Lecture VI

Natural Justice

[I]t is beyond doubt that there are certain canons of judicial conduct to which all tribunals and persons who have to give judicial or quasi-judicial decisions ought to conform. The principles on which they rest are, we think, implicit in the rule of law. Their observance is demanded by our notional sense of justice.

—THE COMMITTEE ON MINISTERS' POWERS

A monkey does not decide an affair of the forest.

—THE KIGANDA PROVERB

Doth our law judge any man before it hear him and know what he doeth.

—JOHN

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1. GENERAL

Natural justice is an important concept in administrative law. In the words of Megarry, J.[1] it is 'justice that is simple and elementary, as distinct from justice that is complex, sophisticated and technical'. The principles of natural justice or fundamental rules of procedure for administrative action are neither fixed nor prescribed in any code. They are better known than described and easier proclaimed than defined.[2] 'Natural justice' has meant many things to many writers, lawyers and systems of law. It has many colours and shades and many forms and shapes. According to de Smith[3], the term 'natural justice' expresses the close relationship between the Common Law and moral principles and it has an impressive ancestry. It is also known as 'substantial justice', 'fundamental justice', 'universal justice' or 'fair play in action'. It is a great humanising principle intended to invest law with fairness, to secure justice and to prevent miscarriage of justice.

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1. *John* v. *Rees*, (1969) 2 All ER 274: (1970) 1 Ch D 345.
2. *Abbot* v. *Sulivan*, (1952) 1 KB 189 (195): (1952) 1 All ER 226.
3. *Judicial Review of Administrative Action*, 1995, p. 378.

In *Wiseman* v. *Borneman*[4], it is observed:

> "[T]he conception of natural justice should at all stages guide those who discharge judicial functions is *not merely an acceptable but is an essential part of the philosophy of the law....*"[5]
>
> (emphasis supplied)

2. DEFINITION

It is not possible to define precisely and scientifically the expression 'natural justice'. Though highly attractive and potential, it is a vague and ambiguous concept and, having been criticised as 'sadly lacking in precision'[6], has been consigned more than once to the lumber-room.[7] It is a confused and unwarranted concept and encroaches on the field of ethics[8]. 'Though eminent Judges have at times used the phrase 'the principles of natural justice', even now the concept differs widely in countries usually described as civilised.

It is true that the concept of natural justice is not very clear and, therefore, it is not possible to define it; yet the principles of natural justice are accepted and enforced. In reply to the aforesaid criticism against natural justice, Lord Reid in the historical decision of *Ridge* v. *Baldwin*[9] observed:

> "In modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist...."[10]

3. HISTORICAL GROWTH

According to de Smith[11], the term 'natural justice' expresses the close relationship between the Common Law and the moral principles and describes what is right and what is wrong. It has an impressive history. It has been recognised from the earliest times: it is not judge-made law. In days bygone the Greeks had accepted the principle that 'no man should be condemned unheard'. The historical and philosophical foundations of the English concept of natural justice may be insecure, nevertheless they

4. (1971) AC 297: (1969) 3 All ER 275: (1969) 3 WLR 706.
5. *Id.* at p. 308 (AC).
6. *R.* v. *Local Govt. Board, ex p Arlidge*, (1914) 1 KB 160 (199).
7. de Smith: *Judicial Review of Administrative Action*, 1995, p. 377.
8. *Local Govt. Board* v. *Arlidge*, (1915) AC 120: (1914-15) 1 All ER.
9. (1964) AC 40: (1963) 2 All ER 66: (1963) 2 WLR 935.
10. *Id.* at pp. 64-65 (AC): p. 74 (All ER).
11. *Judicial Review of Administrative Action*, 1995, pp. 377-79.

are worthy of preservation. Indeed, from the legendary days of Adam and of Kautilya's *Arthashashtra*, the rule of law has had this stamp of natural justice which makes it social justice.[12]

4. NATURAL JUSTICE AND STATUTORY PROVISIONS

Generally, no provision is found in any statute for the observance of the principles of natural justice by the adjudicating authorities. The question then arises whether the adjudicating authority is bound to follow the principles of natural justice. The law is well-settled after the powerful pronouncement of Byles, J. in *Cooper* v. *Wandsworth Board of Works*[13], wherein His Lordship observed:

> "A long course of decisions, beginning with *Dr Bentley's* case[14] *and ending with some very recent cases, establish that although there are no positive words in the statue requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature.*"[15] *(emphasis supplied)*

de Smith[16] also says that where a statute authorising interference with property or civil rights was silent on the question of notice and hearing, the courts would apply the rule as it is "of universal application and founded on the plainest principles of natural justice". Wade[17] states that the rules of natural justice operate as implied mandatory requirements, non-observance of which invalidates the exercise of the power. He adds, "the presumption is, it (natural justice) will always apply, however silent about it the statute may be".

The above principle is accepted in India also. In the famous case of *A.K. Kraipak* v. *Union of India*[18], speaking for the Supreme Court, Hegde, J. propounded:

> "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. *These rules can operate only in areas not covered by any law validly made. In other*

12. *Mohinder Singh Gill* v. *Chief Election Commr.*, (1978) 1 SCC 405 (432): AIR 1978 SC 851 (870); see also *Union of India* v. *Tulsiram Patel*, (1985) 3 SCC 398 (467-68): AIR 1985 SC 1416 (1454-55). For detailed discussion, *see* C.K. Thakker: *Administrative Law*, 1996, pp. 161-63.
13. (1863) 14 CBNS 180.
14. *R.* v. *University of Cambridge*, (1723) 1 Str 557.
15. Id. at p. 194; see also Judicial Review of Administrative Action, 1995, pp. 382-83.
16. *Id.* at pp. 410-13.
17. *Administrative Law*, 1994, pp. 465, 491, 516.
18. (1969) 2 SCC 262: AIR 1970 SC 150.

words they do not supplant the law of the land but supplement it."[19] (emphasis supplied)

In *Maneka Gandhi* v. *Union of India*[20], Beg, C.J. observed: "It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action."[21]

5. AGAINST WHOM NATURAL JUSTICE CAN BE ENFORCED

It is settled law and there is no dispute that the principles of natural justice are binding on all the courts, judicial bodies and quasi-judicial authorities. But the important questions are: Whether these principles are applicable to administrative authorities? Whether those bodies are also bound to observe them? Whether an administrative order passed in violation of these principles is *ultra vires* on that ground? Formerly, courts had taken the view that the principles of natural justice were inapplicable to administrative orders. In *Franklin* v. *Minister of Town and Country Planning*[22], Lord Thankerton observed that as the duty imposed on the Minister was merely administrative and not judicial or quasi-judicial, the only question was, whether the Minister has complied with the direction or not. In the words of Chagla, C.J.[23] 'it would be erroneous to import into the consideration of an administrative order the principles of natural justice'. In *Kishan Chand* v. *Comnr. of Police*[24], speaking for the Supreme Court, Wanchoo, J. (as he then was) observed:

> "The compulsion of hearing before passing the order implied in the maxim '*audi alteram partem*' applies only to judicial or *quasi*-judicial proceedings."

But as observed by Lord Denning[25], at one time it was said that the principles of natural justice applied only to judicial proceedings and not to administrative proceedings, but 'that heresy was scotched' in *Ridge*

19. *Id.* at p. 272 (SCC): 156 (AIR).
20. (1978) 1 SCC 248: AIR 1978 SC 597.
21. *Id.* at p. 402 (SCC): 611 (AIR). For detailed discussion, *see* C.K. Thakker: *Administrative Law*, 1996, pp. 163-65.
22. (1947) 2 All ER 289: (1948) AC 87.
23. *Bapurao* v. *State*, AIR 1956 Bom 300 (301): (1956) 58 Bom LR 418 (422).
24. AIR 1961 SC 705 (710): (1961) 3 SCR 135.
25. *R.* v. *Gaming Board*, (1970) 2 All ER 528: (1970) 2 QB 417: (1970) 2 WLR 1009.

v. *Baldwin*[26]. Wade[27] states that the principles of natural justice are applicable to 'almost the whole range of administrative powers'. In *Breen* v. *Amalgamated Engineering Union*[28], Lord Denning observed: "It is now well-settled that a statutory body, which is entrusted by statute with a discretion, must act fairly. It does not matter whether its functions are described as judicial or quasi-judicial on the one hand, or as administrative on the other hand." Lord Morris declares: "We can, I think, take pride in what has been done in recent periods and particularly in the field of administrative law by invoking and by applying these principles which we broadly classify under the designation of natural justice. Many testing problems as to their application yet remain to be solved. *But I affirm that the area of administrative action is but one area in which the principles are to be deployed.*"[29] (emphasis supplied)

This principle is accepted in India also. In *State of Orissa* v. *Binapani*[30], speaking for the Supreme Court, Shah, J. (as he then was) observed: "It is true that the order is administrative in character, but even an administrative order which involves civil consequences ... must be made consistently with the rules of natural justice..."

In *A.K. Kraipak* v. *Union of India*[31], the Court observed:

> "Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially, there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. *If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries.*"
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> (emphasis supplied)

Again, in *Maneka Gandhi*[32], Kailasam, J. pronounced: "The frontier between judicial or quasi-judicial determination on the one hand and an executive on the other has become blurred. The rigid view that principles

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26. (1964) AC 40: (1963) 2 All ER 66: (1963) 2 WLR 935.
27. *Administrative Law*, 1994, pp. 463-64.
28. (1971) 1 All ER 1148 (1153): (1971) 2 QB 175: (1971) 2 WLR 742.
29. Quoted in *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248 (285): AIR 1978 SC 597(623).
30. AIR 1967 SC 1269 (1272): (1967) 2 SCR 625.
31. (1969) 2 SCC 262 (272): AIR 1970 SC 150(157); see also *D.K. Yadav* v. *J.M.A. Industries Ltd.*, (1993) 3 SCC 259 (268-68).
32. *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248 (385): AIR 1978 SC 597 (690); see also *Rattan Lal* v. *Managing Committee*, (1993) 4 SCC 10 (17-18): AIR 1993 SC 2155.

of natural justice applied only to judicial and quasi-judicial acts and not to administrative acts no longer holds the field."

Moreover, the principles of natural justice apply not only to the legislation or State action but also apply where any tribunal, authority or body of persons, not falling within the definition of "State" under 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 a matter fairly and impartially.[33]

6. PRINCIPLES OF NATURAL JUSTICE

As stated above, 'natural justice' has meant many things to many writers, lawyers, jurists and systems of law. It has many colours, shades, shapes and forms. Rules of natural justice are not embodied rules and they cannot be imprisoned within the strait-jacket of a rigid formula. In *Russel* v. *Duke of Norfolk* [34], Tucker, L.J. observed: "There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."

In the oft-quoted passage from *Byrne* v. *Kinematograph Renters Society Ltd.*[35], Lord Harman enunciates:

> "What, then, are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. *I do not think that there really is anything more.*" (emphasis supplied)

The same view is taken in India. In *Union of India* v. *P.K. Roy*[36], speaking for the Supreme Court, Ramaswami, J. observed: "[T]he extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case."

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33. *Delhi Transport Corpn.* v. *DTC Mazdoor Congress*, 1991 Supp (1) SCC 600 (752): AIR 1991 SC 101.
34. (1949) 1 All ER 109 (118): 65 TLR 225.
35. (1958) 2 All ER 579 (599): (1958) 1 WLR 762.
36. AIR 1968 SC 850 (858): (1968) 2 SCR 186.

In *A.K. Kraipak* [37] Hegde, J. rightly observed:

"What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. *Whenever a complaint is made before a court that some principle of natural justice had been contravened, the court had to decide whether the observance of that rule was necessary for a just decision on the facts of that case.*" (emphasis supplied)

English Law recognises two principles of natural justice:

(*a*) *Nemo debet esse judex in propria causa*: No man shall be a judge in his own cause, or the deciding authority must be impartial and without bias; and

(*b*) *Audi alteram partem*: Hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that there must be fairness on the part of the deciding authority.

(1) Bias or interest

(a) General

The first principle of natural justice consists of the rule against bias or interest and is based on three maxims: (*i*) "No man shall be a judge in his own cause";[38] (*ii*) "Justice should not only be done, but manifestly and undoubtedly be seen to be done";[39] and (*iii*) "Judges, like Caesar's wife should be above suspicion".[40]

(b) Meaning

According to the dictionary meaning 'anything which tends or may be regarded as tending to cause such a person to decide a case *otherwise than on evidence* must be held to be biased'.[41] "A predisposition to decide for or against one party, without proper regard to the true merits of the dispute is bias".[42]

37. *A.K. Kraipak* v. *Union of India*, (1969) 2 SCC 262 (272): AIR 1970 SC 150 (157); see also *Rattan Lal* v. *Managing Committee* (*supra*), at pp. 18-19 (SCC).
38. Lord Coke in *Egerton* v. *Lord Derby*, (1613) 12 Co. Rep 11; Viscount Care, L.C. in *Frome United Breweries* v. *Bath Justices*, (1926) AC 586 (592): (1926) All ER 576.
39. Lord Hewart in *R.* v. *Sussex Justices*, (1924) 1 KB 256 (259): (1923) All ER 233.
40. Justice Bowen in *Lesson* v. *General Council*, (1889) 43 Ch D 366 (385): (1886-90) All ER 78.
41. *Concise Oxford Dictionary*, (1995), p. 123, see also *Secretary to Govt., Transport Deptt.* v. *Munnuswamy*, 1988 Supp SCC 651: AIR 1988 SC 2232 (per Mukharji, J.).
42. *Secy. to Govt., Transport Deptt.* v. *Munnuswamy*, *Id.* at p. 654 (SCC).

In *Franklin* v. *Minister of Town & Country Planning*[43], Lord Thankerton defines bias as under:

> "My Lords, I could wish that the use of the word 'bias' should be confined to its proper sphere. Its proper significance in my opinion, is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator."

(*c*) ***Principle explained***

The first requirement of natural justice is that the Judge should be impartial and neutral and must be free from bias. He is supposed to be indifferent to the parties to the controversy. He cannot act as Judge of a cause in which he himself has some interest either pecuniary or otherwise as it affords the strongest proof against neutrality. He must be in a position to act judicially and to decide the matter *objectively*. A Judge must be of sterner stuff. His mental equipoise must always remain firm and undeflected. He should not allow his personal prejudice to go into the decision-making. "*The object is not merely that the scales be held even; it is also that they may not appear to be inclined.*"[44]

(emphasis supplied)

He must think dispassionately and submerge private feeling on every aspect of a case. "*There is a good deal of shallow talk that the judicial robe does not change the man within it. It does.*"[45]

(emphasis supplied)

If the Judge is subject to bias in favour of or against either party to the dispute or is in a position that a bias can be assumed, he is disqualified to act as a Judge, and the proceedings will be vitiated. This rule applies to the judicial and administrative authorities required to act judicially or quasi-judicially.

(*d*) ***Types of bias***

Bias is of three types:

(*i*) Pecuniary bias,

(*ii*) Personal bias, and

(*iii*) Official bias or bias as to subject-matter.

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43. (1947) 2 All ER 289 (296): (1948) AC 87.
44. *R.* v. *Bath Compensation Authority*, (1925) 1 KB 635 (719) (Per Scrutton, J.).
45. *Public Utilities Comn.* v. *Franklin*, 343 US 451 (465-66): 692 Ed 1068 (1077) (Per Frankfurter, J.).

(*i*) *Pecuniary bias*

It is well-settled that as regards pecuniary interest "the least pecuniary interest in the subject-matter of the litigation will disqualify any person from acting as a Judge". Griffith and Street[46] rightly state that "a pecuniary interest, however slight, will disqualify, *even though it is not proved that the decision is in any way affected*".

(emphasis supplied)

In *Dr Bonham*[47], Dr Bonham, a doctor of Cambridge University was fined by the College of Physicians for practising in the city of London without the licence of the College. The statute under which the College acted provided that the fines should go half to the King and half to the College. The claim was disallowed by Coke, C.J. as the College had a financial interest in its own judgment and was a judge in its own cause.

Dimes v. *Grant Junction Canal*[48] is considered to be the classic example of the application of the rule against pecuniary interest. In this case, the suits were decreed by the Vice-Chancellor and the appeals against those decrees were filed in the Court of Lord Chancellor Cottenham. The appeals were dismissed by him and decrees were confirmed in favour of a canal company in which he was a substantial shareholder. The House of Lords agreed with the Vice-Chancellor and affirmed the decrees on merits. In fact, Lord Cottenham's decision was not in any way affected by his interest as a shareholder; and yet the House of Lords quashed the decision of Lord Cottenham. Lord Campbell observed:

> "No one can suppose that Lord Cottenham could be, in the remotest degree, influenced by the interest that he had in this concern; but my Lords, it is of the last importance that the maxim, that no one is to be a judge in his own cause, should be held sacred.... And it will have a most salutary influence on (inferior) tribunals when it is known that this High Court of last resort, in a case in which the Lord Chancellor of England had an interest, considered that his decree was on that account a decree not according to law, and was set aside. *This will be a lesson to all inferior tribunals to take care not only that in their decrees they are not influenced by their personal interest, but to avoid the appearance of labouring under such an influence.*"[49]
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> (emphasis supplied)

46. *Principles of Administrative Law*, 4th Edn., p. 156; see also *Halsbury's Laws of England*, 4th Edn., Vol. I, para 68, pp. 82-83.
47. (1610) 8 Co. Rep. 113 b: 77 ER 646.
48. (1852) 3 HL 759: 17 Jur 73.
49. *Id.* at p. 793 (HL).

The principle to be deduced from the above weighty pronouncement is that even the least pecuniary interest in the cause disqualifies a Judge. This principle should be observed to clear away everything which might engender suspicion and distrust of the tribunal and to promote the feeling of confidence in the administration of justice. As Lord Hewart stated: "Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice."[50]

The same principle is accepted in India. In *Manak Lal* v. *Dr Prem Chand*[51], speaking for the Supreme Court, Gajendragadkar, J. (as he then was) remarked:

> "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."

In *Jeejeebhoy* v. *Asstt. Collector of Thana*[52], Chief Justice Gajendragadkar reconstituted the Bench on objection being taken on behalf of the interveners in Court on the ground that the Chief Justice, who was a member of the Bench was also a member of the cooperative society for which the disputed land had been acquired.

In *Visakapatanam Coop. Motor Transport Co. Ltd.* v. *G. Bangaruraju*[53], a cooperative society had asked for a permit. The Collector was the President of that society and he was also a Chairman of the Regional Transport Authority who had granted the permit in favour of the society. The Court set aside the decision as being against the principles of natural justice.

In *Mohapatra & Co.* v. *State of Orissa*[54], some of the members of the Committee set up for selecting books for educational institutions were themselves authors whose books were to be considered for selection. It was held by the Supreme Court that the possibility of bias could not be ruled out. Madon, J. observed: "It is not the actual bias in favour of the author-member that is material, but the possibility of such bias."

(ii) Personal bias

The second type of bias is a personal one. A number of circumstances may give rise to personal bias. Here a Judge may be a relative, friend or business associate of a party. He may have some personal grudge, enmity or grievance or professional rivalry against such party. In view

50. *R.* v. *Sussex Justices*, (1924) 1 KB 256 (259): (1923) All ER 233.
51. AIR 1957 SC 425 (429): 1957 SCR 575 (581).
52. AIR 1965 SC 1096: (1965) 1 SCR 636.
53. AIR 1953 Mad 709.
54. (1984) 4 SCC 103 (112): AIR 1984 SC 1572 (1576).

of these factors, there is every likelihood that the Judge may be biased towards one party or prejudiced towards the other.[55]

Thus, where the Chairman of the Bench was a friend of the wife's family, who had instituted matrimonial proceedings against her husband and the wife had told the husband that the Chairman would decide the case in her favour, the Divisional Court quashed the order.[56] Similarly, a Magistrate who was beaten by the accused was held disqualified from hearing a case filed against that accused.[57] Again, a decision was set aside on the ground that the Chairman was the husband of an executive officer of a body which was a party before the tribunal.[58] Likewise, a Magistrate cannot convict his own employees for breach of contract on the basis of a complaint filed by his bailiff.[59]

The above principle is accepted in India also. In one case, a manager conducted an inquiry against a workman for the allegation that he had beaten the manager. It was held that the inquiry was vitiated.[60] In another case, there existed political rivalry between *M* and the Minister, who had cancelled the licence of *M*. A criminal case was also filed by the Minister against *M*. It was held that there was personal bias against *M* and the Minister was disqualified from taking any action against *M*.[61]

In *State of U.P.* v. *Mohd. Nooh*[62], a departmental inquiry was held against *A* by *B*. As one of the witnesses against *A* turned hostile, *B* left the inquiry, gave evidence against *A*, resumed to complete the inquiry and passed an order of dismissal. The Supreme Court held that "the rules of natural justice were completely discarded and all canons of fair play were grievously violated" by *B*. Similarly, in *Rattan Lal* v. *Managing Committee*[63], *X* was a witness as well as one of the three members of an inquiry committee against *A*. At the inquiry, *A* was found guilty and was dismissed. Setting aside dismissal and following *Mohd. Nooh*, the Supreme Court held that the proceedings were vitiated because of prejudice of one of the members of the committee.

55. Griffith and Street: *Principles of Administrative Law*, 4th Edn., p. 156; de Smith: *Judicial Review of Administrative Action*, 1995, p. 522.
56. *Cottle* v. *Cottle*, (1939) 2 All ER 535: 83 SJ 501.
57. *R.* v. *Handley*, (1921) 61 DLR 585.
58. *Ladies of the Sacred Heart of Jesus* v. *Armstrong*, (1961) 29 DLR 373.
59. *R.* v. *Hoscason*, (1811) 14 East 605.
60. *Meenglass Tea Estate* v. *Workmen*, AIR 1963 SC 1719: (1964) 2 SCR 165.
61. *Mineral Development Corpn. Ltd.* v. *State of Bihar*, AIR 1960 SC 468: (1960) 2 SCR 609.
62. AIR 1958 SC 86: 1958 SCR 595.
63. (1993) 4 SCC 10: AIR 1993 SC 2155.

In the leading case of *A.K. Kraipak* v. *Union of India*[64], one *N* was a candidate for selection to the Indian Foreign Service and was also a member of the Selection Board. *N* did not sit on the Board when his own name was considered. Name of *N* was recommended by the Board and he was selected by the Public Service Commission. The candidates who were not selected filed a writ petition for quashing the selection of *N* on the ground that the principles of natural justice were violated. Quashing the selection, the Court observed: "It is against all canons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the selection board must have had its own impact on the decision of the selection board. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. *The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased.*"[65] (emphasis supplied)

(iii) Official bias

The third type of bias is official bias or bias as to the subject-matter. This may arise when the Judge has a general interest in the subject-matter. According to Griffith and Street[66], "only rarely will this bias invalidate proceedings". A mere general interest in the general object to be pursued would not disqualify a Judge from deciding the matter. There must be some direct connection with the litigation. Wade[67] remarks that ministerial or departmental policy cannot be regarded as a disqualifying bias. Suppose a Minister is empowered to frame a scheme after hearing the objections. The procedure for hearing the objections is subject to the principles of natural justice insofar as they require a fair hearing. But the Minister's decision cannot be impugned on the ground that he has advocated the scheme or he is known to support it as a matter of policy.

