

Legal Practitioner Perspectives on Domestic Enquiry, Action and Its Practices

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ABSTRACT :

Discipline is the regulation of human behaviour to achieve desired performance in an organization. It encourages employees to follow established standards, company values, and workplace norms. Maintaining discipline in the workplace is crucial as it directly impacts attendance, work quality, productivity, and overall efficiency. A well-disciplined workforce ensures that employees understand and adhere to organizational rules, policies, and ethical guidelines. It is a reward and punishment system which is followed by department in government and public sector organizations to manages functions like grievance handling, counselling, performance appraisal, manpower planning, training, and development to manages functions like grievance handling, counselling, performance appraisal, manpower planning, training, and development. Discipline serves as a corrective mechanism, ensuring that employees comply with procedures and performance standards. The punishment system follows proper disciplinary procedures and often involves a domestic enquiry to ensure fairness. An effective discipline framework is necessary to guide employee behaviour, prevent misconduct, and create a structured approach to handling infractions. This study aims to explore the Legal frameworks of domestic enquiry and proceedings for personnel based on secondary data sources. As a theoretical study, it provides insights into best practices for maintaining discipline in organizations.

Keywords: Ethical Guidelines; Discipline Enquiry and Proceedings; Workplace Norms; Misconduct; Best Practices.

1. Introduction: An effective discipline program is helpful for both the employer and the employee. Discipline is a form of training that aims to enhance and mould the knowledge, attitudes, and behaviours of employees in order to encourage them to proactively collaborate with their colleagues and enhance their work performance.

Discipline's primary goal is to maximise efficiency by means of preventative and corrective action against particular behaviours. Domestic Enquiry refers to the investigation into alleged incidents of indiscipline and misconducts. Departmental inquiry is a broad term that may encompass any legal or investigative duty. A domestic enquiry functions similarly to a court of law but focuses on addressing violations of corporate rules and regulations rather than crimes against humanity. It is conducted to investigate allegations of indiscipline or misconduct by an employee or worker. An employee cannot be dismissed or penalized for misconduct without being given the opportunity to defend themselves during an enquiry.

This is in line with the principle of natural justice. According to Article 311(2) of the Indian Constitution, no individual can be dismissed, removed, or demoted without a fair enquiry and a clear understanding of the charges brought against them. Misconduct, also referred to as non-conforming behaviour, can be managed through measures such as counselling or issuing warnings. In cases of serious offenses, like theft, fraud, or criminal breach of trust, the employer has the right to initiate legal action if the misconduct falls under laws of land. However, such proceedings, typically led by state authorities, can be lengthy and require substantial evidence. Alternatively, employers may address violations through actions outlined in the employment agreement. Depending on the severity, penalties can range from formal warnings to termination of employment. The role of disciplinary authority becomes essential in ensuring the fair and efficient operation of the organization's reward and punishment system, particularly in enforcing disciplinary measures effectively.

1.1 Disciplinary Authority: Disciplinary authorities are significantly important for maintaining order, fairness, and adherence to organizational policies. The prime responsibility is to identify acts of indiscipline and misconduct and take appropriate corrective measures. Depending on the severity of the offense, disciplinary actions can range from counselling and cautioning to official reprimands, penalties such as suspension or demotion in cases of serious violations like theft or fraud, legal prosecution. These measures help reinforce the importance of organizational rules and foster a sense of responsibility among employees. An effective disciplinary authority follows the **Hot Stove Rule**, which highlights four

essential principles to ensure fairness and consistency. Advance warning ensures about employees' awareness about the organization's rules and the consequences followed by consistency which demands of disciplinary actions must be applied equally to all employees. Third, impersonal action requires that decisions focus on the misconduct itself rather than personal feelings toward the individual and lastly, immediate action, is penalty without delay.

The effectiveness of a disciplinary authority is essential for maintaining organizational integrity and ensuring smooth operations. A well-structured disciplinary system promotes fairness, reinforces ethical standards, and fosters a positive workplace culture. It also helps prevent minor issues from escalating and protects the organization's reputation.

Table: Approaches

Legalistic	It follows a structured disciplinary procedure that upholds the law of natural justice where offender allowed to defend themselves, present mitigating factors, and seek clemency.
Humanitarian	It Foster positive interpersonal relationships. A collective mechanism approach is followed rather than punitive actions, primarily focuses on empathy, support, and aiming to help employees overcome personal challenges.
Leadership	Its foundations include persuasion, good interpersonal connections, mutuality in interactions, and employee engagement and involvement in norm-setting procedures.

The Industrial Employment Act mandates that employers establish a clear procedure take legal action. Employers typically adopt model standing orders issued by the central government to ensure consistency and fairness in workplace regulations. Indian courts have reinforced the importance of natural justice, requiring that employees be given a fair opportunity to present their case before any disciplinary action is taken. The judiciary has played a significant role in shaping workplace discipline by introducing legal safeguards that protect employees from arbitrary dismissal.

