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PRINCIPLES OF NATURAL JUSTICE

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The concept and doctrine of Principles of Natural Justice and its application in Justice delivery system is not new. It seems to be as old as the system of dispensation of justice itself. It has by now assumed the importance of being, so to say, "an essential inbuilt component" of the mechanism, through which decision making process passes, in the matters touching the rights and liberty of the people. It is no doubt, a procedural requirement but it ensures a strong safeguard against any Judicial or administrative; order or action, adversely affecting the substantive rights of the individuals.

'Natural Justice' is an expression of English common law. In one of the English decisions, reported In (1915) AC 120 (138) HL, Local Government Board v. Arlidge, Viscount Haldane observed, "...those whose duty it Is to decide must act Judicially. They must deal with the question referred to them without bias and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must come to the spirit and with the sense of responsibility of a tribunal whose duty it is to meet out justice."

In the early part of this century, in another case reported in (1906) AC 535 (539), Lapointe v. L'Association, the Judicial Committee observed that the principle should apply to every tribunal having authority to adjudicate upon matters involving civil consequences.

In the United States of America, the expression 'natural justice' as such, is not so frequently heard of since due process of law is guaranteed by the Constitution whenever an individual's life, liberty or property is affected by State action. Though 'due process' is a vague and undefined expression, the Implications of which are not finally settled even today, but observance of principles of natural Justice is secured by taking advantage of the phrase 'due process'.

In Snyder v. Massachussets, (1934) 291 US 97(105) the Supreme Court of the United States observed that there was a violation of due process whenever there was a breach of a "principle of Justice so rooted In the traditions and conscience of our people as to be ranked as fundamental." Hearing before decision was one of such fundamental principles as was observed in Hagar v. Reclamation District, (1884) 111 US 701.

In India the principle is prevalent from the ancient times. We find it Invoked in Kautllya's Arthashastra. In this context, para 43 of the judgment of the Hon'ble Supreme Court In the case of Mohinder Singh Gill v. Chief Election Commissioner, AIR 1978 SC 851, may be usefully quoted:

> "Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of authority. It is the bone of healthy

[1] Elevated to Hon'ble Supreme Court subsequent to publication of this Article.

> government, recognised from earliest times and not a mystic testament of judge-made law. Indeed from the legendary days of Adam-and of Kautllya's Arthashastra-the rule of law has had this stamp of natural justice, which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system."

Aristotle, before the era of Christ, spoke of such principles calling it as universal law. Justinian in the fifth and sixth Centuries A.D. called it "'jura naturalia" i.e. natural law.

Different jurists have described the principle in different ways. Some called it as the unwritten law (jus non scriptum) or the law of reason. It has, however not been found to be capable of being defined, but some jurists have described the principle as a great humanising principle intended to invest law with fairness to secure justice and to prevent miscarriage of justice. With the passage of time, some principles have evolved and crystallised which are well recognized principles of natural justice.

The first principle is that 'No man shall be a judge in his own cause' i.e. to say, the deciding authority must be impartial and without bias. It Implies that no man can act as a judge for a cause in which be himself has some Interest, may be pecuniary or otherwise. Pecuniary interest affords the strongest proof against impartiality. The emphasis is on the objectivity in dealing with and deciding a matter. Justice Gajendragadkar, as then he was, observed in a case reported in AIR 1965 SC 1061, *M/s* Builders Supply Corporation v. The Union of India and others, "it is obvious that pecuniary interest, howsoever small it may be, In a subject matter of the proceedings, would wholly disqualify a member from acting as a judge". Lord Hardwick observed in one of the cases, "In a matter of so tender a nature, even the appearance of evil is to be avoided." Yet it has been laid down as principle of law that pecuniary interest would disqualify a Judge to decide the matter even though it is not proved that the decision was in any way affected. This is thus a matter of faith, which a common man must have, in the deciding authority.

The principle is applicable in such cases also where the deciding authority has some personal Interest in the matter other than pecuniary Interest. This may be in the shape of some personal relationship with one of the parties or ill will against any of them. In one of the cases order of punishment was held to be vitiated, as the officer who was in the position of a complainant/accuser/witness, could not act as an enquiry officer or punishing authority. There may be a possibility, consciously or unconsciously to uphold as Enquiry Officer what he alleges against the delinquent officer. (State of U.P. v. Mohammad Nooh, AIR 1958 SC 86).

In one of the selections, which was held for the post of Chief Conservator of Forest, one of the members of the Board was himself a candidate for the post. The whole process of selection was held to be vitiated as the member would be a judge in his own cause. (1970 SLR 134 (Mysore) V.N.Nadgir v. Union of India.)

