Volume III ISSUE IV **ISSN NO: 2582-6034**

LEGALFOXES LAW TIMES

ANALYZING PRINCIPLES OF NATURAL JUSTICE VIS-À-VIS NATURAL LAW THEORY

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Introduction:

There are two facets of law: one is an abstract body of rules, and the other is a social process of negotiating the disagreeing interest of men. In short, the law can be summarized as which are seen to function as obligatory rules in a community recognized by that community and backed by them. The state eventually sets up the mature law system, but we cannot say a priori that without the state no, the law can exist.[1]

The knowledge is that, in certainty, law comprises rules following reason and natural law theories play an important role in arriving at that rules from traditional times to the existing day. These principles of natural law are logically connected with humans, which helps us ascertain principles of Justice and morality. These laws are different from the state-made laws or common human law, i.e. (Positive law), which can have territorial significance and can only be found by reference to prominent lawful foundations like the constitution, statutes, codes, and all other written authorities.[2]

From ancient times, the natural law theory has been essential in upholding peace and justice in politics, law, religion, and ethics. From a view of jurisprudence, Natural law could be understood as those principles that have been created from more or less the highest source other than any government or any authority in the world. It was considered they are the product of reason.

The principles of Natural justice are one such product of reason; as rightly said by Lord Denning, "Justice is what the right thinking members of the community believe to be fair."[3] Natural law and natural justice connect through the beginning of natural law. The ideas of natural justice, as

[1] "G.W. Paton, A textbook on Jurisprudence (first published 1946, Oxford University Press 1972) 97".

[2] "P J Fitzgerald, Salmond on Jurisprudence (first published 1902, Universal Law Publishing Co. Pvt. Ltd. 2004) 15".

[3] "Tapash Gan Choudhury, Penumbra of Natural Justice (first published 1997, Eastern Law House Pvt. Ltd. 2016) 2".

described today, were originally regarded a component of Natural Law and referred to as "right and justice" or "one of the fundamental principles of justice" or "natural fairness."[4]

Understanding Natural Law Theory:

The story of natural law initiated with the jurists of ancient Greece, who conventionally viewed the law as being thoroughly associated with Justice and ethics. According to Aristotle, justice means either what is lawful or fair and equal. Stoics popularized the maxim 'Live according to nature. This did not mean primitive simplicity. A thing was in accord with nature when this own leading principle governed it, and concerning humans, that was the reason.

The cosmos itself was governed by a reason similar to that which abided in man; hence, he who constructed his life on a rule of reason could face the world with confidence.

Romans adopted the theory of natural law and regarded every positive law system can be divided into two parts; one consists of rules that are changeable as they depend on the wills of humans, and others are universally accepted and devoid of change as they depend on reason. The Romans did not restrict their study to theoretical considerations but gave it an actual shape by applying it to their rigid legal system. They coined it *jus naturale,* and it was the essential foundation of every system of law, for any orthodox and customary law might be subject to variation. Still, rules on nature are outside the ambit of human beings.[5]

Praetor Perigrinus and Praetor Urbanus were Roman Magistrates whose work resulted in the methodical development of natural law on a scientific foundation, which eventually steered to the Code of Justinian.

According to Dias and Hughes, "Natural law is a law that derives its legitimacy from its innate values, differentiated by its existing and organic properties, from the law promulgated in advance by the state or its agencies."

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[4] Legal Desire, 'How Just is Natural Justice: Comparative analysis between US and Uk' (LegalDesire.com, June 2017)< https://legaldesire.com/how-just-is-natural-justice-comparative-analysis-between-us-and-uk/#_ftn2> accessed 3 October 2022

[5] "G.W. Paton, A textbook on Jurisprudence (first published 1946, Oxford University Press 1972) 101".

