

ESTOPPEL AND LEGITIMATE EXPECTATION

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Abstract:

Background/Objectives: Estoppels is a rule of evidence which prevents a party from denying the fact which he has already been asserted. The doctrine of legitimate expectation is closely related to the principle of estoppel as both the doctrines are based upon a clear and unambiguous promise.

Methods/Statistical Analysis: The methodology which is going to be adopted for the present research work will mainly be based on doctrinal analysis, i.e., the theoretical sources. The theoretical work will relate to the administrative action of the public body; their policies; Constitutional, Legislative, Executive and judicial control of administrative action through the doctrine of legitimate expectation. It is proposed to collect material from the various discipline of Administrative and Constitutional law. It is also pertinent to mention that research will heavily rely on different journals, reviews, and national & international judicial pronouncements.

Findings: Legitimate expectation has an important place in the realm of administrative law. It is an integral component of the principle of the rule of law that power should not be exercised arbitrarily. One of the safeguards is provided through judicial interpretation in a long list of cases that this administration discretion is subject to legitimate expectation vested in the people. It cannot be expected that there can be judicial intervention in the policy framing by the executive as it is an essential function belonging to the executive.

Keywords: Legitimate expectation, estoppels, judicial review, natural justice, the rule of law.

1. Introduction

The word 'estop' is an ancient English word which originally bore precisely the same signification as the equally ancient English word 'stop' where it is merely a variant. As estoppel may be said to arise when a person executes some deed, or is concerned in or does some act either of record or in pairs, which will preclude him from averring anything to the contrary.¹ Lord Denning explained the word 'estoppel' only means stopped. It was brought over by the Normans. They used the old French 'estoppel.' That meant a bung or cork by which you stopped something from coming out. As said by Lord Coke the name 'estoppel' was given because of a man's act stoppeth or closet up his mouth to allege or plead the truth.²

Estoppel is a principle of law, but it is often described as a rule of evidence which prevents a party from alleging and proving the truth. Under the rule of estoppel, a party is prohibited from asserting or denying a fact or state of things which he has formally asserted as existing. The doctrine of estoppel applies whenever a person induces another to believe on something and accordingly other party acts upon such belief and alter his position. Though commonly called promissory estoppel, it is neither in the realm of contract nor the realm of estoppel. Estoppel is based on the rule of equity, justice, and good consciences.³

According to Section 115 of Indian Evidence Act, 1872, when one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief; neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Lord Cranworth in *West v. Jones*⁴ explained the principle in the following lines on which this doctrine rests:

Where a party has, by words or by conduct, made a representation to another leading him to believe in the existence of a particular fact or state of facts, and that other person has acted on the faith of such representation, then the party who made the representation shall not afterwards be heard to say that the facts were not as he represented them to be.

According to Wade the basic principle of estoppel is that a person who by some statement or representation of fact causes another to act to his detriment in reliance on the truth or it is not allowed to deny it later, even though it is wrong.⁵

Lord Denning in his article on "Recent Development in the Doctrine of Consideration", expressed as under:

A man should keep his word. All the more so when the promise is not bare promise but it is made with the intention that the other party should act upon it. The promise may give rise to different equity from other conduct.⁶

2. Promissory Estoppel

The doctrine of 'Promissory Estoppel' is, one of the four kinds of 'Estoppels' evolved by the Equity Courts in England, It is an equitable principle which applies to public authorities"⁷ The doctrine of promissory estoppel is applied within English contract law. It is used to prevent a promisor from enforcing his legal rights. In English law, consideration is very important, and the promise made without consideration is not enforceable.

The principle was enunciated by the Calcutta High Court as early as in 1880 in ⁸*Ganges Manufacturing Co. v. Souruimull*,⁹ and later in 1905 by the Bombay High Court in *Municipal Corporation of Bombay v. Secretary of State*.¹⁰ In the latter case, the Bombay High Court stated that doctrine of promissory estoppel is applicable even if the promise is not recorded in the form of a formal contract.¹¹

In *Union of India v. Anglo-Afghan Agencies Ltd.*,¹² Court held that:

Even provisions relating to the issue of Trade Notices offering an inducement to the prospective exporters were in character executive, the Union Government and its officers were not entitled at their mere whim to ignore the promises made by the Government.¹³

In *Hindustan Motors Ltd. v. India*,¹⁴ the Court held:

