CHAPTER-IV

SCOPE OF LEGITIMATE EXPECTATIONS IN INDIA: SOME LIMITATIONS

4.1 INTRODUCTION

The doctrine of legitimate expectation plays an important role in various fields of law. But it is not possible to draw a line about its scope and importance. Governments and its functionaries may craft expectations concerning the manner in which administrative powers will be exercised. Expectations of this nature can be generated in many different ways, such as, by the issue of policies or procedures to funnel the exercise of discretionary powers. Expectations regarding the potential exercise of administrative powers may also be generated by public statements or representations, conceivable by the subjects through promises or by adoption and regular application of a certain practice. But just as expectations about the exercise of administrative powers may be created and conceived by an individual or party, they may also be disappointed and they may be disillusioned when a governmental agency has acted in breach of a promise or undertaking made to a particular person or to a class of persons. They may also be disappointed when a government agency has not applied current policy or guidelines in determining a particular case and without good reason. In such a case, the complaint may be that the policy has been applied inconsistently, perhaps in a way which reflects improper discrimination. In other words, an existing policy may be changed and a new one applied to the disadvantage of people who stood to benefit from the earlier policy and who may even have conducted their affairs in reliance upon it. Courts in England and some other jurisdictions have recently accepted that there
can be circumstances in which government agencies should be required to accomplish the legitimate expectations of their subjects conceived by them. This approach endows an expectation with a substantive excellence because it enables the expectation to determine or strongly influence the outcome of, rather than simply the procedures for, administrative decision-making. Australian courts, in disparity, have by and large taken the view that expectations about the exercise of administrative powers may only give rise to procedural rights. On this view, an expectation about the exercise of an administrative power might, at best, obligate a decision-maker who intends to act contrary to that expectation to notify pretentious people and provide them with an opportunity to argue against that course. But the law in Australia imposes no restraints upon a decision-maker beyond these procedural requirements¹.

In *Amalgamated Engineering and Foundry Workers’ Union v. The Management*² the doctrine of legitimate expectation found its legitimate place. In this case the District Committee of a trade union had refused to endorse a member’s election as shop steward. The Court held that if a person claims a privilege he can be turned away without hearing but here a person has something more than a mere privilege i.e. a legitimate expectation that his election would be approved unless there are relevant reasons for not doing so, therefore, the natural justice principles are attracted to the case in order to ensure fairness.

In the same manner in the case of *Melnnes v. Onslow Fane*³, also the doctrine of legitimate expectation found fine exposition. In the case of the British Boxing Board of Control, a Domestic Tribunal had rejected an

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2 (1971) 1 All ER 1148 (CA)
3 (1978) 3 All ER 211 (ChD).
application for entrance licence without hearing. The court made a distinction between application, forfeiture and legitimate expectation situations in licence cases. On the one extreme are application cases where person has no right to the grant of his application. On the other extreme are forfeiture cases in which a person's existing right is violated and, therefore, he is clearly entitled to the benefit of principles of natural justice. In between these extreme situations lies a third situation of legitimate expectation cases. This situation may cover cases of renewal of licence. In this situation, a person can legitimately expect that his licence will be renewed and if his licence is not renewed he has a right to know what makes him unsuitable now when he was suitable as per the principles of natural justice.

The Privy Council in *A.G. of Hong Kong v. Ng. Yien Shiu*\(^4\) while quashing the removal order passed by the Hongkong Immigration Authority without notice and hearing the court held that there is a violation of the legitimate expectation of the immigrant based on announcement of the authority that while examining the cases of illegal immigration each case would be decided on its own merit and, therefore, removal cannot be passed without fair hearing.

Invoking the doctrine of legitimate expectation the House of Lords in *Council of Civil Services Union v. Minister of Civil Services*\(^5\) held that legitimate expectations may arise from an expression or promise made by the authority or from an established past practice which cannot be violated without good reasons. In this case the administrative authority had withdrawn a long-standing practice by a mere oral instruction.

\(^4\) (1982) 2 All ER 346 PC

\(^5\) (1984) 3 All ER 935 HL
In a sense the doctrine of legitimate expectation imposes a duty on the authority to act fairly and is not restricted to situations where expectation is to be consulted or be given an opportunity to make representation. It was held by the court in R. v. Secretary of State for Home Department ex parte Ruddock. In this case violating the established criteria for the issuance of interception order the Home Department had issued warrant for the interception of telephone calls of the applicant. Though the court did not grant relief as nothing unfair or improper was found yet the duty to act fairly where legitimate expectations are involved was firmly established.

In the same manner in R. v. Secretary of State for Home Department ex parte Khan, 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. In this case, in violation of the provisions of the circular regarding entry of adopted children in England, the authority had refused entry to the adopted child of Mr. Khan. The court quashed the order of the authority as it was on considerations of policies which were not in existence when the circular had been issued.

In R. v. Secretary of State for Transport ex parte Greater London Council, the doctrine was applied in tax cases. The court held that a taxpayer had legitimate expectations to make representation that he should not pay tax at the maximum rate.

6 (1987)2 All ER 518 QBD.
7 (1985) 1 All ER 40 CA.
8 (1985) 3 All ER 300 QBD.
Though the doctrine as evolved in England is still in an evolutionary stage yet one thing in 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 moulded 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. In *Cinnanaond v. British Airports Authority*\(^9\) the court upheld the decision of the authority to prohibit the entry of taxi drivers into the airport because of their own past conduct which invited fines. In *Lloyd v. Mahon*\(^10\), the House of Lords held that the doctrine does not include within its ambit a right to oral hearing. Courts have also not protected expectations by judicial review when nothing unfair was found on the part of the authority or legitimate public interest demanded otherwise. The doctrine, however, has been applied to statutory as well as non-statutory authorities.

In *Schmidt v. Secretary of State for Home Affairs*\(^11\), the facts of the case are that the plaintiffs were Scientology students who had applied for an extension to their leave to remain in the UK. Their application was rejected. They sought a declaration that the refusal was ultra vires, on the grounds that they had not been given an opportunity to be heard. The court held that the question whether a hearing was required depended on whether the applicants had some right, interest or legitimate expectation of which it would not be fair to deprive them without hearing what they had to say. In respect of their entitlement to remain for the period originally limited, they had; in respect of an extension to that period, they had not.

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\(^9\) (1980) 2 All ER 368 CA.
\(^10\) (1987) 1 All ER 1118 (HL).
\(^11\) (1969) CA
4.2 SCOPE OF LEGITIMATE EXPECTATION UNDER INDIAN CONSTITUTION

Once discretionary powers are vested with Executive/Administration, abuse or misuse of these powers are to be guarded in order to save the individual from the resultant damage for which State is vicariously liable. In order to eliminate factors of discrimination, the Constitution has to guarantee fundamental right to equal treatment irrespective of caste, creed and sex enforceable by the State through administrative laws. In certain cases, legitimate expectation of the subjects from the State may require a public body to confer substantive benefit to its subjects rather than procedural one and failure of the public body to consider the legitimate expectations of its subjects amounts to abuse of power\textsuperscript{12}, attracting the role of Court. Failure of the government to exercise its discretion on the expected lines invokes the plea of legitimate expectation which though itself is not a right but certainly is a test of arbitrariness and this plea of legitimate expectation cannot be involved against higher public interests of the State of causing higher revenue. In India, this doctrine of legitimate expectation has been founded on Article 14 enshrined in Constitution of India, which imposes a duty upon the state and its functionaries to act fairly on all public authorities and therefore, people can have legitimate expectation that they will be treated fairly by state. Article 14 of the Indian Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Legitimate expectation flows from principle of non-arbitrariness under

\textsuperscript{12} HALSBUY’S laws of England, Administrative Law, 4th Ed. p. 92
Art.14 of Constitution of India and it becomes an enforceable right in case where state or its functionaries fail to give due weight to it. As observed by Supreme Court in *Food Corporation of India v. Kamadhenu Cattle Feed Industries Ltd*\(^{13}\). The court held that the doctrine of legitimate expectation falls within the purview of the rule of non-arbitrariness integrated in Article 14 of the Constitution. Undoubtedly the public authority has an 'unfettered discretion' but the same has to be used for public good. In *M.P.Oil Extraction Co. Ltd. v. State of MP*\(^{14}\), the court held that in a constitutionally governed society when reasonableness of an action of the State is called in question, the rule of law is to be determined not according to the claimant's perception but in the large public interests and the public interest shall have to be more central consideration and may overshadow the legitimate expectation of an individual/claimant and bona fide decision of the public authority reached in this style would gratify the requirement of non-arbitrariness and shall stand the test of judicial scrutiny. The doctrine of legitimate expectation operates in the domain of public law and in certain cases, constitutes a substantive and enforceable right. In *Chanchal Gayal v. State of Rajasthan*\(^{15}\), the court held that the basic idea behind doctrine of legitimate expectation is "Rule of Law" which requires promptness, predictability and certainty in the actions of government while dealing with the public.

