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The Power of Legitimate Expectation: Unveiling Rights, Limits, and Critiques

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Definition of Legitimate Expectation

The doctrine of legitimate expectation is a principle of administrative law that refers to a situation where an individual or group has a reasonable expectation, based on an unambiguous representation or practice of a public authority, ¹ that a particular decision or action will be taken or not taken. ² It can arise from express or implied promises, policies, practices, or past decisions of the authority, ³ and it can apply to various aspects of public administration, *such as licensing, planning, immigration, welfare, or education* ⁴.

The principle of legitimate expectation is an important legal concept that has been recognized in many countries around the world. In the United Kingdom, for example, it has been developed through case law and is now a well-established principle of administrative law. The principle is also recognized in other countries, such as India, Australia, and Canada, among others.

It is based on the idea that public authorities should act fairly and consistently in their dealings with citizens and other stakeholders. This means that when a public authority makes a promise or commitment, it should honour that promise or commitment unless there is a good reason not to do so. Failure to do so may be seen as a breach of trust and could erode public confidence in the authority.

The principle of legitimate expectation seeks to protect the interests of individuals who have relied on the expectations created by the authority, ⁵ and to prevent the authority from acting unfairly or arbitrarily ⁶. However, the doctrine is

subject to limitations and exceptions, such as the public interest, the need for flexibility and change, or the requirements of procedural fairness and natural justice.

The existence of a legitimate expectation depends on several factors, such as the nature of the promise or commitment, the reliance of the individual or group on that promise or commitment, and the impact of not honouring that promise or commitment. In some cases, a legitimate expectation may be overridden by other considerations, such as public interest or legal requirements.

While the principle of legitimate expectation is generally seen as a positive development in administrative law, there are also some challenges and criticisms associated with it. Some critics argue that it can be used to undermine government policy or to create uncertainty in decision-making, while others argue that it can be used to undermine the principles of accountability and transparency. Nonetheless, the principle of legitimate expectation remains an important aspect of administrative law, and its practical applications continue to evolve in response to changing legal and social contexts.

Origin and Development of the Doctrine

The doctrine of legitimate expectation has its origins in English administrative law, where it was first recognized in the context of procedural fairness and natural justice.⁷ In the early cases, the courts held that a person who had a legitimate expectation of a certain procedure or right, based on a promise, representation, or past practice of the public authority, was entitled to a fair hearing or explanation before the authority could depart from the expectation.

For example, in *Schmidt v. Secretary of State for Home Affairs* (1969) 1 Ch 317, the court held that an immigrant who had been promised the right to remain in the UK for a certain period was entitled to a hearing before the decision to shorten his stay could be made. Similarly, in *O'Reilly v. Mackman* (1983) 2 AC 237, the House of Lords held that an individual who had a legitimate expectation of a hearing or other procedural protection could not be deprived of it without a reasonable justification.

Over time, the doctrine of legitimate expectation evolved into a broader principle of administrative law, which applied not only to procedural fairness but also to substantive decisions and actions of the public authority.⁸ In *Council of Civil Service Unions v. Minister for the Civil Service* (1985) AC 374, the House of Lords recognized that a legitimate expectation could arise from a clear and unambiguous representation or practice of the authority, even if it did not create a legal right.⁹ The court held that the Minister could not issue a blanket ban on trade union membership in the civil service without consulting the unions because the unions had a legitimate expectation of being consulted based on the past practice of the authority.

Since then, the doctrine of legitimate expectation has been applied in various contexts and jurisdictions, both in common law and civil law systems, and has been recognized as an important tool for protecting the rights and interests of individuals vis-à-vis the state.

Importance of Legitimate Expectation

The concept of legitimate expectation is important for several reasons. Firstly, it promotes fairness and consistency in decision-making by public authorities. It ensures that individuals are not unfairly disadvantaged by arbitrary or capricious decisions that deviate from established norms or practices.

Secondly, it enhances the accountability of public authorities by providing a means of challenging decisions that are inconsistent with legitimate expectations. It allows individuals to seek redress when their expectations are not met, thereby promoting transparency and good governance.

Finally, legitimate expectation can also serve as a safeguard against abuse of power by public authorities. It provides a legal framework for holding public authorities accountable for their actions and ensures that individuals are protected against arbitrary or discriminatory decision-making.

The principle also plays an important role in ensuring that public authorities act fairly and consistently in their dealings with citizens and other stakeholders. It helps to promote accountability, transparency, and trust in government decision-making and ensures that individuals and groups are treated fairly and by the law.

