

Principle of Natural Justice

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Respected Member's

As we know that the basic motive of principle of natural justice is to ensure fairness in social and economic activities of the people and also shields individual liberty against the arbitrary action. But what exactly are these principles?

In this article we can talk about the principles of natural justice and principle for issuing show cause notice.

1) Introduction

The concept of natural justice though not provided in Indian constitution but it is considered as necessary element for the administration of justice. Natural justice is a concept of common law which has its origin in “**jus natural**” which means law of nature. In its layman language natural justice means natural sense of what is right or wrong. ‘Natural’ justice is not justice found in nature; it is a compendium of concepts which must be naturally associated with justice, whether these concepts are incorporated in law or not. Justice is a great civilizing force. It ensures that the rule of law rather than the rules of nature prevail in regulating human conduct. Natural justice has a very wide application in administrative

discretion. Its aims to prevent arbitrariness and injustice towards the citizens with an act of administrative authorities. The concept of natural justice was confined to the judicial proceedings only but with the advent of welfare state the powers of administrative authorities have considerably increased as a result it becomes impossible for law to determine the fair procedure to be followed by each authority while adjudicating any disputes or any quasi-judicial proceedings.

2) Principles Of Natural Justice

Natural justice is concerned with 2 primary rules.

These are:

- Nemo Judex In Causa Sua (rule against bias)
- Audi Alteram Partem (rule of fair hearing)

Nemo Judex In Causa Sua means rule against bias. It is the first principle of natural justice which says no man shall be judge in his own cause or a deciding authority must be impartial and neutral while deciding any case. Thus the principle signify that in a circumstances where a judge or deciding authority is suspected to be bias an partial then he/she shall be disqualify for determining any case before them. It formulate that justice should not only be done but seen to be done.

Audi Alteram Partem It means hear the other side as well. This is the second most fundamental rule of natural justice that says no one should be condemned unheard. In a circumstances where a person against whom any action is sought to be taken and his right or interest is being affected, shall be given an equal opportunity of being heard.

The **Hon'ble supreme court in CCE & Land Customs v Sanawarmal Purohit 1979 (4) ELT j 613 (SC)** held that it is true that a quasi-judicial authority is not required to hold an enquiry into a dispute before him according to the procedure followed in a court. Where a tribunal which has the power to make any enquiry as it thinks fit, decides a case on a matter of fact discovered by the tribunal itself on inspecting the premises in question, it will be breach of natural justice if it does not inform the parties and give them a chance of dealing with it. If a tribunal receives from a third party a document relevant to the subject matter of the proceedings, it should give both parties an opportunity of commenting on it. It was the duty of the collector of customs to inform the persons charged before him of the charges against them. A quasi-judicial authority would be acting contrary to

the rules of natural justice if it acts on information collected by it which has not been disclosed to the party concerned and with respect to which full opportunity of meeting the inferences which arise out of it has not been given.

With reference to principles of natural justice, the **Supreme court in Automotive Tyre Manufactures Asson. V Designated Authority 2011 (263) ELT 481 (SC)** held that it is trite that the rules of ‘**natural justice**’ are not embodied rules. The underlying principle of natural justice, evolved under the common law, is to check the arbitrary exercise of power by the state or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. In this case, the materials collected by the previous designated authority for antidumping were used by the successor without hearing the aggrieved parties. Therefore the same was interfered with as being a violation of the principles of natural justice.

3) Principles for issuing show cause notice

The indirect tax legislations in **Section 11A** of the **Central Excise Act, 1944**, **Section 73** of the **Finance Act, 1994** and **Section 28** of the **Customs Act, 1962** make it mandatory to issue show cause notices

before adjudicating a matter. Therefore, it would be relevant to notice a few principles in that regard.

- **Whether it is mandatory to issue show cause notice?**

In **UOI Vs. Madhumilan Syntex Ltd. 1988 (35) ELT 349**, the supreme court held that any demand raised without issuing show cause notice or granting a hearing would be invalid in terms of **Section 11A** of the **Central Excise Act, 1944**. In **CCE Vs. Kosan Metal Products Ltd. 1988 (38) ELT 573**, the Supreme court held that show cause notice is necessary before adjudication and mere noting in the periodical returns is not a notice.

- **Whether unsigned show cause notice is valid?**

In the case of **Harichand K. Khanna Vs. C.C.E. 2002(150) ELT 1323 (Tri-LB)** it was held that a show cause notice would not become invalid if the copy served was not signed by the Commissioner but was attested by the Asst. Commissioner, as long as the office copy was initialled by the Commissioner. It must be said that the law in this regard has to be considered strictly. It is noticed in several matters that notices and orders are drafted by subordinates with the Commissioner merely affixing his signature.

- **When can the notice be issued?**

As per the legislative provisions, show cause notices can be issued wherever the duties/taxes have not

been levied, not been paid or have been short-levied or short-paid or erroneously refunded.

Meaning of

(a) **Short levy**-> where the tax/ duty has been levied.

(b) **Non-levy**-> Non-levy of a duty or tax arises when the same has not at all been charged on the product or service.

(c) **Short-paid**-> The term short payment means payment of an amount less than what is due.

(d) **Erroneous refund**-> an erroneous refund refers to a situation where a refund is granted based on an error.

4) Conclusion

The principles of natural justice have been adopted and followed by the judiciary to protect public rights against the arbitrary decision by the administrative authority. It is supreme to note that any decision or order which violates the natural justice will be declared as null and void in nature, hence one must carry in mind that the principles of natural justice are essential for any administrative settlement to be held valid.

In India the principles of natural justice are provided in **Article 14 & 21** of the **Constitution of India**. With the introduction of concept of substantive and

procedural due process in **Article 21**, all that fairness which included in the principles of natural justice can be read into **Article 21**.

The principle of natural justice is not confined to restrict walls the applicability of the principle but depends upon the characteristics of jurisdiction, grant to the administrative authority and upon the nature of rights affected of the individual.

Please give your respective feedback.

Warm Regards

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