



CONCEPT OF NATURAL JUSTICE AND DISCRETIONARY POWER OF SUPREME COURT JUDGES

Keywords: *Natural justice, Supreme Court, judges, discretionary power, transparency.*

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ABSTRACT

“The universal and absolute law is that natural justice which cannot be written down, but which appeals to the heart of all.”

-Victor Cousin

‘*Nemo iudex in causa sua*’ is indispensable in the field of law. India being a democratic country protects the socio-economic justice. The concept natural justice helps to prevent the miscarriage of justice. Supreme Court judges and their judgments ranks first, it is majorly seen that the most cases pending before SC are of national importance. The discretionary power which is imposed on the judges should be safeguarded and not misused. In present era, it is a need for transparency in work. This paper deals with SC judges in particular; the SC judges should invoke the natural justice and should not abuse their discretionary power while delivering judgments. Arbitrariness leads to violation of the concept of Rule of law, where it says about the supremacy of law, equality before law and predominance of legal spirit. Hence this paper strives to explain that there is a need for transparency in allocation of work for SC Judges along with concept of natural justice and the discretionary power of SC Judges at large.

INTRODUCTION:

“A lack of transparency results in distrust and a deep sense of insecurity”

-Dalai Lama.

Rationale and aim of the study:

India being a democratic country, not only looks into the welfare of the people but also ensures the socio-economic justice, which could be expressly seen through the preamble of Indian constitution. This implied brings out the concept of “Natural Justice”¹ Violating the principle of Natural justice also violates Article.14 of Indian constitution. ¹ Being a concept of administrative law, is neither fixed nor prescribed in any code. Natural Justice being a public law, it should be a weapon to secure justice to the people. Its major object is not only to secure justice but also ***prevent miscarriage of justice***. Judiciary being a distinct and most important organ of the government seeks to protect justice and it is given in the hands of judges. Supreme Court judges and their judgments ranks first, it is majorly seen that the most cases pending before SC are of national importance. It is clearly known fact that the judges have discretionary power while upholding judgments, which could be also termed as ***“Judicial discretion”***. The discretionary

¹ 14. Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (constitution of India, 1949).



power of the judges was recognized through the doctrine of *Separation of power*² as judicial independence. Sometimes, courts may abuse its discretionary power, which results in hindering the concept of *Rule of Law*.³ The contemporary issue that is popping out is about the allocation of work for the Supreme Court judges. As the world develops, as people literacy rate increases, they start questioning; some encourage some discourage certain judgments. In today's era, it is a need for transparency in work. Hence this paper strives to explain that there is a need for transparency in allocation of work for SC⁴ Judges along with concept of natural justice and the discretionary power of SC Judges.

Term "Discretionary power":

- *Black's Law dictionary*: Discretionary power is a term that is given to the power to do or not to do a thing.⁵
- *General definition*: Discretionary means it's up to you to decide.
- *Chief Justice Coke*: Discretion is a science or understanding to discern between falsity and truth, between right and wrong, between shadows and substance, between equity and colorable glosses and pretences, and not to do according to their wills and private affections and opinions.⁷

- *Oxford definition*: It is the freedom to decide what should be done in a particular situation.⁸

NATURAL JUSTICE- AN OVERVIEW:

According to Justice Megarry, "Justice that is simple and elementary, as distinct from justice that is complex, sophisticates and technical". Natural justice is a close relationship between the common law and moral principles and it has an impressive ancestry, it is also known as substantial justice. The rules of natural justice have been cherished through ages. It applies reasonableness, good faith, justice, equity and good conscience to control the public authorities' activities. Hence, the principle of Natural justice must be considered while delivering judgments. *Wade* states that, "the presumption is, Natural justice will always apply, however silent about it the statute may be". Article.14 and 21⁹ embodies the principle of natural justice for the fair proceedings. Two major principles must be considered when it comes to natural justice, one is '*nemo debet esse judex in propria causa*' and the other one is '*Audi alteram partem*'.¹⁰

1. ***Nemo debet esse judex in propria causa***: It means, no one can be a judge of his own cause, or no man can act as both at the one and the same time or it should be without bias.
2. ***Audi alteram partem***: This means, hear from both side, or no man should be condemned unheard, or

² <https://www.lawteacher.net/free-law-essays/constitutional-law/indian-constitution-and-separation-of-powers-constitutional-law-essay.php>

³ Lectures on Administrative law by C.K.Takwani.