[A]lthough estoppel against a statute may not be wholly inconceivable as between two private parties, claiming some ordinary Act of a general character, there could be no estoppels against the Sea Custom Act in the present case in the bar of the customs authorities.¹⁵

3. Doctrine of Legitimate Expectation

The doctrine of legitimate expectation belongs to the domain of public law and is intended to give relief to the people when they are not able to justify their claims by law in the strict sense of the terms though they had suffered a civil consequence because their legitimate expectation has been violated or frustrated. The doctrine of legitimate expectation is the latest discovery of the Indian Law, and that has been viewed as one of the grounds of judicial review, and it has assumed the position of a significant doctrine of Public Law in almost all jurisdictions to check misuse or abuse of public power.¹⁶

Legitimate Expectation is enrolled by the courts for the review of administrative actions. An expectation or interest in a public body may arise due to a long-standing practice or a promise of being treated in a certain way by an administrative authority then the courts apply the principles of fairness and reasonableness in judicial review proceedings.

The doctrine of 'legitimate expectations' which has traditionally been used in litigation between private parties has also been recognized in the public law set. It was first used by Lord Denning in 1969 in *Schmidt v. Secy. of State*,¹⁷ where it was held that:

An alien who had been granted permission to enter the U.K. for a limited period had a legitimate expectation for being allowed to stay for the permitted period.¹⁸ Before this case, the expressions 'reasonable expectation' and 'reasonable confidence' have been held to have the same meaning as 'legitimate expectation.' However, popular usage by writers and commentators has given preference to the original language of the inventor, Lord Denning, namely 'legitimate expectation.'¹⁹

4. Estoppel and Legitimate Expectation

There is a close similarity between the public law doctrine of legitimate expectations and the private law doctrine of estoppel. Both are parts of laws of equity. The concept behind the each doctrine involves a clear and unambiguous promise, undertaking or representation (in words or conduct) made by a public authority based on past practices which the claimant has relied on and can reasonably expect to continue.

According to Legitimate, or reasonable expectation, an expectation may arise either from an express promise given on behalf of the public authority or from the existence of a regular practice which the claimant can reasonably expect to continue.²⁰

In the Court of Appeal of Botswana, in *Mothusi v. Attorney General*,²¹ Amissah, J.P., observed:

The concept of legitimate expectation has developed in the administrative procedures to protect those who have been led either by contract or practice to expect a certain course of action in cases where the expected course of action has been altered without giving them a right to make representations. Thus, if an authority has made a promise as to the manner of exercise of discretion, the authority ought to be held to that promise.²²

This has also *been supported by Lord Roskill in Council of Civil Service Unions v. Minister for the Civil Service*.²³ It was observed in that case that for legitimate expectation to arise, the decisions of the administrative authority must 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 has been communicated to him some rational grounds for withdrawing it and 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 reason for contending that they should not be withdrawn.

In *Attorney-General for New South Wales v. Quinn*,²⁴ besides establishing the procedural rights, there is another principle upon which the courts have upheld a claim of legitimate expectation is the existence of some representation which creates an estoppel.²⁵

The principle of legitimate expectation has relevance with the expectations created by promises and policy rules. It becomes the duty of public authority to act fairly and non-arbitrarily to meet the expectation it should be reasonable, logical, valid and should not override public interest and power of authorities.

However, there are significant differences between these two doctrines. Legitimate expectation usually concerns public authorities, while the estoppel may be enforceable against any person. In legitimate expectation, you are not required to prove an injury/loss, while the estoppel necessitates such proof. The legitimate expectation is mostly concerned with established practices, fairness, unreasonableness, public policy and natural justice, while the estoppel is seemingly broader and concerns itself with any representation.²⁶

In the public law context the courts have held that the justifications for enforcing the legitimate expectations may be a broader principle of fairness and the prevention of the abuse of power by public bodies, and so they might not require detrimental reliance of the kind that would be required under the private law doctrine of estoppel.²⁷

An aggrieved person was entitled to judicial review he could show that the decision of the public authority affected him of some benefit or advantage which in past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for the withdrawal and opportunity to comment on such reasons.²⁸ In *Navjyoti Co-Group Housing Society v. The Union of India*,²⁹ it was held that Group Housing Society was entitled to 'legitimate expectation' of following 'consistent past practice' in the matter of allotment even though they may not have the legal right in private law to receive such treatment. The authority not ought to defeat the 'legitimate expectation' without some overriding reasons of public policy to justify its doing so.³⁰

So an undertaking or promise may be one of the sources of legitimate expectation but is not identical with that of estoppel. What is relevant in legitimate expectation is not the knowledge or state of mind of the individual concerned as in estoppel but the interest affected by the exercise of power by the public authority.³¹

The government can change its policies with the changed circumstances and can refrain individual from the benefits which they had been previously receiving. Though certain protection against abrupt changes of the rules to individuals is being provided under the principle of legitimate expectations this protection is not absolute.

