

LEGITIMATE EXPECTATION: UNDERSTANDING HOW A VIEW TURNED TO A PRINCIPLE

Zahidul Islam*

“Legitimate expectation’ has now become a principle having world-wide recognition. Judiciary of different countries at times takes resort to the principle when some authority’s action or policy decision being unreasonable, unfair and arbitrary frustrates other’s interest or benefit, though such action or policy or decision does not infringe other’s legal right for which they can go to the court for having that right protected. Questions may usually come what is the weight of the principle? To what extent such a legitimate expectation, not legitimate right, deserves legal protection. This article is expected to answer the questions adequately.

The phrase ‘legitimate expectation’ was first coined by Lord Denning in the case of *Schmidt Vs Secretary of State for Home Affairs*.¹ The question, in that case, was whether the Home Secretary ought to have given a hearing to the foreign alien students before their prayer for extension of stay in the United Kingdom was refused. Lord Denning, MR, referring to the decision of the House of Lord in *Ridge Vs Baldwin*² held as follows:

*.. an administrative body may, in a proper case, be bound to give a person who is affected by their decision an opportunity of making representations. It all depends on whether he has some right or interest, or, I would add, some legitimate expectation, of which it would not be fair to deprive him without hearing what he has to say.*³

But this phrase, ‘legitimate expectation’, was limited at that time, first of all, to a legal right, which was contravened. The legal position prevalent at that time was explained by Lord Denning himself referring to foreign alien students in the following manner:

He has no right to stay for a day longer than the permitted time. If his permit is revoked before the time limit expires, he ought, I think, to be given an opportunity of making representations: for he would have a legitimate expectation of being allowed to stay for the permitted time. Except in such a case, a foreign alien has no right-

* Zahidul Islam, LLB (Honours) and LLM, Dhaka University, is currently working as a legal researcher in Bangladesh Legal Aid and Services Trust (BLAST).

¹ (1969) 2 Ch 149; (1968)

² (1964) AC 40. In this famous case the majority held that the failure of fair hearing rendered the dismissal of the Chief Constable void.

³ Supra note1, at p. 170 EF.

*and, I would add, no legitimate expectation – of being allowed to stay. He can be refused without reason given and without a hearing.*⁴

The *ratio decidendi* of this case shows, as explained by Lord Denning himself, that the legitimate expectation of a person can only be enforced if he has got a legal right, otherwise not.

But there was already a change in the legal outlook, which will be apparent from the decision in *Reg Vs Criminal Injuries Compensation Board, Ex-parte Lain*⁵ where expectations which although strictly speaking were not legally enforceable but had some reasonable basis, were treated as legitimate expectations.

In the case of *Reg Vs Liverpool Corporation, Ex-Parte Liverpool Taxi Fleet Operators' Association*,⁶ the question for consideration was whether the corporation could disregard their undertaking in not to increase the number of taxis without holding an enquiry. Lord Denning, MR, opined that

*... the corporations were not at liberty to disregard their undertaking. They were bound by it so long as it was not in conflict with their statutory duty*⁷

While conceding that a corporation cannot enter into any contract or take any action incompatible with the due exercise of their powers or the discharge of their duties Lord Denning, MR, held further as follows:

*But that principle does not mean that a corporation can give an undertaking and break it as they please. So long as the performance of the undertaking is compatible with their public duty, they must honour it. And I should have thought that this undertaking was so compatible. At any rate they ought not to depart from it except after the most serious consideration and hearing what the other party has to say: and then only if they are satisfied that the overriding public interest requires it. The public interest may be better served by honouring their undertaking than by breaking it. This is just such a case. It is better to hold the corporation to their undertaking than to allow them to break it.*⁸

In the same case, Roskill, LJ, explained the principle as follows:

It is for the council and not for this court to determine what the future policy should be in relation to the number of taxi licenses, which are to be issued in the city of

⁴ Ibid, at p.171AB.

⁵ (1967) 2 QB 864.

⁶ (1972) 2 QB 299.

