

# NATURE, SCOPE AND APPLICABILITY OF THE DOCTRINE OF LEGITIMATE EXPECTATION IN INDIA AND PAKISTAN

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*Abstract:* As the doctrine of legitimate expectation is a simmering terrain of administrative law, therefore, a lot of dimensions are yet to be addressed. Pledges demonstrated, policies chalked out and practices made by the government ordinarily pave the way to expectations. Public functionaries do defeat the expectations harboured by the public by ignoring fairness (procedural or substantive) enabling thereby the courts to judicially review the decision. So, the courts have been burdening the administrative authorities that despite being short of legal right, the claimant becomes entitled to fair hearing if the claim comes up to the level of legitimate expectation. The doctrine, being a check on the administration, has turned out not only to be a potent tool to enhance the efficiency but equally officious in promoting fairness in the decisions. Undoubtedly, the courts in India have, at the outset, broadened the scope of the doctrine by giving effect to the substantive expectations of the claimant as well but unfortunately, this aspect of the doctrine could attract the judicial favour lately in Pakistan. Through this paper, efforts have been made to trace out the scope, and extent of the doctrine through mainly the prisms of judicial approaches in India and Pakistan.

**Keywords:** Legitimate expectation, Licences and Permits, Contractual controversies, service matters

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## **Introduction**

As the concept of reasonableness finds its positive manifestation and expression in the lofty ideal of social and economic justice which inspires and animates the Directive Principles, and Article 14 strike at arbitrariness in state action<sup>1</sup>, therefore, the supporters of the public model of justice reiterate that the citizens are entitled to a couple of legitimate expectations of any system of justice i.e. rationality and legitimacy<sup>2</sup>.

The doctrine of legitimate expectation has emerged as a panacea against discrimination, arbitrariness and biased. Initially, the courts are of the view that it is the prerogative of the deciding authority to decide the case. As to the scope of legitimate expectation, the same is, it is submitted, inferable only if it is found on any one of the following counts; firstly, sanction of law or, secondly, custom or thirdly, an established procedure followed consistently<sup>3</sup>. In order to crop up into a right, the expectation should be justifiably legitimate and protectable<sup>4</sup>. So, in this context, every legitimate expectation does not, ipso facto, ripen into a right, so, fails to be converted into a right in conventional sense<sup>5</sup>. So, the case of legitimate expectation would deem to have emerged in case a body either by representation or by previous consistent practice paved the way to such expectation which it would be within its powers to fulfill<sup>6</sup>. The claimant can get the decision quashed if it turns out to be whimsical, capricious and inconsistent with the principles of natural justice<sup>7</sup>.

The doctrine expounds the right of a person, who has developed a reasonable expectation, to be heard provided that there is an apprehension of being aggrieved by the verdict to be made by an authority<sup>8</sup>. Furthermore, the doctrine casts in spirit an obligation to act justly and thus

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<sup>1</sup>Maneka Gandhi v union of India [1978] 2 SCR 621

<sup>2</sup> Construction Law Reports (Articles) 3<sup>rd</sup> Series 2009 expert determination Duncan W. Glaholt.

<sup>3</sup> Union of India and other v. Hindustan Development Corp & others AIR 1994 SC 998

<sup>4</sup> Food Corporation of India v M/S Kamdhenu cattle Feed Industries JT (1992) 6 S.C.259

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> Ibid

<sup>8</sup> Indian Aluminum Company limited & Another V Karnataka Electricity Board & Ors  
AIR 1992 S.C 2169

didn't confine to the situations in which the expectant was to be or provided an opportunity of making representation before an initiative was taken by the authority<sup>9</sup>.

### **Halsbury's Laws of England**

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<sup>10</sup>. The expectation may arise from a representation or promise made by the authority including an implied representation or from consistent past practice<sup>11</sup>.

Besides holding it as subtle form of notion of principles pertaining to natural justice and fair play in administrative action<sup>12</sup> and too nebulous<sup>13</sup>, the courts in India, it may be inferred with telling terseness, have been extremely cautious in deviating from the principles adumbrated in Halsbury's laws of England<sup>14</sup>.