As a result, industrial employers must comply with these legal restrictions, ensuring that disciplinary measures are carried out lawfully and fairly, rather than exercising an unrestricted right to "hire and fire."

1.2 Natural Justice Natural Justice is a fundamental principle of common law that ensures fairness, reasonableness, equality, and equity in decision-making. It upholds procedural fairness by guaranteeing two key rights: the right to a fair hearing, where individuals must be given an opportunity to present their case, and freedom from bias, ensuring that decision-makers remain impartial and free from personal interest. As a cornerstone of the rule of law, Natural Justice prevents arbitrary decisions, promotes transparency, and serves as a humanizing tool to secure justice in legal and administrative processes.

1.3 Judicial Bias The act of a judge having a personal or professional interest in a case is known as judicial bias. It may result in friends or family receiving a favourable judgement that is exploited against adversaries. Judges should not have a financial stake in the case in order to prevent this. Since no one can evaluate their own case, this goes against the natural justice premise.

1.4 Misconduct: The Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 define various forms of misconduct in the workplace. These include wilful insubordination, theft, fraud, bribery, damage to property, habitual absenteeism without leaves, habitual late attendance, and repeated violations of workplace laws and regulations. Additionally, riotous or disorderly behavior, negligence, and repeated minor offenses that warrant fines are also considered misconduct. The severity of misconduct is assessed based on its nature and impact, particularly whether it has caused harm to public interest or workplace efficiency. Proper disciplinary measures must be taken to ensure a fair and just work environment while maintaining organizational discipline.

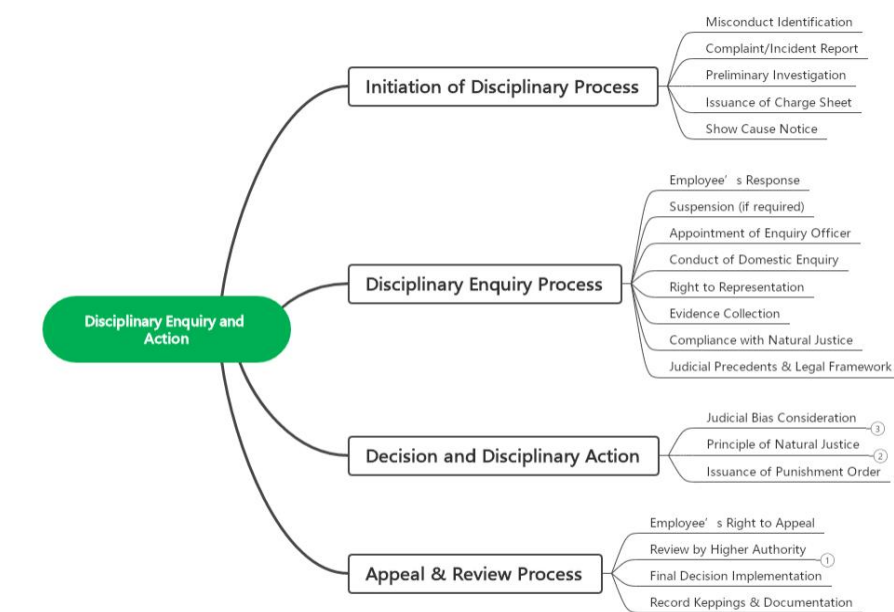


Table: Classification of Workers

Permanent Workers	A permanent employee of an industrial establishment, including one who has successfully completed the probationary period.
Temporary Worker	Employees who have been employed by the establishment for temporary work that is expected to be concluded within a specified time frame.
Apprentices	Workers who are currently enrolled in apprenticeship instruction under the Apprenticeship Act of 1961 are included. A training program that is skill-based and is implemented by the company as an incentive.
Fixed -term Employment	Workers who are employed with a written contract of employment for a specific duration are entitled to all the benefits of permanent employees.
Badli Workers	Employed as a temporary replacement for a permanent position or as a probationer until the permanent position is filled.

2. Review Literature: (Sharma et al., n.d.) This research outlines the process and principles of conducting a domestic enquiry in labour law to natural justice. It details the steps involved, including preliminary inquiries, the issuance of charge sheets, and the roles of the Enquiry Officer and Presenting Officer. The findings from the enquiry are crucial for the Disciplinary Authority's decision-making, aiming to balance employee rights with organizational discipline amidst industrial tensions.

(CHAKRAVARTHY MCom, 2016) As per the study the author describes the importance of article 311 of Indian constitutions. This study explains whenever an employee is sought to be dismissed or punished, it is usual for the employer or senior officers representing the employer to conduct departmental inquiries to determine whether the proposed action is warranted. In some cases, holding such inquiries is made obligatory by statute.