⁷ Ibid. at P. 308.

⁸ Ibid. at p. 308F.

Liverpool. It is not for this court to consider population growths or falls or the extent of the demand for taxis within or without the city or whether there should be more licenses issued in the future than in the past or whether the present grave unemployment position on Merseyside is a relevant consideration. All those are matters for the council. This court is concerned to see that whatever policy the corporation adopts is adopted after due and fair regard to all the conflicting interests. The power of the court to intervene is not limited, as once was thought, to those cases where the function in question is judicial or quasi-judicial. The modern cases show that this court will intervene more widely than in the past. Even where the function is said to be administrative, the court will not hesitate to intervene in a suitable case if it is necessary in order to secure fairness.⁹

In the case of *Reg Vs Board of Visitors of Hull Prison, Ex-Parte St Germain*¹⁰ the decision of the authorities in awarding a loss of remission of sentence was challenged, although he had no such legal right but only an expectation of receiving it.

In the case of *O' Reilly Vs Mackman*¹¹, there was a riot at Hull Prison and the plaintiff and other Prisoners were variously charged with offences against discipline and various penalties were imposed upon them, which were challenged on the allegation of bias. Lord Diplock, in elucidating the legitimate expectation of the prisoners, said as follows:

It is not and it could not be contended that the decision of the board awarding him forfeiture of remission had infringed any right of the appellant derived from private law, whether a common law right or one created by a statute. Under the Prison Rules remission of sentence is not a matter of right but indulgence. So far as private law is concerned all that each appellant had a legitimate expectation, based upon his knowledge of what is the general practice, that he would be granted the maximum remission, permitted by Rule 5(2) of the Prison Rules, of one third of his sentence if by that time no disciplinary award of forfeiture of remission has been made against him. So the second thing to be noted is that none of the appellants had any remedy in private law.

In public law, as distinguished from private law, however, such legitimate expectation gave to each appellant a sufficient interest to challenge the legality of the adverse disciplinary award made against him by the board on the ground that in one way or another the board in reaching its decisions had acted without the powers conferred upon it by the legislation under which it was acting; and such grounds

⁹ Ibid. at p.310 C-F.

¹⁰ (1979) All ER 701.

¹¹ (1983) 2 AC 237.

*would include the board's failure to observe the rules of natural justice; which means no more than to act fairly towards him in carrying out their decisions-making process, and I prefer so to put it.*¹²

The next important case in which the question of legitimate expectation was discussed is the case of *Attorney General of Hong Kong Vs Ng Yuen Shiu*¹³. The Government announced a policy of repatriation of illegal immigrants and stated that such persons would be interviewed and each case would be considered on its merit. Ng Yuen Shiu was interviewed and asked a few questions, but was not allowed to explain the humanitarian grounds on which he might have been allowed to stay. The Privy Council quashed the order of repatriation on the ground that the government's promise was not redeemed in that Ng Yuen's case was not considered on its merit. One of the questions, inter alia, in this case was whether an alien in Hong Kong has a legitimate expectation of fair hearing before a decision was taken against him. In upholding the principle of 'Legitimate expectation', Lord Fraser, on behalf of the Privy Council opined:

*Their Lordship see no reason why the principle should not be applicable when the person who will be affected by the decision is alien, just as much as when he is a British subject. The justification for it is primarily that, when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, as long as implementation does not interfere with its statutory duty. The principle is also justified by the further consideration that, when the promise was made, the authority must have considered that it would be assisted in discharging its duty fairly by any representations from interested parties and as a general rule that is correct.*¹⁴

In the case of *Waite Vs Government Communications Headquarters*,¹⁵ the question of retiring age was at issue. Lord Fraser considered the question of reasonable expectation for retiring age in the following manner:

The proper test is, in my view, not merely statistical. It is to ascertain what would be the reasonable expectation or understanding of the employees holding that position at the relevant time. The contractual retiring age will prima facie be the normal but it may be displaced by evidence that it is regularly departed from in practice. The

¹² Ibid, at p. 275 C-F.