### **Position in the UK**

Golden notion of natural justice found the roots on British soils both on the strength of reasonableness and natural justice<sup>15</sup>. Pioneer's role in laying the foundational stone of the modern trend, in this context, was Schmidt's case<sup>16</sup>. So, the inroad of the doctrine in the British administrative law owed to the said case. It was held that a public functionary was obligated to afford a hearing in case of an injury caused to the liberty, interest or some legitimate expectation of the aggrieved person<sup>17</sup>. Express promises were another terrain where the invocation of the doctrine was held to be relevant for the determination of the rights of the injured party. In

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<sup>9</sup> Ibid

<sup>10</sup>Halsbury's Laws of England Vol.1 (1), 4<sup>th</sup> Ed, Para 81 p.151,152

<sup>11</sup> Ibid

<sup>12</sup>Parahalad Stone Workers and Others v State of Bihar through the Principal Secretary, Patna and others

<sup>13</sup> Institute of Continuing education, Research & Training and others v State of Jharkhand and others, 2015

<sup>14</sup>Navjyoti Housing Cooperative Group Housing Society & others v Union of India, 1992 (2) SCC 477

<sup>15</sup>M.P.Jain&S.N.Jain, Principles of Administrative Law, Lexis Nexus Butterworths Wadhwa Nagpur C33, Inner Circle, Connaught Place New Delhi

<sup>16</sup> Ibid

<sup>17</sup> Schmidt v. Secretary of State for Home affairs, (1969)2 WLR 337

Liverpool Taxi Association's case, the court admitted that, being a policy matter, power to increase or decrease the number of licenses was the prerogative of the City Corporation but in case of promise to consult the Association before making a move to increase the number of licenses<sup>18</sup>. Nurturing the legitimate expectation in repose to the express promise by the Corporation was held to be the *raison d'être* behind the concept of hearing<sup>19</sup>.

Undoubtedly, the public authorities had been demonstrating deviations despite having made express pledges to the expectants but it were the courts which had been instrumental in protecting and broadening the frontiers of legitimate expectation. In this situation, reiterations made by the apex fora in a catena of pronouncements seem to be sufficient for the corroboration of my assertion. For instance, in the case of Attorney General of Hong Kong<sup>20</sup>, on account of a general undertaking by the Government to decide each case on its own merits, the court had stopped the deportation of the alien immigrants without hearing notwithstanding the absence of statutory provision pertaining to hearing before deportation<sup>21</sup>.

The year 1985 witnessed the development of another limb of legitimate expectation i.e. long standing practice<sup>22</sup>. In response to a question if the Board of Visitors of a prison was bound to take into account all the facets of natural justice while imposing penalties on prisoners guilty of disciplinary offences, the House of Lords held in speaking way that the remission of a prison sentence was not a right accrued to a prisoner rather the same was a matter of indulgence<sup>23</sup>. Even then, a prisoner had a legitimate expectation of getting remission based on his knowledge of general prison practice<sup>24</sup>. In case the Board, forfeited the remission of sentence without observing the tenets of natural justice, the prisoner would be entitled to challenge the action of the Board on the basis of legitimate expectation on the premise of long standing practice<sup>25</sup>.

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<sup>18</sup>Re Liverpool Taxi Owners' Association, (1972)2 All ER 589

