

Principles of Natural Justice

Prof.(Dr.) Ramachandra
MCRHRDIT,Hyderabad

Introduction

- Administrators exercise administrative, quasi-judicial and quasi-legislative powers.
- PNJ denote fairness in procedure or *Procedural Fairness*
- Justice- **Simple & elementary**
- NJ=branch of public law
- Rules of NJ=**not embodied rules**
- They **do not supplant the law only supplement it**
- PNJ **are flexible** and whether they were observed in a given case or not depends upon the facts and circumstances of each case

Against whom NJ may be enforced

- Courts
- Judicial Bodies (CIC/CAT/Lok Adalat)
- Quasi-judicial authorities
- **Administrative authorities(Quasi-judicial/Purely administrative orders)**
- **Purely administrative orders:- Notice and hearing only when there are civil consequences** (everything that affects a citizen in his civil life)

2+1 Basic Principles

1. *Nemo debet esse iudex in propria causa*:- **NO BIAS**

{No man shall be a judge in his own cause}

LIKELIHOOD OF BIAS(JUSTICE MUST BE SEEN /B
DONE [Judges= Recuse (potential conflict of interest)]

2. *Audi alteram partem* :- HEAR THE OTHER SIDE

{Both sides must be heard}[**No man should be
condemned unheard**]

NOTICE & HEARING

3. Reasoned Decisions= Giving Reasons (DECISIONS)

Absence of Bias/interest or prejudice

- *Justice must not only be done , but manifestly and undoubtedly be seen to be done*(Lord Hewart)
- *Judges, Like Ceaser's wife should be above suspicion*
- One who **must** avoid attracting negative attention or scrutiny (because they are involved with a famous or prominent figure). Julius **Caesar** used the phrase "**Caesar's wife must be above suspicion**" to explain why he divorced his wife, Pompeia.
- *Conduct should not raise suspicion*

CJI(Ranjan Gogoi)Sexual Harassment Case

- An ex-Supreme Court staff alleged in media that the then CJI Ranjan Gogia had sexually harassed her
- The Supreme Court bench of Justices Arun Mishra, R F Nariman and Deepak Gupta suo moto held that former SC Judge Justice A K Patnaik will hold enquiry regarding alleged conspiracy.
- Also constituted a 3-judge internal panel of Justices SA Bobde, Indira Banerjee and Indu Malhotra to probe the allegations
- Observations-The Internal Investigative Committee gave a clean chit to CJ. The complaint had stayed away from the probe citing likelihood of bias. Details of the inquiry report have not been made public.

Types of Bias(4 types)

- Pecuniary Bias (financial interest)
- Personal Bias
- Official Bias or bias as to subject matter (**RARELY**
invalidates proceedings)

Pecuniary Bias

- *Least pecuniary interest in the subject matter of the litigation will disqualify any person from acting as a judge.*
- There is a presumption that any financial interest in the matter in dispute disqualifies a person from adjudicating

J.Mohapatra &Co v. State of Orissa(1984)

- Some of the members of the Committee set up for selecting books for educational institutions were themselves authors whose books were to be considered for selection.
- Madon J observed “It is *not the actual bias* in favour of the author member that is material, *but the possibility of such bias*”

Personal Bias

- *Here a judge may be a relative, friend or business associate of a party.*(RECUSE)
 - **Prejudiced towards the other**=He may have some personal grudge, enmity or grievance or professional rivalry against such party
 - **Prejudice** = an unfavorable opinion or feeling formed beforehand or without knowledge, thought, or reason
 - **Proceeding/Enquiry is vitiated**
- Vitiate= become ineffective**

State of U.P. v. Mohd. Nooh(1958)

- A departmental enquiry was held against A by B. *As one of the witnesses turned hostile, B left the enquiry, gave evidence against A, resumed to complete the enquiry and passed an order of dismissal.* The Supreme Court set aside the order of dismissal

A.K.Kraipak v. Union of India (1969)

- One N was a candidate for selection to the Indian Forest Service and was also a member of the Selection Board. N *(Naquishband) did not sit on the Board when his name was considered (deliberations)*. Name of N was recommended by the board and he was selected by the Public Service Commission. The candidates who were not selected filed a writ petition for quashing the selection of N (PNJ Violated)
- *Contention = PNJ not applicable to administrative functions*

Official bias /Bias as to subject-matter

- This may arise when the ***judge has a general interest in the subject-matter***
- **Only rarely will this bias invalidate proceedings.**
(DP/DE)

Krishna Bus Service(P) Ltd v. State of Haryana(1985)

- The legality and validity of the notification issued by the State Government conferring the powers of DY. Superintendent of Police on the General manager, Haryana Roadways was challenged by private operators of motor vehicles inter alia on the ground of interest and bias.

