# Mats law school

Law, Common Law

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---------- Natural justice and biasness EFAF ALI * BBA LLB (Honours) * 2ND Year * 4TH Semester 2013 Vasundhara kamath 1/5/2013 Index 1. Acknowledgement 2. Index 3. Introduction 4. The Principle and essential elements of Natural Justice 5. Rule against bias 6. Audi Alteram Partem or Rule Of Fair Hearing 7. Requirement of Cross examination 8. Right of a legal Representation 9. Requirement Of Passing A Speaking or Reasoned Order 10. Enquiry Report to Be ShownTo The Other Party 11. Conclusion Acknowledgement I feel highly elated to work on this dynamic and highly important topic that is “ Natural Justice and Biasness". This topic instantly drew my attention and attracted me to research on it. So, I hope I have tried my level best to bring in new ideas and thoughts regarding the basics of this topic. Not to forget the deep sense of regard and gratitude to my faculty adviser, Miss Vasudhara Kamath, who played the role of a protagonist. Last but not the least; I thank all the members of the MATS Law School and all others who have helped me in making this project a success. INTRODUCTION Natural justice- In English law,  natural justice is technical terminology for the rule against bias i. e nemo iudex in causa sua and the right to a fair hearing i. e audi alteram partem. While 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". 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. 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 mediaeval philosophers' visions of an " ideal pattern of society" or the " natural rights" philosophy of the 18th century. While 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 i. e nemo iudex in causa sua, or " no man a judge in his own cause", and the right to a fair hearing i. e audi alteram partem, or " hear the other side" In India there is no statute laying down the minimum procedure which administrative agencies must follow while exercising decision-making powers. This minimum fair procedure refers to the principles of natural justice Natural justice is a concept of common law and represents higher procedural principles

developed by the courts, which every judicial, quasi-judicial and administrative agency must follow while taking any decision adversely affecting the rights of a private individual. Natural justice implies fairness, equity and equality. In a welfare state like India, the role and jurisdiction of administrative agencies is increasing at a rapid pace. The concept of Rule of Law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging these functions in a fair and just manner. In India, the principles of natural justice are firmly grounded in Article 14 & 21 of the Constitution. With the introduction of concept of substantive and procedural due process in Article 21, all that fairness which is included in the principles of natural justice can be read into Art. 21. The violation of principles of natural justice results in arbitrariness; therefore, violation of natural justice is a violation of Equality clause of Art. 14. 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 essential elements of Natural Justice Natural Justice is the source from which procedural fairness

flows and in Ireland, natural justice was adopted under the title of “ constitutional justice" in the case of McDonald v. Bord na gCon. 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 “ 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 f 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 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 “ 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". RULE AGAINST BIAS (NEMO JUDEX CAUSA SUA) The word “ bias “ in popular English parlance stands included with in the attributes and broader purview of the word “ malice" which is common acceptation means and implies “ spite" or “ ill-will" and it is now well settled that mere general statements will not be sufficient for the purpose of indication of ill-will. There must be cognet evidence available on record to come to a conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice. It is a fundamental and well established principle, not only in public administration but also in the procedure of courts that the decision-maker should be free from bias so that fair and genuine consideration is given to arguments advanced by the parties A person is barred from deciding any case in which he or she may be, or may fairly be suspected to be, biased. This principle embodies the basic concept of impartiality, and applies to courts of law, tribunals, arbitrators and all those having the duty to act judicially.  A public authority has a duty to act judicially whenever it makes decisions that affect people's rights or interests, and not only when it applies some judicial-type procedure in arriving at decisions. The basis on which impartiality operates is the need to maintain public confidence in the legal system. The rule against

bias flows from following two principles: - a) No one should be a judge in his own cause b) Justice should not only be done but manifestly and undoubtedly be seen to be done. Thus a judge should not only be impartial but should be in a position to apply his mind objectively to the dispute before him. The rule against bias thus has two main aspects: - 1. The administrator exercising adjudicatory powers must not have any personal or proprietary interest in the outcome of the proceedings. 2. There must be real likelihood of bias. Real likelihood of bias is a subjective term, which means either actual bias or a reasonable suspicion of bias. It is difficult to prove the state of mind of a person. Therefore, what the courts see is whether there is reasonable ground for believing that the deciding factor was likely to have been biased. Possible sources of bias, for and against, are infinitely varied but they can be grouped into four main categories. The most obvious source of bias is for the decision-maker to have a financial interest in the matter to be decided. Bias may also arise from the decision maker’s personal attitudes, relationships or beliefs in the case. Thirdly, loyalty to an institution can result in the decision-maker being so committed to the objectives or interests of that institution, that they might be incapable of holding the balance fairly between these objectives and other interests. Finally, prior involvement in a case or pre-judgement of the issues can also lead to bias. Whether other relationships between the decision-maker and the parties will amount to objectionable bias so as to disqualify the decision-maker is often a matter of fine judgement. Bias can take many forms: - * Personal bias * Pecuniary bias * Departmental bias * Bias on judicial obstency * Actual or apparent bias * Subject matter bias A. K. Kraipak Vs. UOI In this case,

