation enacted by congress.

Judicial review is a procedure in English administrative law by which the courts supervise the exercise of public power on the application of an individual.

Unlike the U.S., the constitution of India explicitly establishes the Doctrine of Judicial Review in several Articles, such as, 13, 32, 131-136,143,226 & 246. The doctrine of judicial review is firmly rooted in India, and has the explicit sanction of the constitution. The courts in India are thus under a constitutional duty to interpret the constitution and declare the law as unconstitutional if found to be contrary to any constitutional provision. The underlying object of judicial review is to ensure that the authority does not abuse its power and the individual receives just and fair treatment and not to ensure that the authority reaches a conclusion which is incorrect in the eye of law.

The power of judicial review is an integral part of our constitutional system and without it, there will be no government of laws and the rule of law would become a teasing illusion and a promise of unreality. The judicial review, therefore, is a basic and essential feature of the constitution and it cannot be abrogated without affecting the basic structure of the Constitution.

The ultimate scope of judicial review depends upon the facts and circumstances of each case. Judicial review of administrative action can be exercised on following grounds:

i. Illegality – It means decisions or actions taken should be within the scope of

¹ 1Cranch 137 : 2L Ed 60
the relevant statutory or non-statutory legal powers.

ii. Irrationality – It means decision makers must not exercise their powers in a wholly unreasonable or irrational way.

iii. Procedural impropriety – Decision – makers must act fairly in reaching their decisions. This principle applies solely to the matters of procedure as oppose to considering the substance of the decision reached.

iv. Proportionality – This principle provides that some object ought to be sufficient but not excessive for the purpose of achieving that object.

v. Legitimate Expectation – This principle may be recognized by the court as a result of an express promise, assurance or representation by the decision maker. It may also be inferred by the court from the past practice or the conduct of the decision maker.

Chapter-III deals with the Doctrine of Promissory Estoppel, its origin, application, historical retrospect and modern development. The principle of promissory estoppel is an emerging concept all over the world in both common legal systems as well as in civil legal systems. Though this principle is of an ancient origin, yet it has not been developed to an extent to which the other branches of law have been developed in modern times.

The principle of promissory estoppel in its present form has evolved through the various judicial pronouncements, the credit for propounding this principle, must go to Lord Denning. He reformulated and reshaped the crude principle into a recognized doctrine in the High Tree case\(^2\), from thereon, it saw many ups and downs and slowly but steadily found acceptability and sought versatility as a principle of equity under various legal systems.

The Doctrine provides a safeguard against the exercise of arbitrary powers on the part of the executive or unreasonable use of discretion. By virtue of promissory estoppel, the credibility of Government promises is maintained.

The conceptual origin of doctrine of promissory estoppel in English legal system dates back to the year 1877, when Lord Crains for the first time made

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\(^2\) (1947) 1 KB 130
reference to the broad rule of justice in Hughes v. Metropolitan Railway Co. case\textsuperscript{3}. The doctrine burst into sudden blaze in 1946 when Lord Denning in Central London Property Trust Ltd. v. High Trees House Ltd.\textsuperscript{4} highlighted this principle.

In Australia, the doctrine of promissory estoppel is of recent origin. It was in 1983 when in Legione v. Hateley \textsuperscript{5}, the High Court considered the doctrine extensively. In latest decision in Walton Stores case\textsuperscript{6}, the Australian High Court held that the doctrine of promissory estoppel can be used both sword as well as defense and in circumstances where neither a pre-existing contractual relationship exist between the parties.

In the Indian legal system, the conceptual origin of promissory estoppel can be traced to as far back as 1880 to Ganges Manufacturing Co. v. Sourujmull\textsuperscript{7}, but English decision pertaining to the application of Promissory Estoppel propounded by Lord Denning in Central London Property Trust v. High Trees Houses Ltd.\textsuperscript{8}, appears to be guiding force for the decisions in India. This doctrine came in full bloom in Union of India v. Anglo Afghan Agencies\textsuperscript{9}. As this principle was established and developed under the tutelage of Lord Denning in England, in a similar way, the principle of Promissory Estoppel attained its fullness under the guardianship of C.J. Bhagwati in Motilal Padampat Sugar Mills Co. Ltd. v. Union of India\textsuperscript{10}. In this case 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.