64. (1969) 2 SCC 262: AIR 1970 SC 150.
65. *Id.* p. 155 (AIR).
66. *Administrative Law*, 4th Edn., p. 156.
67. *Administrative Law*, 1994, pp. 488-91.

In fact, the object of giving power to the Minister is to implement the policy of the Government.

The above principle has been accepted in India also. As discussed above, mere 'official' or 'policy' may not necessarily be held to disqualify an official from acting as an adjudicator unless there is total non-application of mind on his part or he has acted as per dictation of the superior authority instead of deciding the matter independently or has pre-judged the issue or has taken improper attitude to uphold the policy of the department, so as to constitute a *legal* bias.

Thus, in *Gullapalli Nageswara Rao* v. *A.P.S.R.T.C.* (*Gullapalli I*)[68], the petitioners were carrying on motor transport business. The Andhra State Transport Undertaking published a scheme for nationalisation of motor transport in the State and invited objections. The objections filed by the petitioners were received and heard by the Secretary and thereafter the scheme was approved by the Chief Minister. The Supreme Court upheld the contention of the petitioners that the official who heard the objections was 'in substance' one of the parties to the dispute and hence the principles of natural justice were violated.

But in *Gullapalli II*[69], the Supreme Court qualified the application of the doctrine of official bias. Here the hearing was given by the Minister and not by the Secretary. The Court held that the proceedings were not vitiated as 'the Secretary was a part of the department but the Minister was only primarily responsible for the disposal of the business pertaining to that department'.

In *Krishna Bus Service (P) Ltd.* v. *State of Haryana*[70], the legality and validity of the notification issued by the State Government conferring the powers of Deputy Superintendent of Police on the General Manager, Haryana Roadways was challenged by private operators of motor vehicles *inter alia* on the ground of interest and bias. Upholding the contention and quashing the notification, the Supreme Court observed: "The General Manager of Haryana Roadways who is a rival in business of the private operators of motor vehicles in the State and is intimately connected with the running of motor vehicles cannot be expected to discharge his duties in a fair and reasonable manner. An unobstructed operation of the motor vehicles by private owners operating along the same route or routes would naturally affect the earnings of the Haryana Road-

68. AIR 1959 SC 308: 1959 Supp (1) SCR 319.
69. *Gullapalli Nageswararao* v. *State of A.P.*, AIR 1959 SC 1376: (1960) 1 SCR 580.
70. (1985) 3 SCC 711: AIR 1985 SC 1651.

ways. There is, therefore, every likelihood of his being overzealous in discharging his duties of stopping a vehicle and in searching, seizing and detaining motor vehicles belonging to others and at the same time excessively lenient in the case of vehicles belonging to his own department. If in discharging his duties in the case of vehicles belonging to others he fails to give due regard to the interests of the owners thereof he would be violating their fundamental right to carry on business in a reasonable way. If he is too lenient in inspecting the vehicles belonging to his own department, the interests of the travelling public at large would be in peril. In both the cases there is a conflict between his duty on the one hand and his interest on the other. Moreover, *administration must be rooted in confidence and that confidence is destroyed when people begin to think that the officer concerned is biased.*''[71]

(emphasis supplied)

In *Institute of Chartered Accountants* v. *L.K. Ratna*[72], a member of the institute was removed on the ground of misconduct. The question before the Supreme Court was whether the finding of the Council holding the member guilty can be said to be vitiated on account of bias because the Chairman and the Vice-Chairman of the Disciplinary Committee were *ex officio* President and Vice-President of the Council, and other members of the Committee were also drawn from the Council. Holding that the decision was vitiated, the Court said: ''We do not doubt that the President and the Vice-President and also the three other members of the Disciplinary Committee, should find it possible to act objectively during the decision-making process of the Council. *But to the member accused of misconduct, the danger of partisan consideration being accorded to the report would seem very real indeed.*''[73] (emphasis supplied)

(e) *Test: Real likelihood of bias*

As discussed above, a pecuniary interest, however small it may be, disqualifies a person from acting as a Judge. But that is not the position in case of personal bias or bias as to subject-matter. Here the test is whether there is a *real likelihood of bias* in the Judge.

de Smith[74] says, a 'real likelihood' of bias means at least substantial possibility of bias. Vaugham Williams, L.J.[75] rightly says that the court

71. *Id.* at p. 716 (SCC): 1654 (AIR) (per Venkataramiah, J.). See also *Observations of Lord Denning* at p. 164 (*infra*).
72. (1986) 4 SCC 537: AIR 1987 SC 71.
73. *Id.* at pp. 555-56 (SCC): 79-80 (AIR).
74. *Judicial Review of Administrative Action*, 1995, pp. 525-27.
75. *R.* v. *Sunderland*, (1901) 2 KB 357 (373): 65 JP 598.

will have to judge the matter 'as a reasonable man would judge of any matter in the conduct of his own business'. In the words of Lord Hewart, C.J.[76] the answer to the question whether there was a real likelihood of bias 'depends not upon what actually was done but upon what might appear to be done. *Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice.*' (emphasis supplied) As Lord Denning[77] says: "The reason is plain enough. Justice must be rooted in confidence: and *confidence is destroyed when right-minded people go away thinking 'the judge was biased'.*" (emphasis supplied)

The same principle is accepted in India. In *Manak Lal* v. *Dr Prem Chand*[78], a complaint was filed by *A* against *B*, an advocate for an alleged act of misconduct. A disciplinary committee was appointed to make an inquiry into the allegations made against *B*. The Chairman had earlier represented *A* in a case. The Supreme Court held that the inquiry was vitiated even if it were assumed that the Chairman had no personal contact with his client and did not remember that he had appeared on his behalf at any time in the past. The Court laid down the test in the following words:

> "In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal."[79]

As to the test of likelihood of bias what is relevant is reasonableness of the apprehension in that regard in the mind of the party. The correct approach for the Judge is not to look at his own mind and ask himself, however honestly: "Am I biased ?" but to look at the mind of the party before him.[80]

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76. *R.* v. *Sussex Justices*, (1924) 1 KB 256 (259): (1923) All ER 233.
77. *Metropolitan Properties Ltd.* v. *Lannon*, (1969) 1 QB 577 (578): (1968) 3 All ER 304: (1968) 3 WLR 394; see also *Krishna Bus Service (P) Ltd.* v. *State of Haryana*, (1985) 3 SCC 711: AIR 1985 SC 1651.
78. AIR 1957 SC 425: 1957 SCR 575.
79. *Id.* at p. 429 (AIR): see also *Gullapalli I*, AIR 1959 SC 308; *Gullapalli II*, AIR 1959 SC 1376: (1960) 1 SCR 580; *A.K. Kraipak* v. *Union of India*, (1969) 2 SCC 262: AIR 1970 SC 150; *G. Sarana* v. *University of Lucknow*, (1976) 3 SCC 575: AIR 1976 SC 2428; *Ranjit Thakur* v. *Union of India*, (1987) 4 SCC 611: AIR 1987 SC 2386; *International Airports Authority* v. *K.D. Bali*, (1988) 2 SCC 360: AIR 1988 SC 1099; *Hindustan Petroleum Corpn.* v. *Yashwant*, 1991 Supp (2) SCC 592: AIR 1991 SC 933.
80. *Ranjit Thakur* v. *Union of India*, (1987) 4 SCC 611 (618-19): AIR 1987 SC 2386.

But at the same time, it should not be forgotten that the test of a real likelihood of bias must be based on the reasonable apprehensions of a reasonable man fully apprised of the facts. It is no doubt desirable that all Judges, like Caesar's wife must be above suspicion, but it would be hopeless for the courts to insist that only 'people who cannot be suspected of improper motives' were qualified at common law to discharge judicial functions, or to quash decisions on the strength of the suspicions of fools or other capricious and unreasonable people. The following observations of Frank, J. in *Linahan, Re*[81] are worth quoting:

> "If, however, 'bias' and 'partiality' be defined to mean 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. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions and the processes of education, formal and informal, create attitudes which precede reasoning in particular instances and which, therefore, by definition are prejudices."[82]

Reasonable apprehension in the mind of a reasonable man is necessary. Such reasonable apprehension must be based on cogent materials.[83] Moreover, normally a court will not uphold an allegation of bias against a person holding high constitutional status, such as, Election Commissioner.[84] Again, there must be reasonable evidence to satisfy that there was a real likelihood of bias. Vague suspicions of whimsical, capricious and unreasonable people should not be made the standard to regulate normal human conduct.[85]

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81. (1943) 138 F 2nd 650.
82. *Id.* at p. 652; *see also* the following observations:
    "I have never known any judges, no difference how austere of manner, who discharged their judicial duties in an atmosphere of pure, unadulterated reason. Alas ! we are 'all the common growth of the Mother Earth' — even those of us who wear the long robe."
    —JUSTICE JOHN CLARKE
    "Judges have preferences for social policies as you and I. They form their judgments after the varying fashions in which you and I form ours. They have hands, organs, dimensions, senses, affections, passions. They are warmed by the same winter and summer and by the same ideas as a layman is."
    —THOMAS REED POWELL
83. *Secy. to Govt., Transport Deptt.* v. *Munuswamy*, 1988 Supp SCC 651 (654): AIR 1988 SC 2232 (2234) (Per Mukharji, J.).
84. *Election Commission of India* v. *Subramaniam Swamy*, (1996) 4 SCC 104: AIR 1996 SC 1810.
85. *International Airports Authority* v. *K.D. Bali*, (1988) 2 SCC 360 (370-71): AIR 1988 SC 1099 (1105) (Per Mukharji, J.).

As Slade[86], J. states, "... it is necessary to remember Lord Hewart's principle that it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done without giving currency to 'the erroneous impression that *it is more important that justice should appear to be done than that it should in fact be done*'."[87] (emphasis supplied)

(2) Audi alteram partem

(a) Meaning

Audi alteram partem means 'hear the other side', or 'no man should be condemned unheard' or 'both the sides must be heard before passing any order'.

(b) Principle explained

The second fundamental principle of natural justice is *audi alteram partem*, i.e. no man should be condemned unheard, or both the sides must be heard before passing any order. de Smith[88] says, "no proposition can be more clearly established than that a man cannot incur the loss of liberty or property for an offence by a judicial proceeding until he has had a fair opportunity of answering the case against him". "A party is not to suffer in person or in purse without an opportunity of being heard."[89] This is the first principle of civilised jurisprudence and is accepted by laws of Men and God. In short, before an order is passed against any person, reasonable opportunity of being heard must be given to him. Generally, this maximum includes two elements: (*i*) notice; and (*ii*) hearing.

(*i*) *Notice*

Before any action is taken, the affected party must be given a notice to show cause against the proposed action and seek his explanation. It is a *sine qua non* of the right of fair hearing. Any order passed without giving notice is against the principles of natural justice and is void *ab initio*.

In *Bagg case*[90], James Bagg, a Chief Burgess of Plymouth had been disfranchised for unbecoming conduct inasmuch as it was alleged that he had told the Mayor, 'You are a cozening knave. I will make thy neck

86. *R.* v. *Camborne Justices*, (1955) 1 QB 41: (1954) 2 All ER 850: (1954) 3 WLR 415.
87. *Id.* at p. 52 (QB): 855 (All ER).
88. *Judicial Review of Administrative Action*, 1995, p. 380.
89. *Painter* v. *Liverpool Oil Gas Light Co.*, (1836) A&E 433 (448-49).
90. (1615) 11 Co. Rep 93 b: 8 Digest 218.

crack' and by 'turning the hinder part of his body in an inhuman and uncivil manner' towards the Mayor, said, 'Come and kiss'. He was reinstated by mandamus as no notice or hearing was given to him before passing the impugned order.

In *R.* v. *University of Cambridge*[91], Dr Bentley was deprived of his degrees by the Cambridge University on account of his alleged misconduct without giving any notice or opportunity of hearing. The Court of King's Bench declared the decision as null and void. According to Fortescue, J., the first hearing in human history was given in the Garden of Eden. His Lordship observed:

> "[E]ven God himself did not pass sentence upon Adam, before he was called upon to make his defence. 'Adam,' says God, 'Where art thou? Hast thou not eaten of the tree, whereof I commanded thee that thou shouldst not eat?' "

Even if there is no provision in the statute about giving of notice, if the order in question adversely affects the rights of an individual, the notice must be given. The notice must be clear, specific and unambiguous and the charges should not be vague and uncertain.[92] The object of a notice is to give an opportunity to the individual concerned to present his case and, therefore, if the party is aware of the charges or allegations, a formal defect would not invalidate the notice, unless prejudice is caused to the individual.[93] If the government servant is placed under suspension and the inquiry is held at a different place from the place of his residence and he is not able to attend the inquiry due to non-payment of subsistence allowance, the inquiry is vitiated.[94] Whether prejudice is caused or not is a question of fact and it depends upon the facts and circumstances of the case. Moreover, the notice must give a reasonable opportunity to comply with the requirements mentioned therein. Thus, to give 24 hours' time to dismantle a structure alleged to be in a dilapidated condition is not proper and the notice is not valid.[95] If the inquiry is under Article 311 of the Constitution of India, two notices (first for charges or allegations and

91. (1723) 1 Str 757: 93 ER 698.

92. *N.R. Coop. Society* v. *Industrial Tribunal*, AIR 1967 SC 1182: (1967) 2 SCR 476; *B.D. Gupta* v. *State of Haryana*, (1973) 3 SCC 149: AIR 1972 SC 2472; *Sawai Sangh* v. *State of Rajasthan*, (1986) 3 SCC 454: AIR 1986 SC 995; *Board of Technical Education* v. *Dhanwantri*, AIR 1991 SC 271.

93. *Bhagwan Datta* v. *Ram Ratanji*, AIR 1960 SC 200; *Fazal Bhai* v. *Custodian General*, AIR 1961 SC 1397: (1962) 1 SCR 456.

94. *Ghanshyam Das* v. *State of M.P.*, (1973) 1 SCC 656: AIR 1973 SC 1183; *Mohal* v. *Senior Supdt. of Post Office*, 1991 Supp (2) SCC 503: AIR 1991 SC 328.

95. *State of J&K* v. *Haji Vali Mohd.*, (1972) 2 SCC 402: AIR 1972 SC 2538.

second for proposed punishment) should be given.[1] Where a notice regarding one charge has been given, the person cannot be punished for a different charge for which no notice or opportunity of being heard was given to him.[2]

(ii) Hearing

The second requirement of *audi alteram partem* maxim is that the person concerned must be given an opportunity of being heard before any adverse action is taken against him.

In *Cooper* v. *Wandsworth Board of Works*[3], the defendant Board had power to demolish any building without giving any opportunity of hearing if it was erected without prior permission. The Board demolished the house of the plaintiff under this provision. The action of the Board was not in violation of the statutory provision. The court held that the Board's power was subject to the qualification that no man can be deprived of his property without having an opportunity of being heard.

The historic case of *Ridge* v. *Baldwin*[4] has rightly been described as the '*magna carta*' of natural justice.[5] In that case, the plaintiff, a chief constable had been prosecuted but acquitted on certain charges of conspiracy. In the course of the judgment, certain observations were made by the presiding Judge against the plaintiff's character as a senior police officer. Taking into account those observations, the Watch Committee dismissed the plaintiff from service.

The Court of Appeal held that the Watch Committee was acting as an administrative authority and was not exercising judicial or *quasi*-judicial power, and therefore, the principles of natural justice did not apply to their proceedings for dismissal. Reversing the decision of the Court of Appeal, the House of Lords by a majority of 4:1 held that the power of dismissal could not be exercised without giving a reasonable opportunity of being heard and without observing the principles of natural justice. The order of dismissal was, therefore, held to be illegal.

1. It may be noted here that by the Constitution (42nd Amendment) Act, 1976, the provision regarding second notice has been deleted. See also *Union of India* v. *Tulsiram Patel*, (1985) 3 SCC 398: AIR 1985 SC 1416.
2. *Annamunthodo* v. *Oilfield Workers*, (1961) 3 All ER 621: (1961) 3 WLR 650: (1961) AC 945; *Gupta* v. *Union of India*, 1989 Supp (1) SCC 416: AIR 1989 SC 1393.
3. (1863) 14 CB (NS) 180: (1861-73) All ER 1554. For similar Indian case, see *Olga Tellis* v. *Bombay Municipal Corpn.*, (1985) 3 SCC 545: AIR 1986 SC 180.
4. (1964) AC 40: (1963) 2 All ER 66: (1963) 2 WLR 935 (HL).
5. C.K. Allen: *Law and Orders*, 1965, p. 242.

In *State of Orissa* v. *Binapani Dei*[6], the petitioner was compulsorily retired from service on the ground that she had completed the age of 55 years. No opportunity of hearing was given to her before the impugned order was passed. The Supreme Court set aside the order as it was violative of the principles of natural justice.

Again, in *Maneka Gandhi* v. *Union of India*[7], the passport of the petitioner-journalist was impounded by the Government of India 'in public interest'. No opportunity was given to the petitioner before taking the impugned action. The Supreme Court held that the order was violative of the principles of natural justice.

In *Olga Tellis*[8], in spite of the statutory provision about removal of unauthorised construction by the Commissioner without notice, the Court held that it was merely an enabling provision and not a command not to issue notice before demolition of structure. The discretion was, therefore, required to be exercised in consonance with the principles of natural justice.

In *Nally Bharat Engineering Co.* v. *State of Bihar*[9], a senior supervisor was dismissed from service by the Company for committing theft. The dispute was referred to the Labour Court, Dhanbad, under the Industrial Disputes Act, 1947. The workman made an application to the Labour Court stating that since he was residing at Haripur, it would be convenient for him if the case would be transferred to Labour Court, Patna. That application was made without intimation to the management. The Government also without issuing notice or affording opportunity to the management acceeded to the request of the workman and transferred the case to Labour Court, Patna. The petition filed by the management against the said order was summarily dismissed by the High Court of Patna on the ground that no prejudice was caused to the Company. The management approached the Supreme Court.

Allowing the appeal and setting aside the order of the High Court as well as of the Government, the Supreme Court held that fairness required that an opportunity of hearing ought to have been afforded to the Company before passing the impugned order. Regarding prejudice, Shetty, J. rightly observed:

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6. AIR 1967 SC 1269: (1967) 2 SCR 625.
7. (1978) 1 SCC 248: AIR 1978 SC 597.
8. *Olga Tellis* v. *Bombay Municipal Corpn.*, (1985) 3 SCC 545: AIR 1986 SC 180. See also *Aarti Gupta* v. *State of Punjab*, (1988) 1 SCC 258: AIR 1988 SC 481; *Ahmedabad Municipal Corpn.* v. *Nawab Khan*, AIR 1997 SC 152.
9. (1990) 2 SCC 48: (1990) 2 LLJ 211.

"The management need not establish prejudice for want of such opportunity.... [T]he principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. *The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary.*"[10]

(emphasis supplied)

But, in *Maharashtra State Board of Secondary & H. S. Education* v. *Paritosh*[11], the Supreme Court held that the principles of natural justice cannot be carried to such lengths as to make it necessary that the candidates who have appeared in an examination should be allowed to participate in the process of evaluation of their performance or to verify the correctness of the evaluation made by the examiners by conducting an inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners. The test of reasonableness is not applied in vacuum but in the context of life's realities. As Mathew, J. states: "It is not expedient to extend the horizon of natural justice involved in the *audi alteram partem* rule to the twilight zone of mere expectations, however great they may be."[12]

Similarly, in *Hira Nath Mishra* v. *Principal, Rajendra Medical College*[13], even though the statements of girl students were recorded behind the back of the boy students and no opportunity was afforded to the boy students to cross-examine the girl students, the order of expulsion from college passed against the boy students was upheld by the Supreme Court.

Again, the extent of opportunity of hearing to be given is not dependent upon the quantum of loss to the aggrieved person nor referable to the fatness of the stake but is essentially related to the demands of a given situation. Therefore, if a show cause notice is issued and the explanation is considered before taking action under the statutory provisions, the rules of natural justice cannot be said to have been violated on the ground that *more* opportunity should have been afforded as a huge amount was at stake[14].

10. *Id.* at p. 57 (SCC).
11. (1984) 4 SCC 27: AIR 1984 SC 1543: (1985) 1 SCR 29; see also *Fatehchand Himmatlal* v. *State of Maharashtra*, (1977) 2 SCC 670: AIR 1977 SC 1825.
12. *Union of India* v. *M.L. Capoor*, (1973) 2 SCC 836: AIR 1974 SC 87.
13. (1973) 1 SCC 805: AIR 1973 SC 1260.
14. *Jain Exports* v. *Union of India*, (1988) 3 SCC 579 (586).

(c) *Oral or personal hearing*

As discussed above, an adjudicating authority must observe the principles of natural justice and must give a reasonable opportunity of being heard to the person against whom the action is sought to be taken. But in England[15] and in America[16], it is well-settled law that in absence of statutory provisions, an administrative authority is not bound to give the person concerned an *oral* hearing. In India also, the same principle is accepted and oral hearing is not regarded as a *sine qua non* of natural justice. A person is not entitled to an oral hearing, unless such a right is conferred by the statute[17]. In *M.P. Industries* v. *Union of India*[18], Subba Rao, J. (as he then was) observed:

> "It is no doubt a principle of natural justice that a quasi-judicial tribunal cannot make any decision adverse to a party without giving him an effective opportunity of meeting any relevant allegations against him (but) [*t*]*he said opportunity need not necessarily be by personal hearing. It can be by written representation. Whether the said opportunity should be by written representation or by personal hearing depends upon the facts of each case and ordinarily it is in the discretion of the tribunal.*"[19] (emphasis supplied)

Thus, it is well-established that principles of natural justice do not require personal hearing and if all the relevant circumstances have been taken into account before taking the impugned action, the said action cannot be set aside *only* on the ground that personal hearing was not given.[20]

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15. *Local Govt. Board* v. *Arlidge*, (1915) AC 120: (1914-15) All ER 1; *Ridge* v. *Baldwin*, (1964) AC 40: (1963) 2 All ER 66: (1963) 2 WLR 935; de Smith: *Judicial Review of Administrative Action*, 1995, pp. 437-41; Wade: *Administrative Law*, 1994, pp. 537-41.
16. *F.C.C.* v. *W.J.R.*, (1949) 337 US 265; *see also* observations of Hooper, C.J. ('The one who decides must hear'), in *Morgan (I)* v. *U.S.*, (1936) 298 US 468 (481); *Morgan (III)*, (1938) 304 US 23; *Morgan (IV)*, (1939) 307 US 183.
17. *A.K. Gopalan* v. *State of Madras*, AIR 1950 SC 27 (43): 1950 SCR 88; *F.N. Roy* v. *Collector of Customs*, AIR 1957 SC 648: 1957 SCR 1151; *Union of India* v. *J.P. Mitter*, (1971) 1 SCC 396: AIR 1971 SC 1093; *State of Assam* v. *Gauhati Municipal Board*, AIR 1967 SC 1398; *Farid Ahmed* v. *Ahmedabad Municipal Council*, (1976) 3 SCC 719: AIR 1976 SC 2095.
18. AIR 1966 SC 671: (1966) 1 SCR 466.
19. *Id.* at p. 675 (AIR); see also *Union of India* v. *Jyoti Prakash Mitter*, (1971) 1 SCC 396: AIR 1971 SC 1093.
20. *State of Maharashtra* v. *Lok Shikshan Sansthan*, (1971) 2 SCC 410 (420): AIR 1973 SC 588 (596); *Union of India* v. *Prabhavalkar*, (1973) 4 SCC 183 (193): AIR 1973 SC 2102 (2109); *State of Assam* v. *Gauhati Municipal Council*, AIR 1967 SC 1398; *Mohd. Ilyas* v. *Union of India*, (1970) 3 SCC 61, *Harish Uppal* v. *Union of India*, (1973) 3 SCC 319: AIR 1973 SC 258; *Carborandum Universal*

As already discussed, the principles of natural justice are flexible and whether they were observed in a given case or not depends upon the facts and circumstances of each case. The test is that the adjudicating authority must be impartial, 'fair hearing' must be given to the person concerned, and that he should not be 'hit below the belt'.[21]

But at the same time, it must be remembered that a 'hearing' will normally be an oral hearing.[22] As a general rule, 'an opportunity to present contentions orally, with whatever advantages the method of presentation has, is one of the rudiments of the fair play required when the property is being taken or destroyed.[23] de Smith[24] also says that 'in the absence of clear statutory guidance on the matter, one who is entitled to the protection of the *audi alteram partem* rule is now *prima facie* entitled to put his case orally'. Again, if there are contending parties before the adjudicating authority and one of them is permitted to give oral hearing the same facility must be afforded to the other,[25] or where complex legal and technical questions are involved or where stakes are very high, it is necessary to give oral hearing.[26] Thus, in the absence of statutory requirement about oral hearing, courts will have to decide the matter taking into consideration the facts and circumstances of the case.

