CHAPTER – I
INTRODUCTION

Administrative law as a separate branch of legal discipline especially in India came to be recognized only in the middle of 20\textsuperscript{th} 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.

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. The most ardent advocates of 
\textit{laissez-faire} policy concede to government the minimum functions of defence, administration of justice and policy. But, regardless of the political philosophy, the needs of an increasingly complex society have forced upon one country after another a multiplicity of additional functions: to the protection of elementary standards of health and safety, both for the public in general and employees – which accounted for the first major growth of public services in 19\textsuperscript{th} century England – were rapidly added a vast number of additional social services from elementary measures of public assistance to the highly diversified social-security systems of the mid 20\textsuperscript{th} century; the supervision of public utilities, labour relations and many other economic and social processes intimately affecting the public interest. In times of war and emergency, a multitude of controls over supply and distribution of essential commodities and products further enlarges the functions of the Government.

Beyond the irreducible minimum imposed by external conditions, the type and direction of the administrative function is influenced by the political and economic system of the country. The conduct of major economic enterprise became an administrative function: contracts of supply between the State-owned corporations producing commodities and manufactured goods are at once civil and administrative functions. Managers and other personnel are not only in the civil relationship of servants to masters, but also in the disciplinary relationship of public officials to their superiors.
1.1 The need for a system of Public Law –

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.

From very different premises, the idea of dichotomy of public and private law, with the former representing a system of norms regulating the legal relations between public authority and the individual, has been opposed by three major legal thinkers of the western world, vastly though they differ from each other in background and philosophy. The French legal philosophy and constitutional lawyer, Leon Duguit, opposed the dualism of public and private law in the name of ‘social solidarity’, which demanded that all, governors and governed alike, were subject to the same principle of services to the community. From the stand point of a hierarchy of legal norms in a system of ‘pure science of law’, Hans Kelson opposes the division of public and private law, as being contrary to the ‘step by step’ unfolding the legal norms from the ultimate Grundnorm to the individual decisions of administrative authorities and private parties alike. Coupled with this, however, is a consideration of political theory, which sees in the development of administrative law an entrenchment of public authority in a position of superiority and arbitrariness as against the private citizen?

Neither of these two influential legal theorists has prevented the continuous growth of highly developed system of administrative law in the civil law jurisdictions, buttressed by a complete hierarchy of administrative courts. Far more influential has been the opposition of the English jurists Dicey to any system of droit administratif in England, as being contrary to the spirit and tradition of the common law.

For Dicey the ‘Rule of law’ has three aspects: first, no man is punishable except for ‘a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land’, and therefore the rule of law is not consistent with arbitrary ‘or even wide discretionary authority on the part of the Government’. In the second place, the rule of law means the equal subjection of all classes to the ordinary
law courts and therefore a rejection of so called administrative justice applied by special tribunals on the continental model. The third aspect of Dicey’s rule of law means in essence a historic generalization: in English law, private individual rights derive from court precedents rather than from constitutional codes. This quite clearly applies only to Britain itself and would have no application to a state which like Australia, is governed by a written Constitution, or Canada, which since 1960, has had a bill of rights, let alone to the United States, whose Constitution embodies a comprehensive catalogue of individual rights.

It is no exaggeration to say that the views of this eminent jurist played a considerable part in delaying the growth, not of administration, but of the administrative law in the common law world, for several decades. Yet, almost simultaneously with the publication of the first edition of Dicey’s Law of the Constitution, in 1885, his great contemporary, Maitland, clearly saw the growth of administrative law in England, the growing importance of ‘the subordinate Government of England’.

That Dicey ignored the than prominent privileges and immunities of the Crown, that he completely misunderstood the French droit administratif which, far from protecting Governmental arbitrariness, had already gone far and has since gone further in the legal protection of the citizen against such arbitrariness, has been pointed out by many contemporary critics of Dicey’s theory (Jennings 1959; Robson 1951; Wade 1959; Allen 1967; Hamson 1954). For an understanding of the essential conditions of a system of Administrative Law, it is perhaps more important to point out the basic fallacy in Dicey’s juxtaposition of two principles: one expresses the need for restraint of the arbitrary power of the Government; the other says that there must be ‘equal subjection of all classes’ to ‘the ordinary Courts’. Even within the formulation of these two principles, Dicey makes some questionable assumptions. The equation of ‘arbitrary’ with ‘wide discretionary’ powers of government is one of the few examples of the modern administrative process would except without severe reservations. Again, the identification of ‘ordinary’ courts with the common law

