

CARVING NATURAL JUSTICE INTO THE CONSTITUTION OF INDIA

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The Seat of Justice is the Seat of God

-Mahavir Tyagi

ABSTRACT

There is no carving more deeply rooted in us than the carving of justice. It is generally assumed that nature is the source of justice which gets manifested in the law of human beings. Justice is conceived as natural law. It is understood as a moral instinct common to all men or as a divine dictate written on their hearts. It was thus a vague character and a great difficulty in its realization of the concrete rules of conduct. Disputes often arose as to the actual content of this natural law. Nevertheless, the recognition of the existence of such a law is not at all an area of dispute. Natural law is a powerful influence in maintaining the ideals of justice in the form of moral commandments of life. Natural law is a synonym of moral law. It refers to the principles of right or wrong. Natural justice is an ethical-legal concept that is based on the natural feeling of the human being. Rules of natural justice have developed with the growth of civilization. It is not the creation of the Constitution or mankind. It originated along with human history. To protect himself against the excess of organized power, man has always appealed to someone who is not been created by him and such someone could only be God and His laws, Divine law or Natural law, to which all temporal laws must and actions must conform. It is a great principle of humanization which informs law and procedures with fairness and impartiality.

UNDERSTANDING NATURAL JUSTICE

Natural justice rules are not codified laws. It is not possible to define precisely and scientifically the expression 'natural justice'. They are common-sense justice which is built- into the conscience of human beings. They are based on natural ideals and values that are universal in nature. 'Natural justice' and 'legal justice' are substances of 'justice' which must be secured by both, and whenever legal justice fails to achieve this purpose, natural justice has to be called in aid of legal justice.

The concept of natural justice was differently understood by different writers and lawyers in a different systems. Some regard natural justice as divine law; others took it as a form of jus gentium or the common law of nations.ⁱ And others regard it as a synonym with the expression such as natural law, universal law, eternal law, the laws of God, universal justiceⁱⁱ, natural equity, the substantial requirement of justice, the essence of justice, substantial justice, fundamental justiceⁱⁱⁱ, rational justice, divine justice universal equity, ^{iv}elementary rules of justice^v and alike.

Natural justice has an impressive history which has been recognized from the earliest times. The Greeks had accepted the principle that 'no man should be condemned unheard'. It was first applied in 'The Garden of Eden' where the opportunity to be heard was given to Adam and then provided him punishment. The term —Principles of Natural Justice^l (PNJ), derived from the expression „Jus Natural” of the Roman Law, does not have the force of law as they may or may not form part of statute but they are necessary to be followed. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in the issue. These principles are well settled. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial, and administrative authority while making an order affecting those rights. These rules are intended to prevent such authorities from doing injustice. The rules of natural justice do not supplant the law of the land but only supplement it.^{vi} It is now firmly established that in the absence of express provisions in any statute dispensing with the observance of the principles of natural justice, such principles will have to be observed in all

judicial, quasi-judicial, and administrative proceedings which involve civil consequences to the parties. ^{vii}At the initial stage, it is only applied to judicial proceedings and not to administrative proceedings but in *Ridge vs. Baldwin*, ^{viii}it was stated that the principles of natural justice apply to ‘almost the whole range of administrative powers. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

PRINCIPLES OF NATURAL JUSTICE

Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

Natural Justice recognizes three principles:

- (i) *Nemo debet esse iudex in propria causa*.
- (ii) *Audi alteram partem*, and
- (iii) Speaking orders or reasoned decisions.

The first two have come to us from Roman Law and the third one is a recent Innovation due to the rapid development of constitutional as well as administrative law.

(I) NEMO DEBET ESSC JUDEX IN PROPRIA CAUSA.

The first principle of impartiality roughly translated into English means nobody shall be a judge in his cause or in a cause in which he is interested. This principle is more popularly known as the Doctrine of Bias. That is the authority sitting in judgment should be impartial and act without bias. To instill confidence in the system, justice should not merely be done but seen to be done. The rule disqualifies a person from deciding a dispute in which he has- pecuniary bias; personal bias; or bias relating to the subject matter. say, It implies that no man can act as a judge for a cause in which he has some interest, maybe pecuniary or otherwise. Pecuniary interest affords the strongest proof against impartiality. The emphasis is on objectivity in

dealing with and deciding a matter. Justice Gajendragadkar, as then he was, observed in a case reported in, *M/s Builders Supply Corporation v. The Union of India and others*^{ix}, “it is obvious that pecuniary interest, however small it may be, in a subject matter of the proceedings, would wholly disqualify a member from acting as a judge”. Lord Hardwick observed in one of the cases, “In a matter of so tender a nature, even the appearance of evil is to be avoided.” Yet it has been laid down as a principle of law that pecuniary interest would disqualify a Judge to decide the matter even though it is not proved that the decision was in any way affected. This is thus a matter of faith, which a common man must have, in the deciding authority.