Krishna Bus Service(P) Ltd v. State of Haryana(1985)

- Upholding the contention and quashing the notification, **the Supreme Court observed:**

The General Manager of Haryana Roadways who is a rival in business of the private operators of motor vehicles cannot be expected to discharge his duties in a fair and reasonable manner.

Test: Real likelihood of Bias

- A pecuniary interest, however small it may be, disqualifies a person from acting as a judge. Other interests, however, do not stand on the same footing. *Here the test is whether there is a real likelihood of bias in the judge.*
- Prof. De Smith says, a 'real likelihood' of bias means at least substantial possibility of bias
- Vaughan Williams LJ says that *the court will have to judge the matter 'as a reasonable man would judge of any matter in the matter of conduct his own business'.*

Hear the Other Side (Audi alteram partem)

- Generally , this maxim includes two elements:
 1. Notice
 2. Hearing

Notice

- *Even if there is no provision in the statute about giving a notice, if the order in question adversely affects the rights of an individual*, the notice.
- **State of J&K v. Haji Wali Mohammed(1972)**: To give 24 hours time to dismantle a structure alleged to be in a dilapidated condition is not proper and the notice is not valid.
- **K.D.Gupta v. Union of India(1989)**: Where a notice regarding one charge has been given, the person cannot be punished for a different charge for which no notice or opportunity of being heard was given.

Cross-examination

- Cross-examination was *never considered to be part and parcel of the doctrine of natural justice*. It always depends on the facts and circumstances of each case whether an opportunity of cross-examination should be given to a party against whom proceedings have been initiated.
- **If a statute permits cross-examination of witnesses at the enquiry or adjudication, obviously, the opposite can claim right to cross-examine them.**
Normally, in disciplinary proceedings as also in domestic enquiries, right of cross-examination is not denied (DE=Industrial worker)

Hira Nath Mishra v. Rajendra Medical College(1973)

- A complaint was made that some male students entered quite naked into the compound of the girls' hostel late at night. They were rusticated from the college. Their prayer to cross-examine female students who had seen them was denied. The Supreme Court upheld the action observing :Those girls would have been ***exposed themselves to retaliation and harassment*** thereafter. The ***college authorities are in no position to protect the girl students outside the college precincts.***
- **(Evidence Condition=should not disclose identity)**

Hearing at appellate stage

- A peculiar situation sometimes arises. It may happen that there may be non-compliance with NJ at the initial stage but hearing might have been given by the appellate authority. The question obviously arises: Whether a hearing afforded at the appellate stage can be treated as an acceptable substitute for a hearing not afforded at the *initial stage?* In other words, can failure of NJ at the first stage be cured by complying with NJ at the subsequent stage?
- NO

Right of Counsel

- The right of representation by a lawyer is **never considered to be a part of NJ and it cannot be claimed as of right, unless the said right is conferred by the statute.**
- Some statutes **do not permit** appearance of legal practitioners, **e.g. factory laws**; some statutes **permit appearance** of advocates only with the **permission of the tribunal concerned**, e.g. Industrial Disputes Act, 1947; while in some statutes, the **right to be represented through an advocate is recognised, e.g. Income Tax Act, 1961**

Right of Friend

- In *departmental proceedings and domestic enquiries, an employee or a workman is normally allowed to represent his case through his friend, co-worker or representative of the Union.*

According to the SC, it is desirable that in domestic enquiries, employees should be given liberty to represent their case by persons of their choice, if there is no standing order against such a course being adopted and if there is nothing otherwise objectionable in the said request.

- **DEFENCE ASSISTANT/ Presenting Officer**

Speaking Orders(Reasoned Decisions)

- A speaking order means an order speaking for itself. To put it simply, every order must contain reasons in support of it.
- **Giving of reasons in support of an order is considered to be the third principle of NJ.**
According to this, a party has a right to know not only the result of the enquiry but also the reasons in support of the decision.

