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The Principle of Natural Justice: Duty to Act Fairly

Tanya Sharma

ABSTRACT

Justice is a virtue establishing national order. The Principle of Natural Justice is a principle under legal system which protects people against the arbitrary exercise of power to ensure fair play. The term 'Natural Justice' assures people fairness, reasonableness, good conscience, equity and equality. Aiming to prevent miscarriage of justice and arbitrariness, natural justice is a scientific term for the 'nemo judex in causa sua' which means rule against bias and 'audi alteram partem' which means right to fair hearing that has largely been extended to 'duty to act fairly'. Grounded in the Constitution of India, the doctrine of Natural Justice protects the fundamental rights of people and to feature the concept of fairness by the administrative authorities. The main objective of this paper is to check feasibility of the Principle of Natural Justice in India by referring some of the important cases related to it. Thus, at last in the paper, critical analysis and conclusion have been provided. In the process of making this research paper, several journals, books and articles were referred and taken into consideration. Internet has also been a support in this process. Hence, this paper is a result of Doctrinal Research Methodology.

Keywords- national order, reasonableness, equity, good conscience, arbitrariness.

TABLE OF CONTENTS

"Natural justice is a compact resulting from expediency by which men seek to prevent one man from injuring others and to protect him from being injured by them".

INTRODUCTION

The term 'justice' has been originated from the Latin word 'jus' which means right or law; or in other words it can be defined as "a person who generally does what is morally and fairly right and is disposed of giving everyone his or her due". The idea of justice is situated on different fields and perspectives comprehensive of the ideas of good rightness dependent on morals, rationality, law, religion, value and reasonableness. Justice mainly emphasizes on the three main principles of equity, equality and need which operates within a specific sphere of influence. Thus-

"Justice is a virtue establishing national order".

'NATURAL JUSTICE' IN GENERAL

The Principle or Doctrine of Natural Justice can be understood as a legal system doctrine that protects people against the arbitrary exercise of power by ensuring fair play. There is no clear definition of natural justice mentioned either in the Constitution or in any other statute but it is evolved from various judicial thinking.

Originated from the Roman word 'Jus Naturale', which means principles of natural law, justice, equity and good conscience, this principle aims at protecting individuals from discrimination of their rights and to prevent the miscarriage of justice. Thus, it is a weapon to secure justice of citizens by ensuring their fundamental liberties and rights of subjects. In the case of Maneka Gandhi v. Union of India[1], the court held that natural justice is a humanist theory, which means to levy fairness in law.

Natural justice also known as 'Substantive Justice', 'Fundamental Justice' or 'Universal Justice' is an outcome of necessity for equality and institutes its relationship between Common laws and Moral principles but is not a codified law as it is procedural in nature.

It is a part of law which relates to the administration of justice that controls all actions of public authorities by applying rules relating to reasonableness, good faith, justice, equity and good conscience. It is an essential principle of law as it assures people to retain their faith in the system of adjudication. In the case of Mohinder Singh Gill v. Chief Election Commissioner[2], it was held

[1] 1978 AIR 597
[2] AIR 1978 SC 851

that the concept of fairness should be in every action whether it is judicial, quasi-judicial, administrative or quasi-administrative work.

In the case of Union of India v. Tulsiram Patel[3], the Supreme Court of India expounded the essence of Natural Justice that good conscience should be used in a given situation; nothing more or nothing less.

Hence, natural justice is a scientific term for the "nemo judex in causa sua" which means rule against bias and "audi alteram partem" which means right to fair hearing that has largely been extended to "duty to act fairly".

IT'S ORIGIN

The concept of Natural Justice has not evolved out of a sudden but is a very ancient concept which has originated thousands of years ago. This concept was familiar to Greeks who defined it as "no man should be condemned unheard". The Doctrine of Natural Justice was accepted at the time of Adam and Kautilya's Arthashashtra. Even England adopted the theory of Natural justice in its judicial system by stating that "no human laws are of any validity, if contrary to this". The drafting of Constitution of USA was determined by the principle of natural justice which eventually became the basis for international laws, conventions, covenants and declarations.

SALIENT FEATURES

- Natural justice is a justice which is simple and elementary and provides fair play in action.
- It helps in fulfilling the gaps and loopholes in law.
- It protects the Fundamental Rights and Liberties of People.
- It provides equal opportunity of being heard and to abstain from any kind of biasness.
- By its term, natural justice assures people fairness, reasonableness, correct conscience, equity and equality.
- It mainly aims to prevent miscarriage of justice and arbitrariness.
- It comes into action when a person suffers a civil consequence or when a prejudice is caused to him.
- It retains people's faith in judiciary.
- The rules of natural justice are flexible in nature as they change in accordance with the change in circumstances of the case.