In the case of A.K.Kraipakv. Union of India, AIR 1970 SC 150, a precaution was taken by a member of the selection Board to withdraw himself from the selection proceedings at the time his name was considered. This precaution taken could not cure the defect of being a judge

in his own cause since he had participated m the deliberations when the names of his rival candidates were being considered for selection on merit.

The position, however, may be different when merely official capacity is involved in taking a decision in any matter as distinguished from having a personal Interest. There are certain statutes which provide that named officers may resolve the controversy, if any, arising between the organisation and the other persons, e.g., in the matters relating to nationalisation of routes, Government officers or authorities were vested with the power to dispose of the objections. In such matters as above, it has been held by the Hon'ble Supreme Court that proceeding will not vitiate as It was only In official capacity that the officer was Involved and It would not be correct to say that he was a judge In his own cause being an officer of the Government. It Is a kind of statutory duty which Is performed by a public officer, unless of course bias Is proved In any case. A decision of the Supreme Court can usefully be referred on the point, viz.; AIR 1960 SC 1073, Narayanappa v. State of Mysore .

In another case reported in AIR 1957 SC 425 Manak Lal v. Prem Chand, where a committee was constituted to enquire into the complaint made against an Advocate, the Chairman of the Committee was one who had once appeared earlier as counsel for the complainant. Constitution of such a committee was held to be bad and it was observed, "in such cases the test is not whether in fact the bias has affected the Judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributed to a member of the Tribunal might have operated against him in the final decision of the Tribunal." However, such objections about the constitution of committees or Tribunals consisting of members having bias should be taken at the earliest opportunity before start of the proceedings otherwise, normally, It would be considered as waiver to that objection.

Lord Denning observed in **(1969) 1 OB 577**, Metropolitan Properties Ltd. v. Lunnon, "..... The reason is plain enough. Justice must be rooted in confidence, and confidence is destroyed when right minded people go away thinking, the Judge was biased". But we find a caution given that the suspicion should be that of reasonable people and must not be that of capricious and unreasonable person. (De-Smith-Judicial Review of Administrative Action.)

The principle is of great Importance. It ensures hearing or consideration of a matter by unbiased and impartial authority.

The next principle is audi alteram partem, i.e. no man should be condemned unheard or that both the sides must be heard before passing any order. A man cannot incur the loss of property or liberty for an offence by a judicial proceeding until he has a fair opportunity of answering the case against him. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision Is made, but there may be instances where though an authority Is vested with the powers to pass such orders which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not. De Smith, in his Judicial Review of Administrative Action (1980), at page 161, observed, I "Where a statute authorises interference with properties or other rights and is silent on the question of hearing, the courts would apply rule of universal application and founded on plainest principles of natural justice." Wade in Administrative Law (1977) at page 395 says that principles of natural justice operate as implied mandatory requirements, non- observance of which invalidates the exercise of power. In one of the cases, reported in (1863) 14 GB (NS)

180 Cooper v. Sandworth Board of Works, it was observed, "...Although there is no positive word In the statute requiring that the party shall be heard, yet justice of common law would supply the omission of Legislature."

In A.K. Kraipak's case (supra), the Hon'ble Supreme Court observed that the rules of natural justice operate only in areas not covered by any law validly made. These principles thus supplement the law of the land. In the case of Smt. Maneka Gandhi v. Union of India and another, AIR 1978 SC 597, it has been observed that even where there is no specific provision for showing cause, yet in a proposed action which affects the rights of an individual it is the duty of the authority to give reasonable opportunity to be heard. This duty is said to be implied by nature of function to be performed by the authority having power to take punitive or damaging action.

In one of the recent decisions of the Hon'ble Supreme Court reported In (1993) 1 SCC 78, C.B. Gautam v. Union of India and others, the Hon'ble Supreme Court Invoked the same principle and held that even though It was not statutorily required, yet the authority was liable to give notice to the affected parties while purchasing their properties under Section 269-UD of the Income Tax Act, namely, the compulsory purchase of the property. It was observed that though the time frame within which an order for compulsory purchase has to be made is fairly tight one but urgency is not such that it would preclude a reasonable opportunity of being heard. A presumption of an attempt to evade tax may be raised In case of significant under valuation of the property but it would be rebuttable presumption, which necessarily implies that a party must have an opportunity to show cause and rebut the presumption. It was further observed that the very fact that an imputation of tax evasion arises where an order for compulsory purchase is made and such an Imputation casts a slur on the parties to the agreement to sell lead to the conclusion that before such an imputation can be made against the parties concerned they must be given on opportunity to show cause that the under valuation in the agreement for sale was not with a view to evade tax. It is, therefore, all the more necessary that an opportunity of hearing is provided.