Blackstone, in his observation, "The natural law being co-existent with mankind and emanating from god himself, is superior to all other laws. It is binding over all the countries at all times, and no man-made law will be valid if it is contrary to the law of nature."[6]

Natural law refers to natural laws based on moral standards that are universally applicable in all locations and periods.

Natural Law Theory in relation to legal developments:

Writers have interpreted the concept of natural law differently at different times, and some contend that they hold insights that guide inherent legal development and administration. In contrast, others deduct it as a search for perfect law. The supporters of natural law theory believe that a fundamental element of the law prevents a total separation of law as it is from the law as it ought to be.

In olden civilizations, natural law was said to have a godly foundation. Throughout the medieval age, it was mainly inclined towards a religious basis, but in contemporary eras it had a solid radical and legal tie-up. In modern Legal systems, the natural law theory has found expression in the form of socio-economic justice. It is well known that the entire philosophy of individual rights is a result of the globally appreciated importance and evolution of the Principles of Natural Justice. Only natural law theory served as a facilitator in quickening social change and establishing those principles in the natural process of the legal system all over the world.

Natural justice principles, doctrine against prejudice, judicial review, reasoned judgment, and many more administrative law principles are based on natural law principles. The constitutional protection against self-incrimination and double jeopardy is also embodied in principles of natural law.

In recent days natural law principles are more appreciated in achieving procedural justice. Principles of Natural justice are one step closer to access to justice, and it is a well-established

[6] "Riggan R, , The blackstone commentaries (John F Blair 2007) 39".

fact that jurisprudence to access to justice is yet an additional aspect of incorporation of natural law philosophy into the judicial administration.[7]

Need for Principles of Natural Justice:

Human security and development are sought to be protected through laws and their enforcement. All rules are moral on the substantive side, but to be effective, they have to be righteous on the procedural side too. A law never encourages confidence unless the practice for its administration also appears to be fair. Justice gives the impression to be obviously done when the procedure for its administrative appeals to the natural fairness in men, and that is where Principles of natural justice step in. Whenever legal justice nose-dives to realize the element of justice, natural justice is called in assistance of legal justice. [8]

Natural Justice gives the broad idea of right and wrong which in the current scenario is equated with fairness and with the help of natural justice the courts were able to arrive at a consensus and form an administrative code or administrative procedure that uploads the quality of fairness in it. [9] It is one of the prominent safety nets for protecting arbitrary actions of authority with power in the administration.

Natural Justice is the vibrant part of the rule of law. Natural justice becomes legal justice when it is commandingly represented by law. Natural justice is regarded as a fundamental aspect of secularized law in which a divine touch enlivens law, administration, and decision in order to make fairness a living principle.[10]

[7] "Dr. N. V. Paranjape, Studies in Jurisprudence and Legal theory (first published 1994, Central Law Agency 2016) 176".

[8] "Tapash Gan Choudhury, Penumbra of Natural Justice(first published 1997, Eastern Law House Pvt. Ltd. 2016) 11".

[9] "M P Jain S N Jain, Principles of Administrative Law (Lexis Nexis 7th Edition 2013) 333".

[10] "Tapash Gan Choudhury, Penumbra of Natural Justice(first published 1997, Eastern Law House Pvt. Ltd. 2016) 5".

Understanding the meaning of principles of Natural justice:

According to Justice Arjit Pasayat, while delivering the judgment in "***Nagarjuna Construction Company v Government of Andhra Pradesh"***[11], "Principles of natural justice are those rules which the courts have laid down as being the least security of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, Quasi-judicial and administrative authority while delivering an order disturbing those rights. These rules are proposed to prevent such authorities from doing injustice."

The logic behind adhering to these principles is to avoid injustices; thus, observance is a feasible necessity of fairness in action.[12]

Chinnapa Reddy J observed in "***Swadeshi Cotton Mills v Union of India"***,[13] "Natural justice, like ultra vires and public policy, is a formidable weapon, which can be wielded to secure justice to the citizen. Certain fundamental liberties like civil and political rights may be protected, and vested interests are also protected."