The second principle of natural justice means —to hear the other side ||This is necessary for providing a fair hearing and no doubt the rule against bias would also be a part of the procedure. A corollary has been deduced from the above two rules and particularly the *audi alteram partem* rule, namely *—qui aliquid statue parte inaudita alter actual licet dixerit, haud vacuum favorite* that is, he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right or in other words, as it is now expressed, justice should not only be principle found its way into Magna Carta. The classic exposition of Sir Edwar Coke of natural justice requires to —advocate, interrogate, and adjudicate. In the celebrated case of *Cooper v. Wandsworth Board of Works*,^x the principle was thus stated:-

“Even God did not pass a sentence upon Adam before he was called upon to make his defense. “Adam,” says God, “where art thou? Has thou not eaten of the tree whereof I commanded thee that thou shouldest not eat”.

This rule covers various stages through which administrative adjudication passes 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 the party

5. Report of inquiry to be shown to the other party

CONSTITUTION OF INDIA AND ITS RELATION TO NATURAL JUSTICE

In the Constitution of India, nowhere the expression Natural Justice is used. However, the golden thread of natural justice sagaciously passed through the body of the Indian constitution. The preamble of the constitution includes the words, 'Justice Social, Economic and political' liberty of thought, belief, worship... And equality of status and opportunity, not only ensures fairness in social and economic activities of the people but also acts as a shield to individuals' liberty against arbitrary action which is the base for the principles of Natural Justice.^{xi}

Apart from the preamble Art 14 ensures equality before the law and equal protection of the law to the citizen of India. Art 14 strikes at the root of arbitrariness and Art 21 guarantees the right to life and liberty which is the fundamental provision to protect liberty and ensure life with dignity. Art 22 guarantees natural justice and the provision of a fair hearing to the arrested person. Directive principles of state policy especially Art 39-A take care of social, economic, and politically backward sections of people and accomplish this object i.e. this part ensures free legal aid to indigent or disabled persons, and Art 311 of the constitution ensures constitutional protection to civil servants. Furthermore, Art 32, 226, and 136 provide constitutional remedies in cases of violation of any of the fundamental rights including principles of natural justice. With this brief introduction, the author undertakes to analyze some of the important provisions containing some elements of the Principle of Natural Justice^{xii}.

HOW THE PRINCIPLE OF NATURAL JUSTICE IS EMBODIED IN THE CONSTITUTION OF INDIA- A CONCEPTUAL ANALYSIS

“Rules of natural justice are not embodied rules nor can they be elevated to the position of Fundamental Rights. Their aim is to secure justice or to prevent miscarriage of justice. The principles of natural justice have come to be recognized as being a part of the guarantee

contained in Article 14 of the Constitution because of the new and dynamic interpretation given by the Supreme Court to the concept of equality, which is the subject matter of that article. Violation of a rule of natural justice results in arbitrariness, which is the same as discrimination. Where discrimination is the result of State action, it is a violation of Article 14. Therefore, a violation of the principle of natural justice by a state action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. The principles of natural justice apply not only to legislation and State action but also where any tribunal, authority, or body of men not coming within the definition of “State” in article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matters fairly and impartially.^{xiii}

TIE- UP BETWEEN NATURAL JUSTICE AND ARTICLE 14

The article guarantees equality before the law and equal protection of the law.^{xiv} It bars discrimination and prohibits both discriminatory laws and administrative action. Art 14 is now proving to be a bulwark against any arbitrary or discriminatory state action. The horizons of equality as embodied in Art 14 have been expanding as a result of the judicial pronouncements and Art 14 has now come to have a highly activist magnitude. It laid down the general proposition that all persons in similar circumstances shall be treated alike both in privileges and liabilities imposed. Art 14 manifests in the form of the following propositions:

(i) A law conferring unguided and unrestricted power on authority is bad for being arbitrary and discriminatory.

- (ii) Art. 14 illegalize discrimination in the actual exercise of any discretionary power.
- (iii) Art. 14 strikes at arbitrariness in administrative action and ensures fairness and equality of treatment.

In some cases, the Courts insisted, to control arbitrary action on the part of the administration, that the person adversely affected by administrative action be given the right of being heard before the administrative body passes an order against him. It is believed that such a procedural safeguard may minimize the chance of the Administrative authority passing an arbitrary order.

Thus, the Supreme Court has extracted from Art. 14 the principle that natural justice is an integral part of the administrative process.

Art. 14 guarantee a right of hearing to the person adversely affected by an administrative order. In *Delhi Transport Corporation v. DTC Mazdoor Union*,^{xv} SC held that “the audi alteram partem rule, in essence, enforces the equality clause in Art 14 and it is applicable not only to quasi-judicial bodies but also to administrative order adversely affecting the party in question unless the rule has been excluded by the Act in question.” Similarly in *Maneka Gandhi v. Union of India*^{xvi} SC opined that Art 14 is an authority for the proposition that the principles of natural justice are an integral part of the guarantee of equality assured by Art. 14 an order depriving a person of his civil right passed without affording him an opportunity of being heard suffers from the vice of violation of natural justice.

