



PRINCIPLES OF NATURAL JUSTICE

In this lesson you will be introduced to the concept of 'Natural Justice'. Natural Justice in simple terms means the minimum standards or principles which the administrative authorities should follow in deciding matters which have the civil consequences. There are mainly two Principles of Natural Justice which every administrative authority should follow whether or not these are specifically provided in the relevant Acts or rules. Principles are:

1. No one should be the judge in his/her own case
2. Each party should be given the opportunity to be heard



OBJECTIVES

After studying this lesson you will be able to :

- Define the term 'Natural Justice';
- Discuss the various aspects of the 'Rule Against Bias';
- Analyse the 'Rule of Fair Hearing';
- Understand the meaning of term 'Speaking Order'; and
- Identify the 'Exceptions' to the Rule of Natural Justice.

6.1 CONCEPT OF NATURAL JUSTICE

Natural Justice implies fairness, reasonableness, equity and equality. Natural Justice is a concept of Common Law and it is the Common Law world counterpart of the American concept of 'procedural due process'. Natural Justice represents higher procedural principles developed by judges which every administrative agency must follow in taking any decision adversely affecting the rights of a private individual.

Natural Justice meant many things to many writers, lawyers and systems of law. It is used interchangeably with Divine Law, Jus Gentium and the Common Law of the Nations. It is a concept of changing content. However, this does not mean that at a given time no fixed principles of Natural Justice can be identified. The principles of Natural Justice through various decisions of courts can be easily ascertained, though their application in a given situation may depend on multifarious factors. 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.

The principles of natural justice are firmly grounded under various Article of the Constitution. With the introduction of the concept of substantive and procedural due process in Article – 21 of the Constitution all that fairness which is included in the principles of natural justice can be read into Article – 21 when a person is deprived of his life and personal liberty. In other areas it is Article – 14 which incorporates the principles of natural justice. Article – 14 applies not only to discriminatory class legislation but also to arbitrary or discriminatory State action. Because violation of natural justice results in arbitrariness therefore violation of natural justice is violation of Equality Clause of Article – 14. Therefore, now the principle of natural justice cannot be wholly disregarded by law because this would violate the fundamental rights guaranteed by Articles – 14 and 21 of the Constitution.

There are mainly two Principles of Natural Justice. These two Principles are:

‘*Nemo judex in causa sua*’. No one should be made a judge in his own cause and the rule against bias. ‘*Audi alteram partem*’ means to hear the other party or no one should be condemned unheard.



INTEXT QUESTION 6.1

1. Define ‘Natural Justice’.
2. What is the constitutional basis of the principles of Natural Justice.
3. State two main principles of Natural Justice.

6.2 RULE AGAINST BIAS

‘Bias’ means an operative prejudice whether conscious or unconscious in relation to a party or issue. Therefore, the ‘Rule Against Bias’ strikes against those factors which may improperly influence a judge in arriving at a decision in any particular case. The requirement of this principle is that the judge must



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be impartial and must decide the case objectively on the basis of the evidence on record. Therefore if a person, for whatever reason, cannot take an objective decision on the basis of evidence on record he shall be said to be biased. A person cannot take an objective decision in a case in which he/she has an interest for, as human psychology tells us, very rarely can people take decisions against their own interests. This rule of disqualification is applied not only to avoid the possibility of a partial decision but also to ensure public confidence in the impartiality of the administrative adjudicatory process because not only must “no man be judge in his/her own cause” but also “justice should not only be done but should manifestly and undoubtedly be seen to be done”. Minimal requirement of natural justice is that the authority must be composed of impartial persons acting fairly and without prejudice and bias. A decision which is a result of bias is a nullity and the trial is “Coram non-judice”. Inference of bias, therefore, can be drawn only on the basis of factual matrix and not merely on the basis of insinuations, conjectures and surmises. Bias manifests variously and may affect the decision in a variety of ways.

6.2.1 Personal Bias

Personal Bias arises from a certain relationship equation between the deciding authority and the parties which incline him/her unfavourably or other-wise on the side of one of the parties before him/her. Such equation may develop out of varied forms of personal or professional hostility or friendship. How-ever, no exhaustive list is possible.