When a public authority fails to honour a legitimate expectation, individuals and groups can seek remedies through legal or administrative channels, which can help to hold the authority accountable for its actions. This helps to promote transparency and accountability in government decision-making and ensures that public authorities are held to the same standards as other institutions in society.

By encouraging public authorities to act consistently and fairly in their dealings with citizens and other stakeholders, the principle helps to promote the rule of law, which is an essential foundation for good governance. This, in turn, can help to promote economic development, social stability, and other important public goals.

Types of Legitimate Expectation

Express and Implied Legitimate Expectations

There are two types of legitimate expectations based on how they arise: express and implied.

● **Express Legitimate Expectations**

This arises when a public authority makes an unambiguous promise, representation, or assurance to a person that a certain decision or action will be taken or a certain procedure will be followed. For example, if a government agency explicitly promises a person that they will be granted a license or permit, and the agency later denies the license or permit without a valid reason, the person may have a valid claim to express legitimate expectation.

● **Implied Legitimate Expectation**

This arises when a person has a legitimate expectation based on the past practice or conduct of the public authority, even if there is no explicit promise or representation. Implied legitimate expectation can arise in different ways, such as through consistent and long-standing practice, established policies or procedures, or general principles of fairness and natural justice. For example, if a public authority has a consistent practice of granting certain licenses or permits to a certain class of people, and the authority later denies the license or permit without a valid reason, the person may have a valid claim of implied legitimate expectation¹⁰.

While expressing the legitimate expectation is generally easier to establish, implied legitimate expectation may require a more nuanced analysis of the specific circumstances and context in which the expectation arose. In some cases, a person may also have a combination of both express and implied legitimate expectation, depending on the nature of the promise or representation and the past practice or conduct of the authority¹¹.

Specific and General Legitimate Expectations

There are also two types of legitimate expectations based on their scope: specific and general.

● **Specific Legitimate Expectation**

This arises when a person has a legitimate expectation that a certain decision or action will be taken by a public authority about their specific case or situation. For example, if a person has made a specific request to a public authority for a certain benefit or license, and the authority has given them a clear indication that their request will be granted, the person may have a valid claim¹² of specific legitimate expectation.

● **General Legitimate Expectation**

This arises when a person has a legitimate expectation that a certain decision or action will be taken by a public authority about a wider class of people or a certain area of policy. General legitimate expectation can arise in different ways,

such as through established policies or procedures, consistent practice, or the general principles of fairness and natural justice. For example, if a public authority has a consistent practice of granting certain benefits or licenses to a certain class of people, and the authority later denies the benefit or license without a valid reason, the class of people may have a valid claim of general legitimate expectation¹³.

Reasonable and Unreasonable Legitimate Expectations

There are also two types of legitimate expectations based on their reasonableness: reasonable and unreasonable.

● Reasonable Legitimate Expectation

This arises when a person has a legitimate expectation that is reasonable in the circumstances, based on the representations or past practices of the public authority. A legitimate expectation will generally be considered reasonable if it is consistent with the policies, procedures, and legal framework of the authority, and if the authority has not given any valid reason for departing from it. For example, if a person has a legitimate expectation that their application for a certain benefit will be processed within a reasonable time frame, and the authority fails to meet that expectation without a valid reason, the person may have a valid claim of reasonable legitimate expectation.

● Unreasonable Legitimate Expectation

This arises when a person has a legitimate expectation that is not reasonable in the circumstances, based on the representations or past practices of the public authority. An expectation will generally be considered unreasonable if it is inconsistent with the policies, procedures, and legal framework of the authority, or if the authority has given a valid reason for departing from it. For example, if a person has a legitimate expectation that they will be granted a certain benefit or license, but their expectation is based on an erroneous understanding of the law or policy, the expectation may be considered unreasonable⁴.

Criteria for Legitimate Expectation

To establish a legitimate expectation, certain criteria need to be met. These criteria may vary depending on the jurisdiction and context in which the expectation arises, but generally include the following:

- **Representation:** The person must have received an unambiguous representation or assurance from the public authority, either explicitly or implicitly, that a certain decision or action will be taken.
- **Reasonableness:** The expectation must be reasonable in the circumstances,

based on the policies, procedures, and legal framework of the public authority.

- **Specificity:** The expectation must be specific and relate to a particular decision or action that the person seeks from the public authority.
- **Reliance:** The person must have relied on the representation or assurance to their detriment, such that it would be unfair or unjust for the public authority to depart from it.
- **Legality:** The expectation must be based on a legitimate interest or right recognized by law, such as a statutory or common law right, or a legitimate expectation arising from past practice or consistent policy of the public authority.