There are several instances where Art 14 of the Constitution is invoked to protect the individual from the violation of natural justice principles, in *Central Inland Water Transport Corporation Ltd v. Brijo Nath*^{xvii} in this case a government company made a service rule authorizing it to terminate the service of a permanent employee by merely giving him a three months’ notice or salary in lieu of notice. The rule was declared to be invalid as being violative of Art. 14 on the ground that it was unconstitutional. The rule in question constituted a part of the employment contract between the corporation and its employees. The Court ruled that it would not enforce, and would strike down, an unfair and unreasonable clause in a contract entered into between parties who were not equal in bargaining power. This was in conformity with the mandate of the “great equality clause in Art. 14.”

The Court emphasized that the judicial concept of Art. 14 has progressed “from a prohibition against discriminatory class legislation to an invalidating actor for any discriminatory or arbitrary state action.” The Court also emphasized that the rule was “both arbitrary and unreasonable” and “as it also wholly ignored and set aside the Audi alterum partum rule” violated Art. 14. This is of the view that “the principle of natural justice has now come to be recognized as being a part of the constitutional guarantee contained in Art. 14.” The rule in question was “both arbitrary and unreasonable,” and it also wholly ignored and set aside the Audi alter partum rule and, thus, it violated Art 14.

In another landmark case of *Olga Tellis v. Bombay Municipal Corpn.*^{xviii}, the court held that even if the legislature authorizes the administrative action, without any hearing, the law would be violative of the principles of fair hearing and thus violative of Articles 14 and 21 of the Indian Constitution. In *Cooper v. Wandsworth Board of Works*^{xix}, BYLES J. observed that the laws of God and man both allow the party to defend himself. Even God did not pass a sentence upon Adam before he was called upon to make his defense

The law envisages that in the cases classified as ‘quasi-judicial’, the duty to follow completely the principles of natural law exists. But in the cases which are classified as ‘administrative’, the duty of the administrative authority is to act justly and fairly and not arbitrarily. In *R. v. Gaming Board Ex. p. Benaim*^{xx} Lord Denning held that the view that the principle of natural justice applied only to judicial proceedings and not to administrative proceedings has been overruled in *Ridge v. Baldwin*.^{xxi} The guidance that was given to the Gaming Board was that they should follow the principles laid down in the case of immigrants namely that they have no right to come in, but they have a right to be heard. The Court held in construing the words the Board “Shall have regard only” to the matter specified, the Board has a duty to act fairly and it must give the applicant an opportunity of satisfying them of the matter specified in the section. They must let him know what their impressions are so that he can disabuse them. In the 1970 case of *A. K. Karaipak v. Union of India*^{xxii}, the Supreme Court made a statement that the fine distinction between the quasi-judicial and administrative functions needs to be discarded for giving a hearing to the affected party. Before Karaipak’s case, the court applied natural justice to the quasi-judicial functions only. But after the case, natural justice could be applied to administrative functions as well.

In *Cantonment Board, Dinapore v. Taramani*^{xxiii} in this case the Commanding-in-chief of the cantonment board canceled the board’s resolution after giving it a hearing but not to the respondent to whom the permission had been given. The Supreme Court ruled that Commanding-in-chief ought to have given a hearing to the respondent as well before canceling the permission given by the board. The Court observed: audi alteram partem is a part of Art. 14 of the Constitution”. The real affected party was the party is ultimately affected by the cancellation of the Board’s resolution. Because of Art.14 “no order shall be passed at the back of a person, prejudicial in nature to him when it entails civil consequences.” This is how Art 14 of the Constitution holds an element of Natural justice into it.

LINK BETWEEN ARTICLE 21 AND NATURAL JUSTICE

The spirit of the Indian Constitution lies in Article 21^{xxiv}. The most important word in this Article is 'procedure established by law' the question arises whether these words can be read as rules of natural justice. i.e. whether 'law' U/Art 21 can be read as principles of natural justice? To this question, The Supreme Court ruled by a majority that the word 'law' in Art. 21 could not be read as rules of natural justice. These rules (natural justice principles) were vague and indefinite and the constitution could not be read as laying down a vague standard. Nowhere in the constitution was the word 'law' used in the sense of abstract law or natural justice.

The word 'law' was used in the sense of state (lex) made law and not natural law (jus). The expression 'procedure established by law' would therefore mean the procedure as laid down in an enacted law. On the other hand, Fazal Ali, J., disagreeing with the majority view, held that the principle of natural justice that 'no one shall be condemned unheard' was part of general law of the land and the same should accordingly be read into Art 21. However, later on, the majority opinion of A.K. Gopalan^{xxv} was discarded; this is because the right to life does not mean mere animal existence. This right cannot be allowed to violate by law, which is wholly unreasonable, such law must be reasonable, fair, and just. These terminologies are similar in content that of the 'due process clause of the American constitution. Accordingly, such law must prove substantive reasonableness as well as procedural reasonableness, later one requires such procedure should be 'fair', fairness requires reasonable notice, a reasonable opportunity of hearing, legal representation, reasons for the decision, etc. which are the fundamental component of natural justice.

