Quasi Judicial Functions & Natural Justice
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Quasi Judicial Functions
Quasi Judicial functions:

• Administrative action – to include all the actions of administration.

• Administration is the meeting point of three types of Govt. functions; legislative, executive & judicial.

• Administration exercises variety of powers, administrative action may be legislative or judicial or neither. i.e. discretionary, non-judicial order or merely a ministerial act.
• Need for classification:
• Executive performs variety of functions –
  – Purely administrative
  – Quasi-judicial
  – Quasi-legislative.
  – No clear-cut distinction between one another
  – Single proceeding at times combines various aspects of the three functions
Need for classification: (contd)
Classification is indispensable & inevitable as many consequences flow from it.
If action is judicial or quasi judicial – required to follow PNJ & is amenable to writ of certiorari or Prohibition.
If action is administrative, legislative or quasi-legislative, the requirement is not so.
• Need for classification: (contd)
• If the action is administrative in character, the requirement of publication, laying on the table is necessary.
• In case of pure administrative action, no such requirement.
• Illustrations – Legislative action:
• Fixation of price, declaration of place to be market yard, imposition of tax etc.....
• Indian Express Newspaper v. UOI:
• Wage or rate fixation whether legislative or quasi-judicial – question left open.
• Quasi-judicial Action:
• Some trappings of judicial functions.
• Judicial functions; four requisites:
  – Presentation of a case
  – Ascertainment of the fact by means of evidence
  – Disputes involves question of law
  – Decisions involve application of law to the facts
• Quasi judicial function presupposes an existing dispute between the two or more parties & involves (1) & (2) & not necessarily involve (3) & (4).

• But this is not always true;

• Authorities decides between itself & another
  – Ex. Compulsory acquisition of land
  – Function of Industrial Tribunal under ID Act
• In quasi-judicial function, the authority has to act judicially & required to follow PNJ

• A body will be quasi-judicial body:
  – has a legal authority
  – to determine questions affecting the rights of the subject
  – under duty to act judicially
Legal principles as to when an act of a statutory authority is quasi-judicial act:

- (Indian National Congress (I) v. Institute of Social Welfare)
- Statutory authority empowered under a statute to do any act
- Such act would prejudicially affect the parties
- Even no lis or two contending parties
- The statutory authority has expressly or impliedly imposed to act judicially
• The dividing line between an administrative power & a quasi-judicial power is quite thin is being gradually obliterated.
• Administrative order involving civil consequences is required to follow PNJ.
• Everything that affects a citizen life involves civil consequences.
• C.B. Boarding & Lodging v. State of Mysore: even administrative authority is bound to follow PNJ & hence no need of classification.

• Neelima Mishra v. Harinder Kaur paintal: administrative action whether legislative, administrative or quasi judicial must not be illegal, irrational or arbitrary. Duty to act fairly applies in every case.
• Examples of Administrative functions:
  – An order of preventive detention
  – An order of granting sanction of prosecution of public servant
  – An order of requisition of property
  – Power to issue license or permit
Examples of Quasi judicial functions:

- Disciplinary proceedings against students
- Cancellation of examination results of students for using unfair means
- Dismissal of employees for misconduct
- Forfeiture of pension, gratuity
- An order of assessment under a taxing statute
Principles of Natural Justice

• “The conception of Natural Justice should at all stages guide those who discharge functions is not merely an acceptable but it is an essential part of the philosophy of law”

• PNJ – Important concept of ad’ve law

• Ethico-legal concept

• PNJ – fundamental rules of procedure for ad’ve actions. Neither fixed nor prescribed in any code.
• Object of PNJ:
  