Clear and Unambiguous Representation

To establish a legitimate expectation, the person must have received an unambiguous representation or assurance from the public authority, either explicitly or implicitly, that a certain decision or action will be taken. This means that the representation must be specific, and precise, and leave no room for doubt or misunderstanding.

- **Explicit representation:** An explicit representation is made explicitly and directly, either in writing or verbally. For example, a public authority may explicitly state in writing that a certain decision or action will be taken, such as the grant of a license or permit.
- **Implicit representation:** An implicit representation is implied from the conduct or actions of the public authority. For example, if a public authority has consistently followed a certain practice or policy over some time, a person may have a legitimate expectation that the authority will continue to follow that practice or policy.
- **Unambiguous:** To be unambiguous, a representation must be specific, precise, and not capable of being reasonably misunderstood or misinterpreted. A representation may be considered unambiguous if it is made in clear and concise language if it is made in writing and signed by the relevant authority, or if it is based on a consistent and longstanding practice or policy of the authority.

Reliance on the Representation

To establish a legitimate expectation, the person must have relied on the representation or assurance to their detriment, such that it would be unfair or unjust for the public authority to depart from it. This means that the person must have taken some action or made some decision in reliance on the representation, which would result in harm or prejudice if the representation was not upheld.

- **Reliance:** Reliance refers to the action or decision taken by the person in response to the representation or assurance. The person must have relied on the representation in good faith, meaning that they acted reasonably in light of the circumstances and the representation made by the public authority. Reliance may take different forms, such as the investment of time, money, or effort, or the making of decisions or plans based on the expectation.
- **Detriment:** Detriment refers to the harm or prejudice that the person would suffer if the representation or assurance was not upheld by the public authority. The harm or prejudice must be substantial, and not merely trivial or speculative. For example, a person who has invested a significant amount of money in a business venture based on a representation made by a public authority may suffer substantial financial harm if the representation is not upheld.
- **Unfairness or injustice:** The reliance on the representation must be such that it would be unfair or unjust for the public authority to depart from it. This means that the public authority must balance the interest of the person against the public interest, and consider whether it would be reasonable and proportionate to depart from the representation in light of all the circumstances.

Reasonableness of the Expectation

To establish a legitimate expectation, the expectation itself must be reasonable in the circumstances. This means that the person must have a legitimate interest or concern that the public authority has recognised or created and that the expectation must be one that a reasonable person in the position of the person would have had.

- **Legitimate interest or concern:** The person must have a legitimate interest or concern that the public authority has recognised or created. This may arise from a variety of sources, such as a statutory provision, a policy statement, a promise or undertaking, or a consistent and longstanding practice of the public authority.
- **Reasonableness:** The expectation must be one that a reasonable person in the position of the person would have had, taking into account all the relevant circumstances. The reasonableness of the expectation may depend on factors such as the nature and importance of the decision or action, the clarity and specificity of the representation or assurance, and the extent and nature of any reliance by the person.
- **Balancing of interests:** The public authority must balance the interest of the person against the public interest, and consider whether it would be reasonable and proportionate to uphold the legitimate expectation in light of all the

circumstances. This means that the public authority may depart from the legitimate expectation if there are compelling reasons for the public interest that outweigh the interest of the person.

Fairness and Proportionality

To establish a legitimate expectation, the public authority must balance the interest of the person against the public interest, and consider whether it would be fair and proportionate to depart from the legitimate expectation in light of all the circumstances. This means that the public authority must consider whether the benefits of departing from the expectation outweigh the harm or prejudice that would be suffered by the person.

- **Fairness:** Fairness refers to the equitable treatment of the person by the public authority. The public authority must consider whether it would be fair to depart from the legitimate expectation, taking into account factors such as the degree of reliance by the person, the clarity and specificity of the representation or assurance, and any other relevant circumstances.
- **Proportionality:** Proportionality refers to the balance between the public interest and the private interest of the person. The public authority must consider whether it would be proportionate to depart from the legitimate expectation, taking into account factors such as the importance of the public interest, the harm or prejudice that would be suffered by the person, and any less intrusive alternatives that are available.
- **Balancing of interests:** The public authority must balance the interest of the person against the public interest, and consider whether it would be fair and proportionate to depart from the legitimate expectation in light of all the circumstances. This means that the public authority may depart from the legitimate expectation if there are compelling reasons for the public interest that outweigh the interest of the person.

