PRINCIPLES OF NATURAL JUSTICE

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Introduction

• “Natural Justice” is a concept of common law and signifies certain fundamental rules of judicial procedure.

• Natural Justice is rooted in the natural sense of what is right and wrong. It mandates the Adjudicator or the administrator, as the case may be, to observe procedural fairness and propriety in holding/conducting trial, inquiry or investigation or other types of proceedings or process.

• The object of Natural Justice is to secure Justice by ensuring procedural fairness. To put it negatively, it is to prevent miscarriage of Justice.
The term “Natural Justice” may be equated with “procedural fairness” or “fair play in action”.

- It is concerned with procedure and it seeks to ensure that the procedure is just, fair and reasonable.
- It may be regarded as counterpart of the American “Due-Process”.
Co-relationship between Law and Natural Justice.

- Law is the means, Justice is the end. Law may be substantive as well as procedural.
- Natural Justice also aims at Justice. It, however, concerns itself only with the procedure. It seeks to secure justice by ensuring procedural fairness. It creates conditions for doing justice.
- Natural justice humanizes the Law and invests the Law with fairness.
- Natural Justice supplements the Law but can supplant the Law.
- Natural Justice operates in areas not specifically covered by the enacted law. An omission in statute, likely to deprive a procedure of fairness, may be supplied by reading into the relevant provision the appropriate principle of Natural Justice.
Applicability to Judicial, Quasi-Judicial and Administrative proceedings

- In *State Of Orissa v. Dr. (Miss) Binapani Dei & Ors* (AIR 1967 S.C. 1259), the Hon’ble Supreme Court held that “an administrative order must be made consistently with the rules of natural justice.”

- *A.K.Kraipak’s case* (AIR 1973 S.C. 150) is landmark in the application of principles of natural justice wherein the court held that “the dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. The concept of rule of law would loose its vitality if the instrumentalities of the state are not charged with the duty of discharging their functions in a fair and just manner.”
In *D.F.O., South Kheri And Ors. vs Ram Sanehi Singh* (AIR 1973 S.C. 203) the court reiterated that law must now be taken to be settled, that even in administrative proceedings, which involve civil consequences, the doctrine of natural justice must be held to be applicable.

Bhagwati,J. in *Maneka Gandhi’s case* emphasized that “enquiries which were considered administrative at one time are now considered quasi-judicial in character. Arriving at a just decision is the aim of both administrative and quasi-judicial enquiries. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. From the above discussion, so hear the other side is a rule of fairness. Fairness is a component of rule of law, which pervades the constitution. The dispensation of natural justice by statute will render any decision without observance of natural justice as unjust and hence is not acceptable.”
2 Fundamental Principles of Natural Justice

**Nemo Judex in Causa Sua**
- Rule against Bias
- No one shall be a judge in his own cause

**Audi Alteram Partam**
- Rule of fair hearing
- No person shall be condemned unheard
Doctrine of Bias

• One of the essential elements of judicial process is that administrative authority acting in a quasi-judicial manner should be impartial, fair and free from bias.

• Where a person, who discharges a quasi-judicial function, has, by his conduct, shown that he is interested, or appears to be interested, that will disentitle him from acting in that capacity.

• No tribunal can be Judge in his own cause and any person, who sits in judgment over the rights of others, should be free from any kind of bias and must be able to bear an impartial and objective mind to the question in controversy.
Types of Bias

- **Personal Bias**
  - Personal bias arises from a certain relationship between the adjudicating authority and of the parties.

- **Pecuniary Bias**
  - Where the judge is shown to have pecuniary interest in the results of the proceedings.

- **Subject-Matter Bias**
  - A person shall also be disqualified from acting as a judge if he himself is a party or has some direct connection with the litigation.
Rule of Fair Hearing

- The second principle of natural justice is audi alteram partem (hear the other side) i.e. no one should be condemned unheard. It requires that both sides should be heard before passing the order.
- This rule insists that before passing the order against any person the reasonable opportunity must be given to him.
- This rule implies that a person against whom an order to his prejudice is passed should be given information as to the charges against him and should be given opportunity to submit his explanation thereeto.
2 steps for fair hearing

Notice

Hearing
Requirements of Fair Hearing

Adjudicating authority receives all the relevant material produced by the individual.

The adjudicating authority discloses the evidence or material which it wishes to use against him.

The adjudicating authority provides the person concerned an opportunity to rebut the evidence or material which the said authority issues to use against him.
Does Right to Fair Hearing includes Right to Cross-Examination?

- Whether it includes the right to cross-examination or not depends upon the provisions of the statute under which the hearing is being held and the facts and circumstances of the each case.

- Where domestic enquiry is made by the employees, right of cross examination is regarded as an essential part of the natural justice.