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1 For a recent discussion of the head for a system of Public Law in the UK, see Mitchell [The state of Public Law in the UK, 15 Int * Comp. L.Q. 133(1966)]
tradition assumes a *priori* that no differently constituted courts, including courts of
the eminence, expertise, and judicial independence of the French *Counsel d E’stat*,


The deeper fallacy of Dicey’s assumptions lies in his contention that the rules
of law demands full equality in every respect between government and subjects or
citizens. But it is inherent in the very notion of government that it cannot in all
respect be equal to the governed, because it has to govern. In a multitude of ways,
government must be left to interferer, without legal sanctions, in the lives and
interest of citizens, where private persons could not be allowed to do so with
impunity. To some extent, the range of these immunities is expressed in the
‘prerogative’ of the Crown, or in the equivalent French concept of *actes de
Gourvenement*. Declarations of war, or other military interventions, diplomatic
relations including the recognition of government, may or may not be subject to
legislative control, but they cannot form the subject of individual actions, even
though incalculable damages may be inflicted on millions of individuals as a result
of irresponsible action by the executive. No action may be brought for loss of life,
limb or property, as the result of foreign policy decision, although most States, in
and after last world war, enacted certain legislation compensating citizens for war
damages. The refusal of Anglo-American Courts to examine or question the
recognition of foreign States or Governments is another indication of this basic
distinction between Government and Citizen. It goes, however, beyond the
international sphere, where the border line between Governmental freedom and legal
responsibility has to be drawn, is the key problem of administrative law. But we can
only begin to understand it after having accepted, unlikely Dicey, that inequality
between government and citizens are inherent in the very nature of political society.

Although the struggle against a system of administrative justice had its
counterparts on the continent2, Continental jurisprudence, following the French
model, has long established full-fledged system of administrative justice, which
have come to be recognized as bulwarks against arbitrary administrative power, and


2 See the famous controversy in Germany between Bachr (1864), who wanted to subject all public
law to civil law and procedure and von Gneist (1868), who advocated a system of administrative
justice.
not, as contended by Dicey or Kelson, as legitimized oppressions of the individual.

In the Common Law world, there has been a belated and hesitant, but now increasingly accepted, development of a system and science of administrative law\(^3\). In England a parliamentary Commissioner for administration has been created and the Law Commission has begun to study the need for a system of administrative law. The definition of the sphere of administrative law has, however, especially in the United States, tended to remain narrowly confined to procedural methods and safeguards. This distinguishes the American science and doctrine of administrative law and to a far lesser extent, that of English administrative law from the continental conception of administrative law. As even a cursory survey of any of the leading texts (Waline 1963; Forsthoft 1958) will show, the discussion of remedies and procedures against administrative authorities, and the system of administrative justice, occupies only one, and not the major part of administrative law. For the greater part, continental administrative law is concerned with such matters of substance as public law contracts domains and principles of public ownership, principles of legal responsibility on the part of Government and other public authorities. By contrast, in the common law world, many of the vital problems of public law have to be culled from scattered decisions, standard conditions of government contracts and other material found in the case books and textbooks on contract, tort or property, which in turn, largely fail to analyze the public law problems as such. Because such limitation greatly impede the understanding of the essential characteristic of public law, a necessarily cursory survey of some of the substantive as well as of the procedural problems of administrative law will be attempted, on a comprehensive basis.

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

\(^3\) See, for the United States, the treaties by Davis (1958, 1959) or Gellhorn and Byse (1970); for England, Griffith and Street (1967); for Australia, Benjafield and Whiteore (1970).
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 in the government, liberty of the people; an independent judiciary etc. is imbibed in the concept of Rule of Law.

The Supreme Court has invoked the Rule of Law several times in its pronouncement to emphasize upon certain Constitutional values and principles. For example, in Bachan Singh⁴, Jt. Bhagwati has emphasized that Rule of Law excludes arbitrariness and unreasonableness. To ensure this, he has suggested that it is necessary to have a democratic legislature to make laws, but its power should not be

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⁴ AIR 1982 SC 1325: (1982)3 SCC 24
unfettered, and that there should be an independent judiciary to protect the citizen against the excesses of executive and legislative power.

