CHAPTER - 5

ROLE OF NATURAL JUSTICE IN REMEDIAL ACTION FOR/AGAINST TRANSGRESSION OF PERSONAL LIBERTY
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1. Significance of the Issue

It is an accepted axiom observed Prof. Jain & Jain that the real Kernel of democracy lies in the Courts enjoying the ultimate authority to restrain all exercise of absolute and arbitrary power. Without some Kind of Judicial Power to control the administrative authorities, there is a danger that they may commit excess and degenerate into arbitrary authorities, and such a development would be inimical to a democratic Constitution and the concept of rule of law.

Of the principles of Judicial review of administrative actions/quasi judicial action the most important one is violation of the principles of natural justice.

Natural justice, is a branch of public law and is a formidable weapon which can be wielded to secure justice to the citizen.

Natural justice meant many things to many writers, lawyers and systems of law. It is used interchangeably with Divine Law, jusgentium and the common law of the nations. It is a concept of changing

content. However, this does not mean that at a given time no fixed principles of natural justice can be identified. The principles of natural justice though their application in a given situation may depend on multifarious factors, for fairness itself, it is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop or a bee in one's bonnet. (Justice Krishna Iyer in Mohinder Singh Gill V. Chief Election Commissioner)²

Further it may be argued in the same tone as the Hon'ble Supreme Court observed in Satyavir Singh V. Union of India³ that 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 the acts of authority. It is the bone of healthy government, recognised from the earliest times and not a mystic testament of judge-made law. Indeed, from the legendary days of Adam and of Kautilya's Arthasastra, the rule of law has had this stamp of natural justice which makes it social justice.

² (1978) 1 SCC 405, 434, AIR 1978, SC 851
³ (1985) 4 SCC 252
2. Principles of Natural Justice

It is however agreed on all hands that there are certain broad principles deducible from the two Latin maxims which form the foundation of the doctrine and extend to all cases where the doctrine is attracted.

(a) “Nemo debet esse judex in re-propria causa” which means that no one should be a judge in his own cause or that the tribunal must be impartial and without bias.

(b) “Audi alteram partem”, which means - “hear the other side or that “both sides in a case should be heard” (before it can be decided) or that no man should be condemned unheard.

Besides there also exists two other principles (1) Reasoned decision must be given (2) Justice should not only be done but it should seem to have been manifestly done.

Now the principles of natural justice are firmly grounded in Article 14 and 21 of the Constitution. With the introduction of the concept of substantive and procedural due process in Article 21 of the Constitution all that fairness, which is included in the principles of natural justice can be read into Article 21 when a person is deprived of his life and personal liberty. In other areas, it is Article 14 that now applies not only to discriminatory class legislation but also to arbitrary or discriminatory State action. Because violation of natural justice
results in arbitrariness, therefore, violation of natural justice is violation of Equality clause of Article 14. This all suggests that now the principles of natural justice are grounded in the Constitution.

2A. The doctrine of bias.

If persons who have a direct interest in the subject-matters of an inquiry before an inferior Court or tribunal take part in adjudicating upon it, the Court is improperly constituted and is without jurisdiction, A decision of the Court or tribunal is vitiated by the mere fact that an interested person sat at the hearing, even though such person did not take part in the discussion or did not vote, The mere presence of the interested person may vitiate the decision if he sat in such a position that gave an appearance that he was member of the tribunal. However, according to the Dictionary meaning ‘bias’ means ‘anything which tends or may be regarded as tending to cause such a person to decide a case otherwise than on evidence must be held to be biased’.

‘Bias’ may be divided into 3 groups -

(A) Pecuniary bias,

(B) Personal bias, and

(C) Bias as to subject-matter.
(i) Pecuniary bias

This doctrine means that as regards pecuniary interest 'the least pecuniary interest in the subject-matter of the litigation will disqualify any person from acting as a judge'. We may cite Dr. Bonham's case as an instance of pecuniary bias.

In this case, Dr. Bonham, a doctor of Cambridge University was fined by the College of Physicians for practising in the city of London without the licence of College. The statute under which the College acted provided that the fines should go half to the King and half to the College. The claim was disallowed by Coke, C.J. as the College had a financial interest in its own judgement and was a judge in its own cause.

Another classic example of pecuniary bias is provided by Dimes V. Grant Junction Canal.

In this case the appellant was engaged in prolonged litigations against the respondent company. Against a decree passed by the V.C. Dimes he appealed before the Lord Chancellor, who gave the decision against him. It later came to the knowledge of the appellant that Chancellor had a share in the respondent company. In appeal, their Lordships of House of Lords held that though Lord Chancellor

4. (1610) 8 CO.Rep. 113b.
5. (1852) 3 HLC 579
forgot to mention about the interest in the company by mere inadvertance, yet the interest was sufficient to invalidate the decision given by the Lord Chancellor.

In Jeejeebhoy V. Asst. Collector\(^6\), Thana, the Chief Justice reconstituted the bench when it was found that one of the members of the bench was a member of the cooperative society for which the land had been acquired.

(ii) Personal Bias:

The Second type of bias is personal one. Here a judge may be a relative, friend or business associate of a party or he may be personally hostile as a result of events occurring either before or during the course of trial.

(iii) Personal friendship Bias:

In such situation personal friendship may be regarded as a disqualification provided there is a real likelihood of bias.

In Cottle Vs. Cottle\(^7\) the Chairman of the Bench was a friend of the wife's family who had instituted matrimonial proceedings against her husband. The wife had told the husband that the Chairman would

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\(^6\) AIR 1965 SC 1096 (1965) 1 SCR 636
\(^7\) (1939) All ER 535
decide case in her favour. The Divisional Court ordered rehearing. In A.K.Kraipak V Union of India N was a candidate for selection to the Indian Forest Service and was also a member of the Selection Board. N did not sit on the Board when his own name was considered. But he was recommended by the Board and was selected by the PSC. On challenge the Supreme Court quashed the selection of N for violation of the principles of natural justice.

