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Fair Trial Concerning Natural Justice

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Fair Trial is a necessary fragment that falls under Article 21 of the Indian Constitution which is wholly inclined to the concept of innocence. The research paper outlines the concept of Fair Trial acquainted with certain principles of Natural Justice. The sole objective of a fair trial is to widen the scope of fairness as far as court trials are concerned. Moreover, in this paper, you will learn insights into various principles of Natural Justice which stand with the notion of Fair Trial. The topics of the report comprise the meaning of trial, the venue of the trial, the essence of Natural Justice, and the application of fairness through the principles such as the right to cross-examination, hearing another side, disclosure of the material evidence, pre-decisional and post-decisional hearings, the concept of bias with its categorization. Therefore, these principles aim to prevent the sight of arbitrariness to establish the foundation of equality and fairness. It is grounded in the Constitution of India that the validity of Natural Justice safeguards the fundamental rights of the citizens of India. Also, it prevails over the concept of fairness concerning the various administrative authorities. Through this paper, we would be able to study certain legal maxims such as Nemo debet esse iudex in propria causa, and Audi alteram partem. The notion of the maxim “Audi Alteram Partem” originated from the landmark case of Maneka Gandhi v Union of India which means that both sides must be taken into the consideration by the authority. None of the sides must remain unheard as we saw in Maneka Gandhi’s case concerning her passport. Likewise, we would also learn about the right to free legal aid enshrined in the Indian constitution.

Keywords: *fair trial, fairness, natural justice, arbitrariness, equality, fundamental rights.*

INTRODUCTION

'Lex uno ore omnes alloquitur' is a legal maxim expressing that everyone is equal in the vision of law. No type of biasness is allowed here. Pure rationality and transparency are required to fulfill the above maxim. Article 14¹ of our Indian Constitution also enlists the same concept which, says the Right to Equality, which states that *'Law is supreme'* (no one is above the law). So, the trials are the indispensable fragment of any proceedings. Therefore, conducting fair trials in a court satisfies the concept of Equality. Fair trial is necessary as it ensures pure equality and prevents all sorts of biases. The judge must remain neutral concerning both of the counsels, whether it is a defense or the prosecution. Impartiality of judges matters highly in the concept of a fair trial because in case judges or any other judicial body say tribunals are found biased or inclined towards a single party, it will account for the infringement of the concept of fair trial and the principle of *Natural Justice*. The principles of Natural Justice are not statutory; they are not codified in any law or act. The third rules apply to the *rule of transparency*. In other words, the essence is that the prime objective of providing justice administratively or through any judicial body, there should be the implementation of decent fairness without any mala fide. So that justice can avail, we can also say that the Judicial review concept is also slightly matchable with the concept of fairness. According to this concept, if the court realizes whether its judgment is wrongly interpreted in some cases then it contains the power to amend that respective judgment and will try to release alternate fair and reasonable decisions that will uphold justice. A similar procedure is also the same for Substantial (Legislature) and procedural (Executive) Laws. Fair trial deals with the Human right of the accused person, under which the judge has to assume that the accused is innocent until proven guilty in a court of law.

TRIAL

The trial is aimed to derive Justice. These trials are required to operate with a legitimate code of conduct and a proper set of procedures with specific steps to make this mechanism free from every angle of biasness. This would ultimately lead to the expansion of fairness and equality.

¹ Constitution of India 1950, art 14

No absolute definition of this term is mentioned in the Code of Criminal Procedure,1973. This is an act of examination conducted by the judicial bodies concerning any particular offense. Section 225² of the Code of Criminal Procedure of 1973 enlists that the Prosecution will be conducted by the Public Prosecutor before the court of session in every trial. Whereas Section 304³ of the Code of Criminal Procedure,1973 says that the state will grant free Legal consultants in case if court realizes that the accused is not financially sound to hire their legal representative. Our Indian Constitution under Article 22(1)⁴ also says that the accused has the right to appoint the legal practitioner of his choice. In case of any financial incapacity, the state would be held responsible for providing them with a legal expert. Landmark cases of *Maneka Gandhi v Union of India*⁵ & *Hussainara Khatoon v Home Secretary, State of Bihar*⁶ are well linked with the same concept. The State will manage all the expenses of the free legal aid to the needy accused.