<sup>19</sup> Ibid

<sup>20</sup> Attorney General of Hong Kong v. Ng Yuen Shiu, (1983)2 AC 629

<sup>21</sup> Ibid

<sup>22</sup> CCSU v. Minister of Civil Services, (1985) AC 374

<sup>23</sup> O' Reilly v. Mackman, (1983)2 AC 237

<sup>24</sup> Ibid

<sup>25</sup> Ibid

Since the dawn of its emergence, the doctrine was meant to protect the legitimate expectations pertaining to the procedure i.e. the claimant would be entitled to be consulted or given a fair hearing before any action to his detriment was to be taken<sup>26</sup>. But, under the English law, the frontiers of the doctrine have been extended to the protection of substantive expectations of the claimant as well<sup>27</sup>. So, in order to attract the doctrine, some basic principles have been devised. It would be equally befitting to analyze the said principles: Firstly, there should be a public authority which causes an expectation either expressly or impliedly; secondly, the expectation nurtured by the claimant should be legitimate<sup>28</sup>. As to the legitimacy of the expectation, it has been held that it is the expectation which entails the consequences in public law. Albeit, the law protects only those expectations which are legitimate but law doesn't tell what type of expectation are legitimate<sup>29</sup>. Third limb of arguments for claiming the protection of doctrine is that it would be extremely unjustified assumption of power by the executive authority to frustrate the expectation<sup>30</sup>. Undoubtedly, the abuse of authority is the basic rule of regulating the general principle of public law<sup>31</sup>. However, a departure from a clear and unambiguous representation can only be allowed if there involves a question of overriding public policy<sup>32</sup>.

### **Pakistani Approach**

Legitimate expectation, a nascent terrain in Pakistan, is confined only to the procedural dimensions of the doctrine. The state including all its instrumentalities has to ensure in their actions conformity to the constitution by excluding arbitrariness. The concept of unfettered arbitrary powers doesn't find place in Pakistani constitutional jurisprudence and a public authority possesses it for the good of the public at large. In this context, a public authority has to act justly and adhere to a method demonstrating fair play in action. Being concomitant of good

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<sup>26</sup> The Queen o the Application of Proteus Film Partnership No.1 v The Commissioner for Her Majesty's Revenue and Customs, [2015] UKUT 0211 (TCC)

<sup>27</sup> R v Revenue and Customs Commissioners, [2013] EWHC 1801

<sup>28</sup> R v Revenue and Customs Commissioners [2013] EWHC 1803

<sup>29</sup> Ibid

<sup>30</sup> R v Secretary of State for Foreign and Commonwealth Affairs [2009] AC 413

<sup>31</sup> Ibid

<sup>32</sup> R v Secretary of State for Foreign and Commonwealth Affairs [2008] UKHL 61

administration, due observance of such procedure paves the way to legitimate expectation of being treated fairly. So, for the satiation the urge of non-arbitrariness, it is imperative to accord due consideration to such expectation of a person likely to be aggrieved by any verdict or order of the authority. Merely, legitimacy of an expectation doesn't crop into an enforceable right rather the failure to give due consideration or weight to such it renders the decision arbitrary and thus becomes subject to judicial review. Doctrine of legitimate expectation has been developed almost on British lines. For instance, determination of it has been acknowledged to be a question of fact and in case

If a right accrues to an individual on the basis of any order/ notification amounting to a promise, the same couldn't be withheld without affording the beneficiary an opportunity of being heard, without disclosing the reasons of its withdrawal and without affording the affecttee an opportunity of filing representation against such action<sup>33</sup>. Moreover, the doctrine is not part of any enacted law and the same has been chalked out by way of judicial dicta, fundamentally, for judicially reviewing the administrative actions<sup>34</sup>.

### **What Constitutes Legitimate Expectation?**

Before venturing upon to synthesis what constitute legitimate expectation, it is equally important to examine a closely connected question as to what constitutes expectation. Principle of legitimate expectation has also found recent resurgence, especially after Aljihad Trust's<sup>35</sup> case where after, the said principle would also to have been seen as constitutional principle/ concept enshrined in the due process clause contained in articles 2 and 3 of the constitution<sup>36</sup>. But, within such short span of time, almost all relevant principles evolved by the advanced jurisdictions have been given due space in judicial dicta. For instance, establishment of legitimate expectation on the ground of long standing consistent practice finds due favour and space in Pakistani constitutional jurisprudence<sup>37</sup>. Similarly, after the submission of application, a candidate has the

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<sup>33</sup> Raja industries (Pvt.) LTD v. Central board of Revenue, Government of Pakistan, Islamabad, 1996 MLD 980 Lahore

<sup>34</sup> Begum Nusrat Ali Gonda v Federation of Pakistan and others PLD 2013 SC 829

