



DOCTRINE OF LEGITIMATE EXPECTATIONS: A MYTH

By Aadhya Shrotriya and Maharshi Shah
From O.P. Jindal Global University (Jindal Global Law School)

ABSTRACT

This paper tries to illustrate the illusory nature of the doctrine of legitimate expectation in India and how the judiciary has actually let the executive get away in almost every case. This paper also juxtaposes the application of this doctrine in India to that of the United States of America's ("USA") and illustrates how this doctrine's actual application protects the citizens of the USA from the arbitrary actions of the executive. The country to contrast the Indian position has been chosen as USA since the US judiciary has made the most efficient utilization of this doctrine and has set an example for the other judiciaries. This paper is divided into two parts: Part A shows how this doctrine has become a fiction in India and Part B juxtaposes the Indian system to that of USA.

INTRODUCTION

The concept of separation of power has been an integral and widely debated part of the Indian Constitution. Many diverse viewpoints have been presented by various authors on the degree or the nature of separation of power being followed in the Indian political scenario. However, it is a

well settled position now that the Indian system follows a balanced form of separation of power wherein each organ of the Government i.e. the executive, the legislature and the judiciary is given independent recognition, but no express powers are vested in these different organs.¹ The separation of powers amongst these three organs is not equal in the Indian context as the executive can be seen as a more dominant organ than the others.² With such kind of separation of power, it is important that the functioning of each organ, especially the executive, is monitored by the others and kept in check. It is with this function of keeping a check on each other that a lot of tussles have been witnessed in the past between all these organs. A major tussle in the field of administrative law was also seen between the executive/administrative and the judiciary in the field of judicial review of executive/administrative discretion. With the administrative functions being given to the executive, it was of utmost importance that the executive discretion in the administrative field was kept in check. This tussle gave rise to various tools which allowed the judiciary to keep a check on the executive discretion. A very recent addition in this list was the judicial invention of the doctrine of legitimate expectation.

The doctrine of legitimate expectation was borrowed by the Indian judiciary from the courts in Britain. This doctrine was first used in administrative law by Lord Denning in the case of *Schmidt v. Secretary of State for Home Affairs*.³ After its origin, this doctrine has evolved in many ways and has been

¹ Ruma Paul, *Separation of Powers*, The Oxford Handbook of the Indian Constitution, pg. 254-255.

² Ruma Paul, *Separation of Powers*, The Oxford Handbook of the Indian Constitution pg. 254-255.

³ *Schmidt v. Secretary of State for Home Affairs*, (1969) AII ER 904.



adopted by the judiciaries of most of the countries across the globe. According to Halsbury's Laws of England, this doctrine can be defined as "A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal 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. The existence of a legitimate expectation may have a number of different consequences; it may give *locus standi* to seek leave to apply for judicial review; it may mean that the authority ought not to act so as to defeat the expectations without some overriding reason of public policy to justify its doing so; or it may mean that, if the authority proposes to defeat a person's legitimate expectation, it must afford him an opportunity to make representations on the matter. The courts also distinguish, for example in licensing cases, between original applications, applications to renew and revocations; a party who has been granted a license may have a legitimate expectation that it will be renewed unless there is some good reason not to do so, and may therefore be entitled to greater procedural protection than a mere applicant for a grant."⁴ Though the Indian judiciary has borrowed this concept from the British courts, its interpretation and approach towards this doctrine has been way different than the British courts. The Indian judiciary has been very stringent in its application and has often

disregarded its application on the basis of various exceptions crafted out by judicial imagination.

A. THE MYTH: AN INDIAN CONTEXT

The first Indian case which saw the application of the doctrine of legitimate expectation was that of *Union of India v. Hindustan Development Corporation*.⁵ In this case Justice Reddy for the first time introduced this doctrine and illustrated the scope of this doctrine in India.⁶ Here the doctrine was only limited to procedural legitimate expectation. However, soon the Supreme Court extended this doctrine to substantive legitimate expectation as well.⁷ Since then, the interpretation of this doctrine has changed a lot through various judicial pronouncements, and it can be noticed that the judiciary in India has narrowed down its scope rather than extending it. As discussed by Mr. Chintan Chandrachud in his paper, this doctrine now remains a fictitious or an illusory doctrine in India.⁸ The Indian courts have carved out a number of exceptions wherein this doctrine would not apply, and the discretionary executive practices would be overlooked.

The first major challenge posed by the judiciary is its interpretation of the term 'legitimate expectation'.

In the case of *Bannari Amman Sugars v. CTO*, the court held that a mere anticipation would not suffice and for a claim based on this doctrine the "legitimacy of an

⁴ Mackay, *Halsbury's Laws of England*, London: LexisNexis, 2008.

⁵ *Union of India v. Hindustan Development Corporation*, AIR 1994 SC 988.

⁶ *Id.*

⁷ *Punjab Communications v. Union of India*, AIR 1999 SC 1801, [37].