Principles of Natural Justice and its Usage in the Contemporary world:

By itself, the ability to participate in administrative decision-making under natural justice can be defended as a democratic value. The two parts of natural justice are as follows. One is hearing, or the audi alteram partem doctrine, which literally translates as "let the other side be heard too." The second is the bias doctrine, sometimes known as "nemo debet esse judex in propria causa sua." Or "no one shall be a judge of his own cause".

[11] "Nagarjuna Construction Company v Government of Andhra Pradesh [2008] 16 SCC 276."

[12] "Government of India v. Maim A. Lobo [1991] 190 ITR 101."

[13] "Swadeshi Cotton Mills v Union of India [1981]1 SCC 664."

In the case of "***Triambak Pati Tripathi V B.H.S & I. Education"***[14], the High Court of Allahabad enunciated the natural justice Principles in three-fold points "(i) the person whose rights are to be affected must be given the notice of the case or the charges which he is to meet; (ii) he must be allowed to make representation, explain the allegations made against him, and have his say in the matter; and (iii) the authority conducting the proceedings must not be biased and should act in good faith."

On practicality, all these come down to the two: that there should be a hearing; and that hearing should be done by the courts or tribunals consisting of persons without bias towards the conflicting parties. When a person suffers a civil consequence or prejudice as a result of any administrative activity, the natural justice principles that are prone to be affected, including fair and equitable treatment, are attracted.[15]

The doctrine of Audi Alteram Partem (Fair Hearing):

A fundamental tenet of English common law is that an individual ought not to be deprived of his intrinsic right or compelled to undergo any inconvenience or hardship without first being warned of the reason for such a step and provided with the chance to defend that it should not be undertaken. The traditional explanation of Natural Justice by Sir Edward Coke calls for "to vacate, examine, and adjudicate.

"In the Landmark case of "***Cooper v Wandsworth Board of Works"***[16], "this Principle was given prime importance, and it was observed that even God himself did not pass sentence upon Adam before he was called upon to make his defense."

Courts adopted the position several centuries ago that a party was not to pay in person or a pocketbook without the chance to be heard and that entities entrusted with legal authority could not eventually wield it without first hearing the person who was going to suffer. In "***Labouchere***

[14] "Triambak Pati Tripathi V B.H.S & I. Education AIR [1973] All 1."

[15] Ashoka smokeless Coal India (P) Ltd. V. Union of India, [2007] 2 SCC 640.

[16] Cooper v Wandsworth Board of Works 143 ER 414; [1863] 14 CBNS 180.

v Earl of Wharncliffe" [17] It was decided that it is a well-established legal principle that no individual should be condemned to suffer the consequences of the alleged misbehavior without being heard and without having the chance to present his case.

Duty to hear as a fundamental principle of natural justice in case of alleged misconduct made its appearance in 1615 in ***Bagg's*** case and again in the 1723 case "***R. v Chancellor of Cambridge University"***. Though it cannot be adduced that it was the first instance of following this principle as it was already followed earlier, too, it is correct to say that only in these cases did the age-old principles attain their legal form from its nascent tenets of natural law theory. As observed by Fortescue, J, in this case, "the laws of god and man both give the party an opportunity to make his defense, if he has any."

The position in India in the arena of the right to a hearing has remained growing exponentially in the mid-20th century when the Supreme Court in "***Board of High School V Ghanshyam Das"***[18] acknowledged the character of the injured right and the authority given as regulating the issue of having heard to the person concerned. Later in "***O.P. Gupta v Union of India"***,[19] the Apex Court expressed the endorsement of Lord Ried's view in Ridge V Bladwin, stating: It (Right to hearing) ought to be useful in deciding issues concerning natural justice.

Audi alteram partem requires two things: notice of what action is intended, the reason it is done, and a real chance to argue why the action is unnecessary for. Natural justice emphasizes the need of providing enough prior notification to the individual who will be hit hard by the executive action so that he can make a submission in his favor and present at the trial.