In a case, the Supreme Court quashed the selection list prepared by the Departmental Promotion Committee which had considered the confidential reports of candidates prepared by an officer, who himself was a candidate for promotion.

However, in order to challenge administrative action successfully on the ground of ‘personal bias’, it is essential to prove that there is a “reasonable suspicion of bias” or a “real likelihood of bias”. “Reasonable suspicion” test looks mainly to outward appearance, and “real likelihood” test focuses on the court’s own evaluation of possibilities; but in practice the tests have much in common with one another and in the vast majority of cases they will lead to the same result. In this area of bias the real question is not whether a person was biased. 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 officer was likely to have been biased. In deciding the question of bias judges have to take into consideration the human possibilities and the ordinary course of human conduct. But there must be real likelihood of bias and not mere suspicion of bias before the proceedings can be quashed on the ground that the person

conducting the proceedings is disqualified by bias. The apprehension must be judged from a healthy, reasonable and average point of view and not on mere apprehension and vague suspicion of whimsical, capricious and unreasonable people.

6.2.2 Pecuniary Bias

The judicial approach is unanimous and decisive on the point that any financial interest, howsoever small it may be, would vitiate administrative action. The disqualification will not be avoided by non-participation of the biased member in the proceedings if he/she was present. The Supreme Court in a case quashed the decision of the Textbook Selection Committee because some of its members were also authors of books which were considered for selection when the decision was reached.

6.2.3 Subject Matter Bias

Those cases fall within this category where the deciding officer is directly, or otherwise, involved in the subject matter of the case. Here again mere involvement would not vitiate the administrative action unless there is a real likelihood of bias.

In a case the Supreme Court quashed the decision of the Andhra Pradesh Government, nationalizing road transport on the ground that the Secretary of the Transport Department who gave hearing was interested in the subject-matter.

6.2.4 Departmental Bias

The problem of 'departmental bias' is something which is inherent in the administrative process, and if it is not effectively checked, it may negate the very concept of fairness in the administrative proceeding.

The problem of 'departmental bias' also arises in a different context, when the functions of judge and prosecutor are combined in the same department. It is not uncommon to find that the same department which initiates a matter also decides it, therefore, at times departmental fraternity and loyalty militates against the concept of fair hearing.

In a case, the Supreme Court quashed the notification of the Government which had conferred powers of a Deputy Superintendent of Police on the General Manager, Haryana Roadways in matters of inspection of vehicles on the ground of departmental bias. In this case private bus operators had alleged that the General Manager of Haryana Roadways who is a rival in business in the State, cannot be expected to discharge his duties in a fair and reasonable manner he would be too lenient in inspecting the vehicles belonging to his own department.



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The reason for quashing the notification according to the Supreme Court was the conflict between the duty and the interest of the department and the consequential erosion of public confidence in administrative justice.

6.2.5 Preconceived Notion Bias

‘Bias’ arising out of preconceived notions is a very delicate problem of administrative law. On the one hand, no judge as human being is expected to sit as a blank sheet of paper, on the other, preconceived notions would vitiate a fair trial.

The problem of bias arising from preconceived notions may have to be disposed of as an inherent limitation of the administrative process. It is use less to accuse a public officer of bias merely because he is predisposed in favour of some policy in the public interest. Bias would also not disqualify an officer from taking an action if no other person is competent to act in his place. This limitation is grounded on the doctrine of necessity.

However the term ‘bias’ must be confined to its proper place. If ‘bias’ arising out of preconceived notions means the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one ever will. Therefore, unless the strength of the preconceived notions is such that it has the capacity of foreclosing the mind of the judge, administrative action would not be vitiated.



INTEXT QUESTIONS 6.2

1. Define the term ‘Bias’.
2. Give one example each of the followings:
 - (a) ‘Pecuniary Bias’
 - (b) ‘Subject-matter Bias’
 - (c) ‘Departmental Bias’
3. List the various aspects of ‘Bias’.

