

PRINCIPLE OF NATURAL JUSTICE AND ITS APPLICATION IN INDIAN LEGAL SYSTEM

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ABSTRACT

The aim of this research is to highlight the rules of natural justice and their operation, solely in areas not lined by any law with validity created. If a statutory provision either specifically or by inevitable implication excludes the applying of the principles of natural justice then the Court cannot ignore the mandate of the assembly. Applying of the Principles of Natural Justice in a given case has been excluded within the exercise of statutory power depends upon the language and basic theme of the supply conferring the facility, the character of the facility the aim that it is presented and therefore the impact of that power.

Keywords: Constitutional Law, Principles of Natural Justice, Constitution of India

INTRODUCTION

The doctrine of Natural Justice is nowhere dealt under the Constitution of India. However, the words, 'Justice Social, Economic and political' liberty of thought, belief, worship are incorporate in the Preamble of the constitution. Art 14 guarantees equality before

law and equal protection of law to all the citizens of India and Art 21 guarantees the right to life and liberty to all the persons in India to protect liberty and ensure life with dignity, which is the elementary provision. Art 22 ensures the right to natural justice and provision of opportunity of fair hearing to the arrested person. Additionally, constitutional remedies are guaranteed under Art 32, 226, and 136 in the matters pertaining to the violation of any of fundamental rights as well as in the cases of deprivation of the principles of natural justice.

OBJECTIVES

1. The objective of this project is to prove the given hypothesis.
2. To By Way Pleading and principle of natural justice.
3. To study in detail and establish a substantial argument supported by law.
4. To prove the principle of natural justice.
5. To know about the consequences.

RESEARCH QUESTION

How effectively are the principle of natural justice applied in Indian legal system.?

NULL HYPOTHESIS- The hypothesis that seeks to prove is that the absence of pleading shall not destroy the principle of natural justice.

ALTERNATE HYPOTHESIS- The hypothesis that seeks to prove is that the absence of pleading shall destroy the principle of natural justice.

REVIEW OF LITERATURE:-

It's has many colours and shades,forms and shapes and save where valid law excludes.its applies when people are affected by acts of authority [Mohinder singh gill](#). It is obvious that pecuniary interest,however small it maybe in a subject matters f the proceedings,would wholly disqualify a members from acting as a judge [Builders supply corporation](#). A precaution was taken by a member of the selection board to withdraw himself from the selection proceeding at the time his name was considered [A.k kraipakv](#).

It has been observed that even where there is no specific provisions for showing cause yet in a proposed action which affects the right of an individual it is the duty of the authority to give reasonable opportunity to be heard [Maneka gandhi](#). The rule Audi Alteram Partem is not confined to the conduct of strictly legal tribunal,but it applicable to every tribunal or body of person invested with authority [Lapointe](#). It has been observed that the principal of natural justice are flexible and the test is that the adjudicating authority must be impartial and fair hearing must be given to the person concerned [Srikrishna](#). In matters which are urgent even a post decisional hearing is a sufficient compliance of the principle of natural justice [State of Uttar Pradesh](#). It is Upto the competent authority to decide whether in the given circumstances the opportunity to be provided should be a prior one normal rule of course is prior opportunity [vijai kumar tripathi](#). Accurate decision are not merely a steip toward respect for person accurate decision themselves constitute Am important elements of fair treatment which in turn constitutes Am important element of respect for person [Allan T Revor](#) . The principle of natural justice are attracted where there is some right which is likely to be affected by any act of the administration including a registered expectation [Binmore](#). The authority has statutory power to take action without hearing it would be arbitrary to take action without hearing and this violation of natural justice [Graig,paul \(p\) 2008](#). The requirement to record reason emanates from the board doctrine of fairness in decisions making not only makes the judges and decision makes less prove to errors but also makes them subject to boarded security [David shapiro](#) . He rule of natural justice have been developed with the growth of civilisation and the content there of is often considered as a proper measure of the level of civiliazation [K.l shephard vs union of india](#). The truth is that justice is a very elaborate conception,the growth of many centuries of civilisation and even

