

APPLICABILITY OF PRINCIPLES OF NATURAL JUSTICE TO THE ADMINISTRATIVE PROCEEDINGS

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ABSTRACT:

The aim of the present study “A study on applicability of principles of natural justice to the administrative proceedings” is to study about the constitutional provision relating to principles of natural justice and to study about the factors affecting natural justice. The overall study of this paper is it contains a brief explanation regarding the development of administrative law, how the changing concept of state from political state to welfare state increased the activities of administrative authorities which again lead to the accumulation of wide powers in the hands of administrative authority. The factors responsible for the creation of administrative discretion, the importance of principles of natural justice and utilizing it as a ground to control administrative discretion. The role of judiciary in maintaining a balance between these two concepts are briefly explained in this study .This paper also contains hypothesis, aims and objectives, methodology and tentative plan of the study and it also includes some suggestions. The main aim of the study is to find out how far the principle of natural justice is followed in the administrative actions, and the role played by the principles of natural justice in controlling the wide discretionary power used by the administrative authority. The administrative authorities should follow the minimum procedure before making an order. There is no specific rule that natural justice must be applied only in certain condition. The significant question is under what

circumstances the natural justice is applied and what is the extent of fairness in each case. For the purpose of the study following objectives are framed to highlight the importance of administrative discretion and to analyze the problems of wide discretion and the means to control such discretion, to find out how far the principles of natural justice is followed in administrative action and the role played by it in controlling administrative discretion, to make awareness that the principles of natural justice is an uncodified equitable principle available to each and every person affected by the misuse of discretionary power, to analyze the judicial trend as to how the judiciary is maintaining a balance between administrative discretion and principles of natural justice, to identify the trend of other countries like UK, USA and France in dealing with administrative discretion and the principles of natural justice, and also the effect of violation of the principles of natural justice in India in comparison to other countries.

KEYWORDS:Principles of natural justice, Administrative proceedings, Administrative discretion, Administrative authority, Judiciary.

INTRODUCTION:

The growth of Indian administrative law is the post independence development. The most significant reason for this phenomenal development was a transformation in the concept of state, which in turn was a result of many socio- economic and political changes. The failure of laissez-faire led to re-thinking the role of state. It was urged that the activities of the state should not be confined to the traditional functions, but should expand to meet the new challenges. The humanitarian and socialist idea boosted the demand for state action in the field of social welfare activities. Administrative law is a branch of public law, mainly for the purpose of resolution of the dispute between the citizen and the state, that is, public authorities. It promotes the rule of law articulated on fairness and constitutionally ordered governance. The state exercises numerous categories of functions other than merely those which are traditionally categorized as Sovereign. In order to exercise these functions in a proper manner a wide discretionary power is conferred on the authorities, their subordinates, and various departments. Such administrative discretion should be exercised in consonance with the principles of natural justice and the rule of law. The main concern of administrative law is to ensure that such discretionary power is exercised properly in accordance with and within the limits of the law that confers it. The

problem of administrative discretion is complex. The real problem is conferring too much of power to the executives. Natural justice is a great humanizing principle intended to invest law with fairness and secure justice and over the years it has grown into widely pervasive rule affecting large areas of administrative action. As like administrative discretion, natural justice also is a very important concept in administrative law. Administrative Discretion and Natural Justice can be called as the two pillars of administrative law. Administrative discretion is the creation of modern welfare state whereas natural justice is those principles which embodied in the nature itself. It is well established that even where there is no specific provision in a statute, the duty to follow the principles of natural justice, i.e., a reasonable opportunity of being heard or to decide without bias are implied in the nature of the administrative function. The principles of natural justice require that there should be a fair determination of a question by administrative authorities. While exercising administrative discretion by the authorities concerned there are much room for arbitrariness. Arbitrariness will certainly not ensure fairness. Discretion must be exercised according to common sense and justice, and if there is a miscarriage in the exercise of it, it will be reviewed. Administration possesses vast discretionary powers and if complete and absolute freedom is given to it, it will lead to arbitrary exercise of power. The wider the discretion the greater is the possibility of its abuse. It is rightly said that every power tends to corrupt and absolute power tends to corrupt absolutely. All the powers have legal limit. When wider power is given to the authorities the greater will be the need to control it. If a statute confers discretion on the executive, it must contain guidelines for the exercise of such discretion. When the discretion is conferred on the administrative authority without laying down any parameters, then, there arises the problems of abuse of discretion by the authorities. It is judicious that discretion to be exercised for the purpose for which it is granted and the legal limits which apply to its exercise have to be observed. The courts can on the one hand, intervene with the administrative decisions, if the authorities used its discretionary power for a purpose not allowed by the legislation at all. ([kishore Sharma, 2015](#)) On the other hand, the court can intervene because the authorities while using its power to reach a certain end, has done so in a manner felt to be unreasonable, irrational or disproportionate. It is important to understand that judicial review can vary in intensity. It is becoming common for courts to adopt a variable standard of review the intensity of which alters depending upon the subject matter of the action. The Supreme Court while dealing with the problem of administrative discretion has given

much importance when it violates the principles of natural justice. When the judicial trend is taken into account it is crystal clear that the judiciary is performing a difficult task in ensuring principles of natural justice without affecting the administrative discretion. Natural justice

Aim of the study:

To study about the constitutional provision relating to principles of natural justice and to study about the factors affecting natural justice.