The opportunity to provide hearing before making any decision was considered to be a basic requirement in the court proceeding. Later on this principle was applied to other quasi-judicial and other tribunals and ultimately it is now clearly laid down that even In the administrative actions, where the decision of the authority may result In civil consequences, a hearing before taking a decision is necessary. It was thus observed in A.K. Kralpak's case **(supra)** that if the purpose of rules of natural justice is to prevent miscarriage of justice, one falls to see how these rules should not be made available to administrative enquiries. As observed earlier, in the case of Maneka Gandhi also the application of principle of natural justice was extended to the administrative action of the State and its authorities.

In one of the very old cases of early part of this Century, Lapointe v. L'Association (1906) AC 535(539), it has been observed, “The rule (Audl alteram partem) is not confined to the conduct of strictly legal tribunals, but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals." There is thus no reason to doubt that the administrative actions are as much under the strains of principles of natural Justice as judicial or quasi-judicial decisions.

It may, however, be noted that the principles of natural justice are very flexible principles. They cannot be applied in any straitjacket formula. It all depends upon the kind of functions performed and the extent to which right of a person is likely to be affected. It may not be necessary to provide a full-fledged oral hearing in every case though it may be necessary in

certain other matters. The provisions, which we find in the procedural statutes, providing for opportunity of hearing before any final order is passed, only comply with the principles of natural justice. In certain matters, It may be sufficient to allow a person only to make a representation and no oral hearing may be necessary, but the same may not be true In another matter where full-fledged oral hearing Including cross-examination of the witnesses etc. would be necessary.

The application of the principles of natural justice varies from case to case depending upon the factual aspect of the matter. For example, in the matters relating to major punishment, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules before a person is dismissed removed or reduced in rank, but where it relates to only minor punishment, a mere explanation submitted by the delinquent officer concerned meets the requirement of principles of natural justice. In some matters oral hearing may be necessary but in others, It may not be necessary, as we find that in one of the cases, reported in AIR 1971 SC 1093, Union of India v. J.P.Mittar, a matter relating to correction of date of birth, it was not considered necessary to provide personal hearing; a mere representation was held to be sufficient to conform to the application of principles of natural justice.

In AIR 1977 SC 1691, Srikrishna v. State of M.P., It has been observed that the principles of natural justice are flexible and the test is that the adjudicating authority must be impartial and fair hearing must be given to the person concerned. Similar view was taken in AIR 1966 SC 671, MP Industries Ltd. v. Union of India and others where personal hearing was not considered to be necessary. A mere written representation as provided under the Rules was held to be sufficient to comply with the principles of natural justice. Similarly it will depend upon the facts and circumstances of the case in which a delinquent may be allowed to be represented through counsel; such a demand cannot be made as of right. But there may be circumstances where a counsel may be permitted, e.g. where the person concerned may not be in a position to express or to place before the authority complicated nature of facts and law. In one of the cases, reported in AIR 1973 SC 1260, Hiranath Misra v. Principal, Rajendra Medical College, the request for opportunity to cross-examine the witnesses was refused, which was upheld by the Supreme Court. The boy students of the Medical College had misbehaved with the girl students residing in Hostels. A committee of three independent members of the staff was appointed by the Principal who enquired into the complaints of the inmates and recorded their statements. Charges were framed and the boy students were made known of the charges and their explanation was called. This was held to be sufficient to comply with the principles of natural justice and in the facts and circumstances of the case it was not necessary to allow them cross-examination etc., as it would have exposed the individual girl students to harassment by the male students. The arrangement made by the Principal to enquire into the matter was approved by the High Court.

In one of the recent decisions of the Hon'ble Supreme Court reported in (1994) 5 SCC 566, Maharashtra State Financial Corporation v. Suvarna Board Mills and another, it has been observed that the natural Justice cannot be placed in a strait Jacket; rules are not embodied and they do vary from case to case and from one fact-situation to another. All that has to be seen is that no adverse civil consequences are allowed to ensue before one is put on notice that the consequence would follow if he would not take care of the lapse, because of which the action as made known is contemplated. No particular form of notice is the demand of law. All will depend on facts and circumstances of each case. It was, however, provided that since a representation was made, the corporation would give post- decisional hearing considering the offer made in the representation for repayment of loan. As a matter of fact, sometimes, there

may be urgency in taking a particular action failing which the whole purpose may frustrate. In such circumstances, it has been found advisable to provide post- decisional hearing, i.e. after a decision is taken, but such a case must be Justified on the facts and circumstance as to why it was not possible to provide a pre-decisional hearing. In given circumstances of a case such a step to provide post-decisional hearing may cure the defect of violation of principles of natural justice. In AIR 1995 SC 1512, State of U.P. v. Pradhan Sangh Kshethra Samiti, also the Hon'ble Supreme Court has held that in matters, which are urgent, even a post-decisional hearing is a sufficient compliance of the principle of natural justice, viz audi alteram partem. In an another case reported in AIR 1995 SC 1130, State of U.P. v. Vijai Kumar Tripathi, the Hon'ble Supreme Court has held that it is up to the competent authority to decide whether In the given circumstances the opportunity to be provided should be a prior one or post - decisional opportunity. Normal rule, of course, is prior opportunity.