Personal Hostility: It may be noted that wherever there exists strong personal hostility towards a party a judge becomes disqualified from adjudicating a dispute if it gives rise to a real likelihood of bias. In a leading case, R -Vs- Handley, a magistrate was held to be disqualified from hearing a case filed against an accused, who had beated up the magistrate recently.

Yet in another case Meenglass Tea Estate -Vs- Workmen A manager himself conducted an inquiry against a workman for the allegation that he had beaten up the manager. Held that the inquiry was vitiated.

8. AIR 1970 SC 150
9. 1921 61 DLR 585
10. AIR 1963 SC 1719
(iv) Family relationship Bias:

It may also merit our attention in this context that family ties is also considered to be a factor for disqualifying judge in the matter of adjudication.

In a leading case, Ladies of the Sacred Heart of Jesus -Vs- Armstrong\textsuperscript{11} a Chairman of the Tribunal was the husband of an executive officer of a body which was a party to the proceeding. The decision was quashed on that particular reason.

(v) Professional relationship Bias:

It may also be noted that Professional Business or other vocational relationship between a judge and the parties may also be cited as a ground for disqualifying a judge and to make adjudication in the matter. In West End Service -Vs- I.T. Council\textsuperscript{12} the proprietor of a garage made an application to the council for exempting him from a by-law requiring to close his garage early. The application, however, was turned down by the council. Three councillors happened to be competitors in the business. The Council's decision was set aside as such.

\textsuperscript{11} (1961) 29 DLR 373
\textsuperscript{12} (1958) 11 DLR 364
(vi) Employer and Employee Bias:

If an adjudicator happens to be an employer or employee of one of the parties to the proceeding the possibility or likelihood of bias cannot be ruled out and the adjudicator is thereby disqualified to decide the matter.

In a leading case R-Vs- Hoseason13. The bailiff of a Magistrate filed a complaint for breach of contract against the employee of the Magistrate. The Magistrate is therefore not qualified to give punishment to his own employee.

B. Bias as to subject matter:

Another type of bias is bias as to the subject matter; such situation arises when the judge possesses a general interest of the subject matter of dispute. It may, however, be noted that a mere general interest in the general object to be pursued would not disqualify a judge from deciding the matter. There must be direct connection with litigation.

(a) PARTIALITY:

There might be cases where a Judge may be disqualified if there is direct connection between the adjudicating authority and the issue in controversy.

13. (1811)14 East 605
An example of such Partiality is established by the decision of the Supreme Court in State of U.P. V. Mohammad Nooh\textsuperscript{14}.

In this case, a departmental proceeding was conducted against A by B. As one of the witnesses against A turned hostile B left the inquiry, gave evidence against A, resumed to complete enquiry and passed dismissal order. The Supreme Court on appeal observed that the principles of natural justice were completely discarded and all rules of fair play were grievously violated by B.

(b) DEPARTMENTAL BIAS:

Departmental bias arises in a situation, where there is total non-application of mind or the adjudicator has pre-judged the issue or has taken improper attitude to uphold the policy of the department, which thereby constituted a legal bias.

A classic example of departmental bias is established by Supreme Court's decision in Gullapalli Nageshwara Rao Vs. A.P.S.R.T. Corporation\textsuperscript{15}.

In this case, the petitioners were engaged in motor transport business. The Andhra State Transport Undertaking published a scheme for nationalisation of motor transport in the State and invited objections.

\textsuperscript{14} AIR 1958 SC 86
\textsuperscript{15} AIR 1959 SC 308
The petitioners accordingly submitted objections which were heard by the Secretary and thereafter the scheme was given approval by the Chief Minister.

The Hon'ble Supreme court on challenge upheld the petitioner's plea that the official who heard the objections was 'in substance' one of the parties to the dispute and hence the rules of natural justice have been violated in a calculated manner.

(c) PRIOR UTTERANCES AND PRE-JUDGEMENT OF ISSUES :

Bias may also arise sometimes when the Minister or the official concerned pronounces before hand the general policy of the Government which is to be followed by him. In such situation, it might be argued, that if the prior policy statement is a 'final and irrevocable' decision, the same would operate as a disqualification, otherwise not. In Kondala Rao -V- A. P. Transport Corporation16 the Supreme Court rejected the argument of policy bias and observed that if the authority concerned acts judicially in approving or modifying the scheme, the approval or modification is not open to challenge. And the question of predetermination of the issue, does not arise.

16. AIR 1961 SC 82.
(d) ACTING UNDER DICTATION:

Such situation of bias may crop up if any official, judge or minister is empowered to decide any matter, it would be his duty to exercise his own judgement, and should decide it himself, independently. If the authority concerned decides the matter under dictation from a superior authority the decision is not valid, and the bias of Acting under dictation would be established.

In Mahadayal Vs. C.T.O.\textsuperscript{17} the Supreme Court quashed the decision of the Commercial Tax Department, imposing tax upon the petitioner. Because the Commercial Tax Officer himself considered that the petitioner was not liable to pay tax, and yet, he referred the matter to his superior officer and on instructions imposed tax upon the petitioner.

(e) TEST: REAL LIKELIHOOD OF BIAS:

According to de Smith a real likelihood of bias means at least substantial possibility of bias. In fact in assessing the real likelihood of bias the court will have to judge the matter as a reasonable man would judge of any matter in the conduct of his own business. In Manak Lal V Dr. Prem Chand\textsuperscript{18}, a petition was submitted by A against B, an advocate for an alleged act of misconduct. A committee was

\textsuperscript{17} AIR 1958 SC 667
\textsuperscript{18} AIR 1957 SC 425.
appointed for enquiry into the allegations made against B. It was also shown that the Chairman had earlier represented A in a case. According to the decision of the Supreme Court, the enquiry conducted in this case was vitiated. Even if it were assumed that the Chairman had no personal contact with his client and did not remember that he had appeared on his behalf at any time in the past, yet the fear of likelihood of bias existed in the matter.