Limitations on Legitimate Expectation

While the principle of legitimate expectation is an important aspect of administrative law, it is not without its limitations and potential for abuse. One potential limitation is that the principle may be too flexible, which could lead to inconsistent and unpredictable outcomes.¹⁵

Another potential limitation is that the principle may be used to circumvent the rule of law, particularly if administrative bodies are allowed to create expectations that are inconsistent with legal requirements or the public interest.¹⁶

Public Interest and Overriding Considerations

The doctrine of legitimate expectation is subject to the public interest and overriding considerations. While the legitimate expectation of the person is an important consideration, the public interest may require the public authority to depart from the legitimate expectation if there are overriding considerations.

- **Public interest:** Public interest refers to the collective interest of the community or society as a whole, and may include considerations such as public safety, public health, national security, protection of the environment, and efficient use of public resources.
- **Overriding considerations:** Overriding considerations refer to compelling reasons that justify departing from the legitimate expectation of the person, in the public interest. Examples of overriding considerations may include changes in the law, changes in circumstances, or unforeseeable events that render the legitimate expectation impractical or unworkable.

When considering whether to depart from a legitimate expectation, the public authority must balance the public interest against the interest of the person, and consider whether it would be fair and proportionate to depart from the legitimate expectation in light of all the circumstances.

Change in Circumstances or Policy

The doctrine of legitimate expectation recognizes that a person may have a legitimate expectation based on a representation or assurance made by a public authority, but also acknowledges that circumstances or policies may change over time. When there is a change in circumstances or policy, the public authority may be justified in departing from the legitimate expectation, provided that it acts fairly and proportionately.

In general, a change in circumstances or policy will not automatically justify a departure from a legitimate expectation. Rather, the public authority must carefully consider the impact of the change on the legitimate expectation, and determine whether it would be fair and proportionate to depart from the legitimate expectation in light of the circumstances.

When considering whether to depart from a legitimate expectation based on a change in circumstances or policy, the public authority must:

- **Provide reasons:** The public authority must provide clear and cogent reasons for departing from the legitimate expectation, and must ensure that the reasons are based on relevant and objective considerations.
- **Act fairly and consistently:** The public authority must act fairly and

consistently in its dealings with the person, and must not act arbitrarily or capriciously.

- **Consider alternatives:** The public authority must consider whether there are any alternatives to departing from the legitimate expectation that would achieve the public interest objective.
- **Balance interests:** The public authority must balance the public interest against the interest of the person, and determine whether it would be fair and proportionate to depart from the legitimate expectation in light of all the circumstances.

Unforeseeable Events or Developments

The doctrine of legitimate expectation recognizes that a person may have a legitimate expectation based on a representation or assurance made by a public authority, but also acknowledges that unforeseeable events or developments may occur that make it impractical or unworkable to fulfil the legitimate expectation. When there is an unforeseeable event or development that affects a legitimate expectation, the public authority may be justified in departing from the legitimate expectation, provided that it acts fairly and proportionately.

In general, an unforeseeable event or development will not automatically justify a departure from a legitimate expectation. Rather, the public authority must carefully consider the impact of the event or development on the legitimate expectation, and determine whether it would be fair and proportionate to depart from the legitimate expectation in light of the circumstances.

When considering whether to depart from a legitimate expectation based on an unforeseeable event or development, the public authority must:

- **Provide reasons:** The public authority must provide clear and cogent reasons for departing from the legitimate expectation, and must ensure that the reasons are based on relevant and objective considerations.
- **Act fairly and consistently:** The public authority must act fairly and consistently in its dealings with the person, and must not act arbitrarily or capriciously.
- **Consider alternatives:** The public authority must consider whether there are any alternatives to departing from the legitimate expectation that would achieve the public interest objective.
- **Balance interests:** The public authority must balance the public interest against the interest of the person, and determine whether it would be fair and proportionate to depart from the legitimate expectation in light of all the circumstances.

Estoppel and Abuse of Process

Estoppel and abuse of process are two important concepts that relate to the doctrine of legitimate expectation.

Estoppel refers to a legal principle that prevents a person from denying or asserting something contrary to what they have previously stated or represented. In the context of legitimate expectation, estoppel may arise where a public authority has made an unambiguous representation that a certain course of action will be taken, and a person has relied on that representation to their detriment. In such cases, the public authority may be estopped from departing from the legitimate expectation, as it would be unfair and unjust to do so.