After 1970, the courts expanded the right of the individual impacted by the administrative process by implementing a strategy motivated by the shift in stance in British of erasing the difference concerning quasi-judicial and executive action. And this new trend of liberal thinking was observed by the Apex Court in "***A.K. Kraipak v Union of India"[20].*** Before Kraipak,

[17] Labouchere v Earl of Wharncliffe [1879] 13 Ch D 346.

[18] Board of High School V Ghanshyam Das AIR [1962] SC 1110.

[19] O.P. Gupta v Union of India AIR [1987] SC 2257.

[20] A.K. Kraipak v Union of India AIR [1970] SC 150.

questions regarding distinguishing these two actions used to be a significant element in getting right to hear. The Supreme Court held in this case that Principles of natural justice might be pragmatic in administrative actions too.

Later the principle of the right to a fair hearing was strengthened by one of the landmark cases decided by the Supreme Court, "***Maneka Gandhi V Union of India"***.[21] Justice Bhagwati asserted in his judgment "that natural justice is a tremendous humanizing principle intended to invest law with fairness and to secure justice". This case is frequently cited as sustenance for the argument that a post-decisional hearing cures an order issued without a pre-decisional hearing.

Hearing is recognized now not only as an aspect of the adversarial judicial process but also as an essential aspect of transparency in governance. It is directly provided for in various statutes. Access to documents or information is a critical requisite in any open society. It also means the right to information, which is implicit in the right to a fair hearing.[22]

Nemo judex in causa sua - Rule against Bias:

The word bias in English vernacular includes the characteristics and greater scope of the term malice, which in an ordinary way indicates spite or ill-will. The vital necessity of natural justice is that a judge should be neutral, impartial, and free from bias. According to Socrates, "hearing courteously, answering wisely, considering soberly, and deciding impartially" are the four essential qualities that belong to a judge. His reasonable equilibrium must always be stable and veiled. He should not let his own prejudices influence his decision-making. The goal isn't only that the scales are balanced; it's also that they don't appear to be tilted..[23] The rule of nemo judex in causa is stated in the ***Earl of Derby case***[24] i.e., 'no man shall be a judge of his own cause.' The impartiality of justice lays the foundation of the law of bias.

[21] Maneka Gandhi V Union of India AIR [1978] SC 597.

[22] "S P Sathe, Administrative Law, (1st reprint 2006 7th edition Lexis Nexis) 232".

[23] "Tapash Gan Choudhury, Penumbra of Natural Justice(first published 1997, Eastern Law House Pvt. Ltd. 2016) 311-312".

[24] "Earl of Derby case [1605]1 Co Rep 114."

The idea that bias disqualifies a person from serving as a judge stems from the following two assertions. "(i) No man should be a judge in his own cause (ii) Justice must not only be done nevertheless also seen to be done." In the words of Indian Justice Mahmood, it is an unshaken doctrine of human jurisprudence that whenever there are quarrels between two parties that have to be decided, it cannot be determined by the person who is a party to them or in any way personally related to them.

Under this concept, if an individual is unable to make an unprejudiced judgment based on information on hand for whatever reason, he is said to be biased. In a circumstance in which he has a vested interest, a person cannot make an unbiased conclusion. Bias is usually of five kinds:

- Personal Bias
- Pecuniary Bias
- Subject Matter Bias
- Departmental Bias/ Institutional Bias
- Preconceived notion Bias.[25]

Personal Bias:

Personal Bias is the result of the particular relationship between the Judge and the parties, which inclines him unfavorably and gives one-sided decisions. The judgment may be made by a pal or relative or may also have a professional relationship or even a hostile relationship and may have animosity against him. These circumstances establish prejudice in support of or disadvantage to the party in question.

