



A STUDY RELATING TO PRINCIPLES OF NATURAL JUSTICE IN DOMESTIC INQUIRY

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ABSTRACT

Whenever an employee is sought to be dismissed or punished, it is usual for the employer or senior officers representing the employer to conduct departmental enquiries for the purpose of finding out whether the proposed action of dismissal or punishment is warranted. In some cases the holding of such enquiries is made obligatory by statute. According to Article-311 of the Constitution of India, no employee can be dismissed unless he has been given reasonable opportunity to show cause. In this context, the Principles of Natural Justice relating to procedure are required to be followed by the authorities entrusted with task of deciding disputes. The Principles of Natural Justice will include the following golden rules:

- *No one can be a judge in his own cause;*
- *No one shall be condemned unheard; and*
- *The party is entitled to know the reasons for the decision.*

Keywords: *Employee; Dismissed; Punished; Employer; Senior Officer; Departmental Enquiries; Article. 311; Constitution; Principles; Natural Justice; Golden Rules.*

INTRODUCTION

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 judex in causa sua*) and the right to 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 is that the differences between these two tests are largely semantic and that they operate similarly. The real likelihood test centres on whether the facts, as assessed by the Court, give rise to a real likelihood of bias. In *R. v. Gough*¹, the House of Lords chose to state the test in terms of a 'real danger of bias', and emphasized that the test was concerned with the possibility, not probability of bias. Lord Goff of Chieveley should look at the matter through the eyes of a reasonable man, because the Court in cases such as these



personifies the reasonable man". However, the test in *Gough* has been disapproved of in some commonwealth jurisdictions. One criticism is that the emphasis on the Court's view of the facts gives insufficient emphasis to the perception of the public. These criticisms were addressed by the House of Lords in *Porter v. Magill*². The Court adjusted the *Gough* test by stating it to be "whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased". This case therefore established the current test in the UK to be one of a "real possibility of bias".

On the other hand, the "reasonable suspicion test" asks whether a reasonable and fair-minded person sitting in Court and knowing all the relevant facts would have a reasonable suspicion that a fair trial for the litigant is not possible. Although not currently adopted in the UK., this test has been endorsed by the Singapore Courts. In the Singapore High Court decision in *Tanf Kin Hwa v. Traditional Chinese Medicine Practitioners Board*³, Judicial Commissioner Andrew Phang observed that the 'real likelihood test' is in reality similar to that of reasonable suspicion. First, Likelihood is in fact 'possibility', as opposed to the higher standard of proof centering on 'probability'. Secondly, he suggested that real in real likelihood cannot be taken to mean 'actual', as this test relates to apparent and not actual bias. He also observed that both the Court's and the public's perspectives are 'integral parts of a holistic process' with no need to draw a sharp distinction between them.

In contrast, in *Re Shankar Alan s/o Anat Kulkarni*⁴, Judicial Commissioner Sundaresh Menon thought that there was a real difference between the reasonable suspicion and real likelihood tests. In his opinion, suspicion suggests a belief that something that may not be proveable could still be possible. Reasonable suggests that the belief cannot be fanciful. Here the issue is whether it is reasonable for the one to harbour the suspicions in the circumstances even though the suspicious behaviour could be innocent. On the other hand, 'likelihood' points towards something being likely, and 'real' suggests that this must be substantial rather than imagined. Here then, the inquiry is directed more towards the actor than the observer. The issue is the degree to which a particular event is not likely or possible. Menon J.C. also disagreed with both Lord Goff in *Gough* and Phang J.C. in *Tang Kin Hwa* in that he thought the shift of the inquiry from how the matter might appear to a reasonable man to whether the Judge thinks there is a sufficient possibility of bias was 'a very significant point of departure'. The 'real likelihood test' is met as long as the Court is satisfied that there is a sufficient degree of possibility of bias. Although this is a lower standard than satisfaction on a balance of probabilities, this is actually directed at mitigating the sheer difficulty of proving actual bias, especially given its insidious and often sub-conscious nature. The reasonable suspicion test, however, is met if the Court is satisfied that a reasonable member of the public could harbour a reasonable suspicion of bias.

¹. (1993) UKHL 1 (1993) A.C. 646, H.L. (UK).

². (2001) UKHL 67 (2002) 2 A.C. 357, H.L. (UK).