Abuse of process, on the other hand, refers to the misuse or improper use of a legal process or power. In the context of legitimate expectation, abuse of process may occur where a public authority seeks to depart from a legitimate expectation in a way that is unfair or unjust, or where it uses the legitimate expectation as a means of achieving an improper objective.

Remedies for Breach of Legitimate Expectation

Declarations and Injunctions

Declarations and injunctions are two legal remedies that may be available in cases where a person has a legitimate expectation that a public authority will act in a certain way, but the public authority departs from that expectation.

A declaration is a formal statement by a court that sets out the legal rights and obligations of the parties to a dispute. In the context of legitimate expectation, a person may seek a declaration from a court that confirms their legitimate expectation and requires the public authority to act by that expectation.

An injunction, on the other hand, is a court order that requires a person or entity to do or refrain from doing something. In the context of legitimate expectation, a person may seek an injunction to prevent a public authority from departing from their legitimate expectation or to require the public authority to take certain actions to fulfil their legitimate expectation.

To obtain a declaration or injunction in a case involving legitimate expectation, the person must show that they have a legitimate expectation based on an unambiguous representation by the public authority and that it would be unfair or unjust for the public authority to depart from that expectation.

Damages and Compensation

Damages and compensation are another type of legal remedy that may be available in cases involving legitimate expectation. If a person has a legitimate expectation that a public authority will act in a certain way, and the public authority

departs from that expectation, the person may suffer harm or loss as a result. In such cases, the person may be entitled to damages or compensation to help them recover from the harm or loss that they have suffered.

Several types of damages and compensation may be available in cases involving legitimate expectation, including:

- **Compensatory damages:** These are damages that are awarded to compensate the person for the harm or loss that they have suffered as a result of the public authority's departure from their legitimate expectation. Compensatory damages may include, for example, lost income, medical expenses, or other costs incurred as a result of the public authority's actions.
- **Reliance damages:** These are damages that are awarded to compensate the person for any costs or expenses that they have incurred in reliance on the public authority's representation. Reliance damages may include, for example, costs incurred in preparing a project or investment that was based on the public authority's representation.
- **Restitutionary damages:** These are damages that are awarded to restore the person to the position they would have been in if the public authority had not departed from their legitimate expectation. Restitutionary damages may include, for example, the return of property or funds that were wrongly taken by the public authority.

To obtain damages or compensation in a case involving legitimate expectation, the person must show that they have suffered harm or loss as a result of the public authority's departure from their legitimate expectation. They must also show that the harm or loss was foreseeable and that it was caused by the public authority's actions.

Review and Reconsideration

In addition to legal remedies such as declarations, injunctions, and damages, review and reconsideration may also be available as a means of addressing legitimate expectation.

Review and reconsideration involve a public authority reviewing its decision or action in light of the person's legitimate expectation. This may involve the public authority reconsidering its decision or action, providing reasons for the decision or action, or providing an opportunity for the person to be heard.

Review and reconsideration may be available in a variety of contexts, including administrative decision-making, contract law, and property law. For example, a person may have a legitimate expectation that their planning application will be approved by a local authority, based on representations made by the local authority. If the local authority subsequently refuses the application, the person may seek a

review or reconsideration of the decision based on their legitimate expectation.

Application of Legitimate Expectation in Different Areas of Law

Administrative Law and Judicial Review

The impact of legitimate expectation on administrative decision-making is significant, as it requires decision-makers to consider the legitimate expectations of individuals and groups when making decisions. The legitimate expectation is an important principle of administrative law that has been recognized in many jurisdictions as a means of ensuring fairness, predictability, and consistency in decision-making.

One of the key impacts of legitimate expectation on administrative decision-making is that it requires decision-makers to consider past decisions or policies when making new decisions. This means that decision-makers must take into account the legitimate expectations of individuals and groups who may have relied on past decisions or policies when making their plans or investments. This can help to ensure that decision-making is consistent and predictable, and can provide greater certainty to individuals and businesses.

However, the legitimate expectation is not an absolute principle and may be subject to limitations. Decision-makers may depart from past decisions or policies if there is a legitimate reason for doing so, such as a change in circumstances or the need to protect the public interest. In these cases, decision-makers must provide adequate reasons for their decision and must balance the legitimate expectations of individuals and groups against other factors that may be relevant.

Another impact of legitimate expectation on administrative decision-making is that it can provide a basis for legal challenges if a decision-maker departs from past decisions or policies without providing adequate notice or justification. This can help to ensure that decision-makers are held accountable for their decisions and that they are required to provide reasons for their decisions that are transparent and justifiable.