A person can derive legitimate expectation for being treated in a certain way by an administrative authority even though he has no legal right but for representation or promise made by the authority, impliedly

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13 AIR 1993 SC 1601
14 (1997) 7 SCC 592
15 AIR 2003 SC 1713
or from consistent past practice. Certainly legitimate expectation of a
person based on some promise or undertaking by an authority will get
satisfied if the person claiming is given a fair hearing by the authority
before a decision is taken to alter his position, consequent upon
withdrawing an undertaking earlier given. The core point thus is that
though legitimate expectation derived by a person from the promise or
undertaking given by an authority but denial to act upon in consonance
with such promise or undertaking has to be justified by the authority by
showing some overriding public interest\textsuperscript{16}. However, the doctrine of
legitimate expectation does not give scope to claim straightaway from the
administrative authorities as no crystallized right as such is involved. The
protection of legitimate expectation does not require the fulfillment of the
expectation where an overriding public interest requires otherwise. In
\textit{Bannari Amman Sugars Ltd. v. CTO}\textsuperscript{17}, the court held that though the
doctrine of legitimate expectation is based on the mandate enshrined in
the provisions of Constitution of India but whether an expectation is
legitimate or otherwise has to be inferred from the concept as to whether
an expectation is founded on the sanction of law and the concept itself is
not the key which unlocks the treasure of natural justice that too when the
elements of speculation and uncertainty are inherent in that concept.
Undoubtedly the doctrine of legitimate expectation is a source of
procedural as well as substantive rights and the government/state and its
departments responsible for administering the affairs of the country are
expected to honour their promises or undertaking through their statements
of policy or intention and are bound to treat all the citizens by affording
full personal consideration without any iota of abuse of discretion. The

\begin{itemize}
\item \textsuperscript{16} D.D.Basu, Commentary on the Constitution of India, Vol.1 8th Edn. 2008, p.1262
\item \textsuperscript{17} (2005) 1 SCC 625
\end{itemize}
policy statements given by the representatives of the State cannot be disregarded unfairly or applied selectively because unfairness in the form of unreasonableness is akin to violation of natural justice. Claims based on legitimate expectation have been held to require reliance on representations and resultant detriment to the claimant in the same way as claims based upon promissory estoppels. Unfairness in the purported exercise of power can amount to an abuse or excess of power\textsuperscript{18}.

In \textit{Union of India v. Pardasone}\textsuperscript{19}, the court held that where a non-statutory memorandum is followed in certain cases and refused in other similar cases, the action would amount to violation of Article 14 of Constitution of India. Increasing the age of retirement has been followed in some cases; refusing to extend the same in some other cases would be violative of Article14. The defense taken by the government increasing the age of retirement is a mere executive instruction is not valid.

In \textit{New Horizons Ltd. v. Union of India}\textsuperscript{20}, The Court held that a decision would be regarded unreasonable if it is partial and unequal in its operation as between different classes.

In \textit{State of W.B v. Niranjan Singha}\textsuperscript{21}, the Court observed that the doctrine of legitimate expectation” is only an aspect of Article 14 of the Constitution requiring to deal the citizen in non-arbitrary manner but by itself does not give rise to an enforceable right. Whether an action of the government or the authority or functionary of the state is arbitrary or not, the principle of legitimate expectation would be relevant despite the fact that earlier in \textit{M.P. Oil Extraction Mill v. State of M.P.}\textsuperscript{22}, the Court was

\begin{itemize}
  \item \textsuperscript{18} Ibid p. 1263
  \item \textsuperscript{19} (1972) 3 SCC 273
  \item \textsuperscript{20} AIR 1994 Delhi 126
  \item \textsuperscript{21} (1995) 1 SCC 478
  \item \textsuperscript{22} (1997) 7 SCC 592
\end{itemize}
of the opinion that in appropriate cases legitimate expectation which operates in the domain of public law, constitute a substantive and enforceable right. The Supreme Court of India in number of cases upheld the fortitude of equality enshrined in the Constitution of India while dealing with the application of doctrine of legitimate expectation and thereby made the doctrine as a device to enforce a fundamental right. In *Tamil Nadu Tamil & English Medium Schools Association v. State of TN*\(^{23}\), facts show that schools upto matriculation in the state have been teaching in English Medium for over fifty years and recognition was given to them by the government without any condition. Suddenly, there was a change in the policy introducing Tamil as medium of instruction and this policy was sought to be introduced without affording opportunity of hearing to the affected schools. The Court held that the management of such affected schools is reasonable in claiming that they expected that English medium will be allowed to continue on the basis of legitimate expectation and that it is not necessary that there should have been a representation by the government and that the schools were opened by the management only believing on those representations.

In *Balaji v. State of Mysore*\(^{24}\), the court held that matter of settling a government lease or contract which otherwise is governed by statute, if the government adopts an ad hoc procedure which discriminates against a particular person, it offends Article 14 of the Indian Constitution.

In *Purushottam Lal Dhingra v. Union of India*\(^{25}\), while implementing recommendations of Pay Commission by the government

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23 (2000) 2 SCC 344  
24 (1963) Supp.1 SCR 439  
25 (1973) 1 SCC 651
to one set of employees only thereby making discrimination as against other set of employees though governed by the said recommendations, the court held that the government has exercised discretion arbitrarily in violation of Article 14 and the affected person or aggrieved person can challenge such act of the Government. Similarly, in State of Haryana v. Piara\textsuperscript{26} the Court held that in case where employees are denied equal pay for equal work, it will be treated to amount to their exploitation by taking advantage of their poverty and helplessness and will amount to infringement of right of equal treatment as guaranteed under Article 14.

In a case where a large number of persons were recruited temporarily though being fully qualified to hold the post are thrown out of employment after long years of service, the action was found to be against the spirit of constitution being in violation of legitimate expectation and they were directed to be regularized. The Supreme Court extended this principle of protecting the legitimate expectation under Article 14 to several instances viz., to the matter of granting a lease or a privilege like government contract unfettered by any statutory condition as laid down in Ramana v. IAAI\textsuperscript{27}, if a passport is issued at the discretion of the executive, not governed by any statute in Satwant v. Asst. Passport Officer\textsuperscript{28} if a Pension scheme is declared by an office Memorandum; in D.S. Nakara v. Union of India\textsuperscript{29}, or the conditions of service are unreasonable e.g., an Air Hostess will lose her job on marriage or first pregnancy whichever occurs earlier, even though such conditions of service are embodied in the award of Industrial Tribunal or in an agreement between the employer and employees union; in Air India v.

\textsuperscript{26} (1992) 4 SCC 118  
\textsuperscript{27} AIR 1979 Sc 1628  
\textsuperscript{28} AIR 1967 SC 1836  
\textsuperscript{29} AIR 1983 SC 130
Nargesh\textsuperscript{30} in relation to land matters the Supreme Court dealt with a situation where the government has taken a policy decision, though it did not create any right, to restore the land acquired by the state as per standing orders and has also implemented the same in favour of some persons, refusing to restore the land to similarly placed person. In \textit{State of Haryana v. Gurucharan Singh}\textsuperscript{31} it has been held that such action is arbitrary and discriminatory. In \textit{Kailash Chand Sharma v. State of Rajasthan}\textsuperscript{32} the court reiterated that the policy decisions of the state should be free from the vice of arbitrariness and must conform to the well-settled norms, both positive and negative, underlying Articles 14 and 16 together with Article 15 which form part of constitutional goal of equality. In \textit{Rameshwar Prasad v. Managing Director U.P. Rajkiya Nirman Nigam Ltd.} \textsuperscript{33}, the court held that where certain rules have been framed for absorption of the employees on deputation, but denying the benefit of the rule to others without justifiable reasons was held to be arbitrary. In \textit{Vellore Educational Trust v. State of Andhra Pradesh}\textsuperscript{34}, the court held that where arbitrariness is demonstrated in giving permission to incorporate engineering college in private domain, in spite of policy making to that effect, the same was struck down on the ground of arbitrariness and in violation of legitimate expectation.