• Great humanising principle intended to invest law with fairness to secure justice & to prevent miscarriage of justice.
• In Drew V. Drew and Lebura (1855 (2) Macg. 1.8, Lord Cranworth defined it as “universal Justice”.
• In James Dunber Smith v. Her Majesty the Queen (1877-78 (3) App Case 614, 623 JC) Sir Robert P. Collier, Speaking for the Judicial Committee of Privy Council, used the phrase ‘the requirements of substantial justice’.
• In Arthur John Specman v. Plumstead District Board of Works (1884-85 (10) App Case 229, 240), Earl of Selbourne, S.C. preferred the phrase ‘the substantial requirement of justice’.
• In Vionet v. Barrett (1885 (55) LJRD 39, 41), Lord Esher, MR defined natural justice as ‘the natural sense of what is right and wrong’.
• While however, deciding Hookings vs. Smethwick Local Board of Health (1890 (24) QBD 712), Lord Fasher, M.R. instead of using the definition given earlier by him in Vionet’s case (supra) chose to define natural justice as ‘fundamental justice’.

In Re R.N. (An Infaot) (1967 (2) B. 617, 530P, Lord Parker, C.J., preferred to describe natural justice as ‘a duty to act fairly’.

In Fairmount Investments Ltd., vs. Secretary to State for Environment (1976 WLR 1255) Lord Russell of Willowan somewhat picturesquely, described natural justice as ‘a fair crack of the whip’.

Geoffrey Lane, LJ in Regina vs. Secretary of State for Home Affairs Ex Parte preferred the homely phrase ‘common fairness’.

Hosenball (1977 (1) WLR 766) preferred the homely phrase ‘common fairness’.
• Canara Bank and others vs. Sri Debasis Das and others reported in AIR 2003 Supreme Court 2041
• Natural Justice is another name of commonsense Justice.
• Rules of Natural Justice are not codified canons.
• But they are principles ingrained into the conscience of man.
• Natural Justice is the administration of Justice in a commonsense liberal way.
• Justice is based substantially on natural Justice is based substantially on natural ideals and human values.
• The administration of Justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties.
• It is the substance of Justice which has to determine its form.
• The expressions “Natural Justice” and “Legal Justice” do not present a watertight classification.
It is the substance of Justice which is to be secured by both and when ever legal Justice fails to achieve this solemn purpose, natural Justice is called in aid of legal Justice.

Natural Justice relieves legal Justice from unnecessary technicality, grammatical pedantry or logical prevarication.

It supplies the omissions of a formulated law.

As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants’ defence.

The adherence to principles of Natural Justice as recognized by all civilized States is of Supreme importance when a quasi – judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue.

Notice it is the first limb of the principle of Audi Alteram Partem.

Notice should apprise the party the case he has to meet.

Adequate time should be given to make his representation.
• When can PNJ be claimed?
  – Acting judicially. Duty to act fairly depends upon the provisions of the constituent statute & rules framed there under.

Effect of function-Consequential theory.
– Conceptualism to functionalism.
– Effect of the function of the administrative authority which determining factor whether to follow PNJ or not. (Board of High School v. Ghanshyam) cancellation of result.
• Administrative action: A.K. Kraipak case; “if the purpose of the rules of PNJ is to prevent miscarriage of justice one fails to see why the rules be made inapplicable to administrative inquiries”

• Mohinder Singh Gill v. CEC & Swadeshi Ctton Mills v. UOI

• Only for improving the quality of govt. injecting fair play into the wheels......
• Civil Consequences: If administrative process involves civil consequences, the PNJ would be applicable. Lay emphasis on the effect of the function of the administrative body.

• State of Odisha v. Dr Binapani; compulsory retired without notice. SC observed: true that the order is administrative in character & involves civil consequences, PNJ should be applied.

• Non observance of PNJ itself entails civil consequences. (Kapoor v. Jagmohan)
• Effect on expectations: PNJ is invited to safeguard the legitimate expectation of the citizen. SBIIV. Kalapaka Transport Co. Blacklist of the customer.

• Disciplinary proceedings: PNJ are applicable in disciplinary proceedings.