In *Maneka Gandhi v. Union of India*^{xxvi}, SC by realizing the implications of Gopalan during the 1975 emergency took 'A U-turn and held that "Art 21 would no longer mean that law could prescribe some semblance of the procedure however arbitrary or fanciful, to deprive a person of his liberty. It now means that the procedure must satisfy certain requisites in the sense of being fair and reasonable. The procedure "cannot be arbitrary, unfair or unreasonable". The concept of reasonableness must be projected in the procedure contemplated by Art.21. The Court has now assumed the power to adjudge the fairness and justness of procedure established by law to deprive a person of his liberty. The Court has reached this conclusion by holding that Arts. 21, 19, and 14 are mutually exclusive but linked.

As per Bhagawati, J., “the principle of reasonableness which legally as well as philosophically is an essential element of equality or non-arbitrariness pervades art 14 like a brooding omnipresence”. Thus, the procedure in Art. 21 “must be right, just and fair” and not arbitrary, fanciful or oppressive, otherwise, it would be no procedure at all and the requirement of Art. 21 would not be satisfied. In the same case Iyer, J., opined procedure in Art. 21, which means fair, not formal, procedure; ‘law’ is reasonable law and not any enacted piece. This makes the words “procedure established by law” synonymous with the ‘procedural due process’ in the U.S.A. this makes the right of the hearing on the part of natural justice. Accordingly, as a result of this epoch-making judgment in the Maneka Gandhi case Court concluded that ‘as the right to travel abroad falls under Art. 21, natural justice must be applied while exercising the power of impounding a passport under the Passport Act. Although the passport Act does not expressly provide for the requirement of hearing before a passport is impounded, the same has to be implied therein’.

Supreme Court of India knowing the importance of a ‘fair trial’ by liberal interpretation of Art. 21, made several provisions for the protection of the accused and provided adequate safeguards to defend his case. SC thinks that conducting a fair trial for those who are accused of criminal offenses is the cornerstone of democracy. Conducting a fair trial is beneficial both to the accused as well as to society. A conviction resulting from an unfair trial is contrary to justice.

The Supreme Court has taken a gigantic innovative step forward in humanizing the administration of criminal justice by suggesting that free legal aid be provided by the State to poor prisoners facing a prison sentence. When an accused has been sentenced by a Court but is entitled to appeal against the verdict, he can claim legal aid: if he is indigent and is not that the lawyer’s services continued an ingredient of fair procedure to a prisoner who is seeking his liberation through the Court’s procedure.^{xxvii}

“Now, a procedure which does not make available legal service to an accused person who is too poor to afford a lawyer and who would, therefore, have to go through the trial without legal assistance, cannot possibly be regarded as ‘reasonable, fair and just’”. Accordingly in India, free-legal aid to an indigent or disabled person is considered to be an essential component of Natural Justice. To ensure free legal aid to a citizen of India Art 39A is inserted in part IV of the constitution which states that, The State shall secure that the operation of the legal system

promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities. Accordingly, sufficient safeguard has been provided under Indian Constitution to get legal representation.

A CORRELATION BETWEEN ARTICLE 22 AND NATURAL RIGHTS

Art. 22: gives protection to the arrested person against arrest and detention in certain cases which within its ambit contains a very valuable element of natural justice,

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

Article 22 (1) and (2) confers four following fundamental rights upon a person who has been arrested:

- i) Right to be informed, as soon as may be, of the grounds for such arrest.
- ii) Right to consult and to be defended by a legal practitioner of his choice.
- iii) Right to be produced before the nearest magistrate within twenty-four hours of his arrest excluding the time necessary for the journey from the place of arrest to the Court of Magistrate.
- iv) Right not to be detained in custody beyond the period of twenty-four hours without the authority of the Magistrate.

(i): Right to be informed of the Grounds of Arrest:

The object underlying the provision that the ground for arrest should be communicated to the person arrested appears to be this. On knowing about the grounds of arrest, the detinue will be in a position to make an application to the appropriate court for bail or move the High Court for a writ of habeas corpus. The Supreme Court observed that Article 22 (1) embodies a rule

which has always been regarded as vital and fundamental for safeguarding personal liberty in all legal systems where the Rule of Law prevails. Information as to the grounds of arrest provides a reasonable opportunity to prepare a case by detenu, such grounds must be precisely unambiguous, if the grounds are not fully disclosed to the accused then it would amount to a denial of a 'fair hearing' and results into violation of Natural Justice.

Joginder Kumar v. State of UP^{xxviii} emphasizes that the right not to be arrested except for heinous offenses and to have someone informed of the arrest and to consult privately with lawyers is inherent in articles 21 and 22.

In re, Madhu Limaye^{xxix} the facts were: Madhu Limaye, Member of the Lok Sabha, and several other persons were arrested. Madhu Limaye addressed a petition in the form of a letter to the Supreme Court under Article 32 mentioning that he along with his companions had been arrested but had not been communicated the reasons or the grounds for arrest. It was stated that the arrested persons had been merely told that the arrest had been made "under sections which are bailable". In the return filed by the State, this assertion had neither been controverted nor had anything been stated concerning it. One of the contentions raised by Madhu Limaye was that there was a violation of the mandatory provisions of Article 22 (1) of the Constitution.