\textbf{4.3 SCOPE OF LEGITIMATE EXPECTATION UNDER STATUTORY PROVISIONS}

Under statutory provisions, legitimate expectations may arise in the following situations:

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\item \textsuperscript{30} AIR 1983 SC 1829
\item \textsuperscript{31} (2004) 12 SCC 540
\item \textsuperscript{32} (2002) 6 SCC 562
\item \textsuperscript{33} AIR 1999 SC 3443
\item \textsuperscript{34} AIR 1988 SC 130
\end{itemize}
In *Bharat Wools, Ludhiana v. State of Punjab*\(^{35}\), the court held that if there is an express promise given by a public authority or because of the existence of a regular practice which the claimant can reasonably expect to continue. The Punjab State Knitwear Development Corporation, a body controlled by the State Government, invited applications for allotment of industrial plots to knitwear manufacturers. The appellants applied and deposited the earnest money. The Managing Director of the Corporation allotted plots to the applicants without consulting the Allotment Committee and they deposited the balance of the price of the plot. In the meantime, the Minister concerned called for the record and after hearing the parties cancelled the allotment in their favour. The applicants who were favoured with allotment orders challenged the cancellation of the allotment on the ground that they were deprived of their legitimate expectation by the Minister. The contention failed because the power to allot industrial plots was vested in the Allotment Committee. Instead, the power of allotment was usurped by the Chairman of the committee who himself made the allotment without reference to the Committee thereby converting himself into sole repository of power and made offers of allotment whimsically and arbitrarily. During the course of adjudication of the matter by the court, it was also argued that no fresh applications be invited and the plots be allotted to the applicants who had earlier made the applications for the purpose. The argument was sought to be justified on the basis of the legitimate expectation. The plea of promissory estoppel was also raised. By inviting applications, the government simply invited the individuals to come in a queue for competition and no promise was made by the government. The plea of

\(^{35}\) (1997) ILR 1 P&H, 121
promissory estoppel cannot bar the government from taking a decision in larger public interest. The court pointed out that more than one and half year had elapsed since the applications were invited for allotment of plots and in the meantime prices of land had shot up substantially. It would be against public interest to allot the land amongst original applicants only at the price advertised then. Public interest warrants that the government and the corporation get maximum price and the most competent entrepreneur is given opportunity. Element of speculation did not help the aggrieved person. It was held that the courts themselves must respect the legal limitations and ruled against review of administrative decisions.

In *Madras City Wine Merchants’ Association v. State of Tamil Nadu*, the court held that where there is a change in policy or in public interest, the position is altered by a rule or legislation no question of legitimate expectation may arise. In the present case, under the Tamil Nadu Prohibition Act (i) 1937, two sets of rules were promulgated, viz. the Tamil Nadu Liquor (Retail Vending) Rules 1989 and the Tamil Nadu Liquor (Retail Vending in Bar) Rules 1992. Both the set of rules introduced licensing systems—one for retail liquor vending and the other for operating a bar. The latter license could be had only by one who had a license under the former rules. The validity of the bar license was one year. In 1993, the Bar Rules 1992 were rescinded. The question arose whether the holders of the bar licenses had a legitimate expectation that their licenses would be renewed after one year, the period for which the licenses were initially issued. Refusing to apply the doctrine of legitimate expectation in the given facts, the court pointed out that there was absolutely no promise of renewal of bar licenses. The bar rules were

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36 Ibid
37 (1994) 5 SCC 509
subordinate legislation and no fetter could be imposed on repeal of subordinate legislation needed in public interest. The decision not to renew these licenses had been taken much before the time-limit for renewing the licenses. It became necessary to repeal the bar order in public interest.

In *S.B. International Ltd. v. Assistant Director General of Foreign Trade*\(^{38}\), the court held that the doctrine of legitimate expectation is not applicable in relation to a dispute arising out of a contract qua contract. In the present case, the government announced a scheme of advance licensing for import of raw materials subject to export of finished goods being made within a specified time and value added was 1000 per cent. The petitioner entered into an export contract and thereupon made application for grant of advance import license. Pending his application, the scheme was modified and now the value added was to be 1900 per cent. The petitioner argued that since he had made application before the date of modification of the policy it ought not to apply to him. The Supreme Court rejected his contention arguing that mere making of an application does not create any right that the license would be granted to him. The court also rejected the plea of 'promissory estoppel' as the necessary conditions for the same as laid down in the case were not fulfilled.

In *Indian Aluminum Co. Ltd. v. Karnataka Electricity Board*\(^{39}\), the court held that the doctrine of legitimate expectation cannot be invoked to modify or vary the express terms of a contract, more so when they are statutory in nature. The contracts are entered into voluntarily pursuant to public action, i.e., floating of tenders or by negotiation and hence there is

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\(^{38}\) AIR 1996 SC 2921  
\(^{39}\) AIR 1992 SC 2169
no compulsion on anyone to enter into these contracts. In the instant case, the agreement between the company, the Electricity Board and the State fixing concessional rate for supply of electricity to the company, a manufacturer of aluminum was superseded by an Act of the state legislature. The Act empowered the Electricity Board to increase tariff rates notwithstanding any agreement with the consumers. The increase in electricity rates was challenged by the company on the ground of legitimate expectation. The Supreme Court refused to apply the legitimate expectation principle to the situation on the ground that when relationship between the parties is contractual, there is no scope for application of legitimate expectation. The agreement was not the outcome of any unilateral promise or assurance held out by the State or the Board to the Company. The agreement was the result of negotiations between the parties. Hence, the foundation for application of legitimate expectation was absent. It was held further that a tenderer has a right to have his tender considered and he cannot conceive legitimate expectation that his tender will be accepted.

The Supreme court in *M/S Sethi Auto Service Station v. Delhi Development Authority & Ors.*\(^40\) has examined the concept of 'legitimate expectation'. While dealing with the question of allotment of a plot by the DDA, the Supreme court has enumerated various decisions of the concept of legitimate expectation and examined the law relating thereto. The court held that the protection of legitimate expectations is at the root of the constitutional principle of the rule of law, which requires regularity, predictability, and certainty in government's dealings with the public.\(^41\)

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\(^{40}\) AIR 2009 SC 904

\(^{41}\) Ibid at p. 908
The doctrine of legitimate expectation and its impact in the administrative law has been considered by Supreme court in a catena of decisions\textsuperscript{42} Nevertheless, in order to appreciate the concept, a few decisions are to be discussed at this juncture. It necessary to refer to a decision the House of Lords in \textit{Council of Civil Service Unions & Ors. v. Minister for the Civil Service}\textsuperscript{43}, a locus classics on the subject, wherein for the first time an attempt was made to give a comprehensive definition to the doctrine of legitimate expectation. Enunciating the basic principles relating to legitimate expectation, the court observed that for a legitimate expectation to arise, the decision of the administrative authority must affect such person either by altering rights or obligations of that person which are enforceable by or against him in private law or; by depriving him of some benefit or advantage which either: (i) he has in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until some rational ground for withdrawing it has been communicated to him and he has been given an opportunity to comment thereon or (ii) he has received assurance from the decision-maker that they will not be withdrawn without first giving him an opportunity of advancing reasons for contending that they should be withdrawn.

In \textit{Attorney General of Hong Kong v. Ng Yuen Shiu}\textsuperscript{44}, a leading case on the subject, the door said that when a public authority has promised to follow a certain procedure, it is in the interest of good

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\textsuperscript{42} De Smith’s Judicial review 6th Ed. Parl 2001
\textsuperscript{43} (1985) AC 374
\textsuperscript{44} PC (1983) 2 AC 629
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administration that it should act fairly and should implement its promise, so long as the implementation does not interfere with its statutory duty.