¹³ (1983) 2 AC 629.

¹⁴ Ibid. at p. 638 E-F.

¹⁵ (1983) 2 AC 714.

*evidence may show that the contractual retirement age has been superseded by some definite higher age, and, if so, that will have become the normal retiring age.*¹⁶

But such expectation of retiring age may also be varied with the change of policy of the Government as in the case of *Hughes Vs DHSS*.¹⁷ Lord Diplock held:

*Administrative policies may change with changing circumstances, including changes in the political complexion of governments. The liberty to make such change is something that is inherent in our constitutional form of government. When a change in administrative policy takes place and communicated in a department circular to, among others, those employees in the category whose age at which they would be compulsorily retired was stated in a previous circular to be higher age than 60 years, any reasonable expectations that may have been aroused in them by any previous circular are destroyed and are replaced by such other reasonable expectation as the earliest date at which they can be compelled to retire if the administrative policy announced in the new circular is applied to them.*¹⁸

In the case of *Findlay Vs Secretary of State*,¹⁹ a change of policy had the effect that certain prisoners would have to stay in prison longer than under the previous policy and the court held that the only expectation that Findlay had was that his case would be individually examined and he had no right not to have the policy changed to his detriment. Lord Scarman explained the principle of legitimate expectation in the following manner:

*The doctrine of legitimate expectation has an important place in the developing law of judicial review. It is, however, not necessary to explore the doctrine in this case, it is enough merely to note that a legitimate expectation can provide a sufficient interest to enable one who cannot point to the existence of a substantive right to obtain the leave of the court to apply for judicial review.*²⁰

But in the case of *CCSU Vs Minister for Civil Service*,²¹ the question of legitimate expectation was considered differently. There was an instruction of the government that civil servants engaged in certain work would no longer be permitted to be members of trade unions. The House of Lords found the instruction faulty as the instruction was issued ignoring the legitimate expectation of consultation, which arose out of the regular

¹⁶ Ibid., at p. 724 C-D.

¹⁷ (1985) 1 AC 776.

¹⁸ Ibid., at p. 788 B-C.

¹⁹ (1984) 3All ER 801

²⁰ Ibid., at p.830 B-C.

²¹ (1985) 1 AC 374.

practice of consultation with the unions in case of change in the terms and conditions of service. In the case Lord Fraser explained the principle in the following manner:

But even where a person claiming some benefit or privilege has no legal right to it, as a matter of private law, ... Legitimate, or reasonable, expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue.... The test of that is whether the practice of prior consultation of the staff on significant changes in their conditions of service was so well established by 1983 that it would be unfair or inconsistent with good administration for the Government to depart from the practice in this case. Legitimate expectations, such as are now under consideration, will always relate to a benefit or privilege to which the claimant has no right in private law, and it may even be to one which conflicts with his private law rights.²²

Lord Roskill in the same case also considered the said principle. He said:

The particular manifestation of the duty to act fairly which is presently involved is that part of the recent evolution of our administrative law which may enable an aggrieved party to evoke judicial review if he can show that he had 'a reasonable expectation' of some occurrence or action preceding the decision complained of and that 'reasonable expectation' was not in the event fulfilled.²³

His Lordship further held as follows:

The principle may now be said to be firmly entrenched in this branch of the law. As the cases show, the principle is closely connected with "a right to be heard". Such an expectation may take many forms. One may be expectation of prior consultation. Another may be an expectation of being allowed time to make representations especially where the aggrieved party is seeking to persuade an authority to depart from a lawfully established policy adopted in connection with the exercise of some suggested exceptional reasons justifying such departure.²⁴

The question of legitimate expectation was later considered in many cases of by the courts in the Indian subcontinent as well as in the courts world-wide. The Supreme Court of India in the case of *Nanjyoti Co-Group Housing Society Vs Union of India*,²⁵ held that the criterion for allotment of land to the Co-operative Group Housing Societies on the basis of the date

²² Ibid., at p. 401 A-B.

²³ Ibid., at p. 415D.