<sup>35</sup> Aljihad Trust v Federation of Pakistan, PLD 1996 S.C. 324

<sup>36</sup> Walidad Alias Dadoo Maachi v The State, MLD 1997 Kar. 1697

<sup>37</sup> Anjum Perwaiz v General Manger (Operation) Pakistan Railways Lahore, PLC 2010 Lah 1280

legitimate expectation of being treated fairly and transparently. Any deviation from such principles amounts to playing fraud with the legitimate expectations of the public<sup>38</sup>. Procedurally, the exigency demands that before upsetting and afflicting a legitimate expectation, the Authority is obligated to fulfill three obligations, firstly, service of notice of the case on the person likely to be affected by such decision, secondly, provision of a fair chance for submitting reply, and, thirdly, provision of fair opportunity to present his point of view<sup>39</sup>.

Doctrine of legitimate expectation owes its genesis to the proposition that once a task has been executed in an ordinary manner, it will be unjustified to upset the same by adhering to an arbitrary manner. The doctrine, under certain exigencies, attains the status of substantive and enforceable right for providing relief against injustice provided that the expectant has no statutory right to claim any relief<sup>40</sup>.

Like contemporary trends, Indian courts have also given due recognition to the doctrine as a tool of judicial review<sup>41</sup>. In this context, catena of judicial dicta demonstrates the phenomenal growth of the doctrine in protecting not only procedural rights of the citizens but substantive rights as well. Before putting the doctrine in motion, it has been held imperative to scrutinize if the claimant has an expectation and secondly if the expectation qualified to be legitimate. Legitimate expectation is unlike anticipation mere wish, desire or hope even the claimant is not entitled to knock at the door of the court on the basis of mere disappointment. An expectation can only attain the status of legitimate expectation if the same is found to be based on some legal sanction, custom or defined procedure observed in regular and natural sequence<sup>42</sup>. Such expectation, the court added, ought to be justifiably legitimate and protectable as every expectation wouldn't ipso facto qualify to be right<sup>43</sup>. Only such situation would ripen into legitimate expectation which would come into existence as a result of representation or past practice and was within the ambit

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<sup>38</sup> Imran Hussain v Water and Power Development Authority, PLD 2010 Lah 546

<sup>39</sup> Inbox Business Technologies Limited v Pakistan through Secretary Revenue Division, PTD 2018 Kar 621

<sup>40</sup> Dr. Shoukat Pervez v Federation of Pakistan, PLC 2011 Lah 26

<sup>41</sup> The Law of Ultra Vires, B.C. Sarma, Eastern Law House Private Ltd. 36 Netaji Subhash Marg, Daryaganj New Delhi

<sup>42</sup> Union of India & Others v. Hindustan Development Corp & Others, AIR, 1994 SC.488

<sup>43</sup> Ibid

of authority of the body arousing such expectation<sup>44</sup>. Such situation, undoubtedly, paves the way to a sustainable claim and denial thereof could be turned down if the same would be found to be unfair, arbitrary, unreasonable or inconsistent with the principle of natural justice<sup>45</sup>. The question to be mooted before the court was whether an enforceable distinct right is deemed to have been created if a person has a legitimate expectation? Dispelling the notion, the court added that merely a reasonable or legitimate expectation nursed by a person wouldn't per se generate an enforceable right in favour of the claimant<sup>46</sup>. The omission, however, on the part of the authority to give due weight and consideration to such expectation would render the decision arbitrary<sup>47</sup>. It was, in fact, owing to this stipulation that 'due consideration' has become an important limb of non-arbitrariness-an integral part of the principle of rule of law<sup>48</sup>.

### **Who may invoke the doctrine?**

As the doctrine is based on established practice, therefore, only such person has the *locus standi* who has some engagements with the authority or by a person who has a recognized legal relationship with the authority. Conversely, an alien who has not been in dealing, transaction or negotiations with the authority or nexus with the authority is not entitled to invoke it. Even a doctrine cannot be put in motion on the plea that the authority is obligated to demonstrate fairness. While venturing upon the scope of doctrine, the apex court was of the view that the expectation, in legal context, was different from the anticipation<sup>49</sup>.