VENUE OF THE TRIAL

The trial venue embeds good importance in establishing a fair proceeding. The court has to remain competitive enough while dealing with the cases. It is defined under section 177⁷ of the Code of Criminal Procedure, 1973 that the original venue for the operation of the inquiry would remain the Court within whose jurisdiction (at the local grounds) the offense was committed. Section 178⁸ under the Code of Criminal Procedure, 1973 talks about the place of the inquiry or trial. If we try to approach section 178⁹, it is mentioned that the Jurisdiction may vary with the location in which the offense was committed. Section 181¹⁰ under the Code of the Criminal Procedure,1973 states that the place of a trial differs with the nature and category of an offense committed by an accused. For instance, kidnapping can only be tried by the medium of that court which has the exact location in which the offense occurred.

² Code of Criminal Procedure 1973, s 225

³ Code of Criminal Procedure 1973, s 304

⁴ Constitution of India 1950, art 22(1)

⁵ *Maneka Gandhi v Union of India* AIR (1978) SC 597

⁶ *Hussainara Khatoon v Home Secretary, State of Bihar* (1979) AIR 1369

⁷ Code of Criminal Procedure 1973, s 177

⁸ Code of Criminal Procedure 1973, s 178

⁹ *Ibid*

¹⁰ Code of Criminal Procedure 1973, s 181

CONCEPT OF FAIR TRIAL

Fair trial is not recognized as any of our rights, but several legislations are based on it. Article 6¹¹ of the European Convention on Human rights deals with the Right to a fair trial. Under this right, a fair hearing within a reasonable time frame must take place by the impartial and independent body of the Judiciary. Article 5¹² of the African charter of Human Rights safeguards the Dignity of Humans and prevents exploitation. Article 6¹³ of the African charter of Human Rights talks about protecting a person's liberty and security. Eventually, the right to a fair trial comes under Article 7¹⁴ of the same. It comprises a certain list of Rights that are congruent to the principles of *Natural Justice*, such as the right to Cross Examination, the right to defense, the right to be tried, the right to presume the accused as innocent until they prove to be guilty, etc. Likewise, the International Convention on Civil and Political Rights (ICCPR), in its article 14¹⁵, has a background in Fair Trials. Article 10¹⁶ of the UDHR (Universal Declaration of Human Rights) also guarantees the Right to a Fair Trial. This reveals that now it is a well-established rule of every authoritative body that their actions should be anti-arbitrary. As a result, the Judicial, Administrative, and quasi-judicial bodies are used to emphasize the Concept of Fairness or Fair trial. The supreme court held that the notion of fairness would be given the ultimate priority until any contrary provision of any statute challenges it, in *asst. Excise Commissioner v Issac Peter case*¹⁷, it was held that the concept of fairness would no longer be applicable in the case if it is altering the terms of the contract which is found to be statutory. There are a couple of essential cases, namely *Maneka Gandhi v Union of India*¹⁸ & *Ridge v Baldwin*¹⁹, which reflects that the doctrine of Fairness and Natural justice are friends with each other. This proves that the Concept of fairness involves the practical application of the principles

¹¹ European Convention on Human Rights, art 6

¹² African Charter of Human Rights 1981, art 5

¹³ African Charter of Human Rights 1981, art 6

¹⁴ African Charter of Human Rights 1981, art 7

¹⁵ International Convention on Civil and Political Rights 1966, art 14

¹⁶ Universal Declaration of Human Rights 1948, art 10

¹⁷ *Excise Commissioner v Issac Peter case* (1994) 4 SCC 104

¹⁸ *Maneka Gandhi v Union of India* AIR (1978) SC 597

¹⁹ *Ridge v Baldwin* (1964) AC 40

of Natural Justice. The doctrine of fairness requires the thorough observation of the principles of Natural Justice.

