PREFACE

Justice is provided by the State because State is the protector of the public within its territory. In this regard Barker rightly said that, “Human consciousness postulates liberty; liberty involves rights and rights and rights demand State”. In modern democracy State as a protector of the public’s rights and liberties provides justice through its third pillar i.e. judiciary. Therefore, judiciary is the main source of judicial process and it is the life blood of justice. Natural justice has since long been a part of legal studies and has guided the Courts to interpret laws keeping in mind the “natural sense of what is right and wrong”\(^1\). It is not a Fundamental Right in our country where the founding fathers of the Constitution deliberately eschewed the expression ‘due process’ found in the American Constitution. Nevertheless, its non-observance……may result in the contravention of Fundamental rights”\(^2\). Historically, natural justice has been used in a way that implies “the existence of moral principles of self-evident and unarguable truth……being means to an end and not an end in itself”. Until the landmark judgment of Ridge v. Baldwin\(^3\) it was a firm belief that the principles of natural justice were applicable only to judicial and quasi-judicial proceedings. However, ever since the judgment, the ambit of natural justice “like modern physics” has “expanded rapidly and become even metaphysical as an inevitable sequel to the insistence of civilized man or civilized processes for affecting a citizen’s civil rights i.e., on just means to reach just ends”. Being a ‘quintessence’ of the process of justice, inspired and guided by ‘fair play in action’, it is “now a brooding omnipresence, although varying in its play……its essence is good conscience in a given situation nothing more but nothing less”.

Principle of Natural justice will apply in cases where there is likely to be affected by an act of administration. Good administration, however, demands observance of doctrine of reasonableness in other situations also where the citizens may legitimately expect to be treated fairly. Originally, as well known, the concept

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\(^2\) Krishna, Iyer, J., P.M. Kurien v. P.S. Raghwan, AIR 1970 Ker 152

\(^3\) (1963) 2 All Er 66 (HL)
of natural justice stood for the two rules of audi alteram partem and nemo debet esse judex in propria sua causa. However, as was said by Hegde, J., “in the course of years many more subsidiary rules came to be added to the rules of natural justice”⁴. 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 shades and colors, many forms and shades….”

Historically, the principles on which the Court acted were expressed in terms of natural justice? Is it to be distinguished from some other kind of justice? It has been suggested that the distinction is rather between a basic part of justice which may be called justice ‘natural’, and its super-structure (though it may be that justice itself is ‘far from being a ‘natural’ concept’. Or it is ‘justice that is simple or elementary as distinct from justice that is complex, sophisticated and technical’. Or we may say that it represents the basic irreducible procedural standard with which administrators are required to comply.

If administrators were required to comply with justice that is ‘complex, sophisticated and technical’ what would be required of them? We may identify as features of the full judicial process: notice of the specific issue to be tried; of the place and time of the hearing which will be in public; legal representation; the submission of evidence by each party, including the calling of witnesses subject to cross-examination, and the making of the decision on the basis only of the evidence produced, its announcement and the reasons therefore and a right of appeal. By way of contrast, at the opposite end of a spectrum, we may think of the administrative process thus: the authority is of opinion that certain action is necessary; it gathers information and opinions from whatever source it pleases, gives such weight to such part of it as seems it to be relevant arrives at a decision in private, announces it when and to whom it thinks fit without disclosing the evidence on which it is based or the reasons for the decision.

The basic ‘content’ of the judicial model is expressed in terms of rules of natural justice which are, first, that a person affected by a decision has a right to be heard, second, that the person taking the decision must not be biased (there seems no

⁴ A.K. Kraipak v. UOI, AIR 1970 SC 150 at 157
reason why they should not be expressed as one rule, that there is a right to a fair hearing).

To what kinds of decisions or, in what situations, are these rules applicable? There was a time when they were said to be applicable only when the act in question was classified as judicial, rather than executive or administration.

The concepts of promissory estoppels and legitimate expectation are such facets of natural justice that has been the latest entrants in the judicial system for quite some time. These concepts have gained acceptance and importance both. Estoppel is simply a rule of equity and from a concept it has now become a doctrine and enough case law has gathered around it. Its slightly modulated form is the concept of ‘legitimate expectation’ which has now also assumed the shape of a doctrine. The twins originated from administrative action and takes the shape of administrative law whose susceptibility to review by the courts has also been debated in several important judgments and it has been culled out that the powers of the Court to review administrative action must be restricted to the general legal limitation as applicable. We may say that the concepts are ‘not the key which unlocks the treasure of natural justice and simultaneously it ought not to unlock the gates which shut the Court out of review on merits’. To some extent the elements of speculations and uncertainty are inherent in these two abstract concepts.

Estoppels means that a person is stopped from denying what he has promised and relying upon which another person has acted and would be put to loss if the promise is not acted upon. Three essentials of the doctrine of estoppels in equity are–

i) There must be a promise or representation or an assurance;

ii) Another person to whom such a promise or assurance or a representation is made should act relying upon such a promise, or an assurance or a representation;

iii) It should cause severe loss to the other person to whom such a promise or an assurance or a representation was made if it was not carried out.

Legitimate expectation is another facet of natural justice which has emerged as a strong weapon in the armory of a common man. Being basically a subsidiary of the “audi alteram partem” rule the doctrine of legitimate expectation in essence,
imposes a duty on the authority concerned “to act fairly taking into consideration all relevant factors”. Unfairness in the form of unreasonableness here comes close to unfairness in the form of violation of natural justice and the doctrine of legitimate expectation can operate in either context. This doctrine comes into play when the decision of the administrative authority must affect the person by depriving him of some benefit or advantage. Which either he had enjoyed in the past or which he can expect to be permitted to continue to do until there has been communicated to him rational grounds for withdrawing it on which he has been given an opportunity to comment and contend that it should not be withdrawn.

In recent past, Courts in India, through their creative interpretation, have eliminated every ‘no-go’ area from the administration. This research work focuses on the concepts of promissory estoppel and legitimate expectation, their roles in the modern administration. Both of these doctrines prove a boon for the common man to bring transparency in the administration. These doctrines play a vital role in fixing the public accountability of the persons holding the responsible positions. To some extent we say that the doctrine of legitimate expectation compels the administrative officer as well as the persons who are at the responsible position to act according to the morals and ethics of the job. The courts have played and are playing very important role while applying these doctrines in such liberal way as this behavior of courts have paved way towards the confidence building of the common man in the administration of the system.