CHAPTER-I

THE PRINCIPLE AND ESSENTIAL ELEMENTS OF NATURAL JUSTICE – ITS HISTORICAL PERSPECTIVE AND ROLE OF Judiciary:

1. INTRODUCTION

In a famous English decision in Abbott vs. Sullivan\(^1\) it is stated that “The Principles of Natural Justice are easy to proclaim, but their precise extent is far less easy of define”. It has been stated that there is no single definition of Natural Justice and it is only possible to enumerate with some certainly the main principles. During the earlier days the expression natural justice was often used interchangeably with the expression natural Law, but in the recent times a restricted meaning has been given to describe certain rules of Judicial Procedure.

There are several decision of the Hon’ble Supreme Court which are sufficient to summarize and explain the two essential elements of Natural Justice namely

a. No man shall be Judge in his own cause
b. Both sides shall be heard, or audi alteram partem

The other principles which have been stated to constitute elements of Natural Justice are

1. (1952) 1 K.B.189 at 195
i. The parties to a proceedings must have due notice to when the Court/Tribunal will proceed.

ii. The Court/Tribunal must act honestly and impartially and not under the dictation of other persons to whom authority is not given by Law

These two elements are extensions or refinements of the two main principles stated above.

**How the expression Natural Justice came?**

We have seen the essential elements of Natural Justice and its extensions or refinements. In *Maclean vs. The Workers Union*\(^2\) it has been stated as follows.

‘The phrase is, of course, used only in a popular sense and must not be taken to mean that there is any justice natural among men. Among most savages there is no such thing as Justice in the modern sense. In ancient days a person wronged executed his own justice. Amongst our own ancestors, down to the thirteenth century, manifest felony, such as that of a manslayer taken with his weapon, or a thief with the stolen goods, might be punished by summary execution without any form of trial. Again, every student has heard of compurgation and of ordeal; and it is hardly necessary to observe that (for example) a system of ordeal by water in which sinking was the sign of innocence and floating the sign of guilt, a system which lasted in this country for hundreds of years, has little to do with modern ideas of justice. It is unnecessary to give further illustrations. The truth is that justice is a very elaborate conception, the growth of many centuries of civilization; and even now the conception differs widely in countries usually described as civilized”.

\(^2\) (1929) 1 Ch. 602, 624
**How the Principles of Natural Justice developed over the years?**

The two essential elements had been stated of which the first being that no man shall be Judge in his own cause.

Judges, like Caesar’s wife, should be above suspicion. The Principle is not confined merely to the case where the Judge is an actual party to a cause, but applies to a cause in which he has an interest. An “Interest”, has been defined as a legal interest or a pecuniary interest and is to be distinguished from “favour”. Such an interest will disqualify a Judge. The interest (or bias) which disqualifies must be one in the matter to be litigated. A mere general interest in the general object to the pursued will not disqualify a magistrate. The Interest or bias which disqualifies is an interest in the particular case, something reasonable likely to bias or influence the minds of the magistrates in the particular case. The Law in laying down this strict rule has regard, not to the motive which might bias the Judge but it is to promote the feeling of confidence in the administration of Justice. As the famous saying goes – Justice should not only be done but should manifestly and undoubtedly be seem to be done.

The second principle – Audi Alteram Partem – as the maxim denotes that no one should be condemned unheard. This principle could be broadly classified as under:

i. party to an action is prima facie entitled to be heard in his presence
ii. he is entitled to dispute his opponent’s case, cross examine his opponents witnesses and entitled to call his own witnesses and give his own evidence before Court.

iii. He is entitled to know the reasons for the decision rendered by a Court/Tribunal.

You are all aware about the famous decision of the Hon’ble Supreme Court in **Union of India vs. Tulsiram Patel**. The issue before the Supreme Court was relating to the interpretation of Articles 309, 310 and 311 of the Constitution of India and in particular after the amendment of Clause 2 of Article 311 by the Constitution (forty second amendment) Act, 1976, the second proviso to that clause. Thought the subject matter of the decision related to a service matter and the safe guards conferred in Article 311 to persons employed in Civil capacities under the Union of India or the State, the Supreme Court analysed in depth the principles of natural justice. It was stated that the principles of natural justice are not the creation of Article 14 of the Constitution of India and that Article 14 is not their begetter but their Constitutional Guardian. The Supreme Court traced the ancestry of the principle.

3. **AIR 1985 Supreme Court page 1416**
In the case of **Tulsirram Patel** the Supreme Court considered the issue as to how the principles of natural justice had been interpreted by Courts and within what limits are they to be confined. It was stated that by a process of judicial interpretation two rules have been evolved has representing the principles of natural justice in judicial process, including therein quasi judicial and administrative process. They being

a. no man shall be a Judge in his own cause  
b. hear the other side – Audi Alteram Partem

From the above two rules a corollary has been deduced namely 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, in other words has it is how expressed, Justice should not only be done but should manifestly be seem to be done.

While considering the Audi Alteram Partem rule it was observed that

- a person against whom an order to his prejudice may be passed should be informed of the charges against him.  
- Such person should be given an opportunity of submitting his explanation which also include the right to no the oral and documentary evidence which are to be used against him.  
- Witnesses who are to give evidence against him be examined in his persons with right to cross examination them.  
- To lead his own evidence both oral and documentary, in his defence.

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4. **Ibid**
The Hon’ble Supreme Court in *Viswanathan v. Abdul Wajid* while adjudicating a civil dispute in respect of the Estate of one Ramalinge Mudaliar considered the scope of Section 13 of the Code of Civil Procedure which deals with the effect of Foreign Judgments. For the purpose of the natural justice it would be useful to refer to paragraph 40 and 41 of the Judgment which is as follow:

*The plea that a foreign Judgment is contrary to natural justice has to be considered in the light of the statute law of India and there is nothing in S.13 which warrants the interpretation that a plea that a foreign judgment is contrary to natural justice is admissible only of the party setting up the plea is not duly served, or has not been given an opportunity of being heard.*

*It is the essence of a judgment of a Court that it must be obtained after due observance of the judicial process, i.e. the Court rendering the judgment must observe the minimum requirements of natural justice – it must be composed of impartial persons, acting fairly, without bias, and in good faith; it must give reasonable notice to the parties to the dispute and afford each party adequate opportunity of presenting the case. A foreign judgment of a competent court is conclusive even if it proceeds on an erroneous view of the evidence or the law, if the minimum requirement of the judicial process are assured: correctness of the judgment in law or on evidence is not predicated as a condition for recognition of its conclusiveness by the municipal Court. Neither the foreign substantive law, nor even the procedural law of the trial be the same or similar as in the municipal court. A judgment will not be conclusive, however, if the proceeding in which it was obtained is opposed to natural justice. The words of the statute make it clear that to exclude a judgment under Cl. (d) from the rule of conclusiveness the procedure must be opposed to natural justice. A judgment which is the result of bias or want of impartially on the part of a Judge will be regarded as a nullity and the trial coram non judice.*

5. *AIR 1963 SC page 1*
The Hon’ble Supreme Court in *Canara Bank and others vs. Sri Debasis Das*\(^6\) and others reported in while considering the scope and ambit of the Canara Bank Officers Employees (conduct) Regulations 1976 had analyzed in depth “Natural Justice” and “Audi Alteram Partem”. The observation in the said Judgment could be summarized as follows:

- Natural Justice is another name of commonsense Justice.
- Rules of Natural Justice are not codified canons.
- But they are principles ingrained into the conscience of man.
- Natural Justice is the administration of Justice in a commonsense liberal way.
- Justice is based substantially on natural Justice is based substantially on natural ideals and human values.
- The administration of Justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties.
- It is the substance of Justice which has to determine its form.
- The expressions “Natural Justice” and “Legal Justice” do not present a water tight classification.

6. **AIR 2003 Supreme Court 2041**
➢ It is the substance of Justice which is to be secured by both ad
when ever legal Justice fails to achieve this solemn purpose,
natural Justice is called in aid of legal Justice.

➢ Natural Justice relieves legal Justice from unnecessary technicality,
grammatical pedantry or logical prevarication.

➢ It supplies the omissions of a formulated law.

➢ As Lord Buckmaster said, no form or procedure should ever be
permitted to exclude the presentation of a litigants defence.

➢ The adherence to principles of Natural Justice as recognized by all
civilized States is of Supreme importance when a quasi – judicial
body embarks on determining disputes between the parties, or any
administrative action involving civil consequences is in issue.

➢ Notice it is the first limb of the principle of Audit Alteram Partem.

➢ Adequate time should be given to make his representation.

In recent time the concept of Natural Justice has undergone a
great deal of change. In the sense that what particular rule of Natural
Justice to be applied depends upon the facts of that case, the statute
governing the issue etc. The old distinction between an Administrative
Act and Judicial Act does not survive any longer. Every Administrative
order which involves civil consequences must follow the rules of Natural
Justice.
The Hon’ble Supreme Court has held that in the absence of a notice and reasonable opportunity to a person to meet the case against him, the order passed becomes wholly vitiated. Having held so the Principles of Natural Justice have been interpreted by the Hon’ble Supreme Court prescribing the limits to which they are to be confined.

What is known as “useless formality theory” was considered by the Hon’ble Supreme Court in M.C. Mehta vs. Union of India\(^7\). In the said Judgment it was held

> “Before we go into the final aspect of this contention, we would like to state that case relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case law and literature as to whether relief can be refused even if the Court thins that the case of the applicant is not one of “real substance” or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed”

The Hon’ble Supreme Court in Bar Council of India vs. High Court, Kerala\(^8\), held that principles of Natural Justice cannot to be put in a strait jacket formula, it must be viewed with flexibility and when there is complaint of violation of Principles of Natural Justice the Court may insists on proof of prejudice before interfering or setting aside an order.

\(^7\) AIR 1999 Supreme Court page 2583  
\(^8\) (2004) 6 SCC 311
In the earlier part this decision we had seen that recording of reasons in an order passed by a Court or a Tribunal is also one of the principles of the Audi Alteram Partem Rule. The Hon’ble Supreme Court in *Sri Jain Swetambar Terapanthi VId (s) vs. Phundan Singh* reported in was considering the validity of an Appellate Court against and grant of injunction. In the said case the Trial Court granted an order of injunction and the Appellate Court upset the order of injunction granted by the Trial Court on the ground that the Trial Court has gone wrong in recording prima-facie satisfaction. The Hon’ble Supreme Court set aside the order of the Appellate Court on the ground that the Appellate Court did not discuss the materials on record nor recorded contrary finding. It would be useful to refer to the findings recorded by the Trial Court.

“Petitioner has been successful, in my opinion, to establish the prima facie cases in its favour. I am of the opinion that if the order of temporary injunction, as prayed for, is not passed the interest of Petitioner as well as students, staff and guardian will be adversely affected in view of the fact that the allegations against O.P. Nos. 1 to 5 which have been established prima facie are very serious. In view of that I am inclined to allow the instant Petition for temporary injunction.

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9.    *AIR 1999 SC 2322*
This finding of the Trial Court was reversed by the Appellate Court which came up for consideration before the Hon’ble Supreme Court in the said case. The Supreme Court while analyzing the aspects regarding prima-facie satisfaction and the need to record reasons observed as follows:

*It may be pointed out that it is one thing to conclude that the Trial Court has not recorded its prima facie satisfaction on merits but granted the temporary injunction and it is another thing to hold that Trial Court has gone wrong in recording the prima facie satisfaction and setting aside that finding on the basis of the material on record because it has not considered the relevant material or because it has erroneously reached the finding or conclusions on the facts established. In the first situation, the appellate Court will be justified in upsetting the order under appeal even without going into the merits of the case but in the second eventuality, it cannot set aside the impugned order without discussing the material on record and recording a contrary finding. The High Court proceeded to set aside the order of the Trial Court on the first ground ignoring the aforementioned findings of the Trial Court, the order under appeal is, therefore, unsustainable.*

In yet another case the Supreme Court while considering a proceedings arising out of a general Court martial confirmed by Chief of Army Staff reported in **S.N. Mukherjee vs. Union of India**\(^\text{10}\) observed that in view of the expanding horizon of the principles natural justice, the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules.

10. **AIR 1990 Supreme Court 1984**
The extent of their application depends upon the particular statutory framework where under jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirements cannot, therefore, the insisted upon in such a case. Therefore except in cases where the requirements has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi judicial functions is required to record the reasons for its decision.

In the famous Maneka Gandhi vs. Union of India\(^\text{11}\) in the Hon’ble Supreme Court discussed the increasing importance of Natural Justice and observed that Natural Justice is a great humanizing principle.

\(^{11}\) AIR 1978 Supreme Court 597
intended to invest law with fairness and to secure Justice and over the years it has grown in to a widely pervasive rule. The Supreme Court extracted a speech of Lord Morris in the House of Lords which is an very interesting speech (I quote).

That the conception of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part if the philosophy of the law. We often speak of the rules of natural justice. But there is nothing rigid or mechanical about them. What they comprehend has been analysed and described in many authorities. But any analysis must bring into relief rather their spirit and their inspiration than any precision of definition nor precision as to application. We do not search for prescriptions which will lay down exactly what must, in various divergent situations, be done. The principle and procedures are to be applied which, in any particular situation or set of circumstances, are right and just and fair. Natural justice, it has been said, is only “fair plat in action”. Nor do we wait for directions from Parliament. The common law has abundant riches; there may we find what Byles, J., called “the justice of the common law”. Thus, the soul of natural justice is fair play in action and that is why it has received the widest recognition throughout the democratic world. In the United States, the right to an administrative hearing is regarded as essential requirement of fundamental fairness. And in England too it has been held that “fair play in action” demands that before any prejudicial or adverse action is taken against a person, he must be given an opportunity to be heard. The rule was stated by Lord Denning, M.R. in these terms in Schmidt v. Secy. of State for Home Affairs\(^1\) : - “Where a public officer has power to deprive a person of his liberty or his property, the general principle is that it has not to be done without his being given an opportunity of being heard and of making representations on his own behalf”.