Explaining the nature and scope of the doctrine of legitimate expectation, in Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries, a three-Judge Bench of the Supreme court had observed that the mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.

The concept of legitimate expectation again came up for consideration in Union of India & Ors. v. Hindustan Development Corporation & Ors. Referring to a large number of foreign and Indian decisions, including in council of Civil Service Unions v. Minister for

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45 AIR 1985 SC 458
46 AIR 1999 SC 1493
Civil Service\textsuperscript{47} and Food Corporation of India v. Kamdhenu Cattle Feed Industries\textsuperscript{48} and elaborately explaining the concept of legitimate expectation, it was observed that, if a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is not the key which unlocks the treasury of natural justice and it ought not unlock the gate which shuts the court out of review on the merits, particularly when the element of speculation and uncertainty is inherent in that very concept.

Taking note of the observations of the Australian High court in Attorney General for New South Wales v. Quinn\textsuperscript{49} that to strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be

\textsuperscript{47} (1985) AC 374
\textsuperscript{48} AIR 1985 SC 488
\textsuperscript{49} (2011) NSWCC 1436
to set the Courts adrift on a featureless sea of pragmatism. The court further said that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. The caution sounded in the said Australian case that the Courts should restrain themselves and restrict such claims duly to the legal limitations was also endorsed.

Then in *National Buildings Construction Corporation v. S. Raghunathan & Ors.*, a three-Judge Bench of the Supreme court observed that, the doctrine of legitimate expectation has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of legitimate expectation was evolved which today has become a source of substantive as well as procedural rights. But claims based on legitimate expectation have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.

The Supreme court in *Punjab Communications Ltd. v. Union of India & Ors.*, referring to a large number of authorities on the question, observed that a change in policy can defeat a substantive legitimate expectation if it can be justified on Wednesbury reasonableness. The decision maker has the choice in the balancing of the pros and cons relevant to the change in policy. Therefore, the choice of the policy is for

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50 (1998) 1 NSC 434
51 (2002) 128 STCV 306 P&H
the decision maker and not for the Court. The legitimate substantive expectation merely permits the court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. The view was upheld by the Supreme Court in *Bannari Amman Sugars Ltd. v. Commercial Tax Officer & Ors.*

Later on in *Jitendra Kumar & Ors. v. State of Haryana & Anr.*, it has been reiterated that a legitimate expectation is not the same thing as an anticipation. It is distinct and different from a desire and hope. It is based on a right. It is grounded in the rule of law as requiring regularity, predictability and certainty in the government's dealings with the public and the doctrine of legitimate expectation operates both in procedural and substantive matters.

An examination of the above mentioned few decisions shows that the golden thread running through all these decisions is that a case for applicability of the doctrine of legitimate expectation has been now accepted in the subjective sense as part of our legal jurisprudence. It arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfill unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in

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52  (2004) 192 CTR SC 492
53  (2012) 6 SCC 204
public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest unless the action taken amounts to an abuse of power. The court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. Therefore, a legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited.

In *Ram Pravesh Singh & Other v. State of Bihar*\(^{54}\) in which appellants who were the employees of Futwah Phulwarisharif Gramya Vidyut Sahakari Samiti Ltd., a co-operative society under liquidation, have challenged the order dated 30.9.2002 passed by the Patna High Court, dismissing their appeal against the order dated 24.2.2002 passed by a Single Judge rejecting their writ petitions.

Prior to 1976, Bihar State Electricity Board was supplying electricity to the rural areas surrounding Patna. In the year 1976, the Bihar Government, the Board and Rural Electrification Corporation brought into existence a society registered under the Bihar Co-operative
Societies Act, known as the 'Futwah - Phulwarisharif Gramya Vidyut Sahakari Samiti Ltd to implement a REC Scheme for better distribution of electricity to rural areas. The state government granted a licence dated 24.8.1976 to the society, under section 3 of the Indian Electricity Act, 1910 to supply electricity to the Futwah and Phulwari Sharif Blocks, for a period of 20 years, with options to the licencee to extend the period of licence.

By letter dated 23.4.1993, the Board recommended to the State Government, to revoke the licence granted to the Society and merge the Society with the Board, assigning three reasons i.e. the purpose for which the Society was created no longer existed. (ii) The Society was drawing electricity from multiple points in the Board's distribution network, making it difficult to ascertain the actual quantity of electricity drawn by the Society. (iii) The financial position and management of the Society was in a very bad shape and huge arrears were due from the Society to the Board, in spite of Board supplying it to the Society at 7 paise per unit as against the Board's cost price of 90 to 115 paise per unit.

The State Government, after considering the matter, issued a notification dated 25.4.1995, in exercise of its power under sections 4 and 5 of the Act revoking the licence dated 24.8.1976 granted to the Society. The State Government also constituted a Committee to evaluate the assets of the society which had to be transferred to the Board. The Committee was also required to consider whether it would be useful for the Board to absorb some of the employees of the Society. At a Meeting held on 18.9.1995, the said Committee made the following suggestions:

(a) The Society should be liquidated in view of the cancellation of the licence;

(b) The Liquidator of the Society should realize the amounts due to the
Society and also invite claims from creditors of the Society for settlement of claims;

(c) The amounts due in regard to the electricity supplied up to the date of cancellation i.e. 25.4.1995 should be credited to the Society, and the amounts due for electricity supplied thereafter should be received by the Board;

(d) The accounts relating to the income and expenditure of the Society and the Board be maintained separately, from the date of cancellation of licence, so that they could settle the accounts between them; and

(e) The Board should consider taking work from the employees of the society and pay salary to them. The Board may also consider absorbing the eligible employees of the Society after examining whether they were qualified for the posts and were duly appointed and whether their pay-fixation has been properly done.

The State Government by letter dated 2.1.1996 requested the Board to implement the suggestion of the Committee relating to the employees of the society that the Board should take work from the employees of the society and pay their salaries, and also consider the absorption of eligible employees. Some assurance was also made out in 1996 on the floor of the Legislature that the Board will be persuaded to take over the undertaking of the society with its employees. However, thereafter, the State Government took a decision that the assets and liabilities of the society should be transferred to the Board, but not the services of the employees of the Society. The said decision was communicated by the Secretary, Energy department to the Secretary, Cooperative department and the Board, by letter dated 24.2.1997.
In view of the rejection of the proposal for absorption of services of employees of the Society by the Board, several representations were sent by the Administrator of the Society to the State government to absorb the services of the employees of the society. The Administrator of the Society also furnished a list of employees of the Society with particulars of designations and educational and technical qualifications to the State Government. The number of employees is 225 ranging from Engineers to Class IV employees. The said list was forwarded by the State Government to the Board on 14.7.1999 with a request to ascertain the existing vacancies in the Board. There were some more correspondence relating to the suggestions from various quarters, for absorption of the suitable and fit employees of the Society by the Board.

But the Board did not absorb the services of the employees of the Society. Therefore, the employees of the society i.e. appellants filed CWJC Nos.1503 of 2000 and 14394 of 2001 seeking a direction to the Board to absorb them in equivalent posts with continuity of service and also pay their arrears of salaries, allowances and other dues. They contended that they had a right, both in law and in equity, as also a 'legitimate expectation' to be absorbed into the services of the Board, for the following reasons:

a) The Committee constituted by the State Government had recommended that the Board should take work from the employees of the society and ultimately absorb them;

b) The employees of the society have a 'legitimate expectation' that they should be absorbed by the Board for the following reasons:

i. Initially several private companies were generating and distributing electricity in the State. When the Board was constituted, the undertakings of all those private companies were
taken over and their employees were all absorbed in the services of the Board.

ii. Whenever the undertaking of any company or institution was taken over by any statutory body or corporation, the services of employees of such undertaking are also normally taken over.

iii. When an 'undertaking' is purchased, in the absence of an intention to the contrary, all the assets and liabilities, as also the services of all employees are transferred to the purchaser and therefore the Board cannot refuse to absorb them.

iv. When certain departments were abolished by the State of Bihar, the Supreme Court and the Patna High court had passed several orders directing absorption of the retrenched employees in other departments of the state government.

v. The society was constituted by the Board and the state government to discharge the functions which were earlier being carried on by the Board. The licence granted to the society to distribute electricity was subsequently revoked on the recommendation of the Board. The Board has expressed its readiness to take over the undertaking of the Society. The Board has in fact taken over the assets of the Society and discharging the functions of the society without any interruption, on revocation of the Society's licence on 25.4.1995.

vi. The Board had extracted some work from the employees of the society from 25.4.1995 till May, 1996.

c) There are large number of vacancies in the Board in various categories of posts and there would be no difficulty for absorption of their services by the Board.
d) All the employees of the society have crossed the maximum age limit for seeking fresh employment and if they were not absorbed by the Board, they will be deprived of their livelihood.

e) The society was an instrumentality of the State Government and the Board, and falls within the definition of 'State' within the meaning of that expression in Article 12 of the Constitution of India. When the undertakings of such instrumentality of the state was taken over by another instrumentality of the State, 'fairness in action' which is one of the hallmarks of a 'State' require that the rights of the employees are protected by providing for their absorption in an appropriate manner.