The Supreme Court observed that Article 22 (1) embodies a rule which has always been regarded as vital and fundamental for safeguarding personal liberty in all legal systems where the Rule of Law prevails. The court further observed that the two requirements of Clause (1) of Article 22 are meant to afford the earliest opportunity to the arrested person to remove any mistake, misapprehension, or misunderstanding in the minds of the arresting authority and, also to know exactly what the accusation against him is so that he can exercise the second right, namely of consulting a legal practitioner of his choice and to be defended by him. Those who feel called upon to deprive other persons of liberty in the discharge of what they conceive to be their duty must, strictly and scrupulously, observe the forms and rules of law^{xxx}.

(ii): Right to consult and to be defended by Legal Practitioner

As we already dealt U/Art. 21 that principle of fair hearing requires adequate legal representation, this principle is carried forward by Art. 22 (1). Art 22(1) guarantees the right

of legal representation by an advocate of his choice. The Article does not require the state to extend legal aid as such but only requires to allow all reasonable facilities to engage a lawyer for the person arrested and detained in custody. The choice of counsel is entirely left to the arrested person. The right to consult arises soon after arrest.

In *Nandini Satpathy v. P.L. Dani*,^{xxxii} the Supreme Court observed that Article 22 (1) directs that the right to consult an advocate of his choice shall not be denied to any person who is arrested. This does not mean that persons who are not under arrest or custody can be denied that right. The spirit and sense of Article 22 (1) are that it is fundamental to the rule of law that the services of a lawyer shall be available for consultation to any accused person under the circumstances of near-custodial interrogation. Moreover, the observance of the right against self-incrimination is best promoted by conceding to the accused the right to consult a legal practitioner of his choice. Lawyers' presence is a constitutional claim in some circumstances in our country also, and in the context of Article 20(3) is an assurance of awareness and observance of the right to silence. *Nandini Satpathy's Case* makes a clear departure from the literal interpretation stance of the Supreme Court in earlier cases. The case added fortification to the right to counsel. The Supreme Court went a step forward in holding that Article 22(1) does not mean that persons who are not strictly under arrest or custody can be denied the right to counsel. The Court enlarged this right to include the right to counsel any accused person under circumstances of near-custodial interrogation.

In *Joginder Kumar V. State of U.P.*^{xxxiii} The Supreme Court held that the right of the arrested person upon request, to have someone informed about his arrest and the right to consult privately with lawyers are inherent in Articles 21 and 22 of the Constitution. The Supreme Court observed that no arrest can be made because it is lawful for the Police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest should be made by Police Officer without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even to the need to effect the arrest.

The Supreme Court issued the following requirements:

(1) An arrested person being held in custody is entitled, if he so requests, to have one friend, relative, or another person who is known to him or likely to take an interest in his welfare told as far as practicable that he has been arrested and where is being detained.

(2) The Police Officer shall inform the arrested person when he is brought to the police station of this right.

(3) An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22 (1) and enforced strictly. The above requirements shall be followed in all cases of arrest till legal provisions are made on this behalf. In *M.H.Hoskot V. State of Maharashtra*,^{xxxiii} it was observed by the Supreme Court that generally speaking and subject to just exceptions, at least a single right of appeal on facts, where a criminal conviction is fraught with long loss of liberty, is basic to civilized jurisprudence. Every step that makes the right of appeal fruitful is obligatory and every action or inaction which stultifies it is unfair and unconstitutional. Pertinent to the point are two requirements: (i) service of a copy of the judgment to the prisoner in time to file an appeal and (ii) provision of free legal services to a prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service. Both these are State responsibilities under Article 21. Where the procedural law provides for further appeal these requirements will similarly apply. One of the ingredients of fair procedure for a prisoner, who has to seek his liberation through the court process is a lawyer's services. Judicial justice, with procedural intricacies, legal submissions, and critical examination of evidence, leans upon professional expertise and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side. The Indian socio-legal milieu makes free legal service at trial and higher levels, an imperative processual piece of criminal justice where deprivation of life or personal liberty hangs in the judicial balance. Partial statutory implementation of the mandate is found in S. 304 Cr. P.C., and in other situations courts cannot be inert in the face of Articles 21 and 39-A. *Maneka Gandhi's Case*^{xxxiv} has laid down that personal liberty cannot be cut out or cut down without fair legal procedure. Enough has been set out to establish that a prisoner, deprived of his freedom by court sentence but entitled to appeal against such verdict, can claim, as part of his protection under Article 21 and as implied

in his statutory right to appeal, the necessary concomitant of right to counsel to prepare and argue his appeal.^{xxxv}

If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional or statutory right of appeal, inclusive of special leave to appeal for want of legal assistance, there is implicit in the Court under Article 142 read with Articles 21 and 39-A of the Constitution, power to assign counsel for such imprisoned individual 'for doing complete justice'. The inference is inevitable that this is a State's duty and not Government's charity. Equally affirmative is the implication that while legal services must be free to the beneficiary the lawyer himself has to be reasonably remunerated for his services. Naturally, the State concerned must pay a reasonable sum that the court may fix when assigning counsel to the prisoner. Of course, the court may judge the situation and consider from all angles whether the ends of justice must make available legal aid in the particular case. That discretion resides in the Court. This is the present position relating to legal representation to defend U/Art 22(1).