13. \((1969) 2\text{ Ch. D} 149\)
Natural Justice is a term of art that denotes specific procedural rights in the English legal system and the systems of other nations based on it. Whilst the term natural justice is often retained as a general concept, it has largely been replaced and extended by the more general “duty to act fairly”. What is required to fulfill this duty depends on the context in which the matter arises. There are two rules that natural justice is concerned with. These are the rule against bias (nemo index in causa sua) and the right to a fair hearing (audi alteram partem).

The basis for the rule against bias is the need to maintain public confidence in the legal system. Bias can take the form of actual bias, imputed bias or apparent bias. Actual Bias is very difficult to prove in practice while imputed bias, once shown, will result in a decision being void without the need for any investigation into the likelihood or suspicion of bias. Cases from different jurisdictions currently apply two tests for apparent bias: the “reasonable suspicion of bias” test and the “real likelihood of bias” test. One view that has been taken is that the differences between these two tests are largely semantic and that they operate similarly. The right to a fair hearing requires that individuals should not be penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the case, a fair opportunity to answer it, and the opportunity to present their own case. The mere fact that a decision affects rights or interests is sufficient to
subject the decision to the procedures required by natural justice. In Europe, the right to a fair hearing is guaranteed by Article 6(1) of the European Convention on Human Rights, which is said to complement the common law rather than replace it.

The rules of natural justice are the minimum standards of fair decision-making imposed on persons or bodies acting in a judicial capacity. Where the relevant person or body is required to determine questions of law or fact in circumstances where its decisions will have a direct impact on the rights or legitimate expectations of the individuals concerned, an implied obligation to observe the principles of natural justice arises. However, in the Code of Conduct there is an express requirement on the Adjudicator to conduct any hearing in accordance with the principles of natural justice.

In the event of a hearing taking place or a decision being reached which breaches the principles of natural justice, the person charged may seek a review of the hearing and/or decision in the courts. The following are guidelines of natural justice. If an Adjudicator is in any doubt as to the procedure he is proposing to adopt he should take legal advice. The rules of natural justice consist of the right to a fair hearing; and the rule against bias.
THE RIGHT TO A FAIR HEARING

Rule of Fair Hearing:- Meaning:, Object & Ambit

The second principle of natural justice is audi alteram partem (hear the other side) i.e. no one should be condemned unheard. It requires that both sides should be heard before passing the order. This rule insists that before passing an order against any person reasonable opportunity of hearing must be given to him. This rule implies that a person against whom an order to his prejudice is passed should be given information as to the charges against him and should be given an opportunity to submit his explanation thereto as in case of National Central Cooperative Bank v. Ajay Kumar\textsuperscript{13}.

Audi alteram partem is a fundamental to a fair procedure of fair hearing. This is more far-reaching of the principles of natural justice as includes every question of a fair procedure or due process. Even rule against bias could be considered a part of fair procedure, since a fair hearing must be an unbiased hearing. According to De Smith\textsuperscript{14} no proposition can be more clearly established that a man cannot incur the loss of liberty or property for an offence by a judicial proceeding until he has had a fair opportunity of answering the case against him.

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\textsuperscript{13} A.I.R. 1994 S.C. 39.
\textsuperscript{14} Judicial Review of Administrative Action, 4\textsuperscript{th} Edition p. (36).
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According to H.W.R. Wade

"this is the more far-reaching of the principle of natural justice, since it can embrace almost every question of fair procedure or due process and its implications can be worked out in general detail. He has further observed that the right to a fair hearing has, thus, been used by the courts as a base on which to build a kind of code of fair administrative procedure comparable to due process of law under the constitution of United States." 15

In England the right to fair hearing has been used by the Courts as a base on which to build a kind of code of fair administrative procedure, comparable to 'due process of law' under the Constitution of the United States. In India, right to fair hearing has been implied in Articles 14, 19 & 21 of the Constitution of India. A right to equality under Article 14 of Indian Constitution has given a new and dynamic meaning in the case of Maneka Gandhi v. Union of India16, any action which is arbitrary is a violation of equality clause. An action is arbitrary if it is given without hearing. Reasonableness under Article 19 means both substantive and Procedural. Procedural reasonableness means right to fair hearing.

15. HWR Wade, Administrative Law, 4th Edition p 421
16. A.I.R. 1978 SC 597
‘Procedure established by law' under Article-21 means fair, just or right procedure. A procedure cannot be called a fair procedure which denies a right to fair hearing. Article 311(2) of the Indian Constitution expressly provides for a right to notice and reasonable opportunity as a safeguard against arbitrary dismissal or removal from service.

The right to fair hearing has international dimensions. It is provided in the European Convention on Human Rights and Fundamental Freedoms of 1950. Article 16(1) says that,

"In the determination of his civil right and obligations or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by independent and impartial tribunal established by law."

Similar provisions are there in the Universal Declaration of Human Rights (United Nation's, 1948) Article10.

The right to fair hearing is a rule of ancient origin. In case of Bagg's, a freeman of the borough of Plymouth had threatened and scandalised the mayor (in that he turning the hinder part of his body in an inhuman and uncivil manner towards the aforesaid Thomas Fowens, scoffingly, contemptuously, and uncivilly, with a loud voice,

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17.  (1615) 11 Co. Rep.93 b
said to the mayor Come and kiss, Wade p-500). So he was disfranchised i.e. removed from the office. It was held that penalty was unjustified in the absence of any special power of disfranchisement; and that even if there had been such a power, the removal would be void because it was not shown that a hearing had first been given. A century later same rule was applied in the famous Bentley's case R. v. University of Cambridge\(^{18}\), in which the University had deprived that recalcitrant scholar of his degrees on account of his misconduct in insulting the Vice-Chancellor's Court; but he was reinstated by a mandamus from the Court of the king's Bench, on the ground that deprivation was unjustifiable and that, in any case, he should have received notice so that he could make his defence, as required by 'the laws of God and man'. According to Wade, this is a nice example of the old conception of natural justice as divine and eternal law.

However, the problem of modern administrative law is: How for can this obvious principle of justice; be transplanted from its native judicial soil into the territory of administration? Can the Courts impose an administrative technique of their own devising by laying down standards, and are there any standards of universal validity? The answer according to Wade,

\(^{18}\) (1723) I Str. 557 Fortescue J),
"is that the Court have succeeded in enforcing the principle very widely, broadly speaking in all cases where legal rights or status are affected by the exercise of administrative power, ‘saving only cases where the difficulty is insuperable; and that accordingly, natural justice has become a doctrine with a high decree of universally. It does not follow that it need to be modeled strictly on court procedure, hearings need not always be oral hearings, nor needed sources of evidence always be disclosed. But in general the notion of a fair hearing extends to the right to have notice of the other side's case, the right to bring evidence and the right to argue."19

This rule of natural justice intents to prevent the authority from acting arbitrarily affecting the rights of the concerned person. Duty to give reasonable opportunity to be heard will be implied from the nature of the functions to be performed by the authorities which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation or restriction on inherent fundamental rights of citizen, must take care that justice is not only done but manifestly appears to be done.

In National Textile Workers Union v. P.R. Ramakrishna\textsuperscript{20}. The Hon'ble Supreme Court observed there is a peculiar and surprising misconception of natural justice, in same quarters, that it is exclusively a principle of administrative law. It is not. It is a first universal principle and, therefore, a rule of administrative law. It is a part of the judicial procedure which is imported into the administrative pressure because of its universality. The rule of audi alteram partem is one of the basic principles of natural justice. It was held that in a winding up proceedings of a company, its workers are entitled to appear at the hearing of the winding up petition whether to support or to oppose it. They have a right to be heard if they so wish both before the winding up petition is admitted and order for advertisement is made, as also after the admission and advertisement of the winding up petition until and order is made for winding up the company.

Mr. Justice Bhagwati observed:

"The audi alteram partem rule which mandates that no one shall be condemned unheard is one of the basic principles of natural justice and if this rule has been held to be applicable is a quasi-judicial or even in an administrative proceeding involving adverse civil consequences, it would a fortiori apply in a judicial proceeding\textsuperscript{20}. A.I.R. 1983 S.C. 75
such as a petition for winding up of a company. It is difficult to imagine how any system of law which is designed to promote justice through fair play in action can permit the court to make a winding up order which has the effect of bringing about termination of services of the workers without giving them an opportunity of being heard against the making of such order. It would be violative of the basis principles of fair procedure and unless there is express provisions in the Companies Act, 1956, which forbids the workers from appearing at the hearing of the winding up petition and participating in it, the workers must be held entitled to appear and be heard in the winding up petition."

Mr. Justice O. Chinnappa Reddy observed,

"It is of the essence of most systems of justice certainly of the Anglo-saxon system--that in litigation both side of a dispute must be heard before decision. 'Audi Alteram Partem' was the aphorism of Augusrine which was adopted by the court at that time when Latin maxims were fashionable." "Audi Alteram Partem' is as much a principle of African as it is of English legal procedure: Courts even more than administrator must observed natural justice."
Judicial and Quasi-Judicial Acts

Until the decision of House of Lord's in case of Ridge v. Baldwin\textsuperscript{21}, the right to fair hearing was available to judicial or quasi-judicial acts.

Their Lordship's held that

"every judicial act is subject to the procedure required by natural justice and they then dominated the great majority of administrative acts as judicial for this purpose. Instead of saying, as was in fact the truth, that natural justice must be observed in both judicial and administrative act; the courts stretched the meaning of judicial in an unnatural way. There seem to be nothing but a circular argument; natural justice must be observed when the function is judicial; and the function is called judicial when natural judicial ought to be observed. If every power affecting some persons rights is called judicial, there is virtually no meaning left for administrative. The term 'quasi-judicial' accordingly came into vogue, as an epithet for powers which though administrative, were required to be exercised as if they were judicial i.e. in accordance with natural justice. This at least was less of a misnomer than judicial, and made it easier for the Court to continue the work of developing their system of fair administrative procedure."

\textsuperscript{21} (1964) A.C. 49
The common misconception is to regard a quasi-judicial function as inferior form of judicial function rather than as superior form of administrative function. Judges are prone to judicial and quasi-judicial together and contrast them with administrative, without appreciating the quasi-judicial means administrative\(^{22}\).

This confusion which arose above, was clear by Lord Reid in the case of Ridge v. Baldwin\(^{23}\). Since than the principles of natural justice are applied to administrative acts. In India the Courts were hesitant in the immediate post Ridge v. Baldwin period and sometimes they still resort to this dischotomi of classification; otherwise these principles are made applicable to administrative act. The true should to be, 'the character of the authority was not what mattered was the character of the power exercised. . If it adversely affected legal rights or interests, it must be exercised fair\(^{24}\).

**Statutory Inquiries and Hearings**

The House of Lords took an important stand in 1914 in case of Local Board v. Arlidge\(^{25}\), where a public inquiry had been held on appeal to the Local Government Board by the owner of a house against the Hampstead Borough.

\(^{22}\) HWR Wade, Administrative Law, pp. (504-5).

\(^{23}\) (1964) A.C. 40

\(^{24}\) Wade, Administrative Law, p.502

\(^{25}\) (1915)A.C.120
Council had made a closing order on the ground that Board had dismissed his appeal without a fair hearing because he was not allowed to appear before the officer to made the decision or to see the report of the Inspector who held the inquiry. The report was, of course, the main document in the proceedings. These complaints succeeded in the Court of Appeal but failed in the House of Lords. The judges all agreed that the general importance of the case can scarcely be over estimated, where they differed was in their willingness to compromise between the procedure of courts of law and the need of practical administration.

However, later on case of **Errington v. Minister of Health**\(^{26}\), known Jarrow clearance, the Court of Appeal enunciated the doctrine of Lis for the purpose of application of the principle of natural justice. A public inquiry had been held but after receiving the report the ministry made efforts persuade the Jarrow Corporation to accept less expensive scheme. The Corporation registered and asked the minister to receive a deputation. The minister replied that in view of his quasi-judicial function he did not think he ought to receive a deputation representing one side only. However, with the arrangement of a meeting Corporation was to submit further evidence and argument to the ministry. The minister’s order was set aside by the Court.

\(^{26}\) (1935) 1 KB 249
According to Wade,

"although by inventing the principle of the lis the courts contrived to infuse a measure of natural justice into the statutory procedure at the point where it was most needed, one must admit that mixture of administrative and judicial responsibilities makes it difficult for the ministry to fulfil their function. When an objection is lodged, they must either give up normal dealings with the local authority or else they must allow the objectors to intrude into the daily work of the department. This state of semi-paralysis may last for many months, from the first objector to the final decision ……The notion of the lis, therefore, was not the true key to the problem. It operated merely by reference to time, whereas the need was for a distinction based on substance. Ultimately this was found in the distinction between evidence of a general character used by the minister to guide him on policy, and evidence of facts of the local situation investigated at the inquiry. The former may be obtained and used by the minister as he likes. The latter should be handled only quasi-judicially and in accordance with natural justice."

However, there is nothing like public inquiries system in India as in England. Vast discretionary and arbitrary powers are vested in the authorities which are exercised without regard to the principles of the

27. HWR Wade, Administrative Law, pp.511-12
natural justice, progress to arts tribunalisation and inquiry system is painfully slow in India.

