Natural Justice

The concept of natural justice has acquired universal, recognition. By virtue of this universality, it has become a part of the administrative law.[1] It is a moral safeguard to the orderly procedure of law because "procedural safeguards are the indispensable essence of liberty"[2]. Its aim is to enforce throughout the administrative system those elements of fair procedure which are so fundamental in their character that they apply not only to courts of law but also to tribunals, enquiries and to all sorts of administrative adjudications. Its object is to render justice and fairness. Thus, it is itself a justice. It is that kind of justice which is simple and elementary.[3] Its simplicity and elementariness makes it a great humanizing principle.[4]

Recently, the term has been defined as "fair play in action"[5] or fairness. The term "fairness" possesses an elephantine quality of being easy to recognize in practice but difficult to define.[6] "Fairplay in action", it may be pointed out, seems to manifest an intention to spell out the process of natural justice in action.

The meaning and scope of the term "natural Justice" is not fixed but is variable. The notions held by different writers in different systems of law have not always been identical. There have been variations in meaning attached to the term, including an approximate synonym for divine law and also a form of the *jus gentium* or common law of nations. The rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend, to a great extent, on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened, the court has to decide whether the

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[1] *National Workers Union vs. P.R. Ramakrishnan*, AIR 1983 S.C. 75 Para 15, O.Chinnappa Reddy

[2] *Maneka Gandhi Vs Union of India*, AIR 1978 S.C. 597 at 658 per Krishna Iyer J.

[3] *John Vs. Rees*, 1969 2 All E.R. 274 per Megarry, J.

[4] *Supra Note* 2 at 625 per Bhagwati, J.

[5] *Furnell Vs. Whangarei High Schools Board*, 1973, W.L.R. 92: 1973 1 All E.R. 400 (P.C.) per Lord Morris

[6] *Maxwell Vs. Department of Trade* (1974) 1 Q.B. 523 at 539 per Lawton, L.J.

observance of that rule was necessary for just decision on facts of that case.[7] However, it has many colours and shades, many forms and shapes.[8]

Until recently, rules of natural justice applied only in case of acts regarded as judicial or quasi-judicial. A distinction was made whereby the rules did not apply where executive or administrative function was involved. In other words, a decision whether natural justice applied in any particular case or not, depended upon whether the act in question was in its nature judicial or quasi-judicial as against administrative. The recent trend of judicial thinking, may be observed in the celebrated decision of the House of Lords in *Ridge vs. Baldwin*,[9] wherein a distinction between the judicial and quasi-judicial, on the one hand, and administrative or executive, on the other, was held to be a view tainted with fallacy. It may be pointed out that though *Ridge Vs Baldwin* deserves appreciation as an epoch-making decision, yet it is so only in the sense that it reinforces the trend which remained dormant since the decision in *Arlidge's Case*[10] in 1915. Thus, it may be said that the present approach of the courts on the question of applicability of the rules of natural justice is not entirely new, but a revival of the old trend which was set in *Cooper's Case*.[11]

Now for application of rules of natural justice, the characterization of the nature of the action as judicial, quasi-judicial or administrative has no role to play. It is the consequences of the action which matter.[12] Thus, it is now well settled that rules of natural justice will always apply whenever any action prejudicially affects the "civil rights" of the individual. This change in judicial approach may be described as a change from conceptualism to functionalism. Thus, the prevailing trend for the application of the rules of natural justice, generally speaking, is that whenever administrative action is likely to result in adverse civil consequence to the party, the rules of natural justice must be observed. The cases decided by the Supreme Court,

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[7] *Suresh Kosy George Vs. University of Kerala*, AIR 1969. S.C. 198
[8] *Mohinder Singh Gill Vs. Chief Election Commission*, AIR 1978 S.C. 851
[9] (1964) A.C. 40
[10] *Local Government Board Vs. Arlidge* (1915) A.C.120
[11] *Cooper Vs. Wandsworth Board of Works* (1863) 14, C.B. (N.S.) 180
[12] The origin of the term civil consequence can be traced from the decision in *Wood Vs. Woad* (1874) L.R. 9 Ex. 190, at 196 per Kelly L.C.B.

such as : *Maneka Gandhi*[13], *Mohinder Singh Gill*[14], *S.L. Kappor*[15], *Swadeshi Cotton Mills*[16], and *National Textile Workers Union*[17], etc., are instances in support of this trend.

The new concept of "fair play" has played a significant role in extending the ambit of natural justice to cover various functions of administration which were traditionally beyond the reach of the rules of natural justice. The constantly expanding horizon of natural justice will, it is hoped, expand with its remedical significance to cover even those aspects of administrative function which are still considered 'purely' administrative and are understood to be immune from the requirement of natural justice in the interest of justice and fairplay. It may be suggested that application of rules of natural justice should be extended to all those situations in which a person is affected adversely by an action of administrative authority except in cases where the application of such rules is not practicable in desirable in the larger interest of the society.