C. AUDI ALTERAM PARTEM OR THE RULE OF PAIR HEARING:

This is the second long arm of natural justice which protects a person from arbitrary administrative actions whenever his right to person or property is jeopardised. The significance of this expression is that a person must be given an opportunity to defend himself and this principle is a sine qua non of every civilized society. The expression AUDI ALTERAM PARTEM also signifies that he who shall decide anything without the other side having been heard although he may have said what is right will not have done what is right.

It reminds us of Lord Hewart's observation in a leading case R.V. Sussex Justices, ex parte Mccarthy\(^ \text{19} \), KB, regarding the principles of natural justice (AUDI alteram partem rule) that it is not merely of

\(^{19}\) (1924)/KB 256
some importance, but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seem to be done. Perhaps this rule of natural justice was even Invoked by God when He meted out punishment to Adam and Eve for disrespecting His command. This particular aspect of Notice & hearing can not be waived by citing administrative difficulties and no justification will exist for depriving a person of the opportunity of being heard (Bhagvant Sing V. Commissioner of Police\textsuperscript{20})

In India, it may be maintained that administrative agencies are not strictly bound by the technical rules of procedure of the ordinary law court and particularly for this reason the need arises for following the minimum procedure of fair hearing.

It is agreed on all hands that principles of natural justice will apply to all proceedings where a civil right of persons is adversely affected.

But a question arises as to what is the meaning and import of the expressions civil consequence, we may mention in this context the observation of the Supreme Court given in (Mohinder Singh Gill V. Chief Election Commissioner AIR 1978 SC)\textsuperscript{21}. Bypassing vernal boobytraps, civil consequences undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material

\textsuperscript{20} AIR 1985 SC. 256

\textsuperscript{21} AIR 1978 SC 851
deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.

Hence a conclusion may arise that unless a person has an opportunity of being heard no order involving adverse civil consequence can be handed down against him, before passing such order.

We may mention in this context that before the Supreme Court decision in S.L.Kapoor V. Jagmohan the position of natural justice was that the principles of natural justice shall apply only where an administrative action has caused some prejudice to the person meaning thereby that he must have suffered some Civil consequence. As such the aggrieved person had to adduce something extra for proving prejudice or civil consequence.

But the Supreme Court's decision in Jagmohan case fortified the position that a separate showing of prejudice caused is not necessary because non-compliance of the rules of natural justice constitutes a prejudice in itself, and the corollary ensues that rules of natural justice need not be complied with in as much as the facts are admitted or are indisputable in nature.

22. AIR 1981 SC 136
(a) Incidents of audi alteram partem rule: (i) Notice (ii) Hearing

Notice is the starting point of any hearing. It is an accepted principle that notice must be given to the party or parties before the proceedings start. The requirements of notice mean that the party whose civil rights are affected must have reasonable notice of the case he has to meet. Any proceedings taken without notice would be against the principles of natural justice. (Prem Bus Service vs. R.T.A.)\(^2\)\(^3\)

Notice must be regarded as the principal elements of the right of fair hearing. According to the decision of the Supreme Court in Chanrandas V. Assistant Collector of Customs the grounds mentioned in the Notice on the basis of which action is proposed to be taken must not be unclear, nonspecific and unambiguous. If the grounds cited in the Notice are vague, unspecific, uncertain and ambiguous, it would not amount to a proper notice and therefore constitute a transgression of the right of fair hearing.

It is not enough that the notice in a case should be given, but it should be adequate too.

It may be noted in this context that in order to justify the adequacy of notice it should be analysed to ascertain whether notice gives sufficient data and material so that the person concerned can build up effective defence.

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23. AIR 1961 Sc 344
24. AIR 1968 Cal. 28
Therefore to prevent the violation of the rules of natural justice it is important that the contents of notice, persons who are entitled to notice and the time of giving notice are properly done. In Joseph Vilangandan V. Executive Engineer (P.W.D.) the Supreme Court considered the question of adequacy of notice and set aside the order of the P.W.D. by which the Appellant was debarred from all future contracts to be made with the P.W.D. because of the fact that the notice given to the appellant did not constitute an adequate notice.

It may however be argued that the principles of natural justice would not be violated if notice is not given to the all the members of society proposing amalgamation of the society (Daman Singh V. State of Punjab). But Notice would be necessary in a case when a delarship agreement is required to be modified (Sub-divisional Controller V. A. Ratan-AIR,1985, Calcutta). Besides, Notice will also be necessary when a telephone line is sought to be disconnected (union of India V. Narayanbhai, AIR 1985 Gujrat).

Yet in another landmark decision Keshav Mills Co. Ltd. V. Union of India. The Apex Court did not set aside the Govt. order which intended taking over the mills for a period of 5 years merely on the

25. AIR 1978 S.C. 930
26. AIR 1985, S.C. 973
26A. AIR 1985, guj 31
27. AIR 1973, S.C. 389
basis of the technical ground that the Govt. did not issue notice to the appellant prior to the action taken in as much as a full-scale hearing had already been given earlier and there was nothing more which the appellant wanted to know.

In State of Bombay V. Atma Ram, AIR 1951 SC, the apex court decision made it clear that in the case of detention of a detenu the ground of detention must be furnished to the detenu and if the grounds are vague the order of detention ought to be cancelled or to be set aside.

In Abdul Latif V. commissioner, the Court made it clear that in an administrative action if the notice does not specify the action proposed to be taken, the concerned notice would be considered as a vague one.

Similarly the Notice must not be vague or ambiguous in actions of the Administrative authority which proposes acquirement of property or cancellation of licence.

Under Indian Law the requirement of hearing is an essential aspect of administrative and quasi-judicial proceedings (Express Newspaper Pvt. Ltd. v. Union of India).

27A. AIR 1951, SC 157
28. AIR 1978, All 44
29. AIR 1958 SC 578
Any Administrative order passed by the authority without reasonable opportunity of being heard is illegal and must be set aside.