now the conception differs widely in countries usually described as civilised [Madan](#) . Supreme Court set aside the order of the appellate court on the ground that the appellate court did not discuss the material on record nor recorded finding it would be useful to the findings recorded by the trial court [Sri jain swetambar terapanthi VID](#). The requirement to record reason can be regarded as one of the principle of natural justice which govern exercises of power by administration authorities [S.N Mukherjee](#). It is a fundamental to a fair procedure of fair hearing then rule against bias could be considered a part of fair procedures since a fair hearing must be an unbiased hearing [National central cooperatives bank](#). It's is a part of the judicial procedure which is imported into the administration pressure because of H S university. The order is made for winding up the company [National textile workers union](#). The proceedings started without giving notice to the affected party would violate the principle of natural justice.the notice is required to served on the concerned person property [Cooperation society](#)

SOURCES OF STUDY:

Only secondary sources have been referred for this study. Secondary sources include books related to Constitutional Law and research Articles on the Principles of Natural Justice and its related cases. Ample websites, magazines and blogs have also been referred for the study.

BASIC PILLARS OF PRINCIPLES OF NATURAL JUSTICE IN INDIA

The natural justice mainly focuses on the following:

1. Nemo judex in causa sua – one cannot be a judge in his own cause also known as the rule against bias.
2. Audi alteram partem – Hear the other side/party or an opportunity for fair hearing must be given before passing any order.
 - The social and economic justice seen in the Preamble of Constitution is based on the principles of natural justice.

- Article 311 has many characteristics of natural justice without explicit mention of it
- According to Article 14 any violation of natural justice is equivalent to violation of equality.

ORIGIN OF NATURAL JUSTICE

This principle of Natural Justice was originated in the case of Maclean vs. The Workers Union and subsequently it has been stated as follows.

“The phrase is, of course, used only in a popular sense and must not be taken to mean that there is any justice natural among men. Among most savages there is no such thing as Justice in the modern sense. In ancient days a person wronged executed his own justice. Amongst our own ancestors, down to the thirteenth century, manifest felony, such as that of a manslayer taken with his weapon, or a thief with the stolen goods, might be punished by summary execution without any form of trial. Again, every student has heard of compurgation and of ordeal; and it is hardly necessary to observe that (for example) a system of ordeal by water in which sinking was the sign of innocence and floating the sign of guilt, a system which lasted in this country for hundreds of years, has little to do with modern ideas of justice. It is unnecessary to give further illustrations. The truth is that justice is a very elaborate conception, the growth of many centuries of civilization; and even now the conception differs widely in countries usually described as civilized”.

PRINCIPLES OF NATURAL JUSTICE AND CONSTITUTION OF INDIA

ARTICLE 14 OF CONSTITUTION OF INDIA: Article 14 guarantees all citizens equality before law and equal protection of law. It hinders any form of discrimination and forbids both discriminatory laws and administrative action. Article 14 of Constitution of India, establishes to be safeguard against any arbitrary or discriminatory State action. The sphere of equality as embodied in Article 14 has been expanding as a result of the judicial decisions. This Article laid down a general proposition that all persons in similar circumstance shall be treated in a similar way both in privileges and liabilities imposed.

Art 14 manifests in the form of following propositions:

(i) A law granting freehand and unhindered power on an authority is dreadful for being arbitrary and discriminatory.

(ii) Art. 14 illegalize prejudice in the definite exercise of any discretionary power.

(iii) Art. 14, smacks at arbitrariness in administrative action and guarantees fairness and equality of treatment.

In Delhi Transport Corporation v. DTC Mazdoor Union, the Apex Court held that “the audi alteram partem rule, in essence, enforce the equality clause in Article 14 of the Constitution, is applicable not only to quasi-judicial bodies but also to an administrative order adversely affecting the party unless the rule has been excluded by the Act in question.”

Similarly in Maneka Gandhi v. Union of India the Supreme Court had opined that Article 14 is an authority for the proposition that the principles of natural justice are an integral part of the guarantee of equality assured by Article 14 an order depriving a person of his civil right passed without affording him an opportunity of being heard suffers from the vice of violation of natural justice.