The State Government, in its counter, while denying the claim of the writ petitioners, however, admitted that in August, 2001, it had taken a decision that when the prohibition against recruitment in the Board is lifted and appointments are made in future, preference should be given to the eligible employees of the society if necessary by granting relaxation of the age limit.

A learned single Judge of the High court rejected the said contentions and consequently, dismissed the writ petitions by order dated 24.2.2002. The court held that:

(i) The state government had not given any specific direction to the Board to absorb the services of the employees of the society. Any decision taken by the state government that as and when prohibition against recruitment was lifted and appointments were to be made, the Board should give preference to the eligible employees of the society, was not by itself a direction to the Board. At all events, having regard to section 78A of the Electricity (Supply) Act, 1948, the State Government can issue direction only
in regard to matters of policy, but could not issue a direction to appoint or absorb any employee of the society in its service as that would amount to encroachment of Board's power under section 15 of the Act. The view was expressed by Supreme court in *Rakesh Ranjan Verma v. State of Bihar*\(^55\).

(ii) Even if the society was to be considered as an instrumentality of the State, that would not assist the appellants to contend that the society was an extension of the Board, nor cast any obligation on the Board to absorb the employees of the society. When the licence granted under section 3 of the Act was revoked and the undertaking of the Society (licencee) was agreed to be purchased by Board, the provisions of the Act governed the matter and those provisions did not enable the appellants to claim any right of being absorbed in the services of the Board.

(iii) The fact that the Board took over the undertakings of the private companies which were generating and distributing electrical power till then, along with the services of the employees of such private undertakings, did not have any relevance to the appellants' claim for absorption. The undertakings and services of employees of the erstwhile licencees were taken over several decades ago when the Board was constituted and when the Board was financially and administratively in a completely different position. As the financial position of the Board was presently precarious due to various circumstances, in particular, setting up of Jharkhand State Electricity Board following the reorganization of the state of Bihar and as the Board itself was considering retrenchment of large

\(^{55}\) (1992) Suppl. (2) SCC 343
number of its existing employees, it cannot be compelled to take over the services of the employees of the society in the absence of any legal right in the appellants.

(iv) It could not direct absorption on equitable grounds. Any equitable consideration of the claim of the appellants cannot ignore the financial position of the Board, howsoever sympathetically the court may view the plight of the appellants. The state government, being interested in the welfare of the employees of the society had considered several alternatives to rehabilitate the employees of the Society. In the course of exploring the various alternatives, information was sought by the Government, views were expressed and assurances were made on the floor of the House, to explore the possibility of the Board absorbing the services of the employees of the society. But that did not create any right in the employees of the society to seek employment from the Board. In the absence of any specific decision by the Board or assurance by the Board to absorb the services of the appellants, the principle of 'legitimate expectation' was not attracted.

(v) Having regard to Section 7 and 7A of the Act, when the undertaking of a licensee was purchased by the Board, there was no obligation on the part of the Board to absorb the employees of the erstwhile licensee.

The Letters Patent Appeal filed by the appellants against the said decision of the learned single Judge was dismissed by a Division Bench by a brief order dated 30.9.2002, both on the ground of limitation and on merits, thereby affirming the decision of the learned single court. The said order was challenged in the appeal before Supreme Court. On the
contentions urged, the following question arose for the Consideration of the Supreme Court.

Whether there is any obligation on the part of the Board - either contractual or statutory, or on equitable considerations-to absorb the services of the appellants?

4.3.1 Contractual Obligation

The licence granted to the society under section 3 of the Indian Electricity Act, 1910 was revoked by the State Government on 25.4.1995. It is no doubt true that on such revocation, the Board took over the entire activities of the society relating to distribution of power to the licensed areas. The Board also gave its concurrence to purchase the undertaking of the society. But the Board neither entered into any contract with the society, nor gave any assurance to the Society or its employees to absorb the employees of the society into its service. Therefore, obviously, there is no contractual obligation on the part of the Board to absorb the services of the appellants.

4.3.2 Statutory Obligation

None of the provisions of the Act required the purchaser of the undertaking to take over the services of the employees of the Society. The appellants have not been able to show any other statutory provision which entitles them to seek absorption by the Board. Hence, there is no statutory obligation to absorb them into Board's service.

4.3.3 Equitable considerations

Realising that the appellants had no contractual or statutory right, learned counsel for the appellants sought to derive support for the claim on equitable considerations, by placing reliance on an amalgam of the principles relating to legitimate expectation, fairness in action and natural justice, reiterating the contentions urged before the High Court.
It may be true that when the Board took over the undertakings of the erstwhile private licencees several decades ago, it also took over the services of the employees of such private licensees. It is also possible that this court in exercise of its jurisdiction under Article 142, on the facts of a given case, might have directed that the persons, whose services had been terminated on account of closure of an instrumentality of the State, be continued in the service of Government Departments or other Government Corporations. It may also be true that certain enactments providing for transfer of undertakings in pursuance of nationalization or otherwise, had also provided for continuation/transfer of the services of the employees of the undertakings to the transferee. But these do not attract the principle of 'legitimate expectation'. The court explained the legitimate expectation and said that obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy that may ordinarily flow from a promise or established practice. The term 'established practice' refers to a regular, consistent predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a person can be said to have a 'legitimate expectation' of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. As a
ground for relief, the efficacy of the doctrine is rather weak as its slot is just above 'fairness in action' but far below 'promissory estoppel'. It may only entitle an expectant: (a) to an opportunity to show cause before the expectation is dashed; or (b) to an explanation as to the cause for denial. In appropriate cases, courts may grant a direction requiring the authority to follow the promised procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bonafide reason given by the decision-maker, may be sufficient to negative the 'legitimate expectation'.

The doctrine of legitimate expectation based on established practice as contrasted from legitimate expectation based on a promise, can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognized legal relationship with the authority. A total stranger unconnected with the authority or a person who had no previous dealings with the authority and who has not entered into any transaction or negotiations with the authority, cannot invoke the doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly. In Union of India v. Hindustan Development Corporation\(^56\) this Supreme court explained the nature and scope of the doctrine of 'legitimate expectation' and held that for legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them

\(^{56}\) (1993) 3 SCC 499
to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.

The court also explained the remedies flowing by applying the principle of legitimate expectation and said that it is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negativing a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallized right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore, even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it
would be within its powers to fulfill. The protection is limited to that extent and a judicial review can be within those limits. But as discussed earlier, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision. In a given case, whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which depends on several factors.

In *Punjab Communication Ltd. v. Union of India* the Supreme court observed that the principle of legitimate expectation is still at a stage of evolution. The principle is at the root of the rule of law and requires regularity, predictability and certainty in the governments dealings with the public The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made.

"However, the more important aspect is whether the decision maker can sustain the change in policy by resort to Wednesbury
principles of rationality or whether the court can go into the question whether the decision-maker has properly balanced the legitimate expectation as against the need for a change. In short, this means that the judgment whether public interest overrides the substantive legitimate expectation of individuals will be for the decision-maker who has made the change in the policy. The choice of the policy is for the decision-maker and not for the court. The substantive legitimate expectation merely permits the court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made:

A Constitution Bench of Supreme court in Secretary, State of Karnataka v. Umadevi\textsuperscript{58} referred to the circumstances in which the doctrine of legitimate expectation can be invoked and held that the doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn."