In Mahadayal Prem Chandra Vs. C.T.O.\textsuperscript{30} When the Sales Tax Officer depended entirely on the advice of his senior and assessed the appellant without showing him the senior's opinion and giving him an opportunity to state his point of view against the same. The Supreme court quashed the assessment proceeding.

In another important case in Duli Chandra Kheria V. Collector of Customs\textsuperscript{31} where betelnuts seized from the petitioner were confiscated by the custom authorities and the order was based on the reports of the experts, non-disclosure of the contents of the report was held to vitiate the confiscation proceedings. In Bishnu Ram Burah V. Prag Saika and others\textsuperscript{32} the question arose regarding the grant of liquor Licence by the Board of Revenue to the petitioner. The report of Deputy Commissioner was claimed to be confidential in nature. The applicant did not ask for the copy of the report, hence the question of its disclosure did not arise. The court held the even if such a demand would have been made refusal to furnish copy would not amount to denial of natural justice. Grant of licence is not a matter of right but merely in the nature of privilege. In Union of India vs. J.P.

\textsuperscript{30} AIR 1958 SC 667
\textsuperscript{31} AIR 1965 Cal. 156
\textsuperscript{32} A.I.R. 1984 S.C. 898
Mitter\textsuperscript{33}, the question arose regarding disputed age of a High Court Judge. The President did not grant the opportunity of oral hearing even on request by the aggrieved person. But the person aggrieved has been given an opportunity to submit his case in writing. And the Supreme Court refused to quash the order of the President of India because there was no violation of the principles of natural justice.

It might be mentioned here that the nature of the law is almost same in England in this respect but in practice oral hearing is the rule.

But in so far as the Court practice in the United Stated of America is concerned, the right to oral hearing is a guaranteed right in as much as the Administrative procedure Act, 1946 allows it.

(b) Privilege to submit case and evidence:

In so far as the Right to present case and evidence is concerned we may advert to the Supreme Court decision in N.M.T. Co-Op. Society V. State of Rajasthan\textsuperscript{34}. In this case an enquiry was held under the Motor Vehicles Act for nationalisation of road transport. The witnesses whose names were filed by the Objectors did not appear even in response to the summons issued by the administrative

\textsuperscript{33} \textit{AIR} 1971 S.C. 1093

\textsuperscript{34} \textit{AIR} 1963 SC 1098
authority. The authority refused to issue any coercive process. The Supreme Court refused to quash the order of nationalization holding that the authority is not bound to use its coercive process when the statements of the material witnesses were already on the file.

Yet in another landmark case A.K.Roy V. Union of India. The decision of the Supreme Court indicated that if a person under detention is inclined to examine any witnesses their presence at the appointed time and no obligation can be imposed on the advisory board to summon them. The Board can also put limitation upon the timing within which the detenu must complete his evidence.

Another important aspect of the Audi Alterain Partem Rule is the right to rebut adverse evidence. And it means that the person concerned has been communicated about the evidence against him. In the leading case Dhakeswari Cotton Mills Ltd. vs. C.I.T. the apex court set aside the decision of the tax tribunal where the informations supplied by the department against the assessee was not communicated to him. Of course, this must not signify the necessity of supplying of all adverse materials in original in all the cases.

In City Corner vs. P.A. to Collector and Addl. Magistrate the Supreme Court observed that the natural justice requirements would

35. AIR 1982 SC 710
36. AIR 1955 SC 65
37. AIR 1976, SC 143
be complied with if the summary of the contents of the adverse material is supplied to the person concerned, provided it is not misleading.

The opportunity to rebut evidence necessarily involves the consideration of two factors: cross-examination and legal representation.

(c) Right to Cross-examine

It may be remembered in this context that Cross Examination is the most potent means to extract and establish the truth.

That the right to cross-examination as an ingredient of fair hearing was given much importance by the Supreme Court in different cases.

In State of J and K Vs. Bakshi Gulam Mohammed\(^38\), an enquiry was conducted against Bakshi Gulam Mohammed, former Chief Minister of Jammu and Kashmir State, under J & K Commission of Inquiry Act, 1962. Bakshi Gulam Mohammed requested the cross-examination of the witnesses who had filed affidavits against him. But the request was rejected. The Commission's decision was challenged before the Supreme Court and one of the grounds of challenge was that the denial of the opportunity to cross-examine witnesses violated the rule

\(^38\). *AIR 1967 SC 122*
of the fair hearing. The apex court however, disallowed the challenge on the grounds that the evidence of the witnesses was in the form of affidavits and the copies had been made available to the party.

In State of Kerala Vs. Shaduli Grocery Dealer\(^3\)\(^9\) the Supreme Court observed that the denial of dealer's request by the Sales Tax authorities to cross-examine the third party before making best judgement assessment, is a denial of fair hearing.

Another important decision on the subject was given by the Supreme court in Town Area Committee V. Jagadish Prasad\(^4\)\(^0\). In this case, the Department submitted the Charge-sheet and obtained explanation and afterwards passed the dismissal order. The apex court set aside the order on the ground that the rule of fair hearing comprises an opportunity to cross-examine the witnesses and to lead evidence.

In the United States of America the right to cross-examination is incorporated in the due process clause and also in the Administrative Procedure Act, 1946.

In so far as the practice in English Courts is concerned, the law is almost the same as in India and the British Courts are inclined to

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\(^3\)\(^9\) A.I.R. 1977 S.C. 1627

\(^4\)\(^0\) A.I.R. 1978 S.C. 1407
give utmost importance to the right to cross-examination (R Vs. Gaming Board ex parte Benaim)\textsuperscript{41}.

(d) Legal Representation

This aspect of the principles of natural justice has not been considered as an inseparable part of the rule of fair hearing by the Supreme Court\textsuperscript{42}.

It may be remembered in this context that denial of legal representation would be substantiated on the ground that lawyers have a tendency to complicate matters, to prolong the proceedings and destroy the essential informality of the proceedings, particularly in administrative matters.

