

# INTRODUCTION TO ADMINISTRATIVE LAW

## TOPIC 3: JUDICIAL REVIEW

### Lesson 3.2 Natural Justice, Judicial Review, Separation of Power & Judicial Federalism



## Lesson 3.2: Learning Outcomes

- At the end of this topic, students should be able to:
  - Define natural justice.
  - Demonstrate the basic knowledge of natural justice.
  - Develop communication, verbal and written skills, which play an important part in administrative law.
  - Describe about natural justice.

## What is natural justice?

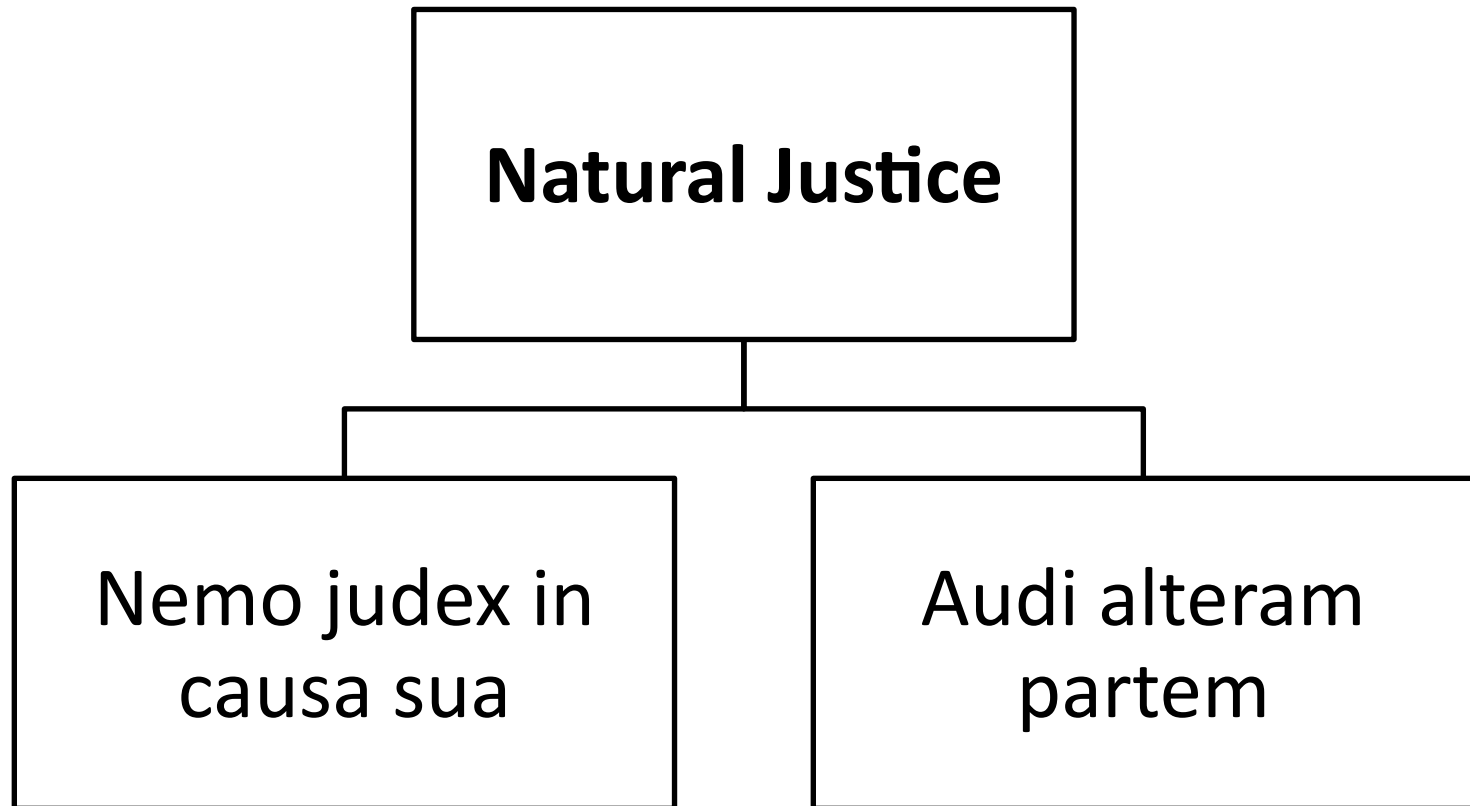
- Natural justice refers to the principles of fairness, reasonableness, and equality.
- Natural justice is a procedural principle:
  - Which every administrative agency must follow and
  - Adversely affects the right of a private individual if not followed