³. 2005.

⁴. (2006) SGHC 12 (2007) SLR (R) 85, HC Singapore.



Even the Court itself thought there was no real danger of this on the facts. As of September, 2011, the Court of Appeal of Singapore had not yet expressed a view as to whether the position taken in *Tang Kin Hwa* or *Shankar Alan* is preferable.

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 direction 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.

Background: 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. It is similar to the American concepts of fair procedure and procedural due process, the latter having roots that to some degree parallel to the origins of natural justice.

Although natural justice has an impressive ancestry and is said to express the close relationship between the common law and moral principles, the use of the term today is not to be confused with the 'natural law' of the Canonists, the medieval philosophers' visions of an 'ideal pattern of society' or the 'natural rights' philosophy of the eighteenth century. Whilst the term natural justice is often retained as a general concept, in jurisdictions such as Australia and the United Kingdom it has largely been replaced and extended by the more general 'duty to act fairly'. Natural Justice is identified with the two constituents of a fair hearing, which are the rule against bias (*nemo iudex in causa sua* or 'no man can be a judge in his own cause') and the right to a fair hearing (*audi alteram partem* or 'hear the other side').

The requirements of Natural Justice or a duty to act fairly depends on the context. In *Baker v. Canada (Minister of Citizenship and Immigration)*⁵, the Supreme Court of Canada set out a list of non-exhaustive factors that would influence the content of the duty of fairness, including the nature of the decision being made and the process followed in making it, the statutory scheme under which the decision maker operates, the importance of the decision to the person challenging it, the person's legitimate expectations, and the choice of procedure made by the decision maker. Earlier, in *Knight v. Indian Head School Division. No. 19*⁶, the Supreme Court held that public authorities which make decisions of a legislative and general nature do not have a duty to act fairly, while those that carry out acts of a more administrative and specific nature do. Furthermore, preliminary decisions will generally not trigger the duty to act fairly, but decisions of a more final nature may have such an effect. In addition, whether a duty to act fairly applies depends on the relationship between the public authority and the individual. No duty

⁵. (1999) 2 SCR 817 Supreme Court (Canada).

⁶. (1990) Can LJ 138.



exists where the relationship is one of master and servant, or where the individual holds office at the pleasure of the authority. On the other hand, a duty to act fairly exists where the individual cannot be removed from office except for cause. Finally, a right to procedural fairness only exists when an authority's decision is significant and has an important impact on the individual.

RIGHT TO A FAIR HEARING:

In general:

It has been suggested that the rule requiring is broad enough to include the rule against bias since a fair hearing must be an unbiased hearing. However, the rules are often treated separately. It is fundamental to fair procedure that both sides should be heard. The right to a fair hearing requires that individuals are not penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the cases against them, a fair opportunity to present their own cases.

Besides promoting an individual's liberties, the right to a fair hearing has also been used by Courts as a base on which to build up fair administrative procedure. It is now well established that it is not the character of the public authority that matters but the character of the power exercised. However, in the United Kingdom prior to *Ridge v. Baldwin*⁷, the scope of a right to a fair hearing was severely restricted by case law following *Cooper v. Wandsworth Board of Works*⁸. This was seen in cases such as *Local Government Board v. Arlidge*⁹ and *R. v. Leman Street Police Station Inspector*¹⁰. In *R. v. Electricity Commissioners*¹¹, Lord Atkin observed that the right only applied where decision-makers had 'the duty to act judicially'. In natural justice cases, this dictum was generally understood to mean that a duty to act judicially was not to be inferred merely from the impact of a decision on the rights of subjects; such a duty would arise only if there was a 'superadded' express obligation to follow a judicial-type procedure in arriving at the decision.

In *Ridge v. Baldwin*, Lord Reid reviewed the authorities extensively and attacked the problem at its root by demonstrating how the term judicial had been misinterpreted as requiring some additional characteristic that the power affected some person's rights. In his view, the mere fact that the power affects rights or interests is what makes it 'judicial' and so subject to the procedures required by natural justice. This removal of the earlier mis-conception as to the meaning of 'judicial' is thought to have given the judiciary the flexibility it needed to intervene in cases of judicial review.

⁷. (1963) UKHL 2 [1964] A.C. 40, H.L. (United Kingdom).

