

PENUMBRA OF NATURAL JUSTICE (2016) by Tapash Gan Chaudhary, Eastern Law House Pvt Ltd, Kolkata, Pp.80+576. Price Rs.1250/-

THE ASPECTS of fair hearing, judicial review of administrative action, judges' code of ethics gained momentum in the wake of recent controversy regarding the role of Chief Justice of India to allocate cases to subordinate judges. A law never inspires confidence unless the procedure for its administration also appears to be fair. Natural Justice is the harbinger of legal justice. Whenever legal justice fails to achieve the substance of justice, natural justice is called in for aid of legal justice.¹ Keeping this aspect, the book under review examines critically the doctrine of natural justice and its application in the administrative functions. It highlights the notion that natural justice, which is based on law of nature, does not vary from country to country and therefore, the author has made a comprehensive study of the law as it prevails in various countries of the world. For instance, with regard to application of the doctrine of *audi alteram partem* rule which is the more far-reaching of the principles of natural justice, he traced out the position in U.K. and discussed the established principle of law in U.K. based on the leading case of *Board of Education v. Rice*.² It discusses the principle that administrative bodies are not bound to observe the strict procedure of a court. Therefore, it can be observed that the book discusses analytically relevant judicial pronouncements from different countries in appropriate places which renders the work useful for the readers. The book under review³ is the third edition published after a gap of fourteen years. This edition, hence, incorporates the important developments that have been taken place in the field of natural justice world over. The book is presented with a preface by the author and goes on to make a comprehensive study in 576 pages, incorporating 9 chapters with elaborate sub-heading for each chapter as well as table of cases and statutes referred therein.

The fundamentals of natural justice and their application has been analytically examined in the first chapter. It examines natural justice as vital part of rule of law. It quoted an observation by V.R. Krishna Iyer, J :-⁴

A pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of authority. It is the bone of healthy government, recognized from earliest times and not a mystic testament of judge-made law. Indeed

1 Tapash Gan Choudhary, *Penumbra of Natural Justice*, (Eastern Law House, New Delhi, 2016)

2 [1911]AC 179.

3 The first edition of this book was published in the year 1997.

4 *Mobinder Singh Gill v. The Chief Election Commissioner*, AIR 1978 SC 851 at p.870.

from the legendary days of Adam-and of Kautilya's Arthashastra-the rule of law has had this taint of natural justice which makes it social justice.

Similarly, various quotations from scholarly judgements and works based on aptness and insight which appear in different parts of the book make this work commendable. It helps to know the mind of those scholars who play a significant role in developing the law on the subject. Apart from this, the criteria to evaluate fairness of procedure in natural justice like representativeness, consistency, suppression of bias, accuracy, correctness, ethicality as well as fairness of procedures linked to fair outcomes is examined. Legitimate expectation and natural justice, constitutional provisions and application of natural justice are also analysed in this chapter.

The second chapter discusses the principle of *audi alteram partem* in the light of duty to hear and its application to cases of alleged misconduct, enquiry, suit and non-judicial bodies, human rights and licensing cases, contempt committed in the presence of the court as well as the effect of order passed in violation of the *audi alteram partem* rule. Various Supreme Court decisions have been discussed in this area. It mentions the two facets of this principle like notice of the case to be met and opportunity to explain. The third chapter, appraise the meaning of a notice, its requirement for proper adjudication before a court and different kinds of notice. This chapter, however, is not shaped worth as a separate area for discussion since many of the aspects are part of the basic principle of *audi alteram partem*.

The fourth chapter examines the rule of fair hearing as the essence of justice. It highlights the issue of disclosure of evidence in criminal trials with reference to position in Canada, England, and India. The justiciable elements of fair hearing are widely discussed. Doctrine of pleasure and its application in India is also discussed in the light of the decision in *B.P.Singhal v. Union of India* and other decisions.⁵

The fifth chapter analyses bias, impartiality, independence of the judge as an essential ingredient in the delivery of justice. It dwells upon the meaning of bias, its different forms, its application to judicial tribunals, quasi-judicial tribunals and inquiries. Exceptions to this rule is also discussed. This chapter incorporates gender bias with particular reference to 'person' clause cases, evolution of the test of bias from mere suspicion to real danger theory and the from the average man's point of view from Indian perspective. It discussed the case of *C.B.Muthamma v. Union of India*,⁶ which an example of gender bias through executive order.

5 *Supra* note 1 p. 226-230

6 AIR 1979 SC 1868.

The sixth chapter examines discretion, different dimensions of judicial discretion, judicial activism and self-restraint and application of the Carltona principle in devolution of responsibility. It provides a meaningful discussion of the fact that discretion being an element in all power, what appears to be a judicial review for breach of natural justice is, in reality, a review for abuse of discretion. Nonetheless, this chapter lacks any critical analysis of the apex court decisions in India, instead it merely makes reference to the decisions made by courts abroad.

The seventh chapter deals with recording of reasons, its meaning and importance. Reasons alone can make the laws obligatory and lasting and it is recognized as one of the norms of natural justice in passing orders by the courts. This chapter incorporates adequacy of reasons with reference to Franks Committee Report (UK), the Burton propositions, the view of Michael Kirby J of Australia while analyzing the significance of recording reasons. It points out that law is nothing but experience developed by reason and applied continually to further experience. What is inconsistent with and contrary to reason is not permitted in law and reason alone can make the laws obligatory and lasting.⁷

The Eighth chapter elaborates on the judicial review of administrative action. Mode of exercising judicial review, declarations and injunctions as new mode of exercising judicial review has been highlighted. It also deals with the cases where judicial review is not available. For instance, the apex court with regard to the issue involving academic matter observed that “the court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them”.⁸ It also compares the position in England.

The ninth chapter is unique feature of this book since it discusses the Judges’ Code of Ethics based on Restatement of Values of Judicial Life adopted by the Chief Justices’ Conference of India 1999 and the Bangalore Principles of Judicial Conduct, 2002. It points out the fact that public confidence in judicial authority is a precious asset and the demand from society for honesty in a judge is absolute. It provides the classic quotes from the learned judges from different part of world like Lord Denning MR, Felix Frankfurter J. It is worth reading to reassess the present day dilemma the apex court is facing in India.

7 *Supra* note 1 at 431-432.

8 *Maharatra Stata Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth* (1984)4 SCC 27.

This book is a valuable addition to the researchers in the field of administrative law. The author presented this vast and explored subject in a very concise and comprehensive manner covering various dimensions of the natural justice. It is useful for the students of law, academia who wish to acquaint with the principles of natural justice as well as practitioners as a guiding principle to apply in the cases they deal with.

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