OBJECTIVE :

- 1)To study about the development of administrative discretion.
- 2)To know that rule against bias is a mean to control.
- 3)To examine doctrine of hearing and its dynamics in natural justice.
- 4)To analyze natural justice and administrative discretion a judicial trend.

LIMITATIONS:

- 1)Lack of secondary source of data .
- 2)Restricted accessibility to primary source of data .

RESEARCH METHODOLOGY(MATERIALS AND METHODS):

- 1)The research is based on secondary source of data , which includes :
 - Articles.
 - Book .
 - Journals .
- 2)Types of research:
 - Applied research .

REVIEW OF LITERATURE:

- 1)Manjeet Sahu, Date Written: September 1, 2015, Abstract: The primary procedural safeguards in South African administrative law are expressed by the twin principles of natural justice: audi alteram partem (“the audi principle”) and nemo iudex in causa sua that is, that a public official should hear the other side, and that one should not be a judge in his own cause. An

administrative act was considered to be quasi-judicial if it affects the rights, liberties (and perhaps, the privileges) of an individual.

2)A STUDY ON APPLICABILITY OF PRINCIPLES OF NATURAL JUSTICE IN DOMESTIC INQUIRY, C.S. CHAKRAVARTH, M.Com., P.G.D.P.M.I.R., LL.M., (Ph.D.), Research Scholar, Department of Law, Osmania University, Hyderabad- 500 007, ABSTRACT: Whenever an employee is sought to be dismissed or punished, it is usual for the employer or senior officers representing the employer to conduct departmental enquiries for the purpose of finding out whether the proposed action of dismissal or punishment is warranted. In some cases the holding of such enquiries is made obligatory by statute. According to Article-311 of the Constitution of India, no employee can be dismissed unless he has been given reasonable opportunity to show cause. The Principles of Natural Justice will include the following golden rules: No one can be a judge in his own cause; No one shall be condemned unheard; and The party is entitled to know the reasons for the decision.

3)International Journal of Business and Management Invention, Volume 5 Issue 1, January 2016, PP-22-24, The Principles of natural justice in public administration and administrative law, Dr. S. B. M. Marume, Zimbabwe Open University: Abstract : According to S.B.M Marume (1988) and J.M Stevens (1982:279), the common law principles of natural justice require that an individual citizen affected by a decision should: be given a fair hearing; that s/he be informed of the case against him/her; be given an opportunity to prepare and present his/her case and that the institution taking the decision be unbiased.

HYPOTHESIS:

- 1)HO: Natural Justice has not been followed in administrative proceedings.
- 2)H1: Natural Justice has been followed in administrative proceedings.

DEVELOPMENT OF ADMINISTRATIVE DISCRETION:

This chapter contains the details as to how the changing concept of state from police state to social welfare state made a way for the development of administrative law in the modern state. There was a wide responsibility in the shoulder of administrative authority to meet out the

welfare measures in a social welfare state and the conferring of wide powers to the authorities leads to the development of discretionary power. Discretion in the ordinary sense means choosing from amongst the various available alternatives without reference to the predetermined criterion. But in administrative law discretion means choosing from amongst the various available alternatives but with reference to the rules of justice and not according to personal whims and fancy. If a statute confers discretion on the executive, it must contain the guidelines for the exercise of such discretion. There is nothing like absolute discretion which leads to possibilities of arbitrariness. Whenever it is felt that there is excessive exercise of discretion the judiciary can make control over such discretion. By judicial control means the power of court to examine the legality of official acts and thereby to safeguard the fundamental and other rights of the individual. But the court cannot interfere in the administrative activities of their own accord. They can intervene only when they are invited to do so by person who feels that his rights have been abrogated or likely to be abrogated as a result of some action of the public official. The judiciary has laid down uniform standards to adjudge the validity of statutory provisions conferring discretionary powers. They are violation of fundamental rights, abuse of discretion, non- application of mind, ultra virus act and non observance of principles of natural justice. As the discretionary power given to the administrative authorities is a rule free space, the compliance of principles of natural justice has been made strict by the courts over the time. Observance of principles of natural justice can be made as a fundamental tool to control administrative discretion.(jayakumar, 2015)