[3] (1985) 3 SCC 398

PRINCIPLES OF NATURAL JUSTICE

The Principles of Natural Justice can be categorized into two types-

- Nemo Judex in Causa Sua
- Audi Alteram Partem

NEMO JUDEX IN CAUSA SUA

Nemo Judex in Causa Sua also known as "Doctrine of Bias" or "Rule against Bias", means that no man shall be a judge in his own cause. Here, the word "bias" can be understood as no person should be inclined or prejudiced for or against one person or group which ultimately leads to fairness. Thus, the judges should be above suspicion and the justice provided by them should not be done merely but to be done manifestly and undoubtedly. There are two essentials of this principle. One is that the judge should be impartial as provided in the case of J. Mahopatra & Co. v. State of Orissa[4] and second that the case must be equitably decided on the basis of evidence. Thus, the administrating authority that is functioning judicial order must be free from bias.

Bias are divided into three types-

1) Personal Bias-

   When the administrative authority pronounces a judgment for or against a party due to its personal feeling then it is said to be personal bias. Here the administrative authority can be family or friend of a party or may have enemity or rivalry against a party.

   In the case of R.C. Chandel v. High Court of M.P. & Anr[5], the court held that "A judge is expected not to be influenced by any external pressure and he is also supposed not to exert any influence on others in any administrative or judicial matter. Thus, every judge must discharge his judicial functions with integrity, impartiality and intellectual honesty".

   In another case of Cottle v. Cottle[6], a suit was filed by a wife against her husband regarding some matrimonial issues. The wife already disclosed the fact to her husband that the Chairman of the bench was her family friend and was going to decide the case in her favour. The divisional court set aside that order and asked for rehearing of the case.

2) Pecuniary Bias-

   When a judicial or administrative authority decides a case due to his financial interest connected to that case is known as pecuniary bias. Halsbury's Law of England depicts it

[4] (1984) 4 SCC 103
[5] (2012) 8 SCC 58
[6] 6 Me. 140 (1829)

as- "There is a presumption that any financial interest however small in the matter in dispute disqualifies a person from adjudicating".

In the case of Jeejeebhoy v. Collector[7], a bench was reconstituted when it was found that one of the members of the bench was a member of cooperative society for which the land had been acquired.

3) Subject Matter Bias-

When the deciding authority has a general interest on a particular case, then it is said that the judge is biased as to subject matter.

This can be well understood by the case of Tata Cellular v. Union of India[8], in which a tender was passed for providing license to operate cellular mobiles in 4 metros. The Director General of Telecommunications is the technical member of Evaluation Company and his presence is required in the Evaluation committee. His son was working in one of the company which applied for license. Thus, the committee granted license to that company. Later the Supreme Court held that there has been subject matter bias and thus the granting of license was not accepted.

Thus, the test of bias is whether a rational man in possession of relevant information would have thought that bias was likely to affect the decision in the given case

AUDI ALTERAM PARTEM

Audi Alteram Partem, the first principle of the civilized jurisprudence and the second long arm of natural justice is to "hear the other side" or "no man should be condemned unheard" or the "Rule of Fair Hearing". This doctrine is a code of procedure and hence covers every stage through which administrative decision making passes. The laws made by God and man gives the opportunity to the party to defend himself, thus, a person who is facing charges must be given an opportunity to be heard before any decision is passed against him. This was provided in the case of Cooper v. Wands worth Board of Works[9].

The Rule of Fair Hearing includes some essential in it. They are-

1) Notice-

Notice is the starting point of hearing in all cases as hearing starts with the notice to the affected person by the authority. It was held in the case of Public Prosecutor v. K.P. Chandrashekharan[10], that a notice must give sufficient time to the person concerned. A notice must also be clear, specific and unambiguous and the charges imposed on it must

[7] AIR 1965 SC 1096
[8] (1994) 6 SCC 651
[9] (1861-73) All ER 1554
[10] (1957) 8 ST C.6 (Mad.)

not be vague and uncertain- Canara Bank v. Debaris Das[11]. Thus, the absence of notice in any case leads to the violation of rules of natural justice.

2) Hearing-

Hearing is an important essential of audi alteram partem as before passing of any order, both sides must be heard- Maneka Gandhi v. Union of India[12]. It is also very important that the deciding party should be impartial and fair hearing must be done- Sri Krishada v. State of MP[13]. Thus, every person is entitled to be heard unless it is expressly or impliedly barred by any statute.

3) Disclosure of Evidence-

It is said that the evidence must be placed before another party for his comments and rebuttal, but if the evidence is used without disclosing it to the affected or another party then it would be against the rule of fair hearing- State of Orissa v. Binapani[14]. It can also be explained by the leading case of Audi Alteram Partem which is Ridge v. Baldwin[15] in which a police constable was dismissed when he was on leave and without giving charge sheet notice.