"Mineral Development Limited v State of Bihar"[26] is a classic example of prejudice in which the revenue minister revoked the petitioner's leasing license for the land due to the current political conflict between both parties. The court determined that there was an obvious case of personal prejudice on the applicant, and that the minister should not have been involved in the

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[25] "I.P. Massey, Administrative law (first published 1980, Eastern Book Company 7th edition 2007) 203".

[26] "Mineral Development Limited V State of Bihar AIR [1960] SC 468."

revocation of the license. The test of personal bias is not whether or whether there existed a genuine prejudice against the applicant. In "***Reg. v Liverpool JJ., ex p. Topping (DC)",***[27] the courts in England have developed binary assessments to decide personal Bias (i) real likelihood of Bias and (ii) reasonable suspicion of bias. Lord Denning in "***Metropolitan Properties Ltd. V Lannon"***[28] laid down that ascertaining the real likelihood of bias in the facts of the case has to be done in reference to the right-minded persons.

As a result, the true test of the genuine likelihood of bias is if a sane individual with considerable evidence would have felt bias was possible and if the authority in question was certainly disposed to rule in a specific way.

In "***Jiwan K. Lohia v Durga Dutt Lohia",***[29] The Supreme Court, while affirming the HC's verdict to remove the arbitrator appointed by the court, observed regarding bias, the criteria to be adopted is not if the bias has really impacted the judgment, but whether a litigant may fairly suspect that a bias due to him may have acted to his disadvantage in the ultimate ruling.

There is no consistent method for determining the true possibility of prejudice, and every matter must be decided based on its situation and facts.

Pecuniary Bias:

A monetary interest, no matter how little or negligible bars an individual from functioning as a jury in any case. One of the Landmark cases in this matter is an age-old English case, "***Dimes v Grand Junction Canal"***,[30] where the House of Lords quashed the order given by Lord Chancellor in the case where he gave relief to the company where he was the shareholder of the company.

[27] Reg. v Liverpool JJ., ex p. Topping (DC) [1983]1 WLR 122.

[28] "Metropolitan Properties Ltd. V Lannon [1968] 3 All ER 304."

[29] "Jiwan K. Lohia v Durga Dutt Lohia [1992] 1 SCC 56."

[30] "Dimes v Grand Junction Canal [1852] 3 HLC 759."

An important case to be noted was that of "***R v Hendon Rural District Council"***[31], The English court overturned planning commission's ruling as its official was a realtor representing the petitioner who the approval had been given. In India also, the same judicial trend is followed. In "***Jeejeebhoy v Assistant Collector, Thana"***[32], CJ Gajendragadkar of the Supreme Court recused himself from the bench and reconstituted it as it was the case regarding the land dispute of the co-operative society in which he was a member.

A monetary or commercial interest in the matter in dispute automatically bars the judge, and it is not necessary to demonstrate the existence of a genuine possibility of bias in the matter.[33]

Subject Matter bias:

It is a bias when a person deciding the case shows prejudice on the subject matter in dispute. To prove the bias of this nature, it has to be exposed that the adjudicator is opinionated on the particular subject matter and is so rigid that he has made fixed and unchangeable decisions that are not established on reason or understanding resulting in a deficiency of fair hearing.

In "***Gullapalli Nageswara Rao v APSRTC"***[34] the SC declared that the directive of the AP government in nationalizing road transport was unsustainable in law as the secretary of that department who was in the panel that heard the matter was having concern in the issue.

The situation can also happen to be a case where the adjudicator, in lieu of voicing his general feelings so passionately that make him incapable of dealing with the particular case in with the spirit of the judiciary so the court may disqualify him in such case.[35]

Departmental Bias/ Institutional Bias:

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[31] "R v Hendon Rural Distt. Council ex p. Chorley [1933] 2 KB 696."

[32] "Jeejeebhoy v Assistant Collector, Thana AIR [1965] SC 1096."