The courts in India have, however, observed that in situation where the person is illiterate (James Bushi V. Collector of Ganjam)\textsuperscript{43} or the matter is complicated and technical (Natya Ranjan V. State)\textsuperscript{44} or a question of law is involved\textsuperscript{45} (Krishna Chandra v. Union of India)\textsuperscript{46} or the person is facing a trained prosecutor (C.L.Subramaniam V. Collector of Customs)\textsuperscript{47} professional aid in some form should be given

\begin{itemize}
\item \textsuperscript{41} R. V. Gaming Board ex Parte Benaim, 1970 2Q.B. 417
\item \textsuperscript{42} N. Kalindi V. Tata Locomotive and Engg Co. AIR 1960 S.C. 914
\item \textsuperscript{43} A.I.R. 1959 Cri. 152
\item \textsuperscript{44} A.I.R. 1962 Orissa 78
\item \textsuperscript{45} J. J. Mody Vs. State of Bombay A.I.R. 1962 guj. 197 and Krishna Chandra Vs. Union of India
\item \textsuperscript{46} (1974) 4 SCC 374
\item \textsuperscript{47} A.I.R. 1972 SC. 2178
\end{itemize}
to the party to render his right to defend himself a substantial one.

It should be remembered that the ruling of the Supreme Court
given in Khatri V. State of Bihar\(^48\), insisted upon providing legal aid to
the poor or indigent accused not only at the stage of trial but at the
time of remand also. In another important case Nandini Satpathy V.
P.L.Dani\(^49\), the apex court observation insisted that the accused must
be allowed legal assistance in custodial interrogation and the police
must wait till the lawyer arrives. It may however be borne in mind that
in the area of criminal justice, the Cr.P.C. now provides for legal aid
to the accused.

Legal Services Authorities Act, 1987 has already been passed by
the Parliament which insists on the free legal aid to a deserving
accused person particularly on the ground of insufficient means to
engage a lawyer.

In the United States of America the Due process clause of the
Constitution and the administrative procedure Act, 1946 upholds a
person's right to legal representation, to strengthen his defence.

But in England the right to be represented by a lawyer is not
ordinarily considered as an essential aspect of fair hearing In R. Vs.

\(^{48}\) AIR 1981 SC 928

\(^{49}\) AIR 1978, SC 1025
St. Mary Assessment Committee\textsuperscript{50} Pett V. Grey-hound Racing Assn\textsuperscript{51} it was observed that where there is a right to appear in person or a technical matter of law and fact is involved, the denial of legal representation is considered as an antithesis of fair hearing.

\textbf{(e) NO EVIDENCE SHOULD BE TAKEN AT THE BACK OF OTHER PARTY.}

In England it was observed by the Court in Errington V Minister of Health\textsuperscript{52} that evidence taken ex parte in the absence of the other party is a violation of the principle of fair hearing.

The decision should not be taken in the sense that the administrative agencies cannot obtain information in the manner they consider best. But the significance of Errington's case is that whatever information is obtained by the Administrative authority must be disclosed to the other party, so that he may have the scope and occasions to rebut it, should be arranged.

In Hira Nath Mishra V. Principal, Rajendra Medical College\textsuperscript{53} the appellants-male students entered quite naked into the compound of the girls' hostel late at night. Thirty-six girl students filed a complaint

\textsuperscript{50} (1891) Q.B. 378
\textsuperscript{51} (1968) 2 WLR 1471
\textsuperscript{52} (1935) 1 RB 249
\textsuperscript{53} AIR, 1973, S.C. 1260
with the Principal of the college, and an enquiry committee was set up. The Committee recorded the statements the girls students but not in the presence of appellants. The appellants’ photographs were mixed up with 20 photographs of other students and the girls by and large identified the appellants. The enquiry committee thereafter called upon the appellants and the charges were explained to them. The appellants however denied the charges and all allegations. But the Enquiry committee gave its decision that the appellants were guilty and expulsion order were passed against them. The order of expulsion was challenged before the Supreme Court particularly on the grounds amongst others that committee recorded the evidence of the girls students not in the presence of the appellants but the Supreme Court rejected this contention and observed that whatever evidence was collected at the back of the appellants was brought to their notice and they were provided an opportunity to rebut the evidence.

(f) REPORT OF THE ENQUIRY COMMITTEE TO BE SHOWN TO THE OTHER PARTY:

In the arena of administrative proceedings there is no hard and fast rule that everything must be done by the same officer alone. There would be no violation of the rule of natural justice, if he takes the assistance of the subordinates.
Now-a-days particularly in disciplinary matters it happens that the inquiry is given to some one else and on the report of the inquiry, the action is taken by the competent authority. The question automatically arises in such situation whether the copy of the report of the inquiry officer should be given to the charged employee prior to taking ultimate decision by the competent authority.

In Union of India V. E. Bashya, it was observed by the Supreme Court that the failure to supply the inquiry report to the delinquent before the disciplinary authority takes a final decision would constitute a violation of Articles 311(2) of the Constitution and also the violation of the principles of natural justice.

(g) REASONED DECISIONS OR SPEAKING ORDERS:

It may be observed in this context that in India administrative agencies are not strictly bound to give reasons for their decision in the absence of any particular statutory requirement. But it will be mandatory for the administrative authorities to give reasons for their decisions, if it is so ordained by the concerned statute. Because the administrative agencies should not merely provide rubber stamp reasons, but a brief, clear statement providing the nexus between the

54. (1988) 2 SCC 196
materials on which certain conclusions are based and the actual conclusion.55.

In England the matter of giving reasons by the administrative authorities in support of their decisions was considered by Franks Committee. And the observation made by the Committee may deserve our attention.

"Almost all witnesses have advocated the giving of reasoned decisions. We are convinced that if tribunal proceedings are to be fair to the citizens, reasons should be given to the fullest particular extent. A decision is apt to be bad if the reasons for it have to be not out in writing because the reasons for it are then more likely to have been not properly thought out. It is true that in simple type of cases, particularly when the decision turns on the expert judgement of the tribunal itself rather than on the application of stated law to proved fact, it may only be possible to give a brief statement of reasons.....