(d) Right of Counsel

The right of representation by a lawyer is not considered to be a part of natural justice and it cannot be claimed as of right,[27] unless the said right is conferred by the statute.[28] In *Pett* v. *Greyhound Racing Assn. (II)*[29], Lyell, J. observed:

> "I find it difficult to say that legal representation before a tribunal is an elementary feature of the fair dispensation of justice. It

Co. v. *Central Board of Direct Taxes*, 1989 Supp (2) SCC 462; *Union of India* v. *Amrik Singh*, (1991) 1 SCC 654: AIR 1991 SC 564.

21. Per Krishna Iyer, J. in *Shrikrishnadas* v. *State of M.P.*, (1977) 2 SCC 741 (745): AIR 1977 SC 1691 (1694).
22. Wade: *Administrative Law*, 1994, p. 537.
23. *Standard Airlines* v. *Civil Aeronautics Board*, (1949) F 2d 18 (21).
24. *Judicial Review of Administrative Action*, 1995, p. 437.
25. *R.* v. *Kingston-upon-Hull Rent Tribunal*, (1949) 65 TLR 209.
26. *Travancore Rayons* v. *Union of India*, (1969) 3 SCC 868 (871): AIR 1970 SC 862 (864); *State of U.P.* v. *Maharaja Dharmander Prasad Singh*, (1989) 2 SCC 505 (525): AIR 1989 SC 997 (1010-11).
27. *Kalindi* v. *Tata Locomotives*, AIR 1960 SC 914: (1960) 3 SCR 407; *Mohinder Singh Gill* v. *Chief Election Comnr.*, (1978) 1 SCC 405 (439): AIR 1978 SC 851 (876).
28. *H.C. Sarin* v. *Union of India*, (1976) 4 SCC 765: AIR 1976 SC 1686.
29. (1969) 2 All ER 221: (1970) 1 QB 46: (1969) 2 WLR 1228.

seems to me that *it arises only in a society which has reached some degree of sophistication in its affairs.*''[30] (emphasis supplied)

But speaking generally, the right to appear through a counsel has been recognised in Administrative Law. C.K. Allen[31] rightly says, ''[E]xperience has taught me that to deny persons who are unable to express themselves the services of a competent spokesman is a very mistaken kindness.'' In *Pett* v. *Greyhound Racing Assn. (I)*[32], Lord Denning observed:

> ''[W]hen a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth. He has also a right to speak by counsel or solicitor.... *Even a prisoner can have his friend.*''[33] (emphasis supplied)

de Smith[34] is also of opinion that in general, ''legal representation of the right quality before statutory tribunals is desirable, and that *a person threatened with social or financial ruin by disciplinary proceedings in a purely domestic forum may be gravely prejudiced if he is denied legal representation*''. (emphasis supplied)

Some statutes do not permit appearance of legal practitioners; e.g. factory laws; some statutes permit appearance of advocates only with the permission of the tribunal concerned, e.g. Industrial Disputes Act, 1947; while in some statutes, the right to be represented through an advocate is recognised, e.g. Income Tax Act, 1961.

Section 30 of the Advocates Act, 1961 confers an absolute right on every advocate to practise in all courts including the Supreme Court, before any tribunal or person legally authorised to take evidence and before any authority or person before whom such advocate is or under any law for the time being in force entitled to practise.[35]

If the matter is very simple, e.g. whether the amount in question is paid or not,[36] or whether the assessment orders were correct,[37] the request for legal representation can be rejected. On the other hand, if the oral evidence produced at the inquiry requires services of a lawyer for cross-

30. *Id.* at p. 231 (AER): 66 (QB).
31. *Administrative Jurisdiction*, 1956, p. 79.
32. (1968) 2 All ER 545: (1969) 1 QB 125: (1968) 2 WLR 1471.
33. *Id.* at p. 549 (AER): 132 (QB).
34. *Judicial Review of Administrative Action*, 1995, pp. 452-53.
35. It may be noted at this stage that though more than thirty years have passed, the provisions of S. 30 of the Act have not been brought in force. *See* in this connection *Aeltemesh Rein* v. *Union of India*, (1988) 4 SCC 54: AIR 1988 SC 1768.
36. *H.C. Sarin* v. *Union of India*, (1976) 4 SCC 765: AIR 1976 SC 1686.
37. *Krishna Chandra* v. *Union of India*, (1974) 4 SCC 374: AIR 1974 SC 1589.

examination of witnesses, or legal complexity is involved therein, or where complicated questions of fact and law arise, or where the evidence is voluminous and the party concerned may not be in a position to meet with the situation effectively or where he is pitted against a trained prosecutor, he should be allowed to engage a legal practitioner to defend him 'lest the scales should be weighed against him'.[38] These are all relevant grounds and in these circumstances, refusal to permit legal assistance may cause serious prejudice to the person concerned and may amount to a denial of reasonable opportunity of being heard.

(e) *Right of 'friend'*

In departmental proceedings and domestic inquiries, an employee or a workman is normally allowed to represent his case through his friend, co-worker or representative of the Union. According to the Supreme Court[39], it is desirable that in domestic inquiries, employees should be given liberty to represent their case by persons of their choice, if there is no standing order against such a course being adopted and if there is nothing otherwise objectionable in the said request.

In *A.K. Roy* v. *Union of India*[40], it was contended that a detenu has a right to represent his case through a lawyer. The Supreme Court negatived the contention. It, however, held that a detenu had a right to be assisted by a friend. "It may be that denial of legal representation is not denial of natural justice *per se*, and, therefore, if a statute excludes that facility explicitly, it would not be open to the tribunal to allow it. But, it is not fair, and the statute does not exclude that right, that the detenu should not even be allowed to take the aid of a friend. *Whenever demanded, the Advisory Boards must grant that facility.*"

(emphasis supplied)

(f) *General principles*

The following propositions can be said to have been established:

(1) The adjudicating authority must be impartial and without any interest or bias of any type.[41]

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38. *C.L. Subramaniam* v. *Collector of Customs*, (1972) 3 SCC 542: AIR 1972 SC 2178; see also *A.K. Roy* v. *Union of India*, (1982) 1 SCC 271 (335): AIR 1982 SC 710 (747); *Board of Trustees* v. *Dilip Kumar*, (1983) 1 SCC 124: AIR 1983 SC 109; *J.K. Aggarwal* v. *Haryana Seeds Development Corpn.*, (1991) 2 SCC 283: AIR 1991 SC 1221; *Maharashtra State Board of Education* v. *K.S. Gandhi*, (1991) 2 SCC 716 (735), *Crescent Dyes & Chemicals Ltd.* v. *Ram Naresh*, (1993) 2 SCC 115.
39. *Dunlop Rubber Co.* v. *Workmen*, AIR 1965 SC 1392: (1965) 2 SCR 139.
40. (1982) 1 SCC 271 (335-36): AIR 1982 SC 710 (747-48).
41. For detailed discussion *see* 'Bias or interest' (*supra*).

(2) Where the adjudicating authority is exercising judicial or quasi-judicial power, the order must be made by that authority and that power cannot be delegated or sub-delegated to any other officer.[42]

(3) The adjudicating authority must give full opportunity to the affected person to produce all the relevant evidence in support of his case. In *Malikram* v. *State of Rajasthan*[43], the scope of hearing was confined by the inquiry officer only to the hearing of arguments and rejected the application of the appellant to lead oral or documentary evidence. The Supreme Court set aside the decision.

(4) The adjudicating authority must disclose all material placed before it in the course of the proceedings and cannot utilise any material unless the opportunity is given to the party against whom it is sought to be utilised. Thus, in *Dhakeswari Cotton Mills* v. *CIT*,[44] the Supreme Court set aside the order passed by the Income Tax Appellate Tribunal on the ground that it did not disclose some evidence to the assessee produced by the department.

(5) The adjudicating authority must give an opportunity to the party concerned to rebut the evidence and material placed by the other side. In *Bishambhar Nath* v. *State of U.P.*[45], in revision proceedings, the Custodian-General accepted new evidence produced by one party, but no opportunity was given to the other side to meet with the same. The Supreme Court held that the principles of natural justice were violated.

(6) An adjudicating authority must disclose the evidence which it wants to utilise against the person concerned and also give him an opportunity to rebut the same; but it does not *necessarily* mean that the right of cross-examination of witnesses should be given to him. It depends upon the facts and circumstances of each case and the statutory provisions.[46]

Generally, in disciplinary proceedings under Article 311 of the Constitution of India against the civil servants[47] and in cases of domestic

42. For detailed discussion *see* 'Sub-delegation of judicial power'; Lecture V (*supra*).
43. AIR 1961 SC 1575: (1962) 1 SCR 978.
44. AIR 1955 SC 65: (1955) 1 SCR 941; see also *M.P. Industries* v. *Union of India*, AIR 1966 SC 671: (1966) 1 SCR 466.
45. AIR 1966 SC 573: (1966) 2 SCR 158; but see *Fedco Ltd.* v. *S.N. Bilgrami*, AIR 1960 SC 415: (1960) 2 SCR 408.
46. de Smith: *Judicial Review of Administrative Action*, 1995, pp. 454-57.
47. *Khemchand* v. *Union of India*, AIR 1958 SC 300; *Union of India* v. *T.R. Verma*,

inquiries by employers against their employees under the factory laws,[48] it is held that the right of cross-examination of witnesses is necessary.

In *State of Kerala* v. *K.T. Shaduli*[49], the returns filed by the respondent-assessee on the basis of his books of account appeared to the Sales Tax Officer to be incomplete and incorrect, since certain sales appearing in the books of accounts of a wholesale dealer were not mentioned in the account books of the respondent. The respondent applied to the S.T.O. for opportunity to cross-examine the wholesale dealer which was rejected by him. Holding the decision of the S.T.O. to be illegal, the Supreme Court held that the respondent could prove the correctness and completeness of his returns only by showing that the entries in the books of accounts of the wholesale dealer were false and bogus and this obviously the respondent could not do unless he was given an opportunity to cross-examine the wholesale dealer.

On the other hand, in externment proceedings,[50] and in proceedings before the customs authorities to determine whether the goods were smuggled[51] the right of cross-examination is not necessary.

In *Hira Nath Mishra* v. *Principal, Rajendra Medical College*[52], the appellants-male students, entered quite naked into the compound of the girls' hostel late at night. Thirty-six girl students filed a confidential complaint with the Principal of the college, who appointed an Inquiry Committee. The Committee recorded the statements of girl students but not in presence of the appellants. The photographs of the appellants were mixed up with 20 photographs of other students and the girls 'by and large' identified the appellants. The appellants were then called upon by the Committee and they were told about the charges against them. The appellants denied the charges and stated that they had never left their hostel. The Committee found the appellants guilty and finally they were expelled from the college.

The said order was challenged by the appellants as violative of the principles of natural justice inasmuch as the statements of the girl students were recorded behind their back and that no opportunity was given to them to cross-examine those girl students. The Supreme Court rejected

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AIR 1957 SC 882.

48. *Central Bank of India* v. *Karunamoy*, AIR 1968 SC 266; *Meenglass Tea Estate* v. *Workmen*, AIR 1963 SC 1719.
49. (1977) 2 SCC 777: AIR 1977 SC 1627.
50. *Gurbachan* v. *State of Bombay*, AIR 1952 SC 221.
51. *Kanungo & Co.* v. *Collector of Customs*, (1973) 2 SCC 445: AIR 1972 SC 2136.
52. (1973) 1 SCC 805: AIR 1973 SC 1260.

these contentions. According to the Court "the girls would not have ventured to make their statements in the presence of the miscreants because if they did, they would have most certainly exposed themselves to retaliation and harassment thereafter. The college authorities are in no position to protect the girl students outside the college precincts."

(7) Oral or personal hearing is not a part of natural justice and cannot be claimed as of right.[53]

(8) Representation through counsel or an advocate also cannot be claimed as a part of natural justice.[54]

(9) The adjudicating authority is not *always* bound to give reasons in support of its order, but the recent trend is that it is considered to be a part of natural justice.[55]

(10) If hearing is not given by the adjudicating authority to the person concerned and the principles of natural justice are violated the order is void and it cannot be justified on the ground that no prejudice was caused to the petititoner[56]; or that 'hearing could not have made any difference'[57] or that 'no useful purpose would have been served'[58]. In *General Medical Council* v. *Spackman*[59], Lord Wright observed: "If the principles of natural justice are violated in respect of any decision, it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of natural justice. *The decision must be declared to be no decision.*"

(emphasis supplied)

Thus, in *Board of High School* v. *Kumari Chitra*[60], the Board cancelled the examination of the petitioner who had actually appeared at the examination on the ground that there was shortage in attendance at lectures. But no notice was given to her before taking the action. The order

53. *See* 'Oral Hearing' under that head (*supra*).
54. *See* 'Right of Counsel' under that head (*supra*).
55. *See* 'Speaking Orders' under that head (*supra*).
56. *Nally Bharat Engg. Co. Ltd.* v. *State of Bihar*, (1990) 2 SCC 48.
57. *Ridge* v. *Baldwin*, (1964) AC 40: (1963) 2 All ER 66: (1963) 2 WLR 935; Wade: *Administrative Law*, 1994, pp. 526-28; *S.L. Kapoor* v. *Jagmohan*, (1980) 4 SCC 379 (395): AIR 1981 SC 136 (147); *Charan Lal Sahu* v. *Union of India*, (1990) 1 SCC 613 (705): AIR 1990 SC 1480.
58. *Board of High School* v. *Kumari Chitra*, (1970) 1 SCC 121: AIR 1970 SC 1039; *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248: AIR 1978 SC 597. But see *State Bank of Patiala* v. *S.K. Sharma*, (1996) 3 SCC 364: AIR 1996 SC 1669.
59. (1943) AC 627 (654-55): (1943) 2 All ER 337.
60. (1970) 1 SCC 121 (123): AIR 1970 SC 1039 (1040).

was challenged as violative of the principles of natural justice. On behalf of the Board it was contended that the facts were not in dispute and, therefore, '*no useful purpose would have been served*' by giving a show-cause notice to the petitioner. The Supreme Court set aside the decision of the Board, holding that the Board was acting in a quasi-judicial capacity and, therefore, it must observe the principles of natural justice.

(11) As a general rule, hearing should be afforded before a decision is taken and not afterwards.[61]

(12) A hearing given on appeal is not an acceptable substitute for a hearing not given before the initial decision.[62]

(13) In exceptional circumstances, hearing may be excluded.[63]

(3) Speaking orders

(a) Meaning

A 'speaking order' means an order speaking for itself. To put it simply, every order must contain reasons in support of it.

(b) Importance

Giving of reasons in support of an order is considered to be the third principle of natural justice. According to this, a party has a right to know not only the result of the inquiry but also the reasons in support of the decision.

(c) Object

There is no general rule of English law that reasons must be given for administrative or even judicial decisions.[64] In India also, till very recently it was not accepted that the requirement to pass speaking orders is one of the principles of natural justice. But as Lord Denning[65] says, 'the giving of reasons is one of the fundamentals of good administration'. The condition to record reasons introduces clarity and excludes arbitrariness and satisfies the party concerned against whom the order is passed. Today, the old 'police State' has become a 'welfare State'. The governmental functions have increased, administrative tribunals and other executive authorities have come to stay and they are armed with wide discretionary powers and there are all possibilities of abuse of power by them. To provide a safeguard against the arbitrary exercise of powers

61. *See* 'Pre-decisional and post-decisional hearing', (*infra*).
62. *See* 'Hearing at appellate stage', (*infra*).
63. *See* 'Exclusion of natural justice', (*infra*).
64. de Smith: *Judicial Review of Administrative Action*, 1995, p. 457; Wade: *Administrative Law*, 1994, pp. 541-45.
65. *Breen* v. *Amalgamated Engg. Union*, (1971) 1 All ER 1148 (1154): (1971) 2 QB 175: (1971) 2 WLR 742.

by these authorities, the condition of recording reasons is imposed on them. It is true that even the ordinary law courts do not *always* give reasons in support of the orders passed by them when they dismiss appeals and revisions summarily. But regular courts of law and administrative tribunals cannot be put at par. I must quote here the following powerful observations of Subba Rao, J. (as he then was) in *M.P. Industries* v. *Union of India*[66]:

> "There is an essential distinction between a Court and an administrative tribunal. A Judge is trained to look at things objectively, but, an executive officer generally looks at things from the standpoint of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties: and *the least they should do is to give reasons for their orders.*[67] (emphasis supplied)

(d) Express provision whether necessary

If the statute requires recording of reasons, then it is the statutory requirement and, therefore, there is no scope for further inquiry. But even when the statute does not impose such an obligation, it is necessary for the quasi-judicial authority to record reasons, as it is the 'only visible safeguard against possible injustice and arbitrariness' and affords protection to the person adversely affected. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision, whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable.[68] The courts insist upon disclosure of reasons in support of the order on three grounds: (1) the party aggrieved has the opportunity to demonstrate before the appellate or revisional court that the reasons which persuaded the authority to reject his case were erroneous; (2) the obligation to record reasons operates as a deterrent against possible arbitrary action by executive authority invested with judicial power; and (3) it gives satisfaction to the party against whom the order is made. The power to refuse to disclose reasons

66. AIR 1966 SC 671: (1966) 1 SCR 466.
67. *Id.* at p. 675 (AIR).
68. *Union of India* v. *M.L. Capoor*, (1973) 2 SCC 836 (853-54); AIR 1974 SC 87 (93-94).

in support of the order is 'exceptional in nature and *it ought to be exercised fairly, sparingly and only when fully justified by the exigencies of an uncommon situation*'. "[69] (emphasis supplied)

Every action of the State must satisfy the rule of non-arbitrariness. Recording of reasons is, therefore, implicit even in absence of statutory provision in that regard.[70]

(e) Where order is subject to appeal or revision

If the order passed by the adjudicating authority is subject to appeal or revision, the appellate or revisional court will not be in a position to understand what weighed with the authority and whether the grounds on which the order was passed were relevant, existent and correct; and the exercise of the right of appeal would be futile. In *CIT* v. *Walchand*[71], Shah, J. (as he then was) rightly observed: "The practice of recording a decision without reasons in support cannot but be deprecated."

In *S.N. Mukherjee* v. *Union of India*[72], the Supreme Court observed that except in cases where the requirement of recording reasons has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions must record reasons in support of their decisions. The considerations for recording reasons are: (*i*) such decisions are subject to the appellate jurisdiction of the Supreme Court under Article 136 as well as supervisory jurisdiction of High Courts under Article 227; (*ii*) it guarantees consideration by the adjudicating authority; (*iii*) it introduces clarity in the decisions, and (*iv*) it minimises chances of arbitrariness and ensures fairness in the decision-making process.

(f) Private law

In *Raipur Development Authority* v. *Chokhamal*,[73] an award was made by an arbitrator under the Arbitration Act, 1940. It did not contain reasons. The said award was challenged *inter alia* on the ground that the arbitrator was bound to record reasons which was a requirement of natural justice. Reliance was placed on *Siemens Engg. Co.* v. *Union of India*[74] The court conceded that in *Siemens Engg. Co.* v. *Union of India*[74] "for the first time the court laid down that the rule requiring reasons in support

69. *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248 (323): AIR 1978 SC 597 (613) (Per Chandrachud, J.).
70. *T.R. Thandur* v. *Union of India*, (1996) 3 SCC 690 (706): AIR 1996 SC 1643.
71. AIR 1967 SC 1435 (1437): (1967) 3 SCR 214 (217).
72. (1990) 4 SCC 594 (612): AIR 1990 SC 1984 (1995).
73. (1989) 2 SCC 721: AIR 1990 SC 1426.
74. (1976) 2 SCC 981: AIR 1976 SC 1785.

of an order is a third principle of natural justice", but drawing a distinction between *public law* and *private law* and restricting the ratio laid down in *Siemens Engg. Co.* to public law, a Division Bench of two Judges observed: "It is no doubt true that in the decisions pertaining to Administrative Law, this Court in some cases has observed that the giving of reasons in an administrative decision is a rule of natural justice by an extension of the prevailing rule. *It would be in the interest of the world of commerce that the said rule is confined to the area of Administrative Law.*"[75] (emphasis supplied)

In *Union of India* v. *Nambudiri*[76], a representation was made by a government servant against certain adverse remarks made in his confidential record. The said representation was rejected, however, without recording reasons. The petitioner approached the Central Administrative Tribunal against that order and the tribunal allowed his application and quashed the order on the ground that it was vitiated since no reasons were recorded. The Union of India approached the Supreme Court.