Contract Law and Estoppel

The doctrine of legitimate expectation has important applications in contract law and the related doctrine of estoppel. In contract law, the legitimate expectation may arise where one party has made a representation to another party that creates an expectation that a certain outcome will occur.¹⁷ For example, a seller may represent to a buyer that a particular product will be of a certain quality, or that delivery will occur on a certain date.

If the other party relies on that representation to their detriment, they may have a legitimate expectation that the representation will be fulfilled. In such

cases, the doctrine of estoppel may be invoked to prevent the party who made the representation from denying it or going back on their word.¹⁸

Estoppel operates as a shield against injustice, preventing a person from relying on their strict legal rights where it would be unfair or unjust to do so. In the context of legitimate expectation, estoppel may prevent a person from reneging on a representation that has created a legitimate expectation in the other party.

Human Rights and Legitimate Expectations

The interaction between legitimate expectation and human rights is an important aspect of administrative law and has been the subject of much debate and litigation. On the one hand, legitimate expectation can be seen as a way to protect human rights by ensuring that individuals can rely on past decisions or policies that may be necessary to protect their rights. On the other hand, there may be cases where legitimate expectation conflicts with human rights and may need to be balanced against them.

One area where the interaction between legitimate expectation and human rights has been particularly significant is in the context of immigration and asylum law. For example, an individual may have a legitimate expectation that their asylum application will be considered based on past policies or practices of the immigration authorities. However, there may be cases where the decision to grant asylum may conflict with the legitimate expectations of other individuals or with the broader public interest. In these cases, the decision-maker may need to balance the legitimate expectation against the human rights of the individual seeking asylum and the broader public interest.

Similarly, in cases involving property rights or environmental protection, there may be conflicts between the legitimate expectation of individuals or groups and the need to protect human rights such as the right to health or the right to a healthy environment. In these cases, decision-makers may need to balance the legitimate expectation against the human rights at stake and may need to provide reasons for their decision to depart from past policies or practices.

International Law and Treaty Obligations

The principle of legitimate expectation has also been recognized in international law and is considered an important element of administrative law in many countries. International instruments, such as the European Convention on Human Rights, the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights, have recognized the right to a fair hearing and the right to rely on legitimate expectations.

In Europe, the principle of legitimate expectation has been recognized by the European Court of Justice and the European Court of Human Rights as an

important principle of EU and human rights law. The EU Charter of Fundamental Rights also recognizes the right to good administration, which includes the right to rely on legitimate expectations.

In the United States, the principle of legitimate expectation has been recognized by the Supreme Court as a component of the due process clause of the Fifth and Fourteenth Amendments. However, the recognition of legitimate expectation as a constitutional principle is more limited in the United States than in some other countries.

In Canada, the Supreme Court has recognized the importance of legitimate expectation in administrative law and has developed a framework for analyzing claims based on legitimate expectation. The Court has recognized that legitimate expectation can arise from a variety of sources, including past practices, representations by government officials, and statutory schemes.

Criticisms and Challenges to Legitimate Expectation

Lack of Clarity and Consistency

One of the main criticisms of the doctrine of legitimate expectation is that it can sometimes be unclear and inconsistent in its application. This can create uncertainty for public authorities and individuals alike and can make it difficult to predict when a legitimate expectation will be recognized.

Part of the problem stems from the fact that the doctrine has evolved through a series of case law decisions, rather than being codified in statute. This has led to a lack of clarity about the precise scope and requirements of the doctrine, as well as the circumstances in which it will be recognized.

Another source of inconsistency is the fact that the courts have sometimes struggled to reconcile the doctrine of legitimate expectation with other legal principles, such as the principle of finality or the duty of public authorities to act in the public interest. This has led to a degree of uncertainty and unpredictability in the application of the doctrine.

Finally, the lack of clarity and consistency in the doctrine of legitimate expectation can also make it difficult for public authorities to strike the right balance between respecting the legitimate expectations of individuals and groups and pursuing broader policy goals and public interests.

Tension with Other Legal Principles

The doctrine of legitimate expectation can sometimes come into tension with other legal principles, particularly in situations where there are competing interests at stake. One area where this tension is particularly evident is in the area of national security, where the need to protect the public interest may conflict with the

legitimate expectations of individuals or groups.

