

# Principles of Natural Justice

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# Principles of Natural Justice

- **'Natural Justice' - an expression of English common law.**
- In the English decision, *Local Government Board v. Arlidge*, (1915) AC 120 (138) HL 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."
- Rules not generally embodied & not fixed by any code
- **Developed to secure justice and to prevent miscarriage of justice**
- Based on the maxim - *Justice should not only be done but should manifestly be seen to be done*
- Encompass Rule against bias & Rule of fair hearing
- Applicable to administrative and quasi-judicial proceedings
- **“Natural Law does not mean the law of the nature or jungle where lion eats the lamb and tiger eats the antelope but a law in which the lion and lamb lie down together and the tiger frisks the antelope.”**

# Constitutional Foundations of Principles of Natural Justice

- **Rule against Bias:** Rt.to Equality & Rule against Arbitrariness (Art.14)
- **Right to Legal representation** (Art.22)
- **Rule of Fair Hearing:**
  - Rule against Arbitrariness u/A 14
  - Procedure established by Law u/A 21
- **Concept of Due Process of Law** - now implicit under Art.21
- **Rule of Fair Trial etc**
- In India "unfair procedure" amounts to "arbitrary" and "unreasonable" exercise of power. Such act would attract Articles 14, 19 and even 21 of the Constitution as interpreted in *State of W.B. v. Anwar Ali Sarkar*, *S.G. Jaisinghani v. Union of India*, *E.P. Royappa v. State of T.N.*, *Maneka Gandhi v. Union of India* and several other cases

# Rule of Fair Hearing

- Based on the maxim – *Audi alteram partem* (no man shall be condemned unheard) – hear the other side
- Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms, states :

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...
- A base on which fair administrative procedures are built up
- **Ingredients** – prior notice of hearing, **Opportunity to be heard**, right to disclosure of evidence, **right to legal representation**, right to produce evidence, **opportunity to rebut and cross examine**, **one who decides must hear & reasoned decision**, Post decisional hearing

# Exclusion of Rule of Fair Hearing

- May be express or implied
- **By statutory provisions** – eg: Urgent land acquisition
- **By constitutional provisions** – eg: Second proviso to Art.311(2)
- **In case of legislative acts**
- **Exclusion in public interest**
- **In case urgency/necessity**
- **In case of impracticability**
- **In case of confidentiality**
- **In case of academic adjudication etc**

# Rule against Bias

- Originates from maxim- *Nemo debet esse iudex in propria sua causa* (no man can be a judge in his own cause)
- The rule disqualifies a person from deciding a dispute in which he has- pecuniary bias; personal bias; or bias relating to subject matter
- Includes Pre-conceived notion bias (Subjective Bias)
- **Instances:** **personal bias** -A.K.Kraipak v. UoI AIR 1970 SC 150; pecuniary bias- Dimes v. Grand Junction Canal & Co [1852,H. of Lords]- the decision of LC in favour of the Canal company- quashed by H.of Lords since he was a shareholder in the co.
- See **Jeejeebhoy v.Asst.Collector of Thana** AIR 1965 SC 1096- Js Gajendragadkar reconstituted the Bench for hearing a case on the ground that he was a member of the cooperative society for which the land in dispute was acquired.

# Rule against Bias

- the second pillar of natural justice
- **requires** that a decision-maker must approach a matter with an open mind that is free of prejudgment and prejudice
- **applies to** a vast range of decision-makers including tribunals, statutory authorities, court officials, juries, government ministers, local councils, prison officials, government officials, and even private arbitrators.
- the courts have adopted a **single test to determine applications for bias - that of the fair minded and informed observer**
- **bias should be “evaluated** through the eyes of the reasonable, informed, practical and realistic person who considers the matter in some detail ... The person postulated is not a ‘very sensitive or scrupulous’ person, but rather a right-minded person familiar with the circumstances of the case.”