Allowing the appeal and setting aside the order of the Tribunal, the Supreme Court observed: "[P]rinciples of natural justice do not require the administrative authority to record reasons for the decision as there is no general rule that reasons must be given for administrative decision. Order of an administrative authority which has no statutory or implied duty to state reasons or the grounds of its decision is not rendered illegal merely on account of absence of reasons. *It has never been a principle of natural justice that reasons should be given for decisions.*"[77] (emphasis supplied)

A special reference may be made in this connection to a decision of the Constitution Bench of the Supreme Court in *S.N. Mukherjee* v. *Union of India*[78]. In that case the appellant, a Major in the Indian Army was charge-sheeted and tried by General Court Martial. Since some of the charges were held proved, punishment of dismissal was awarded. The findings were confirmed by the Chief of the Army Staff though reasons were not recorded for such confirmation. The post-confirmation petition of the appellant was dismissed by the Central Government. His writ petition was also dismissed. The appellant approached the Supreme Court. A substantial question of law was raised in the appeal, namely, whether recording of reasons in support of an order can be said to be one of the

75. (1989) 2 SCC 721(751): AIR 1990 SC 1426 (1444).
76. (1991) 3 SCC 38: AIR 1991 SC 1216.
77. *Id.* at p. 45 (SCC): 1219 (AIR).
78. (1990) 4 SCC 594: AIR 1990 SC 1984.

principles of natural justice. The Constitution Bench decided the said question in the affirmative. Referring to a number of leading cases on the point, Agarwal, J. observed: "Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that *the requirement to record reasons can be regarded as one of the principles of natural justice* which govern exercise of power by administrative authorities."[79] (emphasis supplied)

(*g*) *Recording of reasons whether part of natural justice*

A difficult and controversial question, however, is: Whether recording of reasons can be said to be one of the principles of natural justice? As already discussed, two principles of natural justice are well-established: (*i*) no man shall be a judge in his own cause (*nemo debet esse judex in propria causa*); and (*ii*) no man should be condemned unheard (*audi alteram partem*).

For the first time in *Siemens Engg. Co.* v. *Union of India*[80], the Supreme Court held that the rule requiring reasons to be recorded by quasi-judicial authorities in support of the orders passed by them must be held to be a basic principle of natural justice. Speaking for the Court, Bhagwati, J. (as he then was) observed:

> "*The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice* which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."[81]
>
> (emphasis supplied)

His Lordship reiterated the above view in the leading case of *Maneka Gandhi* v. *Union of India*[82]. "The order impounding the passport of the petitioner was, therefore, clearly in violation of the rule of natural justice embodied in the maxim *audi alteram partem*."

(*h*) *Non-existence and non-communication of reasons*

Again, the distinction between "non-existence of reasons" and "non-communication of reasons" cannot be overlooked. In a society governed by the rule of law, no action can be taken without *existence* of reasons therefor. Ordinarily, those reasons are required to be communicated to the aggrieved party, unless there is justification for non-

79. *Id.* at pp. 614 (SCC): 1996 (AIR).
80. (1976) 2 SCC 981: AIR 1976 SC 1785.
81. *Id.* at 987 (SCC): 1789 (AIR).
82. (1978) 1 SCC 248 (292): AIR 1978 SC 597 (630).

communication. But it may be that in a given case, the reasons may not be *communicated* in public interest or for the like cause. But if an order is passed or action is taken without any reason, the same is arbitrary and unreasonable and requires to be quashed and set aside.

Thus, in *Liberty Oil Mills* v. *Union of India*[83], interpreting the connotation "without assigning any reason" in clause 8-B of the Imports (Control) Order, 1955, the Supreme Court observed:

> "[T]he expression 'without assigning any reason' implies that the decision has to be communicated, but the reasons for the decision have not to be stated. *Reasons of course, must exist for the decision....*" (emphasis supplied)

In *Shrilekha Vidyarthi* v. *State of U.P.*[84], the State Government by a circular terminated appointment of all Government Counsel. When the validity of the said circular was questioned in the Supreme Court, it was contended that the appointments were liable to be terminated at any time "without assigning any cause". Construing the expression in the light of the *ratio* laid down in *Liberty Oil Mills*[83], the Court observed: "The non-assigning of reasons or the non-communication thereof may be based on public policy, but termination of an appointment without the existence of any cogent reason in furtherance of the object for which the power is given would be arbitrary and, therefore, against public policy."[85]

Again, in *C.B. Gautam* v. *Union of India*[86], interpreting the phrase "for reasons to be recorded in writing" under the Income Tax Act, the Supreme Court observed that "the order would be an incomplete order unless either the reasons are incorporated therein or are served separately alongwith the order on the affected party". The Court stated: "*We are of the view that the reasons for the order must be communicated to the affected party.*"[87] (emphasis supplied)

(*i*) ***General propositions***

The law relating to 'speaking orders' may be summed up thus:[88]

(1) Where a statute requires recording of reasons in support of the order, it imposes an obligation on the adjudicating authority and the reasons must be recorded by the authority.

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83. (1984) 3 SCC 465 (492): AIR 1984 SC 1271 (1287).
84. (1991) 1 SCC 212: AIR 1991 SC 537.
85. *Id.* at p. 232 (SCC): 546 (AIR).
86. (1993) 1 SCC 78.
87. *Id.* at p. 105 (SCC); see also *Mohd. Jafar* v. *Union of India*, 1994 Supp (2) SCC 1.
88. For detailed discussion and leading cases, *see* C.K. Thakker: *Administrative Law*, 1996, pp. 198-201.

(2) Even when the statute does not lay down expressly the requirement of recording reasons, the same can be inferred from the facts and circumstances of the case.

(3) Mere fact that the proceedings were treated as confidential does not dispense with the requirement of recording reasons.

(4) If the order is subject to appeal or revision (including Special Leave Petition under Article 136 of the Constitution), the necessity of recording reasons is greater as without reasons the appellate or revisional authority cannot exercise its power effectively inasmuch as it has no material on which it may determine whether the facts were correctly ascertained, law was properly applied and the decision was just and based on legal, relevant and existent grounds. Failure to disclose reasons amounts to depriving the party of the right of appeal or revision.

(5) There is no prescribed form and the reasons recorded by the adjudicating authority need not be detailed or elaborate and the requirement of recording reasons will be satisfied if only relevant reasons are recorded.

(6) If the reasons recorded are totally irrelevant, the exercise of power would be bad and the order is liable to be set aside.

(7) It is not necessary for the appellate authority to record reasons when it affirms the order passed by the lower authority.

(8) Where the lower authority does not record reasons for making an order and the appellate authority merely affirms the order without recording reasons, the order passed by the appellate authority is bad.

(9) Where the appellate authority reverses the order passed by the lower authority, reasons must be recorded, as there is a vital difference between an order of reversal and an order of affirmation.

(10) The validity of the order passed by the statutory authority must be judged by the reasons recorded therein and cannot be construed in the light of subsequent explanation given by the authority concerned or by filing an affidavit. '*Orders are not like old wine becoming better as they grow older*'.[89]

(emphasis supplied)

89. Per Krishna Iyer, J. in *Mohinder Singh Gill* v. *Chief Election Comnr.*, (1978) 1 SCC 405(417): AIR 1978 SC 851 (858): (1978) 2 SCR 272.

(11) If the reasons are not recorded in support of the order it does not *always* vitiate the action.

(12) The duty to record reasons is a responsibility and cannot be discharged by the use of vague general words.

(13) If the reasons are not recorded, the court cannot probe into reasoning of the order.

(14) The doctrine of recording reasons should be restricted to public law only and should not be applied to private law e.g. arbitration proceedings.

(15) The rule requiring reasons to be recorded in support of the order is one of the principles of natural justice.

(16) Normally, the reasons recorded by the authority should be communicated to the aggrieved party.

(17) Even when the reasons are not communicated to the aggrieved party in public interest, they must be in existence.

(18) The reasons recorded by the statutory authority are always subject to judicial scrutiny.

This is the most valuable safeguard against any arbitrary exercise of power by the adjudicating authority. The reasons recorded by such authority will be judicially scrutinised, and if the court finds that the reasons recorded by such authority were irrelevant or extraneous, incorrect or non-existent, the order passed by the authority may be set aside. In *Padfield* v. *Minister of Agriculture*[90], the Minister gave reasons for refusing to refer the complaint to the committee and gave detailed reasons for his refusal. It was admitted that the question of referring the complaint to a committee was within his discretion. When his order was challenged, it was argued that he was not bound to give reasons and if he had not done so, his decision could not have been questioned and his giving of reasons could not put him in a worse position. The House of Lords rejected this argument and held that the Minister's decision could have been questioned even if he had not given reasons. Lord Upjohn observed:

> "[I]f he does not give any reason for his decision, it may be, if circumstances warrant it, that a court may be at liberty to come to the conclusion that he had no good reason of reaching that conclusion and order a prerogative writ to issue accordingly."[91]

It is submitted that the aforesaid view is quite correct and as Lord Pearce says, 'a Minister's failure or refusal to record reasons cannot be

90. (1968) AC 997: (1968) 1 All ER 694: (1968) 2 WLR 924.
91. *Id.* at pp. 1061-62 (AC).

regarded as exclusion of judicial review. *By merely keeping silence the Executive cannot prevent the Judiciary from considering the whole question'*.[92] (emphasis supplied)

The same principle is accepted in India. In *Hochtief Gammon* v. *State of Orissa*[93], the Supreme Court held that it is the duty of the court to see that the Executive acts lawfully and it cannot avoid scrutiny by courts by failing to give reasons. "*Even if the Executive considers it inexpedient to exercise their powers they should state their reasons and there must be material to show that they have considered all the relevant facts.*" (emphasis supplied)

I must conclude the matter by quoting the following powerful observations of Chandrachud, J. (as he then was) in *Maneka Gandhi* v. *Union of India*[94]:

> "The reasons, if disclosed, being open to judicial scrutiny for ascertaining their nexus with the order impounding the passport, the refusal to disclose the reasons would equally be open to the scrutiny of the Court, or else, the wholesome power of a dispassionate judicial examination of executive orders could with impunity be set at naught by an obdurate determination to suppress the reasons. *Law cannot permit the exercise of a power to keep the reasons undisclosed if the sole reason for doing so is to keep the reasons away from judicial scrutiny.*" (emphasis supplied)

7. PRE-DECISIONAL AND POST-DECISIONAL HEARING

(a) General

As a general rule, a hearing should be afforded before a decision is taken by an authority. In the epoch-making decision of *Ridge* v. *Baldwin*[95], it was contended before the House of Lords that since the appellant police officer had convicted himself out of his own mouth, a prior hearing to him by the Watch Committee 'could not have made any difference'. This contention was rejected by the House of Lords for the reason that if the Watch Committee had given the police officer a prior hearing they would not have acted wrongly or unreasonably if they had in the exercise of their discretion decided to take a more lenient course than the one they had adopted.

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92. *Id.* at pp. 1053-54 (AC).
93. (1975) 2 SCC 649(659): AIR 1975 SC 2226(2234).
94. (1978) 1 SCC 248(323): AIR 1978 SC 597(613).
95. (1964) AC 40: (1963) 2 All ER 66: (1963) 2 WLR 935.

The same principle is applied in India also. In *Maneka Gandhi*[96], the passport of the petitioner-journalist was impounded by the Government of India in 'public interest'. No opportunity was given to the petitioner before taking the impugned action. When the said action was challenged, the Government contended that application of the *audi alteram partem* rule would have frustrated the very purpose of impounding the passport. Even though the Supreme Court negatived the argument, it accepted the doctrine of post-decisional hearing in exceptional cases. It laid down that where in an emergent situation, requiring immediate action, it is not practicable to give prior notice or hearing, the preliminary action should be soon followed by a full remedial hearing.

In *S.L. Kapoor* v. *Jagmohan*[97], the supersession of a municipality was challenged on the ground of violation of principles of natural justice, since no show-cause notice was issued before the impugned order. Rejecting the contention that such observance would have made no difference, the Supreme Court observed: "The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. *It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced.*" (emphasis supplied)

In *Swadeshi Cotton Mills*[98], an order taking over the management of a company by the Government without prior notice or hearing was held to be bad and contrary to law. The Court said: "In the facts and circumstances of the instant case, there has been a non-compliance with such implied requirement of the *audi alteram partem* rule of natural justice at the *pre-decisional stage*. The impugned order, therefore, could be struck down on that score *alone*." (emphasis supplied)

In *Olga Tellis*[99], even though the statute empowered the Commissioner to remove the construction without notice, the Supreme Court read the *audi alteram partem* rule in it observing that reading the provision "as containing command not to issue notice *before* the removal of an encroachment will make the law invalid". (emphasis supplied)

96. *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248: AIR 1978 SC 597.
97. (1980) 4 SCC 379(395): AIR 1981 SC 136(147).
98. *Swadeshi Cotton Mills* v. *Union of India*, (1981) 1 SCC 664 (709): AIR 1981 SC 818 (844-45).
99. *Olga Tellis* v. *Bombay Municipal Corpn.*, (1985) 3 SCC 545 (581): AIR 1986 SC 180 (199); see also *Liberty Oil Mills* v. *Union of India*, (1984) 3 SCC 465: AIR 1984 SC 1271.

In *Institute of Chartered Accountants of India* v. *L.K. Ratna*[1], a member of the institute was removed on the ground of misconduct. One of the questions raised before the Supreme Court was whether such a member was entitled to a hearing before such removal. Answering the question in the affirmative, the Supreme Court quashed the order since hearing was not afforded *before* such removal.

In *Shephard* v. *Union of India*[2], certain banks were ordered to be amalgamated with some nationalised banks. Certain employees of private banks were excluded from employment in the nationalised banks. Thus, their services were terminated without giving them an opportunity of hearing. The Supreme Court rejected the proposal for a post-amalgamation hearing since 'there was no justification to think of a post-decisional hearing'. The Court rightly observed: "*It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose.*"

(emphasis supplied)

In *Trehan* v. *Union of India*[3], a circular was issued by a government company, prejudicially altering the terms and conditions of its employees without affording an opportunity of hearing to them. In reply to the said contention, an argument was advanced by the company that *after* the impugned circular was issued, an opportunity was given to the employees with regard to the alteration made by the circular. In other words, a plea regarding post-decisional hearing was put forward. Negativing the contention and following *Shephard case* (*supra*), the Supreme Court reiterated: "*In our opinion, the post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will normally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity.*"

(emphasis supplied)

In *Charan Lal Sahu* v. *Union of India*[4] (*Bhopal Gas Disaster case*), even though the Supreme Court came to the conclusion that prior to settlement of claims before the court, notices were required to be given to the victims and pre-decisional hearing was required to be afforded and even though post-decisional hearing was not sufficient, in the pecu-

1. (1986) 4 SCC 537: AIR 1987 SC 71.
2. (1987) 4 SCC 431 (449): AIR 1988 SC 686 (695).
3. (1989) 1 SCC 764 (770): AIR 1989 SC 568 (572).
4. (1990) 1 SCC 613: AIR 1990 SC 1480.

liar facts and circumstances of the case, the Supreme Court did not quash and set aside the settlement.

Mukharji, C.J., however, rightly observed: "Justice perhaps has been done to the victims situated as they were, but it is also true that *justice has not appeared to have been done. That is a great infirmity.*"[5]

(emphasis supplied)

(b) Hearing at appellate stage

A peculiar situation may also arise in a given case. It may happen that there may be non-compliance with natural justice at the initial stage but hearing might have been given by the appellate authority. The question obviously arises: whether a hearing afforded at the appellate stage can be treated as an acceptable substitute for a hearing not afforded at the initial stage? In other words, can failure of natural justice at the initial stage be cured by complying with natural justice at the appellate stage? In the leading case of *Leary* v. *National Union of Vehicle Builders*[6], an order of expulsion of a member was passed without observing principles of natural justice. Megarry, J. rightly stated: "*As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body.*"

(emphasis supplied)

Wade[7] also says:

> "If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing: *instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial.*" (emphasis supplied)

The same principle is applied in India. In *Mohd. Nooh*[8], the Supreme Court held that if an order passed by an inferior court or tribunal of first instance is null and void 'the vice' cannot be obliterated or cured on appeal or revision. Even if such an order is confirmed in appeal or revision, it does not make any difference.

In *Mysore State Road Transport Corpn.* v. *Mirja Khasim*[9], an appointment of a civil servant was made by the Head of the Department while the order of dismissal was passed by the subordinate authority.

5. *Id.* at 707 (SCC): 1547 (AIR); see also *T.S. Rabari* v. *Govt. of Gujarat*, (1991) 32 (2) Guj LR 1035: (1991) 11(2) Guj LH 364.
6. (1970) 2 All ER 713 (720): (1971) Ch D 34 (39).
7. *Administrative Law*, 1994, p. 545.
8. *State of U.P.* v. *Mohd. Nooh*, AIR 1958 SC 86: 1958 SCR 595; *State Bank of Patiala* v. *S.K. Sharma*, (1996) 3 SCC 364.
9. (1977) 2 SCC 457: AIR 1977 SC 747.

The order was, therefore, held to be without jurisdiction, void and inoperative, having been passed in contravention of Article 311 of the Constitution. The fact that the order was confirmed in appeal could not cure the initial defect.

In *Farid Ahmed* v. *Ahmedabad Municipal Corpn.*[10], before compulsory acquisition of land of the appellant, he was not granted personal hearing which was required to be afforded to him. When the acquisition proceedings were challenged, it was submitted on behalf of the Corporation that an appeal was provided under the Act (Bombay Provincial Municipal Corporations Act, 1949) which was a complete substitute for personal hearing provided under the Act. Negativing the contention, the Supreme Court observed: "*If the order is at inception, invalid, its invalidity cannot be cured by its approval of the Standing Committee or by its confirmation of the State Government.*" (emphasis supplied)

In *Institute of Chartered Accountants*[11] also, the contention was raised that even if the hearing has not been afforded at the initial stage, a right of appeal has been conferred on such member and the member can avail himself of such an opportunity of being heard at the appellate stage. Negativing the contention and relying upon English and Australian judgments, the Supreme Court observed: "*There are cases where an order may cause serious injury as soon as it is made, an injury not capable of being entirely erased when the error is corrected on subsequent appeal....* In such a case, after the blow suffered by the initial decision, it is difficult to contemplate *complete* restitution through an appellate decision. Such a case is unlike an action for money or recovery of property, where the execution of the trial decree may be stayed pending appeal, or a successful appeal may result in refund of the money or restitution of the property, with appropriate compensation by way of interest or mesne profits for the period of deprivation. And, therefore, it seems to us, *there is manifest need to ensure that there is no breach of fundamental procedure in the original proceeding, and to avoid treating an appeal as an overall substitute for the original proceeding.*"

(emphasis supplied)

In the leading case of *State of U.P.* v. *Mohd. Nooh*[12], Das, C.J. rightly stated: "[W]here the error, irregularity or illegality touching jurisdiction

10. (1976) 3 SCC 719 (725): AIR 1976 SC 2095 (2100).
11. *Institute of Chartered Accountants of India* v. *L.K. Ratna*, (1986) 4 SCC 537 (553-54): AIR 1987 SC 71 (78); see also *T.S. Rabari* v. *Govt. of Gujarat*, (1991) 32 (2) Guj LR 1035 (1065-68): (1991) 11 (2) Guj LH 364.
12. AIR 1958 SC 86: 1958 SCR 595.

or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play, the superior court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, *even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned.*"[13]

(emphasis supplied)

(c) Conclusions

It is submitted that the following observations of Sarkaria, J. in *Swadeshi Cotton Mills*[14] regarding pre-decisional and post-decisional hearing must always be remembered by every adjudicating authority:

> "In short, the general principle as distinguished from an absolute rule of uniform application seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the *audi alteram partem* rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing short of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude. In short, *this rule of fair play "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications.*"[15] (emphasis supplied)

13. *Id.* at p. 94 (SCC).
14. *Swadeshi Cotton Mills* v. *Union of India*, (1981) 1 SCC 664: AIR 1981 SC 818.
15. *Id.* at p. 689 (SCC): pp. 831-32 (AIR).

8. EXCLUSION OF NATURAL JUSTICE

(a) General

Though the rules of natural justice, namely, *nemo judex in causa sua* and *audi alteram partem*, have now a definite meaning and connotation in law, and their content and implications are well-understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal strait-jacket. They are not immutable but flexible. These rules can be adopted and modified by statutes and statutory rules and also by the constitution of the tribunal which has to decide a particular matter and the rules by which such tribunal is governed. There are situations which demand the exclusion of the rules of natural justice by reason of diverse factors like time, place, the apprehended danger and so on.[16]

(b) Circumstances

In the following cases, the principles of natural justice may be excluded:

(1) Where a statute either expressly or by necessary implication excludes application of natural justice;

(2) Where the action is legislative in character, plenary or subordinate;

(3) Where the doctrine of necessity applies;

(4) Where the facts are admitted or undisputed;

(5) Where the inquiry is of a confidential nature;

(6) Where preventive action is to be taken;

(7) Where prompt and urgent action is necessary;

(8) Where nothing unfair can be inferred by non-observance of natural justice.

(c) Conclusions

One thing should be noted. Inference of exclusion of natural justice should not be readily made unless it is irresistible, since the courts act on presumption that the legislature intends to observe the principles of natural justice and those principles do not supplant but supplement the law of the land. Therefore, all statutory provisions must be read, inter-

16. For detailed discussion and case-law, *see* C.K. Thakker: *Administrative Law*, 1996, pp. 207-15.

preted and applied so as to be consistent with the principles of natural justice.

It is submitted that the following observations of Chandrachud, C.J. in the leading case of *Olga Tellis* v. *Bombay Municipal Corpn.*[17] lay down correct proposition of law. His Lordship observed:

> "The ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. *A departure from this Fundamental Rule of natural justice may be presumed to have been intended by the legislature only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence.*"[18]
>
> (emphasis supplied)

9. EFFECT OF BREACH OF NATURAL JUSTICE: VOID OR VOIDABLE

(a) General

A complicated and somewhat difficult question is: What is the effect of breach or contravention of the principles of natural justice? Does it go to the root of the matter rendering a decision void or merely voidable? A voidable order is an order which is legal and valid unless it is set aside by a competent court at the instance of an aggrieved party. On the other hand, a void order is not an order in the eye of law. It can be ignored, disregarded, disobeyed or impeached in any proceeding before any court or tribunal. It is a stillborn order, a nullity and void *ab initio*.

(b) England

There has been difference of opinion in England on this point. In some cases, the courts have taken the view that non-compliance of the principles of natural justice does not vitiate the order and the order cannot be said to be a nullity or void *ab initio* but merely voidable which could be set aside at the instance of an aggrieved party. While in other cases the courts have taken the view that non-observance of the principles of natural justice renders the order null and void.[19]

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17. (1985) 3 SCC 545: AIR 1986 SC 180.
18. *Id.* at p. 581, para 45 (SCC): p. 199 (AIR); see also *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248 (291): AIR 1978 SC 597; *Union of India* v. *Amrit Singh*, (1991) 1 SCC 654: AIR 1991 SC 564.
19. For case-law, *see* C.K. Thakker: *Administrative Law*, 1996, p. 216.

c) India

So far as India is concerned, it is fairly well settled and courts have consistently taken the view that whenever there is violation of any rule of natural justice, the order is null and void. Thus, where appointment of a government servant is cancelled without affording an opportunity of hearing[20], or where an order retiring a civil servant on the ground of reaching superannuation age was passed without affording an opportunity to the employee,[21] or where a passport of a journalist was impounded without issuing notice;[22] or where a liability was imposed by the Commission without giving an opportunity of being heard to the assesse;[23] the actions were held to be a nullity and orders *void ab initio*. The same principle applies in respect of bias and interest. A judgment which is the result of bias or want of impartiality is a *nullity* and the trial '*coram non judice*'.[24] (emphasis supplied)

An interesting question arose in *Nawabkhan* v. *State of Gujarat*[25]. In this case, an order of externment was passed against the petitioner on September 5, 1967 under the Bombay Police Act, 1951. In contravention of the said order, the petitioner entered the forbidden area on September 17, 1967 and was, therefore, prosecuted for the same. During the pendency of the criminal case, the order of externment was quashed by the High Court under Article 226 of the Constitution on July 16, 1968. The trial court acquitted the petitioner but the High Court convicted him, because according to the High Court, contravention of the externment order took place when the order was still operative and was not quashed by the High Court. Reversing the decision of the High Court, the Supreme Court held that as the externment order was held to be illegal and unconstitutional, it was of no effect and the petitioner was never guilty of flouting 'an order which never legally existed'.