Traditionally, natural justice comprises two rules. First, *nemo judex in re sua*, which means no man shall be a judge in his own cause. Second, *audi alteram partem*, which means no man shall be condemned unheard. But the concept of natural justice has undergone a great deal of change in recent years. In *A.K. Kraipak Vs Union of India*[18], it was observed by the Supreme Court that a third rule was also in sight. The rule envisaged that quasi-judicial enquiries must not be arbitrary or unreasonable. The third rule envisaged was that reasons should be given for quasi-judicial-decisions.

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[13] *Supra Note* 2
[14] *Supra Note* 8
[15] *S.L. Kapoor Vs. Jagmohan*, AIR 1981 S.C. 136
[16] *Swadeshi Cotton Mills Vs. Union of India*, AIR 1981 S.C. 818
[17] *Supra Note 1* See also *Daud Ahmad Vs. District Magistrate Allahabad*, AIR 1972 S.C. 896; *A.K. Kraipak Vs. Union of India*, AIR 1970 S.C.150; *The Co-operative Housing Society, Civilian Employees, Defence Service Vs. Commissioner and Special Officer, Municipal Corporation of Hyderabad*, AIR 1985 A.P. 277.
[18] AIR 1970 S.C.150. See also *Report of the Committee on Ministers Power 1932*

The *nemo judex* rule is one of the major limbs of natural justice. In essence, it implies impartiality of the decision-maker. Such impartiality must manifest itself in the conduct of the decision-maker during the proceedings before him. This is essential because justice must not only be done but must also be seen to be done. Thus, it is of fundamental importance that the decision-maker should not participate in the proceedings where his interest is involved in any way in the outcome of the case.

The decision-maker will be supposed to be interested in the outcome of the case when his pecuniary interest is involved. Similarly, the existence of a direct nexus between the decision-maker and one of the parties or its counsel which may be presumed due to family, professional or vocational and friendly relations will also render the decision as partial. Negatively, when there are adverse relations between the decision-maker and one of the parties or its counsel, for instance, political rivalry or hostility, the *nemo judex* rule is most likely to be hurt resulting in the violation of the principles of natural justice.

Disqualification of the decision-maker on the ground of his official association with the subject matter, i.e., department or policy or scheme, seems to be liberally viewed by the courts. In this field, the judicial approach is that application of the *nemo judex* rule is not warranted unless there exists a “real likelihood” of bias. A simple mechanical application of the *nemo judex* rule will make the administrative expertise futile and defeat the very object of conferring of the powers to the administration.

The test for *nemo judex* rule is either “real likelihood” or “reasonable likelihood” of bias. However, the reasonable likelihood test is broader in its scope as compared to the other test. Both the tests are in use in judicial pronouncements. However, the reasonable likelihood test is discernible in majority of the cases. The application of both tests is the need of the day. Their application will depend upon circumstances of the case in question.

The *nemo judex* rule is not an absolute principle. Limitation on the rule can be conceived on such grounds as waive, statutory authority and necessity. These limitations are recognized in the interest of justice itself.

Audi alteram partem is another rule of natural justice. It imposes an obligation on the decision-maker that the person likely to be affected adversely by the decision must be given an opportunity before making a final decision. The roots of this principle are ancient. It goes back to the very origin of the Anglo-American Law. The protection guaranteed by the principle of *audi alteram partem* is designed to afford to an individual a right to a fair hearing.

The contents and scope of *audi alteram partem* rule vary according to the constitution of adjudicatory bodies, the nature of statute from which they derive power, nature of power they exercise, the nature and character of the parties and the impact of the consequences that would flow from the action, etc.

The nature of the issues involved is the determinant of the extent and scope of the opportunity to be given to the party likely to be affected. While this simple issue will require written submission, the complex ones may be resolved through oral submission but in all cases, action must follow notice. During the course of hearing, all evidential material must be disclosed to part until judicial or official notice can be taken thereof. All evidence against the party must be gathered in the presence of the party and there should not be any evidence at his back.

The cross-examination of person adducing evidence is essential for a full and true disclosure of facts and for preventing miscarriage of justice. The cross-examination cannot be claimed as a matter of right. It depends on the nature and circumstances of the case and character of the party claiming right of cross-examination. The consequences of the decision do not seem to govern the principle as to whether the right of cross-examination be afforded or not. It may be suggested in this connection that the gravity and impact of the consequences of administrative decisions should be taken into account.

Similarly, gravity of consequences of a decision has not been taken into consideration for bolding whether a person has right to be represented through his counsel before adjudicatory bodies. No doubt informality should be the hallmark of the entire administrative proceedings before such bodies, but it should not result in unfairness.

The concept of post-decisional hearing as satisfying the requirement of *audi alteram partem* rule is gradually getting recognition. However, it must not be taken as a general rule. Resort to post-decisional hearing can only be justified where antecedent hearing would frustrate the very object of the administrative action. The post-decisional hearing must be remedial in nature with full and fair hearing and must be conducted by the same authority which earlier took administrative action or considered the matter.