[33] "I.P. Massey, Administrative law (first published 1980, Eastern Book Company 7th edition 2007) 211".

[34] "Gullapalli Nageswara Rao v APSRTC AIR [1959] SC 308."

[35] "Tapash Gan Choudhury, Penumbra of Natural Justice(first published 1997, Eastern Law House Pvt. Ltd. 2016) 354".

The delinquency of departmental bias in many adjudicatory processes happens to be that one party adjudicating is customarily the management itself. Therefore when an administrator acts as a judge in a case between a private party and the department on the other side, it creates a conflict of interest for the adjudicator, and he might have an official bias toward the section in which the person works.

The case of "***Gullapalli Nageswara Rao v APSRTC"*** is also an apt case of departmental bias as the secretary of the transportation department who was the person started the arrangement of nationalizing road transport and was also responsible for the execution of the same. The Apex Court overturned the ruling because the secretary appeared prejudiced and impartiality may not be guaranteed.

In "***Krishna Bus service v State of Haryana"***,[36] the Apex Court overturned the notice given by an administration granting the authority of DSP to the general manager of Haryana roadways to check automobiles citing the reason that there exists institutional bias.

Question regarding bias is always the question of fact, and the court must be watchful while smearing the principles of bias as it rests on the facts of each case.[37]

Preconceived Notion bias:

Bias caused by previous preconceptions is a highly difficult topic. No person functioning as an adjudicator can be asked to decide on an empty piece of paper, but preexisting assumptions would undermine a proper hearing. The issue of preconceived thought bias may have to be dealt with as a particular disadvantage of the administration process.

This point came in "***Kondala Rao v APSRTC"***[38]. The court rejected to vacate the minister's decision to nationalize road transport after hearing the arguments of contractors on the grounds

[36] "Krishna Bus service v State of Haryana [1985] 3 SCC 711."

[37] "Cantonment Executive officer v Vijay D. ani, [2008] 12 SCC 230."

[38] "Kondala Rao v APSRTC AIR [1961] SC 82."

that the exact minister had chaired over a session only a few days earlier in which nationalization was urged. The court, however, dismissed the claim, ruling that it was purely a policy choice.

The fact is that it's pointless to blame a government servant of prejudice just as he is tilted in favor of few public policy. According to Lord Devlin, "the judge who is confident that he has no prejudices at all is almost certain to be a bad judge."

Requirement of Reasoned Decision:

As it is the famous saying, Reason is the mistress and queen of all things; nothing is permitted which is contrary to reason. The linkages between the information on which certain conclusions are founded and the real facts are the basis for this. Appropriate actions prescribe recording of adequate and relevant reason when order is likely to affect the inherent right of any person. In "***Satish Chandra Khandelwal v Union of India,"***[39] the Delhi HC Full Bench concluded that the duty to explain reasons is one of responsibility and cannot be met by using ambiguous language.

Sir John Donaldson in "***Alexander Machinery Ltd. V Crabtree"***[40] observed "that failure to give reasons amounts to a denial of justice."

The main factors that determine the reasons for all major points should be provided, and such reasons must be adequate for the litigants to determine whether the adjudicator committed any legal errors.[41]

Conclusion:

Principles of natural Justice is one of the paramount principles that had been developed owing to the Natural law theory and its acceptance and usage by countries all over the world irrespective

[39] "Satish Chandra Khandelwal v Union of India AIR [1983] Del 1 [31]".

[40] "Alexander Machinery Ltd. V Crabtree [1974] ICR 120."

[41] "Ashworth Hospital Authority v Mental Health Review Tribunal for west Midlands and North West Regions, [2002]5 CCLR 36".

of their differences and even progressing further and transforming those principles into the positive laws of one's own country is the appreciable effect. The principles of Natural justice emerged as one of the essential components of public policy, and the doctrine of public policy cannot be set in opposition to the law (as was Jus natural), for it is part and parcel of the common law itself – it is respectable and respected.