²⁴ Ibid., at p. 415 F-G.

²⁵ AIR 1993 (SC) 155.

of registration of such Societies was changed by the impugned memorandum to one on the basis of the date of approval of the final list by the Registrar. The Delhi High Court indicated that in view of long-standing practice the office memorandum laying down a completely different criterion should have been made public and further held the said memorandum as arbitrary and unreasonable and struck it down. Although the government withdrew the impugned memorandum but in disposing of the Special leave Petition, the Supreme Court of India upheld the principle of 'legitimate expectation' as enshrined by the House of Lords in the case of *CCSU Vs Minister for Civil Service*.²⁶ G.N. Raym, J, held as follows:

*... the Group Housing Societies if necessary by way of a public notice so that they might take proper representation to the concerned authorities for consideration of their viewpoints. Even assuming that in the absence of any explanation of the expression 'first come first served' in Rule 6(vi) of Nazul Rules there was no statutory requirement to make allotment with reference to date of registration, it has been rightly held, as a matter of fact, by the High Court that prior to the new guideline contained in the memo of January 20, 1990 the principle for allotment has always been on the basis of date of Registration and not the date of approval of the list of members. In the brochure issued in 1982 by the DDA even after Gazette Notification of Nazul Rules on September 26, 1981 the policy of allotment on the basis of seniority in registration was clearly indicated. In the aforesaid facts, the Group Housing Societies were entitled to 'legitimate expectation' of following consistent past practice in the matter.*²⁷

In the said case, His Lordship held further as follows:

*It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation' the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in. We have not been shown any compelling reasons taken into consideration by the Central Government to make a departure from the existing policy of allotment with reference to seniority in Registration by introducing a new guideline.*²⁸

In the case of *Food Corporation of India Vs Messers Kamdhenu Cattle Feed Industries*²⁹ in denying the highest tender's right to have his tenderer',

²⁶ Supra note 21.

²⁷ Supra note 25, at p.165.

²⁸ Ibid.

²⁹ AIR 1993 (SC) 1601.

accepted, the principle of legitimate expectation was also considered by the Supreme Court of India. J.S. Verma, J, held as follows:

*There is no unfettered decision in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure, which is 'fair-play in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of decision-making process in all State-actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.*³⁰

*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' get assimilated in the rule of law and operated in our legal system in this manner and to this extent.*³¹

In the case of *Union of India Vs Hindustan Development Corporation*³² in order to create a healthy competition between big manufacturers who formed a cartel and small manufacturers, the railway authorities introduced a dual pricing policy, which was challenged. The Supreme Court of India in this case considered the question of legitimate expectation in great details

³⁰ Ibid., at p.1604.

³¹ Ibid.

³² AIR 1994 (SC) 988

referring to a number of decisions, at home and abroad. K Jayachandra Reddy, J, explained the principle as follows:

.... it is generally agreed that the legitimate expectation gives the applicant sufficient standi for judicial review and the doctrine of 'legitimate expectation' is to be confined mostly to a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallised right, as such, is involved. The protection of such legitimate expectation does not require the fulfilment 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 the decision-maker should justify the denial for 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 power to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above 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 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, 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 what should be the relief is again a matter which depends on several factors.³³

The learned judge then concluded as follows:

However, it is generally accepted and also clear that legitimate expectation being less than right operates in the field of public and not private law and that to some extent such legitimate expectation ought to be protected though not guaranteed.³⁴

But the learned Judge sounded a note of caution, in exercising this new found concept of legitimate expectation, with great restraint on the part of

³³ Ibid., at p. 1019.