⁸. (1863) 14 C.B. N.S. 180, 143 E.R. 414 Court of Common Pleas (England).

⁹. (1915) A.C. 120, H.L. (UK).

¹⁰. ex parte Venicoff (1920) 3 K.B. 72, H.C. (KB) (England and Wales).

¹¹. ex parte London Electricity Joint Committee Co., (1920) Ltd., (1923).



The mere fact that a decision-maker is conferred wide discretion by law is not reason enough for a weakening of the requirements of natural justice. In the UK context, this is demonstrated by *Ahmed v. H.M. Treasury*¹². The Treasury had exercised powers to freeze the appellants financial assets and economic resources on the ground that it reasonably suspected the appellants were or might be persons who had committed, attempted to commit, participated in or facilitated the commission of terrorism, pursuant to the Terrorism (United Nations Measures) Order 2006 and the Al-Qaida and Taliban (United Nations Measures) 2006 made under the United Nations Act, 1946. The Supreme Court of the United Kingdom held that since the Al-Qaida Order made no provision for basic procedural fairness, it effectively deprived people designated under the Order the Fundamental Right of access to a judicial remedy and hence was *ultra vires* the power conferred by the United Nations Act, 1946 for the making of the Order.

Article. 6 of the European Convention:

The European Convention does not refer specifically to administrative proceedings. Article. 6(1), however, provides for ‘a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law’. But ‘determination of an individual’s civil rights and obligations or of any criminal charge against him’.

The right to a fair hearing is also referred to in Article. 6(1) of the European Convention on Human Rights and Fundamental Freedoms, which states:

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

But it only applies to the ‘determination’ of an individual’s civil rights and obligations or of any criminal charge against him and the jurisprudence of the Court of Human Rights shows that there is no ‘determination’ of an individual’s ‘civil rights and obligations’ – which was originally intended to mean broadly private law rights – in many administration proceedings.

¹³Moreover, disciplinary proceedings where the liberty of the accused is not at risk do not

¹². (No. 1) (2010).

¹³. The Court in accordance with its usual approach, gives both ‘civil rights and obligations’ and ‘criminal charge’ ‘an autonomous Convention meaning’ independent of the national legal system involved. It has been held by the Court that Article. 6(1) ‘does not in itself guarantee any particular content for rights and obligations’ (*James v. U.K.* (1986) 8 EHRR 81, para. 81). The suggestion in *Osman v. U.K.* (2000) 29 EHRR 245; (1999) 1 FLR 193 (wide immunity accorded to police for negligence in investigation and suppression of crime, held a breach of Article. 6(1) that there is a substantive facet to Article. 6(1) has not since found favour: *Barrett v. Enfield LBC* (1999) 3 WLR 79 at 85 (Lord Brown – Wilkinson) and *DP and JC v. United Kingdom* (2003) 36 EHRR 14. Article. 6(1) only applicable to disputes over rights arguably ‘recognised under domestic law’ (para. 123). This was confirmed in *Mathews v. Ministry of Defence* (2003) UKHL 4; (2003) 1 AC 1163, so a substantive bar to a service man recovering damages from the MOD, in the particular circumstances, did not engage Art. 6(1). The Article only protected the right of access to the courts where the right in question was atleast arguably recognized in domestic law and the restriction on access was procedural; *Lecompte, Van Leuven and De Meyere v. Belgium* (1981) 4 EHRR 533. The Court and Commission



involve a 'criminal charge', and if they do not deprive the accused of the liberty to practice a profession they do not, it seems, determine his rights.¹⁴

A fixed penalty scheme to penalize carriers who bring Clandestine entrants into the U.K. has been held to be criminal, since the objective of the scheme was to deter dishonesty and carelessness.¹⁵ That Article. 6(1) is primarily applicable to judicial proceedings may further be seen by the requirement that 'Judgment shall be pronounced publicly'. The circumstances of each case must be investigated to see whether Article. 6(1) is engaged. The following are all matters to which Article. 6(1) has been held by the Court or the Commission to be inapplicable on the ground that there is no determination of the applicant's civil rights and obligations : immigration and deportation, entitlement to tax benefits, the payment of discretionary grants, public employment, the procedures adopted by official investigations (such as a DTI inquiry) and the revocation of a licence by the Parole Board.¹⁶ This is not a complete list.