It is though true that the principles of natural justice are flexible in application but its compliance cannot be jumped over on the ground that even if hearing had been provided, it would not have served any useful purpose. The opportunity of hearing will serve the purpose or not is a later stage. Things cannot be presumed by the authority. This view is supported by observations made in 1943 AC 627, General Medical Council v. Spackman. In one of the cases before the Hon'ble Supreme Court reported in 1970 SC 1039, Board of High School v. Km. Chittra, the authorities took the view that since the facts were not in dispute, no useful purpose would be served by giving an opportunity of hearing. The examination of the petitioner was cancelled for shortage of attendance. The Court held that the Board was acting in a quasi-judicial capacity, hence, the principles of natural justice had to be complied with. Therefore, what defence would be put forward has to be left to the delinquent and no presumptions can be raised about it. Any hearing provided in appeal or before the higher tribunal, cannot be said to be a substitute for hearing, which is to be afforded initially.

The third principle which has developed in course of time is that the order which is passed affecting the rights of an individual must be a speaking order. This is necessary with a view to exclude the possibility of arbitrariness in the action. A bald order requiring no reason to support it may be passed in an arbitrary and irresponsible manner. It is tile reason for passing an order, which checks the arbitrariness. It is a step in furtherance of achieving the end where society is governed by Rule of law.

The other aspect of the matter is that the party, against whom an order is passed, in fair play, must know the reasons of passing the order. It has a right to know the reasons. In Maneka Gandhi's case, it has been held that withholding of reasons for impounding the passport of the petitioner was violative of the principles of natural justice. The orders against which appeals are provided must be speaking orders. Otherwise, the aggrieved party is not in a position to demonstrate before the appellate authority, as to in what manner, the order passed by the initial authorities is bad or suffers from illegality. To a very great extent, in such matters bald orders render the remedy of appeal nugatory. However, it is true that administrative authorities or tribunals are not supposed to pass detailed orders as passed by the courts of law. They may not be very detailed and lengthy orders but they must at least show that the mind was applied and for the reasons, howsoever briefly they may be stated, the order by which a party aggrieved is passed. There cannot be any prescribed form in which the order may be passed but the minimum requirement as indicated above has to be complied with. Our Supreme Court has many times taken the view that non-speaking order amounts to depriving a party of a right 'of appeal. It has also been held in some of the decisions that the appellate authority, while reversing the order must assign reasons for reversal of the findings. As a matter of fact, the

principles of natural justice apply where there may not be any specific provisions in the statute. These principles are inherent and natural in application requiring no statutory provision for the same but the application of these principles can be excluded by express provision under the law. For example, we have the provisions of Article 311 of the Constitution of India where it is provided that before an officer is dismissed, removed or reduced in rank, he must be afforded a reasonable opportunity of being heard in respect of the charges levelled against him but at the same time it also provides that it may not be necessary to afford that opportunity where for reasons recorded in writing it is found that it is reasonably not practicable to hold an enquiry or where the President or the Governor has specified that in the interest of security of the State it is not expedient to hold such enquiry. The relevant case on the question is reported In 1985(3) SCC 398 = 1985 SC 1416 (case of Tulsiram Patel). Thus, there may be circumstance by reason of which statutorily, application of principles of natural justice may be excluded.

To sum up, one finds that Initially the principles of natural justice used to be applied to courts of law alone but later on from judicial sphere it extended, to the tribunals exercising quasi-judicial functions and then to the statutory authorities and the administrative authorities, who have upon them, the responsibility of determining civil rights or obligations of the people. In normal conditions, an action or a decision, judicial or administrative, affecting rights of an individual and resulting in civil consequence is unthinkable. In the present day, without affording hearing by an unbiased and impartial authority who must act objectively and must also give out his mind, as to what weighed in decision making process, by incorporating reasons to support the decision or, to say so, by giving a speaking order. This is necessary for a society, which is governed by Rule of law. How substantive laws are applied and rights are determined is a question not less important, to say it again, the principles of -natural justice are great humanising principles intended to invest law with fairness to secure justice and to prevent miscarriage of justice.

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