4) Cross Examination-

The concept of cross examination is essential as the parties get the opportunity to rebut the evidence. In the case of Central Bank of India v. Karunamoy[16], it was observed by the court that right to cross examination is included in the rule of hearing.

But in some cases, cross examination is not regarded as voilative of Natural Justice. In the case of Hira Nath Mishra v. Rajendra Medical College[17], some male students were charged for their indecent behavior with girl students. Here the court did not allow the procedure of cross examination as that would have been more embarrassing for girl students.

5) Right to Counsel-

Right to counsel is one of the important features of Audi Alteram Partem and its denial will amount to violation of natural justice as the party may not be able to understand the question of law effectively- Krishna Chandra v. Union of India[18]. In the case of Hussainara

[11] (2000) 2 ALLT 170 HC
[12] See Supra note 1
[13] L.P.A. No. 128 of 1994
[14] AIR 1967 SC 1269
[15] 1994 AC 40
[16] AIR 1968 SCC 266
[17] AIR 1973 SC 1260
[18] (1947) 4 SCC 374

v. Home Secretary[19] and M.H. Haskot v. State of Maharashtra[20], it was observed that providing free legal aid to poor is a fair and just procedure.

6) Speaking Orders-

Speaking orders means the order should speak for itself. In other words it is said that the reasoning judgment is one of the prime requirement of natural justice and should be provided by every adjudicating authority- Shyam Sundar v. Harinagar Sugar Mills Limited[21]. In the case of M.L. Kapoor v. Union of India[22], an IPS Officer in the list of 1967 was dropped in 1968 without providing any sufficient reason. Thus, this order was quashed and made invalid.

Thus, Audi Alteram Partem is an important principle and if violated can make any decision as void ab initio.

EXCEPTIONS TO THIS RULE

The concept of natural justice cannot be exercised everywhere, as it has some exceptions attached with it. Exceptions to this rule are-

1) **Statutory Exclusion:** When any Central or State statute expressly or impliedly Barres the non-observance of principles of natural justice, then such principles can be neglected. But sometimes courts, on their own discretion, may declare such laws as unconstitutional.
2) **Emergency:** At the time of emergency, the principles of natural justice cannot be applied, but the basic structure of the Constitution cannot be ignored. Prompt action is to be taken in administrative order as delay may cause public injury. In the case of Maneka Gandhi v. Union of India[23], it was observed that passport may be seized in public interest without the assent of natural justice but the court held that public interest is a justifiable issue and its determination by administrative authority is not final.
3) **Interim Disciplinary Action:** This exception can be well explained by a case of Abhay Kumar v. K. Srinivasan[24], where the college authority debarred a student from entering into the premises of college till the pendency of criminal suit for stabbing a student. This was an interim order issued by the college authority to maintain peace in the campus and hence here the doctrine of natural justice was not applicable.

[19] AIR 1979 SC 1360
[20] AIR 1978 SC 1548
[21] 1961 AIR 1669
[22] AIR 1974 SC 87
[23] See Supra note 1
[24] AIR 1981 Delhi 381

4) **Academic Evaluation:** It is said that the competent academic authority assessing the work of students can declare it unsatisfactory and hence rule of natural justice cannot be applied.
5) **Impracticability:** The Principle of Natural Justice is not applicable when there are large numbers of persons with same interest.

CRITICAL ANALYSIS

In the developing and welfare country like India, the role of administrative and judicial authority is increasing at a rapid speed to fulfill the civic and legal needs of the people. In India, the traits of principle of natural justice can be found in Article 14 (Equality before law), Article 21 (Protection of life and personal liberty), Article 22 (Protection against arrest and detention in certain cases and Article 311 (Dismissal, Removal or Reduction in rank of person employed in civil capacities under the Union or a State) of the Constitution. Hence, any violation made to the principles of natural justice would ultimately make that decision either void or voidable.

CONCLUSION

The Doctrine of Natural Justice has been evolved and followed by the judiciary to protect the fundamental rights of people and to feature the concept of fairness by the administrative authorities. At every stage of the proceedings, the essentials and principles of natural justice are always kept in mind so as to prevent the miscarriage of justice and arbitrariness and to uphold fairness, reasonableness, good conscience, equity and equality. The doctrine of natural justice is so flexible in nature that it changes itself to an extent where the rights of an individual are infringed. If any judicial authority violates the principle of "nemo judex in causa sua" then the order passed would be voidable, i.e. it can be challenged by any court. But if any judicial authority violates the principle of "audi alteram partem", then the order would be regarded as void ab initio. Thus, the adjudicating authority must have sufficient knowledge about the principles of natural justice i.e. "nemo judex in causa sua" and "audi alteram partem" before articulating any judgment. Hence, it should be concluded that-

"The universal and absolute law is that natural justice which cannot be written down, but which appeals to the hearts of all".