PREFACE

With the advent of the Welfare State, the powers of Administrative Authorities have increased tremendously since huge administrative machinery with very wide powers is needed to provide welfare services to the public. Accordingly to H.W.R. Wade powers have two inherent characteristics. First, they are all subject to legal limitations, there is no such thing as absolute or unfettered administrative power. Secondly and consequently, it is always possible for any power to be abused. As the adage goes, power corrupts and absolute power corrupts absolutely. So, the court don’t accept the concept of absolute powers since every power has legal limits. It is the juncture of courts to determine these limits according to the exigencies of the situation. For this, the courts have the power of judicial review, which in India, is a basic feature of the Constitution.

"The most important function of the law is to provide certainty by making possible legitimate expectations". "The laws cannot be based on trust and expectations, however reasonable and fair they may be". These are just two quotations from Dutch literature on the principle of legitimate expectations. Although there is a clear connection between the two quotations, both are nonetheless true. On the one hand, the law must offer certainty and constancy so that individuals can direct their actions accordingly. For this purpose laws are established and binding decisions are taken, and since these laws and decisions create legitimate expectations in the minds of individuals, they cannot arbitrarily be amended or repealed later on. On the other hand, the law cannot be static because it has to give shape to a concept of justice in a rapidly changing society. Our society expects government to pursue an environmental policy, to take far-reaching measures to combat unemployment. These wishes require continuous adjustment of the law.
The connection between law and legitimate expectations is thrown into even a sharper perspective in the situation where an administrative authority which wishes to take a fair decision pursues a policy which is contrary to the statutory regulations from which it derives its decision-making powers. The question which arises then is which legitimate expectation must be fulfilled; the expectation which individuals can legitimately derive from the policy which is contrary to the law, or the expectation which can legitimately be derived from the law in general?

In the world, the answer given to this question is that although the law generally takes precedence but still there may be circumstances in which the legitimate expectation derived from the policy is so strong that the law must be overruled. This theme of the so-called contra legem effect of the principle of legitimate expectations will be dealt with at length in the thesis. Here, however, it is sufficient to note that the principle of legitimate expectations is a principle that has fairly ambivalent ambitions. Two other observations which can be made in this connection are:

First of all, the validity of the principle of legitimate expectations is not absolute in the sense that the legitimate expectations created by executive action must always be fulfilled come what may. In a concrete case, it will ultimately always be necessary to balance the interests, which one or more individuals have in seeing the principle fulfilled against the possibly conflicting public interest at large or the interests of third parties. The need for interests to be balanced is also clearly reflected in the most common definition of the principle of legitimate expectations in constitutional and administrative law doctrine, namely the principle which requires executive authorities to fulfill if at all possible the justified expectations created by them.

The second observation is connected with this is that since the effect of the principle of legitimate expectations requires interests to be balanced in concrete cases, the principle has been developed mainly by
way of case laws in the world. Although some aspects of the principle are embodied in the statute, this does not alter the fact that the principle has for the greatest part remained judge-made law. The prevailing idea in the world has hitherto been that the often subtle process which must be carried out in order to balance the various interests is not well suited to regulation in rigid statutory provisions. Unlike many other principles of fair administration developed by the courts, the principle of legitimate expectations as such has therefore not been included in the General Administrative Law. Clearly, therefore, the extent to which individuals can put their trust in the principle of legitimate expectations under constitutional and administrative law is often fairly uncertain. It ultimately comes down to an assessment of the merits in a concrete case, with the court having the final say. From the point of view of legal certainty, this could be regarded as a fairly gloomy picture. Yet this has to be put in true perspective. Over the years various criteria by which the merits can be balanced have been developed in the decisions of the administrative courts. These criteria do not standardize the process entirely, but they do mean that it can be better controlled.

