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Principles of Natural Justice

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ABSTRACT

Natural justice simply means 'what is just and what is unjust, what is right and what is wrong'. Principles of natural justice is also called common sense justice and whenever the term 'common sense' is used in law it doesn't mean opinion of all persons of the society, but it means ,opinion of the prudent persons. This article intends to show the importance of Principles of Natural Justice in judicial proceedings and also focuses on the consequences of violation of Principles of natural justice by the adjudicating authorities.

Key Words: Natural Justice, Violation, Prudent

I. INTRODUCTION

Principle of natural justice is derived from the word 'jus naturale' of the Roman law, which means procedure must be just fair and reasonable. A procedure to be just fair and reasonable there should not be any arbitrariness, any biasness in that procedure. Whenever the term principle of natural justice is used, it means some principles which are very necessary to produce justice to the society.

Natural Justice is also known as universal justice or fair play in action. It is an essential concept of divine law which is not derived from any statute. Its necessity can be assumed to be echoed in every statute or enactment by promoting equality among parties which means equal treatment and opportunity

Basically there are three rules of Natural Justice:

- The first one is 'Rule Against Bias' which means one cannot be judge in his own case or cause.
- Secondly, 'Hearing rule' which express that hear the other side or no man should be condemned unheard.
- And last is 'Reason Decision' which provides for the rule that every court must give reason for its decision.

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II. ORIGIN

The concept of natural justice is very old and originated at very early age. Roman and Greek people were also very familiar with this principle since very ago. Even if we go back to ancient era during the reign of Kautilya Arthashastra and Adam, the rule of law then consisted of natural justice, which makes it social justice. As indicated by the Bible, on account of Eve and Adam, when they ate the fruit of knowledge, they were taboo by the God. Prior to giving the sentence, eve was given a reasonable opportunity to safeguard himself and a similar cycle was continued on account of Adam as well.

In India also this concept was introduced at very early stage. In the leading case of *Mohinder Singh Gill v. Chief Election Commissioner*,² the court held that whether it is judicial, quasi-judicial, administrative or quasi administrative; there should be the concept of fairness.

Objective of Natural Justice

- Prevent arbitrariness and injustice
- Provide equal opportunity of hearing
- Concept of reasonable and fairness
- To protect liberty and fundamental rights of individuals
- No violation of justice
- Basic feature of the constitution
- Reason for decision of the court
- Lack of biasness
- Rule of just, fair and reasonable
- Sensible and reasonable decision making

III. SITUATIONS IN WHICH PRINCIPLES OF NATURAL JUSTICE ARE ATTRACTED

Principle of Natural Justice is attracted whenever a person suffers a civil consequence or a prejudice is caused to him by administrative action. So, it can be asserted when acting judicially or quasi judicially. It incorporates the idea of decency, essential good standards and different various types of predispositions and why the normal equity is required and what every single uncommon case or circumstance it incorporates where the standards of regular

²1978 AIR 851,1978SCR(3)272

equity won't be pertinent. In the case of *Province of Bombay v. Khusaldas Advani*³, it was held that natural justice will be applicable on every statute as it is a basic principle of natural justice which leads to fairness and justice.

In *SEBI v. Akshya Infrastructure*⁴, it was held that the applicability of the principles of natural justice is not dependent on any statutory provisions. Where a prejudice is caused the principles are necessary attracted.

IV. RULES OF NATURAL JUSTICE

Rule against Bias

“Nemo judex in causa sua”, no one should be a judge in his own cause or case. Rule against bias means the procedure must be just, fair and reasonable i.e. due process of law.

This principle is based on two maxims:

A) No man shall be judge in his own case

B) Justice should not only be done, but undoubtedly be seen to be done

The first requirement of principles of natural justice is that the judge should be impartial, neutral and free from any bias. Bias means an act which lead to non-fair activities in regard with the particular case. One cannot act as a judge of cause in which he himself has some or any type of interest. He must be in a position to act free from prejudice and never support favoritism. If the judge is subject to bias in favor or against of either party to the dispute or in a position that partiality can be assumed, then he will be disqualified as judge and the proceeding will be quashed . Therefore, the most necessary rule is that the judge should be impartial and the judgement must be on the basis of evidence and circumstances presented in the court of law.

Dr Bonham's Case⁵

The leading case that forecasted the importance of this concept was *Dr Bonham's case*. The Royal college of Physicians was empowered to grant license to practice medicine. Dr Bonham did not take out the license and so he was fined and imprisoned. He filed a suit for illegal detention. Chief justice Coke held that ‘college could not be a judge in its own cause’ and hence the decision of the college was quashed on the ground of pecuniary bias.

