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NATURAL JUSTICE: A STUDY OF ITS ABSORPTION IN JUSTICE DELIVERY SYSTEM

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ABSTRACT

Natural Justice by now is an inseparable principle in justice delivery system. Its origin in law is traced to 1817 in Cambridge University case by holding that a degree conferred can not be revoked without giving a hearing. To prevent misuse another principle of Natural Justice emerged that the authority giving hearing ought to be un-biased. Side by side there has been persistence to confine the borders of Natural justice by keeping it within the judicial operations. In its development, it stands extended to quasi -judicial adjudications also. However, a dramatic turn came in 1970 in A.K. Kraipak . The supreme court observed that if the purpose of Natural Justice is to prevent miscarriage of justice, one fails to see why it should be made inapplicable to administrative inquiries. On the other, application of Natural Justice in presence of statutory provisions was resisted initially in Gopalan's but in Maneka Gandhi's its application was allowed by holding that the procedure under which passport is impounded ought to be fair. Clearly showing the trend of its absorption for justice delivery system. In addition, the legislations also provide space for Natural justice especially while dealing with the procedures to be followed by the Adjudicatory Tribunals as neo trend in legislative drafting. This apart, it is perceived that the principle of natural justice ought not be confined by legislative dictate as it will be suicidal for the principal. At the same it need not be stretched to unnatural limits as observed by courts in India. In this way, the Research topic has been deliberated on Doctrinal Methodology on the strength of primary and secondary source of data whereby one source of data has been corroborated with the other for arriving at certainty.

Keywords: Natural Justice, Justice Delivery, Right of Hearing, Bias, Unfairness, Tribunal, Statutory Provisions

INTRODUCTION:

Nature is considered to be the best teacher of which man is an integral part guided and influenced nature in general. William words worth has said, "Let nature be your teacher.[1]"On the other, man

[1] The Complete Poetic Works of William Wordsworth: Together with a description of the Country of the Lakes in the North of England Page 337 (1837)

is said to be a social animal [2]and lives in society where his interaction may be for greatest happiness of greatest number or it may result in conflict which warrants resolution in accordance with set norms what may be termed as law. The resolution mechanism usually has its essence in relative justice what may be termed as Justice in accordance with law. Therefore, when the law is codified, the Absolute justice may in some eventualities have a miss. It is in such circumstances that the natural justice emerges for filling the vacuum in justice delivery system. A complex situation arose in Dr. Bentley's[3] case in England in 1718 where Cambridge University revoked a Doctorate degree conferred on Bentley after undergoing BDS course of the University. The revocation of degree was without hearing the aggrieved doctor in the result ensued into litigation. The basic challenge, in absence of law, being not providing right of hearing before revocation of a Degree. The aggrieved relied on Biblical authorities[4] where the God gave hearing to Adam before terminating him from heaven on the fault of plucking and eating the forbidden Apple. Accordingly, if the God has given hearing to man why an Institute like Cambridge cannot afford the hearing before adopting coercive act of revocation of degree. The Judgement went in favor of aggrieved and since then, the principle emerged that 'no person can be punished without giving an opportunity of hearing to him.'[5]This seems to be the first adoption of Natural Justice in Adjudicatory mechanism. Thereafter, in number of cases it has been followed except where specifically excluded by law[6].

NATURAL JUSTICE:

Thus, one understands the basic limb of natural justice as Right of hearing. But in number of cases though the right of hearing was apparently given but in effect it was a sham act merely to comply with the principle[7] either because the notice was defective as bare bone notice without mentioning the time , place, agenda and authority before whom the person has to appear and for what etc . In

[2] Aristotle, the legendary Greek Philosopher '. . . Man is by nature a social animal'.
[3] R V. The Chancellor, Master & Scholars of the University of Cambridge 1, Strange 56/557= 93 ER 698/703. Referred in Canara Bank V. Awasthi AIR (2005) Sc page 2090 para 10
[4] Genesis -1 and other parts of Abrahamic Religion – Judaism /Christianity
[5] Audi Alteram Partem
[6] Provisos to Article 311 (2) of the constitution of India, 1950
[7] K.A. Abdul Khader V. Dy. Director AIR 1976 Madras 235, State of UP V. Mohmad Sharif AIR 1982 SC 937, Nasir Ahmed V. Assistant Custodian General AIR 1980 Sc 1157 (Bare Bone Notice)

some cases, though the notice has been given but the person to whom it was given avoided to receive and/or made its receipt impossible in a way courts [8]in India construed such act on part of notice as the 'Waiver of Right'. As such the natural justice has been adopted in India especially in Justice delivery system but adopting balance so that natural justice may not be stretched to un-natural limits. It can not be put in a straight jacket formula[9] .

EVOLUTION OF NATURAL JUSTICE:

In its evolutionary phase of developing the 'Right of Hearing, 'the Principal of Bias raised its head. Though the hearing was given but the authority giving such hearing was connected to the issue to reflect disregard and/or mockery of the principal. Catena of cases are there since past from India as well as from abroad. The principale involves being that ' no person can be judge in his own case[10]'The analysis of all the cases makes one to feel for categorization of such cases involving Bias. For clarity the Bias can be i) Pecuniary ii) Personal Bias or iii) Bias as to Subject matter. The student of law knows that best example of pecuniary bias is Grand Junction Canal Case [11]. For Personal Bias reference can be made to supreme court judgement in Meen Glass case [12] and/or Thane Housing Society [13], besides many more especially the leading case of A.K.Kraipak [14] which changed the scenario and extended the natural justice not only to adjudicatory mechanism but also administrative actions once such actions are unfair, capricious and/or cause mis-carriage . In the observations of Justice Hegde, " . . . *if the purpose of the rules of natural justice is to prevent miscarriage of justice, one fails to see why those rules should be made inapplicable to administrative inquiries."*