Emphasizing upon the value of Rule of Law, Khanna, J., observed in *A.D.M. Jabalpur v. Shukla*:

“Rule of Law is the antithesis of arbitrariness……. Rule of law is now the accepted norm of all civilized societies……. Everywhere it is identified with the liberty of the individual. It seeks to maintain a balance between the opposing notions of individual liberty and public order. In every state the problem arises of reconciling human rights with the requirements of public interest. Such harmonizing can only be attained by the existence of independent courts which can hold the balance between citizen and the State and compel Governments to confirm to the Law”.

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 account able 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”.

A Constitution bench of the Supreme Court has declared in no uncertain terms that equality is a basic feature of the Constitution and although the emphasis in the earlier decisions evolved around discrimination and classification, the content of Article 14 got expanded conceptually and has recognized the principles to comprehend the doctrine of promissory estoppel non-arbitrariness, compliance with

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5 AIR 1976 SC 1207; (1976)2 SCC 521
rules of natural justice eschewing irrationality etc.\(^6\).

If there is no affection of a vested right, the question of applicability of Article 14 would not arise. Such an absolute proposition is inconsistent with the recognition by the Supreme Court in or in many of its earlier judgments in relations to promissory estoppel and legitimate expectation which are not only much short of indefeasible right but were evolved to protect a person from unfair or arbitrary exercise of power\(^7\). Moreover, Article 14 itself confers a ‘vested’ Fundamental right and it is difficult to appreciate the logic behind the enunciation.

Article 14 bars discrimination and prohibits discriminatory State action. The horizons of equality as embodied in Article 14 have been expanding as a result of the judicial pronouncements and Article 14 has now come to have a “highly activist magnitude”.

The concepts of ‘Promissory Estoppel’ undue enrichment and restitution and the ‘Legitimate Expectation’ are abstract, ambiguous and nebulous, nonetheless they are vastly important in administration of administrative and commercial laws and an enlightened and inquisitive remedy seeker could lift the veil and discover ample legal relief.

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. The core of the doctrine is ‘faith of the people’ in governance which has assumed tremendous importance in this era of global economy. Estoppel in Black’s dictionary is indicated to mean that a party is prevented by his own acts from claiming a right to the detriment of the other party who has entitled to rely on such conduct and has acted accordingly.

This doctrine of promissory estoppel was first propounded by Hon’ble J. Denning in Central London Property Trust v. High Trees Houses Ltd.\(^8\), the facts of the case were D leased a block of flats in London from C in 1937. When war broke out, many flats were left empty as people were evacuated to escape bombings. C

\(^6\) M. Nagraj v. UOI, (2006/8) SCC 212; AIR 2007 SC 71
\(^7\) Food Corporation of India v. Kamdhenu Cattle Feed Industries, AIR 1993 SC 1601
\(^8\) 1947 KB 130
agreed to reduce the rent by half if D stayed. D paid the reduced rent until the end of the war, and C than claimed for the “arrears”. J. Denning “discovered “ the doctrine of promissory estoppel, and said that although C were once again entitled to the rent originally agreed after the war ended, they could not go back on their promise to accept a reduced rent for earlier years.

When a party to a contract makes a promise to the other, which he knows will be acted on, that he will not enforce his strict legal right; the equitable doctrine of promissory estoppel makes that promise binding on him until such time as he gives reasonable notice of his intention to resume those rights.

Denning, J., said that had Central London sued for the arrears for the years 1940-1945 it would have failed. It would have been stopped from going back on its promise to accept a reduction in rent, even though that promise had not been supported by any consideration from High Trees because to hold otherwise would have been unjust.

The Doctrine of Estoppel is a rule whereby a party is precluded from denying the existence of some state of facts which he had previously asserted and on which the other party had relied or is entitled to rely on. The doctrine of promissory estoppel has been evolved by Courts, on the principle of equity, to avoid injustice. This doctrine is now well established in the field of administrative law.

1.2 Applicability of the Doctrine of Promissory Estoppel –

The doctrine of Promissory Estoppel applies to Government and public authorities however it would yield where equity so demands. But it is equally settled that this doctrine cannot be used to compel the Government or public authorities to carry out a representation or promise which is prohibited by law or which was beyond the power of the officer making it. It will also not apply to government of public authority if a larger public interest so demands.