Another Constitution Bench, referring to the doctrine of legitimate expectation, observed thus in Confederation of Ex-servicemen Associations v. Union of India.\textsuperscript{59} and said that no doubt, the doctrine has an important place in the development of Administrative Law and

\textsuperscript{58} (2006) 4 SCC I
\textsuperscript{59} JT (2006) 8 SC 547
particularly law relating to 'judicial review'. Under the said doctrine, a person may have reasonable or legitimate expectation of being treated in a certain way by an administrative authority even though he has no right in law to receive the benefit. In such situation, if a decision is taken by an administrative authority adversely affecting his interests, he may have justifiable grievance in the light of the fact of continuous receipt of the benefit, legitimate expectation to receive the benefit or privilege which he has enjoyed all throughout. Such expectation may arise either from the express promise or from consistent practice which the applicant may reasonably expect to continue. In such cases, therefore, the court may not insist an administrative authority to act judicially but may still insist it to act fairly. The doctrine is based on the principle that good administration demands observance of reasonableness and where it has adopted a particular practice for a long time even in absence of a provision of law, it should adhere to such practice without depriving its citizens of the benefit enjoyed or privilege exercised.

The Supreme Court then examined whether the principles of legitimate expectation can have any application in the instant case. What transpired several decades ago when the Board commenced its operations and when its finances were sound, cannot have any bearing on its action in the year 1995. The position of the Board vis-à-vis the Society in 1995 was completely different from the position of the Board vis-à-vis the several ex-licensees when the Board took over their undertakings several decades back. Further, the assumption that whenever an undertaking is taken over, transferred or purchased, the transferee or purchaser should continue the services of the employees of the erstwhile owner of the undertaking, is not sound. In fact, statutory provisions seem to indicate otherwise. Section 25-FF of the Industrial Disputes Act, 1947 provides
that where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched, except in the cases mentioned in the proviso thereto. Therefore, the natural consequence of a transfer of an undertaking, unless there is a specific provision for continuation of the service of the workmen, is termination of employment of its employees, and the employer's liability to pay compensation in accordance with Section 25F. In Anakapalle Co-operative Agricultural and Industrial Society Ltd. v. Workmen, a Constitution Bench of Supreme court rejected the contention of the employees that, on transfer of the undertaking, the employees of the undertaking should be absorbed by the purchaser/transferee of the undertaking. This court held that, "This double benefit in the form of payment of compensation and immediate re-employment cannot be said to be based on any considerations of fair play or justice. Fair play and justice obviously mean fair play and social justice to both the parties. It would, not be fair that the vendor should pay compensation to his employees on the ground that the transfer brings about the termination of their services, and the vendee should be asked to take them back on the ground that the principles of social justice require him to do so and in that sense, the said compensation is distinguishable from gratuity. Therefore, if the transferor is by statute required to pay retrenchment compensation to his workmen, it would be anomalous to
suggest that the workmen who received compensation are entitled to claim immediate reemployment in the concern at the hands of the transferee.

The Board had never agreed nor decided to take services of any of the employees of the Society. In fact, it is not even the case of the appellants that the Board had at any point of time held out any promise or assurance to absorb their services. When the licence of the Society was revoked, the State Government appointed a Committee to examine the question whether the Board can take over the services of the employees of the Society. The Committee no doubt recommended that the services of eligible and qualified employees should be taken over. But thereafter the State Government considered the recommendation and rejected the same, apparently due to the precarious condition of the Board which itself was in dire financial straits, and was contemplating retrenchment of its own employees. At all events, any decision by the State Government either to recommend or direct the absorption of the Society's employees was not binding on the Board, as it was a matter where it could independently take a decision. It is also not in dispute that for more than two decades or more, before 1995, the Board had not taken over the employees of any private licencee. There was no occasion for consideration of such a course. Hence, it cannot be said that there was any regularity or predictability or certainty in action which can lead to a legitimate expectation.

The appellant next submitted that Supreme Court, in some cases, has directed absorption in similar circumstances. Reliance is placed on the decision in *G. Govinda Rajulu v. Andhra Pradesh State Construction*
Corporation Ltd.\textsuperscript{61} in which the Supreme court directed that the employees of the Andhra Pradesh State Construction Corporation Limited whose services were sought to be terminated on account of the closure of the Corporation shall be continued in service on the same terms and conditions either in the government departments or in the government corporations.

The court further said that the tenor of the said order, which is not preceded by any reasons or consideration of any principle, demonstrates that it was an order made under Article 142 of the Constitution on the peculiar facts of that case. Law declared by this court is binding under Article 141. Any direction given on special facts, in exercise of jurisdiction under Article 142, is not a binding precedent. Therefore, the decision in the instant case cannot be the basis for claiming relief similar to what was granted in that case. Hence the fact that in certain cases, the court directed regularization of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation.

The Supreme Court then considered the contention that the appellants are entitled to relief based on the principle of fairness in action, on equitable considerations. Learned counsel for the appellants relied on two decisions of Supreme court in support of his contention i.e. Gurmail Singh v. State of Punjab\textsuperscript{62} and Kapila Hingorani v. State of Bihar.\textsuperscript{63}

The observations made by Supreme court in the former case on which reliance is placed are such as:

"This is where, as here, the transferor and/or transferee is a State or a State instrumentality, which is required to act fairly and not arbitrarily and the court has a say as to whether the terms and conditions on which it

\textsuperscript{61} AIR 1963 SC 1489
\textsuperscript{62} (1991) 1 SCC 189
\textsuperscript{63} (2003) 6 SCC 1
proposes to hand over or take over an industrial undertaking embody the requisite of "fairness in action" and could be upheld. Certainly, in such circumstances it will be open to the court to review the arrangement between the State Government and the Corporation and issue appropriate directions. Indeed, such directions could be issued even if the elements of the transfer in the present case fall short of a complete succession to the business or undertaking of the State by the Corporation, as the principle sought to be applied is a constitutional principle flowing from the contours of Article 14 of the Constitution which the State and Corporation are obliged to adhere to."

The court further said that it was very fair on the part of the State Government to decide that, as the tubewells would be operated by the Corporation, it would be prudent to run them with the help of the appellants rather than recruit new staff therefore and that the government should bear the burden of any losses which the Corporation might incur as a result of running the tubewells. But having gone thus far, the court is unable to see why the government stopped short of giving the appellants the benefit of their past services with the government when thus absorbed by the Corporation. Such a step would have preserved to the appellants their rightful dues and retirement benefits. The conduct of the government in depriving the appellants of substantial benefits which have accrued to them as a result of their long service with the government, although the tubewells continue to be run at its cost by a Corporation wholly owned by it, is something which is grossly unfair and inequitable. This type of attitude designed to achieve nothing more than to deprive the employees of some benefits which they had earned, can be understood in the case of a private employer but comes ill will from a State Government and smacks of arbitrariness. Acting as a model employer, which the State
ought to be, and having regard to the long length of service of most of the appellants, the State, should have agreed to bear the burden of giving the appellants credit for their past service with the government. That would not have affected the Corporation or its employees in any way except to a limited extent and, at the same time, it would have done justice to the appellants. This is something which the State ought to be directed to do.

"But in a case where one or both of the parties is a State instrumentality, having obligations under the Constitution, the court has the power of judicial review over all aspects of transfer of the undertaking. It is open to a court, in such a situation, to give appropriate directions to ensure that no injustice results from the changeover.