CONCEPT OF NATURAL JUSTICE

Natural Justice is a concept that belongs to the philosophy of the common law system. It is the representation of higher procedural principles that the different judge frame. All the administrative bodies are required to follow these guidelines to avoid decisions that adversely affect the rights of a private individual. They are just the basic principles that are not codified in any statutes. They generally act as a guiding factor in the Law of Administration. Natural Justice is not defined under the strait jacket but these are just ethics to promote justice. In *Union of India v P.K. Roy*²⁰, the supreme court held that the implementation of these principles should not be applied rigidly like a straitjacket. Their execution can differ with the nature of jurisprudence conferred on the administrative authority, the policy, and the scheme of that respective statute. In *Russel v Duke of Norfolk*²¹, Tucker LJ observed that the Universal application of natural justice principles could not be made to every domestic tribunal. The requirements of Natural Justice will rely on the sort of inquiry, subject matter, and set of rules under which the tribunal is governed. *Audi Alteram Partum* (Both sides should be heard fairly) and *Nemo debet esse iudex in propria causa* (no one should be made a judge in his cause) are a couple of leading principles that state the theme of Natural Justice. Popularly, it is called the *Rule against Bias*, where Authority should remain surrounded by impartial and independent members. The principles of Natural Justice lay supreme importance whenever there is any dispute with relation to the administrative authorities or any other parties due to inappropriate action. Otherwise, the Rules of Natural Justice serve as a hedge for them as far as discrimination of individual rights is concerned. These principles prevent the authorities from exercising any injustice. Moreover, they are also seen to be approved by article 21²² of the Indian constitution which states that “No

²⁰ *Union of India v P.K. Roy* (1968) AIR 850

²¹ *Russel v Duke of Norfolk* [1949] 1 All ER 109

²² Constitution of India 1950, art 21

Person shall be deprived of his/her Life or Personal Liberty except according to the procedure established by Law”²³.

CONCEPT OF BIAS

The initial principle of Natural Justice is the “*Rule against Bias*”. Bias can be defined as the sign of partiality or preferences with no grounds that acting out of self-interest. The judges have to undertake their judgment with proper neutrality and impartialness. They need to act very wisely as per the Law so that the concerned parties can place themselves to the conclusion that they have gone through a Fair trial. Therefore, the first requirement of Natural Justice is that the judge remains free from any bias. It also says that Justice should not seem to be only done but also shined to prevail undoubtedly and manifestly. It is a well-settled law usually applied to various administrative proceedings and quasi-judicial bodies. It is a non-codified principle of Natural Justice. The Maxim ‘*Nemo debet esse judex in propria causa*’ also lies under the concept of bias. It means that no man shall be a judge of his cause or no man can act at the same time. Any interest, motive, or influence which is impairing the Objectiveness of the court will invalidate a judicial or quasi-judicial determination, he must be in a position to act judicially. A judge cannot be allowed to be inclined to any specific side. They must not be authorized to add their prejudice as an ingredient during Decision making. The Decision should not be mixed with the personal feelings of the judge. It should be based on proper genuine evidence and honest testimonies. In case the judge is found to be partial concerning any particular side, it would surely reflect the violation of the principles of Natural Justice. Therefore, remaining free from bias is the principle's real meaning. Four kinds of bias are as follows (i) Pecuniary Bias, is a financial interest, which in turn disqualifies a person from adjudicating. (ii) Personal Bias, under this, the judge is revealed to be a relative, friend, or partner of any business firm. He can have some personal relations, Grievances, and professional rivalry with any parties. So, here the chance of a judge getting prejudiced towards one emerges easily. (iii) Official Bias is a bias regarding a subject matter. This is usually formed when a judge initiates to have his general interest in some subject matter. (iv) Judicial obstinacy, this fragment has derived from the very popular case of

²³ *Ibid*

State of W.B. v Shivananda Pathak²⁴, under which the supreme court discovered the new concept of *Judicial obstinacy*. This means that if any judgment of a judge got aside by the superior court, the judge has to respect that judgment released by the superior court.²⁵ The judge cannot override the judgment released by the superior court. The judgment of the superior court will be of binding nature not only to the aggrieved parties but also to the judge himself, whose decision was challenged previously.

HEARING THE OTHER SIDE

Audi Alteram Partem is a maxim that denotes that each side (Prosecution and Defense) must be heard rationally. No side will remain unheard. This concept originated from the Maneka Gandhi case and is accounted for under the Principles of Natural Justice. It is regarded as the Fundamental & Foundational Principle of Natural Justice, which is a basic necessity to satisfy the term *Rule of Law*. This norm is implemented by all the courts and tribunals exercising at national and international levels. In *Painter v Liverpool Oil Gas Lights co.*²⁶, it was said that the party must not suffer being unheard by any court or tribunal. They should hold an opportunity of being heard fairly by the Judicial body. Generally, the above maxim comprises its two elements which are (i) Notice and (ii) Hearing.

Notice - Before any plan of action, a copy of the notice must be given to the affected party to gather its explanation in return. This is the *Sin qua non* right of the fair trial. The absence of this right would compute to Void ab Initio to the principles of Natural Justice. In *R. v The University of Cambridge*²⁷, Dr. Bantley was made isolated from his respective degrees on the grounds of misconduct made by him without any reveal of the notice. So, here the decision was framed as null and void by the King's Bench.