**Legitimate Expectation**

The doctrine of legitimate expectation is a new emerging concept in administrative law. Generally, the principles of natural justice apply where some legal right, liberty or interest is affected. But good administration demands their observance in other situation also where the citizen may legitimately expect to be treated fairly. In a recent decision in case of *Re estminster*\(^{28}\). Lord Bridge has explained the court have developed a novel doctrine in public law that a duty of consultation may arise from a legitimate expectation of the consultation aroused by a promise or by an established practice of consultation. However, the above analysis is classical. According to *Wade*\(^{29}\)

"Legitimate expectation which means reasonable expectation can equally well be invoked in any of many situation's where fairness and good administration justify the right to be heard"

The Supreme Court of India for the first time recognized the doctrine of 'legitimate expectation' in the case of *Union of India v. Hindustan Development Corporation*\(^{30}\) and has dealt with the English

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28. (1986) A.C. 668
29. Administrative Law, p.522
30. A.I.R. 1994 S.C. 938
Law at length. The case is popularly known as Railway Bogi case. However, Byles J's observations have become classical when he said,

"although there are no positive words in a statute, requiring that the party shall be heard, yet the justice of common law will supply the omission of the legislature\textsuperscript{31}."

This was approved by the House of Lords in case of Ridge v. Baldwin\textsuperscript{32}.

In India, it has been followed in case of Maneka Gandhi v. Union of India\textsuperscript{33} and Olga Tellis v. Bombay Municipal Corporation\textsuperscript{34}. In case of Co-oper v. Wanderworth Board of Works\textsuperscript{35} observed:

"The law of God and man both give the party an opportunity to make his defence if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon "Adam", before he was called upon to make his defence. "Adam", says God, "Where aloe thou? Has thou not eaten 'an apple' of the tree whereof I commanded thee that thou shouldest not eat?"
"And the same question was put to "Eve" also."

\textsuperscript{31} W. A.L., Administrative Law, pp.502-3.
\textsuperscript{32} (1964) A.C. 40
\textsuperscript{33} A.I.R. 1978 S.C. 597
\textsuperscript{34} A.I.R. 1986 S.C. 180
\textsuperscript{35} (1881) 73 All. E.R. 1554 Byles, J
It should be noted that this principle of natural justice provides procedural safeguard against arbitrary administrative adjudication. Justice will deemed to be denied. If a person against whom justice has been invoked, has no opportunity to put his defence forward. In the words of Prof. Robson,

"of all the characteristics of judicial function, none is more essential than the right to hearing. The safeguard of civil liberty finds expression in few principles of greater importance according to English notions than that embodied in the maxim that every man is entitled to his way in his court”

36. Robson, Justice of Administrative Law, Ch.11, p.74
required to give to the affected person the notice of the case against him. The proceedings started without giving notice to the affected party, would violate the principles of natural justice. The notice is required to be served on the concerned person properly as in case of "\textbf{Laxmi Narain Anand C.S.T.}\textsuperscript{37} and in another case of "\textbf{Cooperative Society v. A.P. Govt.}\textsuperscript{38}.

However, the omission to serve notice would not be fatal if the notice has been served his own fault. For example, in a case of "\textbf{L.P. Singh v. Board of Governors, M.A.C.T.}\textsuperscript{39}, some students were guilty of gross violence against other students. The notice could not be served on them because they had absconded. The action of the authority was held to be valid as a notice could not served on the students on account of their own fault.

The notice must give sufficient time to the person concerned to his case as in case of "\textbf{Public Prosecutor v. K.P. Chandrashekharan}\textsuperscript{40}. Whether the person concerned has been allowed time or not, depends upon the facts of each case as in case of "\textbf{Satish Chandra v. Union of India}\textsuperscript{41}.

\textsuperscript{37} (1980) 46 S.T.C. 41  
\textsuperscript{38} A.I.R. 1977 SC 313  
\textsuperscript{39} A.I.R. 1982 M.P.59  
\textsuperscript{40} (1957) 8 S.T,C. 6 (Mad)  
\textsuperscript{41} A.I.R. 1983 Delhi, 1
The notice must be adequate and reasonable. In U.S.A. the Administrative Procedure Act provides with request to the requirements of the notice. It provides that the notice must contain time, place and nature of hearing, legal authority under which the hearing is to be held, statement of specific charges to be met by the person concerned and the matters of fact and law asserted. In India there is no statutory requirements of notice but the courts insist the compliance with the above requirements in order to treat the notice as reasonable and adequate. In order to be treated as adequate and reasonable the notice must give sufficient information so as to enable the person concerned to prepare his defence effectively. For this purpose, the contents of the notice, time of giving notice etc. are taken into account. In a case of Punjab National Bank v. All India Bank Employees Federation⁴², the notice contained certain charges but the penalty was imposed on the charges other than those mentioned in the notice. Thus, the charges on which the penalty was imposed were not contained in the notice served on the person concerned. The notice was not proper and, therefore, imposition of penalty was invalid.

It is to be noted if the person concerned is aware of the case against him and not prejudiced in preparing his defence effectively.

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⁴² A.I.R. 1960 S.C. 16
the requirement of notice will not be insisted upon as a mere technical formalities and proceeding will not be vitiated merely on the technical ground. That the person concerned was not served notice before taking the action as in case of *Keshav Mills Co. Ltd. V. Union of India*43

The notice is required to be clear and unambiguous. If it is ambiguous or vague, it will not be treated as reasonable and proper notice. If the notice does not specify the action proposed to be taken, it is taken as vague and, therefore, no proper as in case of *Abdul Latif v. Commr*44. The notice will also be vague if it does not specify the property proposed to be acquired as in case of *Tulsa Singh v. State of Haryana*45.

As regards the detention under any law providing for preventive, Clause (5) of Article 22 provides that in such condition the making the order for such detention must, as soon as may be, communicate to the detenu the grounds on which the order has been made and must give him the earliest opportunity of making a representation against the order. The grounds communicated to the detenu must not be vague or insufficient or irrelevant. If the grounds furnished to the detenu are

43. A.I.R. 1971 S.C. 389  
44. A.I.R. 1978 All. 44  
45. A.I.R. 1973 Punj. 263
vague or inadequate, the detenu is entitled to be released as in case of **Dhananjoy Das v. D.M.**\(^4\). A ground is regarded vague if it is not capable of being intelligibly understood and is not sufficiently definite to enable the detenu to make effective representation. In the case of State of **Bombay v. Atma Ram**\(^4\), the Supreme Court has held that if the ground which is supplied is incapable of being understood or is incapable of being defined with sufficiently certainty, it will be called vague, but if it is capable of being intelligibly understood and is sufficiently definite to furnish materials to enable the detenu to make a representation against the order of detention, it cannot be called vague. If the ground supplied is vague, the detention will become invalid as in case of **Lawrence v. State of Bombay**\(^4\). Hence the notice should be served properly on the concerned person. The notice should be legal giving sufficient time to the concerned person to prepare his case. The notice must be proper, adequate and reasonable. The notice be vague or ambiguous i.e. the notice should be clear and ambiguous

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\(^4\) A.I.R. 1982 S.C. 1315  
\(^4\) A.I.R. 1951 S.C. 175  
\(^4\) A.I.R. 1856 S.C. 531
(b) Hearing: -

**Oral or Personal Hearing-- how far necessary**

The second ingredient of audi alteram partam (hear the other side) rule is the rule of hearing. If the order is passed by the authority without providing the reasonable opportunity of being heard to the person affected by it adversely will be invalid and must be set aside as in the cases of *Harbans Lal v. Commissioner*\(^49\), *National Central Co-operative Bank v. Ajay Kumar*\(^50\) and *Fateh Singh v. State of Rajasthan*\(^51\). The reasonable opportunity of hearing which is also well known as 'fair hearing' is an important ingredient of the audi alteram partem rule. This condition may be complied by the authority by providing written or oral hearing which is the discretion of the authority, unless the statue under which the action being taken by the authority provides otherwise. Thus like U.S.A. and England, the Courts in India do not consider the right to oral or personal hearing as part of the principle of Audi Alteram Partem unless the statue under which the action is taken by the authority provides for the oral or personal hearing

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49. (1970) Lab I.C. 1448
51. A.I.R. 1995 Raj. 15
unless it is not indicated at without oral or personal hearing the person cannot adequately present. Personal or oral hearing is important when the context requires it was required in the case of **A.K. Gopalan v. State of Madras**[^52]. It is the duty of the authority who will ensure that the affected party may be given an opportunity of oral or personal hearing if the context requires otherwise.

However, the above rule of fair hearing requires that the affected party should be given an opportunity to meet the case against him effectively and this may also be achieved by providing opportunity to the affected person by making 'written representation' instead of oral or personal hearing as was provided in the case of **Union of India v. J.P. Mitter**[^53].

Whether the reasonable opportunity of fair hearing should be given by a written representation or by personal hearing or by oral hearing depends upon the facts of each case and ordinarily it is in the discretion of the Tribunal instead of Courts as is the observation of Mr. Suba Rao in case of **M.P. Industries v. Union of India**[^54]. If the technical or complex question are involved in the case then the personal or oral hearing may be considered

[^52]: A.I.R. 1950 S.C. 27
[^53]: A.I.R. 1971 S.C. 1093
[^54]: A.I.R. 1966 S.S. 671
necessary as in case of *Travancore Rayons v. Union of India*\(^\text{55}\). If otherwise all the circumstances of the case have been taken into account before taking any action, it is very important to see that the action cannot be set aside merely on the ground that the opportunity of oral or personal hearing has been denied as in case of *Maharashtra v. Lol*

Sikshan Sansthan\(^\text{56}\) and *Union of India v. Prabhakar*\(^\text{57}\) in a case of *Bishan Lal v. State of Haryana*\(^\text{58}\), a probational was given an adequate opportunity to answer in writing whatever was alleged against him in the show cause notice served upon him and it is pertinent to mention as held by the court that it was not necessary to give him personal or oral hearing before passing the order of termination of his service.

It is otherwise expressed as the principle that no man should be condemned unheard as in case of *R v. Archbishop of Canterbury*\(^\text{59}\) and further in an early case of *Capel v. Child*\(^\text{60}\), the principle was formulated as under:

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\(^{55}\) A.I.R. 1971 S.C. 862  
\(^{56}\) (1971) 2 S.C.C. 410  
\(^{57}\) (1973) 4 S.C.C. 183  
\(^{58}\) A.I.R.1978 S.C. 363  
\(^{59}\) (1859) 1 E & E 545  
\(^{60}\) (1832) 2 C & J 558 (579)
"Is it not a common principle in every case which has in itself the character of a judicial proceeding and that the party against whom the judgment is to operate shall have an opportunity is being heard?"

More explicit is the pronouncement in a later case of Bonaker v. Evans\(^{61}\) that no proposition can be more clearly established than that a man cannot incur the loss of liberty or property for an offence by a judicial proceeding until he has had a fair opportunity of answering the charge against him unless indeed the legislature has expressly or impliedly given an authority to act without that necessary preliminarity’

It has been pointed out earlier that it is agreed in England, in India and U.S.A. that there is no universal rules as to the kind of hearing required by natural justice. There is minimum which would be enforced even where the statute is silent, providing the function is held to be quasi-judicial. But above that, the nature of hearing required is to be determined upon a construction of the governing statute as in case of Local Govt. Board v. Arlidge\(^{62}\), the nature of the function to be discharged by the authority in question as in case of Gopalan v. The State\(^{63}\) and furthermore the facts and

\(^{61}\) (1850) 16 Q.B. 162 (171)
\(^{62}\) (1915) A.C. 120 (H.L.)
\(^{63}\) (1950) S.C.R. 88 (123, 163)
circumstances of the case in point as in case of Local Govt. Board v. Arlidge where Lord Parmoor observed:-

"Where, however, the question of propriety of procedure is raised in a hearing before some tribunal other than a court of law, there is no obligation to adopt the regular forms of judicial procedure. It is sufficient that the case has been heard in a judicial spirit and in accordance with the principles of substantial justice. In determining whether the principles of substantial justice have been complied with in matters of procedure regard must necessarily be had to the nature of the issue to be determined and the constitution of the tribunal".

(c) Evidence

Evidence is an important part which is to be brought properly before the Court in the presence of both the parties and a judicial or quasi-judicial authority must have to act on the evidence produced as in the case of R v. Bodmin JJ\textsuperscript{64} and not merely on any information which the authority may receive otherwise as in the case of Collector of Central Excise v. Sanwarmal\textsuperscript{65}

\textsuperscript{64}. (1947) 1 All E.R. 109
\textsuperscript{65}. (1968) S.C. [C.A. 1362/67 dt. 16.(J2.1968]
Ordinarily, no evidence personal or oral should be received at
the back of other party and if any such evidence is recorded, it is duty of the
authority that such evidence must be made available to the other party as in
the case of Stafford v. Minister of Health\(^6\) and in another case of Hira
Nath v. Principal\(^6\). The principle is not confined to formal evidence but
extends to any material including information regarding previous
conviction, upon which the Tribunal may act, without giving opportunity to
the affected party to rebut it. Thus, a conviction has been quashed on the
ground that the Justices received a note from their clerk in their chamber,
containing points for conviction before convicting the accused as in the case
of Ross ex parte\(^6\).

It is general principle that all the evidence which the authority
wishes to use against the party, should be placed before the party for his
comment and rebuttal. If the evidence is used without disclosing to the
affected party, it will be against the rule of fair hearing as in the case of
State of Orissa v. Binapani\(^6\) and the extent and content of the information
to

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\(^6\) (1946) K.B. 621
\(^6\) (1973) 1 S.C.C. 805
\(^6\) (1962) 1 All E.R. 540
\(^6\) A.I.R. 1967 S.C. 1269
be disclosed depends upon the facts of each case as in **Prem Prakash v. Punjab University**\(^{70}\)

Ordinarily the evidence is required to be taken in the presence of the party concerned but in some situations this rule is relaxed. For example, where it is found that it would be embarrassing to the witness to testify in the presence of the party concerned, the evidence of the witness may be taken in the absence of the party. Thus the circumstances may exist in which it may not be expedient to examine the witnesses before the affected party and in such circumstances the evidence may be collected behind the back of the party concerned. However, even in such condition the gist of the evidence so collected against the party concerned must be brought to his notice and the party concerned should be given an opportunity to rebut the evidence so collected. The party concerned should be given fair opportunity for correcting or contradicting and relevant statement prejudicial to him as in **Hira Natha Masra v. Rajendra Medical College**\(^{71}\), some male students were charged of some indecent behaviour towards some girl students. An enquiry committee was appointed and the complainant girls testified

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70. A.I.R. 1972 S.C. 1408
71. A.I.R. 1973 S.C. 1260
before it in the absence of the accused male students were given to the accused male students for their rebuttal. The supply of gist of evidence was taken as sufficient compliance with the requirements of fair hearing. The court held that the circumstances show at if the evidence of the girl students had been taken in the presence of the accused male students, the girl students would have been exposed themselves to retaliation and harassment.