⁴ SC- Supreme Court (hereafter would be referred as SC).

⁵ <http://thelawdictionary.org> (Black's law dictionary 2nd edition).

⁶ <http://www.vocabulary.com>

⁷ www.lawyersclubindia.com

⁸ <http://en.oxforddictionaries.com>

⁹ Article.14 & 21 of Indian constitution.

¹⁰ Lectures on administrative law, by C.K.Takwani.



there must be fairness on the side of deciding authority.¹¹

The major concept here is, the judge should be free from bias and he himself cannot be a judge of his own cause. The judge especially SC should be free from bias and they should not interfere their personal issues and involve it in the decision making.

Does natural justice provides modus operandi to arbitrariness vis-à-vis work allocation for Supreme Court judges and their discretionary power?

Discretionary power shall be based on fairness while delivering decisions. This is exclusively provided for the judges in India, when we look towards the SC judges, they should use this power more delicately and carefully while providing judgments. Under separation of powers, the concept of judicial independence was introduced, which in turn brought the concept of judicial discretion. The Natural justice should be in such a manner, that it should prevent arbitrariness. Since this paper deals with SC judges in particular, the SC judges should invoke the natural justice and should not abuse their discretionary power while deciding cases. Arbitrariness leads to violation of the concept of Rule of law, where it says about the supremacy of law, equality before law and predominance of legal spirit. On 12th January 2018, the SC Judges, held a press conference in order to register their differences with CJI¹² in court administrative matters. One of the issues is “*master of the roster*”. It was said that, CJI has the discretionary power to allocate cases to the benches. It was an immediate step

taken after the medical college corruption case, involving the conspiracy to bribe. It was also contended that, the allocation of cases was done by means of preference and without any rational basis for such assignment.¹³

The people in the country has the right to information, people should be aware of what is happening in the judiciary, hence there is a need for transparency in order to prevent the miscarriage of justice, but this could be attained only by incorporating the Natural justice principle in it.

EXIGENCY OF TRANSPARENCY IN WORK ALLOCATION FOR SC JUDGES FOR ITS UNPRECEDENTED MOVE:

Article.142 deals about the Enforcement of decrees and orders of Supreme Court and unless as to discovery, etc (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.¹⁴

The purpose of this article is that, SC should not depend on the executive for the enforcement of orders, if it depends, and then there would a violation of independence of judiciary which is the basic structure of the constitution.

In *Prem Chand Garg v. Excise Commr., U.P.*, Allahabad held that, "An order which

¹¹ Principles of administrative law by M.P.Jain & S N Jain, 7th edition, 2011.

¹² Chief Justice of India.

¹³ www.livelaw.in

¹⁴ Constitution of India, 1949.



this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory”.¹⁵

In *Supreme Court Bar Assn. v. Union of India*, “though the Court took the position that Article. 142 gives it unlimited power, it seems it adopted a cautious and balanced approach”.

Complete justice should be according to rule of law which is a basic feature of the Constitution vide *Kesavananda Bharati v. State of Kerala*.