So a legitimate expectation, even when made out, does not always entitle the expectant to relief. Public interest, change in policy, the conduct of the expectant or any other valid or bona fide 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 authority, on which such established practice has a bearing, or by someone who has a recognized legal relationship with the authority.³²

In *Union of India (UOI) and Anr. v. International Trading Co. and Anr.*,³³ the Supreme Court believed that the doctrine of legitimate expectation could not be applied in this case as it came in the way of public interest. The state was entitled to consider the national priorities and adopt trade policies acting within the bounds of reasonableness. Doctrines of promissory estoppel and legitimate expectation cannot come in the way of public interest.

If legitimate expectation is granted to an individual against changed policies, then it must be founded on arbitrary and unreasonable grounds. In *Union of India v. Hindustan Development Corporation*,³⁴ it was observed that decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest where the doctrine of legitimate expectation can be applied. If it is a question of policy, even by ways of change of old policy, the courts cannot intervene with the decision. In a given case whether there is such facts and circumstance giving rise to legitimate expectation, would primarily be a question of fact.

In *Mohd. Jamal v. The Union of India*,³⁵ it was urged that the doctrine of legitimate expectation, had been considered in the said case where the appellant's claim was based on an old policy. It was held that:

[T]he appellant merely had an expectation for being considered for resettlement and a person basing his claim on the doctrine of legitimate expectation has to establish that he had relied on the said representation and had altered his position and that denial of such expectation worked to his detriment. The courts can interfere only if the decision taken by the authority is found to be arbitrary, unreasonable or in gross abuse of power or violation of principles of natural justice and contrary to public interest. It was also reiterated that the concept of legitimate expectation has no role to play where said action is a matter of public policy or in the public interest, unless, of course, the action taken amounted to an abuse of power.³⁶

As was observed in *Punjab Communications Ltd. v. Union of India and Others*³⁷ that the change in policy can defeat a legitimate substantive 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. It is, therefore, clear that the choice of policy is the decision maker and not the court.³⁸

In *Motilal Padampat Sugar Mills Co. Ltd. v. the State of U.P.*,³⁹ it was observed by the Court that:

[I]n order to invoke the doctrine of promissory estoppels it is necessary for the promisee to show that he suffered detriment as an acting in reliance on the promise. However, we may make it clear that by detriment we mean injustice to the promise which could result if the promisor were to recede from the promise, then detriment could certainly come as a necessary ingredient. The detriment in such a case is not some prejudice which would be suffered by the promisee by acting on the promise, but prejudice which would be caused to the promise, if the promisor were allowed to go back on the promise.⁴⁰

In *Ashok Kumar Maheshwari (Dr.) v. the State of U.P.*,⁴¹ it was held that:

Appellant could not make any clear sound and positive averment as to which officer of the Government, when and in what manner gave the assurance to the appellant or any of his colleagues that they would be promoted as lecturers. It was also not stated that the appellant had, at any time, acting upon the promise, altered his position, in any manner, especially to his detriment. Bald pleadings cannot be made the foundation for invoking the doctrine of promissory estoppels.⁴²

5. Conclusion:

It can be finally concluded that legitimate expectation has an important place in the realm of administrative law. It is an integral component of the principle of the rule of law that power should not be exercised arbitrarily. However, no administrator can function without the use of discretionary power. It can also not be denied that discretionary authority is also subject to some restrictions. Apart from other limitations one of the safeguards is provided through judicial interpretation in a long list of cases that this administration discretion is subject to legitimate expectation vested in the people. It cannot be expected that there can be judicial intervention in the policy framing by the executive as it is an essential function belonging to the executive.

Legitimate expectation also arises in the form of procedural rights that in the case of withdrawal of his rights, he will be communicated for the same and will be given an opportunity for presenting his case.