Art 22 (4) to (7) deals with preventive detention, and Art. 22(5) provides the same safeguards to a person detained under Preventive Detention Laws, like Under COFEPOSA-1974, National Security-1980, etc In *Nandlal Bajaj v. the State of Punjab*^{xxxvi}, the Court allowed legal representation to the detainee through a lawyer even when Section 11 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, and Sec 8(e) of COFEPOSA- 1974 denied legal representation in express term because the state had been represented through a lawyer. The SC observed even when the law does not allow legal representation to the detenu, he is entitled to make such a request and the advisory board is bound to consider this request on merit, and Board is not precluded to allow such assistance when it allows the state to be represented through a lawyer.

ART 32, 226 AND 227

Art 32 and 226 of the constitution provide for constitutional remedies for violation of fundamental Rights and other legal rights respectively remedies, Under Art 32 and 226 can be exercised by issuing appropriate Writ, Direction, and Orders. Writs like Habeas Corpus mandamus, prohibition quo-warranto, and certiorari. Writ of Habeas Corpus is invoked to prevent unlawful detention and Mandamus is invoked to compel a public official to perform his legal duties. Whereas Writ of Prohibition and Certiorari is used to prevent Judicial and

quasi-judicial bodies from acting without jurisdiction, more than jurisdiction, or where the error of law is apparent on the face of the record, violation of Fundamental Rights, and on the ground of violation of Principles of Natural Justice. However, in recent times it is a new development that a Writ of Certiorari can also be invoked against Administrative authority exercising adjudicatory function.^{xxxvii}

In *U.P. Warehousing Corporation V. Vijay Narain*,^{xxxviii} in this case, Court held that the Writ of certiorari or prohibition usually goes to a body that is bound to act fairly or according to natural justice and it fails to do so. In the same manner where the decision is affected by bias, personal, pecuniary, or subject matter as the case may be considered a violation of the principle of natural justice. In such circumstances also writ of certiorari and prohibition can be issued both Under Art 32 and 226. In *Manacle V. Dr. Premchand*^{xxxix}, speaking for SC, Gagendragadkar, J., remarked: “it is obvious that pecuniary interest, however small it may be in the subject matter of the proceedings, would wholly disqualify a member from acting as judge. In *Gullapalli Nageshwar Rao V. APSRTC*^{xl} the SC quashed the decision of the AP Govt., nationalizing Road transport on the ground that the Secretary of the Transport Department who was given a hearing was interested in the subject matter. Any order made in violation of the principles of natural justice is void ab-initio and is liable to be annulled and canceled. The Supreme Court in *Nawabkhan Abbaskhan V. State of Gujarat*^{xli} held that an order which infringes fundamental freedom passed in violation of the audi alteram partem rule is a nullity. When a competent court holds such an official act or orders invalid or sets it aside, it operates from the nativity, i.e. the impugned act or order was never valid.

In *Parry & Co V. P.C.Pal*^{xlii} it was observed that writ of certiorari is generally granted when a Court has acted without or in excess to its jurisdiction. It is available in those cases where a tribunal though competent to enter upon an inquiry, acts in flagrant disregard of the rules of procedure or violates the Principles of Natural Justice, where no particular procedure is prescribed. Where the tribunal has disabled itself from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or where the conclusion on the very face of it is so wholly arbitrary and caprices that no reasonable person can ever have arrived at the conclusion interference under Art. 226 would be justified

Apart from Art.32 and 226, it is Art 227^{xliii} which can be used by the High Court as another extraordinary weapon to prevent violation of principles of natural justice in any of the lower courts or tribunals as the case may be.

ART. 311 AND PRINCIPLES OF NATURAL JUSTICE:

Art 311 deals with the Dismissal, removal, or reduction in rank of persons employed in civil capacities under the Union or a State, through Art. 310 of the constitution adapts 'doctrine of Pleasure' Art 311 constitution provides sufficient safeguards against misuse of such power, (1) of Art 311 declares that no person who is a member of civil service of the Union or an all-India service of State or holds a civil post under Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed and Clause (2) of Art.311 declares no such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The word 'reasonable opportunity of being heard' includes all the dimensions of principles of natural justice, accordingly, no dismissal, removal, or reduction of the rank of civil servant can be made without giving reasonable opportunity of being heard.^{xliv}

In Punjab National Bank V. Kuna Bihar Mira,^{xlv} the question was raised was when the inquiry officer, during the course of the disciplinary proceedings, concludes that the charges of misconduct against an official are not proved, then can the disciplinary authority differ from that view and give a contrary finding without allowing the delinquent officer The Court has ruled that natural justice demands that the authority which proposes to hold the delinquent officer guilty must give him a hearing. If the inquiry officer olds the charges to be proved then the report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action prejudicial to the delinquent officer.

Art. 311 requires the authority, which has to take a final decision and can impose a penalty, to allow the officer charged with misconduct to file a representation before the disciplinary authority records its findings on charges framed against the officer. This is because before imposing the punishment, the employer is expected to conduct a proper inquiry by the

provisions of the Standing Orders, if applicable, and principles of natural justice. The inquiry should not be an empty formality.