Article. 6 does not, however, replace the common law duty to ensure a fair hearing. It has been suggested that Article. 6 alone is not enough to protect procedural due process, and only with the development of a more sophisticated common law will the protection of procedural due process extend further into the administrative machine. Nonetheless, Article. 6 supplements the common law. For instance, the common law does not impose a general duty to give reasons for a decision, but under Article. 6(1), a decision-maker must give a reasoned judgment so as to enable an affected individual to decide whether to appeal. Article. 6(1) of the European Convention on Human Rights, which has legal effect under the Human Rights Act, 1998, now supplements the common law of procedural justice in many administrative cases, even though the Article was originally, it seems, limited to the judicial determination of private law matters. When applicable, this Article provides for 'a fair and public hearing...by an independent and impartial tribunal established by law'. However, the judges have developed, and

have not defined with clarity the boundary between public and private law but have proceeded inductively on a case by case basis; *Runa Begum v. Tower Hamlets LBC* (2003) 2 AC 430 (HL).

¹⁴. *App. No. 8247 / 78 v. Belgium* (1989) 11 EHRR 76.

¹⁵. *International Transport Roth GmbH v. Home Secretary* (2002) 3 WLR 344 (CA) (per Simon Brown LJ and Jonathan Parker LJ; contra Laws LJ). Once recognized as criminal the further protections (including the presumption of innocence) contained in Article. 6(2) and (3) are engaged.

¹⁶. *X, Y, Z, V and W v. U.K.* No. 3325 / 67, 10 YB 528 (1967) (entry); *Agee v. U.K.* No. 7729 / 76, 7 DR 164 (deportation); *App. No. 8903 / 80 v. Austria* (1981) 21 D & R 246. But proceedings for the recovery of over paid tax are within Art. 6(1) : *National and Provincial Building Society v. U.K.* (1947) 25 EHRR 127 (including judicial review of regulations designed to prevent such recovery); *Editions Periscope v. France* (1992) 14 EHRR 597; *App. No. 6776 / 74 v. Switzerland* (1976) 2 D & R 123 and *B v. Netherlands* No. 11098 / 84, 43 DR 198 (1985) (criminal injuries compensation). *Contra Rolf Gustafson v. Sweden* (1997) 25 EHRR 623; *App. No. 8496 / 79 v. United Kingdom* (1981) 21 D & R 168; *Maillard v. France* (1999) 27 EHRR 232. *Private employment (Konig v. Germany)* (1978) 2 EHRR 170; *Lecompte, Van Leuven and De Meyere v. Belgium* (1981) 4 EHRR 533) and some exceptional cases of public employment (*Preikhas v. Germany* App. 6504 / 74 (1978) 12 D & R 5) are included; *Fayed v. U.K.* A 294 (1994) ; (1994) 18 EHRR 393 (investigation did not determine rights); *R (Smith) v. Parole Board* (No. 2) [2008] EWCA Civ. 1269 ; [2004] 1 WLR 421.



continue to develop, techniques that ensure that the Convention is flexibly applied in a way that is sensitive to the administrative context.

Lawyers are a procedurally minded race, and it is natural that administrators should be tempted to regard procedural restrictions, invented by lawyers, as an obstacle to efficiency. It is true that the rules of natural justice restrict the freedom of administrative action and that their observance costs a certain amount of time and money. But time and money are likely to be well spent if they reduce friction in the machinery of government, and it is because they are essentially rules for upholding fairness and so reducing grievances that the rules of natural justice can be said to promote efficiency rather than impede it. Provided that the courts do not let them run riot, and keep them in touch with the standards which good administration demands in any case, they should be regarded as a protection not only to citizens but also to officials. Moreover, a decision which is made without bias, and with proper consideration of the views of those affected by it, will not only be more acceptable; it will also be of better quality. Justice and efficiency go hand in hand, so long at least as the law does not impose excessive refinements.

PROCEDURAL JUSTICE:

By developing the principle of natural justice, the Courts have devised a kind of code of fair administrative procedure. Just as they can control the substance of what public authorities do by means of the rules relating to reasonableness, improper purposes, and so forth, so through the principles of natural justice, they can control the procedure by which they do it. It may seem less obvious that they are entitled to take this further step, thereby imposing a particular procedural technique on government departments and statutory authorities generally. Yet in doing so, they have provided doctrines which are an essential part of any system of administrative justice. Natural justice plays much the same part in British law as does 'due process of law' in the Constitution of the United States. In particular, it has a very wide general application in the numerous areas of discretionary administrative power. For however wide the powers of the state and however extensive the discretion they confer, it is always possible to require them to be exercised in a manner that is procedurally fair.