INDIAN SCENARIO:

[8] UP Singh V. Board of Governors, MACT AIR 1982 MP 59
[9] Dr. Gajanand Aggarwal V. State of Haryana (9th May ,2011) Punjab & Haryana High Court
[10] Nemo debet sees judex propria causa
[11] Dimes V. Grand Junction Canal (1852) 3 HLC759
[12] Meen Glass Tea Estate Workmen AIR 1963 Sc 1719
[13] Jeejee Bhoy V. assistant Collector , Thane AIR 1965 1096
[14] A.K. Kraipak V. Union of India AIR 1970 Sc 150 , A Judgement by five Judges namely Hidayatullah (CJ0 , J.M Shelat , Bhargava, Hegde & A.N. Grover

In India natural Justice is in-separable part of Justice delivery system. Even in framing Legislations care is being taken that natural justice is adhered. Since constitutional days especially from the era of creation of Tribunals for administration of Justice, one finds adherence by the Tribunals to the Natural Justice as a legislative mandate incorporated in the legislation itself [15]. The Legislation establishing Tribunal for justice delivery system loathes it with powers of administering justice by not being bound by civil procedure, at the same adhering to the Principals of Natural Justice. This shows the trend for adoption and respect for Natural Justice by the Legislation. The Executive/Administrative actions have also yielded towards the Principals of Natural Justice especially in areas of Qasi-Administrative actions including those covered by departmental proceedings. The service rules in government, public sector and/or in other sectors provide ample evidence for the same[16] . Non- adherence to Natural Justice is a potent ground for Judicial Review of administrative action and/or any other act of state warranting such action.

JUDICIAL APPROACH:

Since the advent of Principle of Natural justice, its area of operation expanded both in terms of concept as well as spheres of applicability in different system of governance. The position is such that the concept has by now attained respectability. The areas still under debate being whether the non-adherence to Natural Justice makes action void or voidable[17], its cure at appellate stage, besides the outer limits including dispensation/Limitations of Natural Justice. As per the Supreme Court, the object of the Natural justice is to secure justice. In other words, to prevent miscarriage of justice. Accordingly, the rules of Natural Justice can operate in the spheres not covered by law. The principles of Natural Justice is to supplant the law but not supplement it as observed in

[15] Section 36(1) of The Competition Act, 2002, Section 22 (1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and almost all the Acts on Tribunals in India cover the area that Tribunal shall be guided by Natural Justice. The Acts related to Tribunal do not bound the Tribunals by Civil Procedure Code.

[16] The All India Administrative Services (Discipline and Appeal) Rules ,1969 ; The Central Civil Service (Classification , Control & Appeal) Rules,1965 ; State Bank of India Service Rules and like others .

[17] For non -adherence and the action declared void refer to Ridge V. Baldwin (1964) AC 40 though Lord Evershed & Devlin hold it as Voidable in PC in Durayappah V. Fernado (1967) AC 337 . Similar case on Void consequences being Nawab Khan V. State of Gujrat AIR 1974 Sc 1417 ; A.R. Antulay V. R.S. Nayak (1988)2 SCC 602 ; R.B.Shree Ram Durga Dass V. settlement Commissioner (1989)1 SCC 628 . But for Voidable consequences refer to Maneka Gandhi V. Union of India AIR 1978 Sc 597 ; Swadeshi Cotton Mills V. Union of India AIR 1981 Sc 818 ; Tea Trading Corporation V. P. Tea Co (1981) 4 SCC 113

A.K.Kraipak [18]case. The debate has been there but in different form in the matter of A.K. Gopalan in 1950 where one of the contention was that the '. . . procedure established by law' in Article 21 of the constitution of India ought to be taken as 'Due Process', in other words the Natural Justice. The contention was negatived in presence of unambiguous terminology in Article 21 of the Constitution of India . However in its passage and process what was denied in Gopalan case was introduced in Maneka Gandhi Case[19] in 1978 by holding procedure adopted for impounding of passport must be fair. It was observed that section 10 (3) (c) and (5) though an administrative order is open to challenge on the ground of mala fide, unreasonableness , denial of natural justice and ultra vires . The scope of justice delivery system and reliance on Natural Justice by now is inbuilt with still possibility of stretching it further to meet the justice in its 'Absolute Form'. Case after case before the Supreme Court is a means towards justice delivery system and adoption of principles of natural justice. The Judicial Approach on the subject is seen to be cautious by expanding its ambit on one side and also by providing limitation on its frivolous use, preventing its stretch to un-natural limits.

CONCLUSION:

Keeping aforesaid deliberations in view, it can be deduced with certainty that the Natural Justice has itself carved out a space in Justice Delivery System in India. However, its boundaries are embarked by Legislations as well as by Judicial decisions to prevent vagueness. As already deliberated that Natural Justice is to supplant the law but not supplement it. Natural Justice cannot substitute the positive law but is a pointer towards absolute justice delivery mechanism. Misuse of Natural Justice and/or indifference to it is a ground for judicial Review in quashing the proceedings and/or declaring the action under challenge as non-est and/ or for adoption of Wednesbury principle[20]whereby the matter under challenge is remanded back to the appropriate authority for curative measures by quashing the part of proceedings /action which suffered by malice or tainted with violation of natural justice. Accordingly, the title under discussion 'Natural Justice: A Study

[18] At note 14
[19] Maneka Gandhi V. Union of India AIR 1978 Sc 597
[20] Wednesbury Principle propounded in (1947) 2 All ER 680 followed in CCSU (1984) 3 All E R 938. For Indian context Reference inter-alia may be made to Union of India V. G. Ganayutham (1997) 7 SCC 463

of its Absorption in Justice Delivery System' is substantiated keeping Indian scenario in consideration.