The duty to give reasons in administrative adjudication has not yet been universally recognized as a general rule. However, giving of reasons has acquired great importance. The requirement of reasons is an effective check on the arbitrary exercise of power. Besides, it is essential to inspire confidence among the parties and those concerned with the administrative process.

It is high time when natural justice must essentially include the requirement of giving reasons for decisions. The desirability of such a requirement becomes more pertinent in our country because the legislature here seldom incorporates in the appropriate law a provision requiring giving of reasons. Neither has our legislatures enacted a general law requiring giving of reasons in administrative adjudications. It is, therefore, suggested that a general legislation should be enacted on the pattern of the Australian legislation.[19] Judicial dictas emphasizing the requirement of reasoned

[19] Commonwealth Administrative Appeals Tribunal Act, 1975 as amended in 1977. Section 28 of the Act

decision or speaking order as a requirement of natural justice[20] deserves appreciation.

According to some decision, the effect of failure to observe rule of natural justice is that the decision concerned will be 'void'. But according to some other judicial authorities, the effect of such failure would result only in making the order 'voidable', not 'void'. In case of a void decision as soon as the court declares it to be void, it loses all its validity and legal effect from the date of its birth. On the other hand, in case of a voidable decision, it retains its legality till set aside by the court. And in respect of the things done between its pronouncement by the administrative authority and its quashing by the court, it remains valid.

The India courts, by and large, have not entered into the void / voidable controversy. In *Suresh Vs. State of Madhya Pradesh*[21] the High Court refused to follow the theory of voidable orders in case of the acts of public authorities and the authority of Privy Council was held not applicable in India. The failure to observe rules of natural justice should always be taken as 'void'.

It may finally be said that the requirement of rules of natural justice is not a fair-weather assurance. It must be respected in periods of calm as in times of trouble. However, natural justice, unlike certain rigid rules, is not a technical concept with a fixed content unrelated to time, place and circumstances. It ensures fairness between man and man, and more particularly between the individual and the officials of the government.[22]

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[20] *Ibrahim Kunju Vs. State of Kerala & Ors,* AIR 1970 Ker. 65; *Siemens Engg. & Mfg. Co. Vs. Union of India*, AIR 1976 S.C. 1288, etc. see also S.S.Singh, *"Is Giving of Reasons in Administrative Adjudications a Requirement of Natural Justice?"* Lb. I.C. (Jour.), 1984 at 204.

[21] AIR, 1970 M.P. 154 see also *Jawala Prasad Vs. State of Rajasthan*, AIR, 1973 Raj 187; *Union of India Vs. Central Government Industrial Tribunal* (1979) M.P.L.J. 809; *Divisional Superintendent, South Eastern Railway Vs. Ch. Annaji Kumar & Ors* (1980) M.P.L.J.; *Nawab Khan Vs State of Gujarat*, AIR 1974, S.C., 1471, etc.

[22] *Joint Anti-Fascist Refugee Committee Vs. McGrath*, 341 U.S. 123 (1950) at 171-172 per Frankfurtur, J.

Other Cases:

***D. K. Yadav Vs. J.M. A Industries Ltd*. (1993) 3 SCC 259**

Labour Law – Termination of Service-Constitution of India – Article 14 – Principles of Natural Justice implicit under – Action / decision, even administrative in nature, which involves civil consequences, must be just, fair, reasonable and non-arbitrary – and in consonance with natural justice. Natural Justice – Just, fair and reasonable action is an essential inbuilt of natural justice. Natural Justice-fairness – Duty is to act fairly, not so much to act judicially – Action should be impartial, and should be free from even appearance of unfairness, unreasonableness and arbitrariness.

***Rattan lal Sharma Vs Managing Committee (Dr. Hari Ram (Co-edcation) Secondary School* (1993) 4 SCC 10.**

Natural Justice-principle of, applicability to administrative bodies also apart from judicial and quasi-judicial authorities – Rules of natural justice are foundational and fundamental concepts and law is now well settled that the principles of natural justice are part of the legal and judicial procedure and are also applicable to the administrative bodies in its decision making process having civil consequences.

***State Government Houseless Harijan Employees' Association Vs. State of Karnataka*, (2001) 1 SCC 610.**

Applicability of Natural Justice – Requirement of – held, would be read into Statutory Provisions, unless excluded explicitly or by implications.

***State of Punjab Vs V.K. Khanna* (2001) 2 SCC 330.**

Natural Justice - Fairness in action- Determination of - Held, depends upon the facts the circumstances of each case and there can be, no strait- jacket formula therefore

***V.C. Mohan Vs. Union of India* (2002) 3 SCC 451.**

Natural Justice - Fairness -Government authorities should be fair, reasonable and alive to the situation- Rule of law should prevail.

***Haryana Financial Corporation Vs Jagdamba Oil Mills* (2002) 3 SCC 496.**

Fairness in action – held the concept of the obligation of administrative authorities to act fairly was evolved to ensure the rule of law and to prevent the failure of justice- Doctrine of Fairness is complementary to the principles of natural justice which quasi-judicial authorities are bound to observe.

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