Thus the doctrine of estoppels is closely related with legitimate expectation as both are laws of equity and based upon clear and unambiguous promises. It is the duty of a public authority to act fairly and non-arbitrarily to meet the expectation. However, yet there is the difference between the two. As legitimate expectation is concerned with public authorities, there is no need to prove an injury/loss and concerned with established practices, fairness while estoppel is enforceable against any person, it is necessary to prove an injury/loss and is interested in any representation.

References

- 1 H.K. Saharay (Ed.), *M. Monir's Law of Evidence*, volume 2, 1863 (2006).
- 2 C.D. Field's (Revised by Gopats Chaturvedi), *C.D. Field's Law of Evidence in India, Pakistan, Bangladesh, Burma, Ceylon, Malaysia and Singapore*, vol. 5 at 4249 (12th Edition, 2007).
- 3 Batuk Lal, *The Law Of Evidence*, 375 (2004).
- 4 (1851) 1 SIM (N.3.) 205 at 207 quoted in Denis Browne, *Ashburner's Principles of Equity*, 445 (1933).
- 5 H.W.R. Wade, *Administrative law*, 64 (1988).
- 6 Cited from *Sharma Transport v. Govt. of A.P.*, (2002) 2 SCC 188 at 201.
- 7 Available at: <http://www.cili.in/article/viewFile/1544/1130> accessed on February 16, 2009.
- 9 1880 ILR 5 Cal 669.
- 10 1905 ILR 29 Bom 580; (1904) 29 Bom 580.
- 11 Available at: <https://indiankanoon.org/doc/1880129/> accessed on May 2, 2016.
- 12 AIR 1968 SC 718.
- 13 *Id.* at 718.
- 14 AIR 1954 Cal 151.
- 15 *Id.* at 156.
- 16 *Hira Industries Ltd. v. State of C.G. and Ors.*, AIR 2007 Chh 7 at 17.
- 17 (1969) 1 All ER 904.
- 18 Available at: http://www.supremecourtindia.nic.in/speeches/speeches_2009/Judicial_Review_of_Administrative_Action at 8 accessed on August 24, 2009.
- 19 C.F. Forsyth, "The Provenance and Protection of Legitimate Expectations", *The Cambridge Law Journal*, vol. 47, No. 2, 238-260 at 238 (July, 1988).
- 20 Bugalo Maripe, "Legitimate Expectations and the Right to a Hearing: Lessons from the George Arbi Case", *Journal of African Law*, vol. 42, No. 1 94-100 at 97 (1998).
- 21 Civil Appeal No. 15/93 (unreported).
- 22 Bugalo Maripe, *supra* note 80 at 96-97.
- 23 (1985) AC 375; (1985) AC 374 (408-409).
- 24 (1990) 170 CLR 1.
- 25 M.A. Ikhariale, "The Doctrine of Legitimate Expectations: Prospects and Problems in Constitutional Litigation in South Africa", *Journal of African Law*, vol. 45, No. 1, 1-12 at 4 (2001).
- 26 Available at: <https://www.quora.com/What-are-the-similarities-and-differences-between-the-doctrine-of-legitimate-expectation-and-the-doctrine-of-estoppel> accessed on November 18, 2015.
- 27 *R (Bibi) v. Newham*, LBC (2002) 1 WLR 237 at 55 available at *supra* note 4 at 6.

28 *Councils of Civil Service Unions v. Minister for Civil Services*, (1984) 3 All ER 935 cited
from Navjyoti Co-Group Housing Society v. *Union of India*, AIR 1993 SC 155 at 165.
29 AIR 1993 SC 155.
30 *Id.* at 155.
31 *Haoucher v. Min.*, (1991) L.R.C. (Const.) 819 (836') – Australia quoted in Durga Das
Basu, *Constitutional Remedies and Writs*, 367 (1994).
32 *Official Liquidator v. Dayanand*, (2008) 10 SCC 1 at 66.
33 MANU/SC/0392/2003.
34 MANU /SC/0219/1994.
35 *Supra* note 31.
36 *Id.* at 223.
37 AIR 1999 SC 1801.
38 *Id.* at 1801-1802.
39 (1979) 2 SCC 409.
40 *Id.* at 452.
41 (1998) 2 SCC 502.
42 *Id.* at 509.