In India, judicial behavior clearly indicated that estoppel would not be available against the government in violation of a statute. In Mathura Prasad & Sons v. State of Punjab9 and Narinder Chand v. Lt. Governor10, the Supreme Court

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9 AIR 1962 SC 745
held that estoppel is not available against the Government if the representation is in violation of a tax law. Judicial behavior in India further indicates that estoppel cannot be applied against the Government if it jeopardized the Constitutional powers of the Government. The same opinion was reaffirmed with great vigor in *State of Kerala v. Gwalior Rayon Silk Mfg (Wvg.) Co. Ltd.*\(^\text{11}\) the facts of this case were that the Gwalior Rayon Co. established its factory in Kerala with the understanding that the government would supply the raw material i.e. pulp. Later when the government showed its inability to supply the necessary raw material, it entered into an agreement with the company to the effect that the company could purchase its own forest land for drawing raw material and that the government would not interfere with such land for a period of 60 years. Acting on this agreement, the company invested 5 lakhs of rupees and purchased 30,000 acres of land. Later on, acting in pursuance of a law passed by the State Legislature, the Government acquired the land for agrarian reforms before the expiry of 60 years. The Supreme Court summarily dismissed the plea of Estoppel against the Government cannot abdicate their legislative powers by mere agreement.

Cases like above are not difficult to imagine, where non-application of estoppel against the government creates real hardship for the persons who acts on its advice or representation. Therefore, in such situations, the court on the basis of Equity may relief. In *Union of India v. Anglo Afghan Agencies*\(^\text{12}\), the court gave a significant judgment. The facts of this case are that the Textile Commissioner published a scheme of export promotion and represented to the exporter of woolen goods that they would be entitled to import raw material of the total amount equal to 100% of the F.O.B. value of exports. In the instant case, the respondent exported goods worth Rs. 5 lakhs but the commissioner issued an import license for 1.99 lakhs only. On the order being challenged, the government took the plea that the scheme is merely administrative in character and, therefore, not binding on the government. The Supreme Court rejected the contention and held that even if the scheme has no statutory force the government is not entitled to break promises at their whim.

\(^{10}\) (1971)2 SCC 747: AIR 1971 SC 2399
\(^{11}\) AIR 1973 SC 2734
\(^{12}\) AIR 1968 SC 718
In Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.\textsuperscript{13}, the Supreme Court held that the Doctrine of promissory estoppel is not really based on the principle of estoppel, but it is a doctrine evolved by equity in order to prevent injustice. There is no reason why it should be given only a limited application by way of defense. It can be the basis of cause of action.

This view was further reinforced in Express Newspaper (P) Ltd. V. Union of India\textsuperscript{14}, wherein doctrine was used to preclude the government from quashing the action of the Minister for approval of a lease as it was within the scope of his authority to grant such permission. Thus the fraud on the exercise of power was checked.

The doctrine of promissory estoppel cannot be invoked to enforce a promise contrary to law. Therefore, if the promise is statutorily prohibited or is against public policy the court will not enforce it against the government where the prescribed mode of recruitment any promise of appointment by promotion if given by the administrative authority cannot be enforced against it. In the same manner if the representation made by the government though \textit{bona-fide} but is not legally enforceable, the court would not enforce it.

In all the important judgments, the trend is that the doctrine of promissory estoppel is enforceable against the government. In England the judicially favored view is that the Crown is not immune from liability under the doctrine of promissory estoppel. In America, though there is no express decision of the U.S. Supreme Court regarding the enforceability of this doctrine against the government, however, the trend in the state courts is strongly in favor in of the application of the doctrine against the government and the public bodies where the interest of justice, morality and common fairness clearly dictate such a course.

In applying this doctrine, no distinction can be made between exercise of a sovereign or governmental function and a trading and a business activity of the agreement. Whatever is the nature of the function which the government is discharging, the government is subject to the rule of promissory estoppel and if the

\textsuperscript{13} AIR 1979 SC 621
\textsuperscript{14} AIR 1986 SC 872
essential ingredients of this rule are satisfied the government can be compelled to carry out the promise made by it\textsuperscript{15}.