Hearing - The second element of *Audi Alteram Partem* is that the person must be awarded an opportunity of being listened to without the commencement of any decision or action against

²⁴ *State of W.B. v Shivananda Pathak* (1998) 5 SCC 513

²⁵ CK Takvani, *Administrative Law* (EBC 2019)

²⁶ *Painter v Liverpool Oil Gas Lights Co.* [1836] 3A & E 433

²⁷ *R. v The University of Cambridge* [1723] 93 E.R 698

him. *State of Orissa v Binapani Dei*²⁸ the case made this point clear. Under this case, the petitioner was mandatorily made discharged from her course of service on behalf of the justification that she had spent 55 years doing this task. No opportunity for representation was awarded to her to defend herself. Therefore, the supreme court held that the decision to pull out the petitioner from her job unnecessarily without hearing her infringes the Principle of Natural Justice.

DISCLOSURE OF THE MATERIAL EVIDENCE

This Principle teaches us that the proper publication of genuine evidence against the respective person must be made by the adjudicating authority of power to provide the person an opportunity against whom the evidence was presented before the court of law. So that they can prepare the defense against those particular pieces of evidence. In the case of *Bishambhar Nath Kohli v State of U.P.*²⁹, the newly discovered proof collected by one party was accepted by the custodian general, who did not reveal the evidence to the opposing party for their counter. The supreme court under this case stated that the guidelines of natural justice are harmed here. Therefore, it turned out to be the case of *Prima Facie*, where the custodian general was held liable. Also, in *Dhakeswari Cotton Mills Ltd. v CIT*³⁰, the order of the appellate tribunal was set aside by the Supreme court, due to the non-disclosure of evidence to the counterparty.

CROSS-EXAMINATION

This term was never derived as a segment of any doctrine under natural justice. In case there is permission through the medium of the statutes; only then the cross-examination could get activated in some cases. It also depends on the particular facts and nature of the circumstances that can become operative on the party against which the proceedings have been displayed before the court of law. There are certain exceptions made to it by the Supreme court through various case laws. One of them is *Kheem Chand v Union of India*³¹ under which the Supreme

²⁸ *State of Orissa v Binapani Dei* AIR (1967) SC 1269

²⁹ *Bishambhar Nath Kohli v State of UP* AIR (1955) SC 65

³⁰ *Dhakeswari Cotton Mills Ltd. v CIT* (1954) 26 ITR 775 SC

³¹ *Kheem Chand v Union of India* (1958) SCR 1080

Court held that the right to cross-examine is extremely vital. While in *Gurbachan Singh v State of Bombay*³², it was held by the Supreme court that the right to cross-examine is not covered under the era of the principles of natural justice. It further justifies its saying by stating that if access has been given to cross-examine the witness, then it will lead to the defeat of the object.

RIGHT OF THE COUNCIL

The right of representation by a legal practitioner is not recognized as an absolute right to fulfill a fair trial under Natural Justice. If the Statutes grant permission to exercise this right, then the same right would be transformed under the essential rights category. But the administrative law permits this right to be represented by appointing the Counsel. There are distinguished provisions of the different statutes. Some of the statutes do believe in the appearance of the lawyers, and some statutes say in its contrast. For instance, Factory Laws do not allow the engagement of Advocates, while the statutes such as the Industrial Disputes Act of 1947; Income Tax Act of 1961 approved the allowance of Barristers in Legal proceedings. Section 30³³ of The Advocates Act, 1961 says that the advocates can hold their practice in all the Courts, including the Supreme Court. There is a mention that in certain cases where the scope is not very much diversified or restricted to the claiming of the compensation behind a minute dispute, there is no need to call upon the legal practitioners under such circumstances. The need to consult a lawyer is felt in those situations where the case between both parties is of a higher legal degree and complexity, where the collection of honest evidence is a little typical task and the concerned offense is very much heinous. In another word, if the parties are not able to gather evidence from themselves, they are not able to deal with the case effectively, or if a person who is against any party or state has a highly intellectual prosecutor in the opposition, the urge to appoint the counsel can be fulfilled. Therefore, we can hire our legal practitioner, who will be responsible for representing our side during the trial in court.