Krishna Iyer, J. rightly observed: "[N]ullity is the consequence of unconstitutionality and so without going into the larger issue and its plural divisions, we may roundly conclude that the order of an administrative

20. *Shridhar* v. *Nagar Palika, Jaunpur*, 1990 Supp SCC 157: AIR 1990 SC 307; *Shrawan Kumar* v. *State of Bihar*, 1991 Supp (1) SCC 330: AIR 1991 SC 309.
21. *State of Orissa* v. *Binapani (Dr)*, AIR 1967 SC 1269: (1967) 2 SCR 625.
22. *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248: AIR 1978 SC 597.
23. *R.B. Shreeram Durga Prasad* v. *Settlement Commission*, (1989) 1 SCC 628: AIR 1989 SC 1038.
24. *State of U.P.* v. *Mohd. Nooh*, AIR 1958 SC 86: 1958 SCR 595; *A.K. Kraipak* v. *Union of India*, (1969) 2 SCC 262: AIR 1970 SC 150; *Ranjit Thakur* v. *Union of India*, (1987) 4 SCC 611: AIR 1987 SC 2386; *A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602: AIR 1988 SC 1531.
25. (1974) 2 SCC 121: AIR 1974 SC 1471.

authority charged with the duty of complying with natural justice in the exercise of power before restricting the fundamental right of a citizen is void and *ab initio* of no legal efficacy.... An order is null and void if the statute clothing the administrative tribunal with power conditions it with the obligation to hear, expressly or by implication. *Beyond doubt, an order which infringes a fundamental freedom passed in the violation of audi alteram partem rule is a nullity.*"[26] (emphasis supplied)

(d) Test

It would not be correct to say that for any and every violation of a facet of natural justice, an order passed is always null and void. The validity of the order has to be tested on the touchstone of prejudice. *The ultimate test is always the same, viz. the test of prejudice or the test of fair hearing.*[27] (emphasis supplied)

(e) Conclusions

One thing, however, must be noted. Even if the order passed by an authority or officer is *ultra vires*, against the principles of natural justice and, therefore, null and void, it remains operative unless and until it is declared to be so by a competent court. Consequent upon such declaration, it automatically collapses and it need not be quashed and set aside. But in absence of such a declaration, even an *ex facie* invalid or void order remains in operation *de facto* and it can effectively be resisted in law only by obtaining the decision of the competent court.[28]

10. WHERE NATURAL JUSTICE VIOLATED: ILLUSTRATIVE CASES

(1) Where the Commercial Tax Officer assessed the appellant merely on the instructions received from the Assistant Commissioner, without giving an opportunity to the party to meet the opinion of the superior authority, it was held that the procedure was quite unfair and calculated to undermine the confidence of the public in the impartial administration of the Sales Tax Department.[29]

(2) Proceedings under taxation laws being quasi-judicial proceedings, rules of natural justice required that an opportunity should be given to a person to cross-examine those who have made state-

26. *Id.* at pp. 130-33 (SCC): 1478-80 (AIR).

27. *State Bank of Patiala* v. *S.K. Sharma*, (1996) 3 SCC 364 (390): AIR 1996 SC 1669.

28. *State of Punjab* v. *Gurdev Singh*, (1991) 4 SCC 1: AIR 1991 SC 2219; *Smith* v. *East Elloe Rural District Council*, (1956) AC 736: (1956) 1 All ER 855; *Calvin* v. *Carr*, (1980) AC 574: (1979) 2 All ER 440: (1979) 2 WLR 755; Wade: *Administrative Law*, 1994, pp. 516-18; M.P. Jain: *Treatise on Administrative Law*, 1996, Vol. 1, pp. 448-84.

29. *Mahadayal Premchandra* v. *C.T.O.*, AIR 1958 SC 667: 1959 SCR 551.

ments which have been used against him. The order gets vitiated when this is not observed.[30]

(3) Where one of the members of the Selection Committee was himself a candidate for selection, the principles of natural justice were violated.[31]

(4) Where author-members were present in the committee constituted for selection of books written by them, it was violative of the rules of natural justice.[32]

(5) A student who was charged with malpractices in answering an examination when not given a reasonable and fair opportunity to be heard in defence, an order debarring him was quashed.[33]

(6) Where personal hearing is given by one officer and order is passed by another officer, the order is impeachable on the ground of violation of principles of natural justice.[34]

(7) Where a permanent employee of the Road Transport Corporation was absent without leave and without reasonable cause and his services were terminated without giving him an opportunity to show cause, the order was quashed.[35] The same principle applies to government servants also.[36]

(8) Where the Chairman of the tribunal has confirmed an order passed by the Review Committee wherein he was also one of the members recommending premature retirement of a government servant, he was disqualified to decide the said matter.[37]

(9) Where in a contract between the Government and a private contractor, a Government officer decided that the private contractor

30. *State of Kerala* v. *K.T. Shaduli*, (1977) 2 SCC 777: AIR 1977 SC 1627; see also *Town Area Committee* v. *Jagdish Prasad*, (1979) 1 SCC 60: AIR 1978 SC 1407.
31. *A.K. Kraipak* v. *Union of India*, (1969) 2 SCC 262: AIR 1970 SC 150; see also *Kirti Deshmanker* v. *Union of India*, (1991) 1 SCC 104.
32. *J. Mohapatra* v. *State of Orissa*, (1984) 4 SCC 103: AIR 1984 SC 1572.
33. *Board of High School* v. *Ghanshyam*, AIR 1962 SC 1110: 1962 Supp (3) SCR 36; *Nagaraj* v. *University of Mysore*, AIR 1961 Mys 164.
34. *Gullapalli I*, AIR 1959 SC 308: 1959 Supp (1) SCR 319.
35. *Mafatlal* v. *Divl. Controller, State Transport*, AIR 1966 SC 1364: (1966) 3 SCR 40.
36. *Jai Shanker* v. *State of Rajasthan*, AIR 1966 SC 492: (1966) 1 SCR 825; *Deokinandan Prasad* v. *State of Bihar*, (1971) 2 SCC 330: AIR 1971 SC 1409; *State of Assam* v. *Akshaya Kumar*, (1975) 4 SCC 399: AIR 1976 SC 37.
37. *Baidyanath Mahapatra* v. *State of Orissa*, (1989) 4 SCC 664: AIR 1989 SC 2218; see also *State of U.P.* v. *Mohd. Nooh*, AIR 1958 SC 86: 1958 SCR 595.

had committed breach of agreement, it was held that the rules of natural justice were violated.[38]

(10) Where in a departmental enquiry, the management was allowed to be represented by a trained officer, and a delinquent officer was denied legal representation, it was held that the principles of natural justice were not observed.[39]

11. WHERE NATURAL JUSTICE NOT VIOLATED: ILLUSTRATIVE CASES

(1) Where in a case of smuggled gold, the petitioner was heard at length, appeared through counsel, produced witnesses and even got his goldsmith to examine the gold.[40]

(2) Where statements of some witnesses were recorded at the departmental inquiry in absence of delinquent officer, but they were made available to him subsequently for cross-examination.[41]

(3) Where an opportunity of being heard had been afforded to the person against whom an action was sought to be taken, but he did not avail himself of that opportunity.[42]

(4) Where hearing was given by one officer and the order was passed by another officer but the officer who had passed the order had taken full note of all the objections put forward by the petitioners.[43]

(5) If the Reserve Bank is made the sole judge to decide whether the affairs of any banking company are being conducted in a manner prejudicial to the interest of the depositors, the Reserve Bank cannot be said to be a judge in its own cause.[44]

(6) Where the matter was simple and no complicated questions of fact and law were involved, it was held that refusal to grant

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38. *State of Karnataka* v. *Rameshwar Rice Mills*, (1987) 2 SCC 160: AIR 1987 SC 1359.
39. *C.L. Subramaniam* v. *Collector of Customs*, (1972) 3 SCC 542: AIR 1972 SC 2178; *Board of Trustees* v. *Dilipkumar Nadkarni*, (1983) 1 SCC 124: AIR 1983 SC 109.
40. *Shermal* v. *Collector of Central Excise and Land Customs*, AIR 1956 Cal 621.
41. *State of U.P.* v. *O.P. Gupta*, (1969) 3 SCC 775: AIR 1970 SC 679.
42. *Joseph John* v. *State of Travancore-Cochin*, AIR 1955 SC 160: (1955) 2 SCR 1011; *F.N. Roy* v. *Collector of Customs*, AIR 1957 SC 648: 1957 SCR 1151; *Roshan Lal* v. *Ishwar Das*, AIR 1962 SC 646: (1962) 2 SCR 947; *Jethamal* v. *Union of India*, (1970) 2 SCC 301: AIR 1970 SC 1310.
43. *Ossein Manufacturers' Assn.* v. *Modi Chemicals*, (1989) 4 SCC 264: AIR 1990 SC 1744.
44. *Vellukunnel* v. *Reserve Bank of India*, AIR 1962 SC 1371: 1962 Supp (3) SCR 632.

legal assistance was not violative of the principles of natural justice.[45]

(7) Even where an officer can be said to be 'interested' in the cause or matter, he can participate in the proceedings if 'necessity' so requires.[46]

(8) Where the facts were admitted or allegations were not denied and the decision was taken on the basis of those facts or allegations, a complaint that no opportunity of cross-examination of the witnesses was given to the delinquent before taking impugned action was not entertained.[47]

(9) Where an order was obtained by committing fraud on the Court and on coming to know about that fact, the earlier position was restored, hearing was not necessary.[48]

(10) Where immediate action was required to be taken, nonaffording of pre-decisional hearing would not vitiate the action.[49]

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45. *Krishna Chandra* v. *Union of India*, (1974) 4 SCC 374: AIR 1974 SC 1589. For detailed discussion, *see* 'Right of Counsel', (*supra*).
46. *Ashok Kumar Yadav* v. *Union of India*, (1985) 4 SCC 417: AIR 1987 SC 454.
47. *K. L. Tripathi* v. *State Bank of India*, (1984) 1 SCC 43: AIR 1984 SC 273.
48. *U.P. Junior Doctors' Action Committee* v. *Dr Nandwani*, (1990) 4 SCC 633: AIR 1991 SC 909.
49. *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248: AIR 1978 SC 597. For detailed discussion, *see* 'Pre-decisional and post-decisional hearing', (*supra*).

Lecture VII

Administrative Tribunals

Nothing is more remarkable in our present social and administrative arrangements than the proliferation of tribunals of many different kinds. There is scarcely a new statute of social or economic complexion which does not add to the number. —SIR C.K. ALLEN

The proper tribunals for the determination of legal disputes in this country are the courts, and they are the only tribunals which, by training and experience and assisted by properly qualified advocates, are fitted for the task. —LORD ROMER

[T]ribunals have certain characteristics which often give them advantages over the courts. These are cheapness, accessibility, freedom from technicality, expedition and expert knowledge of their particular subject. —THE FRANKS COMMITTEE

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13. Decisions of tribunals and judicial review

1. GENERAL

As discussed in Lecture III, today the executive performs many quasi-legislative and quasi-judicial functions also. Governmental functions have increased and even though according to the traditional theory, the function of adjudication of disputes is the exclusive jurisdiction of the ordinary courts of law, in reality, many judicial functions have come to be performed by the executive, e.g. imposition of fine, levy of penalty, confiscation of goods, etc. The traditional theory of '*laissez faire*' has been given up and the old '*police State*' has now become a '*welfare State*', and because of this radical change in the philosophy as to the role to be played by the State, its functions have increased. Today it exercises not only sovereign functions, but, as a progressive democratic State, it also seeks to ensure social security and social welfare for the common masses. It regulates the industrial relations, exercises control over production, starts many enterprises. The issues arising therefrom are not purely legal issues. It is not possible for the ordinary courts of law to deal with all these socio-economic problems. For example, industrial disputes between the workers and the management must be settled as early as possible. It is not only in the interest of the parties to the disputes, but of the society at large. It is, however, not possible for an ordinary court of law to decide these disputes expeditiously, as it has to function, restrained by certain innate limitations. All the same, it is necessary that such disputes should not be determined in an arbitrary or autocratic manner. Administrative tribunals are, therefore, established to decide various quasi-judicial issues in place of ordinary courts of law.

2. STATUS

(a) Constitutional recognition

The status of tribunals has been recognised by the Constitution. Article 136 of the Constitution empowers the Supreme Court to grant special leave to appeal from any judgment, decree, determination, sentence or order passed or made by any tribunal in India. Likewise, Article 227 enables every High Court to exercise power of superintendence over all tribunals throughout the territories over which it exercises jurisdiction.[1]

By the Constitution (42nd Amendment) Act, 1976, Articles 323-A and 323-B have been inserted by which Parliament has been authorised to constitute administrative tribunals for settlement of disputes and adjudication of matters specified therein.[2]

(b) Definition

It is not possible to define the word 'tribunal' precisely and scientifically. According to the dictionary meaning,[3] 'tribunal' means 'a seat or a Bench upon which a Judge or Judges sit in a court', 'a court of justice'. But this meaning is very wide as it includes even the ordinary courts of law, whereas, in administrative law this expression is limited to adjudicating authorities other than ordinary courts of law.

In *Durga Shankar Mehta* v. *Raghuraj Singh*[4], the Supreme Court defined 'tribunal' in the following words:

> "[T]he expression 'Tribunal' as used in Article 136 does not mean the same thing as 'Court' but includes, within its ambit, all adjudicating bodies, provided they are constituted by the State and are invested with judicial as distinguished from administrative or executive functions."[5]

In *Bharat Bank* v. *Employees*[6], the Supreme Court observed that though tribunals are clad in many of the trappings of a court and though they exercise quasi-judicial functions, they are not full-fledged courts. Thus, a tribunal is an adjudicating body which decides controversies be-

1. For detailed discussion, *see* Lecture IX, (*infra*).
2. For detailed discussion, *see* 'Constitution (42nd Amendment) Act: Effect', (*infra*.).
3. *Webster's New World Dictionary*, 1972, p. 1517; *Concise Oxford Dictionary*, (1995), p. 1489.
4. AIR 1954 SC 520: (1955) 1 SCR 267.
5. *Id.* at p. 522 (AIR).
6. AIR 1950 SC 188: 1950 SCR 459; see also *All Party Hill Leaders' Conference* v. *Sangma*, (1977) 4 SCC 161: AIR 1977 SC 2155; *Associated Cement Co. Ltd.* v. *P.N. Sharma*, AIR 1965 SC 1595: (1965) 2 SCR 366; *Jaswant Sugar Mills Ltd.* v. *Lakshmi Chand*, AIR 1963 SC 677: 1963 Supp (1) SCR 242; *Rohtas Ind. Ltd.* v. *Staff Union*, (1976) 2 SCC 82: AIR 1976 SC 425.

tween the parties and exercises judicial powers as distinguished from purely administrative functions and thus possesses some of the trappings of a court, but not all.

(c) Administrative tribunals: misnomer

According to Wade,[7] the expression 'administrative tribunals' is misleading for various reasons. *Firstly*, every tribunal is constituted by an Act of Parliament and not by Government. *Secondly*, decisions of such tribunals are judicial rather than administrative. A tribunal reaches a finding of fact, applies law to such fact and decides legal questions objectively and not on the basis of executive policy. *Thirdly*, all tribunals do not deal with cases in which Government is a party. Some tribunals adjudicate disputes between two private parties, e.g. disputes between landlords and tenants; employers and employees, etc. *Finally*, such tribunals are independent. 'They are in no way subject to administrative interference as to how they decide any particular case.'

M.P. Jain,[8] therefore, suggests that it is better to designate these bodies as 'tribunals' by discarding the word 'administrative'.

(d) Administrative tribunals and Courts[9]

(e) Administrative tribunals and executive authorities[10]

(f) Test

A tribunal is an adjudicating authority. But the power of adjudication of disputes does not *ipso facto* make the body a 'tribunal'. In order to be a tribunal, it is essential that such power of adjudication must be derived from a statute and not from an agreement between the parties. Hence, a 'Domestic Tribunal' which is a private body set up by the agreement between the parties and designated as 'tribunal' is really not a 'tribunal'. On the other hand, Rent Control Authority or Statutory Arbitrator can be said to be tribunals though not described as such.

Thus, the basic test of a tribunal within the meaning of Article 136 or Article 227 of the Constitution is that "it is an adjudicating authority (other than a court) vested with the judicial power of the State under a statute or a statutory rule".[11]

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7. *Administrative Law*, 1994, pp. 909-10.
8. *Treatise on Administrative Law*, (1996), Vol. 1, p. 496.
9. *See* 'Administrative tribunal distinguished from court', (*infra*).
10. *See* 'Administrative tribunal distinguished from executive authority', (*infra*).
11. *Bharat Bank* v. *Employees* (*supra*); *Jaswant Sugar Mills Ltd.* v. *Lakshmi Chand*, AIR 1963 SC 677 (685): 1963 Supp (1) SCR 242; *ACC* v. *P.N. Sharma*, AIR 1965 SC 1595 (1608-09): (1965) 2 SCR 366.

(g) Authorities held to be tribunals: Illustrative cases

Applying the above test, let us consider the position of some of the authorities. The following authorities have been held tribunals within the meaning of Article 227:

(*i*) Election Tribunal.
(*ii*) Industrial Tribunal.
(*iii*) Revenue Tribunal.
(*iv*) Rent Control Authority.
(*v*) Excise Appellate Authority.
(*vi*) Commissioner for Religious Endowments.
(*vii*) Panchayat Court.
(*viii*) Custodian of Evacuee Property.
(*ix*) Payment of Wages Authority.
(*x*) Statutory Arbitrator.

(h) Authorities not held to be tribunals: Illustrative cases

On the other hand, the following authorities are held not tribunals under Article 227:

(*i*) Domestic Tribunal.
(*ii*) Conciliation Officer.
(*iii*) Military Tribunal.
(*iv*) Private Arbitrator.
(*v*) Legislative Assembly.
(*vi*) Registrar acting as a Taxing Officer.
(*vii*) Customs Officer.
(*viii*) Zonal Manager of Life Insurance Corporation of India.
(*ix*) Advisory Board under Preventive Detention Laws.
(*x*) State Government exercising power to make a reference under the Industrial Disputes Act.

3. REASONS FOR GROWTH OF ADMINISTRATIVE TRIBUNALS

According to Dicey's theory of rule of law, the ordinary law of the land must be administered by ordinary law courts. He was opposed to the establishment of administrative tribunals. According to the classical theory and the doctrine of separation of powers, the function of deciding disputes between the parties belonged to ordinary courts of law. But, as discussed above, the governmental functions have increased and ordinary courts of law are not in a position to meet the situation and solve the complex problems arising in the changed socio-economic context. In

these circumstances, administrative tribunals are established for the following reasons:

(1) The traditional judicial system proved inadequate to decide and settle all the disputes requiring resolution. It was slow, costly, inexpert, complex and formalistic. It was already overburdened, and it was not possible to expect speedy disposal of even very important matters: e.g. disputes between employers and employees, lockout, strikes, etc. These burning problems cannot be solved merely by literally interpreting the provisions of any statute, but require the consideration of various other factors and this cannot be accomplished by the courts of law. Therefore, industrial tribunals and labour courts were established, which possessed the technique and expertise to handle these complex problems.

(2) The administrative authorities can avoid technicalities. They take a functional rather than a theoretical and legalistic approach. The traditional judiciary is conservative, rigid and technical. It is not possible for the courts of law to decide the cases without formality and technicality. On the other hand, administrative tribunals are not bound by the rules of evidence and procedure and they can take a practical view of the matter to decide the complex problems.

(3) Administrative authorities can take preventive measures, e.g. licensing, rate-fixing, etc. Unlike regular courts of law, they have not to wait for parties to come before them with disputes. In many cases, these preventive actions may prove to be more effective and useful than punishing a person after he has committed a breach of any legal provision.

(4) Administrative authorities can take effective steps for enforcement of the aforesaid preventive measures, e.g. suspension, revocation or cancellation of licences, destruction of contaminated articles, etc. which are not generally available through the ordinary courts of law.

(5) In ordinary courts of law, the decisions are given after hearing the parties and on the basis of the evidence on record. This procedure is not appropriate in deciding matters by the administrative authorities where wide discretion is conferred on them and the decisions may be given on the basis of the departmental policy and other relevant factors.

(6) Sometimes, the disputed questions are technical in nature and the traditional judiciary cannot be expected to appreciate and decide them. On the other hand, administrative authorities are

usually manned by experts who can deal with and solve these problems, e.g. problems relating to atomic energy, gas, electricity, etc.

(7) In short, as Robson says, administrative tribunals do their work 'more rapidly, more cheaply, more efficiently than ordinary courts ... possess greater technical knowledge and *fewer prejudices against Government*... give greater heed to the social interests involved... decide disputes with conscious effort at furthering social policy embodied in the legislation'.[12] (emphasis supplied)

4. ADMINISTRATIVE TRIBUNAL DISTINGUISHED FROM COURT

An administrative tribunal is similar to a court in certain aspects. Both of them are constituted by the State, invested with judicial powers and have a permanent existence. Thus, they are adjudicating bodies. They deal with and finally decide disputes between parties which affect the rights of subjects. As observed by the Supreme Court in *Associated Cement Co. Ltd.* v. *P.N. Sharma*[13], 'the basic and the fundamental feature which is common to both the courts and the tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State'.

But at the same time, it must not be forgotten that an administrative tribunal is not a court. The line of distinction between a 'court' and a 'tribunal' in some cases is indeed fine though real. *All courts are tribunals but the converse need not necessarily be true.* A tribunal possesses some of the trappings of a court, but not all, and therefore, both must be distinguished:

(1) A court of law is a part of the traditional judicial system. Where judicial powers are derived from the State and the body deals with *King's justice* it is called a 'court'. On the other hand, an administrative tribunal is an agency created by a statute and invested with judicial powers. Primarily and essentially, it is a part and parcel of the Executive Branch of the State, exercising executive as well as judicial functions. As Lord Greene[14] states, administrative tribunals perform '*hybrid functions*'.

(2) Whereas ordinary civil courts have judicial power to try all suits of a civil nature, excepting those whose cognizance is either expressly or impliedly barred, tribunals have power to try cases in special matters statutorily conferred.