• Fairness in Action: Maneka Gandhi case, Olga Tellis case
Right to Information Act 2005

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Right to Information Act 2005

Objects of the Act:

1. To provide practical regime of RTI to secure access to information from Public Authorities for the citizens
2. To promote transparency and accountability in Public Authorities.
3. As Democratic nation it, requires informed citizenry to function.
4. To contain corruption and to resolve conflict of interest.
5. To hold Govt.s and instrumentalities accountable to the governed

Background of the Act:

6. RTI (central Act) 2005 (31 sections and 2 schedules)
“The world suffers a lot not because of the violence of bad people, but because of the silence of good people”

- Napoleon
Sec. 1.(1) Short title, (2) Extent, (3) Commencement
(Secs.4,5,12,13,15,16,24,27&28 shall come into force at once & the remaining within 120 days)

Sec. 2. Definitions (definitions of 14 terms are given)

2(a). ‘Appropriate Government’ (Conflict of Jurisdiction)
2(e). ‘Competent Authority’ (speaker ,CJI,CJH, President, Govs.& administrator appointed under Art. 239)

2(f). ‘Information’

“Information means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force”.
Right to Information Act 2005

2(h). ‘Public Authority’ means and includes authorities created;
1. by or under the Constitution;
2. by any other law made by Parliament;
3. by any other law made by State Legislature;
4. by notification issued or order made by the appropriate Government and includes:
   (a). any body owned, controlled or substantially financed
   (b). non-Government organization substantially financed directly or indirectly by the appropriate Government.

2(i). ‘Record’: It Includes-(document, manuscript, file, microfilm, facsimile etc.,)

2(j). ‘Right to Information’: The right to Information accessible under the Act including; to inspect work, documents, records; to take notes, extracts; certified copies, samples etc.,

2(n). ‘Third party’: (First, Second and Third parties under RTI) The person other than a citizen making the application including a Public Authority.
Sec.3. **Right to information:** Subject to provisions of the Act every citizen shall have the right to information. (by birth descent, registration and naturalisation.)

Sec.4. **Obligation of Public Authorities**

4(1)(a). Shall maintain records duly catalogued and indexed and ensure that all records to be computerized within reasonable time, subject to availability of finance and it shall be connected to network.

4(1)(b). **Publish within 120 days information on 17 items such as:**

1. Organization, functions and Duties,
2. Powers and duties of officers.
3. Procedure followed in decision making including channels of supervision.
5. The rules, regulations, instructions, manuals and records held and used by it.
6. Statement of categories of documents that held or under its control.
7. The particulars of consultation arrangement, with public for formulating policy etc.,
8. Statement of Boards, councils, committees constituted for advice, meetings and minutes of such bodies and whether they are open for public etc.,
10. Monthly remuneration received by each employee and system of compensation.
11. Budget allocated, particulars of plans, proposed expenditure report of disbursement.
13. Particulars of recipients of concessions, permits etc.,
14. Details of information held in electronic form.
15. Facilities available for citizens for obtaining information, working hours, library, reading rooms facilities etc,
16. Names, designation and details of PIOs.
17. Such other information as may be prescribed.
4(2). Endeavor to provide *Suo motu* as much information to public through various modes at regular intervals through various modes including internet.

4(3). Every information shall be disseminated widely in easily accessible manner to the public.

4(4). All materials shall Dissemination by considering cost, easy accessibility language, etc., for free or at print cost.
Sec. 5. Designation of PIOs:

1. Designation of PIOs by PAs in their administrative units/offices within 120 days.
2. Designate at sub-divisional level APIOs. To receive application for forwarding to PIOs or AAs.
3. Every PIO shall deal with requests and render assistance for the person seeking.
4. PIO may seek the assistance of any others for discharge of duties.
5. The person whose assistance is sought shall provide.