In case of *Suresh Koshy v. University of Kerala*\(^7_2\) a committee was appointed to enquire into the alleged malpractice by a student during the examination. After the enquiry a show cause notice was given to the student but the report of the enquiry was not given to him. Non-furnishing of a copy of the report on the basis of which the show cause notice was issued was not taken as violation of the principle of natural justice. The court made it clear that where the law provides for a show cause notice, it should not be taken to mean that a copy of the report on the basis of which the notice has been issued should be made available to the affected person.

In case of *Keshav Mill Co. v. Union of India*\(^7_3\) the Supreme Court was not ready to lay down an inflexible rule that it was not necessary

\(^7_2\) A.I.R. 1969 S.C. 198
\(^7_3\) A.I.R. 1973 S.C. 389
to show the report of enquiry committee to the affected person. The court made it clear that whether the report of the enquiry committee should be furnished or not depends in every individual case on merits of the case. However, again in case of Shadilal Gupta v. State of Punjab 74 the Supreme Court has held that it is not necessary to show the report of the enquiry-officer to the person affected. Recently the Supreme Court has held that when an enquiry-officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry-officers report before the disciplinary authority arrives at its conclusion with regard to the guilt or innocence of the employee with regard to the charges leveled against him. A denial of the enquiry-officers report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove the innocence and is a breach of the principles of natural justice as in case of Managing Director, ECIL v. B. Karunakar 75 and in another case of Union of India v. Mohd. Ramzan Khan 76

74. A.I.R. 1973 S.C. 1124
75. (1993) 4 S.C.C. 727
76. (1991) 1 S.C.C. 588
(d) **Cross Examination**

The adjudicating authority in a fair hearing is not required only to disclose the person concerned the evidence or material to be taken against him, but he should be provided an opportunity to rebut the evidence or material. The important question before the authority is that the witness should be cross-examined or not. It depends upon the provisions of the statute under which the hearing is being held and facts and circumstances of each and every case whether it includes the right of cross examination or not as reported in Jain & Jain, Principles of Administrative law, p. 254. In some cases of domestic inquiries or departmental disciplinary inquiries, the right of cross examination of witnesses or deliquent officials is regarded as essential part of natural justice as in case of *Phulbari Tea Estate v. Worlsmen* 77 and in case of *Meenglass Tea Estate v. Workmen* 78. Where it was utmost necessary to cross examine the workmen of both the estates to know the truth and find the facts of the case.

In the case of *Central Bank of India v. Karunamoy* 79 where disciplinary proceedings are initiated by the Govt. against the civil servants, the right to cross examination is included in the rule of hearing.

77. A.I.R. 1959 S.C. 1111
78. A.I.R. 1963 S.C. 1719
79. A.I.R. 1968 S.C. 266
The right to cross examination is not taken orally and inquiry is only a fact finding one as in case of **State of J & K v. Bakshi Gulan Mohd.**\(^ 80 \) where a commission of enquiry was appointed to enquire into charges of corruption and real administration against the Ex.-Chief Minister of the State of J & K. Several persons filed affidavits supporting the allegations. The Ex-Chief Minister claimed the right to cross examination all the persons who had filed affidavits leveling the charges of corruption against him who had filed the affidavits. His claim was disallowed by the Court on the ground that the evidence was not given orally but only affidavits were filed and the enquiry was only a fact finding one. In such cases where no oral hearing is held and only written statements are called for from the affected party, there is no right of cross examining of the witnesses as reported in Jain & Jain, Principle of Administrative Law, 4th Edition, p256. If the witnesses give oral evidence, the person against whom the oral evidence has been given has right to cross examine the witnesses and if he demand such a right and it is refused and he is not allowed this right, the refusal to allow him to cross examine the witnesses would amount to valuation of fair hearing as in case of **Meenglass Tea Estate v. Their Workmen**\(^ 81 \).

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80. A.I.R. 1967 S.C. 122

81. A.I.R. 1967 S.C. 1719
However, there are certain exceptions to this rules. In certain situations the cross examination may be embarrassing for the witnesses as in case of *Hira Nath Mishra v. Rajendra Medical College*\(^82\). In such situation the right to cross examination may be denied and denial in such situations would not amount to violation of natural justice. In the above case some male students were charged off some indecent behaviour towards some girl students. The accused male students were not allowed to cross-examine the girl students. The refusal to allow the accused male students to cross examine the girl students was upheld and was not treated as a violation of natural justice because allowing the boys the right of cross examination would have been further more embarrassing for the girl students and the refusal was necessary for protecting the girl students for any harassment later on.

Sometimes there is a danger of life or persons or property of the witness if his identity is not kept confidential as in case of *Gurubachan Singh v. State of Bombay*\(^83\) where the Deputy Commissioner under Police Act passed an externment order which was served on a person of bad character who was not allowed to cross examine the witnesses in order to

\(^{82}\). A.I.R. 1973 S.C. 1260

\(^{83}\). A.I.R. 1952 S.C. 221
keep the identity of the witnesses confidential and the said persons of bad character was not allowed to cross-examine the witnesses. The refusal was not taken as violation of the natural justice because the witnesses would not to give evidence openly against the persons of bad character due to fear of violation to their persons or property.

In another case of *Kanungo & Co. v. Collector of Customs*⁸⁴ the business premises of a person were searched and certain watches were confiscated by the authority under Sea Customs Act. The said person was not allowed to cross-examine the persons who gave information to the authority. There was no violation of the natural justice and the Court held that the principles of natural justice do not require the authority to allow the person concerned the right to cross examine the witnesses in the matters of seizure of goods under the Sea Customs Act. If the person concerned is allowed the right to cross-examine, it is not necessary to follow the procedure laid down in the Indian Evidence Act.

In U.S.A. the right to cross examination has been included in the due process of law and the Administrative Procedure Act, 1946.

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A.I.R. 1972 S.C. 2136
(e) **Legal Representation**

An important question is whether right to be heard includes right to legal representation? Fairly speaking, the representation through a lawyer in the administrative adjudication is not considered as an indispensable part of the fair hearing. But, in certain situations if the right to legal representation is denied, then it amounts to violation of natural justice. Thus where the case involves question of law as in case of **J.J. Mody v. State of Bombay**[^85] and in another case of **Krishna Chandra v. Union of India**[^86], the denial of legal representation will amount of violation of natural justice because in such conditions the party may not be able to understand the question of law effectively and, therefore, he should be given an opportunity of being heard fairly.

Similarly there is violation of natural justice if in cases where the subject matter is complicated and technical and the party is denied the right of legal representation as in case of **Natya Raiyan v. State**[^87] where the party may not be able to understand the complication and technicality of the matter whereas a legal representative may plead the case properly and further defend the interest of the party not to be harmed. In such cases,

[^85]: A.I.R. 1962 Guj. 197
[^86]: (1947) 4 S.C.C. 374
[^87]: A.I.R. 1962 Ori. 78
where the person or party is illiterate as in case of James Bukshi v. Collector of Ganjam\textsuperscript{88} or in such cases where the expert evidence is on record as in case of Harish Chandra v. Registrar, Co-op. Societies\textsuperscript{89} or the prosecution is conducted by legally trained persons as in case of C.L. Subramaniam v. Collector of Custom\textsuperscript{90} and the case of The Board of Trustees, Port of Bombay v. Dalip Kumar\textsuperscript{91}, the denial of right to legal representation in the above mentioned circumstances would certainly be the violation of natural justice because the illiterate persons will not be able to plead his case as effectively as a legal representative or counsel may represent fairly watching the interest of the affected party.

Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law and the right to life and personal liberty guaranteed by Article 21 of the Constitution of India may be curtailed or taken away by following the procedure established a law. The procedure prescribed for deprivation of personal liberty must be reasonable, fair, just and a procedure to be reasonable fair and just, must embody the principles of natural justice as

\textsuperscript{88.} A.I.R. 1959 Ori. 152
\textsuperscript{89.} (1966) 12 F.L.R. 141
\textsuperscript{90.} A.I.R. 1972 S.C. 2178
\textsuperscript{91.} A.I.R. 1983 S.C. 100
in case of Maneka Gandhi v. Union of India\textsuperscript{92}. Free legal aid to the poor is an essential element of reasonable, fair and just procedure and a procedure which failed to provide for free legal service to the poor and needy persons cannot be referred as reasonable, fair and just and thereby it would be violative of Article 21 as in case of Hussainara v. Home Secretary\textsuperscript{93} and in the case of M.H. Hoskot v. State of Maha\textsuperscript{94}. In short, this is the Constitutal right of every accused person who is unable to engage a lawyer and secure legal services on account of reason such as poverty, indigace etc. and the state is under a mandate to provide a lawyer to an accused person. If the circumstances of the case and the need of justice so required, provided of course, the accused person does not object to the provision of such lawyer.

In case of Khatri v. State of Bihar\textsuperscript{95} the Court has held that the state is bound to provide legal aid to the poor or indigent accused and the right cannot be denied on the ground that the accused did not ask for it and it is further the duty of the Presiding Officer to inform the accused of such rights.

\textsuperscript{92} A.I.R. 1978 S.C. 598
\textsuperscript{93} A.I.R. 1979 S.C. 1360
\textsuperscript{94} A.I.R, 1978 S.C. 1548
\textsuperscript{95} A.I.R. 1981 S.C. 928
In U.S.A. the right to legal representation has been granted by the process clause of the U.S. constitution and the Administrative Procedure Act of 1946.

The right to a fair hearing requires that an individual shall not be penalised by a decision affecting his rights or legitimate expectations unless he has been given prior notice of the case against him, a fair opportunity to answer it and the opportunity to present his own case.

Each individual must have the opportunity to present his version of the facts and to make submissions on the relevant principles of the Code of Conduct and the allegations against him.

The right to a fair hearing involves Prior notice of the hearing, opportunity to be heard, conduct of the hearing, right to legal representation and the decision and the reasons for it.

**THE RULE AGAINST BIAS**

The two main aspects of this rule are that a person adjudicating on a dispute must have no pecuniary or proprietary interest in the outcome of the proceedings and must not reasonably be suspected, or show a real likelihood, of bias. The Adjudicator must be able to show that he has conducted a full enquiry into the circumstances involved before making his decision as to whether a breach of the Rules of Conduct has occurred and, if so, what sanction should be imposed. There
should be no suggestion in his conduct of the hearing that prior to its commencement he has irrevocably decided the outcome.

In this century, as in the past, Judges and others have used the phrase ‘natural justice’ in a way which implies the existence of moral principles of self-evident and unarguable truth. To justify the adoption or continued existence of a rule of law on the ground of its conformity to natural justice in this sense conceals the extent to which a judge is making a subjective moral judgment and suggests, on the contrary, an objective inevitability. Natural justice used in this way is another name for ‘natural law’ although devoid of some at least of the theological and philosophical overtones and implications of that concept.

But before entering into implications of the doctrine of natural justice, it is necessary to explain the historical basis of importing this doctrine to test the validity of the decisions of administrative tribunals. It should be pointed out that the initial application of the doctrine of natural justice was to “Courts” i.e. to say, in respect of judicial functions and it is from that sphere that the doctrine has been extended to statutory authorities or tribunals exercising “quasi-judicial” functions and later, to any administrative authority who has the function of determining civil rights or obligations. In England where there are no written guarantees of rights as in India or the U.S.A., it is controlled by common law principles of natural justice.
2. **History of Natural Justice in England**

**ENGLAND**: Natural justice is an expression of English common law and involves a procedural requirement of fairness. Without going into the ramifications of the doctrine of the natural justice at this stage, it may be said that the doctrine as understood in England, rests on two broad principles resting on Latin maxims which were drawn by common law from “justice naturale”, as in case of **Local Govt. v. Arlidge**. In the 19th Century, the phrase came to be applied by the superior courts in controlling the decisions of courts of summary jurisdiction and it was asserted that any court of justice or judicial tribunal must observe these minimum safe guard of natural justice for justice to be done i.e. being impartial and without bias and further no man should be condemned unheard, otherwise failing which the decisions would lose their judicial character. That these are the essential requirements of a judicial decision would appear from the notable words of **Viscount Haldane** as in case of **Local Govt. v. Arlidge**96:

“.............those whose duty it is to decide must act judicially. They must deal with the question referred to them without bias and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must come to the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice.”

96. (1915) A.C. 120(138) H.L.
This essential similarity is clearly demonstrated by Lord Esher M.R’s definition of natural justice as “the natural sense of what is right and wrong”, as in case of Voinet v. Barrett\textsuperscript{97}. Lord Mansfield founded liability to repay money had and received on “natural justice and equity”, as in case of Moses v. Macferlan\textsuperscript{98}. Some years later Lord Kenyon declared that

“It is a principle of natural justice and our laws that actus non facit reum nisi mens sit rea,”
as mentioned in case of Fowler v. Padget\textsuperscript{99}.