6.3 RULE OF FAIR HEARING

The Rule simply implies that a person must be given an opportunity to defend himself/herself. This principle is a ‘sine qua non’ of every civilized society. Corollary deduced from this rule is “*qui aliquid statuerit, parte inaudita altera aequum licet dixerit, haud aequum facerit*” (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). The same principle was expressed by

Lord Hewart when he said, “ It is not merely of some importance, but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done”. Administrative difficulty in giving notice and hearing to a person cannot provide any justification for depriving the person of opportunity of being heard. Furthermore, observance of the rules of natural justice has no relevance to the fairness of the stake but is essentially related to the demands of a given situation.

Even if the legislature specifically authorizes an administrative action without hearing, except in cases of recognised exceptions, then the law would be violative of the principles of fair hearing as per Articles – 14 and 21 of the Indian Constitution. However, refusal to participate in enquiry without valid reason cannot be pleaded as violation of natural justice at a later stage.

6.3.1 Right to Notice

‘Notice’ is the starting point of any hearing. Unless a person knows the formulation of subjects and issues involved in the case, he/she cannot defend himself/herself. It is not enough that the notice in a case be given, but it must be adequate also. The adequacy of notice is a relative term and must be decided with reference to each case. But generally a notice in order to be adequate must contain the following :

The test of adequacy of ‘Notice’ will be whether it gives sufficient information and material so as to enable the person concerned to put up an effective defence. Therefore, the contents of notice, persons who are entitled to ‘Notice’ and the time of giving ‘Notice’ are important matters to ascertain any violation of the principles of natural justice. Sufficient time should also be given to comply with the requirement of notice. Thus, when only 24 hours were given to demolish a structure alleged in a dilapidated condition, Court held that notice is not proper. In the same manner where notice contained only one charge, the person cannot be punished for any other charge for which notice was not given.

However, the requirement of notice will not be insisted upon as a mere technical formality, when the concerned party clearly knows the case against him and is not thereby prejudiced in any manner in putting up an effective defence.

6.3.2 Right to Present Case and Evidence

The adjudicatory authority should afford reasonable opportunity to the party to present his/her case. This can be done through writing or orally at the discretion of the authority unless the statute under which the authority is functioning directs otherwise.

The requirements of natural justice are met only if opportunity to represent is given in view of the proposed action. The demands of natural justice are not

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met even if the very person proceeded against has been furnished information on which the action is based, if it is furnished in a casual way or for some other purposes. This does not mean that the opportunity need be a “double opportunity”, that is, one opportunity on the factual allegations and another on the proposed penalty. But both may be rolled into one.

The Courts are unanimous on the point that oral hearing is not an integral part of fair hearing unless the circumstances are so exceptional that without oral hearing a person cannot put up an effective defence. Therefore, where complex legal and technical questions are involved or where stakes are very high oral hearing shall become a part of fair hearing. Thus, in the absence of a statutory requirement for oral hearing courts will decide the matter taking into consideration the facts and circumstances of every case.

6.3.3 The Right to Rebut Adverse Evidence

The right to rebut adverse evidence presupposes that the person has been informed about the evidence against him. This does not, however, necessitate the supply of adverse material in original in all cases. It is sufficient if the summary of the contents of the adverse material is made available provided it is not misleading.

The opportunity to rebut evidence necessarily involves the consideration of two factors: cross-examination and legal representation.

6.3.4 Cross-Examination

‘Cross-examination’ is the most powerful weapon to elicit and establish truth. However, the Courts do not insist on ‘cross-examination’ in administrative adjudication unless the circumstances are such that in the absence of it the person cannot put up an effective defence. Where the witnesses have orally deposed, the refusal to allow cross-examination would certainly amount to violation of the principles of natural justice. In the area of labour relations and disciplinary proceedings against civil servants also, the right to cross-examination is included in the rule of fair hearing.

6.3.5 Legal Representation

Normally representation through a lawyer in any administrative proceeding is not considered an indispensable part of the rule of natural justice as oral hearing is not included in the meaning of fair hearing. This denial of legal representation is justified on the ground that lawyers tend to complicate matters, prolong the proceedings and destroy the essential informality of the proceedings. It is further justified on the ground that the representation through a lawyer of choice would

give edge to the rich over the poor who cannot afford a good lawyer. The fact remains that unless some kind of a legal aid is provided by the agency itself, the denial of legal representation, to use the words of Professor Allen, would be a 'mistaken kindness' to the poor people.