The doctrine of promissory estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negative. In Union of India v. Anglo Afghan Agencies Ltd.\textsuperscript{11}, the Supreme Court

\textsuperscript{3} (1877)2 App. Cases H.L. 448
\textsuperscript{4} (1947) 1 KB 130
\textsuperscript{5} (1983)57 A.L.J.R. 292 at 303
\textsuperscript{6} (1986)76 ALR 513
\textsuperscript{7} (1880)ILR 5 Cal 667
\textsuperscript{8} (1947)1 KB 130
\textsuperscript{9} AIR 1968 SC 718
\textsuperscript{10} AIR 1979 SC 621
\textsuperscript{11} AIR 1968 SC 718
applied promissory estoppel against the Government on equitable grounds. It was in this case the doctrine found its most eloquent exposition.

In chapter-IV researcher has discussed the origin of Doctrine of Legitimate Expectation. The researcher has also tried to elaborate that how the principles of natural justice lay the foundation for this doctrine.

Doctrine of Legitimate Expectation is one such principle which is being evolved to redress the public when their expectations 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.

Doctrine of Legitimate Expectation supposes to protect the expectation which is raised due to the representation or promise by an administrative official 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 was first used by Lord Denning in *Schmidt v. Secretary of State for Home Affairs*<sup>12</sup>. This doctrine has now flourished tremendously in India in recent times. This reference was first found in *State of Kerala v. K.G. Madhavan Pillai*<sup>13</sup>.

This doctrine has its roots in the Article 14 of the Indian Constitution, which abhors arbitrariness and insists on fairness in all administrative dealings. It is firmly sure that the protection of Article 14 is available only in case of arbitrary ‘class legislation’ but also in case of arbitrary ‘state action’. The doctrine of legitimate expectation contributes 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.

Legitimate expectation is becoming a major basis of judicial review of administrative action and developing sharply in recent times. The concept of

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<sup>12</sup> (1969)1 All ER 904 (CA)

<sup>13</sup> AIR 1989 SC 49
legitimate expectation in administrative law has now, undoubtedly, gained sufficient importance. Legitimate expectation gives the applicant sufficient *locus standi* for judicial review.

In chapter-V the researcher has examined the case laws to conceptually analyze the doctrine and tried to find out the related speculations. The concept of legitimate expectation arises from administrative law, a branch of public law. In proceedings for judicial review, it applies the principles of fairness and reasonableness to the situations or interest in a public body retaining a long standing practice or keeping a promise.

The Doctrine of Legitimate Expectation has its place besides Rule of Law, Natural Justice and Promissory Estoppel etc. This doctrine has two aspects – procedural and substantive. The procedural aspect of it relates to a representation that a hearing or other appropriate procedure will be afforded before any decision is made. The substantive aspect of the doctrine overlap with the doctrine of promissory estoppel with the difference that is promissory estoppel, there is a promise on behalf of the authority whereas in legitimate expectation, disappointment is caused by sudden change of policy or procedure.

The judicial motivation for seeking to protect such expectation is plain: if the executive undertakes, expressly or by past practice, to behave in a particular way the subject expects that undertaking to be complied with. That is surely fundamental to good governance and it would be monstrous if the executive could freely renge on its undertakings. Public trust in the government should not be left unprotected.

Chapter-VI of the study discusses the global aspect of the doctrines of promissory estoppel and legitimate expectation. The applicability and development of both these doctrines under various legal systems of different countries has also been discussed.

The growth of public administration has become a universal phenomenon of contemporary society although both speed and manner of its development have varied greatly from country to country. A minimum of administration is, of course, inherent in the very notion of the government.
In America the legal system has always given chance for adjustment and growth than elsewhere. The doctrine of promissory estoppel has displayed remarkable vigor and vitality in the hands of American Judges and is still rapidly developing and expanding in this country. This doctrine has been widely used in the United States, however not only to support plaintiff’s cause of action, but in cases in which there is no previous contractual relationship between the parties. It may be noted that doctrine of promissory estoppel does not purport to enforce all promises. Only those promises which are likely to and gratuitous have induced reliance of a substantial character are within the scope of promissory estoppel and then only when the need to avoid ‘injustice’ demands their inclusion. Purely gratuitous promises are not now enforced in American legal system.

