

Doctrine of Necessity

Blog Series – 87 October 20, 2020 PoSH – Vol.44

Principle of Natural Justice is one of the Fundamental principle of Jurisprudence that no man can be a judge in his own cause and that if there is a reasonable likelihood of bias it is “in accordance with natural justice and commonsense that the Judge likely to biased should be incapacitated from sitting”.

Nemo in propria causa judex, esse debet, i.e.; no one should be made a judge in his own cause.

It is the most significant requirement of natural justice that any authority adjudicating decisions, be composed of acting fairly and be an impartial person. He or she should not have prejudice or bias.

Bias may be conscious or unconscious with a preconceived opinion, in relation to the subject or the to the person involved.

The rule against Bias, strikes against those factors which may improperly influence the adjudicating authority against arriving at a possible decision in any case.

The main objective is to ensure confidence on the impartiality of the adjudicatory process

Evolution of Doctrine of Necessity

Doctrine of Necessity is an exception to the above.

“The doctrine of necessity is a common law doctrine and is applied to tide over the situations where there are difficulties. Law does not contemplate a vacuum, and a solution has to be found out rather than allowing the problem to boil over.” In Lalit Kumar Modi v. Board of Control for Cricket in India & Ors.: (2011) 10 SCC 106, the Supreme Court

The term Doctrine of Necessity is a term used to describe the basis on which administrative actions by administrative authority, which are designed to restore order, are found to be constitutional

Necessity excludes bias

An adjudicator who is subject to disqualification on account of bias may nevertheless, can validly adjudicate if:

- 1) No other person competent to adjudicate is available;
- 2) A quorum can not be formed without him; or
- 3) No other competent tribunal can be constituted

In *Somaya Gupta vs Jawaharlal Nehru University And Anr*, the Hon'ble Delhi High Court has observed that in case the Presiding Officer has recused himself from the proceedings for a reason, does not mean the Inquiry Committee, is disabled from continuing with the proceedings.

The Judge in his Order has indicated about the Doctrine of Necessity quoting the reference from In *Lalit Kumar Modi v. Board of Control for Cricket in India & Ors.: (2011) 10 SCC 106, the Supreme Court.*

Anandan S

Feature Writer, Skill Enhancer & Webinar Specialist