It may be mentioned in this context that the Tribunals and Inquiries Act, 1958, provides in section 12 for giving of reasons by those bodies if so requested by parties unless grounds of national security require to the contrary.

In the United States of America the administrative procedure Act requires in Section 8(6) that the administrative decisions should be accompanied by findings and conclusions, as well as the reasons or basis therefor.

In India the Supreme Court considered this aspect of natural justice and handed down decisions in many a cases.

In Bhagat Raja V. Union of India,\textsuperscript{56} The Supreme Court observed that in certain areas the court would invalidate an order of such tribunal even where the statute has not required it to give reasons for its decisions.

We may however discuss the different situations in which the giving of reasons becomes an important aspect of decision given by the decision making authorities and tribunals.

(1) Reasons must be given where the decision of the Tribunal is subject to judicial review of the superior Courts under Arts. 136, 226 or 227, of the Constitution, because, in the absence of reasons, the constitutional power of supervision of these superior Courts would be rendered nugatory\textsuperscript{57}.

(2) Almost the same reasoning, has been given by the Supreme

\begin{flushright}
\textsuperscript{56} AIR 1967 S.C. 606 \\
\textsuperscript{57} Bhagat Raja V. Union of India AIR 1971 S.C. 862 \\
Travancore Rayons V. Union of India AIR 1971 S.C. 862
\end{flushright}
Court when the subject matter of the Tribunal was confidential provided the Tribunal was exercising quasi-judicial power.58

(3) The same view has been taken in the case of administrative orders which may be labelled as quasi-judicial as distinguished from order, required by the statute to be exercised on the ‘Personal satisfaction’ of the authority concerned.59

(4) In a matter relating to Art. 311 (2) of the Constitution, it may be mentioned that where the Government of other punishing authority inflicts punishments on the delinquent employee, differing from the findings arrived at by the inquiring authority, it must give reasons. We may mention yet another important case on the point60 (Narayandas V. State of M.P.AIR 1972 S.C.) The Criminal Law Amendment Act, 1961, empowers the State Government to forfeit any newspaper or book which seemingly questions the territorial integrity of India in such a manner as to be prejudicial to the interests of the safety or security of India. A book of the petitioner was forfeited by an order of the Government without giving any reasons in support of its order. The High Court found that in passing the order the said provision was repeated and it was sufficient compliance with the statutory provision. The Supreme Court revised the order of the High Court and

59. Zora Singh V. Tandon, AIR 1971 S.C. 1537
60. Narayandas V.State of M.P. AIR 1972 S.C 2086
held that it was essential to give reasons in support of the order. In Union of India Vs. M.L. Capoor,\textsuperscript{61} The Supreme Court also emphasised on the giving of fuller reasons, by the Administrative authorities.

The apex court observed also in Mahabir Prasad V. State of U.P.\textsuperscript{62} that if a quasi-judicial order is subject to appeal the law necessarily implies the requirement of reasons otherwise the right to appeal shall become an empty formality.

In Maneka Gandhi V. Union of India\textsuperscript{63} the Supreme Court castigated the conduct of the Government for withholding the passport of the petitioner without assigning any reasons whatsoever, the apex court also observed a law which allows any administrative authority to take a decision affecting the rights of the people without assigning any reason cannot be accepted as laying down a procedure which is fair, just and reasonable and hence would be violative of Articles 14 and 21. Yet in Sunil Batra V. Delhi Administration\textsuperscript{64} the apex court ruled that the under the prisons Act, 1894 there is an implied duty on the jail superintendent to give reasons, for putting fetters on a prisoner.

In Siemens Engg. and Mfg. Co. V. Union of India\textsuperscript{65} the Supreme Court observed that administrative authorities and tribunals should

\textsuperscript{61} AIR 1974 S.C 87
\textsuperscript{62} AIR 1970 S.C 1302
\textsuperscript{63} A.I.R. 1978 SC 597
\textsuperscript{64} A.I.R. 1978 SC 1675
\textsuperscript{65} A.I.R. 1976 SC 1785
accord fair and proper hearing to the persons sought to be affected by their order and give sufficiently clear and explicit reasons in support of the orders made by them.

The Supreme Court further observed in Mahabir Jute Mills Ltd. Gorakhpur V. Shibhanlal Saxena that the Administrative order should contain reasons when they decide matters affecting the right of parties.

In another landmark decision Harbhajan Singh V. Union of India. The Court pronounced that giving of reasons is a must in passing an administrative order by the authorities. In this case an Indian Citizen sought permission to sue a foreign embassy for recovery of the amount due from it. The sanction was refused by the Central Govt. on political grounds. On challenge the Supreme Court held that the power given to the Central Government must be exercised in accordance with the principles of natural justice and in consonance with the principle that reasons must appear from the order. And the order refusing sanction was set aside.

66. A.I.R. 1976 SC 2075
67. AIR 1987 SC 9
(h) POST-DECISIONAL HEARING

The concept of post-decisional hearing originated in order to maintain a balance between administrative efficiency on the one hand and fairness to the individual, on the other. It may be mentioned in this context that the apex court considered this aspect of Natural justice as a harmonizing tool in the landmark case Maneka Gandhi V. Union of India\(^6\)\).

It is needless to maintain that in this case the passport of a journalist Maneka Gandhi was impounded by the competent authority without giving an opportunity of hearing to the petitioner. On Challenge before the Supreme Court the Government expressed the view that rule of hearing should be excluded in the matter concerned in as much as such action would have frustrated the very purpose of impounding the passport. The apex court turned down this contention of the Government and held that though it is an administrative action on the part of the government yet the principle of fair hearing is attracted by way of necessary implication and the application of the rule (fair hearing) could not be ruled out. On the intervention of this Supreme Court the passport was returned to the petitioner because of the special socio-political factors attending the

\(^6\) AIR 1978 SC 597
case. One thing became clear from the decision of the apex court in this case that the concept of post-decisional hearing in situation where pre-decisional hearing is required either expressly or by necessary implication, would become necessary. Because a person would not expect that a post-decisional hearing would be anything more than a mere empty formalistic ritual.