³⁴ Ibid., at p. 1020.

the Courts and referred with approval the following observation made in the case of *Attorney General for New South Wales Vs Quin*³⁵:

*To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of individual would be to set the Courts adrift on a featureless sea of pragmatism. Moreover, the notion of legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercising of a power when its exercise otherwise accords with law.*³⁶

The learned Judge then explained when and in what manner this principle can be enforced. He held as follows:

*If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or based on, 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 to unlock the gates which shuts the Courts out of review on the merits', particularly when the element of speculation and uncertainty is inherent in that very concept. As cautioned in *Attorney General for New South Wales* case the Courts should restrain themselves and restrict such claims duly to the legal limitations. It is a well-meant caution. Otherwise, a resourceful litigant having vested interests in contract, license, etc, can successfully indulge³⁷ in getting welfare activities mandated by a directive principle thwarted to further his own interests.³⁸*

³⁵ (1990) 64 Australian LJR 327.

³⁶ Supra note 32, at p. 1021

³⁷ Such an indulgence seemed inadvertently occurred in *M.D. WASA Vs Superior Builders & Engrs Ltd* 51(1999) DLR (AD) 56. In this case, a commercial contract was involved. WASA illegally terminated the contract. The High Court Division held the writ petition maintainable to give relief. Appellate Division rejecting the plea of non-maintainability of the writ petition observed, "Basically, the principle is that a writ petition cannot be founded merely on a contract, but when a contract is concluded the contractor has a legitimate expectation that he will be dealt with fairly." However, Mahmudul Islam in his book "*Constitutional law of Bangladesh*"

The principle of 'legitimate expectation' again came up for consideration before the Supreme Court of India, in the case of *Madras City Wine Merchants' Association Vs State of TN*.³⁹ S. Mohan, J, held as follows:

... legitimate expectation may arise – a) if there is an express promise given by a public authority; or (b) because of the existence of a regular practice which the claimant can reasonably expect to continue; or (c) such an expectation must be reasonable.

*However, if there is a change in policy or in public interest the position is altered by a rule or legislation, no question of legitimate expectation would arise.*⁴⁰

Thus, in the said case, the decision to repeal the grant of bar licenses was upheld on the ground of public interest. Monohar, J, held as follows:

*When the State has received complaint that the consumption of liquor in bars resulted in law and order problems, womenfolk being harassed, certainly, in public interest it could take a decision to repeal the grant of bar licenses. There is nothing unreasonable.*⁴¹

In the like way, in the case of *Food Corporation of India Vs Messers Kamdhenu Cattle Feed Industries*⁴² though the Supreme Court of India recognised the legitimate expectation of the highest bidder, whose right to have his tender accepted was denied, it refused relief because of the overriding public interest in getting further higher price obtained through subsequent negotiation with all the bidders.

Dhaka, 2nd edition 2002, at p. 582 commented on the decision as: “ The doctrine of fairness was introduced to give aggrieved persons a right to hearing. The Doctrine of legitimate expectation is a further extension of the fairness doctrine to give a right of hearing. The doctrine is now being pressed in aid to deal with arbitrary change of policy. The doctrine is not meant to confer additional remedy where the law provides a remedy. For a breach of contract the remedy in law is an action for damages. If legitimate expectation can give a person a right to maintain a writ petition, the distinction between commercial contract and statutory contract made in *Sharping* will be obliterated inasmuch as in every case of breach of contract the contractor can press in aid the doctrine of legitimate expectation to maintain his petition under article 102 of the Constitution.”

³⁸ Supra note 32., at p. 1021

³⁹ (1994) 5 SCC 509

⁴⁰ Ibid., at p. 535;

⁴¹ Ibid., at p. 538

⁴² Supra note 29; see also *North South Property Development Ltd v Ministry of Land*, 52 (2000) DLR (HCD) 7.

The Supreme Court of India again considered the principle of legitimate expectation in relation to a change of policy of the Government, in the case of *Punjab Communications Ltd Vs Union of India*.⁴³ M Jagannad Rao, J, on consideration of large number of cases held as follows:

*... ... the doctrine of 'legitimate expectation' in the substantive sense has been accepted as part of our law and that the decision maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way.*⁴⁴

Then his Lordship on the facts of the said case held as follows:

*The said facts are the reason for the change in the policy of the Government and for giving up the notification calling for bids for Eastern UP. Such a change in the policy cannot, in our opinion, be said to be irrational or perverse....*⁴⁵