In the 19\textsuperscript{th} Century Kindersley V.C. invoked natural justice in case of Rice v. Rice\textsuperscript{100} to help to determine the conflicting priorities of two equitable interests. Lord Watson, in discussing the right of a mortgage to tack (i.e. to claim for subsequent advances to the mortgagor the same priority, as against other mortgages, as his original loan enjoyed) said often earlier English decision as in case of Hopkinson v. Rolt\textsuperscript{101}, which, it was argued, was inapplicable to Skotland,

“the principle of that decision does not rest upon any rule or practice of English conveyancing but upon principles of natural justice,”

\textsuperscript{97} (1885) 55 L.J.Q.B. 39(41)
\textsuperscript{98} (1760) 2 Burr, 1005(1012)
\textsuperscript{99} (1798) 7 T.R. 509(514)
\textsuperscript{100} (1853) 2 Drew 73(79)
\textsuperscript{101} (1861) 9 H.L.C. 514
as in case of Union Bank of Scotland Ltd. v. National Bank of Scotland\(^{102}\). Examining the origin of the right of a cargo owner to general average contribution Brett M.R. said in case of Burton & Co. v. English & Co.\(^{103}\),

“……………it seems to me that the right arose at the time of the making of the Rhodian laws, it is consequence of the peculiarity of sea danger and has become incorporated into the municipal law of England as a law of the ocean and of marine risk, because when two parties were jointly in danger of the same misfortune, natural justice required that any loss falling upon one party for the safety of the whole adventure should be recouped by the other party in proportion,”

The two principles which, pre-eminently, are generally thought to be necessary to guarantee that the law or any body or rules, is applied impartially and objectively---and hence justly --- are that no man should be judged without a hearing and that every judge must be free from bias or as they are often cited in the form of latin tags, audi alteram partem and nemo judex in re sua. It is not possible to produce an exhaustive list of the rules of natural justice in this formal sense or of the requirements of the rules, because the rules of natural justice are means to an end and not an end themselves, as in case of Official Solicitor V.K.\(^{104}\)

In the words of Tucker L.J.,

\(^{102}\). (1886) 14 R.(H.L.), 1(5)
\(^{103}\). (1883) 49 L.T. 768(769)
\(^{104}\). (1965) A.C. 201
“the requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter i.e. being dealt with and so forth”,

as in case of **Russell v. Duke of Norfolk**\(^{105}\).

Whatever the uncertainly inherent in the phrase ‘natural justice, it connotes, above all, the maxims **audi alteram partem** (i.e. hear the other side) and nemo judex re sua (i.e. a judge should be impartial and without bias) because they are

“so vital and essential to the due performance of the office of the judge that without them the judge is no judge at all”.

**Green L.J.** put it more tersely in Errington’s case i.e. **Errington v. Minister of Health**\(^{106}\).

“a judge must hear both sides and must not hear one side in the absence of the other”.

It is logical, therefore, with the growth of the administrative tribunals and other statutory bodies, the duty to decide the rights of the parties judicially came to be vested by law in bodies other than courts; as in case of **R. v. London Country Council**\(^{107}\). The application of the principles of natural justice came to be extended to these ‘quasi-judicial’ authorities as well. In the case of **Lapointe v. L’ Association**\(^{108}\), the **Judicial Committee** thus observed:-

\(^{105}\) (1949) All E.R. 109(113)

\(^{106}\) (1935) 1 K.B. 249 (268)

\(^{107}\) (1931) 2 K.B. 215(233)

\(^{108}\) (1906) K.C. 535 (539)
“The rule (audi alteram partem) is not confined to be conduct of strictly legal tribunals, but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals”.

In an appeal from Malaya, the Judicial Committee in the case of Kanda v. Fed. of Malaya\(^{109}\), Lord Denning has summarized the principle thus;

“If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made effecting him and then he must be given a fair opportunity to correct of contradict them.. It follows, of course, that the judge or whoever had to adjudicate must not hear evidence or receive representation from one side behind the back of the other. The court will not inquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The court will not go into the likelihood of prejudice. The risk of it is enough”.

\(^{109}\) (1962) 2 W.L.R. 1153 (P.C.)
3. **History of Natural Justice in U.S.A.**

**U.S.A.** : In the United States, the expression, ‘natural justice’, as such is not so frequently heard of, it appears to have been used in the early case of **Calder v. Bull**\(^{110}\) and in case of **Ex parte Robinson**\(^{111}\), because it is not necessary to rely on common law when ‘due process’ is to be affected by State action (5\(^{\text{th}}\) and 14\(^{\text{th}}\) Amendments.) ‘Due process’ is a vague and undefined expression, the implications of which are not finally settled even today. But, thanks to the genius of the **American judiciary**, it has secured the observance of the minimum requirement of justice embodied in the principle of natural justice, by taking advantage of the very vagueness of the phrase ‘due process’ as in case of **Caritativo v. California**\(^{112}\)

In the hands of Supreme Court, the phrase early came to evolve two-fold meaning—substantive and procedural and the principle of natural justice were considered to be implied in the procedural aspect of due process. The American Supreme Court in case of **Brown v. Walker**\(^{113}\) described the first eight amendments to the constitution as incorporating into

“the fundamental law of the land certain principles of natural justice which has become permanently fixed in the jurisprudence of the mother country”.

\(^{110}\) (1798) 3 Dall 396(398 f)

\(^{111}\) (1896) 86 U.S. 505

\(^{112}\) (1957) 357 U.S. 549 (558)

\(^{113}\) (1896) 161 U.S. 591, (600)
Thus the court included within the phrase such various provisions as those recognizing the right to free speech and right to speedy and public trail of criminal charges; those prohibiting double jeopardy, excessive bail, cruel and unusual punishments; and those protecting the security of homes from searches or billeting of troops, the right of citizen to bear arms and the right to trial by jury.

Thus, in case of **Synder v. Massachussets**\(^ {114} \), the Supreme Court observed that there was a violation of due process whenever there was a breach of a

> “principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental”

and in the early case of **Hagar v. Reclamation District**\(^ {115} \), the Court had formulated the view that ‘hearing’ before decision was one of such fundamental principle and that accordingly, ‘due process’ required inter alia that…..

> “whenever it is necessary for the protection of the parties, it must give them ‘an opportunity to be heard’ respecting the justness of the judgment sought.”

It is thus to be seen that three ingredients of procedural due process as summarized by Prof. Willis in his “Willis, Constitutional Law, pp 642-43”, basically correspond to the English common law principle of natural justice.

\(^ {114} \) (1934) 291 U.S. 97, (105)
\(^ {115} \) (1884) 111 U.S. 701
4. **History of Natural Justice in India**

**INDIA:** Our constitution has conferred upon the superior Courts the same supervisory jurisdiction over inferior courts and tribunals as gave rise to the doctrine of natural justice in England and once it is conceded that there are certain fundamental requirements the absence of which vitiates any judicial or quasi-judicial decision effecting the right of individuals, a proposition for which no specific constitutional authority is required as in the case of *Manak Lal v. Prem Chand*\(^{116}\). Our superior Courts cannot help applying these requirements while exercising their jurisdiction under Arts. 32 & 226 to issue writ certiorari as in case of *N.P.T. Co. v. N.S.T. Co.*\(^{117}\) or the supervisory jurisdiction of the High Court under Art. 227 as in case of *Waryam v. Amarnath*\(^{118}\) or the extraordinary power of appeal vested by Art. 136 in the Supreme Court as in the case of *D.C. Mills v. Commr. of I.T.*\(^{119}\)

On the other hand, a constitutional requirements of the compliance with the principle of natural justice is derived from the expression ‘reasonable restriction’ in cls. (2-6) of Art.19 as in case of *Hari v. D.C. of Police*\(^{120}\) & *Fedco v. Bilgrami*\(^{121}\).

The difference in the application of doctrine of natural justice in England on the one hand and U.S.A. and in India, on the other hand is that where

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117. (1957) S.C.R. 98(100)
118. (1954) S.C.R. 565
119. (1955) S.C.R. 941 (950)
120. (1956) S.C. 559
‘due process’ or reasonableness is a constitutional safeguard and it cannot be taken away or abridged as in England by ordinary legislation.

Principle of Natural Justice occupied the very important place in the study of the administrative law. These rules are not embodied rules which are not fixed in any Code. They are the judge-made principle and are regarded counter part of the American procedural ‘due process’. Any judicial or quasi-judicial tribunal determining the rights of individuals must confirm to the principle of natural justice in order to maintain ‘the rule of law’ as in Representation of the Committee on Minister’s Powers (1932) C.md. 4060 p.75. The reason is that these principles constitute the ‘essence of justice’ and must, therefore, be observed by any person or body charged with the duty of deciding the rights of the parts of the party which involves the duty to act judicially as in case of Spackman v. Plumstead Board of Works\textsuperscript{122} & in another case of General Medical Council v. Spackman\textsuperscript{123}.

Though both in England and India it has been held that there is no universal or uniform standard of natural justice applicable to all cases coming within the purview of the doctrine and that the contents or requirements of natural justice vary with the varying constitution of different quasi-judicial bodies and their functions, the subject matter of inquiry, the relevant statutory provisions as in case of Local Govt. Board v. Arlidge\textsuperscript{124} & in another case of Board of Education v. Rice\textsuperscript{125} and the other circumstances of the case, nevertheless, it is agreed on all hands that there are certain

\begin{itemize}
  \item \textsuperscript{122} (1885) 10 App. Cas. 229(240)
  \item \textsuperscript{123} (1943) A.C. 627(641)
  \item \textsuperscript{124} (1915) A.C. 120
  \item \textsuperscript{125} (1911) A.C. 179(182)
\end{itemize}
broad principles deducible from the two Latin maxims which form the
foundation or basis of the doctrine of natural justice and extend to all
cases where the doctrine is attracted.

These principles have been developed to secure justice and
to prevent miscarriage of justice as in case of A.K. Kraipak v. Union of
India\textsuperscript{126}. They require fair play in action. Earlier these principles were
applied only to the judicial functions but later on their ambit was
extended to the quasi-judicial function and at present these principles
apply not only to the judicial and quasi-judicial functions, but also to the
administrative functions as in case of Ridge v. Baldwin\textsuperscript{127}. It has now
been established that the distinction between the quasi-judicial and
administrative functions is not relevant as duty to hear is attracted
wherever an action is likely to have civil consequences to a person as in
case of Mohinder Singh v. Chief Election Commissioner\textsuperscript{128}. As
mentioned on page 32 in book of Administrative Law by K.J. Edeey,
the basic principle is that where a person or public body has the power in
reaching a decision to affect the rights of subjects, then that person must
comply with what have become known as the rules of natural justice and
the real test is the effect of the decision on the right of the

\begin{thebibliography}{9}
\bibitem{126} A.I.R. (1970) S.C. 150
\bibitem{127} (1964) A.C. 49
\bibitem{128} A.I.R. 1978 S.C. 851
\end{thebibliography}
person affected. The dividing line between administrative power and quasi-judicial power is quite thin and is being gradually obliterated and the horizon of the natural justice is gradually expanding and now the principles of natural justice has been extended even to pure administrative function as in cases of A.K. Kraipak v. Union of India\textsuperscript{129}, Ridge v. Baldwin\textsuperscript{130} & Maneka Gandhi v. Union of India\textsuperscript{131}.

These principles of natural justice are treated as a part of the Constitutional guarantee contained in Art. 14 and the violation of these principles by the administrative authorities is taken as violation of Art 14. Actually the concept of quasi-judicial, natural justice and fairness all have been developed to control the administrative action. The object has been to secure justice and prevent miscarriage of justice. The concept of rule of law would have its importance if the administrative authorities are not charged with the duty of discharging their functions in fair and just manner. Art 14 & 21 have strengthened the concept of natural justice. Art. 14 applies not only to discriminatory class legislation but also to discriminatory or arbitrary state action. Violation of the principle of natural justice results in arbitrariness and, therefore, its results in the violation of Art. 14. Art. 21 requires substantive and procedural due process and it provides that no person shall be deprived of his life or person liberty except according to the procedure

\begin{itemize}
  \item \textsuperscript{129} A.I.R. (1970) S.C. 150
  \item \textsuperscript{130} (1964) A.C. 49
  \item \textsuperscript{131} A.I.R. 1978 S.C. 579
\end{itemize}
established by law. The procedure prescribed for deprivation of person liberty must be reasonable, fair, just and a procedure to be reasonable, fair and just must embody the principle of natural justice. A procedure which does not embody the principles of natural justice cannot be treated as reasonable, just and fair as in case of **Vionet v. Barrett**\(^{132}\).

The concept of natural justice has been defined by many judges, lawyers and scholars. In **Drew v. Drew and Lebum**, it has been defined by **Lord Granworth** as ‘universal justice’. **Sir Robert P. Collier** viewed natural justice as ‘requirements of substantial justice’ in case of **James Dunber Smit v. Her Majesty The Queen**\(^{133}\). In **Voinet v. Barreet**\(^{134}\), **Lord Esher M.R.** has defined as ‘the natural sense of what is right and wrong’. Subsequently in **Hopkins v. Smethwick Local Board of Health**\(^{135}\), **Lord Esher M.R.** instead of taking the definition of the natural justice given by him earlier choose to define it as ‘fundamental justice’.

The rule of natural justice are not embodied rules and, therefore, it is not possible and practicable to precisely define the parameters of natural justice. **Tucker L.J.** in case of **Russell v. Duke of Norfolk**\(^{136}\) has observed

\(^{132}\). (1885) 55 LJ RB, 29  
\(^{133}\). (1877-78) 3 app.Cas. 614  
\(^{134}\). (1885) 55 LJ B.R.  
\(^{135}\). (1863) 14 C.B. (N.S.), 214  
\(^{136}\). (1949) 1 All E.R. 109 (C.A.)
“there are, in my view, no words which are of universal application to every kind of inquiry and very kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of inquiry, the rules under which the tribunal is acting, the subject matter i.e. being dealt with and so forth”.

The Supreme Courts has observed in case of Union of India v. P.K. Roy\(^\text{137}\) that the extent and application of the doctrine of natural justice depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case.

In A.K. Kraipak v. Union of India\(^\text{138}\) the Supreme Court has observed

“What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice has been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.”