1.3 Applicability of the Doctrine of Legitimate Expectation in India –

This doctrine has flourished tremendously in India in recent times. This reference was first found in \textit{State of Kerala v. K.G.Madhavan Pillai}\textsuperscript{16}. In this case the government had issued a sanction to the respondent to open a new unaided 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 principle of natural justice. The Court held that the sanction order created legitimate expectation in the respondent which was violated by the second order without following the principles of natural justice which is sufficient to vitiate an administrative order. This doctrine again showed triumph in \textit{Scheduled Caste and Weaker Section Welfare Association v. State of Karnataka}\textsuperscript{17}. In this case government had issued a notification notifying areas where slum clearance scheme will be introduced. However, the notification was subsequently amended and uncertain 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 can not be denied without a fair hearing.

The concept of legitimate expectation has now gained importance in administrative law as a component of natural justice, non-arbitrariness and Rule of law.

In \textit{Union of India v. Hindustan Development Corporation}\textsuperscript{18}, the court explained the clear meaning and scope of this doctrine. The court held that 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 a natural and regular sequence. The expectation should be justifiable, legitimate and protectable.

\textsuperscript{15} Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., AIR 1979 SC 621
\textsuperscript{16} AIR 1989 SC 49
\textsuperscript{17} (1991)2 SCC 604
\textsuperscript{18} (1993)3 SCC 499
The doctrine of legitimate expectation confers upon person a right which is enforceable in case of its denial. Though the denial is a ground for challenging an administrative action but the court will not interfere unless this denial is arbitrary, unreasonable, not in public interest, and inconsistent with the principles of natural justice or where denial is in violation to a right.

The principle of natural justice have enriched law and constitutions the world over. Article 14 of the Indian Constitution applies not only to discriminatory class legislation but also to arbitrary or discriminatory State action, because violation of natural justice is violation of the Equality clause of Article 14.

Principles of natural justice are judge made rules and still continue to be classical example of judicial activism. These principles are attracted whenever a person suffers a civil consequences or a prejudice is caused to him by any administrative action. Loss of ‘legitimate expectation’ also attracts the principles of natural justice.

The law is clear on the point that the cases which are classified as ‘duty to act fairly’ which simply means that the administrative authority must act justly & fairly and not arbitrarily or capriciously.

There exist vast areas of administrative and executive functions of the administration wherein a person does not claim a right but still has legitimate expectations of receiving a benefit or a privilege. It is in this area though there is no duty of the administration to act judicially but certainly there is a duty to act fairly. ‘Legitimate Expectations’ though cannot defeat or invalidate legislation but may vitiate an administrative action. Therefore, when persons enjoys certain benefits or advantages under a policy of government, even though they may not have a legal right, cannot be deprived of their legitimate expectation by changing the policy without following the principles of fair hearing. However, denial of legitimate expectation can be justified by overriding public interest. Relief in such cases would be limited only to cases where it amounts to a denial of a right or where action is arbitrary, unreasonable and not in public interest.

However, if a right has already been vested it can not be divested by executive action exercised under statutory or executive powers. Doctrine of
legitimate expectation would preserve such right. Therefore, if the tax exemption it is for a fixed period and conditions for exemption have also been fulfilled, withdraw of an exemption cannot affect the already occurred right. In this manner a right can be preserved also by the invocation of the doctrine of promissory estoppel. However, it is to the contrary to the provisions of law because application of the doctrine against constitutional or statutory provisions is in impermissible in law. Doctrine of legitimate expectation is now considered to be a part of natural justice also. If a person is given to understand that a benefit given would not be taken away without complying with the principles of natural justice, benefit cannot be taken away without complying with the requirements of natural justice.

With the growth of administrative law there need to control the possible abuse of discretionary powers by the administration. In the chain of evolving principles the latest is the doctrine of public accountability. The basic purpose of the emergence of the doctrine is to check the growing misuse of power by the administration and to provide speedy relief to the victims of such exercise of power. The doctrine is based on the premise that the power in the hands of administrative authorities is a public trust which must be exercised in the best interest of the people. Therefore, the trustee (public servant) who enriches himself by corrupt means holds the property acquired by him as a constructive trustee.

Unfortunately, today, though there is too much talk about public accountability, too little coherent institutional response is available, and whatever response is available, that of the judiciary, it is also slow and variegated. Furthermore, when the system speaks in double tongue it further erodes its credibility. Accountability simply means that if a public officer abuses his office, either by an act or omission or commission, and in consequence of that there is an injury to an individual or the public at large, he must be held responsible for it.