³AIR1950 SC 222

⁴2014 11 SCC 112

⁵ 8 Co. Rep. 107 77 Eng. Rep. 638

Types of Bias

(A) Pecuniary Bias

If the judge is shown to have any pecuniary interest or financial benefit in the result of proceeding, then it will lead to pecuniary bias. Or if the judge of the court accepts any bribe from the accused in the form of money, property, or etc., then there must be chance of biasness. If a judge has pecuniary interest however slight it may be, he will be disqualified from his position.

***Maneklal v. Premchand*⁶**

In this case it was observed that 'it is obvious that pecuniary interest, however slight it may be in a subject matter of proceedings, would wholly disqualify a member from adjudicating authority.

***Jeeja bhoy v. Collector*⁷**

The Chief Justice reconstituted the bench on the objection that one of the members of a bench was member of cooperative society for which the land had been acquired.

***R v. Hendon Rural Distt. Council*⁸**

The England court quashed the decision of planning commission where one of the members was an estate agent who was acting for the candidate whom the permission was granted.

***Dimes v. Grant Junction Canal*⁹**

A disagreement about land was brought under the steady gaze of the courts of value. The issue was heard by the vice-chancellor who granted the case for a public organization. An appeal was heard by the Lord Chancellor, who dismissed the appeal-subsequently asserting the first honor. It happened that the Lord Chancellor held offers worth a few thousand pounds in the organization profiting by the decision. Held, at House of Lords, the Lord Chancellor was consequently precluded in light of his pecuniary interest in the proceeding. His pronouncement was voidable and is thus reversed i.e the case had to be heard on appeal again

(B) Personal Bias

Personal bias arises from certain relationship between the deciding authority i.e judge and party, which lead the deciding authority in such a situation so that he gives the judgement in favor of his party. This may be due to personal relationship, friendship, professional relation,

⁶AIR 1957 SC 425

⁷AIR 1965 SC 1096

⁸(1933) 2 KB 696 (DC)

⁹1852

employment relation, etc.

In order to challenge the administrative action on the ground of personal bias then it is very necessary to give a reasonable reason for bias. The interesting and important thing is that the biasness is not every time in favor of the accused. But sometimes it may be in against of the accused. For example- A person who is the father of the accused acting as a judge in his son's case, to set an example to the society and for getting his personal benefits , there is a chance of bias against his son [the accused] though his son might be innocent.

***Mineral Development ltd. v. State of Bihar*¹⁰**

In this case, the petitioners were granted for mining license for 99 years in 1947. But the ministers who had political relation with the petitioners cancelled the license. This action of government was challenged on the ground of personal bias.

The challenge was accepted by the court and it was held that there was personal bias and the minister was disqualified from taking any action against petitioners.

Manik lal vs. Premchand¹¹

'A' filed a complaint against his advocate for misconduct for inquiry a disciplinary committee was appointed, the chairman of the committee had represented 'A' in a case .

The Supreme Court held that the inquiry was vitiated.

AK Kraipak v. UOI¹²

There was a selection to the Indian Forest Service and person who was a member of the selection board was himself a candidate for selection before the court. The member was hence selected. The SC held that there was a real likelihood of bias, and quashed the order on the ground that principle of natural justice was violated.

(C) Subject Matter

When the deciding authority is directly or indirectly involved in the subject matter of a particular case then subject matter bias may arise. Only in rare cases this type of bias will invalidate the proceeding. There must be some direct connection with the litigation.

R v. Deal Justice¹³ The magistrate was not declared disqualified to try a case of cruelty to an animal on the ground that he was a member of the Royal Society for the prevention of cruelty to animals, as this did not prove a real likelihood of bias.

¹⁰AIR 1960 SC 468

¹¹AIR 1957 SC 425

¹²(1969) 2 SCC 262 :AIR 1970 SC 150

¹³(1881) 45 LT 439 (DC)

Ranjan Gogoi Case (2019)¹⁴

A woman employee, in April 2019, had accused Chief Justice of India, Mr. Ranjan Gogoi of sexually harassing her while working as a junior court assistant in October 2018. An in-house special judge panel of judges was constituted to look into the sexual harassment allegations against CJI Gogoi. The close relationship shared by Justice Ramana with CJI Gogoi might not allow for an objective hearing of her side. Later Justice Indu Malhotra replaced justice Ramana on the panel. This panel eventually concluded that there was no substance in the sexual harassment allegations leveled by the staff officer. This was completely violation of principles of natural justice.

