International Journal of Pure and Applied Mathematics
Volume 120 No. 5 2018, 2085-2097
ISSN: 1314-3395 (on-line version)
url: http://www.acadpubl.eu/hub/
Special Issue
http://www.acadpubl.eu/hub/

CONTEMPORARY APPLICABILITY ON THE OF CONCEPT OF PRINCIPLE OF NATURAL JUSTICE

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ABSTRACT:

A conceptual understanding of the common law principles with regard administrative delegations, discretion and of judicial proceedings which gave raise to Natural Justice principle, a fundamental doctrine which have a clear traces of historical existence became a supreme doctrine of practice in civilised states. An idea of justice and the doctrine of natural law often subjected to threat by the limitless activities of the judicial and quasi-judicial actions affects the people's right and functions. The importance of this principle was known to the people though it overrides other laws and legislation has been adopted by the nation in ensuring justice and in preventing miscarriage of justice. Through its historical traces this concept has emerged in India not as an common law principle but through its existence from Vedic traces which is dealt in this study, with the objective of discussing the contemporary status and applicability of the Natural Justice principle, dealing with various sources the Indian judiciary time immemorial has been practising this doctrine and still apply this principle in the cases. Through the observations from the administrative governance the practice of this doctrine has seen a steady growth in its applicability and adherence which played a dominant role in curbing arbitrary state action

through its authoritative catalogue. The Constitutional validity provided by the state adhered to its principle pervades all the unlawful actions, neutrality and impartially constituted and also encapsulated the legal principles and doctrines. Thus having a probative value in the Indian judiciary the doctrine of Natural Justice has made the Indian judiciary in a civilised standard and an independent procedural format in ensuring justice to the people apart from the interpretations. (Takwani & Thakker 2008)

Keywords: administrative, arbitrary, civilised state, constitutional, delegations, discretion, Natural Justice

INTRODUCTION :

Capability of the human nature has developed time immemorial and has proved through various inventions and acknowledgements, the reflections and experiences of the people have made them to create their own laws and governance. By the emergence of do doctrines and fundamental principles paved way for transparent understanding of the law of the law, though historical governance was opaque in nature and the applicability was not more competent the laws, principles and doctrines formulated was futuristic in nature which at present has its competent application. The observations of human behaviour and the inability of antique laws which was in disguise paved way for the imposition of modern political philosophies and ideologies which indeed had a tint of customary and ancient laws and doctrines.(Takwani & Thakker 2008)The anchored natural doctrines and principles along with their own essential ingredients has been in applicability even with the contemporary human society. (Wade & Forsyth 2009)One of the remarkable doctrine which has its existence and uniqueness is the natural justice doctrine, which emerged in curbing the administrative discretion and biasness and to uphold the concept of equality to all mankind in all parts of the world. Natural law which is not codified rather has developed as a divine law based on natural values and ideas invariably has a deeming effect upon natural justice principle where justice is provided to the person naturally which is basically a Human Rights principle.Thus the principle of natural justice has developed as a sine qua non of all the democratic governance with its two main pillars holding this doctrine up straight in the eyes of law. In Indian democracy, the heart and soul of The Constitution of India has

incorporated this doctrine in its preamble as equality and equal protection clause along with Article 14 and 311 which silently mentions about the Natural Justice principle. The laws of the land made in accordance with the Constitution of the Nation which impose liability when violated, this mechanism clearly reveals the practice and the status of Natural Justice principle in contemporary India with its two main pillars on board. But the question of practice is often put forth when the point of hearing is constituted and the need of reasoned decision is made available. With regard to the nexus between upholding the concept and applying the concept the Natural Justice principle is often subjected to the question of status in Indian judiciary.

Aim of the study :

This study tries to figure out the contemporary status of Natural Justice principle in Indian judiciary and also discuss its applicability in regard of reasoned decisions, through a comparative analysis with European practice of this doctrine in their own Constitution along with the examples of obiter dicta and precedents of Indian and other country case laws.(India n.d.)