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12. Quoted by Kagzi: *The Indian Administrative Law*, 1973, p. 284.
13. AIR 1965 SC 1595 (1599): (1965) 2 SCR 366; *Durga Shankar Mehta* v. *Raghuraj Singh*, (1955) 1 SCR 267 (*supra*); *Engineering Mazdoor Sabha* v. *Hind Cycles Ltd.*, AIR 1963 SC 874.
14. *Johnson* v. *Minister of Health*, (1947) 2 All ER 395 (400).

(3) The mere lack of general jurisdiction to try all cases of a civil nature does not necessarily lead to an inference that the forum is tribunal and not a court. A court can also be constituted with limited jurisdiction.

(4) Judges of ordinary courts of law are independent of the executive in respect of their tenure, terms and conditions of service, etc. On the other hand, members of administrative tribunals are entirely in the hands of the Government in respect of those matters.

(5) A court of law is generally presided over by an officer trained in law, but the president or a member of a tribunal may not be trained as well in law.

(6) In a court of law, a Judge must be an impartial arbiter and he cannot decide a matter in which he is interested. On the other hand, an administrative tribunal may be party to the dispute to be decided by it.

(7) A court of law is bound by all the rules of evidence and procedure but an administrative tribunal is not bound by those rules unless the relevant statute imposes such an obligation.[15]

(8) A court must decide all the questions *objectively* on the basis of the evidence and materials produced before it, but an administrative tribunal may decide the questions taking into account the departmental policy or expediency and in that sense, the decision may be *subjective* rather than *objective*. "The real distinction is that the courts have an air of detachment."

(9) While a court of law is bound by precedents, principles of *res judicata* and estoppel, an administrative tribunal is not strictly bound by them.[16]

(10) A court of law can decide the '*vires*' of a legislation, while an administrative tribunal cannot do so.[17]

5. ADMINISTRATIVE TRIBUNAL DISTINGUISHED FROM EXECUTIVE AUTHORITY

At the same time, an administrative tribunal is not an executive body administrative department of the Government. The functions entrusted and the powers conferred on an administrative tribunal are *quasi*-judi-

5. For detailed discussion *see* 'Administrative tribunals and rules of procedure and evidence', (*infra*).

6. For detailed discussion *see* 'Administrative tribunals and rules of procedure and evidence', (*infra*).

7. *Bharat Bank* v. *Employees*, AIR 1950 SC 188 (206): 1950 SCR 459; *Dhulabhai* v. *State*, AIR 1969 SC 78: (1968) 3 SCR 662; *L. Chandra Kumar* v. *Union of India*, (1997) 3 SCC 261: AIR 1997 SC 1125.

cial and not *purely* administrative in nature. It cannot delegate its quasi-judicial functions to any other authority or official. It cannot give decisions without giving an opportunity of being heard to the parties or without observing the principles of natural justice. An administrative tribunal is bound to act judicially. It must record findings of facts, apply legal rules to them correctly and give its decisions. Even when the discretion is conferred on it, the same must be exercised judicially and in accordance with well-established principles of law. The prerogative writs of *certiorari* and prohibition are available against the decisions of administrative tribunals. "They are 'administrative' only because they are part of an administrative scheme for which a minister is responsible to Parliament, and because the reasons for preferring them to the ordinary courts are administrative reasons."[18]

6. CHARACTERISTICS

The following are the characteristics of an administrative tribunal:[19]

(1) An administrative tribunal is the creation of a statute and thus. it has a statutory origin.

(2) It has some of the trappings of a court but not all.

(3) An administrative tribunal is entrusted with the judicial powers of the State and thus, performs judicial and quasi-judicial functions, as distinguished from pure administrative or executive functions and is bound to act judicially.

(4) Even with regard to procedural matters, an administrative tribunal possesses powers of a court; e.g. to summon witnesses, to administer oath, to compel production of documents, etc.

(5) An administrative tribunal is not bound by strict rules of evidence and procedure.

(6) The decisions of most of the tribunals are in fact judicial rather than administrative inasmuch as they have to record findings of facts *objectively* and then to apply the law to them without regard to executive policy. Though the discretion is conferred on them, it is to be exercised objectively and judicially.

(7) Most of the administrative tribunals are not concerned *exclusively* with the cases in which Government is a party; they also decide disputes between two private parties, e.g. Election Tribunal, Rent Tribunal, Industrial Tribunal, etc. On the other hand, the Income Tax Tribunal always decides disputes between the Government and the assessees.

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18. Wade: *Administrative Law*, 1994, p. 909.
19. *Franks Report*, 1957; Cmnd. 218, para 40.

(8) Administrative tribunals are independent and they are not subject to any administrative interference in the discharge of their judicial or quasi-judicial functions.

(9) The prerogative writs of *certiorari* and prohibition are available against the decisions of administrative tribunals.

Thus, taking into account the functions being performed and the powers being exercised by administrative tribunals we may say that they are neither exclusively judicial nor exclusively administrative bodies, but are partly administrative and partly judicial authorities.

7. WORKING OF TRIBUNALS

There are a number of administrative tribunals in India. For example, Industrial Tribunals, Labour Courts, established under various Industrial Laws, Railway Rates Tribunal established under the Indian Railways Act, Election Tribunals established under the Representation of the People Act, Mines Tribunals established under the Indian Mines Act, Rent Controller appointed under the Rent Acts, Workmen's Compensation Commissioners appointed under the Workmen's Compensation Act, etc.

Let us study the actual working of some of the tribunals to understand the constitution of the tribunals, the procedure adopted by them and their powers and duties.

(i) Industrial Tribunal

The Industrial Tribunal is set up under the Industrial Disputes Act, 1947. It can be constituted by the Central Government if an industrial dispute relates or in any way concerns the Central Government, but where the Government of India has no such direct interest, the tribunal may be constituted by the 'appropriate Government'.

The Industrial Tribunal may consist of one or more members, and they can be appointed by the Central Government or by the 'appropriate Government', as the case may be. Where such tribunal consists of two or more members, one of them will be appointed as the Chairman of the tribunal. There may be a one-man tribunal also. The Chairman of the tribunal should possess judicial qualifications, i.e. he (*a*) is or has been a Judge of the High Court; or (*b*) is or has been a District Judge; or (*c*) is qualified for appointment as a Judge of the High Court. With regard to members other than the Chairman, they should possess such qualifications as may be prescribed. Where an industrial dispute affecting any banking or insurance company is referred to the tribunal, one of the members in the opinion of the Central Government or 'appropriate Government' should possess special knowledge of banking or insurance, as the case may be.

The jurisdiction of the tribunal extends to any industrial dispute, such as a dispute between employers and their workmen or between workmen and workmen 'connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person'.

The procedure to be followed by the Industrial Tribunal is prescribed by the Act and the rules made thereunder. The tribunal has to act judicially as it is a quasi-judicial authority. It has some of the trappings of a court. It has to apply the law and also the principles of justice, equity and good conscience.[20] The tribunal is vested with powers of a civil court, and it can enforce attendance of any person and examine him on oath, compel the production of documents, issue commission for examination of witnesses and such inquiry and investigation shall be deemed to be a judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code, 1860. Every member of the tribunal shall be deemed to be a 'public servant' within the meaning of Section 21 of the Penal Code.

At the same time, the tribunal has to keep in view that it deals with special types of disputes and it should not merely enforce contractual obligations. It should prevent unfair labour practices and victimisation and restore industrial peace by ensuring the salutary principle of collective bargaining.[21]

Though the function of the tribunal is to adjudicate on industrial disputes, it has only some of the trappings of the court, but not all. It is not bound by the strict rules of procedure and can take decisions by exercising discretion also. Since its object is to do social justice, 'to a large extent' it is free from the restrictions of technical considerations imposed on ordinary law courts.[22] All the same, the tribunal is a quasi-judicial authority discharging quasi-judicial functions and is not purely an administrative body. Therefore, its adjudication must be on the basis of 'fairness and justness'. It has to act within the limits of the Industrial Disputes Act. Social justice divorced from the legal principles applicable to the case on hand is not permissible.[23] It has a power to adjudicate and not to arbitrate. It can decide the dispute on the basis of the pleadings and has no power to reach a conclusion without any evidence on record. Though discretion is conferred on it, the same must be exercised judiciously. It has to hold the proceedings in public. It should follow fair

20. *N.T.F. Mills* v. *2nd Punjab Tribunal*, AIR 1957 SC 329: 1957 SCR 335.
21. *Llyod's Bank Ltd.* v. *Staff Assn.*, AIR 1956 SC 746.
22. *Bengal Chemical Works* v. *Employees*, AIR 1959 SC 633: 1959 Supp (2) SCR 136.
23. *J.K. Iron and Steel Co. Ltd.* v. *Mazdoor Union*, AIR 1956 SC 231: (1955) 2 SCR 1315.

procedure such as notice, hearing, etc. and must decide disputes fairly, independently and impartially.

The tribunal's awards are published in the Government Gazette. On due publication, the award becomes final. It is required to be signed by all the members of the tribunal. If it is not signed by all the members, the same is illegal and inoperative.[24]

Thus, the proceedings conducted by the Industrial Tribunal are judicial proceedings and the decisions and awards are subject to the writ jurisdiction of the High Court under Article 226 of the Constitution. The tribunal is also subject to the supervisory jurisdiction of the High Court under Article 227 of the Constitution. Article 136 of the Constitution vests the Supreme Court with discretion to entertain appeals against the orders of tribunals by granting special leave.[25] But having regard to the nature of powers of the Supreme Court under Article 136, the Supreme Court is slow in exercising such discretion and it interferes only in exceptional cases.[26]

(ii) Income Tax Tribunal

The Income Tax Tribunal is constituted under the Income Tax Act, 1961. It consists of as many judicial and accountant members as the Central Government thinks fit. A judicial member must have held at least for ten years a judicial post or must have been a member of the Central Legal Service (not below Grade III) for at least three years or must have been in practice as an advocate for at least ten years. An accountant member must be a Chartered Accountant under the Chartered Accountants Act, 1949 and must have practised as such for ten years or must have served as Assistant Commissioner for at least three years. Appointments are made by the Central Government. The Chairman of the Tribunal shall be appointed from amongst the judicial members. The conditions of service of the members are regulated by the President of India in exercise of powers conferred by the proviso to Article 309 of the Constitution. The tribunal sits in benches in various cities, such as Ahmedabad, Allahabad, Bombay, Calcutta, Delhi, Madras, etc. The tribunal functions under the control of the Ministry of Law and not under the

24. *Llyod's Bank Ltd.* v. *Staff Assn.*, AIR 1956 SC 746; *United Commercial Bank* v. *Workmen*, AIR 1951 SC 230: 1951 SCR 380.
25. See also *L. Chandra Kumar* v. *Union of India*, (1997) 3 SCC 261: AIR 1997 SC 1125.
26. *Express Newspapers* v. *Workers*, AIR 1963 SC 569: (1963) 3 SCR 540; *Bharat Bank Ltd.* v. *Employees*, AIR 1950 SC 188: 1950 SCR 459.

Ministry of Finance. This ensures independence of judgment by its mem bers and inspires confidence in the assessees.

Appeals can be filed before the tribunal by an aggrieved party agains orders passed by the Appellate Assistant Commissioner, Inspecting As sistant Commissioner or Commissioner within a period of 60 days. Th tribunal shall decide the matter only after giving both the parties to th appeal an opportunity of being heard. If the parties do not appear at th time of hearing, the appeal may be adjourned or heard *ex parte*. Th assessee is entitled to appear before the tribunal personally or throug an authorised agent including a lawyer. The tribunal is not governed b the rules of evidence applicable to the courts of law and is empowere to regulate its own procedure. It gives oral hearing to the parties an passes appropriate orders. The decisions may be unanimous or by a ma jority opinion. If there is equal division, the members state the points o difference and the President will refer the matter for hearing to one o more other members. The matter will then be decided by a majority o all the members who have heard it. The order passed by the tribunal must be in writing and signed by the members of the Bench. It will be communicated to the assessee as well as to the Commissioner of Income Tax.

The proceedings before the tribunal are deemed to be judicial proceedings. It has the power of summoning witnesses, enforcement of attendance, discovery and inspection, production of documents and issue of commissions, as it has been given powers of a civil court under the Code of Civil Procedure, 1908. It can order prosecution of persons who produce false evidence or fabricate such evidence and they may be punished under the Indian Penal Code, 1860. It may also take appropriate actions for its contempt. It may impound and retain books of account. The proceedings of the tribunal are not open to public and there is no provision for publication of its decisions. Of course, there are various private tax journals reporting such decision, e.g. Taxation, Current Tax Reports, Taxation Law Reporter, etc.

The decisions of the tribunal on questions of fact are final. No regular appeal is provided by the Act against the decision of the tribunal even on questions of law but a reference can be made at the request of either party to the High Court on any question of law or directly to the Supreme Court if the tribunal is of the opinion that there is conflict of opinions amongst the High Courts.[27] From the judgment of the High Court on a

27. S. 257, Income Tax Act, 1961; see also *L. Chandra Kumar* v. *Union of India*, (1997) 3 SCC 261: AIR 1997 SC 1125.

reference from the tribunal, an appeal lies to the Supreme Court in a case in which the High Court certifies it to be a fit case for appeal to the Supreme Court. An aggrieved party can also invoke the jurisdiction of the Supreme Court under Article 136 of the Constitution.

(iii) Railway Rates Tribunal

Indian Railway Rates Tribunal is established under the Indian Railways Act, 1989. It consists of a Chairman who 'is or has been a Judge of the Supreme Court or of a High Court' and two members, one shall be a person who, in the opinion of the Central Government has 'special knowledge of commercial, industrial or economic conditions of the country' and the other shall be a person, who, in the opinion of the Central Government, 'has special knowledge and experience of the commercial working of the railways'. They shall be appointed by the Central Government and the terms and conditions of their appointment may be such as the Central Government may prescribe. The members so appointed are to hold office for such period as may be specified in the order of appointment, not exceeding five years. No member can be reappointed. The tribunal may, with the sanction of the Central Government, appoint such staff and on such terms and conditions as the Central Government may determine.

The tribunal is a quasi-judicial body, having all the attributes of a civil court under the Code of Civil Procedure, 1908. It has power to summon witnesses, take evidence, order discovery and inspection of documents, issue commissions, etc. The proceedings of the tribunal are deemed to be judicial proceedings within the meaning of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. The tribunal is not bound by strict rules of evidence and procedure and is empowered to frame its own rules for the purpose of 'practice and procedure', subject to approval of the Central Government.

The tribunal has the power to hear complaints against the railway administration relating to discriminatory or unreasonable rates levied by it, classification of goods or in giving undue preference to a particular person. The tribunal acts with the aid of assessors who are selected from a panel prepared by the Central Government. This panel includes representatives of trade, industry, agriculture and persons who have a working knowledge of the railways. They are selected after consultation with the interests likely to be affected by the decisions of the tribunal.

A party before the tribunal is entitled to be heard in person or through an authorised agent including a lawyer. The decision of the tribunal is to be made by a majority of members. Its decision is final and can be

executed by a civil court 'as if it were a decree'. The tribunal can revise its order on an application being made by the railway administration if the tribunal is satisfied that 'since the order was made, there has been a material change in the circumstances'.

Since the tribunal is presided over by a Judge of the Supreme Court or a High Court, independence and impartiality is assured. This is the most valuable safeguard as the tribunal has to decide the disputes between an individual and the administration.

8. POWER TO GRANT STAY

An administrative tribunal is created by a statute. It possesses all the powers conferred on it by the parent Act. But over and above those powers, it has also power to grant interim relief during the pendency of proceedings before it.

Maxwell states: "Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution."[28]

In *ITO* v. *Mohd. Kunhi*,[29] the Income Tax Tribunal refused to grant stay during the pendency of appeal on the ground that it had no such power. The High Court, however, held that the tribunal had implied power to grant such relief. Confirming the order of the High Court, the Supreme Court said, "It is firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective."

The underlying object of such power has been succinctly described by Jessel, M.R. in the leading case of *Polini* v. *Grey*[30] in the following words:

> "It appears to me on principle that the court ought to possess that jurisdiction, because the principle which underlines all orders for the preservation of property pending litigation is this, that the successful party in the litigation, that is the ultimate successful party, is to reap the fruits of that litigation, and not obtain merely a barren success. That principle, as it appears to me applies as much to the court of first instance before the first trial, and to the Court of Appeal before the second trial, as to the Court of last instance before the hearing of the final appeal."

28. Maxwell on *Interpretation of Statutes*, (11th Edn.), p. 350.
29. AIR 1969 SC 430(433): (1969) 2 SCR 65; *Union of India* v. *Paras Laminates*, (1990) 4 SCC 453: AIR 1991 SC 696.
30. (1879) 12 Ch D 438 (443): 41 LT 173.

9. ADMINISTRATIVE TRIBUNALS AND PRINCIPLES OF NATURAL JUSTICE

As discussed above, administrative tribunals exercise judicial and quasi-judicial functions as distinguished from purely administrative functions. An essential feature of these tribunals is that they decide the disputes independently, judicially, objectively and without any bias for or prejudice against any of the parties to the dispute. The Franks Committee, in its Report (1957) has proclaimed three fundamental objectives; (*i*) openness, (*ii*) fairness, and (*iii*) impartiality. The Committee observed:

> "In the field of tribunals openness appears to us to require the publicity of proceedings and knowledge of the essential reasoning underlying the decisions; fairness to require the adoption of a clear procedure which enables parties to know their rights, to present their case fully and to know the case which they have to meet; and impartiality to require the freedom of tribunals from the influence, real or apparent of departments concerned with the subject-matter of their decisions."[31]

The above principles are accepted in India. The Law Commission in its Fourteenth Report (1958) has observed that administrative tribunals perform quasi-judicial functions and they must act judicially and in accordance with the principles of natural justice.[32] Administrative Tribunals must act openly, fairly and impartially. They must afford a reasonable opportunity to the parties to represent their case and to adduce the relevant evidence. Their decisions must be *objective* and not *subjective*. Thus, in *State of U.P.* v. *Mohd. Nooh*[33], where the prosecutor was also an adjudicating officer, or in *Dhakeswari Cotton Mills* v. *CIT*[34], where the tribunal did not disclose some evidence to the assessee relied upon by it, or in *Bishambhar Nath* v. *State of U.P.*[35], where the adjudicating authority accepted new evidence at the revisional stage and relied upon the same without giving the other side an opportunity to rebut the same, the decisions were set aside. In *British Medical Stores* v. *Bhagirath*[36], on an application being made by the tenants, a Rent Controller made private inquiry, visited the premises in the absence of the landlord and without giving him the opportunity of being heard held that the contractual rent was excessive and fixed the standard rent, the High Court set aside the

31. Franks Report; 1957, Cmnd. 218, para 40.
32. *Report on Reform of Judicial Administration*, Vol. II, 1958, pp. 671-95.
33. AIR 1958 SC 86: 1958 SCR 595.
34. AIR 1955 SC 65: (1955) 1 SCR 941.
35. AIR 1966 SC 573: (1966) 2 SCR 158.
36. AIR 1955 Punj 5.

order as violative of the principles of natural justice. Likewise, in *Kishanchand* v. *C.I.T.*,[37] the assessee was held liable to pay income tax on the basis of a letter written by a Bank to ITO, the copy of which was never supplied to the assessee. Setting aside the assessment, the Supreme Court observed, "It is true that the proceedings under the Income Tax Law are not governed by the strict rules of evidence and therefore it might be said that even without calling the manager of the bank in evidence to prove this letter, it could be taken into account as evidence. But before the income tax authorities could rely upon it, they were bound to produce it before the assessee so that the assessee could controvert the statements contained in it by asking for an opportunity to cross examine the manager of the bank with reference to the statements made by him.[38]

10. ADMINISTRATIVE TRIBUNALS AND RULES OF PROCEDURE AND EVIDENCE

Administrative Tribunals have inherent powers to regulate their own procedure subject to the statutory requirements. Generally, these tribunals are invested with powers conferred on civil courts by the Code of Civil Procedure, 1908 in respect of summoning of witnesses and enforcement of attendance, discovery and inspection, production of documents, etc. The proceedings of administrative tribunals are deemed to be judicial proceedings for the purposes of Sections 193, 195 and 228 of the Indian Penal Code, 1860 and Sections 345 and 346 of the Code of Criminal Procedure, 1973. But these tribunals are not bound by strict rules of procedure and evidence, provided that they observe principles of natural justice and 'fair play'. Thus, technical rules of evidence do not apply to their proceedings, and they can rely on hearsay evidence or decide the questions of onus of proof or admissibility of documents, etc. by exercising discretionary powers.[39] In *Dhakeshwari Cotton Mills* v. *C.I.T.*,[40] the Supreme Court held that the Income Tax Officer was not fettered by technical rules of evidence and pleadings, and was entitled to act on materials which might not be accepted as evidence in a court of law. In *State of Mysore* v. *Shivabasappa*[41], the Supreme Court observed: "[T]ribunals exercising quasi-judicial functions are not courts and that therefore they are not bound to follow the procedure prescribed for trial

37. 1980 Supp SCC 660: AIR 1980 SC 2117.
38. *Id.* at p. 664 (SCC): 2121 (AIR).
39. *State of Orissa* v. *Murlidhar*, AIR 1963 SC 404.
40. AIR 1955 SC 65: (1955) 1 SCR 941.
41. AIR 1963 SC 375 (377): (1963) 2 SCR 943; see also *K.L. Shinde* v. *State of Mysore*, (1976) 3 SCC 76: AIR 1976 SC 1080.

of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in Court. *The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it.* What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts."

(emphasis supplied)

In *State of Haryana* v. *Rattan Singh*[42], speaking for the Court, Krishna Iyer, J. observed: "It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act.... *The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice.*"

(emphasis supplied)

It is submitted that the correct legal position has been enunciated by Diplock, J. in *R.* v. *Dy. Industrial Injuries Commissioner, ex parte Moore*[43]:

> "The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than it must be based upon material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. *It means that he must not spin a coin or consult an astrologer, but that he must take into account any material which, as a matter of reason, has some probative value.... If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the*

42. (1977) 2 SCC 491 (493): AIR 1977 SC 1512 (1513).
43. (1965) 1 QB 456: (1965) 1 All ER 21.

issue: The supervisory jurisdiction of the High Court does not entitle it to usurp this responsibility and to substitute its own view for his.''[44]
(emphasis supplied)

Yet as held by the Supreme Court in the case of *Bareilly Electricity Co.* v. *Workmen*[45], this does not mean that administrative tribunals can decide a matter without any evidence on record or can act upon what is not evidence in the eye of law or on a document not proved to be a genuine one.

Speaking for the Court, Reddy, J. observed: ''*[I]t is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witness who have executed them, if they are alive and can be produced.*''[46] (emphasis supplied)

11. REASONS FOR DECISIONS

Recording of reasons in support of the order is considered to be a part of natural justice, and every quasi-judicial authority including an administrative tribunal is bound to record reasons in support of the orders passed by it.