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# NATURAL JUSTICE

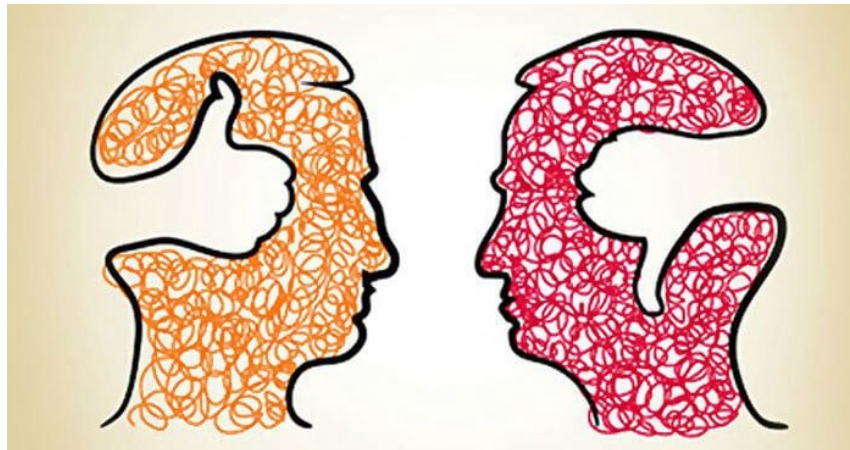
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## 2 components of Natural Justice



# Nemo judex in causa sua

- *Nemo judex in causa sua* means "no-one should be a judge in his own cause."
- It is a principle of natural justice that no person can judge a case in which they have an interest.
- It is also called **rule against bias**.



# Nemo judex in causa sua

- Bias is an operative prejudice in relation to a party or an issue.
- Requirements for rule against bias:
  - The judge must be impartial
  - Free of prejudgment and prejudice
  - He must decide the case objectively
  - On the basis of facts and evidence



# Nemo judex in causa sua

- Types of bias:

Type	Explanation
1) Personal bias	Arises out of the personal/ professional relationship, friendship or hostility between the authority and the party(ies). It is human nature to give favourable decision to friends and relatives, whereas give unfavourable decision to enemies.

# Nemo judex in causa sua

- Types of bias:

Type	Explanation
2) Pecuniary bias	A bias in which any financial interest, however small, with or related to the parties, would affect administrative action.
3) Subject-matter bias	The situations where the deciding officer is directly or indirectly related to the subject matter of the case.



# Nemo judex in causa sua

- Types of bias:

Type	Explanation
4) Departmental/ institutional bias	The Department / Institution itself becoming the adjudicating authority would negate the concept of fairness in the administrative proceeding.



# Nemo judex in causa sua

- Types of bias:

Type	Explanation
5) Pre-conceived notion bias	<p>The deciding officer has a pre-conceived notion, feeling, liking or disliking in regard to the subject matter which forces him to give a specific judgment.</p> <p>Opinion formed beforehand without adequate evidence.</p>

# Nemo judex in causa sua

- Tests to determine the existence of bias:
  - Real likelihood of bias test
  - Reasonable suspicion of bias test
  - Real danger of bias test



# Nemo judex in causa sua

- **Real likelihood of bias test:**
  - The real likelihood test centres on whether the facts, as assessed by the court, give rise to a real likelihood of bias.
  - It looks into whether there is real possibility of bias.
  - Depends on the court's impression whether there is real likelihood/ possibility of bias.



## Nemo judex in causa sua

- **Reasonable suspicion of bias test:**
  - This test asks whether a reasonable and fair-minded person sitting in court and knowing all the relevant facts would have a reasonable suspicion that a fair trial for the party is not possible.
  - Reasonable man is really an ideal, focusing on how a typical person, with ordinary prudence, would act in certain circumstances.
  - A reasonable man serves as a comparative standard for determining liability.

## Nemo judex in causa sua

- **Real danger of bias test:**
  - Real danger requires a higher standard than real likelihood of bias.
  - The court must look into whether the authority might unfairly regard (or have unfairly regard) with favour, or disfavour, the case of a party to the issue under consideration by him.
  - This would avoid setting aside of judgments upon quite unsubstantial grounds and the smallest pretext of bias.

## Audi alteram partem

- Audi alteram partem literally means hear the other side.
- Also known as right to fair hearing/ right to be heard.
- 2 elements:
  - Both sides must be heard
  - No man should be condemned unheard (give opportunity to be heard)



# Types of rights under audi alteram partem

- **Right to notice:**

- The parties must be informed of the date, time, place of the hearing and the officer that will hear the case.
- The allegations made against them must be communicated so that they can answer the same.