In another important case Swadeshi Cotton Mills V. Union of India the Supreme Court was inclined to uphold the order of the government, passed in this matter for taking over the management of the company in violation of the rule of Audi Alteram Partem. The Government has already agreed to give post-decisional hearing to the petitioner.

The Hon'ble Supreme court also considered this aspect of post-decisional hearing in Tea Trading Corporation -Vs- Pashok Tea Co. The apex court emphasised the importance of post-decisional hearing in this matter which has now become an established canon of the rule of Audi Alteram Partem.

We may also refer in this context the observation of Professor de Smith which was expressed in the following words.

69. AIR 1981 SC 818
70. (1981) 4 SCC 113
"Can the absence of a hearing before a decision is made be adequately compensated for by a hearing ex post facto. A prior hearing may be better than a subsequent hearing but a subsequent hearing is better than no hearing at all;

... In K.I. Shephard V. Union of India71 the apex court also again considered this aspect of post-decisional hearing, in this matter under the provisions of the banking regulations act 1949, three erstwhile banks had been amalgamated. Certain employees of the amalgamated banks were excluded from employment and their services were not taken over. Some of the excluded employees filed petitions before the Supreme Court. The apex court pointed out that post-decisional hearing will not do justice in this case, specially where normal rule of fair hearing should have applied. And the apex court further held that even in cases of emergent situations pre-decisional hearing is necessary which may not be an elaborate one especially in cases where action has grave consequences such as loss of livelihood72.

71. (1987) 4 SCC 431
(i) EXCEPTIONS TO THE RULE AGAINST BIAS :

It may be noted in this context that there are certain exceptional cases where a person is allowed to decide a case even though, but for the exceptional circumstances he would have been disqualified.

(1) Exceptions allowed by Statutory authority;
(2) Exception allowed by Statutory modification;
(3) Exceptions allowed by or under official or departmental bias thereby sanctioning immunity from disqualification.
(4) Exceptions allowed because of the inherent power of a Court to punish for its own contempt.
(5) Exceptions allowed from the doctrine of waiver
(6) Exceptions allowed from the requirement of purely administrative duty,
(7) Exception allowed on the Doctrine of necessity.

(j) EXCEPTIONS TO THE RULE OF NATURAL JUSTICE :

We may now advert to the situation or circumstances in which the concept of exception to the rule of natural justice may be considered. Though natural justice ordinarily postulates a right to be heard, such right may be excluded by exceptional circumstances by statute.

(a) Where immediate action is necessary under an emergency, in
the interests of public safety or defence of the realm, The leading
case in this respect is Sadhu Singh V. Delhi Administration73

(b) Where speedy action is necessary, in order to save the life,
property, health or morals of the public. Such situation may arise in
the following circumstances:

1. to destroy a dangerous building,
2. to wind up a banking company in order to save depositors,
3. to prohibit a procession or meeting for the preservation of an
imminent breach of peace of the community, The landmark decisions
of the Supreme Court are provided by the following cases in this
context:

1) Joseph V. Reserve Bank74
2) Babulal V. State of Maharashtra75
3) Cooverjee V. Excise Commissioner76

If we look to England it is found that the legal practice in British
Court insists that in the absence of a provision in the statute or
statutory rules, an administrative authority is not bound to hear a
party orally or to allow him to appear in person and that the
requirement of natural justice is satisfied if he is given the opportunity

73. AIR 1966 SC 91
74. AIR 1962 SC 1371
75. AIR 1961 S.C. 884
76. 1954 SCR 873
of stating his case in writing. But at the same time, it is also worth noting in this regard that the British Courts have also established that the contents of the quasi-judicial obligation vary according to circumstances, and the nature of the question decided and that in the case of some quasi-judicial authorities the function is 'almost entirely' judicial 77.

Looking back to India the position may be highlighted from the following standpoint.

A right to make oral argumentation or representation is conferred by certain statutory provisions, for e.g.

(1) The Public Servants (Inquiries) Act, 1850 (2) Rule 55 of the Civil Services (Classification, Control & Appeal) Rules.

Further, it may also be maintained in this context that in the absence of such statutory requirements, the general rule laid down by our Supreme Court is that natural justice does not necessarily involve a right to oral hearing 78.

The Hon'ble Justice Krishna Iyer observed in Board of Mining Examination V. Ramjee 79 regarding the application of the rules of natural justice in a given case that-

77. Vine v. National Dock labour Board, 1956 3 AG ER 939 (945) HL
78. M. P. Industries Vs. Union of India AIR 1966 SC 671
79. A.I.R. 1977 S.C 967
"Natural justice is no unruly horse, no lurking landmine, nor a judicial cure at all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating."

But it should also merit our attention at the same time that it has been acknowledged that in particular circumstances, where evidence is taken, a personal hearing to explain that evidence or to persuade the authority by reasoned argument may be necessary to ensure fairplay. Nageswara V. APSRTC\textsuperscript{80}, and this thought process also applies in cases where complex and technical questions are raised\textsuperscript{81}.

Apart from what has been stated above it may also be highlighted in this regard that both in England and in India the initial application of the doctrine of natural justice was confined only to those administrative authorities upon which a quasi-judicial duty was imposed by statute. But in recent cases, the principle has been extended to all administrative authorities whose decisions affect the

\textsuperscript{80} A.I.R. 1959 S.C. 308
\textsuperscript{81} Travancore Rayons V. Union of India, AIR 1971 S.C. 862
rights of individuals, whether any quasi-judicial obligation to hear such parties is imposed by the relevant statute or not, e.g. where the order of the administrative authority-

(1) deprives a person of his property e.g. an order for eviction of a tenant,

(2) deprives a person of his profession or calling even though the other part is the government;

(3) cancels a licence relating to a business or profession, which is not inherently dangerous;

(4) affects a man's reputation.

