PRINCIPLE OF NATURAL JUSTICE AND ITS LEGAL IMPLECATIONS

NATURAL JUSTICE: CONCEPT AND MEANING:

Natural Justice is an important concept in administrative law. The principles of natural justice of fundamental rules of procedure are the preliminary basis of a good administrative set up of any country. The concept and doctrine of Principles of Natural Justice and its application in Justice delivery system is not new. It has its place since the beginning of justice delivery system. Natural justice is an expression of English common law, which involves a procedural requirement of fairness. It is an important concept in administrative law. In the words of Justice Krishna Iyer Natural justice is a pervasive fact of secular law where a spiritual touch enlivens legislation, legislation and adjudication to make fairness a creed of life. It has many colour and shades, many forms and shapes.[1] 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. 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.

Natural Justice is an important concept in administrative law. The term natural justice signifies basic principles of justice, which are made available to everyone litigant during trial. Principles of natural justice are founded on reason and enlightened public policy. These principles are adopted to circumstances of all cases. Such principles are applicable to decisions of all governmental agencies, tribunals and judgments of all courts. In the present world the importance of principle of natural justice has been gaining its strength and it is now the essence of any judicial system. Natural justice rules are not codified laws. It is not possible to define precisely and scientifically the expression ‘natural justice’. They are

[1] Lord Esher MR in Vionet VS Barrat, (1885) 55 LJQB 39.

basically common – sense justice which are built- in the conscience of human being. They are based on natural ideals and values which are universal in nature. ' Natural justice' and 'legal justice' are substances of 'justices' which must be secured by both, and whenever legal justice fails to achieve this purpose, natural justice has to be called in aid of legal justice. Rules of natural justice have developed with the growth of civilization. It is not the creation of Constitution or mankind. It originated along with human history. In order to protect himself against the excess of organized power, man has always appealed to someone which is not been created by him and such someone could only be God and His laws, Divine law or Natural law, to which all temporal laws must and actions must conform. It is of 'higher law of nature' or 'natural law' which implies fairness, reasonableness, equity and equality.

HISTORICAL DEVELOPMENT

The concept of Principle of natural justice is not a new concept. Natural justice has an impressive history which has been recognized from the earliest times.The Greeks had accepted the principle that 'no man should be condemned unheard'. It was first applied in 'Garden of Eden' where opportunity to be heard was given to Adam and then providing him punishment. Some of the evidences of natural justice is also found in Roman law.Principle of natural justice has also been found in the Kautilya's Arthsastra, Manusmriti and different text. 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 "'juranaturalia" i.e. natural law. 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**[2], 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 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

[2]AIR 1978 SC 851

Extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system."

In **Swadeshi Cotton Mills V. Union of India**[3], It was observed that Natural justice is a branch of public law and is a formidable weapon which can be wielded to secure justice to the citizen. Also in **Canara Bank V. V K Awasthi**[4] the supreme court observed that principles of natural justice are those rules which have been laid down by courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, Quasi–judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

PRINCIPLES OF NATURAL JUSTICE

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Frank Committee or the committee on Minister's Power has laid down the following norms of natural justice:

1. No man should be condemned unheard,
2. No man shall be judge in his own cause,
3. A party is entitled to know the reasons for the decision,
4. Making available a copy of statutory report.

However the traditional English law recognises two principles of natural justice

(A) NEMO JUDEX IN CAUSA SUA (Rule Against Bias)

The literal meaning of the Latin maxim 'NEMO JUDEX IN CAUSA SUA 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 he has some Interest, may be pecuniary or otherwise. Bias means an operative prejudice, whether conscious or unconscious, in relation to a party or issue. Such operative prejudice may be the result of a preconceived opinion or a predisposition or a predetermination to decide a case in

[3] AIR 1981 SC 818
[4] Air 2005 6 SCC 321

a particular manner so much so that it does not leave the mind open. Pecuniary interest affords the strongest proof against impartiality. The emphasis is on the objectivity in dealing with and deciding a matter. Justice Gajendragadkar, has observed in the case of M/**S Builders Supply Corporation v. The Union of India and others**[5], "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 tobe 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 anyway 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.

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.

In the case of **A.K.Kraipak V. Union of India**[6] 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

[5]AIR 1965 SC 1061
[6]AIR 1970 SC 150,

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. In another case **Manak Lal v. Prem Chand**[7]**,** 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 andmust 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, **Metropolitan Properties Ltd. v. Lunnon**[8],"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 accusation given that the suspicion should be that of reasonable people and must not be that of capricious and unreasonable person. The principle is of great Importance. It ensures hearing or consideration of a matter by unbiased and impartial authority.

TYPES OF BIAS

1. Pecuniary Bias

Judicial approach is unanimous and decisive on the point that any financial interest, howsoever small it may be, would vitiate administrative action. The disqualification will not be avoided by non-participation of the biased member in the proceedings if he was present when the decision was reached.

In the age of free market economy where investment in shares is very common there is very much chance of the bias of this type. However considered opinion is that it would serve no public interest if the deciding officer rescues himself where he has no substantial pecuniary interest.

2. Subject Matter Bias

[7]AIR 1957 SC 425
[8](1969) 1 OB 577

Those cases fall within this category where the deciding officer is directly, otherwise, involved in the subject matter of the case. Here again the mere involvement would not vitiate the administrative action unless there is a real likelihood of bias.

In R. Vs. Deal Justices, Ex p. Curling[9] , the magistrate was not declared to try a case of cruelty to an animal on the ground that he was a member of the royal society for the prevention of Cruelty to animals, as this did not prove a real likelihood of bias.

3. Departmental Bias Or Institutional bias

The problem of departmental bias is something which is inherent in the administrative process, and if not effectively checked it may negate the very concept of fairness in administrative proceeding. The problem of departmental bias also arises in a different context when the functions of a judge and prosecutor are combined in the same department. It is not uncommon to find that the same department which initiate a matter also decides it , therefore at times departmental fraternity and loyalty militates against the concept of fair hearing.

4. Policy Notion Bias

Bias arising out of preconceived policy notions is a delicate problem of administrative law. On one hand , no judge as a human being is expected to sit as a blanket sheet of paper and on the floor, preconceived policy notions may vitiate a fair trial.

A classic case bringing this problem to the forefront is **Franklin V. Minister of Town and country planning[10] a**lso known as Stevenage case. In this case the appellant challenged the Stevenage New Town Designation Order Act, 1946. On the ground that no fair hearing was given because the Minister had entertained bias in his determination which was clear from his speech at Stevenage when he said "I want to carry out a daring exercise in town planning and it is going to be done. Though the court did not accept the challenge on the technical ground that the minister in confirming the report was not performing any quasi-judicial function , but the problem still remains that the bias arising from strong policy convictions may operate as a more serious threat to fair action than any other single factor.

5. Preconceived Notion Bias

This type of bias is also known as unconscious bias. All person exercising adjudicatory powers are humans with human prejudices, no matter some persons are more humans than

[9] (1881) 45 LT 439 (DC)
[10] 1948 AC 87