These observations have to be understood in the background of the facts of the particular case. The appellants therein were tubewell operators in the Public Works department (PWD) of the State Government. The State took a decision to transfer all tubewells to a Corporation wholly owned and managed by the State and as a consequence all the permanent posts with reference to the Tubewell Circle in the PWD were abolished. Notices were served in terms of Section 25F of the Industrial Disputes Act, 1947. When those notices were challenged, they were set aside on the ground that they were not in consonance with clause [c] of Section 25F. The State Government issued fresh notices of termination and they were also set aside by the High court on the ground that they did not conform to clause [b] of Section 25F. Thereafter, the State Government served fresh notices terminating the services in accordance with Section 25F for the third time. The third round notices were also challenged. But the High court upheld the notices of retrenchment. The order of the High court was challenged before Supreme Court. During the pendency of the long drawn litigation, the
newly formed Corporation decided to take over their services by extending them the same scale of Pay, which they were getting when they were in the employment of the State Government. Therefore, the only grievance that survived for consideration before this court related to appellants therein being treated as fresh appointees on the dates of their respective appointment by the corporation, thereby denying them the benefit of their past service and seniority. It is in the context of examining the said grievance, the court made the observations and said that the retrenchment under Section 25-FF is valid. The Corporation had voluntarily taken over the services of the retrenched employees. The question whether the transferee or the purchaser of the undertaking should absorb the services of the employees of the previous employer was not in issue and therefore, the said decision is of no assistance. On the other hand, what may be relevant are the observations of the Constitution Bench in Secretary, State of Karnataka v. Uma Devi when it said that obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality of the project is also of equal concern for the State. The State works out the scheme taking into consideration the financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature by insisting on regularization or permanence in employment, when those employed temporarily are not needed permanently or regularly? For example, if the court gives a direction to provide permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that

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64 (2006) 4 SCC I
the undertaking itself may collapse under its own weight. It is not as if
this had not happened. So, the court ought not to impose a financial
burden on the State by such directions, as such directions may turn
counterproductive."

The decision of Supreme Court in *Kapila Hingorani v. State of
Bihar*65 is an interim order in a public interest litigation. In the State of
Bihar, various government companies and public sector undertakings had
not paid salaries to their workmen and other employees for a long time,
resulting in deaths and suicides of several employees. The petitioner
therein wanted the State to bear the responsibility for payment of salaries.
The State resisted the petition on the contention that the liabilities of the
company cannot be passed on to the State by taking recourse to the
doctrine of lifting the veil or otherwise. The Supreme court issued certain
interim directions for disposal of all liquidation proceedings in regard to
the government companies in question and appointment of a Committee
to scrutinize and ascertain the assets and liabilities of the company. The
Supreme Court also directed the State Government to deposit a sum of
Rs.50 crores before the High court for disbursement of salaries to the
employees. During the course of the said interim order, the Supreme
court observed that the government companies/public sector undertakings
being "States" would be constitutionally liable to respect life and liberty
of all persons in terms of Article 21 of the Constitution of India. They,
therefore, must do so in cases of their own employees. The Government
of the State of Bihar for all intent and purport is the sole shareholder.
Although in law, its liability towards the debtors of the company may be

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65 (2003) 6 SCC I
confined to the shares held by it but having regard to the deep and pervasive control it exercises over the government companies; in the matter of enforcement of human rights and/or rights of the citizen to life and liberty, the State has also an additional duty to see that the rights of employees of such corporations are not infringed.

The right to exercise deep and pervasive control would in its turn make the Government of Bihar liable to see that the life and liberty clause in respect of the employees is fully safeguarded. The Government of the State of Bihar, thus, had a constitutional obligation to protect the life and liberty of the employees of the government-owned companies/corporations who are the citizens of India. It had an additional liability having regard to its right of extensive supervision over the affairs of the company.

The observations made in an interim order with reference to the State's obligations will not be of any avail to seek employment under the Board. The Supreme said that it is not concerned in these appeals about the rights of the employees of the Society vis-a-vis the Society or the State Government. The court is concerned with a specific question as to whether they can seek absorption under the Board on the ground of legitimate expectation. The Supreme Court referred to the decision made in *Bhola Nath Mukherjee v. Government of West Bengal*66 relating to transfer of a licensee's undertaking to a State Electricity Board, as a consequence of revocation of the licence. In that case, the Board initially allowed the employees of the erstwhile licensee to continue in its service but subsequently introduced terms which rendered them fresh appointees from the date of take over of the undertaking. The question that arose for

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66 (1997), Sec. 562
consideration was whether the employees were entitled to compensation under Section 25FF of the Industrial Dispute Act; and whether the liability for payment of such compensation under Section 25FF of the Act was on the transferor or the Board. The court held that employees had no right to claim any retrenchment compensation from the Board, nor did they have any right to claim to be in continuous employment on the same terms and conditions, after the purchase of the undertaking by the Board. The said decision clearly recognizes that the Board has no obligation towards the employees of the previous owner of the undertaking.

A person may have a 'legitimate expectation' of being treated in a certain way by an authority even though he has no right in private law to receive such treatment.

The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice.

4.4 LIMITATIONS OF THE DOCTRINE OF LEGITIMATE EXPECTATIONS

4.4.1 Exceptions to Doctrine of Legitimate Expectations

Although legitimate expectation has assumed the position of a significant doctrine of public law in almost all jurisdictions, yet there are some exceptions to this principle of fair procedure.

In Ved Gupta v. Apsara67, the court held that there cannot be a legitimate expectation to a thing which would involve the violation of a statute, e.g., to run a cinema house without licence; or interference with a public duty of the authority. In State of H.P. v. Kailash68, the court held that where a person other than a licensee was operating a cinema show,

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67 (1996) 5 CLJ, 286
68 (1992) 1 SCC 351
no hearing of such outsider would be required before making an order suspending such show. For the same reason, legitimate expectation cannot preclude legislation.

In *Govt of A.P v. The Nizam*\(^69\), the court held that no legitimate expectation can be founded on an application which has been rejected for failure to comply with the conditions imposed for its consideration.

In *Union Territory Chandigarh v. Dilbagh*\(^70\), the court held that in the matter of appointment to Government service since a candidate doesn't acquire any right to be appointed merely because his name appears in Selection List made by a Selection Board. In the absence of any specific rule entitling him to such appointment, the Court or Tribunal cannot fetter the discretion of the appointing authority by the doctrine of legitimate expectation, in the absence of arbitrariness or maladies. Even the doctrine of natural justice cannot be invoked if he is not heard before canceling such Selection List for bona fide reasons. The court also said that the legitimate expectation of an individual is subject to the larger consideration of public interest. Whenever such question arises, it is to be determined not according to the claimant's perception but in larger public interests wherein other important considerations may outweigh e.g., in the matter of non-acceptance of the highest bid at a public auction or a tender relating to a government contract or license.

In *Union of India v. Hindustan Development Corporation*\(^71\), the court held that legitimate expectation doesn't give rise to any substantive right straight away. It gives a locus standi to a person to seek judicial

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\(^{69}\) AIR 1993 SC 76  
\(^{70}\) AIR 1993 SC 431  
\(^{71}\) (1993) 3 SCC 499
review by challenging an administrative action and to have it quashed only if the decision is arbitrary, unreasonable or not taken in public interest and a failure to give a hearing to such affected person has resulted in failure of justice.

4.4.2 Overriding Considerations

4.4.2.1 National security

In *Council of Civil Service Unions v. Minister for the Civil Service*\(^\text{72}\), The Government Communications Headquarters (GCHQ) was responsible for the provision of intelligence to the government, and for the security of military and official communications. Since the establishment of GCHQ in 1947, its staff had been permitted to belong to civil service trade unions, and GCHQ management had regularly consulted with the unions following industrial action at GCHQ, the Prime Minister in her capacity as Minister for the Civil Service sought to curtail staff rights of trade union membership by an instruction issued under prerogative powers for controlling the Civil Service. The CCSU (1955) HL sought a declaration that the Minister had acted unfairly in removing staff rights of trade union membership without consultation. The Minister argued that consultation would have provoked the very disruption and endangering of national security which her instruction was intended to terminate.

The court held that the proceeding on the basis that the exercise of delegated prerogative powers was justifiable, that, although the staff had no legal right to prior consultation, they had a legitimate expectation to it. Such expectation might arise either from an express promise given by a public authority or, from a regular practice of consultation which the

\(^{72}\) (1985) AC 374
applicant could reasonably expect to continue. In the absence of evidence that an issue of national security was involved, it would have been proper to grant the declaration sought.