To what extent legal representation would be allowed in administrative proceedings depends on the provisions of the Statute. Factory Laws do not permit legal representation, Industrial Dispute Acts allows it with the per-mission of the Tribunal and some Statutes like Income Tax Act permit legal representation as a matter of right.

However, the Courts in India have held that in situations where the person is illiterate, or the matter is complicated and technical, or expert evidence is on record or a question of law is involved, or the person is facing a trained prosecutor, some professional assistance must be given to the party to make his right to defend himself meaningful.

6.3.6 Report of the Inquiry to be shown to the Other Party

In many cases, especially in matters relating to disciplinary proceedings, it happens that to conduct the inquiry, the action is entrusted to someone else and on the basis of the report of the inquiry the action is taken by the competent authority. Under these circumstances a very natural question arises is that whether the copy of the report of the inquiry officer be supplied to the charged employee before final decision is taken by the competent authority?

This question is important both from the constitutional and administrative law point of view. One of the cardinal principles of the administrative law is that any action which has civil consequences for any person cannot be taken without complying with the principles of natural justice. Therefore, administrative law question in disciplinary matter has always been whether failure to supply the copy of the Report of the Inquiry to the delinquent employee before final decision is taken by the competent authority would violate the principles of natural justice?

In the same manner the constitutional question in such a situation will be whether failure to supply the copy of the Report of the Inquiry to the delinquent would violate the provisions of Article – 311(2) of the Constitution of India? Article – 311(2) of the Constitution provides that no government employee can be dismissed or removed or reduced in rank without giving him/her a reasonable opportunity of being heard in respect of charges framed against him/her. Therefore, it has always been a perplexing question whether failure to supply the report of the inquiry officer to the charged government employee before final decision is taken would amount to failure to provide "reasonable opportunity"



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as required under Article 311(2) Another Constitutional question that can be asked in such a situation would be whether any final action taken by the authority on the basis of the report of the inquiry without first supplying the copy of it to the delinquent would be arbitrary and hence violative of Article – 14 of the Constitution which enshrines the great harmonizing and rationalizing principle?

The findings on the merit recorded by the Inquiry Officer are intended merely to supply appropriate material for the consideration of the government. Neither the findings nor the recommendations are binding on the Disciplinary Authority.

The Inquiry Report along with the evidence recorded by the inquiry officer constitute the material on which the government has ultimately to act. That is the only purpose of the inquiry and the report which the inquiry officer makes as a result thereof.

The application of the principles of natural justice varies from case to case depending upon the factual aspect of the matter. For example, in the matters relating to major punishment, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules before a person is dismissed removed or reduced in rank, but where it relates to only minor punishment, a mere explanation submitted by the delinquent officer concerned meets the requirement of principles of natural justice. In some matters oral hearing may be necessary but in others, It may not be necessary.

6.3.7 Post Decisional Hearing

‘Pre-Decisional Hearing’ is the standard norm of rule of audi alteram partem. But ‘Post-Decisional Hearing’ affords an opportunity to the aggrieved person to be heard. However, ‘post-decisional hearing’ should be an exception rather than being the rule itself. 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; and
3. where it is impracticable to afford pre-decisional hearing.

The idea of ‘Post-Decisional Hearing’ has been developed to maintain a balance between administrative efficiency and fairness to the individual. This harmonizing tool was developed by the Supreme Court in ‘Maneka Gandhi v. Union of India’. In this case on 1st June, 1976 the passport of the petitioner, a journalist, was impounded in public interest by an order of the Government without furnishing any reasons therefore. The petitioner, being aggrieved by such arbitrary action of the government filed a petition before the Supreme Court under Article-32 challenging

the validity of the impoundment order. One of the contentions of the government was that the rule of audi alteram partem must be held to be excluded because it may frustrate the very purpose of impounding the passport. Rejecting the contention, the court rightly held that though the impoundment of the passport is an administrative action yet the rule of fair hearing is attracted by necessary implication and it would not be fair to exclude the application of this cardinal rule on the ground of administrative convenience. Though the court had not quashed the order outrightly but has developed the technique of 'Post-Decisional Hearing' in order to balance such situations to provide a fair opportunity of being heard immediately after serving the order impounding the passport; which would satisfy the mandate of natural justice.