Section.151- Saving of inherent powers of court, “Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court”.¹⁶

In the very recent verdict of **K.K. Velusamy v. N. Palanisamy**, the Hon’ble Supreme Court upheld that Section. 151 of the Code recognizes the discretionary power inherited by every court as a necessary corollary for rendering justice in accordance with law, to do what is ‘right’ and undo what is ‘wrong’.¹⁷

Hence the power which is given to the court and the discretionary power being an inherited power of SC Judges are to be protected and abuse of such discretionary power would lead to arbitrariness and

sometimes leads to ultra vires. *Such arbitrariness could be found only when the legal system is transparent in nature.*

The recent press conference, which was headed by Justice -Jasti Chelameswar, M.B.Lokur, Ranjan Gogoi, kurian Joseph. They wrote a letter to CJI, one of the issues that were raised was about the assignment of matters. The letter also contained that, “not recognition of any superior authority, legal or factual of the chief justice over his colleagues”.

It also held that, the SC in the case, *State of U.P v. Prakash chand & others* argue that Hon’ble Chief Justice being the *master of roster* can even transfer part heard cases from one Bench to another Bench.¹⁸ They also referred to the judgment of Hon’ble Apex Court rendered in the case of *Divine Retreat Centre Vs. State of Kerala and others* argued that the constitution of Benches and allocation of work to Judges/Benches is the sole prerogative of Hon’ble Chief Justice and the Judges cannot pick and choose any case pending in High Court and assigned the same to themselves for disposal without appropriate orders of Hon’ble Chief Justice.¹⁹

The press conference letter incorporated the case of *R.P.Luthra v. Union of India*,²⁰ where, Justice lalit had issued a notice to the centre for the delay in finalizing the memorandum of procedure for appointment of judges on SC & HC, any issue with regard to the memorandum of procedure should be discussed by the Chief judges’

¹⁵ 1963 AIR 996, 1963 SCR Supl. (1).

¹⁶ The code of civil procedure, 1908.

¹⁷ (2011) 11 SCC 275.

¹⁸ (1998)1 SCC page no.1

¹⁹ (2008) 3 SCC Page 542

²⁰ SLP (C) 28662-28663/2017.



conference and by full court and should be dealt with by none other than the constitutional bench and they also cited *Supreme Court advocate on record association and Anr v. union of India*²¹ case, and said that, there was no occasion for the bench to make any observation with regard to finalization of memorandum of procedure.²²

From this press conference, we can find that, there is a need for transparency in work allocation of SC judges and work allocation in SC should be maintained properly and the allocation shall be based on hierarchy and without arbitrariness in order to minimize the pending cases. One could say that, the discretionary power is abused for the personal sake then this could lead to arbitrariness and it can be prevented only through the mode of transparency, when transparency prevails in work places, an individual would fear to take any action against Justice and in return the Natural Justice could be upheld and protected.

CONCLUSION:

Salmond says, “matter of right and judicial discretion are not the subject of evidence and demonstration, but of argument and are submitted to the reason and conscience of the court- in determining the questions of Judicial discretion it seeks to discover the right or Justice of the matter”. The essence of discretionary power can be tasted only for providing moral judgments, with certain restrictions and limitation keeping in mind. When the court uses the *Wednesbury principle of reasonableness* to check whether the discretion results in arbitrariness

or not, it should also check within itself at first. The citizen of the country has the right to know information; it can be obtained through right to information Act, 2005 in order to increase the level of transparency. Transparency in courts helps in appointment of judges, will reduce the pending cases as the judges or judiciary have to give valid reasons, it would help for recruitment of posts, bribery, corruption would reduce in judiciary etc., but these could be achieved only when the Judges use their discretionary power under limit, by keeping in mind the concept of Natural justice. Since, Supreme Court judges ranks the highest, they should play a significant role in such a way, to protect the Natural justice. This could be obtained only when the Judiciary attains transparency. Work allocation in SC should be maintained properly and the allocation shall be based on hierarchy and without arbitrariness in order to minimize the pending cases. Hence, this paper had tried to learn and explore the need for transparency in Judiciary in particular to the allocation of work for SC judges.

SUGGESTIONS:

The allocation of work for the Supreme Court judges can be maintained by means of forming a committee, headed by Chief Judges of India. By creating such committee, the complications or issues regarding the allocation of work can be reduced.

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²¹ (2015) 5 SCC 1, Para 1255.

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