⁸ Chintan Chandrachud, *The (Fictitious) Doctrine of Substantive Legitimate Expectations in India*, pg. 1



*expectation can be inferred only if founded on the sanction of law.*⁹ It is important to note here that the doctrine of legitimate expectation was invented to protect certain rights which were short of being a legal claim but were detrimental to the claimant. Since the nature of this doctrine was to protect non-legal rights, the court's interpretation in the present case that the expectation should be founded on sanction of law nullifies the whole basis of this doctrine.

Another major setback came in the case of *Ghaziabad Development Authority v. Delhi Auto & General Finance Pvt Ltd.* while relying on the prior judgment in *Hindustan Development Corporation* case, the court here held that "legitimate expectation is not by itself a distinct enforceable right."¹⁰ It stated that it is not a crystallized right but it only gives an individual a ground for judicial review and is mostly confined to a right of fair hearing.¹¹ Here again it was seen how judiciary has narrowed down the doctrine to a bare minimum and has just left the remedy available to a mere right to be heard. Also, it was seen in the case of *FCI v. Kamdhenu Cattle* how the court has included the doctrine of legitimate expectation under Article 14 and stated that a mere violation of legitimate expectation would not give a distinct right but a violation of Article 14 along with a claim of legitimate expectation could be brought. This position again vitiates the whole concept of legitimate expectation as if a person needed an Article 14 violation along with legitimate expectation, then he could have just challenged the act under Article 14 without having a need for a claim

of legitimate expectation.¹² This doctrine was brought in to give a distinct remedy to the claimant irrespective of any other legal violation. However, its enforcement with such other legal violations renders the doctrine of legitimate expectation useless.

The Indian judiciary took a step further in rendering this doctrine illusory, by reading this doctrine in tandem with the *Wednesbury* principle. Earlier the case of *FCI v. Kamdhenu* had set a precedent wherein they had carved out an exception of public interest and good faith and stated that the doctrine of legitimate expectation would not be applicable in case of overriding public interest.¹³ Soon after this in the case of *Punjab Communications v. Union of India*, the court advanced this previous position by stating that the defense of public interest against a claim of legitimate expectation would be tested according to the *Wednesbury* principle.¹⁴ What this meant was that whenever the executive would further the defense of public interest it would be upheld until and unless it was gravely unreasonable or discretionary. Hence, a lesser degree of discretion, arbitrariness or unreasonableness in its defense of public purpose would be overseen by the judiciary and the executive would be allowed to act in such a manner.

From the above exceptions and hindrances it can be clearly seen how the judiciary has rendered this doctrine of legitimate expectation illusory and useless. It has hardly been used to protect the individuals against the arbitrary actions of the executive. On the other hand, the judiciary instead of keeping a

⁹ *Bannari Amman Sugars v. CTO*, (2005) 1 SCC 625.

¹⁰ *Ghaziabad Development Authority v. Delhi Auto & General Finance Pvt. Ltd.*, (1994) 4 SCC 42.

¹¹ *Id.*

¹² *Food Corporation of India v. Kamdhenu Cattle Feed Industries*, AIR 1993 SC 1601.

¹³ *Id.*

¹⁴ *Supra* 7.



check on the executive's discretion, has made a path for the executive to exercise discretion under the garb of legal provisions. However, when this position of the Indian judiciary is juxtaposed with that of the British and American judiciary, one can see that the judiciary of these jurisdictions has played an active role in protecting its citizens against such discretionary practices and has kept a good check on the executive discretion. These judiciaries have also interpreted this doctrine in a much wider sense in order to allow its citizens to make the full use of this doctrine.

B. POSITION IN THE USA

In USA, the doctrine of legitimate expectations is referred to as the principle of consistency. The courts in USA, by referring to it as principle of consistency have given it a very broad scope and meaning. In USA this principle of consistency applies to all the organs of the Government and not just the administrative branch of it. Both, the executive and legislative have to follow this principle of consistency. Not only both the branches of the government but also the different levels of each branch have to follow this principle. The principle of consistency operates in 2 ways i.e. vertical consistency and horizontal consistency.¹⁵ The advantage this system gives it that it creates a coherence in the system as a practice which is to be followed is followed consistently by each organ and also by each level of one organ. The legislature and the executive both need to follow a consistent procedure in its functioning and cannot change their past practices except in cases of extreme

emergencies. Another advantage of this system is that the court don't question the claim of locus standi of the claimant but check and question the procedure of the executive. They look into the question of whether the practice which is challenged has been a consistent procedure or not. Due to this, what happens is that the executive has to follow a consistent procedure and cannot change its stance as if the procedure is not consistent then the procedure is struck down. With such a strict check on its procedures the executive is always under an obligation to work consistently without much divergence in its proceedings. Also, the principle of consistency gives a distinct right in the USA unlike the doctrine of legitimacy in India which needs to be accompanied by another cause of action.