# Types of rights under audi alteram partem

- **Right to notice:**
  - Purposes of sufficient notice:
    1. To enable the party to effectively prepare their case and to answer the opponent's case
    2. To enable the party to make their representation
    3. To enable the party to appear at the hearing



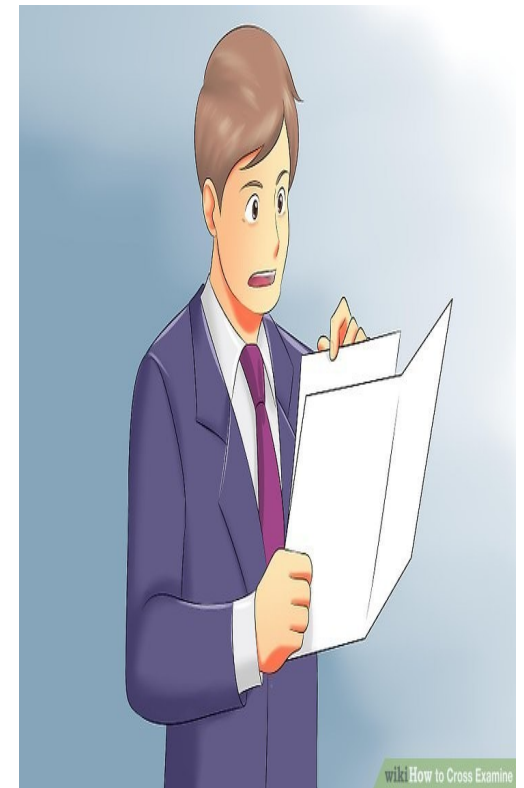
# Types of rights under audi alteram partem

- **Right to present case and evidence:**
  - The authority who assigned for look after a matter must provide an opportunity to the party to present his case with evidence to support his case.
  - The party should be allowed to bring his witnesses to support his case.



# Types of rights under audi alteram partem

- **Right to cross-examine witnesses:**
  - Cross-examination is the examination of a witness who has already testified in order to check or discredit the witness's testimony, knowledge, or credibility.
  - Party should be given the opportunity to cross-examine witnesses from the other side.



## Types of rights under audi alteram partem

- **Right to reasoned decision:**
  - The party is entitled to know the reason for the decision made by an administrative authority.
  - Reasoned decision is important to determine whether the body has exercised its functions and discretion properly.
  - It is also important for the purpose of judicial review: for the aggrieved party to apply to the court for the review of the administrative decision.

# Types of rights under audi alteram partem

- **Rule against dictation:**
  - The authority deciding should not act according to the orders of his superiors.
  - The authority must be free from internal and external influence/ pressure in deciding a case.



# Types of rights under audi alteram partem

- **Financial help to attend hearing:**
  - The financial incapacity of a party in putting evidence should not come in way.
  - Evidence and witnesses should be brought at the expense of the government to facilitate fair hearing.



# Types of rights under audi alteram partem

- **Decision post haste:**
  - The decision should not be taken in haste.
  - Reasonable time should be spent in hearing the evidence and coming to a conclusion.



# Types of rights under audi alteram partem

- **Right against unnecessary delay:**

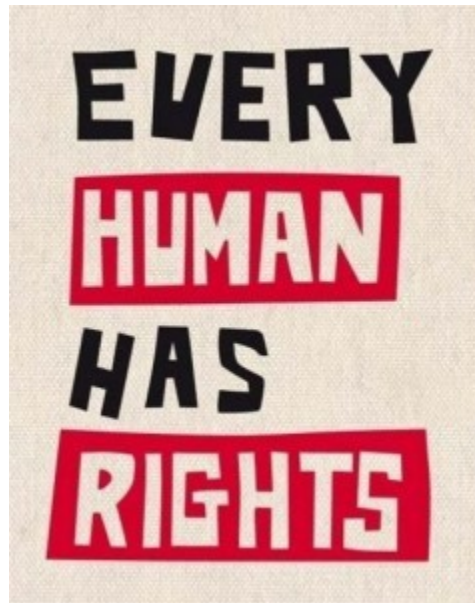
- Rule of natural justice encourages prompt disposal of cases.
- There should not be unnecessary and excessive delay in resolving a case.
- The applicant has to prove that the delay is prejudicial to him.





# Judicial review & natural justice

- Breach of natural justice is a ground for judicial review.
- If the aggrieved party believes that there is bias and his right to be heard has been violated, he may apply for judicial review.



## Separation of powers

- According to the doctrine of separation of powers, there are 3 branches of government:
  - Legislative: body that makes the law
  - Executive: body that enforces/ implements the law
  - Judiciary: body that interprets/ applies the law
- The 3 branches act independently and separately from each other.

# Separation of powers

- Purposes of separation of powers:
  - Act as check and balance
  - Limit power of each branch of government
  - Prevent abuse of power of each branch of government
  - Give each branch power to fulfill different tasks
  - Ensure no individual/ group of people who are all powerful
  - Protect rights of citizens from being violated by government

# Judicial federalism

- Judicial federalism refers to the power of federal courts to review decision of state bodies/ courts.
- Civil courts have the power to review all administrative acts/ decisions of federal and state government/ agencies.
- For Syariah courts and bodies (State level), civil courts also have the power to review Syariah courts' and religious bodies' decisions (Indira Ghandi v Pengarah Jabatan Agama Islam, Perak 2018).