Rule of natural justice are foundational and fundamental concepts. They are regarded part of the legal and judicial procedures and

\(^{137}\) A.I.R. (1968) S.C. 850  
they are further applicable not only to judicial or quasi-judicial bodies but also the administrative bodies in its decision-making process having civil consequences. The earlier view as in case of Franklin v. Ministry of Town & Country Planning\(^{139}\), that the principles of natural justice were applicable to the judicial and quasi-judicial orders only and not to the administrative orders has been changed now. Both in English Law and in India the courts have made it clear that the principle of natural justice in applicable in administrative proceedings as in case of A.K, Kraipak v. Union of India\(^{140}\). In Sate of Orisa v. Birapani Dei\(^{141}\) the Supreme Court has specifically held that even an administrative order which involve civil consequences must by made consistently with the rules of natural justice. The important question is what is the meaning of the ‘civil consequences’ has been made clear in case of Mohinder Singh Gill v. Chief Election Commissioner\(^{142}\) where the Supreme Court has held that

‘civil consequences covers’ covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation everything that affects a citizen in his civil life inflicts a civil consequences.’

\(^{139}\) (1947) 2 All E.R. 289 (H.L.)
\(^{140}\) A.I.R. (1970) S.C. 150
\(^{141}\) A.I.R. (1967) S.C. 1269
\(^{142}\) (1978) 1 S.C.C. 405
As regards the application of the principles of natural justice the distinction between quasi-judicial and administrative order has gradually become thin and now it is totally eclipsed and obliterated. The aim of the rules of natural justice is to secure justice or put it negatively to prevent miscarriage of justice and these rules operate in are not covered by law validly made or expressly excluded. The rules of natural justice would apply unless excluded expressly or by implication.

EXCEPTIONS TO THE RULE OF NATURAL JUSTICE

It is a general rule that every person whose rights are affected by the administrative actions is entitled to claim natural justice. The Courts have generally read into the provisions of the relevant sections a requirement of giving a reasonable opportunity of being heard before an order is made which would have adverse civil consequences for the parties affected as in case of C.B. Gautam v. Union of India\textsuperscript{143}. However, there are certain exceptions to this general rule where the requirement of 'natural justice' is excluded. Such exceptional circumstances are as follows: -

Exclusion by Statutory Provisions

The principle of natural justice may be excluded by the statutory provisions where the statute expressly provides for the

\textsuperscript{143.} (1993) 1 S.C.C. 78
observance of the principles of natural justice, the provision is treated as mandatory and the authority is bound by it. Thus, where the statute is silence as to the observance of the principles of natural justice, such silence is taken to imply the observance thereto and the Courts read into the provisions of the statute the observance of principles of natural justice. However, the principles of natural justice are not incapable of exclusion. These principles supplement law and they do not supplant the law and they may be excluded by the statute. When the statute expressly or by necessary implication excludes the application of the principles of natural justice, the Courts do not ignore the mandate of the legislature or the statutory authority and cannot read into the concerned provisions of the principles of natural justice as in case of A.K. Kraipak v. Union of India\textsuperscript{144}. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provisions conferring the power, the nature of power conferred, the purpose for which it is conferred and the effect of the exercise of that power as in case of Rash Lal Yadav v. State of Bihar\textsuperscript{145} and Umrao Singh Chaudhary v. State of M.P.\textsuperscript{146}

\textsuperscript{144} A.I.R. 1970 S.C. 150
\textsuperscript{145} (1994) 5 S.C.C. 267
\textsuperscript{146} (1994) 4 S.C.C. 328
It is also be noted that statutory provisions excluding the application of the principle of natural justice must not be violative of the Constitutional provisions as in case of *Gullapalli Nageshwar Rao v. A.P. State Road Transport Corporation*\(^1\). The exclusion should be based on reasonable ground and should not be arbitrary. If the exclusion is without any reasonable ground, it would be certainly arbitrary and violative of Article 14 of Constitution of India as in the case of *Delhi Transport Corporation v. D.T.C. Majdoor Congress*\(^2\) where the validity of Regulation 9(b) of the Delhi Road Transport Authority (conditions of Appointment and Service) regulations were challenged on the ground that this Regulation empowered the authority to terminate the services of the permanent and confirmed employee by issuing a notice without assigning any reason in the order and without giving any opportunity of hearing to the employee before passing the order for termination of services.

This regulation was held to be wholly arbitrary, uncanalised and unrestricted violating the principles of natural justice as well as Article 14 of the Constitution. Public Corporation or Govt. Company being state instrumentation are state within the meaning of Article 12 of

\(^1\) A.I.R. 1959 S.C. 1376

\(^2\) A.I.R. 1991 S.C. 101
the Constitution and as such they are subject to the observance of the fundamental rights embodied in Part-III of the Constitution as well as to confirm to the Directive Principle in Part-IV of the Constitution. The Service Regulations or rules framed by them are to be tested by the touchstone of Article 14 of the Constitution but the procedure prescribed by their Rules or Regulations must be reasonable, fair and just and not arbitrary, fanciful and unjust. In this case Justice Ray has observed that it is now well settled that audi alteram partem which in essence enforces the equality clause in Article 14 is applicable not only to the judicial and quasi judicial orders but also to the administrative order affecting prejudicially the party in question, when the application of the rules has been expressly excluded by the Act or Regulation or Rule.

**Exclusion by the Constitutional Provisions**

The principles of natural justice may be excluded by the express provision of the Constitution which are implicit in Article 14 & 21 and they are impliedly included therein. Consequently, express Constitutional provisions excluding the application of the principles of natural justice will prevail and here Article 311 (2) is notable. Article 311 provides protection to the civil servants and Article 310 incorporates the doctrine of pleasure developed and applied in England and the rule is that a civil servant of the Crown holds office during the pleasure of the Crown and his services can be terminated by the Crown without assigning any
reason at any time and without giving any compensation except where it is otherwise provided by a statute. The Crown is not bound by the contract of employment between it and a civil servant. The doctrine of pleasure is based on public policy and its operation can be modified by an Act of Parliament. Article 310 of the Constitution of India which incorporates the doctrine of pleasure is subject to Article 311 and the protection of Article 311 is available to all persons holding a civil post under the Union or a State Govt. including the members an All India Services. However, the protection of Article 311 is not available to the members of the Defence services or persons holding a civil post connected with defence outside the regular civil services.

**Article 311 (1)**

According to Article 311 (1) no person who is a member of a civil service of the Union or an All India Service or a Civil Service of a State hold a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he has been appointed.

**Article 311 (2)**

According to Article 311 (2) no person holding a civil post under the Union or a State including the members of an All India Service shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a
reasonable opportunity of being heard in respect of these charges. The dismissal or removal or reduction in rank must be by way of punishment which is determined by applying the test

- (a) whether the government servant has right to the post or rank
- (b) Whether he has been visited with civil consequences as in the case of Moti Ram Deka v. N.E. Frontier Railway\textsuperscript{149}.

If either of these two tests is satisfied, the dismissal or removal or reduction in rank will be by way of punishment so as to attract Article 311 (2) and the dismissal or removal or reduction in rank without giving the reasonable opportunity of being heard will be unconstitutional and arbitrary. The permanent servant has a right to hold the post and, therefore, his removal or dismissal or reduction in rank without giving him reasonable opportunity to defend will be unconstitutional as in the above case of Moti Ram Deka v. N.E. Frontier Railway\textsuperscript{149}.

However, a temporary govt. servant has no right to hold the post and, therefore, he may be dismissed or removed from service at any time by giving a reasonable notice. If the order of termination or reversion or reduction in rank costs stigma on the character or integrity of the govt. servant, it will be constitute a penal consequence so as to attract

\textsuperscript{149} A.I.R. 1964 S.C. 600
Article 311 (2) and hence, search order is required to be passed after inquiry and giving him reasonable opportunity to defend.

**Second Proviso to Article 311 (2)**

Second Proviso to Article 311 (2) create some exceptions to the rule of audi alteram partem. According to the proviso the aforesaid provisions of Article 311 (2) are not applicable in the following conditions-

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led his conviction on a criminal charge or

(b) Where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry or

(c) Where the President or Governor as the case may be, satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

In none of these conditions there is any need to hold any inquiry or to provide the servant reasonable opportunity of being heard.

In the case of **Tulsi Ram Patel v. Union of India**\(^{150}\) the Supreme Court has held that in these three conditions there is no need to hold an inquiry or to give reasonable opportunity of being heard or even

\(^{150}\) A.I.R. 1985 S.C. 1416
the service rule cannot confer on the servant the right of hearing in the aforesaid three conditions because the rule making power under Article 309 is subject to Article 311 and hence any rule contravening Article 311 would be invalid. In this case the Supreme Court has made it clear that Article 14 cannot be invoked to imply natural justice in the three clauses stated above and any action taken against the servant would be taken as malafide and invalid.

In the case of **D.T.C. v. D.T.C. Mazdoor Congress**\(^{151}\) the Supreme Court has held that absence of arbitrariness is the first essential of the rule of law which means that decision should be made by the application of known principles and rules and such decision should be predictable and the citizen should know where he is. If a decision is taken without any rule, it is unpredictable and such a decision is the anti-thesis of a decision taken in accordance with the rule of law. However, the rule of natural justice i.e. audi alteram partem rule while in essence and enforces the equality clause in Article 14 is applicable not only to the quasi-judicial orders but also to the administrative orders affecting prejudicially the party in question, unless the application of the rule has been expressly excluded by the Act or Regulation or Rule. The rule of law demands that it has to be observed both substantially and procedurally.

\(^{151}\) A.I.R. 1991 S.C. 101
In an another case of **State of Haryana v. Piara Singh**\(^{152}\), the Supreme has held that in service matter the Rule of Court is to ensure rule of and to see that the executive acts fairly and gives fair deals to employee as required under Articles 14 & 16. For example, if a Municipal corporation is established, the Govt. is not required to hear the residents of the Municipal area before taking decision for its establishment because the establishment of a Municipal Corporation is a legislative Act and the rule of natural justice are not applicable to the legislative Act as in the case of **Sundarjas Kanegala Bhatiyja v. Collector, Thane**\(^{153}\). According to **De Smith**\(^{154}\), the legislative act is the creation and promulgation of a general rule of conduct without reference to the particular case. In making the subordinate or delegated legislation also no hearing is required to be given unless the Enabling Act expressly provides for such hearing.

**Exclusion in case of Legislative Act**

The legislative act or function includes making of rules and regulations i.e. the delegated or subordinate legislation and it is well

\(^{152}\) A.I.R. 1992 S.C. 2130

\(^{153}\) A.I.R. 1990 S.C. 261

established that legislative function or legislative act is not subject to the principles of natural justice. According to Paul Jackson155 a Minister or any other body in making legislation is not subject to the rule of natural justice. For example, in the case of powers derived from the Royal Prerogative, the courts may refuse to interfere on the ground that the applicant has not been deprived of any legal right as in case of De Freitas v. Benny156 the Privy Council held that a Minister could not be required to disclose the evidence on which he based his advice on the exercise of the Royal Prerogative of Mercy because

"Mercy is not the subject of legal rights. It begins where legal rights end."

Lord Denning M.R. succinctly expressed this judicial attitude in R v. Secretary of State for the Home Department, ex.p. Hosendall157, "The rules of natural justice have to be modified in regard to foreigners here who themselves unwelcome and ought to be deported."

H.W.R. Wade in his book Administrative Law at page 482 has also stated that there is no to be heard before the making of legislation, whether primary or deregative unless it is provided by the statute.

155. Paul Jackson, Natural Justice, p.161
156. (1976) A.C. 238
157. (1977) W.L.R. 766, 778
In MRF Ltd. v. Inspector, Kerala Gove\textsuperscript{158} the court has made it clear that the principle of natural justice cannot be imported in matter of legislative action. If the legislative, in exercise of its plenary power under Article 245 of the Constitution, proceeds to act in a law, those who would be affected by that law cannot legally raise a grievance that before the law was made, they should have given an opportunity of hearing. Union of India v. Cynamide India Ltd.\textsuperscript{159}, Prag Ice & Oil Mills v. Union of India\textsuperscript{160}, C.L. Sahu v. Union of India\textsuperscript{161} and J.K. Synthetic Ltd. v. Municipal Board of Nimbehe\textsuperscript{162} are the recent Indian cases where it has been held that legislative function or act is not subject to the principle of natural justice but if there is a provision in the statute requiring the observance of the rules of natural justice, the provision must be complied with and thus in such condition the rules of natural justice would be required to be observed.

\textbf{Exclusion in case of Public Interest}

The observance of the principles of natural justice may be excluded in case such observance would cause injury to the public.

\begin{flushright}
\begin{enumerate}
  \item 158. A.I.R. 1999 S.C. 188
  \item 159. A.I.R. 1987 S.C. 1802
  \item 160. A.I.R. 1987 S.C. 1768
  \item 161. A.I.R. 1990 S.C. 1490
  \item 162. A.I.R. 1991 Raj. 1
\end{enumerate}
\end{flushright}
interest as in the case of Union of India v. Tulsi Ram Patel\textsuperscript{163} the Supreme Court made it clear that

"the rules of natural justice can be avoided if its observance will paralyse the administrative process. The cases of public interest include the defence of the country and maintenance of state secret and here the rule of natural justice may be excluded or avoided keeping in view both of these interests. Thus the authorities are not required to disclose the informations relating to the defence policy or defence matter because such disclosure may seriously jeopardize the defence planning of the Govt."

In the case of Union of India v. Tulsi Ram Patel\textsuperscript{163}, a permanent auditor in the Regional Audit Office, was convicted u/s 332 of the Indian Penal Code for causing head injury by iron rod to his superior officer, R.A.O. He was compulsory retired by the Disciplinary Authority under Rule 19(1) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 without holding enquiry and giving opportunity of being heard under Article 311 (2). The Supreme Court has held the order of compulsory retirement from service was valid under clause (a) of second proviso to Article 311 (2).