In the leading case of *M.P. Industries* v. *Union of India*[47], Subba Rao, J. (as he then was) observed:

> ''In the context of a welfare State, administrative tribunals have come to stay. Indeed, they are the necessary concomitants of a welfare State. But arbitrariness in their functioning destroys the concept of a welfare State itself. Self-discipline and supervision exclude or at any rate minimise arbitrariness. The least a tribunal can do is to disclose its mind. The compulsion of disclosure guarantees consideration. The condition to give reasons introduces clarity and excludes or at any rate minimises arbitrariness; it gives satisfaction to the party against whom the order is made; and it also enables an appellate or supervisory Court to keep the tribunals within bounds. *A reasoned order is a desirable condition of judicial disposal.*''[48]
>
> (emphasis supplied)

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44. *Id.* at p. 488 (QB). See also *Miller* v. *Minister of Housing*, (1968) 1 WLR 992: (1968) 2 All ER 663.
45. (1971) 2 SCC 617: AIR 1972 SC 330.
46. *Id.* at p. 629 (SCC): pp. 339-40 (AIR).
47. AIR 1966 SC 671: (1966) 1 SCR 466.
48. *Id.* at p. 677 (AIR).

Dealing with the contention regarding disposal of matters even by Crown's Courts *in limine* without recording reasons, His Lordship rightly observed: "It is said that this principle is not uniformally followed by appellate Courts, for appeals and revisions are dismissed by appellate and revisional Courts *in limine* without giving any reasons. There is an essential distinction between a Court and an administrative tribunal. A Judge is trained to look at things objectively, uninfluenced by considerations of policy or expediency; but, an executive officer generally looks at things from the stand-point of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act. So *it is essential that some restrictions shall be imposed on tribunals in the matter of passing of orders affecting the rights of parties; and the least they should do is to give reasons for their orders.*"[49] (emphasis supplied)

12. FINALITY OF DECISIONS

In many statutes, provisions are made for filing appeals or revisions against the orders passed by administrative tribunals and statutory authorities. For example, under the Bombay Industrial Relations Act, 1946, an appeal can be filed before the Industrial Tribunal against the order passed by the Labour Court; or to the Rent Control Tribunal against the order passed by the Rent Controller under the Delhi Rent Control Act, 1958 or to the Income Tax Tribunal against the order passed by the Appellate Assistant Commissioner, Inspecting Assistant Commissioner or Commissioner under the Income Tax Act, 1961.

Sometimes, however, provisions are made in a statute by which the orders passed by administrative tribunals and other authorities are made '*final*'. This is known as 'statutory finality' and it may be of two types—

(*i*) sometimes no provision is made for filing any appeal, revision or reference to any higher authority against the order passed by an administrative tribunal or authority; or

(*ii*) sometimes an order passed by administrative authorities or tribunals are *expressly* made final and jurisdiction of civil courts is also ousted.

Regarding the first type of 'finality', there cannot be any objection, as no one has an inherent right of appeal. A right to file an appeal is a statutory right and if the statute does not confer the right on any party and treats the decision of the lower authority as final, no appeal can be filed against that decision. Thus, under the Income Tax Act, 1961, the

49. *Id.* at p. 675 (AIR).

decision given by the Income Tax Appellate Tribunal on a question of fact is made final and no appeal lies against that finding to any authority. In the same manner, under the Administration of Evacuee Property Act, 1951, the order passed by the Custodian of Evacuee Property is made final and no appeal or revision lies to any authority against the said decision.

Regarding the second type of finality, provisions are made in some statutes by which the decisions recorded by administrative tribunals are *expressly* made final and jurisdiction of civil courts is also ousted. And even though the subject-matter of the dispute may be of a civil nature and, therefore, covered by Section 9 of the Code of Civil Procedure, 1908, a civil suit is barred by the statutory provision. For example, Section 170 of the Representation of the People Act, 1951 provides:

> "No civil court shall have jurisdiction to question the legality of any action taken or any decision given by the returning officer or by any other person appointed under this Act in connection with an election."

In these cases, the correct legal position is that the jurisdiction of civil courts must be ousted either expressly or by necessary implication. Even if the jurisdiction of civil courts is ousted, they have jurisdiction to examine the cases where the provisions of the Act and the rules made thereunder have not been complied with and the order passed by the tribunal is *de hors* the Act or 'purported order'[50] or the statutory authority has not acted in conformity with the fundamental principles of natural justice,[51] or the decision is based on 'no evidence',[52] etc. as in these cases, the order cannot be said to be '*under the Act*'[53] and the jurisdiction of the civil court is not ousted.

In *Radha Kishan* v. *Ludhiana Municipal Council*[54], the Supreme Court observed: "Under Section 9 of the Code of Civil Procedure the Court shall have jurisdiction to try all suits of civil nature excepting suits of which cognizance is either expressly or impliedly barred. A statute,

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50. *Union of India* v. *Tarachand Gupta*, (1971) 1 SCC 486: AIR 1971 SC 1558.
51. *Srinivasa* v. *State of A.P.*, (1969) 3 SCC 711: AIR 1971 SC 71; *Dhulabhai* v. *State*, AIR 1969 SC 78: (1968) 3 SCR 662; *Dhrangadhra Chemical Works* v. *State of Saurashtra*, AIR 1957 SC 264: 1957 SCR 152.
52. *Kaushalya Devi* v. *Bachittar Singh*, AIR 1960 SC 1168; *Bhatnagar & Co.* v. *Union of India*, AIR 1957 SC 478: 1957 SCR 701; *Board of High School* v. *Bagleshwar Prasad*, AIR 1966 SC 875: (1963) 3 SCR 367; *Jagrutiben* v. *Gujarat Secondary Education Board*, AIR 1992 Guj 45.
53. *Dhulabhai* v. *State*, (infra); *Union of India* v. *Tarachand Gupta*, (supra); *Premier Automobiles* v. *Wadke*, (1976) 1 SCC 496: AIR 1975 SC 2238.
54. AIR 1963 SC 1547 (1551): (1964) 2 SCR 273.

therefore, expressly or by necessary implication can bar the jurisdiction of civil courts in respect of a particular matter. The mere conferment of special jurisdiction on a tribunal in respect of the said matter does not in itself exclude the jurisdiction of civil courts. The statute may specifically provide for ousting the jurisdiction of civil courts; even if there was no such specific exclusion, if it creates a liability not existing before and gives a special and particular remedy for the aggrieved party, the remedy provided by it must be followed. The same principle would apply if the statute had provided for the particular forum in which the remedy could be had. Even in such cases, the civil court's jurisdiction is not completely ousted. *A suit in a civil court will always lie to question the order of a tribunal created by statute, even if its order is, expressly or by necessary implication, made final, if the said tribunal abuses its power or does not act under the Act but in violation of its provisions.*"

(emphasis supplied)

Suffice it to say that in the classic decision of *Dhulabhai* v. *State*[55], after discussing the case-law exhaustively, Hidayatullah, C.J. summarised the following principles in this regard:

(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

55. AIR 1969 SC 78: (1968) 3 SCR 662.

(3) Challenge to the provisions of the particular Act as *ultra vires* cannot be brought before tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of *certiorari* may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act, but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or is illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant inquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.[56]

13. DECISIONS OF TRIBUNALS AND JUDICIAL REVIEW

As discussed above, no appeal, revision or reference against the decision of an administrative tribunal is maintainable if the said right is not conferred by the relevant statute. Provisions can also be made for ouster of jurisdiction of civil courts; and in all these cases the decisions rendered by the tribunal will be treated as *'final'*. But this statutory finality will not affect the jurisdiction of High Courts under Articles 226 and 227 and of the Supreme Court under Articles 32 and 136 of the Constitution of India.[57] The power of judicial review of High Courts and the Supreme Court is recognised by the Constitution and the same cannot be taken away by any statute; and if the tribunal has acted without jurisdiction, or has failed to exercise jurisdiction vested in it, or if the order passed by the tribunal is arbitrary, perverse or *mala fide*, or it has not observed the principles of natural justice, or there is an error apparent on the face of the record, or the order is *ultra vires* the Act, or there is no evidence in support of the order, or the order is based on irrelevant

56. *Id.* at pp. 89-90 (AIR): 682-84 (SCR); see also *Premier Automobiles* v. *Wadke*; (1976) 1 SCC 496: AIR 1975 SC 2238. For detailed discussion regarding the jurisdiction of civil courts, *see* C.K. Takwani: *Civil Procedure*, 1997, pp. 27-42.

57. *See also* Lecture IX (*infra*).

considerations, or where the findings recorded are conflicting and inconsistent, or grave injustice is perpetuated by the order passed by the tribunal or the order is such that no reasonable man would have made it, the same can be set aside by the High Court or by the Supreme Court. It is appropriate at this stage to quote the following observations of Denning, L.J.[58]:

> "If tribunals were to be at liberty to exceed their jurisdiction without any check by the courts, the rule of law would be at an end."

At the same time, it must be borne in mind that the powers of High Courts and the Supreme Court under the Constitution of India are extremely limited and they will be reluctant to interfere with or disturb the decisions of specially constituted authorities and tribunals under a statute on the ground that the evidence was inadequate or insufficient, or that detailed reasons were not given. The Supreme Court and High Courts are not courts of appeal and revision over the decisions of administrative tribunals.[59]

14. REVIEW OF DECISIONS

There is no inherent power of review with any authority and the said power can be exercised only if it is conferred by the relevant statute.[60] As a general rule, an administrative tribunal becomes *functus officio* (ceases to have control over the matter) as soon as it makes an order and thereafter cannot review its decision unless the said power is conferred on it by a statute, and the decision must stand unless and until it is set aside by appellate or revisional authority or by a competent court.

Again, review is not a re-hearing of the matter on merits. Maybe, the court might not be right in refusing relief in the 'first round', but when once the order is passed by the court, a review thereof 'must be

58. *R.* v. *Medical Appeal Tribunal*, (1957) 1 QB 574 (586): (1957) 1 All ER 796 (801).

59. *State of A.P.* v. *C.V. Rao*, (1975) 2 SCC 557: AIR 1975 SC 2151; *Sri Ram Vilas Service* v. *Chandrasekaran*, AIR 1965 SC 107: (1964) 5 SCR 869; *Bombay Union of Journalists* v. *State of Bombay*, AIR 1964 SC 1617: (1964) 6 SCR 22; *Hindustan Tin Works* v. *Employees*, (1979) 2 SCC 80: AIR 1979 SC 75; *Prem Kakar* v. *State*, (1976) 3 SCC 433: AIR 1976 SC 1474; *Union of India* v. *Parma Nanda*, (1989) 2 SCC 177: AIR 1989 SC 1185; *see also* Lecture IX (*infra*).

60. *Patel Narshi Thakershi* v. *Pradumansinghji*, (1971) 3 SCC 844: AIR 1970 SC 1273; *Mehar Singh* v. *Naunihal*, (1973) 3 SCC 731: AIR 1972 SC 2533; *Chandra Bhan* v. *Latafat Ullah*, (1979) 1 SCC 321: AIR 1979 SC 1814; *R.R. Verma* v. *Union of India*, (1980) 3 SCC 402: AIR 1980 SC 1461; for detailed discussion about 'Review', *see* C.K. Takwani: *Civil Procedure*, 1997, 323-31.

subject to the rules of the same and cannot be lightly entertained'. "A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition through different counsel of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of counsel's certificate which should be a routine affair or a habitual step. It is neither fairness to the court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost."[61]

In the leading case of *Northern India Caterers Ltd.* v. *Lt.-Governor of Delhi*[62], Pathak, J. (as he then was) rightly observed: "Whatever the nature of the proceedings, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the court will not be reconsidered *except where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.*"

(emphasis supplied)

This, however, does not mean that in absence of any statutory provision an administrative tribunal is powerless. An administrative tribunal possesses those powers which are inherent in every judicial tribunal. Thus, it can reopen *ex parte* proceedings, if the decision is arrived at without issuing notice to the party affected; or on the ground that it had committed a mistake in overlooking the change in the law which had taken place before passing the order; or to prevent miscarriage of justice; or to correct grave and palpable errors committed by it; or what the principles of natural justice required it to do.[63]

It is submitted that the following observations of Chinnappa Reddy, J. in *A.T. Sharma* v. *A.P. Sharma*[64] lay down correct law on the point. After referring to the well-known decision in *Shivdeo Singh*[64], His Lordship observed:

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61. *Chandra Kanta* v. *Sk. Habib*, (1975) 1 SCC 674 : AIR 1975 SC 1500 (per Krishna Iyer, J.).
62. (1980) 2 SCC 167 (172): AIR 1980 SC 674 (678).
63. *Shivdeo Singh* v. *State of Punjab*, AIR 1963 SC 1909 (1911).
64. (1979) 4 SCC 389 (391): AIR 1979 SC 1047 (1048).

"[T]here is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definite limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. *A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.*" (emphasis supplied)

15. DOCTRINE OF RES JUDICATA

The doctrine of *res judicata* is embodied in Section 11 of the Code of Civil Procedure, 1908. It means that if an issue had been made the subject-matter of the previous suit and had been raised, tried and decided by a competent court having jurisdiction to try the suit, the same issue cannot thereafter be raised, tried or decided by any court between the same parties in a subsequent suit.

Though Section 11 of the Code speaks about civil suits only, the general principles underlying the doctrine of *res judicata* applies even to administrative adjudication. Thus, an award pronounced by the Industrial Tribunal operates as *res judicata* between the same parties and the Payment of Wages Authority has no jurisdiction to entertain the said question again,[65] or if in an earlier case, the Labour Court had decided that *A* was not a 'workman' within the meaning of the Industrial Disputes Act, 1947, it operates as *res judicata* in subsequent proceedings.[66] In *Bombay Gas Co.* v. *Jagannath Pandurang*[67], the Supreme Court observed: "*The doctrine of res judicata is a wholesome one which is applicable not merely to matters governed by the provisions of the Code of Civil Procedure but to all litigations.* It proceeds on the principle that there should be no unnecessary litigation and whatever claims and

65. *Bombay Gas Co.* v. *Shridhar*, AIR 1961 SC 1196 : (1961) 2 LLJ 629.
66. *Bombay Gas Co.* v. *Jagannath Pandurang*, (1975) 4 SCC 690 : (1975) 2 LLJ 345.
67. (1975) 4 SCC 690 (695): (1975) 2 LLJ 345.

defences are open to parties should all be put forward at the same time provided no confusion is likely to arise by so putting forward all such claims." (emphasis supplied)

About a year later,[68] the Supreme Court entertained 'doubt' about the extension of the sophisticated doctrine of constructive *res judicata* to industrial law.

It is, however, submitted that the view taken by Gajendragadkar, J. (as he then was) in the case of *Trichinopoly Mills* v. *Workers' Union*[69] is correct. In that case, His Lordship observed:

> "It is not denied that the principles of *res judicata* cannot be strictly involved in the decisions of such points though it is equally true that industrial tribunals would not be justified in changing the amounts of rehabilitation from year to year without sufficient cause."

16. ADMINISTRATIVE TRIBUNALS: WHETHER BOUND BY DECISIONS OF SUPREME COURT AND HIGH COURTS ?

Article 141 of the Constitution declares that "the law declared by the Supreme Court shall be binding on all courts within the territory of India". Undoubtedly, the scope of Article 141 is very wide and it would apply to ordinary courts as well as administrative tribunals.

There is no provision corresponding to Article 141 with respect to the law declared by a High Court. The question, therefore, arises whether the law declared by a High Court has a similar binding effect over all subordinate courts and inferior tribunals within the territories in relation to which it exercises jurisdiction.

Generally, even in the absence of specific provisions, the same principle applies to judgments of a High Court. Again, as the Supreme Court is the apex Court in the country, the High Court is the apex Court in the State. Moreover, like the Supreme Court, the High Court, over and above writ jurisdiction, has also supervisory jurisdiction over all subordinate courts and inferior tribunals within the territories in relation to which it exercises its jurisdiction. Therefore, if any administrative tribunal acts without jurisdiction, exceeds its power or seeks to transgress the law laid down by the High Court, the High Court can certainly interfere with the action of the tribunal.

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68. *Mumbai Kamgar Sabha* v. *Abdulbhai*, (1976) 3 SCC 832 : AIR 1976 SC 1455.
69. AIR 1960 SC 1003 (1004): (1960) 2 LLJ 46; for income tax matters see *Maharana Mill* v. *ITO*, AIR 1959 SC 881; *Visheshwara Singh* v. *ITC*, AIR 1961 SC 1062; *Udayan Chinubhai* v. *CIT*, AIR 1967 SC 762; for detailed discussion about 'Res Judicata' *see* C.K. Takwani: *Civil Procedure*, 1997, pp. 45-80.

This question directly arose before the Supreme Court in the case of *East India Commercial Co. Ltd.* v. *Collector of Customs*[70]. In that case, proceedings had been initiated by the Collector of Customs against the petitioner company on the allegations that it had violated the conditions of licence and illegally disposed of goods and thereby committed an offence. The High Court confirmed the order of acquittal passed by the trial court holding that it cannot be said that "a condition of the licence amounted to an order under the Act" and, therefore, no offence was committed by the company. The High Court also passed an order directing the seized goods to be sold and the sale proceeds to be deposited in the court. After those proceedings, a notice was issued by the Collector on the company to show cause why the amount should not be confiscated and the penalty should not be imposed. It was contended by the company that when once the High Court had decided that the breach of a condition of the licence cannot be said to be a breach of order, the Collector had no jurisdiction to issue the show-cause notice. It was submitted that the decision of a High Court on a point is binding on all subordinate courts and inferior tribunals within its territorial jurisdiction and the notice was, therefore, required to be quashed. Upholding the contention and quashing the show-cause notice, the majority rightly observed: "This raises the question whether an administrative tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared.... Under Article 227 it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on all subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working, otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer.

The Court added:

We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superin-

70. AIR 1962 SC 1893: (1963) 3 SCR 338.

tendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such proceeding."[71]

(emphasis supplied)

Where the tribunal notices a decision of the Supreme Court and tries to distinguish it without distinguishing features, the approach is highly objectionable.[72] A deliberate attempt to flout a judgment of a superior court may amount to contempt of court.[73]

17. ADMINISTRATIVE TRIBUNALS AND DOCTRINE OF PRECEDENT

Administrative tribunals are bound by the decisions of the Supreme Court and of the High Court in the territories within which they exercise jurisdiction. But over and above the Supreme Court and the High Court, every tribunal is bound by a decision of a higher authority also.

In *Bhopal Sugar Industries* v. *I.T.O.*,[74] the Income Tax Officer refused to carry out clear and unambiguous directions issued by Income Tax Tribunal. Observing that such refusal would be against the fundamental principle of hierarchy of courts, the Supreme Court stated, "*Such a view is destructive of the basic principles of the administration of justice.*" (emphasis supplied)

In another case,[75] the Supreme Court stated, "In a tier system undoubtedly decisions of higher authorities are binding on lower authorities *and quasi-judicial tribunals are also bound by this principle.*" (emphasis supplied). There must be restraint at all levels as otherwise there can be no rule of law and our entire system of administration of justice will fail.[76]

Again, in *Ajit Babu* v. *Union of India*,[77] the Supreme Court held that the doctrine of precedent applies even to Central Administrative Tribunals. Whenever a point of law is decided by a judgment of the tribunal, it has to take into account the said decision rendered in earlier case as a precedent and decide the case accordingly.

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71. AIR 1962 SC 1893 at 1905 (per Subba Rao, J.). See also *Padmanabha Setty* v. *Papiah Setty*, AIR 1966 SC 1824: (1966) 2 SCR 190; *Kaushalya Devi* v. *Land Acquisition Officer, Aurangabad*, (1984) 2 SCC 324: AIR 1984 SC 892; *Bishnu* v. *Parag*, (1984) 2 SCC 488: AIR 1984 SC 898; *Jain Exports* v. *Union of India*, (1988) 3 SCC 579; *State of Orissa* v. *Bhagaban Sarangi*, (1995) 1 SCC 399; *Cassel & Co.* v. *Broome*, (1972) 1 All ER 801: (1972) 2 WLR 645: AIR 1995 SC 1349.
72. *Union of India* v. *Kantilal*, (1995) 3 SCC 17: AIR 1995 SC 1349.
73. *Bardakanta* v. *Bhimsen*, (1973) 1 SCC 446: AIR 1972 SC 2466.
74. AIR 1961 SC 182 (185): (1961) 1 SCR 474.
75. *Jain Exports* v. *Union of India*, (1988) 3 SCC 579 (585).
76. *Bishnu Ram* v. *Parag Saikia*, (1984) 2 SCC 488 (500): AIR 1984 SC 898; *Kaushalya Devi* v. *L.A.O.*, (1984) 2 SCC 324: AIR 1984 SC 892.
77. AIR 1997 SC 3277.

It is submitted that the following observations of Lord Chancellor in *Cassell* v. *Broome*[78] lay down correct law on the point and, therefore, are worth quoting:

> "It is inevitable in a hierarchical system of courts that there are decisions of the Supreme Appellate tribunal which do not attract the unanimous approval of all members of the judiciary. When I sat in the Court of Appeal, I sometimes thought the House of Lords was wrong in overruling me. Ever since that time there have been occasions, of which the instant appeal is one, when alone or in company, I have dissented from a decision of the majority of this House. But *the judicial system only works if someone is allowed to have the last word and if that last word, once spoken, is loyally accepted.*"
>
> (emphasis supplied)

18. DOCTRINE OF STARE DECISIS

The doctrine of stare decisis applied to Crown's Courts does not *stricto sensu* apply to administrative tribunals. The duty of such tribunals is 'to reach the right decision in the circumstances of the moment' and they are not bound to follow previous decisions. This, however, does not mean that administrative tribunals need not exercise discretion on the basis of reasonable or consistent principles or that no regard may be had to previous decisions. It is desirable that the principles followed by tribunals should be known to public at large and on the basis of such principles cases are decided.[79]

In *Union of India* v. *Paras Laminates*,[80] a Bench of two members of CEGAT [Customs, Excise and Gold (Control) Appellate Tribunal] disagreed with the view taken by another Bench on an identical question of law and referred the matter to a larger Bench. Upholding the action of the tribunal, the Supreme Court stated: "The rationale of this rule is the need for continuity, certainty and predictability in the administration of justice. Persons affected by decisions of Tribunals or courts have a right to expect that those exercising judicial functions will follow the reason of ground of the judicial decision in the earlier cases on identical matters. . . . It is, however, equally true that it is vital to the administration of justice that those exercising judicial power must have the necessary freedom to doubt the correctness of an earlier decision if and when subsequent proceedings bring to light what is perceived by them as an er-

78. (1972) 1 All ER 801 (809): (1972) 2 WLR 645.

79. Wade: *Administrative Law*, (1994), pp. 628-29, 935.

80. (1990) 4 SCC 453 (457-58): AIR 1991 SC 696. See also observations of Lord Denning in *HTV Ltd.* v. *Price Commission*, 1976 ICR 170.

roneous decision in the earlier case. *In such circumstances, it is but natural and reasonable and indeed efficacious that the case is referred to a larger bench.* (emphasis supplied)

19. CONTEMPT OF ADMINISTRATIVE TRIBUNALS

Articles 129 and 215 of the Constitution preserve all the powers of the Supreme Court and the High Courts, respectively, as a Court of Record which include the power to punish the contempt for itself. Section 10 of the Contempt of Courts Act, 1971 empowers every High Court to exercise the same jurisdiction, power and authority in respect of contempt of courts subordinate to it as it exercises in respect of contempt of itself.[81]

Thus, there is no controversy that a High Court can deal with the case of contempt of a court subordinate to it. The question, however, is whether a "tribunal" can be said to be a "court" subordinate to the High Court.