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INTEXT QUESTION 6.3

1. Define 'Rule of Fair Hearing'.
2. Discuss the main components of a 'Valid Notice'.

6.4 REASONED DECISIONS OR SPEAKING ORDERS

The third principle of Natural Justice which has developed in course of time is that the order which is passed affecting the rights of an individual must be a speaking order. This is necessary with a view to exclude the possibility of arbitrariness in the action. A bald order requiring no reason to support it may be passed in an arbitrary and irresponsible manner. It is a step in furtherance of achieving the end where society is governed by Rule of Law.

The other aspect of the matter is that the party, against whom an order is passed, in fair play, must know the reasons of passing such order. It has a right to know the reasons. The orders against which appeals are provided must be speaking orders. Otherwise, the aggrieved party will not be in a position to demonstrate before the appellate authority as to in which manner, the order passed by the initial authorities is bad or suffers from illegality. To a very great extent, in such matters bald orders render the remedy of appeal nugatory. However, it is true that administrative authorities or Tribunals are not supposed to pass detailed orders as passed by the courts of law. They may not be very detailed and lengthy orders but they must at least show that the mind was applied and for the reasons, howsoever briefly they may be stated, the order by which a party aggrieved is passed. There cannot be any prescribed form in which the order may be passed but the minimum requirement as indicated above has to be complied with. The Supreme Court has many times taken the view that non-speaking order amounts to depriving a party of a right of appeal. It has also been held in some of the

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decisions that the appellate authority, while reversing the order must assign reasons for reversal of the findings.

**INTEXT QUESTION 6.4**

1. Explain the meaning of 'Reasoned Decisions' or 'Speaking order'.
2. What do you understand by the term, 'Speaking Order'. Point out the significance of 'Speaking Order' in administrative proceedings.

6.5 EXCEPTIONS TO THE RULE OF NATURAL JUSTICE

Application of the Principles of Natural Justice can be excluded either expressly or by necessary implication subject to the provisions of Articles 14 and 21 of the Constitution. Therefore, if the Statute, expressly or by necessary implication, precludes the rules of natural justice it will not suffer invalidation on the ground of arbitrariness.

6.5.1 Exclusion in Emergency

In exceptional cases of emergency where prompt preventive or remedial action, is needed, the requirement of notice and hearing may be obviated. Such as, in situations where a dangerous building is to be demolished, or a company has to be wound up to save depositors.

However, the administrative determination of an emergency situation calling for the exclusion of rules of natural justice is not final. The courts may review the determination of such a situation.

Natural Justice is pragmatically flexible and is amenable to capsulation under compulsive pressure of circumstances. It is in this context that the Supreme Court observed: "Natural Justice must be confined within their proper limits and must not be allowed to run wild. The concept of Natural Justice is a magnificent thoroughbred on which this Nation gallops forward towards its proclaimed and destined goal of justice social, economic and political.

6.5.2 Exclusion in Cases of Confidentiality

In a case the Supreme Court held that the maintenance of surveillance register by the police is a confidential document. Neither the person whose name is entered in the register nor any other member of the public can have access to it. Furthermore, the court observed that the observance of the principles of

natural justice in such situation may defeat the very purpose of surveillance and there is every possibility of the ends of justice being defeated instead of being served. Same principle was followed in *S.P. Gupta v. Union of India* where the Supreme Court held that no opportunity of being heard can be given to an Additional Judge of a High Court before his name is dropped from being confirmed. It may be pointed out that in a country like India surveillance may provide a very serious constraint on the liberty of the people, therefore, the maintenance of the surveillance register cannot be so utterly administrative and non-judicial that it is difficult to conceive the application of the rules of natural justice.

