

# Principle of Natural Justice

- The words 'natural justice' are derived from the Roman word 'JusNaturale', which means principles of natural law, justice, equity, and good conscience. These principles did not originate from any divine power, but are the outcome of the necessity of judicial thinking, as well as the necessity to evolve the norms of fair play.

- These are the principles which every disciplinary authority should follow while taking any decision, which may adversely affect the rights of individuals. It is to be seen that rules of natural justice are not codified anywhere; they are procedural in nature and their aim is to ensure delivery of justice to the parties.

- Rules of natural justice serve as hedge against any blatant discrimination against rights of individuals.
- These rules are intended to prevent such authority from doing injustice. They seem to be recognised by Article 21 of the Constitution of India in a way which says, “No person shall be deprived of his life or personal liberty except according to the procedure established by law”. This is that procedure which is held by the courts to be the rules of natural justice.

- With the evolution of society, as well as legal jurisprudence, the concept of natural justice has also undergone change. Rules of natural justice are not rules embodied in any statute. These rules were part of the law and procedure during the British Raj also, and are being observed in India since time immemorial. These rules have become a part and parcel of the law, as well as procedure. These may be implied from the nature of the duty to be performed under a statute.

- What particular rule of natural justice should be applied depends on the facts and circumstances of each case. With the passage of time, the old distinction between a judicial act and an administrative act has withered away. Orders of the disciplinary authority, which involve civil consequence, must be consistent with the rules of natural justice, otherwise the orders are likely to be set aside by the courts.

- Natural justice is a concept of **common law** and represents **higher procedural principles** developed by the courts, which every judicial, quasi-judicial and administrative agency must follow while taking any decision adversely affecting the rights of a private individual.
- Natural justice implies **fairness, equity and equality**.
- In a welfare state like India, the **role and jurisdiction of administrative agencies is increasing** at a rapid pace. The concept of Rule of Law would lose its validity if the instrumentalities of the State are not charged with the **duty of discharging these functions in a fair and just manner**

- India, the principles of natural justice are firmly grounded in **Article 14 & 21** of the Constitution.
- With the introduction of **concept of substantive and procedural due process** in Article 21, all that fairness which is included in the principles of natural justice can be read into Art. 21.
- The **violation of principles of natural justice results in arbitrariness**; therefore, violation of natural justice is a violation of Equality clause of Art. 14.



- The principle of natural justice encompasses following two rules:-
- **Nemo iudex in causa sua**- No one should be made a judge in his own cause or the **rule against bias**.
- **Audi alteram partem**- Hear the other party or the **rule of fair hearing** or the rule that no one should be condemned unheard.

# RULE AGAINST BIAS( NEMOJUEX CAUSASUA )

- **Bias** means an **operative prejudice**, whether conscious or unconscious in relation to a party or issue. The rule against bias flows from following two principles: -
- a) No one should be a judge in his own cause
- b) Justice should not only be done but manifestly and undoubtedly be seen to be done.
- Thus a judge should not only be **impartial** but should be in a position to apply his mind **objectively** to the dispute before him.

## *A.K.Kraipak Vs. UOI*

- In this case, Naquishband, who was the acting Chief Conservator of Forests, was a member of the Selection Board and was also a candidate for selection to All India cadre of the Forest Service. Though he did not take part in the deliberations of the Board when his name was considered and approved, the SC held that **'there was a real likelihood of bias for the mere presence of the candidate on the Selection Board may adversely influence the judgement of the other members'**

The rule against bias thus has two main aspects:

- 1. The administrator exercising adjudicatory powers must not have any **personal or proprietary interest** in the outcome of the proceedings.
- 2. There must be a **real likelihood of bias**. Real likelihood of bias is a subjective term, which means either **actual bias or a reasonable suspicion of bias**. It is difficult to prove the state of mind of a person. Therefore, what the courts see is whether there is **reasonable ground for believing** that the deciding factor was likely to have been biased.
- Bias can take many forms: -
- Personal Bias, Subject-matter bias, Departmental bias, Pre-conceived notion bias

# SC Observations

- 1. The **dividing line between an administrative power and quasi-judicial power is quite thin** and is being gradually obliterated. Whether a power is Administrative or quasi-judicial, one has to look into
  - a) the **nature of power** conferred
  - b) the **person** on whom it is conferred
  - c) the **framework of the law** conferring that power
  - d) the **manner** in which that power is expected to be exercised .
- 2. The principles of natural justice also apply to administrative proceedings,

# SC Observations

- 3. The concept of natural justice is to prevent miscarriage of justice and it entails -
- (i) No one shall be a judge of his own cause.
- (ii) No decision shall be given against a party without affording him a reasonable hearing.
- (iii) The quasi-judicial enquiries should be held in good faith and not arbitrarily or unreasonably.

# AUDI ALTERAM PARTEM OR RULE OF FAIR

## HEARING

- The principle of *audialterampartem* is the basic concept of principle of natural justice. The expression *audialterampartem* implies that a person must be given opportunity to defend himself. This principle is **sine qua non** of every civilized society.

# AUDI ALTERAM PARTEM OR RULE OF FAIR HEARING

- This rule covers various stages through which administrative adjudication passes starting from notice to final determination. Right to fair hearing thus includes:-
  - 1. Right to **notice**
  - 2. Right to **present case and evidence**
  - 3. Right to **rebut adverse evidence**
    - (i) Right to **cross examination**
    - (ii) Right to **legal representation**
  - 4. **Disclosure of evidence** to party
  - 5. **Report of enquiry** to be shown to the other party
  - 6. **Reasoned decisions** or speaking orders



# Conclusion

- The nature of the rules of natural justice is flexible. They tend to change with the exigencies of time, and circumstances of each case. Due to their flexible nature, they may seem to be vague or uncertain, but they have been very well adopted by the Indian legal system. Their aim is to prevent arbitrariness, as well as miscarriage of justice.
- Of course, they are not enforceable as fundamental rights, but nevertheless, they ensure a strong safeguard against any arbitrary action that may adversely affect the rights of individuals. These have been laid down by the courts as being the minimum protection to rights of individuals against the arbitrary procedure that may be adopted by a judicial or quasi-judicial authority, while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

- In the past, there were only two rules forming the rules of natural justice; with the course of time, many more subsidiary rules came up to be added to them. These principles are now well settled and can be summarised as under:
- (i) That every person whose civil rights are affected, must have a reasonable notice of the case he has to meet
- (ii) That he must have reasonable opportunity of being heard in his defense
- (iii) That the hearing must be by an impartial tribunal
- (iv) That the authority must act in good faith and not arbitrarily
- (v) The order should be a speaking order