- In the case disciplinary proceedings initiated by the Government against the civil servants, the right to cross examination is not taken orally and enquiry is only a fact finding one.
In *Hira Nath Mishra v. Rajendra Medical College*, (AIR 1973 S.C. 1260), some male students were charged of some indecent behaviour towards some girl students. The accused male students were not allowed to cross-examine the girl students. The refusal allow the accused male students to cross-examine the girl students was upheld and was not treated as violation of natural justice because allowing them the right of cross-examination would have been embarrassing for the girl students. The refusal was necessary for protecting the girl students from any harassment later on.
Whether Right to be Heard includes Right to Legal Representation?

- Ordinarily the representation through a lawyer in the administrative adjudication is not considered as an indispensable part of the fair hearing. However, in certain situations denial of the right to legal representation amounts to violation of natural justice.

- Thus, where the case involves a question of law or matter which is complicated and technical or where the person is illiterate or expert evidence is on record or the prosecution is conducted by legally trained persons, the denial of legal representation will amount to violation of natural justice because in such conditions the party may not be able to meet the case effectively and therefore, he must be given some protectional assistance to make his right to be heard meaningful.
Institutional Decision

- In ordinary judicial proceedings, the person who hears must decide. In the judicial proceedings, thus the decision is the decision of the specific authority. But in many of the administrative proceedings the decision is not of one man or one authority i.e. it is not the personal decision of any designated officer individually. It is treated as the decision of the concerned department. Such decision is called institutional decisions. In such decision often one person hears and another person decides. In such decision there may be division in the decision making process as one person may hear and another person may decide.

- In *Gullapalli Nageswara Rao v. A. P. State Road Transport Corporation* the Supreme Court the hearing by one person and decision by another person has been held to be against the rule of fair hearing.

- But the actually the Administrative practice continues to permit the hearing by one person and decision by another.
Reasoned Decision (Speaking Order)

- Reasoned decision may be taken to mean a decision which contains reason in its support. When the adjudicators bodies give reasons in support of their decisions, the decisions are treated as reasoned decision. A decision, thus supported by reasons is called reasoned decision. It is also called speaking order. In such condition the order speaks for itself or it tells its own story.

- The reasoned decision introduces fairness in the administrative powers. It excludes or at least minimizes arbitrariness.
The right to reasons is an indispensable part of sound judicial review. The giving of reasons is one of the fundamental of good administration.

It has been asserted that a part of the principle of natural justice is that a party is entitled to know the reason for the decision apart from the decision itself.

In another words, a party is entitled to know the reason, for the decision, be it judicial or quasi-judicial.

The reasoned decision gives satisfaction to the person against whom the decision has been given. It will convince the person against whom the decision has been given that the decision is not arbitrary but genuine. It will enable the person against whom the decision has been given to examine his right of appeal. If reasons are not stated, the affected party may not be able to exercise his right of appeal effectively.
In *Sunil Batra v. Delhi administration*, the Supreme Court while interpreting section 56 of the prisons act, 1894, observed that there is an implied duty on the jail superintendent to give reasons for putting bar fetters on a prisoner to avoid invalidity of that provision under article 21 of the constitution. Thus the Supreme Court laid the foundation of a sound administrative process requiting the adjudicatory authorities to substantiate their order with reasons. The court has also shown a tendency to emphasize upon the fact that the administrative order should contain reasons when they decide matters affecting the right of parties.
Natural Justice and Indian Constitution

Article 14
- Equality
- Principle of Non-Discrimination

Article 21
- Procedure Established by Law
- ‘Due Process’
In *Maneka Gandhi v Union of India*, observed that “Natural justice is a great humanizing principle intended to invest law with fairness and to secure justice and ever the year it has grown into a widely pervasive rule affecting large areas of administrative action. Thus the soul of natural justice is fair play in action and that is why it has received the widest recognition throughout the democratic world. In the United States, the right to an administrative bearing is regarded as essential requirement of fundamental fairness and in England too it has been held that fair play in action demands that before any prejudicial or adverse action is taken against a person he must be given an opportunity to be heard.”
Exceptions to Natural Justice

- **Statutory Exclusion**
  - When the statute expressly or by necessary implication excludes the application of the principles of natural justice the courts do not ignore the statutory mandate.

- **Emergency**
  - In exceptional cases of urgency or emergency where prompt and preventive action is required the principle of natural justice need not be observed.

- **Public Interest**
  - The requirement of notice and hearing may be excluded where prompt action is to be taken in the interest of public safety, or public health, and public morality.
The rules of natural justice is not attracted in the case of interim disciplinary action. For example, the order of suspension of an employee pending an inquiry against him is not final but interim order and the application of the rules of natural justice is not attracted in the case of such order.

Where a student is removed from an educational institution on the grounds of unsatisfactory academic performance, the requirement of pre-decisional hearing is excluded.

Where the authority deals with a large number of person it is not practicable to give all of them opportunity of being heard and therefore in such condition the court does not insist on the observance of the rules of natural justice.
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