Sec. 6. Request for information to PIO/APIO:

1. May seek by writing or in electronic format with requisite information accompanying fees. Oral requests to be reduced to writing.
2. No reason for information is required and his personal details except address,
3. Transfer the application to the PAs concerned within five days and inform the applicant.
Sec. 7 Disposal of Requests.

1. As expeditiously as possible within 30 days and 48 hours, if it is concerned with violations of human Rights and reject if comes under Secs. 8 or 9.

2. If not given within time – it is deemed to have been refused. (Deemed refusal)

3. Provide details of cost and inform about the review right on cost

4. Provide assistance to the sensorily disabled persons.

5. If information sought is published /electronic format charge the fee prescribed. (No fee for BPL card holders)

6. PIO to consult third parties before providing information.

7. Public Information Authority may reject by giving reasons, appeal privileges and appellate authority particulars.

8. Information shall be provided in the format sought.
Sec. 8. (1) Exemption from Disclosure. No obligation provide the following:

a. Disclosure would prejudicially affect the sovereignty and integrity of India. (Copies of Home ministry. directions to CBI on interception of telephone. Correspondence with USSR on Nethajis disappearance)

b. Expressly forbidden to be published by any court. (Draft judgement cannot be given; Inspection of land on which there was pending suit.

c. Which would cause a breach of privilege of Parliament (Five privileges – speech, control over its affairs, publication, arrest and punish contempt eg., standing committee materials, budget proposals)

d. Commercial confidence, trade secrets or intellectual property

e. Information available to a person in his fiduciary relationship, (examiners, doctors, advocates - legal opinions Visitors registers of police stations are exempted.

f. Information received in confidence from Foreign Government

g. Which would endanger the life or physical safety of any person
Right to Information Act 2005

a. Which would impede the process of investigation
b. Cabinet papers including records of deliberations.
c. Information of personal nature which has no relation to public activity/privacy unless it serves a larger public interest. Provided further, what cannot be denied to Parliament or State Legislature cannot be denied to an individual.

2. Not withstanding OS Act 1923, PA may allow access if public interest outweighs the individual interest.

3. Subject to clauses a, c, i of 8(1) information beyond 20 yrs shall be provided

Sec. 9. Rejection on the ground of copyright.
Sec. 10. Severability.
Sec. 11. Third Party Information.

1. Information supplied by third party and to be treated as confidential, PIO must cause a notice to third party inviting his submission within 5 days. Except trade secrets, disclosure may be made if the public interest outweighs.

2. The third party within ten days to make representation on disclosure.

3. PIO to decide within 40 days make a decision.

4. Third party to whom notice is given may prefer an appeal under Sec. 19. (Third party to be heard before imparting information)

Sec. 12. Constitution of CIC:

(No. of Ics, selection committee, CIC powers of general superintendence, qualification of CIC & Cis, not to hold office of profit & HQ Delhi.)

Sec. 13. Term of office and conditions of service.

(5yrs., including aggregate, oath and resignation)


Sec. 15. Constitution of SIC.

Sec. 16. Term of office and conditions of service.

Sec. 17. Removal of S.I. Commissioner.
Sec. 18. Powers and function of Information Commissions – appeals and penalties.

Functions: 1. Receive and inquire into complaints of:
   a. who has not been able to file because PIO is not appointed,
   b. on refusals;
   c. not responded;
   d. unreasonable fee;
   e. incomplete or misleading information etc.,
   f. Any other matter

2. Initiate inquiry if reasonable grounds exist.

3. It enjoys the same powers as that of civil courts such as;
   Enforce attendance; inspection of documents; receiving evidence in affidavit; Requesting any public record; issuing summons etc.,

4. Examine any records and such records shall not be withheld.
Sec. 19. Appeals – First and Second appeal.
The Commission may;
1. Require the PA for:
   I. Providing access to information
   II. Appointing PIOs
   III. Make necessary changes in the practice of maintenance, management and destruction of records.
   IV. Enhancing the provisions of training of the officials
2. PA to compensate
3. Impose penalties
4. Reject applications.