Effect of failure of natural justice in proceedings contemplated U/Art. 311 is defended upon the following circumstances

- (i) where there is a total violation of natural justice, i.e., where no opportunity of hearing has been given: where there has been no notice/ no hearing at all; and
 - (ii) Where a facet of natural justice has been violated, i.e. where there has been an adequate opportunity of hearing, or where a fair hearing is lacking.
- (ii) In situation (i), the order would undoubtedly be void. In such a case, normally, the authority concerned can proceed afresh according to natural justice.

In situation (ii), the Court has to see whether, in the totality of the circumstances, the delinquent servant did or did not have a fair hearing. While applying the audi alter partem rule, the ultimate and overriding objective must be kept in mind, to ensure a fair hearing and to ensure that there is no failure of justice. These prepositions were laid down by Hon'ble SC in *State Bank of Patiala V. S.K.Sharma*^{xlvi} these prepositions equally apply to inquiry affected by bias, the inquiry officer should be a person with an open mind and he should hold an impartial domestic inquiry. He should not be based either in favor of the department or against the person against whom the inquiry is to be held, prejudge the issue, or have a foreclosed mind, or have pre-determined notions.

An inquiry by a person who is biased against the charged officer is a clear denial of reasonable opportunity. For example, the same person cannot be a judge and a witness in the same case. Therefore, the inquiry officer cannot also be a witness against the servant against whom he is holding the inquiry; such a procedure denotes a biased state of mind against the person concerned.

In *Kuldeep Singh V. Commissioner of Police*,^{xlvii} the SC held that the inquiry officer was biased as he “did not sit with an open mind to hold an impartial domestic inquiry which is an essential component of natural justice as also that of “reasonable opportunity”, contemplated by Art. 311(2) of the Constitution.” The inquiry officer, said the Court, acted arbitrarily in the matter and found the employee guilty in such a coarse manner that it became apparent that he was

merely carrying out the command from some superior officer who perhaps directed to “fix him up”.

However, merely because the officer holding inquiry is not liked by the servant there may not be the possibility of bias and no proceeding in such circumstance is said to be affected by bias, there is authority for the view that, where there are certain rules governing the procedure of enquires, the mere violation of such rules will not give a party a cause of action unless there has been, in consequence, the prejudice caused.

Another important question here is should an Advocate be Permitted in all Domestic Enquiries. In the Board of Trustees V. Nadkarni,^{xlviii} the Supreme Court stated that in the past there was an informal atmosphere before a domestic inquiry forum and that strict rules of procedural law did not hamstring the inquiry. We have moved far away from this stage. The situation is where the employer has on his pay rolls Labour Officers. Legal Advisors and Lawyers in the garb of employees are appointed as Presenting Officers and the delinquent employee pitted against such legally trained personnel has to defend himself.

However, the fact is that the weighted scales and tilted balance can only be partially restored if the delinquent is given the same legal assistance as the employer. It applies with equal vigor to all those who must be responsible for fair play. When the Bombay Port Trust Advisor and Junior Assistant Legal Advisor would act as the Presenting cum Prosecuting Officer in the inquiry the employee was asked to be represented by a person not trained in law, which was held utterly unfair and unjust. The employee should have been allowed to appear to the rough legal practitioner and failure vitiated the inquiry.

In Ghatge Patil Transport Pvt. Ltd. V B.K. Patel and others. ^{xlix} Apart from the provisions of law, it is one of the basic principles of natural justice that the inquiry should be fair and impartial. Even if there is no provision in the Standing Orders or Law, wherein an inquiry before the domestic mind if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to a denial of a reasonable request to defend himself and the essential principles of natural justice would be violated.

And in India Photographic Co V. Sumatra Mohan Kumar¹ the court should discourage the involvement of legal practitioners in simple domestic inquiries, like disciplinary inquiries, for

avoiding complications and delays, yet the court's refusal of such representation would constitute a failure of the inquiry itself. Principles of Natural Justice demand conceding to such a claim. No general rule can be laid down in this respect but the issue must be left for consideration in the light of the facts and circumstances of each case. The view of Calcutta HC appears to be correct.

Further in inquiry when Principles of Natural Justice have not been observed, if the disciplinary authority concludes that the inquiry was not made in conformity with principles of natural justice, it can also remit the case for further inquiry on all or some of the charges. The discretion in this regard should be exercised by the disciplinary authority for adequate reasons to be recorded in writing. A further inquiry may be ordered, for example, when grave lacunae or procedural defects are vitiating the first inquiry and not because the first inquiry had gone in favor of the delinquent officer. In the latter type of cases, the disciplinary authority can, if it is satisfied with the evidence on record, disagree with the findings of the Inquiring Authority.

In this context the following observations of the Rajasthan High Court in *Dwarka Chand V. State of Rajasthan*^{li} are relevant: If we were to hold that a second departmental inquiry could be ordered after the previous one has resulted in the exoneration of a public servant the danger of harassment to the public servant, would in our opinion, be immense. If it were possible to ignore the result of an earlier departmental inquiry, then there will be nothing to prevent a superior officer, if he were so minded, to order a second or a third or a fourth or even a fifth departmental inquiry after the earlier ones had resulted in the exoneration of a public servant.