There are several cases in which Article 14 of the Constitution of India is invoked in order to protect the individuals from the violation of natural justice and similarly in Central Inland Water Transport Corporation Ltd v. Brojo Nath, an order of termination of service of an permanent employee merely by issuing a three months was held to be invalid and unconstitutional as being depriving the employee of the right and Protection under Art. 14. The Court ruled that it would strike down, any unfair and unreasonable clause of a contract entered into between parties who were not equal in bargaining power. And the Court further held that such an action was in conformity with the mandate of the “great equality clause in Art. 14.

In Cantonment Board, Dinapore v. Taramani Devi, in this case the Court observed that the rule of Audi Alteram Parterm is an ingredient of Article 14 of the Constitution. For the reason that Article 14 states “no order shall be passed at the back of a person, prejudicial

in nature to him, when it entails civil consequences” an in such a manner Article 14 of the Constitution holds the element of Natural justice into it.

ARTICLE 21 CONSTITUTION OF INDIA:

The most significant expression under this Article is ‘procedure established by law’ the issue arise whether the above mentioned expression can be read as principles of natural justice. For which, the Supreme Court of India in majority ruled that the word ‘law’ under Art. 21 could not be read as rules of natural justice. Since, the rules of natural justice are vague and imprecise and thus the Constitution could not be read as laying down an indistinguishable standard.

Late Mr. Bhagawati J. stated, “the principle of reasonableness which legally as well as philosophically is an essential element of equality or non-arbitrariness pervades art 14 like a brooding omnipresence”. Therefore, the procedure laid in Article 21 “must be right, just and fair” and shall not be arbitrary, oppressive, otherwise, it would be no procedure at all and the requirements under Art. 21 would not be fulfilled.

The Supreme Court has taken a massive inventive step forward in improving the administration of criminal justice by suggesting that free legal support to poor prisoners by the State undergoing imprisonment. When an accused is sentenced to imprisonment by a Court and if the Accused is entitled to appeal against the order/judgment/decreed, the Accused has the right to claim legal aid and if he is unable to meet the expense, the State shall make all such arrangements in order to provide legal aid. “Now, a procedure which does not make available legal service to an accused person who is too poor to afford a lawyer and who would, therefore, have to go through the trial without legal assistance, cannot possibly be regarded as ‘reasonable, fair and just’”. In India free-legal aid to differently able persons are considered to be significant element of Natural Justice.

ARTICLE 22 CONSTITUTION OF INDIA:

This Article provides protection to arrested person from arrest and detention in certain cases which within its sphere contains fundamental element of natural justice,

Article 22 (1) and (2) grants the following fundamental rights upon a arrested person:

- i) Right to be informed, instantaneously the grounds for arrest.
- ii) Right to consult and be defended by a legal practitioner of his choice.
- iii) Right to be produced before the nearest magistrate within twenty-four hours from arrest excluding of travel from the place of arrest to the Court of Magistrate.
- iv) Right not to be detained in custody without the authority of the Magistrate beyond the period of twenty four hours from arrest.

RIGHT TO BE INFORMED OF THE GROUNDS OF ARREST:

The primary object of this provision is that the arrested person shall be communicated the ground for arrest. Since, on the knowledge of the grounds of arrest, the arrested person shall make arrangements for necessary legal remedies and shall also make an application before an appropriate court with Application for bail or also utilize the remedy of approaching the High Court with a Writ of Habeas Corpus. The Apex Court observed that Article 22 (1) of the Constitution of India represents a rule which has at all times regarded as vital and fundamental for protection of personal liberty in all legal systems where the Rule of Law prevails. Any such communicated grounds made to the arrested person shall be precise, defined, clear and unambiguous, in any case if the grounds are not wholly unveiled to accused than it shall amount to denial of 'fair hearing' and ultimately shall result into violation of Natural Justice. In re, Madhu Limaye the facts being; Madhu Limaye, Member of the Lok Sabha along with several other persons were arrested. Madhu Limaye, one of the arrested persons addressed a petition in the form of a letter to the Apex Court by invoking Article 32 of the Constitution and thereby pointing out that he along with several other members had been arrested but no ground for such an arrest was communicated. The Supreme Court observed that Article 22 (1) embodies a rule which has always been regarded as vital and fundamental for safeguarding personal liberty in all legal systems where the Rule

