

# PRINCIPLES OF NATURAL JUSTICE

*Lecture delivered by Justice T.S.Sivagnanam*  
**at Tamil Nadu State Judicial Academy on 01.06.2009**  
**to the newly recruited Civil Judges (JR Division) during Induction Programme 2009**

All of you who have assembled here have been newly Inducted in to the Judicial Family. There lies an onerous responsibility on each one of you to carry forward your office with dignity and decorum. The post of Civil Judge Junior Division is the foundation of our Judicial Structure. It is common knowledge that unless the foundation is strong and firm, one cannot raise a tall edifice on it. The Subordinate Judiciary is the root of our Judicial system and each one of you should strive hard to inspire confidence in the society that they would get Justice. With these words let me proceed to the topic for the day.

The Judicial Academy has classified the subject allotted under the head - General Topics. Though I may not strictly agree with such classification, it is to be noted that though the topic would appear to be general in nature, its roots are deeply embedded and its forms the basis for administration of Justice which is so essential to preserve social order and security.

I am aware of the nature of litigation which would be assigned to a Civil Judge Junior Division and it is all the more essential that all of you observe the principle in both your Judicial as well as your Administrative work.

For the sake of convenience I propose to analyze the topic – Principle of Natural Justice under the following heads.

1. The Principle and its essential elements
2. How the name came ?
3. How it developed over the years ?
4. How and where it has to be applied ?

### **1. The Principle and essential elements of Natural Justice:**

In a famous English decision in *Abbott vs. Sullivan* reported in (1952) 1 K.B.189 at 195 it is stated that “the Principles of Natural Justice are easy to proclaim, but their precise extent is far less easy to define”. It has been stated that there is no single definition of Natural Justice and it is only possible to enumerate with some certainty 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 I shall refer at the appropriate place and these Judgments 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

- i. The parties to a proceedings must have due notice of 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.

### **2. 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* (1929) 1 Ch. 602, 624 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”.***

***Natural Justice has been defined in various cases and a few instances are given below.***

- In *Drew V. Drew and Lebura* (1855 (2) Macg. 1.8, Lord Cranworth defined it as **“universal Justice”**.
- In *James Dunber Smith v. Her Majesty the Queen* (1877-78 (3) App Case 614, 623 JC) Sir Robert P. Collier, Speaking for the Judicial Committee of Privy Council, used the phrase **‘the requirements of substantial justice’**.
- In *Arthur John Specman v. Plumstead District Board of Works* (1884-85 (10) App Case 229, 240), Earl of Selbourne, S.C. preferred the phrase **‘the substantial requirement of justice’**.
- In *Vionet v. Barrett* (1885 (55) LJRD 39, 41), Lord Esher, MR defined natural justice as **‘the natural sense of what is right and wrong’**.
- While however, deciding *Hookings vs. Smethwick Local Board of Health* (1890 (24) QBD 712), Lord Fasher, M.R. instead of using the definition given earlier by him in Vionet’s case (supra) chose to define natural justice as **‘fundamental justice’**.

- In Ridge v. Baldwin (1963 (1) WB 569, 578), Harman LJ, in the Court of appeal countered natural justice with ***'fair play in action'*** a phrase favoured by Bhagwati, J. in Meneka Gandhi vs. Union of India (1978 92) SCR 621).
- In Re R.N. (An Infant) (1967 (2) B. 617, 530P, Lord Parker, C.J., preferred to describe natural justice as ***'a duty to act fairly'***.
- In Fairmount Investments Ltd., vs. Secretary to State for Environment (1976 WLR 1255) Lord Russell of Willowan somewhat picturesquely, described natural justice as ***'a fair crack of the whip'***
- Geoffrey Lane, LJ in Regina vs. Secretary of State for Home Affairs Ex Parte Hosenball (1977 (1) WLR 766) preferred the homely phrase ***'common fairness'***.

### **3. 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 be pursued will not disqualify a magistrate. The interest or bias which disqualifies is an interest in the particular case, something reasonably 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 reported in AIR 1985 Supreme Court page 1416. 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. Though 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 which we had seen at some length in the previous part of this lecture.

In the case of Tulsiram 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 now 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 examine them.
- To lead his own evidence both oral and documentary, in his defence.

The Hon'ble Supreme Court in AIR 1963 SC page 1, Viswanathan vs. Abdul Wajid while adjudicating a civil dispute in respect of the Estate of one Ramalinga 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 todays topic it would be useful to refer to paragraph 40 and 41 of the Judgment which is as follows.

*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 if 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 his 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 requirements of the judicial process are assured: correctness of the judgment in law or on evidence is not predicated as a condition nfor 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 impartiality on the part of a Judge will be regarded as a nullity and the trial coram non iudice.*

The Hon'ble Supreme Court in *Canara Bank and others vs. Sri Debasis Das and others* reported in AIR 2003 Supreme Court 2041 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.
- It is the substance of Justice which is to be secured by both and 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 Audi Alteram Partem.
- Notice should apprise the party the case he has to meet.
- Adequate time should be given to make his representation.

In reason 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 (AIR 1999 Supreme Court page 2583). 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 thinks 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 reported (2004) 6 SCC 311, 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 compliant of violation of Principles of Natural Justice the Court may insists on proof of prejudice before interfering or setting aside an order.

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 AIR 1999 SC 2322 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.*

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 AIR 1990 Supreme Court 1984 in S.N.Mukherjee vs. Union of India 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. 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 requirement 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 *Meneka Gandhi vs. Union of India* reported in AIR 1978 Supreme Court 597 the Hon'ble Supreme Court discussed the increasing importance of Natural Justice and observed that Natural Justice is a great humanizing principle 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 of 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 play 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*: - (1969) 2 Ch. D 149 "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".*