### **Licenses and permits**

One of the major areas which have fetched the attention of the researchers is licenses and permits. As to this area rationality and nicety of the doctrine enjoins upon the authority not to

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<sup>44</sup> Ibid

<sup>45</sup> Food Corporation of India v. M/S Kamdhenu Cattle Feed Agencies, (1992) 6 SC 259

<sup>46</sup> Union of India and another v. Lf. Col. P.K Choudhary and Others, [2016] INSC 158

<sup>47</sup> Ibid

<sup>48</sup> Ibid

<sup>49</sup> Union of India v. Hindustan Development Corporation, [1993] SCC 499

withdraw or deny its renewal without affording the expectant an opportunity of being heard.<sup>50</sup> In this context, it becomes imperative to explore an answer to a couple of propositions i.e. does legitimate expectation mean only a procedural protection in the form of hearing or it entails a substantive right or anything else in lieu of that right? Truly, preponderance of opinions seems to be in favour of the expansion of expectant's rights in the shape of substantive remedies. The situation paving the way to substantive legitimate expectation is the same i.e. past practice or representation by a body with the only addition that the fulfillment of the potential expectation should be in the power of that body<sup>51</sup>. Recently, in an oligarchy of judicial dicta, substantive limb of the doctrine seems to have secured judicial recognition. For instance, it has been reiterated that while exercising its discretion in favour of public policy, the government would be justified in outweighing any moral obligation to holders of the legitimate expectation<sup>52</sup>. As per prevalent policy, grant or denial of licenses or permits is the prerogative of the government. In this respect, no claimant has vested right to claim license or permit according to the terms and conditions of the policy<sup>53</sup>. In case, however, of renewal or withdrawal of a license or permit the claimant has been held to have legitimate expectation of renewal of the license or permit unless there exist some compelling reasons of its denial<sup>54</sup>. Therefore, summary denial of the renewal without affording a fair hearing to the applicant may be deemed to be unfair<sup>55</sup>. Similarly, the government has the authority to modify or replace the policy. Any insistence on the part of the applicant of the license or permit, on the basis of legitimate expectation under old policy, would not be sustainable as the legitimate expectation was expected to be in line with statutory provisions<sup>56</sup>. So, in case of nonaccrual of vested right for the grant of license, the court would be

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<sup>50</sup> Municipal and Planning law Reports (Articles) 2<sup>nd</sup> Series 1992 Liability Attendant to Municipal Services Edward Veitch.

<sup>51</sup> Administrative Law, SP Sathe, 7<sup>th</sup> ed. 445

<sup>52</sup> Ibid

<sup>53</sup> The law of Ultra Vires, B.C. Sarma, Eastern Law House Private Ltd. 36 Netaji Subhash Marg, Daryaganj New Delhi

<sup>54</sup> Union of India v Hindustan Development Corp, AIR, 1994 SC 988

<sup>55</sup> Ibid

<sup>56</sup> A. Mahildeshwaran v Government of Tamil Nadu, (1996)8 SCC 617

slow in binding the government to adhere to old policy on the strength of doctrine of legitimate expectation<sup>57</sup>.

### **Contractual Controversies**

With the passage of time, the frontiers of the doctrine are, in terms of subjects and the grounds in/on which it can be invoked, broadening. In this sense, issues relating to contracts are another recruit to the inventory of terrains which have caught the attention of the courts. Albeit, in suitable situations, the doctrine can be put in motion in connection with the issues relating to contracts but alteration of express stipulation of contracts of statutory nature are proscribed under the garb of legitimate expectation<sup>58</sup>. Recourse is, ordinarily, made to the legitimate expectation in event of inability or denial by the government to use the discretion for the renewal of existing contract or abrupt discontinuation of previous policy<sup>59</sup>. Despite being a panacea against arbitrariness, the doctrine cannot be claimed as a right. It is generally understood that in cases of agreements or contracts, extension is not refused unless any violation is attributed to the applicant, but a refusal to renew or extend without having any of such reasons may be construed to be the violation of legitimate expectation<sup>60</sup>. But, in case of a contract with the state, the expectant would not be entitled to extra supply of extra good under the premise of legitimate expectation, if the state had already supplied minimum quota under the statute, in case the contractor had concluded a contract with the state after being aware of the shortage of the goods<sup>61</sup>.