Gullapali Nageswar v. APSRTC¹⁵

The scheme for nationalizing of motor transport which was notified by state government was quashed since the secretary who initiated the scheme and who heard the objection was the same person.

(D) Departmental Bias

Departmental bias is something which is inherent in the administrative process and if not effectively checked, it may negate the very concept of fairness in the proceeding of administrations. In simple word, if deciding authority and accused are of same department then chance of bias may arise. The problem of departmental Bias also arises in different content- when the function of a judge and the prosecution are combining in the same department. It is not difficult to find the department which both initiates and decides the matters well, there for that time, departmental fraternity and loyalty resist against concept of fair hearing

State Of UP v. RS Sodhi

The question before the court in this case was within state police should investigate into the allege fake encounter in which the allegations were charged against local police. The court held that this would lead to departmental bias and hence it directed CBI to investigate.

(E) Policy Bias

Sometimes it happen that minister or the concerned officer may announce before head the general policy which he intends to follow. Issues arising of preconceived policy notion is a very dedicated issue.

¹⁴46th CJI

¹⁵AIR 1959 SC 1376

Kondala Rao v. APSRTC¹⁶

The court did not quash the order of minister who had heard the objections of private operators, nationalizing road transport on the ground that the same minister had presided over a meeting only a few days earlier in which nationalization was favored. The court rejected the contention on the ground that the decision of the committee was not final but merely a policy decision.

(F) Judicial Obstinacy

There may be also a judicial bias i.e. bias on account of judicial obstinacy. Supreme court has discovered this new criteria of bias through the unreasonable condition, in the case State of WB v. Shivnanda Pathak¹⁷, a writ of mandamus was looked for by the solicitor guiding the administration to advance him. A solitary adjudicator permitted the appeal requesting the specialists to advance the candidate 'forthwith' yet the request was put aside by the Division seat following two years, a new request was petitioned for installment of pay and different advantages in the conditions of the judgment of the single appointed authority. It was excused by the single adjudicator. The request was tested in claim which was heard by a division seat to which one part was an adjudicator who had permitted the previous appeal. The allure was permitted and certain reliefs were conceded.

Allowing the appeal and setting aside the order the Apex court described the case of a new form of bias 'judicial obstinacy'. It is said that if the judgement of a judge is set aside by a superior court, the judge must submit to that judgement. The judgement of higher court binds not only to the parties to the proceeding but also to the judge who had rendered it.

V. AUDI ALTERAM PARTEM

It means 'hear the other side', or no man should be condemned unheard, or let the both side be heard before passing any order. In a civilized society it is assumed that the person, against whom the action is sought to be taken, must be given a reasonable opportunity to defend himself. The second fundamental of principles of Natural Justice is Audi Alteram Partem. This is the basic and most important requirement of Rule of Law. It can be defined as fundamental and foundational concept. The norm it provides is implemented by all the courts and tribunals.

Dr Bentley's Case¹⁸

¹⁶AIR1961 SC 82

¹⁷1998

¹⁸1723

This rule got into prominence with Dr Bentley's case. Dr Bentley was a professor of great eminence. A process was sent to him by the VC of Cambridge University. He ignored it and remarked that the vice chancellor has acted like a fool. The university deprived him of his degrees. The case was nullified by the court on the ground that Dr Bentley was not given opportunity of hearing. The judge Fortescue said..."even God himself didn't pass sentence against Adam, before he was called upon to make a defenses. In short, if an order is being passed against any person , a reasonable opportunity of hearing must be given to him.

Generally this maxim has two elements;

- Notice
- Hearing

Notice

Notice means a mere knowledge of fact. It may oral or in writing, actual or constructed. Actual notice means whenever a knowledge of fact is given directly to a person. But if the knowledge of fact is not given directly to the person and in some situations the court presumes that the person has knowledge of the fact then it is constructive notice. Before any action is taken against the affected party, valid and proper notice must be given to them to further proceed with the procedure of fair trial method. It is a sine qua non of audi alteram partem. If any order is passed without giving a valid notice, then the order will be declared void on the ground of violation of principles of natural justice.

- **Object of Notice**

The object of notice is to give an opportunity to the person so that he can equip himself to defend his case .Where 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 requirements mentioned therein.

R v. University Of Cambridge¹⁹

Dr Bentley was deprived of his degrees by the Cambridge University on account of his alleged misconduct without giving any notice.The court declared the decision null and void.

