



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 & uncoded
- 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 devours 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

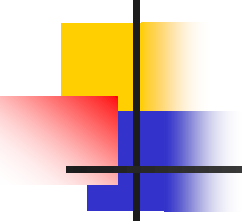
- Mineral Dev.Corp.Ltd. V State of Bihar (AIR 1960 SC 468) – cancellation of mining license- due to political rivalry-quashed
- S.P.Kapoor v,State of HP (1981,SC)- selection list prepared by DPC-quashed as the officer who prepared the ACRs of other candidates was a candidate himself
- J.Mohapatra v.State of Orissa (1984,Sc)- assesment 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

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- 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