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NATURAL JUSTICE

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INTRODUCTION

Principles of natural justice is a subject of vast importance today. While various groups in recent years have attempted to formulate the different rules, little attention has been paid to its position in our constitution. The purpose of this short study is to make available exact position of this topic in our constitution.

The principles of natural justice occupy a unique place in Administrative Law. It is an old expression, has a long history behind it. It has been used in the sense of natural law, universal law, enternal law etc. But in recent years it acquired a restricted meaning and has come to be used as a phrase to describe certain rules of procedure. It supplies the omissions of formulated law. According to Lord Evershed —"the principles of natural justice are easy to proclaim but their precise extent is far less easy to define (Abbot V Sullivan 1952 1 K.B.189). It is the name of those principles which constitute the minimum requirement of justice and without adherence

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to which justice would be a travesty. In substance it is the procedural side of justice. They are binding on persons, who though not atrictly judges, yet have to decide something judicially or at least quasi-judicially.

England:

These principles may be regarded as one of the foundations of English adjudications. The common law originally applied these principles in a narrow context of the decision making process of a Court of law. Thus Lord Haldane said — "when the duty of deciding an appeal is imposed, those, whose duty it is to decide it must act judicially". They must deal with the questions referred to them without bias and they must give to each of the parties the opportunity of adequately presenting the case made....." (Local Govt. Board V. Alridge 1915 P.C.120). Later these principles came to be applied also to the decisions of administrative bodies acting judicially. Now, the rules of natural justice perform a function similar to the concept of procedural "due process", as it exists in the U.S., a concept in which they lie embedded, (de smith, Judicial Review of Administrative Action p.335). The Common Law lawyers, however have used the expression 'natural justice' with precision of meaning, as refering to two important principles namely;

(1) Nemo debut esse judex in propria causa

(2) Audi Alteram Partem.

America:

However in U.S.A. the 'due process clause' is included in the constitution. This right is available under the Vth and XIVth Amendments. The due process clause in both these amendments are practically identical. The Vth Amendment adopted in 1791 provides".....nor

(shall any person) be deprived of life, liberty or property without due process of law". Later Supreme Court held that the Vth Amendment is a limitation only on the federal Government and not on State Governments, (Barron V Baitimore) so after the divil war in 1865 the XIVth Amendment was added to the constitution which provided due process limitation on state authority. According to Willis it includes notice, opportunity to be heard, an impartial tribunal and an orderly course of procedure. In simple terms, notice and opportunity to be heard are fundamentals of due process of law" (Douglas).

Thus American system is entirely different from the British. In America, the rules of fair administrative procedure are embedded in the constitution; the legislature itself, consequently does not possess the authority to relieve the administration from their demands. In England, on the other hand, the rules of natural justice have no such constitutional foundation and express provisions in a statute can dispense with the requirements of natural justice in any given case.

India:

Let us now discuss the position in India — In India at the time of the framing of the constitution the Advisory Committee on Fundamental Rights had suggested that "no person shall be deprived of his life or liberty without due process of law". The Drafting Committee however substituted the words "except according to procedure established by law". A.21 as it was finally adopted runs as follows:

> " No person shall be deprived of his life or personal liberty except according to procedure established by law". Thus the first attempt to incorporate the American principles (which includes principles of natural justice) in the Indian Constitution was failed.

Later another attempt was made, in the A.K. Gopalan's case.[1] In this case the petitioner contented that the words 'procedure established by law' in A.21 should be given some what the same meaning as under due process of law in the Vth and XIVth Amendments of the constitution of U.S.A. The line of reasoning was as follows:

1. The procedure established by law was same as process of law or due process of law and the omission of word 'due' from A.21 did not alter its meaning.

2. The 'law' in A.21 meant natural law, i.e., law conforming to the principles of natural justice.

3. Even if it meant statutory law, it should have complied the minimum principles of natural justice.

Supreme Court rejected all these contentions, and held that procedure established by law meant procedure prescribed by statute. As an elaborate discussion of this decision is impossible. I wish to analyse only a few important points considered in, and passages from, this decision.

1. Majority of the judges while denying the existence of the American due process clause in India, observed that, 'if the Indian constitution wanted to preserve to every person the protection given by the due process clause of the American Constitution, there was nothing to prevent the Assembly from adopting the phrase". Originally the advisory Committee recommended in favour of the American clause, but the drafting committee altered the words

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1. 1950 A.I.R. S.C.27.