Another major advantage of the principle of consistency is its application to even contracts. As opposed to the Indian system, wherein the doctrine of legitimacy does not apply to contracts, the principle of consistency applies to contracts as well. This widens the scope of this principles and allows the claimants to bring in suits based on this principle even in contractual matters. A classic case to highlight this advantage was seen in the Indian case of *Indian Aluminium Co Ltd (IAC) v. Karnataka Electricity Board*¹⁶. Here, a tripartite contract was signed between IAC, the Karnataka Electricity Board and the State. The contract was signed for discounted price of electricity to be supplied to the company. Later, the Act passed by the State Legislature superseded the terms of the contract and hence the company was charged an undiscounted price

¹⁵ Jayanta Chakraborty, Doctrine of Legitimate Expectation- A comparative Study of UK, USA& INDIA, 5 Indian J.L. & Poly 21 (2018)

¹⁶ Indian Aluminium Co. Ltd. v. Karnataka Electricity Board, AIR 1992 SC 2169.



for the electricity. The company challenged this on the ground of legitimate expectation. The court in this case rejected the company's claim stating that doctrine of legitimate expectation does not apply in contractual matters and since a contract was entered here, the company could not rely on this doctrine.¹⁷ Here, we can see how if the USA system of consistency was followed in India as well than the ruling of the case would be completely opposite and the company could actually benefit from it. Under the American jurisprudence, the most important field where this principle is used is that of government contracts.¹⁸

The most important advantage of this American principle of consistency was illustrated in the case of *Mathews v. Elridge*.¹⁹ In this case the court illustrated their approach while dealing with defence of public purpose. They laid down the 'Flexible due process' test as opposed to the *Wednesbury* test followed in India. The court while explaining the test stated that "*First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burden that the additional or substitute procedural requirement would entail.*"²⁰ As stated, the court makes a detailed analysis of every right related to the defence of public purpose before allowing such an exception. It takes the right of the individual also into consideration while making a decision unlike the Indian judiciary

wherein the defence of public purpose is mostly allowed without any detailed analysis. The Indian judiciary only refuses such an exception in extreme cases of unreasonableness i.e. *Wednesbury* test. This approach of the USA courts helps in protecting the rights of all as in cases wherein the public purpose has nothing to do with the principle of consistency then the courts would reject the defence and allow the claimant to succeed in getting the remedy.

CONCLUSION

After going through all the cases and the various interpretations of the doctrine of legitimate expectations in India and US, it would be safe to conclude that the Indian judiciary has followed a very conservative approach while applying this doctrine which has led to an inefficient use of this doctrine. More often than not, the executive in India has got away with its discretionary practices without the judiciary interfering in such matters. On the other hand, this doctrine has been fully utilised in the context of USA due to its wide interpretation and judicial activism. While comparing these two jurisdictions, it was very evident that the relationship between the judiciary and the executive in India is very political and flawed in nature. Rather than keeping a check on the executive, the judiciary has always subsided an individual's interest in front of the executive's interests. Hence, it would be safe to say that the Indian judiciary should take up a more active role of keeping a check on the executive and should follow the footsteps of the US judiciary in order to protect the rights of its citizens.

¹⁷ Id.

¹⁸ *Supra* 15.

¹⁹ *Mathews v. Elridge*, 424 U.S. 319 (1976).

²⁰ Id.



BIBLIOGRAPHY

Cases

1. Schmitd v. Secretary of State for Home Affairs, (1969) AII ER 904.
2. Union of India v. Hindustan Development Corporation, AIR 1994 SC 988.
3. Punjab Communications v. Union of India, AIR 1999 SC 1801, [37].
4. Bannari Amman Sugars v. CTO, (2005) 1 SCC 625.
5. Ghaziabad Development Authority v. Delhi Auto & General Finance Pvt. Ltd., (1994) 4 SCC 42.
6. Food Corporation of India v. Kamdhenu Cattle Feed Industries, AIR 1993 SC 1601.
7. Indian Aluminium Co. Ltd. v. Karnataka Electricity Board, AIR 1992 SC 2169.
8. Mathews v. Eldridge, 424 U.S. 319 (1976).

Journal Articles and Online Articles

1. Ruma Paul, *Seperation of Powers*, The Oxford Handbook of the Indian Constitution, pg. 254-255.
2. Mackay, *Halsbury's Laws of England*, London: LexisNexis, 2008.
3. Chintan Chandrachud, *The (Fictitious) Doctrine of Substantive Legitimate Expectations in India*.
4. Jayanta Chakraborty, *Doctrine of Legitimate Expectation- A comparative Study of UK, USA& INDIA*, 5 Indian J.L. & Poly 21 (2018)
5. Jain & Jain, Chapter XXIV LEGITIMATE EXPECTATION, Lexis Advance.