- **Essentials of Valid Notice**

What; what means the name of the person who made charge on the other person

Why; why means grounds on which the charge has been framed

¹⁹1723

Where; The place where the person has to report i.e. jurisdiction of the court.

If any of the essentials are absent ,the notice will be considered invalid.

Board of High School v. Ghaneshyam²⁰

The respondent was debarred from taking the coming exam as a punishment for using unfair means in the exam. The committee gave no opportunity of hearing. It was held that the nature of committee being quasi judicial should have followed the principles of natural justice and hence the decision of the committee was quashed.

Hearing

The second requirement of audi alteram partem is that the person concerned should be given fair opportunity of hearing before any action is taken against him.

Cooper vs. Wandsworth Boards Of Works²¹

The act had not expressed that notice ought to be given before making a move to pull down a house; cooper house was pulled down even without hearing him. The conflict that this was an administrative act and no notification called for, was dismissed by the court

Maneka Gandhi v. UOI²²

The passport of petitioner had been impounded by the Government of India in the name of 'Public Interest'. No opportunity of hearing had been given to her. It was held that this was violative of the right of hearing and hence was held to be ultra-vires.

Ridge v. Baldwin²³ The House of Lords ruled that as no opportunity of hearing was given to chief constable, there was violation of principles of natural justice .Hence ,the dismissal order given by 'watch committee' was quashed

- **Requirements of Fair Hearing**

1] Disclosure of Materials - An adjudicating authority must disclose all the evidence and material placed before it in the course of proceeding and must provide opportunity of hearing to the concerned person so that he can prepare his defenses.

2] Right to present case and evidence - After receiving the notice ,the person must be given reasonable time period to prepare and present his case in effective manner.

3] Right to cross examination - Cross examination was never considered to be part of

²⁰AIR 1962 SC 1110

²¹1863

²²1978 AIR 597 1978 SCR (2) 621

²³1964

natural justice .It always depends upon the facts and circumstances of each case whether an opportunity of cross-examination should be given to a party against whom proceeding have been initiated. If a statute permits cross examination, obviously, the opposite party can claim it.

***Khem Chand v. UOI*²⁴**

The SC held that an occasion to safeguard a delinquent by cross-examining the witness created against him is a significant right

***Ludhiana Food Product Case*²⁵**

The court held that if the party itself refuses to cross-examination the witness then it will not fall under miscarriage of justice against himself is an important right

4] Oral or Personal Hearing - 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.

5] Right of Legal Representation - Ordinarily, the right of representation by a lawyer in any authoritative proceeding isn't viewed as basic piece of regular equity as oral hearing is excluded from the minima of reasonable hearing. But talking generally, in the cycle of enquiry each gathering has option to host a legal representative. Each get-together will be introduced by lawfully prepared individual and nobody can deny

3. Reasoned Decision or Speaking Order - It means, all the judgements of the adjudicating authority must be based on some reasonable grounds. Judgements should not be arbitrary. So it is necessary for the adjudicating authority to write the arguments of council, opinion of judges and etc. So that the society is in position to know the ground of the judgement whether it is arbitrary or with due process of law.

Basically, it has 3 grounds on which it relies;

- 1] The aggrieved party has chance to signify before the appellate and provisional court that what was the reason which makes the authority to reject it.
- 2] It is a satisfactory part of the party against whom the order has been passed.
- 3] The responsibility to record reasons work as hurdle against arbitrary action by the judicial power vested in administrative authority.

²⁴1958 AIR 300 , 1958 SCR 1080

²⁵1990 (47) ELT 294 Tri del

Maneka Gandhi v. UOI²⁶

While emphasising on the importance of reasoned decision, the court observed that, not disclosing the ground of passport seizure of the aggrieved, it was held to be subject to judicial scrutiny.

VI. POSITION IN INDIAN CONSTITUTION

The term Natural Justice is not directly provided in the Indian Constitution, but there are many provisions in the constitution in which the gist of the natural justice has been embodied by various pronouncement of the court. If we start from the Preamble of the Constitution, it provides for the concept of social, economic and political justice, conceptually speaking, it is the concept of fairness in social, political and economic activities.

Then there is article 14, which provides for equality before the law and equal protection of law, article 14 applies not only to discriminatory class legislation but also to arbitrary or discriminatory state action. So the violation of equality in article 14 is violation of principle of natural justice. Under article 19(2) to (6) reasonable restrictions can be imposed on the right to carry on trade and business which include procedural restrictions also. In determining the validity of reasonable restrictions, courts have referred to the principles of natural justice.