RULE AGAINST BIAS AS A MEANS TO CONTROL:

In this chapter another important element of administrative law the principles of natural justice is explained elaborately. The origin and growth of the principles of natural justice and the importance of natural justice in the field of administrative law are discussed in this chapter. The applicability of natural justice in various stages of development in administrative law is also discussed. The application of natural justice principles in quasi-judicial and administrative actions is well explained. Another important area which is the content of this chapter is the rule against bias. The principle rule against bias is based on three maxims: No man shall be a judge of his own cause Justice should not only be done, but manifestly and undoubtedly be seen to be done, and Judges, like Caesar's wife should be above suspicion. One of the essential elements of

principles of natural justice is that administrative authority acting in a quasi – judicial manner should be impartial, fair and free from bias. Where a person, who discharges a quasi-judicial function, has, by his conduct, shown that he is interested, or appears to be interested, that will disentitle him from acting in that capacity. Based on this the courts have developed different types of bias. They are: personal bias, pecuniary bias, official bias, departmental bias, bias on preconceived notion and bias on account of obstinacy. The Supreme court⁴ in various decision held that there need not be a real bias, but a reasonable suspicion or apprehension as to the bias is sufficient. In such cases the decision can be held as to be violative of the principles of natural justice.(Balduin, 1973)

DOCTRINE OF HEARING AND ITS DYNAMICS IN NATURAL JUSTICE:

Another important element of the principles of natural justice is the rule of fair hearing. The fair hearing is based on the maxim “Audi Alteram Partem” means that no man should be condemned unheard or both sides must be heard before passing any order. There should be a general right to both parties to be heard. The principles of natural justice embrace almost every question of fair procedure. The detailed requirement of natural justice is a continuous process from notice to final determination. In the course of time the courts have developed many requirements related to the principles of natural justice. The rule of hearing is not a fixed rule it varies depends upon the nature and circumstances of each individual case. The courts in India emphasizes that in the modern complex administrative system, it is not possible for the authorities to follow the whole procedure of hearing but it is also very necessary to protect the individual right. Under these circumstances the administrative authorities need to follow the minimum procedure of the rule of fair hearing. In the course of time the court developed a new concept called post decisional hearing. It means that if the authority is not in a position to give a pre hearing, post hearing can be given. Based on the recommendations of the Committee on Minister’s Power the courts insisted a new principle called Speaking Orders or Reasoned Decisions, means that every administrative orders should be accompanied with the reasons for the decision. In practice the courts in India finds it very difficult to follow strictly the principles of natural justice and maintain a balance between administrative discretion and principles of natural justice.[Principles of Natural Justice in Indian Constitution - LawVedic](#)

NATURAL JUSTICE AND ADMINISTRATIVE DISCRETION - JUDICIAL TREND:

The fifth chapter is the analytical chapter in the whole study. This chapter contains the role of judiciary in the field of the principles of natural justice from 1950 to till date. This can be classified into three different phases that is before 1963, between 1963 and 1978 and after 1978. These three phases are the landmark turning points in the development of the natural justice principles. The judiciary has played a very important role in upholding the principles of natural justice without interfering with the discretionary powers of the administrative authorities. The courts established relationship between quasi-judicial and administrative function in administrative law, and also contributed new principles of natural justice which is more suitable. Before 1963, the natural justice principles were applicable only to quasi-judicial functions and were not applicable to purely administrative functions. After 1963, a landmark judgment⁶ in England which established that there need not be any difference between quasi-judicial and administrative function. (mahendra singh, 2013) The courts insisted that whatever may be the nature of function performed by the administrative authorities, it should follow principles of natural justice. In the third phase, in 1978, the Supreme Court held that due to administrative exigencies if the authorities are not able to give a pre-hearing, the authority can go for a post-decisional hearing. Accordingly the court developed a new concept called post-decisional hearing. In the same way after a thorough analysis it is found that the court made the principles of natural justice more flexible to suit the prevailing modern administrative conditions. The application of natural justice principles vary according to the varying circumstances of cases. <https://www.nacenkampur.gov.in/download3.inc.php?rid=164>

9.CASE ANALYSIS: (A.K.CRIPAK VS UNION OF INDIA):**FACTS:**

Mr.N was a candidate for selection to the service he was also a member of a selection board.

Mr.N did not sit on the board when his own name was considered. The selection board had recommended the name of Mr.N for selection of service. Then he was selected by the public service commission. A.K.Cripak was another candidate who was not selected by the public service commission. He challenged the selection of Mr.N on the ground that the principles of natural Justice was violated. The selection of Mr.N was quashed by the court.

ISSUES:

Whether the selection of Mr.N was violative of principles of natural Justice.