In some cases, the Supreme Court held that the phrase "court subordinate to a High Court" under the Contempt of Courts Act is wide enough to include administrative tribunals throughout the territories in relation to which the High Court exercises jurisdiction under Article 227 of the Constitution, whereas in some other cases, it has taken a contrary view.

A direct question arose before the Supreme Court in *Brajnandan Sinha* v. *Jyoti Narain*[82]. In that case, the High Court of Patna convicted *B* under the Contempt of Courts Act, 1952 holding that the Commissioner appointed under the Public Servants (Inquiries) Act, 1850 was a "court subordinate to the High Court". *B* approached the Supreme Court.

It was contended that the Commissioner could not be said to be "court" within the meaning of the Contempt of Courts Act. In any case, he was not a "court subordinate to the High Court" merely because his orders were subject to supervisory jurisdiction of the High Court under Article 227 of the Constitution.

Interpreting the provisions of the Act and referring to various decisions, the Supreme Court held that the Commissioner cannot be said to be a "Court" as understood in the Contempt of Courts Act. The Court stated, "*The expression "Courts subordinate to the High Courts" would prima facie mean the Courts of law subordinate to the High Courts in the hierarchy of courts established for the purpose of administration of justice throughout the Union.*"[83] (emphasis supplied)

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81. *S.K. Sarkar, Member, Board of Revenue* v. *V.C. Misra*, (1981) 1 SCC 436: AIR 1981 SC 723: (1981) 2 SCR 331; *Mohd. Ikram* v. *State of U.P.*, AIR 1964 SC 1625: (1964) 5 SCR 86.

82. AIR 1956 SC 66: (1955) 2 SCR 955.

83. *Id.* at p. 69 (AIR).

In the opinion of the Court, "unless and until a binding and athoritative judgment can be pronounced by a person or body of persons it cannot be predicted that he or they constitute a court". As the Commissioner was a mere fact-finding authority and his report lacked both finality and authoritativeness which were essential tests of a judicial pronouncement, he could not be said to be a Court.

In *Jugal Kishore* v. *Sitamarhi Central Coop. Bank*[84], the Assistant Registrar exercising powers under the Co-operative Societies Act and deciding disputes between the society and members was held to be "Court". The Registrar was not merely the trappings of a Court but in many respects he is given the same powers as are given to ordinary civil courts.'

Again, in *S.K. Sarkar, Member, Board of Revenue* v. *V. C. Misra*,[85] the Court of Board of Revenue was held to be a Court subordinate to the High Court. The Supreme Court held that the expression 'Courts subordinate to the High Court' was wide enough to include all courts which were judicially subordinate to the High Court under Article 227 of the Constitution even though administrative control over them did not vest in the High Court under Article 235 of the Constitution.

But in *Alahar Coop. Credit Service Society* v. *Sham Lal*[86], without referring to earlier decisions, the Supreme Court held that a Labour Court established under the Industrial Disputes Act, 1947 could not be said to be a Court subordinate to the High Court and no contempt proceedings for non-compliance of the award passed by the Labour Court would lie.

Certain tribunals have been conferred power by their parent statutes to punish a person for committing their contempt. In such cases, a tribunal can exercise powers under the Contempt of Courts Act, 1971.[87]

20. FRANKS COMMITTEE

In 1955, a Committee was appointed by the Lord Chancellor under the Chairmanship of Sir Oliver Frank to consider and make recommendations of the constitution and working of administrative tribunals in England. Various complaints had been made by people against the working of administrative tribunals to Franks Committee. Those complaints were:

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84. AIR 1967 SC 1494 (1499): (1967) 3 SCR 163.
85. (1981) 1 SCC 436: AIR 1981 SC 723: (1981) 2 SCR 331. See also *Mohd.* v. *Chandrabhanu*, AIR 1986 Guj 210: (1986) 27 Guj LR 1 (FB).
86. (1995) 2 Guj LH 550 (SC).
87. S. 17, Administrative Tribunals Act, 1985.

(1) Sometimes, there is no appeal against the tribunal's decision, e.g. Rent Tribunal. Tremendous power, which can ruin a person's life, has been put into the hands of three men. Yet there is no higher court in which their decisions can be tested.

(2) The three on the Bench of the tribunal need have no proper legal qualifications. A court of no appeal has been put into the hands of men who are generally neither qualified lawyers, Magistrates nor Judges.

(3) There is no evidence on oath, and therefore there can be no proper cross-examination as in a court of law. Statements are made on both sides, but the time-honoured method of getting to the truth cannot be used.

(4) Procedure is as the tribunal shall determine. No rules have been laid down as to the procedure at a tribunal hearing. Witnesses may be heard or not heard at their pleasure.[88]

Though the aforesaid complaints were against the Rent Tribunals, they were present in all tribunals.

The Committee submitted its report in 1957 and made the following recommendations:[89]

(1) Chairmen of tribunals should be appointed and removed by the Lord Chancellor; members should be appointed by the Council and removed by the Lord Chancellor.

(2) Chairmen should ordinarily have legal qualifications and always in the case of appellate tribunals.

(3) Remuneration for service on tribunals should be reviewed by the Council on Tribunals.

(4) Procedure for each tribunal, based on common principles but suited to its needs, should be formulated by the Council.

(5) The citizen should be helped to know in good time the case he will have to meet.

(6) Hearings should be in public, except only in cases involving (*i*) public security, (*ii*) intimate personal or financial circumstances, or (*iii*) professional reputation, where there is a preliminary investigation.

(7) Legal representation should always be allowed, save only in most exceptional circumstances. In the case of national insurance

88. Wade: *Administrative Law*, 1994, p. 919.
89. Wade: *Administrative Law*, 1994, pp. 923-24.

tribunals the Committee was content to make legal representation subject to the Chairman's consent.

(8) Tribunals should have power to take evidence on oath, to subpoena witnesses, and to award costs. Parties should be free to question witnesses directly.

(9) Decisions should be reasoned, as full as possible, and made available to the parties in writing. Final appellate tribunals should publish and circulate selected decisions.

(10) There should be a right of appeal on fact, law and merits to an appellate tribunal, except where the lower tribunal is exceptionally strong.

(11) There should also be an appeal on a point of law to the courts; and judicial control by the remedies of *certiorari*, prohibition and *mandamus* should never be barred by statute.

(12) The Council should advise, and report quickly, on the application of all these principles to the various tribunals, and should advise on any proposal to establish a new tribunal.

Griffith and Street[90] have included:

(13) Adjudications of law and fact in which no policy question is involved should not be carried out by Ministers themselves or by Civil Servants in the Minister's name.

(14) The personnel of tribunals deciding issues of law or fact or applying standards should be independent of the departments with which their functions are connected.

(15) The personnel should enjoy security of tenure and adequacy of remuneration essential to the proper discharge of their duties.

(16) At least one member of the tribunal should be a lawyer if the questions of fact and law arise; one member may have expert knowledge where such knowledge would be helpful to guide discretion and apply standards.

(17) An appellate system should be provided so that those aggrieved by an adjudication may go to a higher tribunal and ultimately matters of law should reach the court.

21. CONSTITUTION (42ND AMENDMENT ACT): EFFECT

By the Constitution (42nd Amendment) Act, 1976, Part XIV-A came o be inserted. Articles 323-A and 323-B enabled Parliament to constitute administrative tribunals for dealing with certain disputes. Article 323-A

90. *Principles of Administrative Law*, 1963, p. 193.

enacts that Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints concerning recruitment and conditions of service of persons appointed to the public service. Parliament may by law specify the jurisdiction, power and authority of such tribunals and prescribe the procedure to be followed by them. Article 323-B(1) empowers the appropriate legislature to provide for the adjudication or trial by tribunals of any disputes, complaints or offences with respect to all or any of the matters specified in clause (2). Such a law may also provide for the exclusion of jurisdiction of all courts except that of the Supreme Court under Article 136.

Part XIV-A inserted by the 42nd amendment opened a new chapter in the Indian Constitutional and Administrative Law, substantially excluding and curtailing judicial review of administrative action. It was a "retrograde innovation"[91] and its object was to take away the supervisory jurisdiction of the High Court over tribunals under Article 227. However, Articles 323-A and 323-B were not self-executory inasmuch as they themselves did not take away the jurisdiction of High Courts under Article 226 or Article 227 of the Constitution, but they only enabled Parliament or the appropriate legislature to make laws to set up such tribunals and to exclude the jurisdiction of the High Courts under Article 226 or Article 227.

(It is, however, submitted that the above legal position has now been substantially changed in view of a recent decision of the Supreme Court in *L. Chandra Kumar* v. *Union of India.*[92])

22. SAMPATH KUMAR V. UNION OF INDIA

In exercise of the power conferred by Article 323-A of the Constitution, Parliament enacted the Administrative Tribunals Act, 1985. Section 28 of the Act excluded the power of judicial review exercised by the High Courts in service matters under Articles 226 and 227. However, it has not excluded the judicial review entirely inasmuch as the jurisdiction of the Supreme Court under Articles 32 and 136 of the Constitution was kept intact. The constitutional validity of the Act was challenged before the Supreme Court in the leading case of *S.P. Sampath Kumar* v. *Union of India*[93]. Undoubtedly, the question raised was of far reaching effect and of great public importance.

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91. M.P. Jain: *Indian Constitutional Law*, 1993, p. 918.
92. (1997) 3 SCC 261: AIR 1997 SC 1125. For detailed discussion, see *L. Chandra Kumar* v. *Union of India*, (*infra*).
93. (1987) 1 SCC 124: AIR 1987 SC 386.

The Constitution Bench upheld the validity of the Administrative Tribunals Act, 1985. Speaking for the majority, Ranganath Misra, J. (as he then was) observed: "We have already seen that judicial review by this Court is left wholly unaffected and thus there is a forum where matters of importance and grave injustice can be brought for determination or rectification. Thus, exclusion of the jurisdiction of the High Court does not *totally* bar judicial review.... It is possible to set up an alternative institution in place of the High Court for providing judicial review.... The Tribunal has been contemplated as a substitute and not as supplemental to the High Court in the scheme of administration of justice.... What, however, has to be kept in view is that the Tribunal should be a real substitute for the High Court not only in form and *de jure* but in content and *de facto*.... Under Sections 14 and 15 of the Act all the powers of the Court in regard to matters specified therein vest in the Tribunal — either Central or State. Thus, *the Tribunal is the substitute of the High Court and is entitled to exercise the powers thereof.*"[94]

(emphasis supplied)

In concurring judgment, Bhagwati, C.J. rightly observed: "If this constitutional amendment were to permit a law made under clause (1) of Article 323-A to exclude the jurisdiction of the High Courts under Articles 226 and 227 without setting up an effective alternative institutional mechanism or arrangement for judicial review, it would be violative of the basic structure doctrine and hence outside the constituent power of Parliament. It must, therefore, be read as implicit in this constitutional amendment that the law excluding the jurisdiction of the High Court under Articles 226 and 227 permissible under it must not leave a void but it must set up another *effective* institutional mechanism or authority and vest the power of judicial review in it. *Consequently, the impugned Act excluding the jurisdiction of the High Court under Articles 226 and 227 in respect of service matters and vesting such jurisdiction in the Administrative Tribunal can pass the test of constitutionality as being within the ambit and coverage of clause (2)(d) of Article 323-A, only if it can be shown that the Administrative Tribunal set up under the impugned Act is equally efficacious as the High Court, so far as the power of judicial review over service matters is concerned.*"[95]

(emphasis supplied)

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94. *Id.* at pp. 138-39 (SCC): 395-96 (AIR).
95. (1987) 1 SCC 124 at 130-31: 389-90 (AIR).

In *J.B. Chopra* v. *Union of India*[96], the Supreme Court held that the Administrative Tribunal has jurisdiction, power and authority to decide even the constitutional validity or otherwise of any statute, statutory rule, regulation or notification.

23. POST SAMPATH KUMAR POSITION

In *Sampath Kumar*,[97] the Supreme Court upheld the validity of the Administrative Tribunals Act, 1985 by observing that Central Administrative Tribunals were "real substitutes" of High Courts *de jure* (in form) as well as *de facto* (in content) in regard to the matters to be dealt with by them and no void had been created.

While upholding the validity of the Act, the Constitution Bench considered faith of litigants in High Courts and the role played by them in the administration of justice. Speaking for the majority, Misra, J. (as he then was) also impressed upon Administrative Tribunals by observing:

> "The High Courts have been functioning for over a century and a quarter and until the Federal Court was established under the Government of India Act, 1935, used to be the highest courts within their respective jurisdictions subject to an appeal to the Privy Council in a limited category of cases. In this long period of about six scores of years, the High Courts have played their role effectively, efficiently and also satisfactorily. The litigant in this country has seasoned himself to look up to the High Courts as the unfailing protector of his person, property and honour. The institution has served its purpose very well and the common man has thus come to repose great confidence therein. Disciplined, independent and trained judges well versed in law and working with all openness in an unattached and objective manner have ensured dispensation of justice over the years. Aggrieved people approach the court — the social mechanism to act as the arbiter — not under legal obligation but under the belief and faith that justice shall be done to them and the State's authorities would implement the decision of the court. *It is, therefore, of paramount importance that the substitute institution—the Tribunal— must be a worthy successor of the High Court in all respects.*"[98]
>
> (emphasis supplied)

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96. (1987) 1 SCC 422: AIR 1987 SC 357; see also *Amulya Chandra* v. *Union of India*, (1991) 1 SCC 181; *R.K. Jain* v. *Union of India*, (1993) 4 SCC 119; *Chief Adjudication Officer* v. *Foster*, (1993) AC 754.
97. *Sampath Kumar* v. *Union of India*, (1987) 1 SCC 124: AIR 1987 SC 386: (1987) 1 SCR 435.
98. *Id.* at p. 139 (SCC): 396 (AIR).

The question, however, was: whether it was true? Were administrative Tribunals really substitutes of High Courts? Did they fulfil the objects for which they had been set up? Actual experience and functioning of tribunals, unfortunately, was far from satisfactory. They lacked in competence, objectivity and judicial approach. They failed to inspire confidence in public mind and were not successful in creating an "effective alternative institutional mechanism" as intended while inserting Article 323-A in the Constitution. There were serious complaints against such tribunals. They did not allow to argue cases properly. Some tribunals did not permit oral submissions. Some others did not allow even the Supreme Court decisions to be cited. Many a time, such tribunals had become "resting place for those who had outlived their utility" and had become "dead wood".

The Arrears Committee, after in-depth study of all these problems, stated:

> "The overall picture regarding tribunalisation of justice in our country is not satisfactory and encouraging. There is a need for a fresh look and review and a serious consideration before experiment is extended to new areas of the fields, especially if the constitutional jurisdiction of the High Court is to be simultaneously ousted."[1]

In *R.K. Jain* v. *Union of India*,[2] the Supreme Court expressed anguish on working of 'alternative institutional mechanisms' and their ineffectiveness in exercising the high power of judicial review. It was also noted that the sole remedy provided under Article 136 of the Constitution was ineffective and inconvenient and a suggestion was made that an expert body like the Law Commission should study the feasibility of providing an appeal to a Bench of two Judges of the High Court concerned from the orders of such tribunals.

24. CHANDRA KUMAR V. UNION OF INDIA[3]

In *Chandra Kumar* v. *Union of India*,[4] a Division Bench of the Supreme Court expressed the view that the decision rendered by a Constitution Bench of five Judges in *Sampath Kumar*[5] needed to be "comprehensively reconsidered", and a "fresh look by a larger Bench

1. Report of Arrears Committe, (1989-90), Vol. II, Chapters VIII, IX; pp. 110-11; para 8-65.
2. (1993) 4 SCC 119.
3. (1997) 3 SCC 261: AIR 1997 SC 1125.
4. (1995) 1 SCC 400.
5. *Sampath Kumar* v. *Union of India*, (1987) 1 SCC 124: AIR 1987 SC 386: (1987) 1 SCR 435.

over all the issues adjudicated in *Sampath Kumar*'' was necessary. In the light of the opinion of the Division Bench, the matter was placed before a larger Bench of seven Judges.

After considering various decisions on the point, the larger Bench held that the power of judicial review is a basic and essential feature of the Constitution and the jurisdiction conferred on High Courts under Articles 226 and 227 and on the Supreme Court under Article 32 of the Constitution is a part of basic structure of the Constitution. For securing independence of judiciary, the judges of superior courts have been entrusted with the power of judicial review. Though Parliament is empowered to amend the Constitution, that power cannot be exercised so as to damage the essential feature of the Constitution or to destroy its basic structure.

The Court also observed that High Courts and the Supreme Court have been entrusted with the task of upholding the Constitution and with a view to achieving that end, they have to interpret the Constitution. It is the power and duty of judiciary to ensure that the legislature and the executive do not, in discharge of their functions, transgress constitutional limitations. The said power, therefore, cannot be ousted or excluded by an Act of Parliament or even by affecting amendment in the Constitution.

In the light of various decisions of the Court, the larger Bench held that not only Section 28 of the Administrative Tribunals Act, 1985 was *ultra vires*, but clause 2(*d*) of Article 323-A and clause 3(*d*) of Article 323-B as amended by the Constitution (42nd Amendment) Act, 1976 were also *ultra vires* and unconstitutional as they destroyed the basic structure of the Constitution. The Court held that there was no constitutional prohibition against administrative tribunals in performing a supplemental as opposed to a substitutional role. In exercising powers such tribunals cannot act as substitutes for High Courts and the Supreme Court. Their decisions will be subject to scrutiny by a Division Bench of the respective High Courts.

In concluding remarks, the Court speaking through Ahmadi, C.J. declared;

> ''In view of the reasoning adopted by us, we hold that clause 2(*d*) of Article 323-A and clause 3(*d*) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the ''exclusion of jurisdiction'' clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent be unconstitutional. *The*

jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution."[6] (emphasis supplied).

It is submitted that the view taken by the Supreme Court in *Chandra Kumar* lays down correct law on the point. *Sampath Kumar* did not consider all aspects in their proper perspective. The attention of the Court was also not specifically invited to the exclusion of jurisdiction of the Supreme Court under Article 32 of the Constitution, as also unsatisfactory working of various Tribunals, obviously because it was a subsequent event post *Sampath Kumar case*. The larger Bench had the advantage of seeing actual working of various Tribunals. It has also benefit of studying various reports on functioning of such Tribunals including a well-studied and in-depth report of the Arrears Committee (1989-90). It is submitted that the decision in *Chandra Kumar* is a progressive step in the direction of independence of judiciary and must be welcomed by one and all as it seeks to restore jurisdiction and constitutional status of High Courts and of the Supreme Court in the direction of re-enforcement of Rule of Law.

One thing, however, should be noted. According to the Court, as administrative tribunals perform a supplemental role and as the decisions rendered by them are subject to scrutiny by a Division Bench of respective High Courts, a party aggrieved by a decision of the tribunal cannot directly approach the Supreme Court by invoking Article 136 of the Constitution.

The Court stated:

"We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. *In view of our above-mentioned observations, this situation will also stand modified. In the view that we have taken no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution*; but instead, the aggrieved party will be entitled to move the High Court under Articles 226/227 of the Constitution and from the decision of the Division Bench of the High Court, the aggrieved party could move this Court under Article 136 of the Constitution.[7] (emphasis supplied)

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6. (1997) 3 SCC 261(311): AIR 1997 SC 1125(1156)
7. *Id.* at p. 308 (SCC): 1154 (AIR).

It is submitted that the above observations are not in consonance with the provisions of the Constitution and do not state the legal position correctly. Article 136 of the Constitution confers plenary powers on the Supreme Court to grant Special Leave to Appeal against orders passed by all courts and tribunals which cannot be taken away or curtailed. "The Constitution for the best reasons did not choose to fetter or circumscribe the powers exercisable under that Article (Article 136) in any way."[8] The Court was, therefore, not right in concluding that the legal position regarding Article 136 of the Constitution will also stand modified. It is respectfully submitted that the Court had no jurisdiction to 'modify' the Constitution and to that extent *Chandra Kumar* requires reconsideration.

25. CONCLUSIONS

A sound justice delivery system is a *sine qua non* for the efficient governance of a country wedded to the Rule of Law. An independent and impartial judiciary in which the litigating public has faith and confidence alone can deliver the goods.[9]

In a democracy governed by rule of law, the only acceptable repository of justice is a court of law. Judicial review is an integral part of our legal system and basic and essential feature of the Constitution and it cannot be dispensed with by creating tribunals under Articles 323-A and 323-B of the Constitution. Any institutional mechanism or authority in negation of judicial review is destructive of basic structure. So long as the alternative institutional mechanism set up by any Act is not less effective than the High Court, it is consistent with the constitutional scheme. The faith of the people is the bedrock on which the edifice of judicial review and efficacy of the adjudication are founded. The alternative arrangement must, therefore, be effective and efficient. For inspiring confidence and faith in the litigating public they must have an assurance that the persons deciding their disputes are totally and completely free from influence or pressure from executive. To maintain independence and impartiality, it is necessary that the persons appointed in tribunals have judicial and objective approach as also sufficient knowledge and legal training.[10]

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8. *Bharat Bank Ltd.* v. *Employees*, AIR 1950 SC 188(193): 1950 SCR 459(473-74); *Durga Shankar* v. *Raghuraj Singh*, AIR 1954 SC 520(522): (1955) 1 SCR 267(373-73). For detailed discussion, see V.G. Ramachandran: *Law of Writs*, (1993), pp. 838-74.
9. *Chandra Kumar* v. *Union of India*, (1997) 3 SCC 261, 306, 311): AIR 1997 SC 1125; *R.K. Jain* v. *Union of India*, (1993) 4 SCC 119(134).
10. *Ibid.*, see also *Sampath Kumar* v. *Union of India*, (1987) 1 SCC 124: AIR 1987

It is submitted that the following observations of Arrears Committee (Malimath Committee) must always be borne in mind while dealing with the powers and jurisdiction of tribunals. After indepth study, the Committee concluded:

> "*It must not be forgotten that what is permissible to be supplanted by another equally effective and efficacious institutional mechanism is the High Court and not the judicial review itself. Tribunals are not an end in themselves but a means to an end*; even if the laudable objectives of speedy justice, uniformity of approach, predictability of decisions and specialist justice are to be achieved, the framework of the tribunal intended to be set up to attain them must still retain its basic judicial character and inspire public confidence. *Any scheme of decentralisation of administration of justice providing for an alternative institutional mechanism is substitution of the High Courts must pass the aforesaid test in order to be constitutionally valid.*"[11]

SC 386: (1987) 1 SCR 435; *S.S. Bola* v. *B.D. Sardana*, (1997) 8 SCC 522: AIR 1997 SC 3127(3166-71).

11. Report of Arrears Committee, (1989-90), Vol. II, Chapter VIII, para 8-65 cited in *Chandra Kumar* v. *Union of India*, (*supra*).