\textsuperscript{163} A.I.R.1985 S.C. 141
In one group of cases decided along with the case of Tulsi Ram Patel, some members of C.I.S.F broke down the discipline in the Force and deliberately destroyed the orders of the Superior. Military was called and there had been exchange of fire between Military and member of C.I.S.F. for a few hours. Situation was very violent and there was mass terror and threat to the loyal staff. The respondents who were members of the said C.I.S.F. were dismissed from service without holding inquiry under clause (b) of the proviso to Article 311(2) and Rule 37(b) of the C.I.S.F. Rules on the ground that it was reasonably practicable to hold inquiry. The Supreme Court held the order of dismissal of the members of the C.I.S.F. was valid under clause (b) to the second proviso to Article 311(2).

Similarly in another group of cases decided by the Supreme Court on the same grounds of Tulsi Ram Patel case, the Railway Employees were dismissed from services under clause (b) of second proviso to Article 311(2) and Rule 14 of the Railway Servant Rules for participating in the illegal all India strike of the Railway Employees. The Railway service was paralysed, loyal workers and superior officers were assaulted and intimated, public interest and public good were prejudicially affected. There was a great need for prompt and immediate action to bring the situation to normal and in these circumstances the
inquiry was not reasonably practicable. Hence the order of dismissal was held valid.

In another group of cases decided along with the case of Tulsi Ram Patel, the members of the M.P. Distt. Police and M.P. Special Arm Forces stationed at annual Mela at Gwalior indulged in violent demonstration and rioting, were dismissed from service by the order of Governor without making inquiry and giving the petitioners a reasonable opportunity of being heard. The Supreme Court held the order of dismissal was valid on the ground that in these circumstances prompt and urgent action was required and, therefore, holding of the inquiry would not have been in the interest of the security of the State.

It is to be noted that public interest is a justiable issue as in case of Maneka Gandhi v. Union of India164. The determination of the authority that the exclusion of the rule of natural justice is in public interest and is not final, the Court may examine whether the exclusion is necessary for the protection of the public interest. The Court can very well determine whether the exclusion of the principle of natural justice is in public interest or not. In this case, the Court has also held that in situation where prior hearing is dispensed with on the ground of public interest, opportunity of personal hearing must be given to the person

164. A.I.R. 1978 S.C. 597
concerned. If the public interest demands post decisional hearing, then it must be brought in action and post-decisional hearing means hearing after the decision or order.

**Exclusion in case of Emergency or Necessity**

The rule of natural justice may be excluded where prompt action is required to be taken in the interest of public safety or public morality or public health and in case of prompt action is required to be taken the pre-decisional hearing may also be excluded. For example where a person who is dangerous to peace in the society is required to be detained or externed as in case of Babu Lal v. State of Maharashtra\(^{165}\) or where a building which is dangerous to the human lives is required to be demolished as in case of Nathu Bhai v. Municipal Corporation Bombay\(^{166}\). A trade which is dangerous to the society is required to be prohibited and a prompt action is required to be taken in the interest of public and hearing before the action may delay the administrative action and thereby cause injury to the public interest and public safety as in the case of Cooverji v. Excise Commissioner\(^{167}\). The administrative determination is thus subject to the judicial review as in case of Swadeshi Cotton Mill v. Union of India\(^{168}\) where the Supreme Court has held

\(^{165}\) A.I.R. 1961 S.C. 484

\(^{166}\) A.I.R. 1959 Bombay 333

\(^{167}\) 1954 S.C.R. 873

\(^{168}\) A.I.R. 1981 S.C. 818
that the word ‘immediate’ in Section 18AA of the Industries Development and Regulation Act does not imply that the rule of natural justice can be excluded. The audi alteram rule is very flexible and adoptable concept of natural justice which can be modified to adjust and harmonize to need for special and obligation to act fairly and thereby the measure of its application may be cut short in reasonable proportion to the exigencies of the situation.

The doctrine of necessity has been well explained in Halsbury’s Laws of England where it has been stated that even if all the members of the Tribunal competent to determine a matter were subject to disqualification, they might be authorized and obliged to hear that matter by virtue of the operation of the common law doctrine of necessity which has been recognized and applied by the Supreme Court of India in Charan Lal Sahu v. Union of India\textsuperscript{169} and in case of Tata Cellular v. Union of India\textsuperscript{170} where the Supreme Court held that the acceptance of the tender of the company in which his son was employee could not be initiated merely because the said officer was a member of the Tender Evaluation Committee who was not a decision-maker at all and his involvement was necessary in view of Sec. 3(6) of the Telegraph Act.

Thus, the Court held that the acceptance of the tender could not be declared invalid on the ground of bias.

**Exclusion on the ground of impractibility**

Where the authority deals with a large number of persons it is not practicable to give all of them opportunity of being heard and, therefore, in such condition the Court does not insist on the observance of the rules of justice as in case of *R.Radakrishnan v. Osmania University*¹⁷¹ where the entire M.B.A. Entrance Examination was cancelled on the ground of mass copying and the Court held that it was not possible to give all the examinees the opportunity of being heard before the cancellation of the examination. Similarly in another case of *Bihar School Examination Board v. Subhash Chandra*¹⁷² the examination of all subject at one centre was cancelled on the ground of mass copying and the examinees were allowed to reappear at a supplementary examination. The Supreme Court held that the number of examinees was very large and it was impracticable to give all of them opportunity of being heard before passing the order.

**Exclusion in case of Confidentiality**

Some times the rule of natural justice is excluded in case of

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¹⁷¹. A.I.R. 1974 A.P. 283  
confidentiality as in case of *Malak Singh v. State of Punjab*\(^{173}\) where the Surveillance Register maintain by the police is a secret and confidential document and no one can claim access to it despite his name has been entered in the registrar. The observance of the rule of natural justice in such a case would defeat the purpose of surveillance and there is every possibility of the end of justice being defeated instead of being served.

**Exclusion in case of Academic Adjudication**

In the case of *Jawahar Lal Nehru University v. B.S. Narwal*\(^{174}\) the Supreme Court has held that the very nature of academic adjudication appears to negative any right of hearing where a student of the university was removed from the Roll on the ground of unsatisfactory academic performance without giving him any opportunity of hearing. The Supreme Court has made it clear that if the competent academic authority assess the work of a student over a period of time and thereafter declare his work unsatisfactory the rule of natural justice may be excluded and it is to be noted here that this exclusion does not apply in case of disciplinary matters.

\(^{173}\) A.I.R. 1981 S.C. 760

\(^{174}\) A.I.R. 1980 S.C. 1666
Exclusion when no right of the person is infringed

In case where the right of a person is not prejudicially affected, the application of the rules of natural justice is not attractive as in case of J.R. Vohra v. Indian Export House Ltd.\textsuperscript{175} where under the Delhi Rent Control Act limited tenancy can be created and it can be terminated on the expiry of its term. If the term of the limited tenancy is expired and warrant of position is issued to the tenant without any notice of hearing to him, the warrant of position cannot be held to be invalid on the ground that no hearing has been given to the tenant before the issue of the said warrant and by the issue of the said warrant no right has been violated and as a result the application of the rules of natural justice is not attracted.

Exclusion in the case of interim preventive action

The rules of natural justice is not attracted in the case of interim preventive order. For example in a case of Abhay Kumar v. K.Srinivasan\textsuperscript{176} an order was passed by the College Authority debarring the student from entering the premises of the college and attending the classes till the pendency of a criminal case against him for stabbing a student and the Court held that the order was interim and not final and

\begin{footnotesize}
\begin{itemize}
\item[175.] A.I.R. 1985 S.C. 475
\item[176.] A.I.R. 1981 Delhi 381
\end{itemize}
\end{footnotesize}
it was passed with the object of maintaining peace in the campus being preventiv in nature and the rules of natural justice were not applicable in the case of such order.

**Exclusion in case of fraud**

The rules of natural justice are not applicable and excluded in case of fraud as in case of **U.P. Junior Doctors Action Committee v. Dr. B.Sheetal Nandwani**\(^{177}\) where the admission obtained by fraud was cancelled without providing opportunity of hearing to the affecting candidates and the Supreme Court held that the circumstances in which such benefit has been taken by the candidates concerned do not justify the attraction of the application of the rule of natural justice and, therefore, the cancellation of the admission could not be challenged on the ground of not providing the opportunity of hearing to the affected candidates before passing the order of cancellation of admission. The Supreme Court in this case made it quite clear that opportunity of hearing is not necessary before passing the order of canceling the admission of the candidates when such admission has been secured by fraud.

**Effect of Breach of Natural .Justice**

When the Authority is required to observe the principle of natural justice in passing an order but fails to do so, the general judicial

\(^{177}\) A.I.R. 1991 S.C. 909
opinion is that the order is void. For example in case of Ridge v. Baldwin\textsuperscript{178} in England the Court held the decision of the authority void on the ground of the breach of rule of fair hearing. However, in case of Durayappah v. Fernando\textsuperscript{179}, the order passed without observing the principle of natural justice was held to be voidable and not void and the decision in this case has been much criticised. Griffith and Street have expressed the view that the failure to give a hearing renders a decision void and not merely voidable and the contrary decision in Durayappah case cannot be regarded as a good English Law\textsuperscript{180}

In India, the position is well settled and the order passed in violation of the principles of natural justice is void as in the cases of Nawab Khan v. State of Gujrat\textsuperscript{181}, State of U.P. v. Mohd. Noor\textsuperscript{182}, A.K. Kraipaipak v. Union of India\textsuperscript{183} and Collector of Monghyr v. Keshav Pd.\textsuperscript{184}

When the reasons for the decision are not given to the person concerned or reasons are not given to the Court, the order is quashed and

\begin{footnotesize}
\begin{enumerate}
\item (1964) A.C. 40
\item (1967) 2 A.C. 337
\item Griffith & Street, Principle of Administrative Law, p. 115, 231 (1973)
\item A.I.R. 1974 S.C. 147
\item A.I.R. 1958 S.C. 87
\item A.I.R. 1970 S.C. 150
\item A.I.R. 1962 S.C. 1674
\end{enumerate}
\end{footnotesize}
the authority is directed by the Court to examine the matter afresh as in case of *Bhagat Raja v. Union of India*\(^{185}\) and in case of *Travancore Rayons v. Union of India*\(^{186}\). When the reasons are not communicated to the person concerned that they are on record and in some cases as in *Ahmedabad Municipality v. Raman Lal*\(^{187}\) and in *I.M.A. Industries v. Union of India*\(^{188}\), the court has upheld the action but in some other cases as in *Ajantha Industries v. Central Board of Direct Taxes*\(^{189}\) the court has not upheld it because the court has held that recording of reasons on the file is not sufficient and it is necessary to give reasons to the affected person and in this case the order was quashed on the ground that the reasons were not communicated to the person concerned. The view expressed in this case appears to be the better view and reasons are always to the benefit of the party concerned and they should be communicated to the person concerned and they should not be confined to the record or file.

5. **RECENT DECIDED CASES IN APEX COURTS OF INDIA**

Following are the recent decided cases of Hon’ble High Court as well as Supreme Court in which Principle of Natural Justice is involved:

185. A.I.R. 1967 S.C. 1606
186. A.I.R. 1971 S.C. 862
188. A.I.R. 1980 Delhi 200
189. A.I.R. 1976 S.C. 437
Lachhman Singh Chopra v. State Bank of India\textsuperscript{190}.

Departmental Inquiry was conducted and the petitioner was dismissed from service. Wednesbury principle that Punishment whether disproportionate and Petitioner appellant found guilty by Inquiry Officer of the misconduct for accepting bribe for sanctioning loan to farmers. Disciplinary Authority the basis of Inquiry Report dismissed the petitioner / appellant from service. Appeals before appellate and revisional authorities, failed that Writ petition filed by petitioner / appellant before High Court also dismissed by Single Judge. Appeal against the above order held that, principle of natural justice have religiously been complied with by the punishing, appellate and revisional authorities. Wednesbury principle would not be attracted. It is for the Disciplinary Authority to decide the quantum of punishment. Charges leveled against the petitioner / appellant were serious in nature and stood proved. No interference of Courts, warranted. Order and judgment passed by Single Judge, upheld. 2007 (1) RSJ 45, 2001 (1) S.C.T. 214 and 2006 (2) S.C.T. 219, relied. 2011 (1) S.C.T. 249, Distinguished.

Panchmahal Vadodara Gramin Bank v. D.M. Parmar\textsuperscript{191}

Disciplinary proceedings. Dismissal from service. The Petitioner was

\begin{itemize}
\item \textbf{190.} 2011(4) SCT 353 (P&H)(D.B.)
\item \textbf{191.} 2011(4) SCT 725(SC)
\end{itemize}
dismissed from Service. Proportionality and validity of Reasonable opportunity of hearing, whether not given to delinquent in the Enquiry Proceedings held that documents called by delinquent during enquiry has been found by Enquiry Officer as not relevant for the charges against delinquent. If the said documents were not allowed to be inspected by delinquent Officer, there has been no violation of principles of natural justice. Charges against him were of serious nature which were largely proved. Findings of Enquiry Officer include not only serious acts of negligence by delinquent but also acts of dishonesty and lack of probity. Punishment of dismissal from service was not shockingly or strikingly disproportionate to gravity of charges, 1996 (2) SCT 760, (2005)4 SCC 364 and 2010(4) SCT 120, relied upon 2006(2) SCT 446, 2009(1) SCT 563 and (2003)9 SCC 480, distinguished.