Procedure is not a matter of secondary importance. As governmental powers continually grow more drastic, it is only by procedural fairness that they are rendered tolerable. The legislation which controls the use of land, for example, contains a large element of expropriation without compensation, which is for the most part accepted without public complaint. But if there is the least suggestion that a planning appeal has been handled unfairly, public complaint is loud and wide-spread. A Judge of the United States Supreme Court has said:



‘Procedural fairness and regularity and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied’.¹⁷ One of his colleagues said:

‘The history of liberty has largely been the history of the observance of procedural safeguards’.¹⁸

Natural justice is a well-defined concept which comprises two fundamental rules of fair procedure:

- That a man may not be a judge in his own cause; and
- That a man’s defence must always be fairly heard.

The two rules do not seem to have been bracketed together before the decision of the House of Lords in *Spackman v. Plumstead District Board of Works*¹⁹. In courts of law and in statutory tribunals it can be taken for granted that these rules must be observed. But so universal are they, so ‘natural’, that they are not confined to judicial power. They apply equally to administrative power, and sometimes also to powers created by contract. It is in their application to ordinary administrative power that public authorities are prone to overlook them, for example where a police authority is dismissing a chief constable or a minister is confirming a housing scheme. Natural justice is one of the most active departments of administrative law.

There are both broad and narrow aspects to consider. The narrow aspect is that the rules of natural justice are merely a branch of the principle of ultra vires. Violation of natural justice is then to be classified as one of the varieties of wrong procedure, or abuse of power, which transgress the implied conditions which Parliament is presumed to have intended. Just as a power to act ‘as he thinks fit’ does not allow a public authority to act unreasonably or in bad faith, so it does not allow disregard of the elementary doctrines of fair procedure. Lord Selbourne once said in *Spackman v. Plumstead District Board of Works*²⁰, “There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice”.

Quoting these words, the Privy Council has said that ‘it has long been settled law’ that a decision which offends against the principles of natural justice is outside the jurisdiction of the decision-making authority.²¹ Likewise Lord Russell has said in *Fairmount Investments Limited v. Secretary of State for the Environment*²²; *Ridge v. Baldwin*²³ ‘a decision given without regard to the principles of natural justice is void’ (Lord Reid): “it is to be implied, unless the contrary

¹⁷. *Shaughnessy v. United States*, 345 US 206 (1953) (Jackson. JJ).

¹⁸. *McNabb v. United States*, 318 US 332 (1943) (Frankfurter. JJ).

¹⁹. (1885) 10 App. Cas. 229 at 240.

²⁰. (1885) 10 App. Cas. 229 at 240.

²¹. *A – G v. Ryan* (1980) AC 718. Even the order of a superior court may be set aside for violation of natural justice: *Isacacs v. Robertson* (1985) AC 97.

²². (1976) 1 WLR 1255 at 1263.

²³. (1964) AC 40.



appears, that Parliament does not authorize by the Act the exercise of powers in breach of the principles of natural justice, and that Parliament does by the Act require, in the particular procedures, compliance with those principles”.

Thus violation of natural justice makes the decision void, as in any other case of *ultra vires*. This effect is discussed more fully below. For the moment, it is enough to note that the rules of natural justice thus operate as implied mandatory requirements, non-observance of which invalidates the exercise of the power.

In its wider aspect, the subject contains the very kernel of the problem of administrative justice: how far ought both judicial and administrative power to rest on common principles? How far is it right for the courts of law to try to impart their own standards of justice to the administration? When special powers to take action or to decide disputes are vested in administrative bodies with the very object of avoiding the forms of legal process, is there yet a residuum of legal procedure which ought never to be shaken off? The judges have long been conscious of this problem, and it has prompted them to some of their more notable achievements. Rules of common law, which became in effect presumptions to be used in the interpretation of statutes, developed and refined the rules of natural justice over a period of centuries. Since the decisions to which the rules apply are very various, they have to be flexibly applied and their precise content depends on the circumstances. But their

In *Ridge v. Baldwin*²⁴, Lord Reid made an apt reply:

“In modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed and measured, therefore it does not exist. The idea of negligence is equally insusceptible of exact definition...and natural justice as it has been interpreted in the courts is much more definite than that”.