To meet the standards of public accountability the Right to Information Act, 2005 played a very vital role. This Act has become a cause of public action Preamble of the Act provides for setting up the practical regime of Right to Information for all citizens to secure assesses to information under the control of public authorities in order to promote transparency and accountability in the working
of every public authority. Thus the Act aims at making Government a participating Government. Present law converts ‘freedom of information’ into a ‘right of information’ for all the citizens.

1.4 Balance between Individual Interest & Public Interest-

As said, the doctrine is based on equity or obligation in certain situations, court has to strike a balance between individual interest and the larger public interest. Since ‘public interest’ is the *suprema tex* it can override individual equity. This principle was applied by the Hon,ble court in *M.P.Mathur v. DTC*[^19^]. In this case, the court allowed the Delhi Transport Undertaking which had promised transfer of certain tenements owned by it but given to the employees on their retirement, to withdraw from promise because the tenements were needed to provide accommodation for the existing workforce. Thus by balancing the equities the court did not apply the doctrine of promissory estoppel. This proves that an administration can change its policy, at any time, in public interest provided there is no bias, discrimination and arbitrariness. The same principle was applied in *U.P. Power Corp. v. Sant Steel & Alloys (P) Ltd.*[^20^], the court applied the doctrine of promissory estoppel against the government which had granted concessions for five years for establishing industries in hilly areas.

In some rare situations the court in India support the opinion that the doctrine of legitimate expectation can be taken even when expectation is based on unlawful representation which is beyond the power of the authority. In such situation court would balance public interest individual interest.

1.5 Nexus between the Doctrine of Promissory Estoppel and Doctrine of Legitimate Expectation –

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. The term ‘legitimate expectation’ was first used by Lord Denning in 1969 and from that time

[^19^]: (2006)13 SCC 706
[^20^]: (2008)2 SCC 777
it has assumed the position of a significant doctrine of public law in almost all the jurisdictions.

In India, the Apex Court has developed this doctrine in order to check the arbitrary exercise of power by the administrative authorities. This doctrine provides a central space between ‘no claim’ and ‘a legal claim’ wherein a public authority can be made accountable on the ground of an expectation which is legitimate. This doctrine has become a part of natural justice and no one can be deprived of his legitimate expectation without following the principles of natural justice. This doctrine of legitimate expectation is a fine example of judicial creative. A natural habitat for this doctrine can be found in article 14 of the Constitution which abhors arbitrariness and insist on fairness in all administrative dealings. It is now firmly established that the protection of article 14 is available not only in case of arbitrary “class legislation” but also in case of arbitrary “state action”. Thus the doctrine is being hailed as a fine principle of administrative jurisprudence for reconciling power with liberty.

The doctrine has negative and positive contents both. If applied negatively an administrative authority can be prohibited from violating the legitimate expectation of the people and if applied in a positive manner an administrative authority can be compelled to fulfill the legitimate expectations of the people. This is based on the principle that public power is a trust which must be exercised in the best interest of its beneficiaries – the people21.

This term ‘Legitimate Expectation’ as mentioned earlier was first used by Lord Denning in Schmidt v. Secretary of State for Home Affairs22, wherein the government had cut short the period already allowed to an alien to enter and stay in England, the court held that the person had legitimate expectation to stay in England which cannot be violated without following a procedure which is fair and reasonable. In this manner Lord Denning used the term ‘Legitimate Expectation’ as an alternative expression to the word ‘right’.

\[\text{21 FCI v. Kamdhenu Cattle Feed Industries, AIR 1993 SC 1601}
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\[\text{22 (1969)1 All ER 904 (CA)}\]
In *R. v. Secy of State for Home Department ex parte Khan*\(^2\), the court held that if the authority had made a statement that a certain criterion or procedure would be followed the people can legitimately expect that it would be followed in the decision making process of the authority, therefore, the authority is under an obligation to follow that criterion or procedure.

This doctrine is still in an evolutionary stage yet one thing is certain that it is an equity doctrine and, therefore, the benefit of the doctrine cannot be claimed as a matter of course. It is a flexible doctrine which can be molded to suit the requirements of each individual case. The court did not apply the doctrine where applicant’s own conduct was unlawful or claim was unworthy.

Evolving this doctrine further the courts support the opinion that claim of legitimate expectation must not always fail against legal incapacity. Therefore, on the grounds of equity recourse to legitimate expectation can be taken even when the expectation is based on representation which is beyond the powers of the authority. In such situation court balance the individual interest against public interest.