**State of Tripura v. Puranjoy Nath**

Cancellation of Appointment after 17 years. Petition filed against the above order in the double bench of Gauhati / Agartala bench and held that Petitioners duly participated in selection process and a merit list was also prepared. Appointments cancelled after 17 years. Petitioners were not even informed, by issuing any appropriate notice, regarding

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**192. 2012(1) SCT 41 (Gauhati) (Agartala Bench)(D.B.)**
remiss committed by them or illegality that occurred in their appointments, warranting termination of their services. Apart from an omnibus statement of vague allegation of selection process itself being void, there was no material or particulars mentioned in impugned memorandum justifying cancellation of appointments. Principles of natural justice violated. Order directing reinstatement without any backwages upheld and appeals dismissed.

**Gupta and Gupta Chartered Accountants v. Reserve Bank of India**

This case Writ Petition No. 10672 of 2009 decided on 10.10.2011 in Delhi High Court where Gupta & Gupta Chartered Accountants were petitioners and Reserve Bank of India and others were respondents. Mr. H.S. Parihar, Advocate appeared for respondent No. 1 and Sh. Jagdeep Kishore, Advocate appeared for respondent No. 2 and 3. Banking companies (Acquisition of Transfer of undertakings) Act, 1970. Appointment and Removal of SCA. Petitioner a firm of chartered accountants excluded from panel of Statutory Central Auditors for a public sector Bank. Discontinuance on account of complaint made to RBI against petitioner by PNB which was accepted and acted upon by RBI. RBI accepted complaint by PNB without seeking explanation.

193. **2012(1) SCT 571 (Delhi).**
from petitioner on PNB's specific allegations. RBI as a holder of power to appoint and remove an SCA has to exercise such power in a fair and reasonable manner after following a just procedure which comports with principles of natural justice. Allegations concerning competence and integrity of an SCA selected by RBI through a fairly rigorous process cannot be permitted to be made lightly and equally accepted on face value without some probe by RBI. Decision of RBI held to be violative of principles of natural justice and was therefore, illegal. Said decision of RBI will not come in way of Petitioner being hereafter appointed SCA in accordance with norms devised by RBI.

**Sanjay Kumar Singh v. Union of India**

**Central Reserve Police Force Rules, 1955. Rule 27 (c).**

The above case was heard in Hon’ble Supreme Court of India before Justice Mukundakam Sharma and Anil R. Dave in Civil Appeal No. 4888, 4885, 4886 and 4887 of 2005 and the case was decided on 06.09.2011. Appellants were detailed to go in two vehicles one as escort and other a water tanker for bringing water. While both the vehicles were on their way to the water point Militants ambushed the vehicles and started firing indiscriminately. Five CRPF Personnel in the escort vehicle were killed. Appellants were the four who survived the ambush. Appellants suspended from service for committing

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194. 2012(1) SCT 184(SC).
disobedience of orders, gross misconduct and displaying cowardice in execution of their duties and in their capacity as members of CRPF. No violation of principles of natural justice as alleged by counsel of appellants. Reasonable opportunity granted to appellants at every stage. Drivers of both the vehicles did not carry arms as per hand book of CRPF. Charge sheet issued to appellants much before seven days as required to be done prior to holding of the trial. Therefore no prejudice caused to the appellants because one of the witness was examined in trial before expiry of 48 hours after reading out the charges to them, in view of the fact that they were made aware of contents of charges much prior. List of witnesses making it clear that there could be any other witness other than those cited specifically in the list. Appellants specifically did not opt for Defence Assistant and in fact cross examined the witnesses themselves. No violation of principles of natural justice. Punishment awarded not disproportionate to the offences alleged. Therefore findings by Benches of High Court cannot be interfered with lightly. In the present case two benches of the High Court after looking into the records have found that there is no violation of the principles of natural justice and that the charges have been established against all the appellants and that the punishment awarded is not disproportionate to the offences alleged. After the said findings have been recorded by the learned Single Judge and the
Division Bench, there is hardly any scope for this Court to substitute its findings and come to a different conclusion, by reappreciating the evidence. The findings recorded by the Benches of the High Court are concurrent findings and the same cannot be interfered with lightly. In our considered opinion, to re-appreciate the evidence and to come to a different finding would be beyond the scope of Article 136 of the Constitution of India. Therefore, we hold that the judgment and order passed by the High Court suffers from no infirmity. Accordingly, the appeals have no merit and are dismissed but without any order as to costs. Appeal dismissed. 1994(1) S. C. T. 319: 2010(2) S.C.T. 628, relied on.

**S.C. Sharma v. Central Administrative Tribunal, Chandigarh Bench, Chandigarh** 195.

The above case CWP No. 8197-CAT of 2011 decided on 16.05.2011 was heard in the Hon’ble Punjab and Haryana High Court D.B. of Justice M.M. Kumar and Justice Jitender Chauhan. Article 311 and 226- Dismissal from service. Proportionality of punishment challenged and held that Courts are not a Court of Appeal over and above the Enquiry Officer, Disciplinary Authority or the Appellate / Revisional Authority. If the Enquiry Officer, Punishing Authority or the Appellate Authority has proceeded on the basis of wholly irrelevant
consideration or in violation of principles of natural justice only then the Courts are empowered to interfere with the quantum of punishment imposed. When the principles laid down in the aforementioned judgments are applied to the facts of the present case, we find that the Wednesbury principles, as per the guidelines given in Rameshwar Prasads case (supra) would not be attracted because principles of natural justice have been religiously complied with. Therefore, the impugned orders passed by the punishing, appellate and revisional authorities would not require any intervention. For the reasons aforementioned, we find no merit in the instant petition. Accordingly, the same is dismissed.

**Harbans Lal v. Bank of India**

This case was heard before Justice M.M. Kumar and Justice Arvind Kumar in L.P.A. No. 1663 of 2010 (O&M) decided on 04.08.2011 in which Shri H.C. Arora, Advocate appeared on behalf of Sh. Harbans Lal, Appellant and Sh. K.P.S. Dhillon, Advocate appeared on behalf of respondents. The petitioner was dismissed from service on the basis of embezzlement and misappropriation. Copy of inquiry report not served on the appellant and categorical Confession alongwith admission of guilt by dismissed employee who is appellant. Finding of

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Departmental enquiry well based and supported by evidence in addition to confessional statement. Appellant found guilty of embezzlement after holding an inquiry in accordance with procedure laid down in the Rules. **Principles of Natural Justice followed at the stage of holding of enquiry.** Appellant was also granted personal hearing. Merely because a copy of inquiry report not sent to the appellant would not vitiate the proceedings. No prejudice for non-supply of inquiry report has been suffered by appellant particularly when he himself has confessed the acts of issuance of bogus receipts and misappropriation. Appeal dismissed. 1991(1) SCT 111 : 1994(1) SCT 319, relied on.

A and N Islands Integrated Devp. Corp. Ltd. v. Regional Provident Fund Commissioner

**Employees Provident Funds and Miscellaneous Provisions Act, 1952, Section 7-1.** The above case was heard in the Hon’ble Calcutta High Court in Writ Petition No. 1160 of 2010 decided on 25.01.2011 before Justice Sanib Banerjee in which A and N Islands Integrated Devp. Corp. Ltd. was petitioners and Ms. Anjili Nag, Advocate appeared for petitioners and S.Karmakar, Advocate appeared for the respondents. Alternative remedy. Provident Fund authorities applied the provisions of CPWD Manual in relation to the first writ petitioner

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197. 2012(1) SCT 124(Calcutta).
without making him aware thereof and **Principles of natural justice apparently violated.** Existence of alternative remedy held, was no bar in such case. Matter directed to be reconsidered by authority after giving hearing to the petitioner. However, it is made clear that the merits of the order have not been gone into and it will be open to the appropriate authority to pass the same order, if found suitable, after hearing the petitioners on the applicability of the CPWD Manual to the first petitioner. W.P. No. 1160 of 2010 is allowed accordingly without any order as to costs. Petition was allowed by the Hon’ble Court.

**Madhukar Tulsiram Tayade v. Chairman Board of Directors, Vidarbha Kshetriya Gramin Bank, Akola**\(^{198}\)

The above Writ Petition No. 341 of 2011 was decided on 15.03.2011 was heard in the Bombay High Court (D.B.) before Justice D.D. Sinha and Justice A.P. Bhangale in which petitioner was represented by M.M. Sudame, Advocate and the respondents were represented by N.W. Almelkar, Advocate. Removal from Service – No opportunity of hearing afforded to petitioner by appellate authority by appellate authority and also no reasons given for confirming punishment awarded by disciplinary authority. It was held that the order suffers from non-application of mind and is violative of principles of natural
justice. Hence, we have no hesitation in holding that the impugned order suffers from non-application of mind and is violative of principles of natural justice and, therefore, cannot be sustained in law.

For the reasons stated hereinabove, the impugned order dated November, 29, 2010 passed by the Board of Directors is hereby quashed and set aside. It is open for the respondents to reconsider the appeal and to take a decision by following the principles of natural justice, within a period of three months, by passing a reasoned order.

Rule is made absolute in above terms and no order as to cost.

_**Chhayaben Sureshchandra Arya v. State of Gujarat**_[199]

This case of Special Civil Application No. 504 of 2011 decided on 31.01.2011 before Justice Abhilasha Kumari in which Sh. P.H. Pathak, Advocate appeared for the petitioner and Sh. K.P. Rawal, Advocate and Govt. pleader appeared for the respondents State of Gujarat & others. Constitution of India Article 16 Transfer of service and repeated transfers challenged on the allegation of malafides. The Hon’ble High Court had directed Secretary, Health and Medical Services to decide representation of petitioner against order of transfer taking into consideration allegations of malafides and pass reasoned order. Representation of petitioner however rejected by Commissioner,

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199. 2012(1) SCT 58 (Gujarat).
Commissionerate of Medical Services and not by Secretary, Health and Medical Services who was so directed did not decide allegations of malafides. No reasoned order passed. Hence, order rejecting representation liable to be set aside.

**Balbir Singh Analyst v. State of Haryana**

**Articles 14 and 16** – Retrospective Promotion and Petitioner joined on the post of Analyst on 6.5.1986 by direct recruitment. While respondent No. 3 who was working on the junior post as Senior Analytical Assistant was subsequently promoted to post of Analyst on 17.12.1986. He remained junior to petitioner and official respondents suddenly gave retrospective promotion to Respondent No. 3 with effect from 30.10.1984 thus rendering the petitioner junior to him without issuing any notice or providing opportunity of being heard to petitioner. Doctrine of audi alteram partem and rules of natural justice completely violated by Respondents. No other cogent evidence on record even to suggest remotely that any post of promotional quota in the cadre of Analyst was vacant in the year 1982 as pleaded by respondents. No cogent explanation for the coming that why respondent No. 3 was not promoted with effect from 1982 and why he was subsequently promoted with effect from 30.10.1984. Thus,

200. 2011(3) SCT 336(P&H).
Respondent No. 3 cannot legally be granted retrospective promotion over and above the petitioner who had joined by direct recruitment when respondent No. 3 was not even born in the indicated cadre. 

Promotional order being illegal, arbitrary and against the principles of natural justice cannot legally be maintained thus set aside. 2010(3) SCT 343 : 1991 SCC (L&S) 1070, relied on.

Justice P.D. Dinakaran v. Hon’ble Judges Inquiry Committee

Articles 14, 121 and 124 – Judges (Inquiry) Act, 1968, Sections 3(2)(c) – Natural Justice and an enquiry committee was constituted. Apprehension of bias in the mind of delinquent because of inclusion of a person as a member of the committee with a prejudiced mind. The member alleged to be biased had participated in the seminar organized by the Bar Association of India and made speech opposing elevation of the petitioner as Judge of Supreme Court and drafted the resolution against him. It was held that the natural justice is a branch of public law and Principles of natural justice control all actions of public authorities by applying rules relating to reasonableness, good faith and justice, equity and good conscience. Natural justice is a part of law which relates to administration of justice. It requires that justice should not only be done, but must be seen to be done.

201. 2011(3) SCT 704 (SC).
Apprehension of bias has to be seen from the view point of the delinquent not from the angle of the court. Therefore, fairness and interest of justice requires that such a member should be replaced from the enquiry committee. Competent authority from quested to replace the said member of the committee without interfering with the proceedings already taken up by the committee.

**Ombir Singh v. Union of India**\(^{202}\)

Articles 14, 16 and 311 – Punjab Prisons State Service (Class-III) Executive Rules, 1963, Rule 15 – Punjab Civil Services (Punishment and Appeal) Rules, 1970, Rule 8 – Punjab Jails Department Executive (Punishment and Appeal) Rules, 1948, Rule 10. Public Servant found guilty of Misconduct and Departmental Inquiry was held where the petitioner was removal from service. Justification of Petitioner served with a charge sheet on basis of misconduct committed by him. Inquiry Officer submitted his report to the Disciplinary Authority and Dissatisfied with the reply given by the petitioner, the Disciplinary Authority removed him from service. Appeal and revision filed by petitioner were dismissed. Original application filed by petitioner before Central Administrative Tribunal, also failed. Writ against – Held, that once no procedural lapse has been pointed out, the findings

\(^{202}\) 2011(3) SCT 777(P&H)(D.B.).
of Enquiry Officer are based on evidence and charges have been established. Tribunals and Courts are not a Court of Appeal over and above the Inquiry Officer, Disciplinary Authority or Appellate / Revisional Authority. Plea of petitioner that he had been acquitted in the criminal case and there was no legal warrant to hold departmental inquiry, is not acceptable. Inquiry proceedings and criminal proceedings could be conducted even simultaneously. Acquittal in criminal proceedings does not bar the departmental proceedings. No violation of principles of natural justice or the petitioner has been treated unfairly. Once the findings of Inquiry Officer are well based and procedural requirements as contemplated by Rules, have been complied with, quantum of punishment cannot be interfered with order of removal of service of petitioner, upheld. (2004) 7 SCC 442; (2005) 10 SCC 471; (1991) 4 SCC 385; (1999) 2 SCT 660 and 2007 (1) RSJ 45, relied upon.