Then we have article 21 which says, 'no person shall be deprived of his life and personal liberty except according to the procedure established by law.' When a person is deprived of his life and personal liberty, the fairness which is included in the principles of natural justice gets violated. In *Maneka Gandhi's Case*, It was observed that procedure established by law means 'due process of law' which means process should be just, fair and reasonable.

Article 22 of Indian Constitution provides some rights to detained person; like-

- 1} to know the grounds of detention
- 2} to produce before the court within 24 hours
- 3} to get a legal representative of his/her choice

Then there is article 32 and 226 which give the courts power to issue writs. Article 136, special leave petition, all is important principles of natural justice. Article 311 contains all the principles of natural justice. It provides that, there should not be any suspension or any decreasing in order of public servant without proper hearing.

²⁶ibid

State of UP vs. Vijay Kumar Tripathi²⁷

The court held that Principles of Natural Justice must be read into the provisions of a law. Such a course is fundamental where the standard rejects, either explicitly by vital ramifications, the application of principles of natural justice.

Asoka Smokeless Coal India Ltd. V. UOI ²⁸

The court observed that the principles of natural justice are attracted where there is something right which is likely to be affected by any act of the administration including a legitimate expectation.

VII. EXCEPTIONS TO THE RULE OF NATURAL JUSTICE

We have discussed that Principles of natural justice is very necessary to provide Justice to the society But there are many conditions in which the fulfilment of Natural justice are not necessary.

1. Exclusion in Emergency- In the exceptional of emergency, where preventive action is taken, the requirement of notice and hearing may be obviated.

2. Exclusion in case of confidentiality - There are some situation which is very confidential in nature, if disclosed then miscarriage of justice can happen, so in these types of situation Natural justice is excluded.

Malak Singh V.State of Punjab²⁹

.The SC held that the upkeep of reconnaissance register by the police is secret archive. Neither the individual whose name is entered in the register nor some other individual from Public approach it

3. Exclusion in Case of Purely Admin, Matters - If there is any function, which is purely admin in nature then there is no need to fulfil the purpose of Natural justice

JNU v. B.S. Narwal³⁰

SC held that the idea of scholarly settling seems to refute any privileges of a resistance to be heard. Consequently, the rule of natural justice may be excluded if competent academic authorities pass any decisions.

4. Exclusion in Case Where it is Practically not Possible - There are some situations in

²⁷1955 Supp (I) SCC 552

²⁸(2007) 2 SCC 640

²⁹AIR 1981 SC 760

³⁰AIR 1980 SC 1666

which providing the opposite of hearing is not practically possible so it is also an exception to this rule.

R. Radhakrishnan vs. Osmania University³¹

Where the entire MBA exam was cancelled by the university because of mass Cheating, the court held the notice hearing to all candidates is not possible.

5. Exclusion in Case of Interim Preventive Proceeding - If there is any preventive proceeding then in that case fulfilment of Principles of natural justice is not necessary.

6. Exclusion in Legislative Proceedings - If any statute provides for exclusion of Principles of natural justice then in that case it may be excluded.

7. Exclusion in Case of Necessity -If there is any necessity where it is not necessary to observe the Principles of natural justice, and then it can be excluded.

8. Where no Right of The Person is Infringed- Where no right of a person is infringed by any statute arising from the common law, the Principle of natural justice are not applicable.

VIII. EFFECTS OF BREACH OF THE RULE OF NATURAL JUSTICE

The questions arises that what will be the effect of breach of principle of Natural justice, will it be void or voidable? A voidable order means an order which is valid and legal unless it is said by a competent court at the instance of one party on the other hand void means an order which has no legal effect; the treats it as if it had never existed or happened.

The answer is that if we breach any principle of Natural justice , the court will set it aside and declare it null and void.

Nawab Khan Abbas khan v. state of Gujarat³²

The SC held that and order which infringes a fundamental freedom, passed in violation of the Audi alteram partem rule, is null and void

IX. CONCLUSION

Principles of natural justice means : ‘what is just and what is unjust , what is right and what is wrong’. It is also known as common sense Justice. The principle of Natural justice have been adopted and followed by the liberty of individuals. It provides for Just, fair and reasonable procedure. The main objective of Principles of natural justice is to prevent the orders from

³¹AIR 1974 AP 283

³²AIR 1974 SC 1471

arbitrariness and injustice. It provides for rule against bias and provides for equal opportunity of hearing.

“Natural Justice is compact resulting from expediency by which men seek to prevent one man from injuring others and to protect him from being injured by them”

-Epicurus