Promissory estoppel in U.S.A. is to leave the gap between the mere promise and the bargain. In this gap the doctrine can operate rationally, logically and usefully as a means of protecting justifiable reliance and avoid injustice.

In England too, promissory estoppel being a principle evolved by equity to avoid injustice and in fact, it is neither in the realm of estoppel nor of the contract. The basis of the doctrine is inter – position of equity and law. Equities has always stepped into mitigate the rigors of strict law i.e. to mitigate the rigor caused under certain circumstances by the requirement of consideration in every enforceable promise.

The principle of promissory estoppel coined by the court helped to narrow the gap between the strict rules of law and social necessities of the 20th century.

The doctrine of promissory estoppel has undergone considerable development under the tutelage of Lord Denning. In 1877, Lord Crain stated this doctrine in its earliest form in Hughes v. Metropolitan Railway Company\(^\text{14}\), but it could not be accepted for long. Then in 1947 in High Trees case\(^\text{15}\) it became a recognized doctrine. The modern history of promissory estoppel (of dispensation of the requirement of consideration in cases of modification or discharge of contract under certain circumstances) starts with this celebrated case.

\(^{14}\) (1877)2 AC 489  
\(^{15}\) (1947) KB 130
There has been a sense of inevitability about the acceptance of the doctrine of promissory estoppel as forming part of Australian Law. In *Legione v. Hateley*\(^{16}\) the High Court considered the doctrine extensively. The court held that it to be an essential element that the promisee must have adopted the promise ‘as the basis of action or inaction’ and thereby placed himself ‘in a position of material disadvantage’ if the promisor were allowed to withdraw, without notice, the promised indulgence.

The doctrine of legitimate expectation has developed in Britain over the last forty years. The first appearance of legitimate expectation was in the judgment of Lord Denning in *Schmidt v. Secretary of State for Home Affairs*\(^{17}\).

In Singapore, the doctrine of legitimate expectation protects 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 Courts in judgments that have been rendered. This doctrine was first applied in *Re Siah Moori Guat*\(^{18}\) case.

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. The doctrine of legitimate expectation was authoritatively accepted as part of South African administrative law in the landmark case of *Administrator, Transvaal v. Traub*\(^{19}\). 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.

Researcher has made an attempt to draw the conclusion and suggestions in the last chapter-VII of the study. The conclusion has been drawn regarding the judicial position and utility of the doctrines in the administration of public offices and suggestions for the effective implementation of these doctrines to achieve the constitutional purposes set under various provisions. The researcher has found that

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\(^{16}\) (1983)57 A.L.J.R. 292

\(^{17}\) (1969)2 Ch. 149 (C.A.)

\(^{18}\) (1988)2 S.L.R. (R) 165, H.C.

\(^{19}\) 1989 (4) SA 731 (A)
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.

While doing the survey of the decided cases it was found that the large number of cases is either against the government or by the government, which prejudicially affects the rights of citizens. It is suggested that to cover the spate of cases there should be legislation on promissory estoppel, and it should have its place in administrative law. It should be included in the administrative law as administrative estoppel. It is the need of the time too. It will satisfy the notion. It is further suggested that the rules of natural justice or legitimate expectation are not embodied rules. It is open to the authority concerned to evolve its own procedure. The procedure followed may vary with the facts and circumstances of the case. So, there should be some set of rules for the uniform application of the doctrine.

This research work focuses on the concepts of promissory estoppel and Legitimate Expectation, their roles in the modern administration. As both of these doctrines proves a boon for the common person to bring transparency in the administration. The judiciary has played and is playing vital role while applying these doctrines in such a liberal way to fix the accountability of the administration towards the public.

It must always be remembered that a step taken into a new direction is fraught with the danger of being a likely step in a wrong direction. In order to be a path breaking trend it must be a sure step in the right direction. Any step satisfying these requirements and setting a new trend to achieve justice can alone be a new dimension of justice and a true contribution to the growth and development of law meant to achieve the ideals of justice.