Art 311 (2) provides invaluable safeguards to civil servants but at the same time provides some exceptions to the requirement of natural justice, under the following circumstance reasonable opportunity of being heard is not essential to civil servants under the Union of India or a State,

(i) Where a person is dismissed, removed, or reduced in rank on the ground of misconduct which has led to his conviction on a criminal charge.

(ii) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such an inquiry.

- (iii) Where the President or the Governor as the case may be is satisfied that in the interest of the Security of the State, it is not expedient to hold such inquiry.

Referring to Article 311 (2) (b), the judges have pointed out that sometimes by not taking prompt action might result in the situation worsening and at times becoming uncontrollable. This could also be construed by the troublemakers and agitators as a sign of weakness on the part of the authorities. It would not be reasonably practicable to hold an inquiry where the Government Servant terrorizes threatens or intimidates disciplinary authority or the witnesses to the effect that they are prevented from taking action or giving evidence against him. It would not be reasonably practicable to hold the inquiry where an atmosphere of violence or general indiscipline and insubordination prevails. This is about constitutional provision embedded with principles of natural justice.

CONCLUSION

Natural justice is in the best interest to promote the interest of individuals. Natural justice forms the cornerstone of every civilized legal system. It is not found in the codified statutes. But it is inherent in nature. Being uncodified, natural justice does not have a uniform definition. However, it lays down the minimum standard that an administrative agency has to follow in its procedure. Where legal justice fails, the role of natural justice becomes evident in preventing the miscarriage of justice. Even God never denied natural justice to human beings. So human laws also need to conform to the rules of natural justice. India, the principles of natural justice are firmly grounded in Articles 14 & 21 of the Constitution. With the introduction of the concept of substantive and procedural due process in Article 21, all that fairness that 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, a violation of natural justice is a violation of the Equality clause of Art. 14.

ENDNOTES

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- ⁱ Gardiner v. Heading(1928)2KB
ⁱⁱ Drew v. Drew(1885)2Macq 188
ⁱⁱⁱ Hopkins v. Smethwick local board of health (1890) 24Q.B.D 712
^{iv} Allainee des professeurs Catholique de Montreal v. Labour relation board(1953)2 SC R 140
^v Abbot v. Sullivan 1 KB 189
^{vi} SATHE,ADMINISTRATIVE LAW,129((2010)
^{vii} A.K Kraipak vs. Union of India AIR 1970 SC 150
^{viii} (1964) AC 40
^{ix} AIR1965 SC 1061
^x [(1863) 143 ER 414],
^{xi} MASSEY,ADMINISTRATIVE LAW,145(2005)
^{xii} Supra n 1
^{xiii} Supra n 19
^{xiv} . Equality before law.- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

^{xv} 1991 Suppl(1SCC)600
^{xvi} Supra n 15
^{xvii} (1986)3 SCC 156
^{xviii} 1985 3SCC 545
^{xix} Supra n 4
^{xx} [1970] 2 QB 417.
^{xxi} (1963)1 QB 539
^{xxii} Supra n 14
^{xxiii} AIR 1995 SC 61
^{xxiv} Art 21 reads No person shall be deprived of his life and personal libertyexcept according to the procedure established by law.
^{xxv} AIR 1950 SC 27
^{xxvi} Supra n 15
^{xxvii} Hussainara khatoon v. Home secretary Bihar (1980)1SCC 81
^{xxviii} (1994)4SCC 260
^{xxix} (1969)1SCC 292
^{xxx} Mahendra p singh,SHUKLA 'S CONSTITUTIONAL LAW ,215(11TH EDN 2008)
^{xxxi} (1978)2SCC424
^{xxxii} Supra n 36
^{xxxiii} (1978)3 SCC 544
^{xxxiv}Supra n 15
^{xxxv} Supra n 38
^{xxxvi} (1981)4SCC 327
^{xxxvii} Supra n 38
^{xxxviii} (1978)4SCC358
^{xxxix} AIR 1957 SC 425

^{xl} AIR 1954 MP 111

^{xli} AIR 1974 SC 1474

^{xlii} 1969 SCR (2) 976
^{xliiii} Art.227 reads. Power of superintendence over all courts by the High Court
(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction (2) Without prejudice to the generality of the foregoing provisions, the High Court may
(a) Call for returns from such courts;
(b) Make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

and

(c) Prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts
(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein: Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor

(4) Nothing in this article shall be deemed to confer on High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

High Court may in exercise of its power of superintendence issue direction, Order or writ in cases where it felt that there is violation of principles of natural justice accordingly it is one of the constitutional provisions framed in the spirit of principles of natural justice.

^{xliv} Supra n 38

^{xlv} AIR 1998 6SCC 525

^{xlvi} AIR 1996 SC 1664

^{xlvii} (1992)2SCC 10

^{xlviii} (1983)1SCC 124

^{xlix} (1989) 2 S.C.C. (Supp.) 627

^l (2013) 5SCC 485

^{li} AIR 1958 Raj 38)