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6.5.3 Exclusion in case of routine matters

A student of the university was removed from the rolls for unsatisfactory academic performance without giving any pre-decisional hearing. The Supreme Court held that the very nature of academic adjudication appears to negate any right of an opportunity to be heard. Therefore if the competent academic authorities examine and assess the work of a student over a period of time and declare his work unsatisfactory, the rules of natural justice may be excluded. In the same manner when the Commission cancelled the examination of the candidate because, in violation of rules, the candidate wrote his roll number on every page of the answer, the Supreme Court held that the principles of natural justice are not attracted. Court observed that the rule of hearing is strictly construed in academic discipline as if this is ignored it will not only be against public interest but would also erode social sense of fairness. However, this exclusion shall not apply in case of disciplinary matters or where the academic body permits non-academic circumstances.

6.5.4 Exclusion Based on Impracticability

Rules of Natural Justice may be excluded on the grounds of administrative impracticability. For example in a case where the entire M.B.A. entrance examination was cancelled by the university because of mass copying, the court held that notice and hearing to all the candidates is not possible in this situation, which has assumed national proportions. Thus the court sanctified the exclusion of the rules of natural justice on the ground of administrative impracticability.

6.5.5 Exclusion in Cases of Interim Preventive Action

If the action of the administrative authority is a suspension order in the nature of a preventive action and not a final order, the application of the principles of natural justice may be excluded. In a case where the institution passed an

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order debaring the student from entering the premises of the institution and from attending classes till the pendency of a criminal case against him for stabbing a co-student. The Delhi High Court held that such an order could be compared with an order of suspension pending enquiry which is preventive in nature in order to maintain campus peace and hence the principles of natural justice shall not apply. Therefore, natural justice may be excluded if its effect would be to stultify the action sought to be taken or would defeat and paralyse the administration of the law. The Supreme Court in *Maneka Gandhi v. Union of India* observed : “Where an obligation to give notice and opportunity to be heard would obstruct the taking of prompt action, especially action of a preventive or remedial nature, right of prior notice and opportunity to be heard may be excluded by implication.”

6.5.6 Exclusion in Cases of Legislative Actions

Legislative action, may be plenary or subordinate, is not subjected to the rules of natural justice because these rules lay down a policy without reference to a particular individual. On the same logic principles of natural justice can also be excluded by a provision of the Constitution also. Constitution of India excludes the principles of natural justice in Articles 22, 31(A), (B), (C) and 311(2) as a matter of policy. Nevertheless if the legislative action is arbitrary, unreasonable and unfair, courts may quash such a provision under Articles 14 and 21 of the Constitution. In a case the Supreme Court held that no principles of natural justice have been violated when the government issued notification fixing the prices of certain drugs. The Court reasoned that since notification flowed from a legislative act and not an administrative one so the principles of natural justice do not apply.

6.5.7 Where No Right of the Person is Infringed

Where no right has been conferred on a person by any statute nor any such right arises from common law, the principles of natural justice are not applicable. This can be illustrated by referring a decision of the Supreme Court. The Delhi Rent Control Act makes provision for the creation of limited tenancies. Sections 21 and 37 of the Act provide for the termination of limited tenancies. Combined effect of these sections is that after the expiry of the term a limited tenancy can be terminated. The Supreme Court held that after the expiry of the prescribed period of any limited tenancy, a person has no right to stay in possession and hence no right of his is prejudicially affected which may warrant the application of the principles of natural justice.

6.5.8 Exclusion in Case of Statutory Exception or Necessity

Disqualification on the ground of bias against a person will not be applicable if he is the only person competent or authorized to decide that matter or take that action. If this exception is not allowed there would be no other means for deciding that matter and the whole administration would come to a grinding halt. But the necessity must be genuine and real. Therefore, the doctrine of necessity cannot be invoked where the members of the Text Book Selection Committee were themselves the authors because the constitution of the selection committee could have been changed very easily by the government.



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6.5.9 Exclusion in Case of Contractual Arrangement

In a case the Supreme Court held the principles of natural justice are not attracted in case of termination of an arrangement in any contractual field. Termination of an arrangement/agreement is neither a quasi-judicial or an administrative act so that the duty to act judicially is not attracted.