and substituted the present clause. A good number of members of the House were in favour of the expression ' due process' being retained and not for substituting the expression 'procedure established by law'. There were two arguments one in favour of the American clause and another in favour of the 'procedure established by law clause'. Supporters of the first view contented that the legislature may be trusted not to make any law which would abrogate the fundamental rules of justice. Whereas supporters of the second theory argued that it is not possible to trust the legislature, the legislature is likely to err, is likely to be led away by passion, by party prejudice, by party considerations etc. Then Dr.Ambedkar gave an explanation to the following effect:- "We are therefore, placed in two difficult positions, one is to give the judiciary the authority to sit in judgment over the will of the legislature and to question the law made by the legislature.... The second position is that the legislature ought to be trusted not to make bad laws..... There are dangers on both sides. For myself I can not altogether omit the possibility of legislature packed by party men making laws which may abrogate or violate that we regard as certain fundamental principles.... At the same time I do not see how five or six gentlemen sitting in the federal court or Supreme Court examining laws made made by the legislature, and by dint of their individual conscience or their bias or their prejudices can be trusted to determine which law is good, and which law is bad". (constituent Assembly Debates 13th Dec.1948 p.999-1001). Last part of this speech, I think is vague and confusing. Because these 'five or six gentlemen' (S.C.) is considered as the guardian of the Fundamental rights (A.32). It can decide whether a restriction imposed by the state upon the fundamental right of a person is 'reasonable' or not. It has the power to determine whether a law is unconstitutional or not. In such a circumstances how can we say that this body is incompetent to examine a law made by the state affecting life and liberty of the individual?

The only clear reason given by the drafting committee for the change of the words "due process of law" to "procedure established by law" was that this 'expression is more defenite and such a provision finds place in A.31 of Japanese constitution of 1946'. With regard to this argument I wish to draw your attention to the statement made by Mahboob Ali Baig Sahib Bahadur in the Constituent Assembly. He criticised this line of argument for the change in these words — 'It is no doubt true that in the Japanese constitution A.31 reads like this but if the other Articles that find place in the Japanese constitution (viz. AA: 32, 34 & 35) had also been incorporated in this constitution there would have been a complete safeguarding on the personal liberty of the citizen". (p.844). (Note — A.32 which is important in our present context, provides that no person shall be denied the right to access to the court). I can only express my respectful agreement with these observations.

II. Dua J, in the course of judgement pointed out that the word established according to Oxford English Dictionary means 'to render stable or firm, to strengthen by material support, to fix, settle, institute, or ordain permanently by enactment or agreement. 'It does not necessarily mean to 'enact'. The whole question therefore hinges upon the interpretation of the word 'law' and not of the word 'established' (D.K.Sen A comparative study of the Indian Constitution Vol.2 p.271).

III. While delivering the judgement Kania C.J. in a controversial passage said, to read the word 'Law' as meaning rules of 'Natural Justice' will land one in difficulties because the rules of Natural justice, as regards procedure is concerned, are no where defined and in my opinion the constitution cannot be read as laying down a vague standard. From the judgment it is not clear in what sense the learned judge used the words 'the rules of natural justice, as regards procedure, are nowhere defined'.

If it is in the sense that a term without a definition of a word with more than one definition cannot be enforced, then I think we can not enforce a major portion of the Indian constitution.

IV. In another part Kania C.J., observed that 'Although no doubt the power of the legislature overrides and controls the rights conferred by this Article.... 'Yet, it must also be remembered that the position in point of law in England is not different and there in spite of the supremacy of Parliament, the parliament has not been known to legislate against well recognised principles of natural justice accepted as such in all civilized countries'. In this context, I think we can not compare English position with Indian because of two reasons —(a) In England Sovereign legal power is vested in the Queen in Parliament. There judges are not appointed as guardians of the constitutional rights like Supreme Court of U.S.A. or Supreme Court of India acting under A.32. (b) In England there is a Unitary form of Government whereas in India it is not so. Like U.S.A. we have a central parliament and a number of State legislatures. In a federation or quasi-federation, vesting of such wide powers with legislatures will lead to confusion and injustice.

After this decision, position of natural justice in India is this:- Law in A.21 meant statute law and nothing more. In case of a procedure prescribed by law it cannot be questioned on the ground that it violates the principles of natural justice. There is no guarantee that it will not enact a law contrary to the principles of Natural Justice. If the legislature so enacts that the rules of natural justice may not be followed in certain types of cases the court, whatever may be its personal view in the matter is bound to enforce that law. Such a law can qualify the doctrine of notice, and the right to be heard and prescribe any

procedure it thinks fit. So the present position is that the Indian constitution guarantees statutory justice, not natural justice.

Conclusion:

The interpretation of A.21 given in A.K. Gopalans case 'in fact placed the liberty of the citizen at the mercy of the party in power. Thus the Supreme Courts construction in A.21 has led to a position when in our country there is to be no respect for the broad principles of natural justice, of the law which hears before it condemns, which proceeds upon equity and renders judgement after trial' (Mohan Kumaramangalam Paper read at the IXth Madras State Lawyer's conference') One of the important aims of our constitution is to do justice. In the legal sense it means not only justice in the substantive side but also justice in procedural side. Natural justice forms an important part of procedural justice. It supplies the procedural omissions of a formulated law. According to Jackson J., 'it might be preferable to live under Russian Law applied by common law procedures than under the common law enforced by Russian procedure'. This passage, hope will illustrates the importance of procedural fairness. (Shaughnessy V U.S.345 U.S.206 1953 quoted from p.153 Administrative law Wade II Edn.). The right of a person to be given a fair hearing before he suffers, is a vital principle which if only the judges themselves apply it consistently will protect the citizens interest and the quality of administration.

Summing up it is to be said that for the future of administration of justice in India, it is of great importance that rules of natural justice, its different aspects and its position in the Indian Constitution should be settled clearly.

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