Naquishband, who was the acting Chief Conservator of Forests, was a member of the Selection Board and was also a candidate for selection to All India cadre of the Forest Service. Though he did not take part in the deliberations of the Board when his name was considered and approved, the SC held that `there was a real likelihood of a bias for the mere presence of the candidate on the Selection Board may adversely influence the judgement of the other members' SC also made the following observations: - 1. The dividing line between an administrative power and quasi-judicial power is quite thin and is being gradually obliterated. Whether a power is Administrative or quasi-judicial, one has to look into — a) the nature of power conferred b) the person on whom it is conferred c) the framework of the law conferring that power d) the manner in which that power is expected to be exercised. 2. The principles of natural justice also apply to administrative proceedings, 3. The concept of natural justice is to prevent miscarriage of justice and it entails - (i) No one shall be a judge of his own cause. (ii) No decision shall be given against a party without affording him a reasonable hearing. (iii) The quasi-judicial enquiries should be held in good faith and not arbitrarily or unreasonably. J. Mohopatra & Co. Vs, State of Orissa SC quashed the decision of the Textbooks' selection committee because some of its members were also the authors of the books, which were considered for selection. The Court concluded that withdrawal of person at the time of consideration of his books is not sufficient as the element of quid pro quo with other members cannot be eliminated. Ashok Kumar Yadav Vs. State of Haryana Issue- Whether the selection of candidate would vitiate for bias if close relative of a members of the Public Service

Commission is appearing for selection? Held The SC laid down the following propositions: - 1. Such member must withdraw altogether from the entire selection process otherwise all selection would be vitiated on account of reasonable likelihood of bias affecting the process of selection 2. This is not applicable in case of Constitutional Authority like PSC whether Central or State. This is so because if a member was to withdraw altogether from the selection process, no other person save a member can be substituted in his place and it may sometimes happen that no other member is available to take the place of such a member and the functioning of PSC may be affected. 3. In such a case, it is desirable that the member must withdraw from participation in interview of such a candidate and he should also not take part in the discussions. The Supreme Court conceptualised the doctrine of necessity in this case. AUDI ALTERAM PARTEM OR RULE OF FAIR HEARING The principle of audi alteram partem is the basic concept of principle of natural justice. The expression audi alteram partem implies that a person must be given opportunity to defend himself. This principle is " sine qua non" of every civilized society. This rule covers various stages through which administrative adjudication pasees starting from notice to final determination. Right to fair hearing thus includes:- 1. Right to notice 2. Right to present case and evidence 3. Right to rebut adverse evidence (i) Right to cross examination (ii) Right to legal representation 4. Disclosure of evidence to party 5. Report of enquiry to be shown to the other party 6. Reasoned decisions or speaking orders POST DECISIONAL HEARING Post decisional hearing means hearing after the decision is reached. The idea of post decisional hearing has been developed by the SC in Maneka Gandhi Vs. UOI

to maintain the balance between administrative efficiency and fairness to the individual. Mankea Gandhi Vs. UOI Facts In this case the passport dated 01. 06. 1976 of the petitioner, a journalist, was impounded `in the public interest' by an order dated 02. 07. 1977. The Govt. declined to furnish her the reasons for its decision. She filed a petition before the SC under article 32 challenging the validity of the impoundment order. She was also not given any pre-decisional notice and hearing. Argument by the Govt. The Govt. argued that the rule of " audi alteram partem" must be held to be excluded because otherwise it would have frustrated the very purpose of impounding the passport. Held The SC held that though the impoundment of the passport was an administrative actionyet the rule of fair hearing is attracted by the necessary implication and it would not be fair to exclude the application of this cardinal rule on the ground of administrative convenience. The court did not outright quash the order and allowed the return of the passport because of the special socio-political factors attending the case. The technique of post decisional hearing was developed in order to balance these factors against the requirements of law, justice and fairness. The court stressed that a fair opportunity of being heard following immediately the order impounding the passport would satisfy the mandate of natural justice The same technique of validating void administrative decision by post decisional hearing was adopted in Swadeshi Cotton Mills Vs. UOI . Under section 15 of IDRA, an undertaking can be taken over after making an investigation into its affairs The court validated the order of the govt. which had been passed in violation of the rule of audi alteram partem because the govt. had agreed to give post-decisional hearing. The ratio of the majority