Research Question:

What is the contemporary status and applicability of Natural Justice doctrine?

Objectives:

1. To discuss about the contemporary status of the principle in Indian judiciary
2. To study the applicability of the principle with regard to administrative and other offences

Hypothesis:

H0: Natural Justice principle is not firmly upheld in Indian judiciary

Ha: Natural Justice principle is firmly upheld in the Indian judiciary

Research Methodology:

This study is a Doctrinal research relied on secondary sources like books, articles, theories and legislations

GENESIS OF NATURAL JUSTICE PRINCIPLE

- **HISTORICAL TRACES**

The inherent principle of natural justice which sets as a backbone for judicial system, administrative system and quasi-judicial systems form a soul for a judgement or an order. When tracing its origin, this doctrine was set into practice by the Ancient Greek and Romans centuries ago, when natural law was considered as a divine legislation for governance and justice in the parallel line the principle of natural justice emerged from the religious and philosophical beliefs and ideologies. Human beings in primitive period were subjugated to nature's morality and divinity had a capability of shaping their own views of natural justice, these particular views lead to the development of doctrine and principles of futuristic thoughts.(Anon 1973) Earlier Natural Law applicability was seen in the Adam and Eve period, later was proclaimed by various jurist in their own thoughts and ideologies which on the whole emerged as a overriding law of the land. As this set of principle was traced in practice by the Romans and the Greek, their way of understanding was delivered as; by the Romans "an ideal body of right and reasonable principles which was common to all human beings", by the Greek in the renderings of Cicero's "Greek Stotic Philosophy" as a divine law of the land, these expression gave a conclusion as a natural sense of what is right and what is wrong as mentioned in Violet v. Barrett case. This primitive theory of Natural Justice having two main senses which is fair hearing and absence of biasness as formulated in ancient times still rules the judiciary of contemporary period, though having a wider sense of reasoning and applicability depending on the circumstances and situations the applicability of this principle made varied and interpreted accordingly. This doctrine is primitive time are considered as unwritten laws or laws based on reasons which I'd traditionally explained in two Latin pillars as standards which is taken into consideration during decision making, thus a "fair play" principle was constituted and formed into a universal law. Not only the common law countries other countries during the French Revolution and American Revolutions the importance of this Natural justice doctrine increased tremendously due to various interlocks thus

formed a internal part of all the Constitutions of the world which became the cure for legislatures and executives when being sub-versed with arbitrariness, unfairness and unreasonableness.(Anon 1973; India n.d.)

- **TRACES IN INDIA**

Though Natural Justice principle has said to have its origin and evolution in Ancient Greek and Roman in conditioning administrative discretionary power, in India it has been traced to the times of ancient Vedic period where Kautilya's Dharmashastra took its tale, this inherent doctrine has been quoted in Vedic laws by different authors; **Brihaspati** as decision should not be for personal gain or should be personal bias, **Yajnavalkya** said that administrative authority should be unbiased and fearless, **Katyayana** expressed as the decision made should not be illegal and an unrighteous decision. In order to regulate the powers of the governing bodies and to avoid disturbance to the rights, duties, immunities enjoyed by the people this principle have already been in existence and applicability of which is far fetched. In India this concept not been new to the judicial system has grown to a heightened level of applicability and are anchored through the Constitution of the country. The judicial code of integrity being very rigid and at times transparent have incorporated this doctrine in the Indian Constitution under Article 14 which is expressed and 311 which is implied(Anon 1973; India n.d.; India n.d.)