In a democratic society, governed by the rule of law, every government which claims to be inspired by ethical and moral values must do what is fair and just to the citizens regardless of legal technicalities.

Doctrine of legitimate expectation shares space with the principle of promissory estoppel. If, thus, principle of promissory estoppel applies, there may not be any reason as to why doctrine of legitimate expectation would not. It operates in public domain and in appropriate cases constitutes a substantive and enforceable right. The principle at the root of the doctrine is rule of law which requires regularity, predictability and certainty in governments’ dealing with the public.

The doctrine of legitimate expectation is a recent creation of the decisional law. It forms part of a judicial strategy to exclude the possibility of arbitrary administrative action. The substantive aspect of the doctrine overlap with the doctrine of promissory estoppel, with the difference that in promissory estoppel, there is a promise on behalf of the authority whereas in legitimate expectation,

\(^2\) (1985)1 All ER 40 (CA)
disappointment is caused by sudden change of policy or procedure. Promissory estoppel is invoked to make the state liable for its promise relying upon which another person has acted and if the promise is not kept, it would incur loss or some detriment. The doctrine of legitimate expectation is invoked to prevent an administrative authority from exercising its discretion arbitrarily. In its substantive sense it is another parameter for judging the validity of the exercise of administrative discretion. Where discretion is exercised in a manner not consistent with past practice or policy, its reasonableness is examined with reference to the detriment caused by the non-fulfillment of legitimate expectation. In *West Bengal v. Niranjan Singha*\(^{24}\), the Supreme Court said that the doctrine of ‘legitimate expectation’ is only an aspect of Article 14 of the constitution in dealing with the citizens in a non-arbitrary manner and thus, by itself, does not give rise to an enforceable right but in testing the action taken by the government authority whether arbitrary or otherwise, it would be relevant.

While change in policy due to overriding public interest consideration is valid, the government has to satisfy the Wednesbury Test of proper exercise of discretionary power. The court may interfere if it is satisfied that the change of policy is irrational or perverse. Where Doordarshan communicated to the petitioner its approval of a programme on current affairs but subsequently backed out on the ground that its policy did not permit allotment of time to a private person, it was held that it could not suddenly change its policy. The petitioner had spent a lot of time and invested money in the programme\(^{25}\).

1.6 Application of the Promissory Estoppel at Global Level –

Modern contractual jurisprudence in common law countries abounds in a concept generally styled as Promissory Estoppel. This principle may be called the child of equity brought into the world with a view to promote honesty and good faith and bringing law closer to justice. The principle though commonly known as promissory estoppel is neither based on contract nor on the common law doctrine of estoppel. The early cases did not speak of this doctrine as estoppel. They spoke of it

\(^{24}\) *(2001)2 SCC 326, 329

\(^{25}\) *Prasar Bharti Broadcasting Corporation of India v. Debiyoti Bose* AIR 2000 Cal 43
“raising equity”. It is worth mentioning the development of promissory estoppel in
the other legal system like America, England and Australia.

In America, the legal system has always given chance and been very liberal
for the 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. The development of this
document does not owe its origin from the judicial pronouncement of Lord Denning in
the High Trees case, but dates back to long ago.

In England, 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 the 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. In the 19th century, the law of England was dominated by the difference
between law and equity. Law has its own strict rules. Equity was, or should have
been, more flexible. It was the means by which the needs of the people could be met.
The principles 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.

In Australia, there has been a sense of inevitability about the acceptance of
the “doctrine or principle” of promissory estoppel as forming part of Australian
Law. In a number of cases since the mid-1970’s the Australian Courts have referred
to the doctrine of promissory estoppel without any apparent criticism, but without
discussing it in detail or expressly accepting it as part of the law of the particular
jurisdiction concerned. With respect to all the cases it would be argued that the court
did, at least tacitly, concede that the doctrine in some form or other form was part of
the law available to be applied. There have also been a number of more positive
assertions that the doctrine forms part of Australian law and the Courts in their
decisions, time and again, accepted and extensively examined the doctrine.