decision was as follows: - 1. Pre-decisional hearing may be dispensed with in an emergent situation where immediate action is required to prevent some imminent danger or injury or hazard to paramount public interest. 2. Mere urgency is, however, no reason for exclusion of audi alteram partem rule. The decision to exclude pre-decisional hearing would be justiciable. 3. Where pre-decisional hearing is dispensed with, there must be a provision for post-decisional remedial hearing. In K. I. Shephard Vs. UOI certain employees of the amalgamated banks were excluded from employment. The Court allowing the writs held that post decisional hearing in thiscase would not do justice. The court pointed out that there is no justification to throw a person out of employment and then give him an opportunity of representation when the requirement is that he should be given an opportunity as a condition precedent to action. In H. L. Trehan Vs. UOI, a circular was issued by the Govt. on taking over the company prejudicially altering the terms and conditions of its employees w/o affording an opportunity of hearing to them. The SC observed that " In our opinion, the post decisional opportunity of hearing does not observe the rules of natural justice. The authority who embarks upon a post-decisional hearing will normally proceed with a closed mind and there is hardly any chance of getting proper consideration of the representation at such a post decisional hearing." Thus in every case where pre-decisional hearing is warranted, post-decisional hearing wil not validate the action except in very exceptional circumstances. Conclusion It can be concluded that pre-decisional hearing is the standard norm of rule of audi alteram partem. But post-decisional hearing atleast affords an opportunity to the aggrieved person and is better than no hearing at all. However, post-

decisional hearing should be an exception rather than rule. It is acceptable in the following situations:- 1. where the original decision does not cause any prejudice or detriment to the person affected; 2. where there is urgent need for prompt action; 3. where it is impracticable to afford pre-decisional hearing. The decision of excluding pre-decisional hearing is justiciable. REQUIREMENT OF CROSS EXAMINATION Cross-examination is used to rebut evidence or elicit and establish truth. In administrative adjudication, as a general rule, the courts do not insist on cross-examination unless the circumstances are such that in the absence of it, an effective defence cannot be put up. The SC disallowed cross-examination in State of J&K Vs. Bakshi Gulam Mohammed on the ground that the evidence of witness was in the form of affidavits and the copies ad been made available to the party. In Town Area Committee Vs. Jagdish Prasad , the department submitted the charge, got an explanation and thereafter straightaway passed the dismissal order. The court quashed the order holding that the rule of fair hearing includes an opportunity to cross-examine the witness and to lead evidence. In Hira Nath Misra Vs. Principal, Rajendra Medical College the court disallowed the opportunity of cross-examination on the grounds of practicability. The SC rejected the contention of the appellants that they were not allowed to cross-examine the girl students on the ground that if it was allowed no girl would come forward to give evidence, and further that it would not be possible for the college authorities to protect the girl students outside the college precincts. Where, however, witnesses depose orally before the authority, the refusal to allow crossexamination would certainly amount to violation of principles of natural justice. It can thus be concluded

that right to cross-examine is an important part of the principle of fair hearing but whether the same should be allowed in administrative matters mainly depends on the facts and circumstances of the case. RIGHT OF LEGAL REPRESENTATION Legal representation is not considered as an indispensable part of the rule of fair hearing in administrative proceedings. This denial of legal representation is justified on the ground that — a) the lawyers tend to complicate matters, prolong hearings and destroy the essential informality of the hearings. b) it gives and edge to the rich over the poor who cannot afford a good lawyer. Whether legal representation is allowed in administrative proceedings depends on the provisions of the statute. Factory laws do not permit legal representation, Industrial Disputes Act allows it with the permission of the tribunal and some statutes like Income Tax permit representation as a matter of right. The courts in India have held that in following situations, some professional assistance must be given to the party to make his right to defend himself meaningful: - a) Illiterate b) Matter is technical or complicated c) Expert evidence is on record d) Question of law is involved e) Person is facing trained prosecutor The courts have observed in few cases that it would be improper to disallow legal representation to the aggrieved person where the State is allowed to be represented through a lawyer. In Nandlal Bajaj Vs. State of Punjab, the court allowed legal representation to the detainee through a lawyer despite Section 8(e) of COFEPOSA specifically denied legal representation in express terms because the State had been represented through a lawyer. In Board of Trustees, Port of Bombay Vs. Dilip Kumar , a request of delinquent employee for legal representation was turned down as there was no provision in the regulations.