### **Service Matters**

Employment in public service is another area in which the doctrine has been put in motion. In Pakistan, accrual of legitimate expectation in terms of promotion matters has been acknowledged by the courts. Notwithstanding the fact that promotion cannot be claimed as a vested right, but arousal of legitimate expectation in the minds of eligible candidates is

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<sup>57</sup> ITR Exports Madras(p) Ltd. V Union of India, AIR 1996 SC 3461

<sup>58</sup> The Law of Ultra Vires, B.C Sarma Eastern Law House Private Ltd. 36 Netaji Subhash Marg, Daryaganj New Dehli

<sup>59</sup> Administrative Law, SP Sathe 7<sup>th</sup> Edition,445

<sup>60</sup> Ibid

<sup>61</sup> Assistant Excise Commissioner v Issac Peter (1994)4 SCC 104

inevitable<sup>62</sup>. In case of an employee who was promoted to a higher post on ad hoc basis and regularized thereafter was held to be entitled to have been promoted since the date of his promotion<sup>63</sup>. Similarly, in case a recommendation is made a body/authority, such recommendation creates a legitimate expectation in the person recommended by such body<sup>64</sup> notwithstanding the fact that the competent authority may reject the recommendations by expounding cogent and convincing reasons<sup>65</sup> and similar views have also been expressed by the apex court in another case<sup>66</sup>. Albeit, expectation nurtured by a person, after the submission of all documents, attains legitimacy that his case will be processed accordingly, but, in case of termination of contract of service in the light of unambiguous terms and conditions of the contract, accrual of legitimate expectation can't be said to have arisen by any stretch of imagination<sup>67</sup>.

In case of contractual appointment, the employee has a legitimate expectation of completion of contractual period<sup>68</sup>. Premature termination of the contract of employment is not outlawed rather the same has been acknowledged to the prerogative of the employer. But making recourse to this practice without affording an opportunity of being heard always offends the constitutional mandate<sup>69</sup>. Invocation of the doctrine doesn't, ipso facto, mean a demand for the enforcement of a common law right or any statutory right rather the same means to be dealt with fairness as the doctrine is imbedded in fairness<sup>70</sup>. Expectant, thus, establishes his claim on some consistent representation demonstrated by a public authority whose denial will amount to violation of his right<sup>71</sup>. The court will only interfere if decision of denial is tainted with

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<sup>62</sup>Registrar Balochistan High Court Quetta v Mazar Khan, PLC 2014 Quetta 1275

<sup>63</sup> Abdul Aziz v Chairman Punjab Labour Appellate Tribunal and two others, PLC 1995 Lah 50

<sup>64</sup>Miss Farzana Qadir v Province of Sindh through, Secretary Ministry of Health, Government of Sindh, PLC 2000 Kar 225,

<sup>65</sup>Salman Adil Siddiqui v Province of Sindh, PLC 2008 Kar 220

<sup>66</sup> Government of Sindh v Abdul Jabbar, PLC 2004 SC 99

<sup>67</sup>Aatir Mahmood v Federation of Pakistan, PLC 2008 Lah 127

<sup>68</sup>Muhammad Aslam v Vice Chairman, PLC 2010 Lah 266

<sup>69</sup> Ibid

<sup>70</sup>Rafaqat Ali v Executive District Officer Health, PLC 2011 Lah 1615,

<sup>71</sup>Province of Punjab through Collector v Malik Shah Nawaz, MLD 2011 Lah 1045

arbitrariness, unreasonableness, contrary to the principles of natural justice, offending the public interest and abuse of power.

### **Accrual of legitimate expectation**

Legitimate expectation may accrue either due to a representation or some previous practice made or observed by some public functionary. Such expectation ought to be within the ambit of authority to be fulfilled. The protection accorded to the expectant is confined to that extent and the omission on the part of such authority can only be judicially reviewed within the circumference of authority prescribed for such authority. Undoubtedly, the law obligates the claimant to establish the foundation for claiming the *locus standi*. For this purpose, the expectant has to prove numerous factors expounded by the courts. For instance, the verdict given by the public authority ought to be arbitrary, devoid of reasons and against the public interest.