Another area where tension can arise is the principle of finality, which holds that once a decision has been made by a public authority, it should be final and binding unless there are exceptional circumstances. In some cases, the doctrine of legitimate expectation may be seen as undermining this principle by allowing individuals or groups to challenge decisions even after they have been made.

Similarly, the principle of certainty, which holds that the law should be clear and predictable, may also be affected by the doctrine of legitimate expectation. This is because the doctrine can sometimes create uncertainty by allowing individuals or groups to claim a legitimate expectation even in situations where the law or policy is unclear.

Finally, the principle of parliamentary sovereignty, which holds that Parliament is the supreme law-making authority in the UK, may also come into tension with the doctrine of legitimate expectation. This is because the doctrine can sometimes be seen as allowing the courts to substitute their judgment for that of Parliament or other public authorities.

Risk of Judicial Overreach or Interference

One potential limitation on the application of the doctrine of legitimate expectation is the risk of judicial overreach or interference in the decision-making powers of the executive branch. As noted earlier, the doctrine operates as a means of controlling the exercise of discretionary powers by public authorities. However, if the courts were to apply the doctrine too broadly or too frequently, it could undermine the ability of public authorities to make decisions in the public interest.¹⁹

To address this risk, courts have developed several safeguards and limitations on the application of the doctrine. One such safeguard is the requirement that the expectation be based on an unambiguous representation by the public authority.²⁰ This helps to ensure that the courts are not simply second-guessing the decision-making of the public authority.

Another limitation is the requirement that the expectation be reasonable in the circumstances.²¹ This helps to ensure that the courts are not substituting their judgment for that of the public authority, but rather are assessing the reasonableness of the expectation in light of the relevant facts and circumstances.

Finally, courts have recognized that the doctrine of legitimate expectation is subject to the principle of proportionality, which requires a balancing of the public interest against the interests of the individual or group making the claim.²² This helps to ensure that the courts are not unduly interfering in the exercise of discretionary powers by public authorities.

Conclusion

Summary of Key Points

The legitimate expectation is an important concept in the law that promotes fairness, consistency, and accountability in decision-making by public authorities. It recognizes the right of individuals to expect that public authorities will act by established norms and practices, and provides a legal framework for challenging decisions that are inconsistent with those expectations. Legitimate expectation has important implications in various areas of law, including contract law, administrative law, and human rights law. It is an essential safeguard against abuse of power by public authorities and plays a crucial role in promoting transparency and good governance.

In conclusion, the legitimate expectation is a fundamental principle of administrative law and constitutional governance that reflects the importance of fairness, consistency, and rationality in government decision-making. ItsIt's—constitutional standing in many jurisdictions underscores its significance as a cornerstone of the rule of law and constitutional governance.

Through its practical application in various cases, a legitimate expectation has provided individuals and groups with a framework for challenging decisions that breach their legitimate expectations. It has also helped to promote transparency and accountability in government decision-making by requiring decision-makers to provide sufficient justifications for their actions.

However, the legitimate expectation is not an absolute right, and its scope and applicability may vary depending on the specific context and legal framework. Therefore, it is important for decision-makers and individuals alike to be aware of the legal implications of legitimate expectation and to seek appropriate legal advice when necessary.

Future Prospects and Developments

The doctrine of legitimate expectation has been the subject of much debate and development in administrative law, and it will likely continue to evolve in the future. One area where further development is possible is the relationship between the doctrine and the principle of proportionality. As noted earlier, the principle of proportionality requires a balancing of the public interest against the interests of the individual or group making the claim. However, there is still some uncertainty and disagreement over how this balancing should be carried out in practice.

Another area where further development is possible is the relationship between the doctrine of legitimate expectation and other principles of administrative law, such as the duty to give reasons for decisions and the duty to consult with affected parties. As noted earlier, these principles are closely related to the doctrine of

legitimate expectation, and there may be scope for further integration and harmonization of these principles in the future.

Implications for Legal Practice and Policy-Making

Legitimate expectation has important legal implications in various areas of law, including contract law, administrative law, and human rights law.

In contract law, legitimate expectations can arise in the context of a breach of contract. For example, if a party has relied on a representation made by the other party, and that representation is not fulfilled, the injured party may be able to claim damages based on their legitimate expectation.

In administrative law, legitimate expectation can be used to challenge decisions made by public authorities that are inconsistent with established norms or practices. For example, suppose a public authority has consistently followed a certain course of conduct in a particular area. In that case, an individual may have a legitimate expectation that the authority will continue to do so. If the authority deviates from this established practice without a valid reason, the individual may be able to challenge the decision.