From the discussion of the above noted cases, it can be concluded that the expression 'legitimate expression' first used by Lord Denning, MR, in the Case of Schmidt in 1969 opened a new vista and has by now been established as a principle of law. At the same time, it is also true that the principle still lacks clarity. It is not still specified in which circumstances legitimate expectation arises and to what extent it deserves protection. Nevertheless some factors that may give birth to a legitimate expectation are almost clear, such as:

- (a) The statement or practice giving rise to the legitimate expectation must be clear and unambiguous, and expressed or carried out in such a way as to show it was intended to be binding⁴⁶; it will not be tentative or uncertain⁴⁷.
- (b) The statement or practice must be applicable and relevant to the case in hand.⁴⁸
- (c) Legitimate expectations are enforced for achieving fairness and justice. Hence, even if a case of legitimate expectation is made out, the

⁴³ AIR 1999 (SC) 1801.

⁴⁴ Ibid., at p. 1813.

⁴⁵ Ibid, at p. 1815

⁴⁶ *National Buildings Construction Corporation Vs Baghunathan*, AIR 1998 SC 2779.

⁴⁷ *North South Property Development Ltd v Ministry of Land*, 52 (2000) DLR (HCD) 7.

⁴⁸ For example the case *R v Home Secretary ex p Malhi*, (1990) 2 All E.R. 357 may be cited, where an offer of an interview had been made in 1986, but action was taken in 1988 without an interview; held: there was no legitimate expectation of an interview in 1988 as the circumstances then were quite different.

decision or action of the authority will not be interfered with unless it is shown to have resulted in failure of justice.⁴⁹

- (d) He who seeks to enforce must be a person (or member of the class to which) the statement was made or the practice applied.⁵⁰
- (e) A legitimate expectation will not be enforced if there is overriding public interest, which requires otherwise.⁵¹

However, the presence of the above mentioned factors or fulfilment of other conditions do not inescapably guarantee the enforcement of legitimate expectation. At times it depends on the discretion of the judge⁵². So, any result, enforcement or denial may ensue. This very fact is nicely observed in *Union of India Vs Hindustan Development Corporation*⁵³ as:

*Legitimate expectations may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of the governmental activities. They shift and change so fast that the start our list would be obsolete before we reach the middle.*⁵⁴

After all, we should not forget the fact that though the principle of legitimate expectation in the legal arena has, undoubtedly, gained sufficient importance; it seems an annexure to a long list of concepts fashioned by the court for review of the administrative action. It is, therefore, staying at a primary stage where inconsistency, ambiguity or vagueness in decisions and deliberations is natural. And we have to understand that this

⁴⁹ Supra note 32 & 47

⁵⁰ R v Inland Revenue Commrs, (1990) 1 All E.R. 173

⁵¹ Supra note 32, 42 & 47.

⁵² For example in *Bangladesh Soya-Protein Project Ltd vs. secretary, Ministry of MDMR*, 6 (2001) BLC (HCD) 641, the govt initiated 'School Feeding Programme' and entered into contract with the petitioner for supply of Soya- protein biscuits to schools for a fixed period. On the expiry of the contract period, the government discontinued the programme. The High Court Division held that such discontinuance of programme, violating its own policy, was in gross violation of the legitimate expectation not only of the petitioner but also of the millions of under nourished children warranting interference of the court and directed the government to implement its policy decision. The judgment does not show that there was any promise in the shape of statement of policy to continue the programme and there could not be any legitimate expectation of anybody of the continuity of the programme. Even if the programme would have been continued, the petitioner could not have any legitimate expectation of having renewed or fresh contract for the supply of Soya protein biscuits.

⁵³ Supra note 32.

⁵⁴ Ibid., at p. 57.

inconsistency, ambiguity or vagueness is not in the principle but in application. However, if it is kept in mind at the time of dealing with a legitimate expectation that the principle in essence imposes a duty to act reasonably in dealing with the rights and interest of the people in the given circumstances, such inconsistency in application is bound to diminish.