**INTEXT QUESTION 6.5**

1. Name some of the 'Exceptions' to the Principles of Natural Justice.

Write True/False

2. Application of principles of Natural Justice can be excluded either expressly or by necessary implications subject to the provisions of Articles-14 and 21 of the Constitution. (True/False)
3. Natural Justice is pragmatically flexible and amenable to capsulation under compulsive pressure of circumstances. (True/False)

**WHAT YOU HAVE LEARNT**

- Natural Justice represents higher procedural principles developed by judges which every administrative agency must follow in taking any decision adversely affecting the rights of a private individual. The principles of natural justice are firmly grounded under various Articles of the Constitution. There are mainly two principles of Natural Justice.
 1. 'Rule against Bias' which signifies that the judge must be impartial and must decide the case objectively on the basis of the evidence on record. There are various factors which may influence the judgement. These include personal bias, pecuniary bias, subject matter bias, departmental bias and preconceived notion bias.

MODULE - 2

Functions and
Techniques of Law



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Principles of Natural Justice

2. 'Rule of Fair Hearing' which means that a person must be given an opportunity to defend himself. The important components of this rule are right to notice, right to present case and evidence, the right to rebut adverse evidence, cross-examination, legal representation, report of the enquiry to be shown to the other party and post decisional hearing.
- Similarly the Natural Justice demands that every decision should mention the reasons for arriving at such decision.
 - There are a number of Exceptions to the Principles of Natural Justice. These are exclusion in emergency, confidentiality, routine matters, exclusion based on impracticability, interim preventive action, legislative action, where no right of the person is infringed, statutory exception or necessity, contractual arrangement.



TERMINAL QUESTIONS

1. Explain the 'Rule Against Bias'. Discuss various types of 'bias' which may operate in the decision making by the administrative authorities.
2. Examine the Rule of Fair Hearing. Critically analyse the various aspects of this Rule.
3. Define the term 'Speaking Order'.
4. Identify the various 'Exceptions' to the Rule of Natural Justice.



ANSWERS TO INTEXT QUESTIONS

6.1

1. Natural Justice implies fairness, reasonableness, equity and equality.
2. Article 14 and 21 of the Constitution provide the strong basis of the principles of Natural Justice. Article – 14 bars arbitrary actions whereas Article – 21 provides for substantive and procedural fairness in matters which effect the life and liberty of individuals.
3. Two main principles of Natural Justice are (i) No one should be the Judge in his/her own case and (ii) each party should be given the opportunity to be heard.

6.2

1. The term 'Bias' means an operative prejudice whether conscious or unconscious in relation to a party or issue.



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2. Three examples are:
 - (a) The adjudicating officer has shares in one of the companies.
 - (b) A person who is the member of the selection panel is also one of the applicants for the post.
 - (c) An officer of the government Transport company authorised to inspect the government and private vehicle.
3. Various aspects of 'Bias' are:
 - (a) Personal Bias
 - (b) Pecuniary Bias
 - (c) Subject Matter Bias
 - (d) Pre-conceived Notion bias and
 - (e) Departmental Bias

6.3

1. 'Rule of Fair Hearing' simply implies that a person must be given an opportunity to defend himself/herself.
2. The important components of a Notice are:
 1. Time, place and nature of hearing.
 2. Legal authority under which hearing is to be held.
 3. Statement of specific charges which the person has to meet.

6.4

1. The term 'Reasonal Decisions' or 'Speaking orders' means tht the order which is passed affecting the rights of an individual must be speaking order. The party against whom an order is passed in fair play, must know the reasons of passing the order.
2. 'Speaking order' is the order which mentions the reason (s) for arriving at a particular decision. It helps in avoiding arbitrariness. It helps in building up the trust and confidence in the system. It provides the ground (s) of appeal if desired by the aggrieved party.

6.5

1. Some of the important exceptions to the principles of natural justice are – exclusion in emergency, confidentiality, routine matters, exclusion legislative action, where no right of the person is infringed etc exclusion in case of statutory exception or necessity, exclusion in case of contractual arrangement.
2. True
3. True