Sec. 20. Penalties – fine upon hearing him and disciplinary actions under service rules.

Sec. 21. Protection of action taken in good faith

Sec. 22. Overriding effect of the Act.

Sec. 23. Bar on Judn. of courts.

Sec. 24. Act not to apply for certain organizations.(18 Organisations)

Sec. 25. Monitoring and Reporting.

Sec. 26. Govt. to prepare programmes.

Sec. 27. Power to make rules by App. Govt.

Sec. 28. Power to make rules by Competent Authorities.

Sec. 29. Laying of rules before Parliament.
RTI Compliance In India

States:
- Karnataka ranks 15th among 28 states with below average performance.
- Nagaland and Delhi ranked as high performers (performance level is 62% and 56%).
- Bihar is amongst the top five states in performance.
- Central Govt. performance is at 53%. States at 28%.

RTI Compliance in Ministries:
- Panchayath Raj (87%); Agri. & Co-op (80%).
- Environment & Forest at 11%.
- Housing & Urban Poverty zero compliance.
- Arunachal; Assam are zero compliance States.
- Uttarakhand and Kerala are at the bottom.
- Cases pending Karnataka in 2011 are 13000.
1. PIO said file is lost – held wrong decisions – directed to file Police complaint and departmental inquiry against the custodian.
2. Asked for the details of a post and whether he can apply – Held it is not information.
3. Information sought on the estranged wife, held to seek redressal in appropriate forum.
4. Sought the information about the officer who had approved mutation and passed orders – PIO rejected as 8(1)(J) held wrong, directed to supply.
5. Sought information about brother’s LIC policy, since he is not the legal heir it attracts 8(1)(J).
6. Unsatisfied petitioner, held, best course is to permit inspection of all records.
7. How service tax of service provider is determined. It is not information under 2(f).
8. No dialogues with the public authority such as question of fact and Law.
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<th>No.</th>
<th>Ruling</th>
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<td>6.</td>
<td>Asked for information relating to oath regarding minor penalty proceedings; held it did not create any information hence need not be given.</td>
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<td>7.</td>
<td>Information already on the public domain should not be asked.</td>
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<td>8.</td>
<td>Complaint was advised to specify the required information.</td>
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<td>9.</td>
<td>Sought to know the action on request for transfer – held transfer is the prerogative of the authority, there need not be any reason for it.</td>
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<td>13.</td>
<td>Information of the case in the court which is in progress – need not be given as it is incomplete.</td>
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<td>14.</td>
<td>C I C has no authority review the CIC’s earlier decision - since it is speaking order, writ may be filed.</td>
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<td>15.</td>
<td>Sought information on the statements in the newspapers by the Secretary of the public authority, denied saying not aware of it – held no information may be sought on reports, assumptions and presumptions.</td>
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<td>16.</td>
<td>20 years document only 3 out of 10 exemption clauses are applicable hence, has to be provided.</td>
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Checklist for PIOs

1. Whether the applicant is a bona fide citizen?
2. PIO can not refuse the Application.
3. Name and details of the Applicant.
4. If BPL category, proof of documents.
5. Ensuring the application Fee.
6. Illiterate/disabled persons and assistance.
7. Oral requests to be reduced to writing.
8. No reasons to be asked.
10. Open a Case file and & record in the RTI application register.
Checklist for PIOs

11. Time starts from the date of receipt of application.
12. Check details of information sought.
13. Whether it falls under sec. 8 or 9, if so reject by giving reasons.
14. Format in which sought and means of communication.
15. Whether the information is readily available/published/on the domain.
16. Whether life and liberty involved?
17. If held by others, he is deemed PIOs.
18. Calculate cost.
19. Intimate the applicant.
20. Provide assistance for inspection of work, material, certified samples etc.
21. Wait till applicant pays the fees to provide the information.
Thank You