If we take into count the functional test which is referred to above, many functions, which were previously considered administrative, would be treated as quasi-judicial by inference or implication, even though there was no express provisions in the statute. This particular thought process was exhibited by the Hon'ble Supreme Court in a leading case A. K. Kraipak V. Union of India\textsuperscript{82}.

The apex court declared in that particular case i.e. Kraipak V. Union of India\textsuperscript{83}.

“"The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For

\textsuperscript{82} AIR 1970 SC 150
\textsuperscript{83} AIR 1970 SC 150
determining whether a power is a quasi-judicial power one has to look to the nature of the power concerned, the person or persons on whom it is conferred... the consequences ensuing from the exercise of the power...."

The corollary therefore emerges that the only condition for invoking the doctrine of natural justice even to a purely administrative function is that it affects the rights of parties or involves civil consequences84.

We may now pin point the circumstances, in which exclusion of the principles of natural justice may be permitted.

a) Exclusion in emergency
b) Exclusion in cases of dire public interest,
c) Exclusion in cases of confidentiality,
d) Exclusion in case of academic adjudication
e) Exclusion based on impracticability
f) Exclusion in cases of interim preventive action
g) Exclusion in cases of legislative action
h) Where no right of the person is infringed.

3. EFFECT OF BREACH OF THE RULES OF NATURAL JUSTICE

Action Void or Voidable

We may now advert to the situation where the non observance or non compliance of the rules of natural justice will render an action void or voidable.

The British Court's decision in this regard may merit our attention. In Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon\(^85\), the court insisted that the aggrieved party may waive his right to avoid a decision, given in violation of rule against bias, as where timely objection is not made even though there is full knowledge of the bias and the right to object to it.

According to professor, H.W.R. Wade the breaches of the rules of natural justice must have the effect of producing void decisions. In Ridge v. Baldwin\(^86\) the house of Lords was divided in its opinion. Lord Reid and Lord Hodson considered the decision of the Watch Committee which terminated the services of the constable as void because the rule of fair hearing had been violated. But Lord Evershed and Lord Devlin considered it merely voidable.

It is also worth noting the decision of the Privy Council in Durayappah v. Fernando\(^87\) where the court was of the view that the

\(^{85}\) (1968) 3 All ER 304
\(^{86}\) 1964 A.C. 40
\(^{87}\) 1967 AC 337
denial of the natural justice makes decision voidable and not void.

Looking back to India, we may consider the decisions of the Supreme Court given in different cases in this regard.

In Nawabkhan V. State of Gujarat\(^88\) the apex court held that an externment order passed in violation of the rules of natural justice is of no effect and its violation is no offence because such a determination is a juridictional error going to the very roots of a determination. And the supreme court held that a violation of a fundamental freedom passed in non compliance of Audi Alteram Partem Rule is a nullity.

But in Maneka Gandhi V. Union of India\(^89\) the Supreme Court observed that the effect of impoundment of the passport of the petitioner without a hearing is not void or non est because the government has assured that the appellant would be provided with a post decisional hearing. But in Swadeshi Cotton Mills V. Union of India\(^90\) where a government order was passed under the provisions of an Act without compliance of the rules of natural justice is null and void. But Supreme Court refrained from taking any action in as much as the Solicitor-General gave an assurance that a post-decisional hearing would be given.

\(^{88}\) AIR 1974 SC 147
\(^{89}\) AIR 1978 SC 597
\(^{90}\) AIR 1981 SC 818
Yet in another decision Tea Trading Corporation V. Pashak Tea Co.\footnote{(1981) 4 SCC. 113} the Supreme Court was again required to give a decision on the effect of breach of the principles of natural justice. In this matter the Government of India, passed orders under the provisions of the Tea Act. 1953. In pursuance of the orders passed by the Central Government. The Trading Corporation of India, took over the management of the two estates under the ownership of Pashok Tea Company. It is interesting to note in this regard that the orders in the instant case had been given without giving any hearing. The Tea Trading Corporation contended before the Supreme Court that even if it be held that the orders under challenge could be given only after the company had been given a fair opportunity to be heard the attributes of a nullity attaching to the two orders renders them only voidable and not non est and that their “voidability” would also evaporate if the advantage of hearing is given ex post facto.

This argument of the company were challenged on the premises that if a pre-decisional hearing is required to be given either expressly or by necessary implication as part of the rules of natural justice, failure to comply it would render the order non est or stillborn, which cannot be revived by any post-decisional hearing. It is only where pre-decisional hearing cannot be read into the statute in as much as the necessity of an emergent action, that the post-decisional hearing ought to be given.
And therefore the apex court maintained that this important question of law should be properly determined by a larger bench.

Once again Supreme Court was required to consider this aspect of law in another important case\textsuperscript{92}.

After long deliberation the apex court gave a decision in the instant case to the effect that an action in violation of natural justice (non compliance of the opportunity of fair hearing) is a nullity.

It may however be noted in this context that if it is held that contravention of natural justice renders a decision a nullity, irrespective of any prejudice, the following consideration become immaterial -

i) That the facts are admitted\textsuperscript{93}

ii) That it would have made no difference in the decision had natural justice been observed\textsuperscript{94}

iii) That the person aggrieved, though present at the time of the decision, not objected at that time or at any later stage\textsuperscript{95}.

iv) The status of the Court which violated natural justice, including the Supreme Court, would make no difference.

It should also be remembered that the denial of natural justice by the trial Court will not be cured by the observation of the appeal court.\textsuperscript{96}

\textsuperscript{92} A.R.Antulay V.R. S.Nayak, (1988)2 SCC, 602
\textsuperscript{93} Union Carbide V. Union of India (1991) 4 SCC, 584
\textsuperscript{94} Union Carbide V. Union of India (1991) 4 SCC 584
\textsuperscript{95} Antulay V Nayak (1988) 2 SCC 602
\textsuperscript{96} (Olga V. B.M.C.) AIR 986 SC. 180