4.4.2.2 Preserve action freedom of administrative action.

In *R v. Secretary of State for Health*[^73^], Where the facts of the case such as the applicant manufactured oral snuff. In 1985, when the government was already aware of a link between oral snuff and cancer, the applicant received a government grant. At the same time, the government obtained the applicant's agreement to place a health warning on its product, and not to market it to those aged less than 18 years. In 1988, the Department of Health announced that it intended to ban the manufacture of oral snuff. The applicant sought judicial review on two grounds: first, the Secretary of State was in breach of a statutory duty to consult it as an affected party, and, secondly, that it had a legitimate expectation that it would be permitted to continue to manufacture snuff as long as it kept to its agreement regarding marketing and the health warning.

The court held that the applicant would succeed on the first ground and fail on the second. The applicant had no legitimate expectation. The court also held that the Secretary of State's discretion to change his policy could not be fettered by moral obligations to the applicant deriving from the earlier favourable treatment of them'. The court further said that the applicant 'must have been aware that their expectations could never fetter the Secretary of State's public duty to promote and safeguard the health of the public'.

[^73^]: [2003] 2 WLR 692
In *R v. Ministry of Agriculture, Fisheries and Food*\(^{74}\), the applicant's arguments based on legitimate expectation cannot succeed because legitimacy, in the sense in which it applied to expectations under public law, was not absolute. Its presence was to be gauged by balancing the expectations induced by government and the policy considerations which militated against their fulfillment. Sedley J said that the balance must in the first instance be for the policy maker to strike; but if the outcome is challenged by way of judicial review or do not consider that the court's criterion is the bare rationality of the policy maker's conclusion. While policy is for the policy maker alone, the fairness of his or her decision not to accommodate reasonable expectations which the policy will thwart remains the court's concern. To postulate this is not to place the judge in the seat of the Minister, it is the court's task to recognise the constitutional importance of ministerial freedom to formulate and to reformulate policy. But it is equally the court's duty to protect the interests of those individuals whose expectation of different treatment has a legitimacy which in fairness outtops the policy choice which threatens to frustrate it. Legitimate expectation is now in effect a term of art, reserved for expectations which are not only reasonable but which will be sustained by the court in the face of changes of policy. Whether this point has been reached is determined by the court, whether on the grounds of rationality, of legality or of fairness, of all of which the court, not the decision maker is the arbiter.

In *R v. Secretary of State for the Home Department*\(^{75}\) where the facts of the case such as the applicants were three prisoners serving sentences at HMP Risley. Pursuant to rules made by the Secretary of

\(^{74}\) (1995) CA

\(^{75}\) (1996) CA 94
State and in force at the beginning of their sentences, they would have been eligible to apply for periods of home leave after serving one-third of their terms of imprisonment. These rules were communicated to prisoners in the form of a notice and 'compact', setting out responsibilities undertaken by the prison, and requiring signed commitments to norms of good behaviour by the prisoners. In response to perceived public concern, the Secretary of State amended the rules by statutory instrument in 1995 with the result that eligibility to home leave accrued only on the completion of half the sentence to be served by a prisoner. The applicants claimed that the change denied them a legitimate expectation on the terms of the original rules. The Divisional Court dismissed the applications on the grounds that (a) no clear and unambiguous representations had been established, and (b) that the correct test by which to judge the Secretary of State's change of policy was not the balance of fairness and proportionality, but the public law test of irrationality.

The court by upholding the judgment of the Divisional Court held that the principle for granting home leave and other privileges upon the regime currently in force, those documents nevertheless suggested that this was the position, and certainly contained no contrary indications. Where procedural irregularity was alleged against a Minister, it was appropriate to inquire into the fairness of the procedure adopted by him, but where, as in the present case, a substantive defect was alleged, it fell to be judged by the far stricter irrationality test.

4.4.3 Other Limitations upon the Doctrine of Legitimate Expectation

The doctrine of 'legitimate expectation' has its own limitations. The concept of legitimate expectation is only procedural and has no
substantive impact. In *Attorney General for New South Wales v. Qain*\(^{76}\) One Q was a stipendiary Magistrate in charge of Court of Petty Sessions. By an Act of Legislature that court was replaced by local court.

Though applied, Q was not appointed under the new system. That action was challenged. The court dismissed the claim observing that if substantive protection is to be accorded to legitimate expectations, it would result in interference with administrative decisions on merits which is not permissible. Moreover, the doctrine does not apply to legislative activities. Thus, in *R. v. Ministry of Agriculture*\(^{77}\) conditions were imposed on fishing licences. The said action was challenged contending that the new policy was against legitimate expectations'. Rejecting the argument and dismissing the action, the court held that the doctrine of legitimate expectations' cannot preclude legislation.

Likewise, in *Sri Srinivasa Theatre v. Govt, of TN*\(^{3n}\). by amending the provisions of the Tamil Nadu Entertainments Tax Act, 1939, the method of taxation was changed. The validity of the amendment was challenged inter alia on the ground that it was against legitimate expectation of the law in force prior to amendment. Rejecting the argument and following the judgment passed in *Council of Civil Service Unions v. Minister for Civil Service*\(^{78}\), the Supreme Court held that legislation cannot be invalidated on the basis that it offends the legitimate expectations of the persons affected thereby.

Again, doctrine of 'legitimate expectations' does not apply if it is contrary to public policy or against the security of State. Thus, in *Council of Civil Service Unions v. Minister for Civil Service*\(^{79}\) the staff of

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76 (1990) 3 ALR I.
77 (1991) 1 All ER41.
78 (1985) AC 374
79 Ibid
Government Communications Head Quarters (GCUQ) had the right to unionization. By an order of the government, the employees of GCHQ were deprived of this right. The union challenged the said action contending that the employees of GCHQ had legitimate expectations of being consulted before the Minister took action. Though in theory, the House of Lords agreed with the argument of the Union about legitimate expectations, it held that the Security considerations put forward by the government-override the right of the Union to prior consultation.

Similarly, in State of M.P. v. Kailash Chand\textsuperscript{80}, an Act was amended by providing age of superannuation. It was contended that when an appointment was made by fixing tenure, there was right to continue and the doctrine of legitimate expectation would apply. The claim was, however, negative observing that "legitimate expectation cannot preclude legislation"

In Union of India v. Hindustan Development Corp\textsuperscript{81} in government contract, dual pricing policy was fixed by the State Authorities i.e. lower price for big suppliers and higher price for small suppliers. That action was taken in larger public interest and with a view to break "cartel" it was held that adoption of dual pricing policy by government did not amount to denial of legitimate expectation.

4.5 CRITICAL APPRAISAL

Like the bulk of the administrative law the doctrine of legitimate expectation is also a fine example of judicial creativity. Nevertheless it is not extra legal and extra-constitutional. A natural habitat for this doctrine can be found in Article 14 of the Constitution which abhors arbitrariness and insists on fairness in all administrative dealings. It is now firmly

\textsuperscript{80} AIR 1992 SC 1277.
\textsuperscript{81} AIR 1994 SC 980.
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\textsuperscript{82}.

The doctrine has both negative and positive contents. If applied negatively an administrative authority can be prohibited from violating the legitimate expectations 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 i.e. the people.

The doctrine of legitimate expectations in essence imposes a duty to act fairly. Legitimate expectation may come in various forms and owe its existence to different kinds of circumstances. It is not possible to give an exhaustive list in the context, the doctrine to be applied due to the vast and fast expansion of government activities. They shift and change so fast that the start of our list would be obsolete before we reach the middle.

One thing, however, is clear, that court cannot assume jurisdiction to review administrative act or decision, which is unfair in the opinion of the court. If that be allowed, the court would be exercising jurisdiction to do the very thing which is to be done by the repository of an administrative power, i.e. choosing among the courses of action upon which reasonable minds might differ.

But the Court must stop short of compelling fulfillment of the promise or practice unless the statute so requires or the statute permits the repository of the power to bind itself as to the manner of the future

\textsuperscript{82} Food Corporation of India \textit{v.} kamdhenu Cattle Feed Industries, \textit{AIR} 1993 SC 1601
exercise of the power. It follows that the notion of legitimate expectation is not the key which unlocks the treasury of natural justice and it ought not to unlock the gate which shuts the court out of review on the merits. It is true that the emergence of doctrine of legitimate expectation has put a tremendous impact in Indian Law specifically an administrative law. The real impact of the legitimate expectation in India Law has been discussed in next chapter.