



Who Will Watch the Watchman

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Recent turmoil in Supreme Court over a case of **sexual harassment against Chief Justice of India** reignited century old debate : a debate about **Quis custodiet ipsos custodes i.e. who will watch the watchmen?**

- In response to sexual misconduct allegations against him, CJI Ranjan Gogoi called for a special bench chaired by himself, which was in **gross violation with the established legal principle: the principles of due process and natural justice.**
- **Due process** for addressing complains of sexual harassment at workplace.
 - In this case ideal due process could have been: the senior-most judge of the Supreme Court after the chief could have taken cognizance of the complaint, set up an **independent internal complaints committee** in accordance with **existing law**, and ensured that that committee was allowed to **work free of fear or favour, and in a swift manner.**
 - Clearly, **due process** was **not followed** in this case.
- The **natural justice** premise.

In the above case, Supreme Court constituted a bench headed by Chief Justice himself. Moreover, victim was not present and so was not heard. The concept of 'Principles of Natural Justice' contains the following **two core points** —

 - **Nemo in propria causa judex, esse debet i.e.,** no one should be made a judge in his/her own case, or the rule against bias.
 - **Audi alteram partem i.e., hear the other party,** or the rule of fair hearing, or the rule that no one should be condemned unheard.
- **Principles of Natural Justice in Indian Constitution**

- In The Constitution of India, nowhere the expression Natural Justice is used. However, the principle of natural justice can be found in **Preamble, Art 14 and Art 21.**
 - **Preamble:** Preamble of the constitution includes the words, ‘Justice Social, Economic and political’ liberty of thought, belief, worship. And equality of status and of opportunity, which not only ensures fairness in social and economical activities of the people but also acts as shield to individuals liberty against the arbitrary action which is the base for principles of Natural Justice.
 - **Art 14:** This Article guarantees equality before law and equal protection of law. It bars discrimination and prohibits both discriminatory laws and administrative action. Art 14 is now proving to be bulwark against any arbitrary or discriminatory state action. The horizons of equality as embodied in Art 14 have been expanding as a result of the judicial pronouncements and Art 14 has now come to have a highly activist magnitude. It laid down general proposition that all persons in similar circumstance shall be treated alike both in privileges and liabilities imposed.
 - **Art 21 and the principle of natural justice:** With the Supreme Court pronouncement of “due process of Law “in Maneka Gandhi case(1978) , court asserted the principle of reasonableness while deciding a case. It now means that the procedure must satisfy certain requisites in the sense of being fair and reasonable. The procedure “cannot be arbitrary, unfair or unreasonable.
- Difference between Due process of law and Procedure established by the law:

Procedure established by the law

Due process of law

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- It originated in England. It means as per as per the practice and usage as laid down in the statute.
 - It confers limited power in the hand of judiciary. Under this doctrine, if any action of the executive is challenged before a court,
 - the court will see for the existence of any law that authorizes the executive to perform that act and the law has been passed by a competent legislature.
 - the court will also see whether the prescribed procedure has been followed by the executive while performing the action.
 - If these two conditions are satisfied, the judiciary will hold the action of executive as legally valid. the court will not go behind the intention of legislature and test whether the law is just reasonable and fair . The court will not provide any protection for the individual action the action of the legislature however inappropriate, fanciful, whimsical or unreasonable the law may be.
 - Thus it gives protection for an individual against the arbitrary action of the executive and not against the legislature.
 - The due process of law originated in the USA
 - It confers wider power on the judiciary. Under this doctrine, if an action of the executive is challenged before the court, then the court will see whether there exists any law passed by a competent legislature that authorizes the executive to such an action.
 - It will also see whether the executive has followed the prescribed procedure given by the law.
 - In addition, the court will also apply the principle of natural justice and see whether the law so passed by the legislature is just fare and reasonable.
 - If it does not satisfy above condition, then court will declare the law as unconstitutional and void.
 - Thus this doctrine extends protection to both executive and legislature