CONTEMPORARY APPLICABILITY AND APPRAISALS

Principle of Natural Justice which ensures a specific procedural rights and a widened scope in reasoned decisions and fair hearing has taken its position in governing the administrative authorities in acting fairly by closely associating to their discretionary power. Due to the increased administrative governance in India and the developed checks and balances Natural Justice principle revived its stage in checking the arbitrary powers and the exercise of the state in various matters. Thus increase in state powers slowly paved way for Natural Justice Principle in taking its position.(Tremblay 1997)

1. TWO ENDS OF GOLDEN THREAD

Indian Constitution has timely incorporated the principle of Natural Justice and designated it has a golden thread which protects the integrity of the decision makers and making. The duty entrusted to Indian judiciary is to establish justice free from unfair practices and duly rendition of judgements, by use of the below mentioned two main principles of this natural justice doctrine the judicial system functions accordingly,(Singh 1986)

- **Audi Alteram Partem - fair hearing**

By a statement from a judge, natural justice doctrine is not just a principle for providing justice rather prevention of miscarriage of justice rendered by the court of law. This essential element of natural justice principle ensures that no one is condemned unheard which incorporates the rule of fair hearing principle in th3 Constitution, though it is a part of natural justice principle a civilised jurisprudence adopted Audi Alteram Partem as first principle an authority or a legal proceeding must follow which makes the authorities to make available the reasonableness of opportunity of hearing which varies accordingly. Various aspects are involved in ensuring Audi Alteram Partem principle; right to notice, knowledge about evidence against the accused, presenting the case and evidence, cross-examination and speaking order, these are considered as law trial procedures witnessed in the court of law which are the fundamental requirements of adjudication.(Ewart 1867)

- **Nemo judex in causa sua - Rule against bias**

An impartiality in the judgement or the approach of a judge is termed as a biasness in action, with respect to this rule against bias it takes a light through two main principles: (1) No One should be judged in his own cause; (2) Justice should not only be availed but also be manifested and undoubted done. This brings a conclusion that a decision maker could not be adjudicated upon their own willingness or conscience, this rule plays a major role also in administrative functions where the act of discretionary power takes its toll. This act of bias is constituted when a reasonable apprehension is constituted, thus an accepted operational technique emphasised in administrative law takes its stand in the judiciary. An English principle has classified the rule of bias into three types: official bias, personal bias, pecuniary interest depending on the facts and

circumstances, it also provides a “No-bias rule” mechanism which provides a aspects of curbing biasness;

1. Financial interest
2. Personal Attitude
3. Balancing between objectives and interest of the institution
4. Prior involvement in the case

Thus an administrative agency which administers rules, guideline, practical procedures and policies are not accepted when it acts with neutrality and impartiality in judgement or by a decision making body.(Anon n.d.)

2. NATURAL JUSTICE DOCTRINE - CONSTITUTIONAL CORNERSTONE

Article 14, 19, 21 acts as a cornerstone for the principle of Natural Justice in the Indian Constitution, fundamental rights which are the branch of public law goes in hand with natural justice principle which is considered as supreme importance of a civilised state. The adherence to the rules of Natural Justice is ensured is constitution which is interpreted accordingly with the cases in trial, depending on the facts and circumstances the applicability of doctrine changes respectively. With the nature of both rigidity and flexibility every state acts in accordance with their administrative powers and procedure and ensures that no arbitrary state action infringes Article 14 or 21 which deals about equality and right over life and liberty, thus an entrusted authority or a legal procedure is ought to be free from all the clutches of arbitrariness and ought to be reasonable.(Anon n.d.; Basu et al. 2008)

3. OBITER DICTUM

Landmark cases:

I. E.P. Royappa v State of Tamil Nadu

With respect to this case the court of law held that, if an authenticated order passed initially in the judgement which has challenged by the opposites party for the violation of Natural Justice principle that prior the order passed has not observed the principle and thus the order passed can be quashed for that purpose. (Anon n.d.; Anon n.d.)

II. Maneka Gandhi v Union of India

It was held by the court of law that if an administrative authority's action is said to affect the basic fundamental rights of the citizen or person it is said to be violative of Natural Justice(Anon n.d.)

III. A.K. Kraipak v Union of India

The Court came to the conclusion that on the material on record it was unable to uphold that plea. In that case there was no question of any conflict between duty and interest nor any members of the departmental promotion committee was a judge in his own case. The only thing complained of was that one of the members of the promotion committee was favourably disposed towards one of the competitors . As mentioned earlier in this case we are essentially concerned with the question whether the decision taken by the board can be considered as having been taken fairly and justly. It was held that, initially Natural Justice principle is applicable only to quasi-judicial functions but was later held that this principle is applied to administrative functions also ensuring opportunity of hearing the affected party.(Anon n.d.)