Legitimate expectations may accrue in various forms and different kind of circumstances may be instrumental in paving the way to their existence. It was owing to this nature of the expectations that no exhaustive inventory could be prepared. However, cases of promotions and contracts may be quoted as common examples for the accrual of legitimate expectations. For example, in the event of grant of licenses, permits etc under the shadow of discretion, the grantee is likely to develop a reasonable expectation, notwithstanding the fact that the grantee has not legal right as to its renewal or non revocation. Basically, legitimacy of an expectation is deemed to have been established in case a decisive step is taken by the relevant body. As the doctrine has roots in fairness and if an authority has demonstrated a specific conduct assuring thereby that a particular course of action will be followed

### **Limitation of Doctrine of Expectation**

The notion of legitimate expectation seems to be the nascent addition to the inventory of concepts expounded by the courts for reviewing the administrative actions of the executive. The same, therefore, needs to be confined to defined boundaries applicable and bidding the manner of the potential use of administrative power in a case. The courts in India, however, have been extremely conscious in defining the scope of interference on the premise of doctrine of legitimate expectation. Principally, the doctrine functions within the terrain of public law and private law doesn't come within its ambit. This situation has been accepted on both sides of the border. The

doctrine has been made subject to certain limitations. For instance, in case, no promise has been made or in the absence of any long standing practice, the doctrine of legitimate expectation has no relevance. Similarly, any change in the existing policy may also defeat the expectations nurtured by a person on the basis of any previous policy unless the policy turns out to be illegal<sup>72</sup>. Being a question of fact, the issue of legitimate expectation is not justifiable while exercising extra ordinary jurisdiction<sup>73</sup>.

As to rendering legislation invalid, for instance, it has been held that the theory of legitimate expectation based upon legislative practice cannot be brought to defeat or invalidate legislation<sup>74</sup>. At the most, it may be used against an administrative action<sup>75</sup>. As to India, it has been held that not a single case has been referred before the apex court where legislation has been invalidated on the basis that it offended the legitimate expectation of the persons affected thereby<sup>76</sup>; however, the same may be invoked to invalidate the administrative action<sup>77</sup>. Judicial approach for rendering legislation invalid on the conjecture of legitimate expectation is in line with Indian approach. Undoubtedly, retrospective application of an executive order for the impairment of a vested right or imposition of new obligation has never been drawing comfort from the courts<sup>78</sup>. The principle, it has been reiterated time and again, cannot be applied in case of a legislative provision<sup>79</sup>. So much so; ignorance of law does not pave the way to legitimate expectation<sup>80</sup>. Similar stance has been taken in case of legitimate expectation accruing on the basis of a document containing administrative instructions. The court added that in case administrative instructions are superseded by a statutory provision, legitimate expectation, in such

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<sup>72</sup> All India Pet Coke Calciners Association and Others v Union of India and Others, Patna H.C. 2012

<sup>73</sup> Ms Shagufta Hashmat and others v Federation of Pakistan through Secretary Cabinet Division, PLC 2018, Islamabad 619

<sup>74</sup> Srinivasa Theatre & Ors v Government of Tamil Nadu & Ors AIR 1992 S.C 999

<sup>75</sup> Ibid

<sup>76</sup> Ibid (1985) A.C, 374 Council of Civil Service Union and Ors V Minister for the Civil Service

<sup>77</sup> Srinivasa Theatre v. Government of Tamil Nadu, AIR 1992 SC 999

<sup>78</sup> Government of Pakistan v Facto Belarus Tractors Limited, 2000 SCMR 112

<sup>79</sup> Ibid

<sup>80</sup> Ayaz Muhammad Khan v Province of Sindh, PLC 2003 Kar 304

situation, is deemed to have been outsmarted<sup>81</sup>. In order to establish a stance on the premise of such expectation, it is imperative that it should be reasonable, having statutory backing<sup>82</sup>. Prospectus, being compendium of instructions, is revised yearly and the potential expectants are supposed to keep abreast of all such developments and at the same time, it is inbuilt that the candidates will abide by such changes<sup>83</sup>. Legitimate expectation developed on the basis of prospectus is deemed to be unreasonable and devoid of and statutory backing<sup>84</sup>. Being not part of any enacted law, the doctrine has, basically, been carved out by the courts for judicially reviewing the administrative actions<sup>85</sup>. So, no one is entitled to put the doctrine in motion for the enforcement of a right which is founded on a per incuriam judgment<sup>86</sup>.