# Rule against Bias

- The rule against bias was originally founded on a principle of fairness and accuracy in decision-making, but it is now founded on the idea that to allow a biased tribunal to make a decision would be to undermine public confidence in the system
- **Bias relating to subject matter – Gullapalli Nageswara Rao v. APSRTC (1959, SC)** – scheme for nationalization of motor transport notified by State Govt.-quashed since the Secretary who initiated scheme and who heard objections was the same
- **Bias – No need of actual/real likelihood** [there was a real likelihood of a bias for the mere presence of the candidate on the Selection Board may adversely influence the judgment of the other members'-SC in A.k.Kraipak)
- **Even reasonable likelihood is a vitiating factor**
- **Exceptions to the rule against bias- Necessity**(when there is no alternative), **Waiver**(When there is no objection by party having knowledge of bias)



# Doctrine of Necessity as an Exception to Rule against Bias

- **Necessity excludes bias**

*An adjudicator who is subject to disqualification on account of bias may nevertheless, can validly adjudicate if:*

- 1) No other person competent to adjudicate is available;
- 2) A quorum can not be formed without him; or
- 3) No other competent tribunal can be constituted.

- In **Ashok Kumar Yadav v State of Haryana [AIR 1987 SC 454]** Supreme Court showed that Doctrine of Necessity acts as an exception to official bias. During the selection process in Haryana State Public Service Commission, relative of the member of the Selection Board was interviewed and later personal relationship was alleged as a ground to strike down the decision of the Selection Board. ....But the situation here is different as the selection of candidates to Haryana Civil Service (Executive) and allied services, is not done by a selection committee made for the purpose but is provided for by Article 316 of the Constitution of India. Hence, the same principle as in case of personal relationship cannot be applied in this case. If a member of Public Service Commission were to withdraw altogether from the selection making process on the ground that a close relative of his appearing for selection, no other person save a member can be substituted in his place. And it may also happen sometimes that no other member is available at all and hence functioning of Public Service Commission may be affected. In this case hence, Supreme Court Invoked the Doctrine Of Necessity expressly and held that the decision by the Committee valid and untarnished by any sort of bias.

- Chinappa Reddy, J took the same stand in deciding another such similar case Javid Rasool Bhat v State Of Jammu and Kashmir.

# Old view regarding the duty to act judicially

- In *Nakkuda Ali v. Jayaratne* [1951 AC 66 : 66 TLR 214], the Controller of Textiles cancelled a licence of a textile dealer on the ground that the holder was unfit to continue as a dealer. Before passing the impugned order, no hearing was afforded by the Controller. In an action against the Controller, the Privy Council held that the action by the Controller of cancellation of a licence was an executive action of withdrawal of privilege and the dealer had no right to hold the licence and the Controller was not under a duty to act judicially.
- Similarly, in *R. v. Metropolitan Police Commr., ex p Parker* (1953) 1 WLR 1150 : (1953) 2 All ER 717 ] a cab-driver's licence was revoked on the ground of alleged misconduct without giving opportunity to him to rebut the allegations. The Court upheld the order on the ground that the licence was merely a permission which could be revoked at any time by the grantor and in doing so, he was not required to act judicially.

# From duty to act judicially to duty to act Fairly

- But as Schwartz says, for an individual to lose his licence is to suffer an "economic death sentence" and is wholly contrary to the spirit of Anglo-American administrative law and this is an unwarranted restriction upon the application of the rules of natural justice. [*Administrative Law*, p. 115]
- de Smith also says:

"Demolition of a property-owner's uninhabitable house might be for him a supportable misfortune; deprivation of a licence to trade might mean a calamitous loss of livelihood; but the judicial flavour detected in the former function was held to be absent from the latter. *The decision, whilst not unique, was inconsistent with the general attitude of the English courts towards the licensing and regulation of trades and occupations and in general towards the right to earn one's living.*" [*Judicial Review of Administrative Action*, 1980, p. 172.]

# Effect of Breach of Natural Justice

- The action in violation of breach of natural justice— void
- In exceptional cases – post decisional hearing can be given
- the principles – initially 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.
- "acting fairly" is an additional weapon in the armoury of the court. It is not intended to be substituted for another much more powerful weapon "acting judicially". Where, however, the former ("acting judicially") cannot be wielded, the court will try to reach injustice by taking resort to the latter—less powerful weapon ("acting fairly").
- **Administrators-** bound to follow the Principles of Natural Justice while taking a decision affecting the civil rights and obligations of the citizens.

**Thank You**