JUDGEMENT:

A five judge bench of the Apex Court comprising of Hidayatullah, CJ and Grover, Shelat, Bhargava and Hegde, JJ. through Hegde, J. held that the selections made by the selection committee were in violation of principles of natural justice. The Hon'ble Court found the power exercised by the Selection Board as an administrative one and tested the validity of the selections on that basis. It held that the concept of rule of law would lose its importance if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. Also, it is a must to charge administrative authorities with the duty of discharging their functions in a fair and just manner in a Welfare State like India, where the jurisdiction of the administrative bodies is increasing at a rapid rate. In this case, for the first time, without the assistance of any foreign judgement, the Supreme Court had decided that Principles of Natural Justice were applicable not only to judicial and quasi-judicial functions, but also to administrative functions. The present case has made the position more clear. Hence, taking all the above decisions as well as some other English decisions into consideration, the Court declared that Principles of Natural Justice are applicable to Administrative functions also and struck down the selection process on the ground of violation of principles of natural justice.(Singh, 2009)

LEGAL PROVISION:

The ideas of social and economic justice that can be found in the Preamble of the Constitution depend on the principles of natural justice. Article 311 consolidates a significant number of the highlights of the natural justice without unequivocally saying it. Infringement of natural justice is equivalent to infringement of Equality of the Article 14. Principles of Natural Justice - Lawnotes.in

11.COMPARATIVE STUDY :

PRINCIPLES OF NATURAL JUSTICE – A COMPARISON WITH U.K, USA AND FRANCE:

In this chapter a comparative analysis of the application of the principles of natural justice in the field of administrative action is dealt. For the purpose of comparison three countries are located. They are United States, United Kingdom and France. The application and violation of natural justice in these countries are compared with that of India and important changes which can be positively followed by our country is also highlighted.

USA: In US there is a separate Administrative Procedure Act, where natural justice is included in the name of Due Process clause.

U.K: In England the common law system is followed. Under the common law system, Equity, Justice and good conscience are the essential principles. Before 19th century itself in England the principles of natural justice were followed and the courts till date are insisting to follow the principles of natural justice.

FRANCE : In France there is a separate system of administrative law in the name of Droit administrative and a separate court Conseil D' et at is constituted to hear the administrative matter. In France the state is responsible to the citizen. Another complicated and difficult area is the effect of breach or contravention of the principles of natural justice. There has been a difference of opinion on this point. In some cases the courts have decided that non-compliance with the principles of natural justice do not vitiate the order and the order cannot be said to be null or void abinitio but merely voidable which would be set aside at the instance of an aggrieved party. In other cases however, the courts have taken the view that non observance of the principles of natural justice render the order null and void. But recently the courts made it clear that the validity of the order in violation of the principles of natural justice has to be tested on several factors. The main factor is the prejudice to the person aggrieved.

FINDINGS:

- 1)The rule of principles of natural justice has not been followed strictly in administrative authority.
- 2)Improvements should be made in Administrative authority's in following principles of natural

justice.

SUGGESTIONS AND CONCLUSION:

The improvements that can be brought to the modern administration in order to have an efficient administration. The rule of principles of natural justice must be strictly followed in administrative authority. Therefore I conclude that the standards of characteristic of principles of natural Justice have been produced and taken after by the legal to ensure the privilege of the public against the arbitrariness of the administrative authorities. One can take note of that the principles of natural Justice with fairness. The idea that principle of natural Justice ought to at all stages control the individuals who release legal capacities isn't only a worthy, yet fundamental piece of the theory of the law to secure justice or to Prevent miscarriage. In a welfare state like India, the part Jurisdiction of Administrative agencies is expanding at a fast space and with quick development of state obligation and community needs of the general population conferment of regulatory caution progressed toward becoming need of an hour. ([Maria palombino, 2017](#)) With development in extent of Athens discretionary power of the administrative authority the measures are to be outfitted with adequate energy to prevent abuse of discretion. In such manner Constitutionalized administer of law nation like India, components of natural law, i.e. fairness play in real life must be found and proclaimed by legal to keep in place the matchless quality of govern of law in India. In such manner the author says that "the rule of natural Justice can work just in zones not secured by law validly made" such old judicial choices of Apex Court and other High Court must be rethought and right view would announce principles of natural Justice important end product of Law, they should work in fairness of and even in repudiation to the built up law where the enthusiasm of equity requests. In India, the principles of natural Justice are solidly grounded in Article 14 and 21 of the Constitution. With the presentation of idea of substantive and procedural due process in Article 21, all the fairness which is incorporated into the principles of natural Justice can be perused into Art. 21. The infringement of principles of natural Justice brings about arbitrariness in this way, infringement of principles of natural Justice is an infringement of Equality clause of Art. 14. Principles of Natural Justice In Indian Constitution

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