Likewise, legitimate expectation is not deemed to have accrued on the basis of a notification/order which creates a right for some specific period<sup>87</sup>. The courts, in India, have infallibly demonstrated that the scope to judicially review the decisions of the executive or the legislature in fiscal matters is very narrow<sup>88</sup>. The apex court added that all that would not mean that the interference with the administrative matters was entirely a prohibited terrain for the court. Rather the interference would be on a very limited scale. For instance, in case of violation of an enacted law or a constitutional provision or in case of arbitrariness in the *Wednesbury's* sense<sup>89</sup>, the court would have ample room to interfere. Promulgation of policies and taking such administrative decisions as they thought to be expedient in the public interest was held to be the exclusive domain of the executive and the legislation<sup>90</sup>. Lack of expertise in this terrain is,

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<sup>81</sup> Ahmad Abdullah v Government of the Punjab, PLD 2003 Lah 752

<sup>82</sup> Shafique Ahmed v Government of Punjab, PLD 2004 SC168

<sup>83</sup> Ibid

<sup>84</sup> Rashid Nawaz v University of the Punjab, PLD 2007 Lah 78

<sup>85</sup> Application by Abdul Rehman Farooq Prizada v Begum Nusrat Ali, PLD 2013 SC819

<sup>86</sup> Ibid

<sup>87</sup> Zaman Cement v Central Board of Revenue, 2002 SCMR 312

<sup>88</sup> Bajaj Hindustan Limited v Shadilal Enterprises Limited, 2010 Ind law SC 1027

<sup>89</sup> All India Pet Coke Calciners Association and Others v Union of India and Others Patna H.C 2012

<sup>90</sup> Ibid

basically, desisting factor<sup>91</sup>. It is owing to this fact that, in matters of economic policy, the courts are generous in giving a large leeway to the executive and the legislature<sup>92</sup>.

Granting licenses for import and export is executive or legislative policy and for that purpose, the government has to take into account diverse factors for formulating it in the larger interest of the economy of the country<sup>93</sup>. So, the sacrosanctity of the government's prerogative to vary the policy as per its expediency has been unerringly accepted and established by judicial expositions<sup>94</sup>. As the disadvantage or loss in *personam* as a result of formulation or implementation of policy can't underpin the judicial interference<sup>95</sup>, therefore, the courts, in the context of economic regulatory measures seem to be judicially restraint and are of the view that the state should not be hampered by the court in economic and fiscal matters unless they are manifestly illegal or unconstitutional<sup>96</sup>. Ad hoc, experimental and at the most complicated nature of the administrative decisions in economic and social sectors is the *raisin deter* of court's avoidance to dwell upon such matters<sup>97</sup>.

## **Conclusion**

Blessing emanating from the doctrine of legitimate expectation, inter alia, is that it has broadened the horizons of the applicability of the natural justice to a considerable extent. This fact does resonate in the dicta pronounced by the Indian courts. Albeit, in Pakistan the insertion of Article 10-A, in the Constitution of 1973 did protect the legitimate expectation to a great extent but unfortunately, it remained alien for a considerable time to constitutional landscape of this part of the planet. On the contrary, no such arrangements have been made in India. In both of the jurisdictions, the doctrine has been held to be operative only in the field of public law. So,

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<sup>91</sup> Ibid

<sup>92</sup> Ibid

<sup>93</sup> Ibid

<sup>94</sup> Ibid

<sup>95</sup> India Cement Limited v. Union f India 1990 Ind law SC 385

<sup>96</sup> All India Pet Coke Calciners Association and Others v Union of India and Others Patna H.C 2012

<sup>97</sup> Ibid

keeping in view its acceptability, it can be inferred that it is likely to encompass other areas as well.