³² *Gurbachan Singh v State of Bombay* (1952) SCR 737

³³ Advocates Act 1961, s 34

JUSTICIABILITY

This Doctrine means that there must be a record of those reasons which, contains some judicial justification. The entry of unjustified, irrelevant, and irrational reasons is not acceptable by the adjudicating authority. If the reasons of irrational nature or even a non-existent group of reasons got considered by the adjudicating authority of power, then their decision would soon be abolished and transferred to the proceeding higher authority.

This Doctrine is essential as far as Fair Trial or Natural Justice is concerned. It acts as a barrier against any arbitrary power or the effect of biases. If the adjudicating authority disobeys the concerned doctrine in producing its judgment by exceeding its limits, then the presence of Fairness will gradually become invisible. Society has to live with the arbitrariness that would eventually degrade the theme of Natural Justice.

English Law - It can be understood through the case of *Padfield v Minister of Agricultural Fisheries and Food*³⁴ in which the Minister had neglected to refer to a complaint led by the committee. To justify his order, he presented a list of the grounds for which he eventually refused to take the complaint into his consideration. Considering the complaints were found under the discretion of the minister itself. Therefore, it was held in the House of Lords that the reasons designed by the Minister on account of which he was perpetually refusing to record the complaint were found to be useless, non-legitimate, and did not hold Judicial Scrutiny. So, it was cleared by the statement that the minister's order was found invalid through legal means. Moreover, the House of Lords also stated that even the discretion of the minister could be challenged in the case if the grounds behind the application of the order are not found to be legally justified and relevant.

Indian Law - The same doctrine also applies in Indian Law through the very popular case of *Hochtief Gammmon v State of Orissa*³⁵. Under this case, a similar model of concept was

³⁴ *Padfield v Minister of Agricultural Fisheries and Food* (1968) AC 997

³⁵ *Hochtief Gammmon v State of Orissa* (1975) 2 SCC 649

maintained by the Supreme Court of India. It was held that if the Executive is over-exercising its power, it has to state some valid reasons before the court of law.

PRE-DECISIONAL AND POST-DECISIONAL HEARING

Pre-decisional hearing is a hearing that takes place before the judicial body's decision. The post-decisional hearing is a hearing that takes place after the commencement of the judgment laid by the courts or tribunals. This doctrine is connected with the concept of judicial review, where the court or the tribunals can again review their decision if it is not fairly served to both the parties or the society.

In the *Swadeshi Cotton Mills v Union of India*³⁶, the order was taken by the government to the management of the company without any representation of being heard or any release of notice for them. Therefore, the court noticed that the principle of *Audi Alteram Partem* is infringed in this case because the defense was not provided with an opportunity to represent themselves in counter of government during the pre-decisional stage. In the *Institute of Chartered Accountants of India*³⁷, a member of the association got suspended due to his misconduct. The Supreme Court, while dealing with a similar case, quashed this order of suspension as no opportunity for a hearing was provided to the member. Hence, the order was not legally valid. In *K.I Shephard v Union of India*³⁸, some workers of the private banks were excluded from their course of employment without any hearing from their side. Therefore, the provision of a post-decision hearing was refused in this case by the Supreme Court. Whereas in the case of *Charan Lal Sahu v Union of India*³⁹ (Bhopal Disaster case), the Supreme Court of India concluded by saying that the proper chance of being heard by the defense through providing prior notice is required and proper application of the pre-decisional hearing must take place.

³⁶ *Swadeshi Cotton Mills v Union of India* AIR (1981) SC 818

³⁷ *Unknown v Chartered Accountants of India* AIR (1987) SC 71

³⁸ *KI Shephard v Union of India* AIR (1988) SC 686

³⁹ *Charan Lal Sahu v Union of India* AIR (1990) SC 1480

CONCLUSION

The number of cases which not only upheld the basic structure of our Indian Constitution but also safeguard the Fundamental rights of the Citizens of India needs to be improved in terms of biasness. We saw multiple cases in which biases still display. Mere destination towards the judgment would not amount to justice to the upcoming generations. The Judiciary urgently needs to take a move against its present conditions. This will abolish the presence of prejudice, and Justice would prevail. Therefore, it is crucially mandatory to comply with the principles of Natural Justice, especially the principle of Free and Fair Trial. In my opinion, today's scenario is not settled with the concept of a fair trial as the judges are already derived by their predetermined facts and somewhere with their closed minds also. So, this made it impossible to reach beyond one's views and consider the facts and circumstances of any particular case. Some of the judges used to conduct the proceedings in their interest, which is none other than their biases.