of Law prevails. In *Joginder Kumar V. State of U.P.* The Supreme Court observed that no arrest can be made because it is lawful for the Police officer to do so. The existence of the power to arrest is one thing. Arrest and detention in lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest should be made by Police Officer without reasonable satisfaction after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. If an Accused is sentenced to imprisonment, it is nearly unable to exercise the constitutional or statutory right of appeal of the Accused, inclusive of special leave to appeal for want of legal assistance. The court may judge the situation and consider from all angles whether it is necessary for the ends of justice to make available legal aid in the particular case. This is the present position pertaining to legal representation to the arrested person under Article 22(1).

ARTICLE 32, 226 AND 227:

Article 32 and 226 of the constitution provides for remedies for violation of fundamental Rights and as well as other statutory rights, Under Article 32 and Article 226 the remedies can be exercised by seeking for orders for issuance appropriate Writ, Directions and Orders. In *U.P. Warehousing Corporation V. Vinay Narayan Vajpayee*, the Court held that Writ of certiorari or prohibition usually goes to a body which is bound to act fairly or according to natural justice and it fails to do so. In the same manner where the decision is affected by bias, personal, or pecuniary, or subject matter as the case may be considered as violation of principle of natural justice. In such circumstances also writ of certiorari and prohibition can be issued both Under Art 32 and 226. In *Gullapalli Nageshwar Rao V. APSRTC* the SC quashed the decision of the AP Govt., nationalizing Road transport on the ground that the Secretary of the Transport Department who was given a hearing was interested in the subject matter. Any order made in violation of principles of natural justice is void ab-initio and is liable to be annulled and cancelled. The Supreme Court in *Nawabkhan Abbaskhan V. State of Gujarat* held that an order which infringes a fundamental freedom passed in violation of the audi alteram partem rule is a nullity. When a competent court holds such official act or order invalid or sets it aside, it operates from nativity i.e. the impugned act or order was never valid. Apart from Art.32 and 226, it is Art 227 which can be used by High Court as another extraordinary weapon to prevent violation principles of natural justice in any

of the lower courts or tribunals.

ART. 311 AND PRINCIPLES OF NATURAL JUSTICE:

Art 311 deals with removal, Dismissal or reduction in rank of persons employed in civil capacities under the Union or State, though Art. 310 of the constitution adapts 'doctrine of Pleasure'. The expression 'reasonable opportunity of being heard' includes all the aspects of the principles of natural justice and accordingly no dismissal, removal, or reduction of rank of civil servant can be ordered without giving reasonable opportunity of being heard. In Punjab National Bank vs. Kunj Behari Misra, the following question was raised: when the inquiry officer, during the course of the disciplinary proceedings, comes to the conclusion that the charges of misconduct against an official are not proved, then can the disciplinary authority differ from that view and give a contrary finding without affording an opportunity to the delinquent officer? The Court has ruled that natural justice demands that the authority which proposes to hold the delinquent officer guilty must give him a hearing. If the inquiry officer holds the charges to be proved then the report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action prejudicial to the delinquent officer.

CONCLUSION

In a welfare state like India, the responsibility of administrative agencies is escalating at a rapid pace and with rapid growth of state liability and civic needs of the people. Under Article 14 & Article 21 of the Constitution of India, the articles firmly deal with the principles of natural justice. The violation of principles of natural justice shall result in arbitrariness; therefore, violation of natural justice is also a violation of Right to Equality under Article 14. Natural Justice has its foundation on good conscience and human values that follow a fair procedure. If the state doesn't discharge its function in a just and fair manner the Rule of Law would lose its validity.

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