1.7 Applicability of Doctrine of Legitimate Expectation at Global Level –

In England, the doctrine of legitimate expectation has developed over the last
forty years. The first appearance of legitimate expectation was in the judgment of
Lord Denning M.R. in Schmidt v. Secy. of State for Home Affairs\textsuperscript{26}, with the passage of time in many cases, Court dealt with this doctrine and every time the doctrine emerged with a convincing facet. Nevertheless, the British cases have been careful to avoid specific definitions of what constitute a legitimate expectation, so, there has never been a clear, coherent judicial definition of the legal doctrine. Perhaps the most extensive application of the doctrine came in what is now generally considered the leading case on legitimate expectation, in the House of Lords in Council of Civil Services Union v. Minister for Civil Services\textsuperscript{27}. Lord Diplock emphasized that a legitimate expectation was not simply one which a reasonable person would entertain, but required something more to be “legitimate”.

In Canada, although legitimate expectation is generally considered to have begun its development in the late 1980’s and early 1990’s the phrase it 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. 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 scope of 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. 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 whom natural justice had traditionally apply.

The doctrine of legitimate expectation was authoritatively accepted as part of South African administrative law in the land mark case of Administrator, Transvaal v. Traub\textsuperscript{28} in 1989. It is now an established principle of South African administrative

\textsuperscript{26} (1969)2 Ch. 149 (CA)
\textsuperscript{27} (1985) AC 374 (H.L.)
\textsuperscript{28} 1989 (4) SA 731 (A)
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 practices, 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 protection in South Africa.

The present study is an attempt to make a doctrinal study of the concept of
‘Promissory Estoppel and Legitimate Expectation – A Comparative Analysis and
Emerging Trends’. It evaluates that the growth of administrative law need to control
the possible abuse of discretionary powers by the administration in the name of
change in procedure and policy. This study focuses on that every government which
follows the moral and ethical values must do the fair and just to its citizens
regardless the legal technicalities. A study is also undertaken on the various
countries legal systems regarding the applicability and growth of these two
doctrines. As this concept is a new addition in the field of law, this present study
evaluates the applicability of these doctrines in the Indian Judicial System by the
Hon’ble Courts. The leading judgments on these doctrines have been examined in
this context.

Keeping in view the nature of problem Doctrinal research method has been
adopted. In accordance with this method, apart from the thorough study of the
Constitution of India, other legislation has also been taken into consideration for the
present study. The 108th report of the Law Commission of India on ‘Promissory
Estoppel’ has been consulted for better understanding and position of the doctrine in
Indian scenario. Study of the various case laws on the particular provisions of law
and commentary thereon has been discussed. The relevant and important part of
quotations of judicial pronouncements of the Hon’ble Supreme Court and High
Courts have been referred to, analyzed and evaluated at the appropriate place.
Various Law Journals, Internet sites have also been source of research on this topic.

1.8 Scheme of Study –

The present study has been divided into seven chapters, Chapter I, is devoted
to the brief introduction of the concepts of promissory estoppel and legitimate
expectation, the applicability of these doctrines in Indian Judicial System and at the
global level. The provisions of Indian Constitution regarding equality & fairness in
procedure have been discussed.
Chapter II deals with the Judicial Review of Administrative Action, the origin of judicial review, its development in the USA, UK and India, the grounds of Judicial Review of Administrative Action.

Chapter III deals with the doctrine of Promissory Estoppel, its origin, application, position in today's legal system. It discusses the different kinds of estoppel. The chapter reveals the historical retrospect and modern development. The chapter troughs light on the application of doctrine against the government also.

Chapter IV reveals the doctrine of legitimate expectation. It discusses the origin of the doctrine of legitimate expectation in England and in India. The chapter deals with the historical development of the doctrine from Manusmiriti to till date. The constitutional aspect with reference to Article 14 has been discussed in this chapter. The chapter elaborates that how the principles of natural justice lay the foundation for this doctrine.

Chapter V examines the doctrine of legitimate expectation. This chapter conceptually analyzes the doctrine with the help of case laws. The chapter deals with the speculations on the doctrine.

Chapter VI discusses the Global aspect of the doctrine of promissory estoppel and legitimate expectation. The applicability and development of both these doctrines under various legal systems of different countries have been discussed. The effect of growth of doctrines in one country also affects the other countries while fixing the accountability of their legal system. This chapter discusses that how the different countries adopt the approach of those countries which applies these doctrines.

Chapter VII is the last chapter of the study. It derives the conclusions and suggestions of the study. Here, an attempt has been made to draw conclusion from the present study regarding the judicial position and utility of the doctrines in the administration of public offices and suggestion for the effective implementation of these doctrines to achieve the Constitutional purpose set under various provisions.