General Principles of Law & Principles of Natural Justice

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Law – Definition & Meaning

- the collection of rules imposed by authority
- legal document setting forth rules governing a particular kind of activity
- the principles and regulations established in a community by some authority and applicable to its people, whether in the form of legislation or of custom and policies recognized and enforced by judicial decision.
- all the rules of conduct established and enforced by the authority, legislation, or custom of a given community, state, or other group or any one of such rules
Law in Jurisprudence

- **Austin** – Law is the command of sovereign enforceable by sanctions

- **Salmond** - Law is body of principles recognised by State and applied by it in administration of justice

- **Roscoe Pound** - It is a tool of social engineering
Kinds of Law

- Codified & uncodified
- International & municipal
- Substantive and procedural
- Civil and criminal
- Secular and Personal
- Supreme and ordinary/organic etc
Sources of Law

- **Legislation** – Constitution, Statutes, Rules etc
- **Custom** – practice (s) passed on by one generation to the next - ancient, certain, uniform, not opposed to public policy & continuous
- **Precedent** – authoritative & persuasive - ratio decidendi & obiter dicta
General Principles of Law

- Rule of Law
- Separation of Powers
- *Ubi jus ibi remedium*
- *Ignorantia facti excusat-ignorantia juris non excusat*
- *Volenti non fit injuria* (damage suffered by consent is not a cause of action)
- *Res ipsa loquitur* (the thing speaks for itself)
General Principles of Law

- *Actus non facit reum nisi mens sit rea* (the intent and the act both concur to constitute the crime)
- *Nemo debet bis vexari pro una et eadem causa* (it is a rule of law that a man shall not be twice vexed for one and the same)
- “*FIAT JUASTITIA RUAT COELUM*” — let justice be done, though the heaven should fall.
- Principles of Natural Justice
Principles of Natural Justice

- Rules not generally embodied & not fixed by any code
  - Judge made rules
- Have been developed to secure justice and to prevent miscarriage of justice (Proper measure of protection against organized power and its excesses)
- Based on the maxim - *Justice should not only be done but should manifestly be seen to be done* [in Lord Hewart, CJ in R v. Sussex Justices Ex parte McCarthy (1924, KB)]
- Natural justice is not justice of the nature where the lion devoirs the lamb... but implies fairness, reasonableness, equity and equality
- Based on Rule of Law
- Encompass Rule against bias & Rule of fair hearing
- Incorporated in the constitution of India (Art.14,19,20,21 & 22 etc)
- Applicable to administrative and quasi-judicial proceedings
Rule against Bias

- Bias- operative prejudice
- Originates from maxim- Nemo debet esse judex 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
- **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.
Instances of Rule against Bias

- S.P. Kapoor v. State of HP (1981, SC) - selection list prepared by DPC-quashed as the officer who prepared the ACRs of other candidates was a candidate himself
- J. Mohapatra v. State of Orissa (1984, SC) - assessment committee to select books for schools-comprised certain authors whose books were included-proceedings were quashed
Rule against Bias

- 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

- Even reasonable likelihood is a vitiating factor
Rule of Fair Hearing

- Based on the maxim – *Audi alteram partem* (no man shall be condemned unheard) – hear the other side
- Rule of fair hearing
- **Ingredients** – notice, 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
Rule of Fair Hearing - Some Instances

- Dhakeswari Cotton Mills v. Commissioner of Income Tax (AIR 1955 SC 65)- Assessment made by IT authorities based on surmises, suspicions and conjectures - set aside

- Reasons: Assessee not disclosed information supplied by dept. representative, assessee co. was not given opportunity to rebut adverse material evidence, & the material sought to be relied on by assessee not received

- Result: Assessee had no fair hearing.
Exclusion of Natural Justice

- May be express or implied
  - By statutory provisions – e.g.: urgent land acquisition (under review)
  - By constitutional provisions – e.g.: 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
Effect of Breach of Natural Justice

- The action – void
- In exceptional cases – post decisional hearing can be given
Conclusion

- Wish you Happy Administration
- Thank You