IV. Union of India v J.P. Matter

It was held by the court of law that the opportunity is ought to be provided to represent oneself which wholly guarantees the rights and Natural Justice free from infringement.

V. Chatterji v Durgadutt

By this case it was ensured that law never acts inhuman and never condemns any one unheard, which directly talks about the principle of Audi Alteram Partem (the rule of fair hearing). With which the case decided remain unaffected with the violation of any principles of either natural justice nor fundamental rights.

COMPARATIVE ANALYSIS

- Administration of Natural Justice principle in European countries:

Common law countries practice their laws in their own ways which may or may be adopted in other nations, in such lines European countries which is looked upon for its ancient laws and customary practice administer the principles and doctrines in alternative way with that of other

countries. With respect to the administration procedures the governance trace a different scenario where there exist no authoritative catalogue or general principles for European administration. The legislative administration are governed by relevant rules and principles embedded in treaties, charters and conventions where it is expressly mentioned which constitutes according interpretations to specific authorities.

- Legitimacy of Natural Justice principle in European law:

As stated before Europe's administration procedures are derived from treaties, conventions and charters, the Natural Justice principle is also derived from a Convention, "European Convention on Human Rights" where Article 6(1) mentions about Right to fair hearing which was domestically upheld through Human Rights Act of 1998. Though this principle not exactly renders the ingredients of Natural Justice doctrine, it complements the common law principle. As the Rule of law tradition suggested the right of fair trial, a common principle of community law, the European law contemplated things and directly connected a public hearing procedure with the judicial review requirements. In regard to the main ingredients of Natural Justice principle, it is ensured that this principle is applied when a legal right of an individual is infringed. Rule against bias and a basic refusal for impartial decision maker is keenly overlooked by this principle (Sadurski n.d.)

- The International Covenant on Civil and Political Rights:

The other convention which played a profound role in the growth of Principle of Natural Justice is the covenant on Civil and Political Rights, which in addition to the respect over human rights this also gave profound observance to fundamental freedom. Section 14(1) of the Covenant stated, "everyone shall be entitled to a fair and public hearing by a competent independent and impartial tribunal established by law, this provision urges to protect the integrity of decision making process in establishing judgements excluded from unfair judgements, improper procedures and biased judges. (Canada. Dept. of the Secretary of State 1979)

CONCLUSION AND SUGGESTIONS

Natural law which is not codified rather has developed as a divine law based on natural values and ideas invariably has a deeming effect upon natural justice principle where justice is provided to the person naturally which is basically a Human Rights principle, The main objective behind the adaptation of Principles of Natural Justice is to harmoniously construe individual's natural rights of being heard and fair procedure as well as the public Interest. Thus the principle of natural justice should not be readily made unless the people right is seen to be violated, since the Courts act on the presumption that the legislature intends to observe the principles of natural justice and those principles which form the basis for the democratic country.Therefore, all statutory provisions must be read, interpreted and applied so as to be consistent with the principles of natural justice.Thus the principle of natural justice has developed as a sine qua non of all the democratic governance with its two main pillars holding this doctrine up straight in the eyes of law. Political and judicial ideologies and philosophies which gave existence to the principle ensuring justice to all naturally has emerged in its own stance through jurisprudential study enhanced the quality of judiciary and administrative. The inclusions and exclusions of natural justice doctrine aims at harmoniously ensuring the individuals Natural right which is of larger public interest, overruling of natural justice at times may affects the naturality of the principle and consequently affect the basic right. In the contemporary Indian judicial system the existence of this principle is firmly upheld but often subjected to interpretation and changes in their essential principle depending upon their facts and circumstances. Betterment of applicability the essential elements of this principle may not be subjected to violations and the legitimacy and the legacy of which is maintained.

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