Another indication that natural justice is a sufficiently precise concept is that the expression has been used without further definition in Acts of Parliament.²⁵

NATURAL JUSTICE IN THE COMMON LAW:

The rules requiring impartial adjudicators and fair hearings can be traced back to medieval precedents, and, indeed, they were not unknown in the ancient world. In their medieval guise they were regarded as part of the immutable order of things, so that in theory even the power of

²⁴. (1964) AC 40 at 64.

²⁵. Foreign Compensation Act 1969, Section. 3(10). Since breach of natural justice goes to jurisdiction, questions of natural justice can apparently be taken either to the Court of Appeal direct or else raised in ordinary proceedings with unrestricted rights of appeal. In view of the specific provision, it might be held that only the latter course was open; Trade Union and Labour Relations Act 1974, Section. 6(13), since repealed.



the legislature could not alter them. This theory lingered into the seventeenth and faintly even into the eighteenth century. It reached its high-water mark in *Dr. Bonham's case* (1610), where Chief Justice Coke went so far as to say that the Court could declare an Act of Parliament void if it made a man judge in his own cause, or was otherwise '*against common right and reason*'. This was one of his grounds for disallowing the claim of the College of Physicians. The statute under which the College acted provided that fines should go half to the College, so that the College had a financial interest in its own judgment and was judge in its own cause.

No modern judge could repeat this exploit, for to hold an Act of Parliament void is to blaspheme against the doctrine of parliamentary sovereignty, Coke's opinion was by no means clear law even in his own time although it was approved by at least one contemporary Chief Justice.²⁶ Natural Justice, natural law, the law of God and 'common right and reason' were all aspects of the old concept of fundamental and unalterable law. They no longer represent any kind of limit to the power of statute.²⁷ Natural Justice has had to look for a new foothold, and has found it as a mode not of destroying enacted law but of fulfilling it. Its basis now is in the rules of interpretation. The Courts presume that Parliament, when it grants powers, intends them to be exercised in a right and proper way. 'Where wide powers of decision-making are conferred by statute', Lord Browne-Wilkinson has observed, "it is presumed that Parliament implicitly requires the decision to be made in accordance with the rules of natural justice".²⁸ Since Parliament seldom makes provisions to the contrary, this allows considerable scope for the courts to devise a set of canons of fair administrative procedure, suitable to the needs of the time and the context in which the issue arises.

The courts also apply similar doctrines in the private sphere, in the interpretation of contracts. Members of trade unions or clubs, for example, cannot normally be expelled without being given a hearing, for their contracts of membership are held to include a duty to act fairly: by accepting them as members and receiving their subscriptions, the trade union or club impliedly undertakes to treat them fairly and in accordance with the rules. The same may apply to members of universities, including students. Such cases, strictly speaking, fall outside administrative law, since they are not concerned with governmental authorities, and the question at issue is not one of *ultra vires* but one of breach of contract. Nevertheless the principles of fair procedure may be similar to those applied in administrative law and the decisions may be helpful by analogy.

DOMESTIC ENQUIRY VIS-À-VIS PRINCIPLES OF NATURAL JUSTICE:

²⁶. Hobart CJ in *Day v. Savadge* (1614) Hobart 85, who said '...even an Act of Parliament made against natural justice equity, as to make a man judge in his own case, is void in itself, for *jura naturae sunt immutabilia* and they are *legus legum*'; *City of London v. Wood* (1701) 12 Mod. 669 (Holt CJ approving Coke's opinion).

²⁷. In 1871 Willes J described the above quoted remark of Hobart CJ as 'a warning rather than an authority to be followed': *Lee v. Bude and Torrington Junction Railway* (1871) LR and CP 576 at 582.

²⁸. *R v. Home Secretary ex. p. Pierson* (1998) AC 539 at 350; Lord Mutsill in *R. v. Home Secretary ex. p. Doody* (1994) AC 531 at 560 (Parliament presumed to intend power to be exercised in a manner that is fair in all the circumstances).