In human rights law, legitimate expectations can be used to protect individual rights and freedoms. For example, suppose an individual has a legitimate expectation that a certain action will not be taken by a public authority, and that action would interfere with their human rights. In that case, the individual may be able to challenge the decision on human rights grounds.

The principle of legitimate expectation has several legal implications that are important for understanding its practical applications. These implications relate to the rights and obligations of public authorities, the remedies available to individuals or groups when a legitimate expectation is not met, and the relationship between legitimate expectation and other legal principles.

One of the key legal implications of legitimate expectation is that public authorities must act consistently and fairly in their dealings with citizens and other stakeholders. This duty arises from the principle of good governance, which requires public authorities to act in the public interest and to respect the rights of individuals and groups. When a public authority makes a promise or commitment, it must honour that promise or commitment, unless there is a good reason not to do so. Failure to do so may be seen as a breach of the duty of good governance and could result in legal liability.

Another legal implication of legitimate expectation is that individuals or groups may have legal remedies available to them when a legitimate expectation is not met. These remedies may include seeking judicial review of the decision, filing a complaint with a relevant ombudsman or regulatory body, or pursuing other administrative or legal channels. The specific remedies available will depend on

the jurisdiction and the circumstances of the case, but the principle of legitimate expectation provides a basis for challenging decisions that are perceived to be unfair or unlawful.

The relationship between legitimate expectations and other legal principles is also important to consider. For example, the legitimate expectation may be overridden by other legal considerations, such as public interest or legal requirements. In such cases, the legitimate expectation may not be sufficient to justify a particular course of action by the public authority. Similarly, the principle of legitimate expectation may need to be balanced against other legal principles, such as the principle of legal certainty or the principle of proportionality.

Notes

1. C. Forsyth, “*The Doctrine of Legitimate Expectation: A Critical Review of the Case Law*” (1995) 15 OJLS 349, at 349-350.
2. *Council of Civil Service Unions v. Minister for the Civil Service*. (1985), AC 374, at 410.
3. Le Sueur, A., Maurice, C., & Sunkin, M., *Public Law and Human Rights* (2nd ed.) (Oxford University Press, 2004), at 417.
4. P. Craig, *Administrative Law* (6th ed.) (Sweet & Maxwell, 2008), at 633.
5. *Breen v. Amalgamated Engineering Union*. (1971), 2 QB 175, at 206.
6. *R (Bhatt Murphy) v. Independent Assessor*. (2008), EWCA Civ 755, at [41].
7. T. Prosser, *The Limits of Administrative Law* (Hart Publishing, 2012), at 189.
8. C. Forsyth, “*The Doctrine of Legitimate Expectation: A Critical Review of the Case Law*” (1995) 15 OJLS 349, at 352.
9. *Council of Civil Service Unions v. Minister for the Civil Service*. (1985), AC 374, at 410.
10. *Council of Civil Service Unions v. Minister for the Civil Service*. (1985), AC 374, at 410.
11. T. Prosser, *The Limits of Administrative Law* (Hart Publishing, 2012), at 190.
12. *R (Bibi) v. Newham LBC* [2002] EWHC 2376 (Admin), at para. 57.
13. *Council of Civil Service Unions v. Minister for the Civil Service*. (1985), AC 374, at 410.
14. *R (Daly) v. Secretary of State for the Home Department*. (2001), UKHL 26, at para. 28.
15. See Craig, P.P., ‘*Legitimate Expectations and the Flexible Principle of Consistency*’ (1996) Public Law 682.
16. See Elliott, M.A., ‘*The Constitutional Foundations of Judicial Review*’ (2001) Public Law 524.
17. J. Beatson, A. Bell, and M. J. Matthews, “*Beatson, Matthews and Elliott’s Administrative Law: Text and Materials*,” (Oxford: Oxford University Press, 2020), p. 440.
18. G.R. Sullivan, “*The Law of Estoppel*,” (Oxford: Clarendon Press, 1991), p. 1.
19. T. Poole, “*Textbook on Administrative Law*,” (Oxford: Oxford University Press, 2018), p. 227.
20. *R. v. North and East Devon Health Authority, ex parte Coughlan*. (2001), QB 213, para. 57.
21. *R. v. Secretary of State for the Home Department, ex parte Khan*. (1984), 1 WLR 1337.
22. J. Beatson, A. Bell, and M. J. Matthews, “*Beatson, Matthews and Elliott’s Administrative Law: Text and Materials*,” (Oxford: Oxford University Press, 2020), p. 454.