Where order is subject to appeal/ revision

- If the order passed by the adjudicating authority is subject to appeal or revision, the appellate or revisional court will not be in a position to understand what weighed with the authority and ***whether the grounds on which the order was passed were relevant, existent and correct*** and the exercise of the right of appeal would be futile

In A.K. Gopalan (A.21 & A.19)

- The petitioner challenged the validity of his detention under the Act on the ground, that it was violative of his right to freedom of movement under Art. 19(1)(d) which is the very essence of personal liberty guaranteed by Art. 21 of the Constitution. ***He argued that the words “personal liberty” include the freedom of movement also and therefore the Preventive Detection Act, 1950 must also satisfy the requirement of Art. 19 (5).*** In other words, the restrictions imposed by the detention law on the freedom of movement must be reasonable under Art. 19(5) of the Constitution. ***It was argued that Art. 19(1) and Art. 21 should be read together because Art. 19(1) dealt with substantive rights and Art. 21 dealt with procedural rights. (The State under clause(5) of Article 19 impose reasonable restrictions on the freedom of movement on 2 grounds (1)in the interests of the general public (2)for the protection of the interests of the Scheduled tribes).***

Maneka Gandhi v. Union of India(1978)

- In Maneka Gandhi v. Union of India(1978), the *Supreme Court has not only, overruled Gopalan's case but has widened the scope of the words 'personal liberty' considerably.* *Bhagwati, J. (as he then was) observed:*
"The expression 'personal liberty' in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised to the status of distinct fundamental rights."
- The Court lays down great stress on the procedural safeguards. *The procedure must satisfy the requirement of natural justice, i.e. it must be just, fair and reasonable.*

Maneka Gandhi v. Union of India(1978)

- The order withholding reasons for impounding the passport was therefore not only in breach of statutory provisions (Passport Act) but also in violation of the rule of natural justice embodied in the maxim “audi alteram partem”.

Although there are no positive words in the statute (Passport Act) requiring that the party shall be heard, yet the justice of the Common Law will supply this omission of Legislature.

The power conferred under Section 10(3)(c) of the Act on the passport authority to **impound a passport is a quasi-judicial power.** The rule of natural justice would therefore, be applicable in the exercise of this power. **A provision requiring of such opportunity to the affected person can and should be read by implication in the Passport Act, 1967.** If such provisions were held to be **incorporated in the Act by necessary implication, the procedure prescribed for impounding passport would be right, fair and just and would not suffer from the vice of arbitrariness or unreasonableness.**

Maneka Gandhi's case (A.21 &A.19)

- In Maneka Gandhi's case the Supreme Court has overruled the view expressed by the majority in Gopalan's case and held that **Article 21 is controlled by Art. 19, that is, it must satisfy the requirement of Art. 19 also.** *The court observed:*
- **A law depriving a person of 'personal liberty' has not only to stand the test of Art. 21 but it must stand the test of Art. 19 of the Constitution.**
- Each right holds importance, however, *there are three major fundamental rights which are given a lot of weightage, and when combined together form the Golden Triangle of Indian Constitution*

Protection from Legislative action also

- Prior to Maneka Gandhi's decision, ***Article 21 guaranteed the right to life and personal liberty to citizens only against the arbitrary action of the executive, and not from legislative action. The State could interfere with the liberty of citizens if it could support its action by a valid law.*** But after the Maneka Gandhi decision Article 21 ***now protects the right to life and personal liberty of citizen not only from the Executive action but from the Legislative action also.***

A person can be deprived of his life and personal liberty if two conditions are complied with, first, there must be a law and secondly, there must be a procedure prescribed by that law, provided that the procedure is just, fair and reasonable.

Maneka Gandhi

It was observed that any law interfering with personal liberty of a person must satisfy a triple test: (i) it must prescribe a procedure; (ii) the procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation; and (iii) it must also be **liable to be tested with reference to Article 14**. As the test propounded by Article 14 pervades Article 21 as well, the law and procedure authorising interference with personal liberty and right of privacy must also be right and just and fair and not arbitrary, fanciful or oppressive. If the procedure prescribed does not satisfy the requirement of Article 14 it would be no procedure at all within the meaning of Article 21.