During the course of enquiry, the regulation was amended giving powers to Enquiry Officer to allow legal representation. The court held that this question whether legal representation should be allowed to the delinquent employee would depend on the fact whether the delinquent employee is pitted against legally trained mind. In such a case, denial of request to engage a lawyer would result in violation of essential principles of natural justice. Following this case, the SC in J. K. Aggarwal Vs. Haryan Seeds Development Corporation Limited held that refusal to sanction the service of a lawyer in the enquiry was not a proper exercise of the discretion under the rule resulting in failure of natural justice; particularly in view of the fact that the Presenting Officer was a person with legal attainments and experience REQUIREMENT OF PASSING A SPEAKING OR REASONED ORDER In India, unless there is specific requirement of giving reasons under the statute, it is not mandatory for the administrative agencies to give reasons for their decisions. Reasons are the link between the order and mind of the maker . Any decision of the administrative authority affecting the rights of the people without assigning any reason that amounts to violation of principles of natural justice. The requirement of stating the reasons cannot be under emphasized as its serves the following purpose: - 1. It ensures that the administrative authority will apply its mind and objective look at the facts and evidence of the case. 2. It ensures that all the relevant factors have been considered and that the irrelevant factors have been left out. 3. It satisfies the aggrieved party in the sense that his view points have been examined and considered prior to reaching a conclusion. 4. The appellate authorities and courts are in a better position to consider the appeals on the

question of law. In short, reasons reveal the rational nexus between the facts considered and the conclusions reached. However, mere recording of reasons serves no purpose unless the same are communicated either orally or in writing to the parties. In fact mere communication of reasons has no meaning unless the corrective machinery is in place. Whether the reasons should be recorded or not depends on the facts of the case. In Tarachand Vs. Municipal Corporation, an assistant teacher was dismissed on the ground of moral turpitude. The Enquiry fully established the charge. The Asst. Education Commissioner confirmed the report w/o giving reasons. The SC held that where the disciplinary authority disagrees with the report of the enquiry officer, it must state the reasons. In other words, the citing of reasons is not mandatory where the disciplinary authority merely agrees with the report of enquiry officer. S. N. Mukherjee Vs. UOI Issue Whether it was incumbent upon the Chief of Army Staff to record the reasons of the orders passed by him while confirming the findings and the sentence of the CG Supreme Court observed that The requirement to record reasons could be regarded as one of the principles of natural justice. * An administrative authority must record the reasons in support of their decisions, unless the requirement is expressly or by necessary implication excluded * The reasons cited would enable the court to effectively exercise the appellate or supervisory powers. * The reasons would produce clarity in the decisions and reduce arbitrariness. Held Under sec 162 of the Army Act, the reasons have to be reached only in cases where the proceedings of a summary court martial are set aside or the sentence is reduced and not when the findings and sentence are confirmed. Thus requirement of recording reasons cannot

be insisted upon at the stage of consideration of post-confirmation petition by the CG. Mahindra & Mahindra Vs. UOI Order passed by MRTPC, a quasi judicial body - Clauses in agreement with the dealers are found to be offensive and resulting in RTP - No reasons were cited - Co. filed appeal before SC - SC held that the order suffers from an error of law apparent from the face of it as no reasons have been given. REPORT OF ENQUIRY REPORT TO BE SHOWN TO THE OTHER PARTY Whether a copy of enquiry report must be submitted to the delinquent employee before passing the order? Until 1987, there was no precedent or law which made it obligatory, in all cases, for the disciplinary authority to serve a copy of the enquiry report on the delinquent before reaching a final decision. For the first time in 1987, full bench of CAT held that failure to supply a copy of the enquiry report to the delinquent before recording a finding against him is obligatory and failure to do so would vitiate the enquiry. (P. K Sharma Vs, UOI) The SC in 1973 considered this question in Keshav Mills Co. Ltd. Vs. UOI. Facts Appellant Co. after doing business for 30 years closed down. 1200 persons unemployed - On the basis of commission to enquire into the affairs of the co. u/s 15 of IDRA, GOI passed an order u/s 18-A to take over the mill. Challenged before SC on the ground that enquiry report not submitted Held * Not possible to lay down general principle on this . * Answer depends on facts and circumstances of each case * If the non-disclosure of the report causes any prejudice in any manner to the party, it must be disclosed, otherwise non-disclosure would not amount to violation of principles of natural justice. CONCLUSION Natural justice have a close relation with common law and moral principles but it is not the natural law. Natural justice aims at providing

fairness equity and equality to the people and it aims at decisions and judgement free from any kind of biasness to give proper justice to people in absence of this, judgements would go influenced with biasness and would change their nature so we cannot hope to get justice from court as they would be partial which would thus make a court a useless place to get justice from. Rule against biasness makes a judge to be impartial and to put his mind objectly to the dispute or problem before him The basis on which impartiality operates is the need to maintain public confidence in the legal system. The erosion of public confidence undermines the nobility of the legal system, and leads to ensuing chaos Justice must be rooted in confidence and confidence is destroyed when right-minded people go away thinking: 'The judge was biased. And thus the complete law and order fails without natural justice and rule against biasness.