The principle of legitimate expectations is constitutional one. Legitimate expectations may be created not only by policy rules and decisions but also by way of statutes and decisions. Interpreted in this way, the principle of legitimate expectations also covers the problem of the retrospective effect of regulations and the withdrawal of decisions. In addition, there are various differences between the two principles. A well-known example in this connection is the classification by Nicolai, who regards the fundamental principle of legal certainty as the basic concept for law as such and from which three principles can be derived for constitutional and administrative law, namely:

(a) The principle of substantive legal certainty which requires the executive to respect acquired rights. This principle imposes limits
above all on the retrospective effect of regulations and the withdrawal of decisions.
(b) The principle of procedural legal certainty which requires that decisions must be clear and definite;
(c) The principle of legitimate expectations which requires that executive bodies fulfill legitimate expectations wherever possible. This principle is of particular relevance to the expectations created by promises and policy rules. The advantage of this classification is that it provides a good understanding of the situations in which the various principles or sub-principles are applied. However, it has no legal consequences. Whether a decision is contrary to the substantive or procedural variant of the principle of legal certainty or to the principle of legitimate expectations makes no difference; it is unlawful in all cases and there is not any hierarchy between the various principles. Keeping in view the questions contained in the hypothesis, the principle of legitimate expectation is used as a general term. However, the principle will occasionally be referred to as the principle of legal certainty as this name is also sometimes used in case law.

The doctrine of legitimate expectation is a new feature in the domain of judicial review. This doctrine flourished under the European Administrative law and is a product of that system. Credit goes to Lord Denning, who in 1969 brought it in the English Administrative Law in the Schmidt case. Since then, it has been refined and refashioned in English Law. At present, it is an integral part of it, procedurally as well as substantively. The Indian law, which is primarily based on English Common Law could not have remained untouched by these developments. So, the doctrine of legitimate expectation finds its well deserved place in Indian Administrative Law since early nineties. Now Indian case law is replete with arguments of legitimate expectations and the courts have also accepted its application in procedural as well as substantive aspects in the appropriate cases.
However, the meaning and scope of the doctrine remains uncertain. By its very nature, it cannot be captured in the definition as such. There are the benefits or interests, which don't come under the legal rights in strict sense, though they are important and need protection in public interests. Violation of legitimate expectation may amount to abuse of power, then the courts will enforce them procedurally, or substantively through the mechanism of judicial review.

Owing to the complex nature of the doctrine of legitimate expectation, it has not received a thorough analysis either in the case law or in academic circles in India. Here in the present work, an attempt has been made to analyse this concept of legitimate expectation from different dimensions in order to understand its place in the Indian Constitutional and Administrative law. Importance of the present study becomes all the more relevant and urgent given the inefficient, almost incompetent administrative setup with so much of corruption in the system due to lack of political will to reform it. Therefore, the proper fulfillment of the legitimate expectation of the public administratively and judicially will definitely help in achieving the constitutional goals enshrined in the directive principles and fundamental rights of the Constitution.

**HYPOTHESIS**

The arbitrary exercise of power by the administrative authorities is on the increase nowadays. The administrative authorities escape from the accountability on the ground that the individual does not have a locus stnadi for the claim. The earlier decisions are withdrawn or modified without any valid justification. The policy rules, promises and contracts are ignored. The individual interests and interests of third parties are not taken into consideration by the administrative authorities to derive a conclusion in certain matters. The public bodies use to depart from the published policy criteria for dealing with a particular case. The administrative authorities use to make such representations which are
ultra vires. The Wednesbury principle which seeks to strike the right balance between the needs of the administration and fairness to the individual has been abused by the administrative authorities every now and then. There are many instances of the abuse of powers by the administrative authorities. The legal principle of consistency in the exercise of powers given by public law which creates a presumption that the authority will follow a declared policy is being defeated frequently. No reasons are given by the authorities to justify the departure from the existing policy. The discretionary power is exercised in an arbitrary manner. The decisions are withdrawn by way of statutory sanction. Last but not least, the traditional grounds of judicial review of the administrative actions are inadequate to provide remedy to the people when they are not able to justify their claims on the basis of law. The introduction of the new doctrine of legitimate expectation has extended the power of judicial review of the courts to a great extent to check the abuse of powers by the public authorities.