It is true that Domestic Enquiries need not be conducted in accordance with the technical requirements of criminal trials. Even so, they must be fairly conducted, and in holding them considerations of fair play and Natural Justice must govern the conduct of the enquiry officer. Further, it is essential that these enquiries are conducted honestly and bona fide with a view to determine whether the charge framed against the workman is proved or not, and so care must be taken to see that these enquiries do not become empty formalities.²⁹

In *Sur Enamel and Stamping Works Ltd. V. Their Workmen*³⁰, the Supreme Court held: "It must be clearly understood that the mere form of an enquiry would not be enough to satisfy the requirements of industrial law and would not protect the action taken by the employer from challenge, if in substance the enquiry is not fair and proper. An enquiry cannot be said to have been properly held unless –

- The employee proceeded against has been informed clearly of the charge leveled against him;
- The witnesses are examined in the presence of the employee in respect of the charges;
- The employee is given a fair opportunity to cross-examine the witnesses;
- The is given a fair opportunity to put up his defense by examining defense witnesses, including himself, if he so wishes; and
- The enquiry officer records his findings with reasons for the same in his report.

"It goes without saying that it is of the essence of any enquiry that a person accused of an offence must be told clearly and specifically of the offence with which it is intended to charge him and he must not be condemned unheard".³¹

In *Gurgaon District Ex-Servicemen Motor Transport Co-operative Society v. Nawal Singh*³², the respondent had no opportunity of being heard in relation to the enquiry held. There was no charge-sheet against him, and there was no enquiry in his presence. He was not allowed to cross-examine the witnesses and he had no opportunity to put forward his defense. It was held that it could hardly be called an enquiry into the conduct of respondent and stood vitiated on that account.

CONCLUSION

One thing should be noted. Inference of exclusion of natural justice should not be readily made unless it is irresistible, since the courts act on presumption that the legislature intends to observe the principles of natural justice and those principles do not supplant but supplement the law of the land. Therefore, all statutory provisions must be read, interpreted and applied so as to be consistent with the principles of natural justice. The courts are always willing to be confined by

²⁹. *Associated Cement Company Limited v. Their Workmen*, 1963 (7) FLR 269=1963 (II) LLJ 393 SC.

³⁰. 1963 (7) FLR 236=AIR 1963 SC 1914.

³¹. *Venkataswami Naidu v. Jai Hind Motor Service*, 1958 (II) LLJ 520, 538 (IT).

³². 1968 (I) LLJ 85.



rigid categories, and in some cases they have held that there is a duty of procedural fairness even when there is neither statute nor contract upon which to base it. The Court of Appeal has held that the Panel on take-overs and mergers, part of the Stock Exchange's System of self-regulation which has no statutory or contractual basis, is subject to judicial review, and must observe the principles of natural justice, because it operates in the public sphere and exercises immense power *de facto*.³³ The High Court of Australia has held that the owner of a race course who admits the public has a 'moral duty' not to reject any individual arbitrarily and without hearing him fairly, and that if he does so his act is '*ultra vires* and *void*'.³⁴ The Courts have in the past asserted common law powers to regulate some kinds of monopolies; and these decisions are perhaps to be seen as analogous to those powers.

Where an administrative act or decision is vitiated by a breach of natural justice, the court may award any appropriate remedies. The remedy will frequently be certiorari to quash, on the footing that the vitiated decision is void and nullity. For this same reason a declaratory judgment is equally effective, as in *Ridge v. Baldwin*.³⁵ Occasionally, where injury is done, there will be grounds for an action for damages.

Traditionally natural justice has been confined to the two rules which are:

- That a man may be judge in his own cause;
- That a man's defense must always be fairly heard.

It has not, as yet, included a general requirement that reasons should be given for decisions. On the other hand there are isolated judicial statements that natural justice requires decisions to be based on some evidence of probative value. The courts are now so conscious of natural justice that they may well extend its scope in both these directions.

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³³. *R. v. Panel on Take-Over and Mergers* ex. p. Datafin Plc (1987) QB 815 (not a natural justice case).

³⁴. *Forbes v. New South Wales Trotting Club* (1979) 25 ALR 1; *Contrast Healthy v. Tasmanian Racing and Gaming Commission* (1977) 14 ALR 519 at 538, holding that an owner's rights of property may be exercised without regard to natural justice.

³⁵. (1964) AC 40.



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