**RESEARCH METHODOLOGY**

The present research work has been carried out by following the traditions non-empirical method of doctrine approach. The research is based upon the analytical study of the existing legislations, case laws, jurist work, reports of various commissions and committees, articles published in various international and national journals relating to the topic of research and the theoretical background of the principle of legitimate expectation, which has emerged in recent times in judicial review of administrative action. So, the research methodology is doctrinal in nature. By following the doctrinal research, all the secondary data in various forms, are analyzed to reach to the concrete conclusion. Different dimensions of the topic have been analysed in different chapters and then the conclusions are drawn for the whole research work on the basis of the analysis and suggestions are offered to future developments.
OBJECT AND PURPOSE OF STUDY

The main object and purpose of the research is to study about the relevance of the doctrine of legitimate expectation to provide judicial remedy to the aggrieved party when the party cannot claim the remedy under the ordinary procedure law. In other words, the main object of the research is to find out the usefulness of the doctrine of legitimate expectation in the administration of justice by the court when the administration of justice was not possible in the circumstances, the person / party has suffered the actual injury but there is no injury in the eyes of law. Another object of the research work is to find out the scope of the legitimate expectation as a ground of extension of judicial review of administrative actions. Further, the research is carried out to know the emerging trends about the doctrine of legitimate expectation in India. In other words, one of the objects of the research is also to find out the circumstances when the doctrine of legitimate expectation can be considered as a part of Article 14 of Indian Constitution i.e. right to equality. Lastly, the object of the research work is to find out the limitations which can be imposed upon the doctrine of legitimate expectation by the judiciary and the aggrieved party can not succeed to invoke the doctrine as a ground of judicial review of administrative actions.

SCHEME OF THE STUDY

The whole research work has been divided into seven chapters including the present one. Chapter-I is titled as 'Introduction: Meaning and Nature of Legitimate Expectation'. The chapter deals with the meaning of legitimate expectation, essential attributes of legitimate expectation and various types of legitimate expectation. The chapter also deals with the effects and consequences of legitimate expectation upon administrative actions.
Chapter-II is titled as "Legitimate Expectation: Theoretical Background". The chapter deals with history about the existence of legitimate expectation. The chapter also covers the factors responsible for the existence of the principles of procedural legitimate expectation and substantive legitimate expectation. The Chapter deeply deals with the arguments in favour and against the legitimate expectation. The chapter also deals with the requirements for applying legitimate expectation and determination whether an expectation is reasonable and legitimate or not. The chapter throws the light upon the standard of review for administration to defeat a legitimate expectation.

Chapter-III is titled as 'Development of Legitimate Expectations in England and India' Firstly, the chapter deals with the evolution and development of legitimate expectation in England. Secondly the chapter deals with the evolution and development of legitimate expectation in India. The chapter also deals with the judicial approach through judicial decisions about the evolution and development of legitimate expectation in England as well as in India. At the end, the chapter deals with the critical appraisal about the evolution and development of legitimate expectation.

Chapter-IV is titled as 'Scope of Legitimate Expectations in India: Some Limitations' First the chapter deals with the scope of the legitimate expectation under the Constitution of India. Second, the chapter deals with the scope of legitimate expectation under administrative law. Third, the chapter deals with the scope of legitimate expectation under law of contract. The chapter also deals with the exceptions to the doctrine of legitimate expectation. In the last, the chapter deals with the critical appraisal of the scope of legitimate expectation in India.

Chapter-V is titled as 'Grounds of Review in Legitimate Expectation in Indian Law'. The chapter deals with the impact of legitimate expectation upon the various concepts which are considered as grounds of
judicial review of administrative actions. The chapter deals with the impact of legitimate expectation upon illegality, procedural impropriety principle of proportionality, doctrine of public accountability and promissory estoppel. The chapter also deals with the relationship between the legitimate expectations and other concepts which are considered as standard grounds of judicial review under Administrative Law. In the last, the chapter critically analyses the impact of legitimate expectation in Indian law as a ground of review.

Chapter-VI is titled as 'Legitimate Expectation in India: Emerging Trends in Policy Matters'. The chapter deals with the latest position about the doctrine of legitimate expectation in India. The chapter deals with the emerging trends in the doctrine of legitimate expectation in India. In other words, the chapter deals with the judicial approach about the use of legitimate expectation in India. The chapter highlights the settled judicial principles to invoke the legitimate expectation for providing remedy to the person who is aggrieved by the administrative decision. In the last, the chapter deals with the critical views about the approach of judiciary regarding the doctrine of legitimate expectation as the basis of judicial review.

Chapter-VII is titled as 'Conclusions and Suggestions'. The chapter is the last chapter of the research work. The chapter is divided into two parts. The first part deals with the concrete conclusion of the research work. The first part consists of the summary of the six chapters of the research work. The second part deals with the some suggestions made by the researcher about the topic of the research. The suggestions made by the researcher can be considered useful for the executive, judiciary, administrative authorities and researchers.