(PRINCIPLES OF NATURAL JUSTICE, n.d.) The document is a lecture by Justice T.S. Sivagnanam discussing the principles of natural justice, their essential elements, historical development, and application within the judicial system, aimed at newly recruited Civil Judges in Tamil Nadu. (Kumar, n.d.) The document is an article by Justice Brijesh Kumar discussing the Principles of Natural Justice. It explains the concept, historical background, and application of these principles in judicial and administrative processes. The key principles highlighted are:

Impartiality: one should never be a judge of their own case, ensuring decisions are made without bias. Fair Hearing Right's: Both sides must be heard before any decision affecting rights or liberties is made. Reasoned Decisions: Decisions must be supported by reasons to prevent arbitrariness and ensure transparency. The article emphasizes that these principles are fundamental to ensuring fairness and preventing miscarriages of justice, and they apply to courts, tribunals, and administrative authorities.

It also notes the flexibility of these principles, which can vary based on the context and specifics of each case.

(* NATURAL JUSTICE *, 2019) This paper, written by Dr. Sujata Rana, natural justice, which is known as procedural fairness, within administrative law. It explains two key principles:

1. Hearing rights (Audi Alteram Partem) – Every person should be given an opportunity to present their side before a decision is made.
2. Prohibition Against Bias (Nemo Judex in Sua Causa) – One cannot be judge of their own case to ensure impartiality.

The paper traces the history of natural justice and how it has become a part of administrative law. It highlights its significance of fair & justice in decision-making. The study explores various situations where natural justice applies, such as:

- Trade and business regulations
- Licensing processes
- Property rights
- Disciplinary actions in workplaces

It also discusses cases where natural justice may not be required, such as:

- Legislative decisions made by governments
- Emergency situations where quick action is needed

By protecting individual rights and preventing unfair treatment, it strengthens trust in the legal system and promotes justice for all.

3. Objective:

- To investigate the extent of a Domestic Enquiry
 - To examine the responsibilities of an Enquiry Officer
 - To analyse the disciplinary actions taken by the Disciplinary Authority.
 - To examine the crucial elements of evidence.
 - To analyse significant legal precedents pertaining to domestic enquiries.

4. Research Methodology: The Paper is Theoretical research and is primarily based on secondary data collected from different databases, websites, journals etc. Also, the review literature contains legal documents related to natural justices. This study comprises of information regarding Disciplinary Enquiry. This research work emphasises the significance of domestic enquiry and the thorough analysis of the enquiry officer. These topics are discussed in detail under various subheadings. This paper is a combination of all the legal practices and proceedings followed in public sector undertakings and other departments. This study employed both qualitative and quantitative data to acquire a comprehensive comprehension of the investigation process, the court's judgements, and the misconduct committed by workers. -All advocates and judgements regarding the misconduct of workers were included in the investigation.

5. Discussions: Corporations/Industries shall consist of existing standards of discipline, contracts of service by awards, agreements Conduct discipline and appeal rules and standing orders for smooth functioning of an organisation. However, if an employee fails to comply by these codes of ethics, he shall be liable to disciplinary processes enforced by management in compliance with the terms of the Standing Order. Domestic enquiry shall be performed in line with standing directions and agreements. Every employee of the Corporation/ Company shall at all times-

- Has to maintain full integrity or honesty.
- Employee as to maintain full devotion to their duty
- Employee has to prevent himself/herself for doing anything which is unbecoming of a public servant.
- An employee at senior post position has to refrain from becoming office bearer of a political party.
- Has not to take part or give their contribution in any protest, agitation or demonstration of any political parties

6. Penalties

Table: Penalties

Minor	Major
Censure	Decrease in scale of pay, grade, post or Service
Withholding of increments of pay with or without cumulative effect	Decrease in lower time scale of pay stage for a specified period, with instructions on increments and delay in future pay increments.
Withholding of promotion	Compulsory Retirement

Recovery from pay of the whole or part of any pecuniary loss caused to the	Dismissal from service usually disqualifies future employment with the government or its owned companies.
Reduction to a lower stage in the time-scale of pay for a period not exceeding three years.	Removal of Services, Dismissal from Service
	Withholding of increment due to work being found unsatisfactory
	Employees may be stopped at the efficiency and declared as unfit, to which may not receive rise in pay scale at time of promotion.
	Employees may be denied promotion to a higher position

7. Process of Disciplinary Actions:

Enquiry Before Penalty: No penalty can be given to an employee without first conducting an enquiry. Punishing an employee without an enquiry would violate natural justice.

Who Conducts the Enquiry: The Disciplinary Authority can either conduct the enquiry themselves or appoint a public servant as the Enquiry Officer to investigate the allegations against the employee.

Framing Charges: The Disciplinary Authority prepares charges, details of misconduct, a list of documents, and witnesses for communication of accused employee. The employee has **15 days** to respond if the penalty is major and **7 days** in case of minor.

Appoint to Enquiry officer: There must be appointment of an Enquiry Officer and a Presenting Officer to investigate the case.

Employee's Right to Assistance: In case of defence the accused employee can take help from a public servant but cannot engage a legal practitioner. Also, the accused employee must appear before the Enquiry Officer at the given date, time, and place in notice.

In case, Employee Denies: If the employee pleads not guilty, the Enquiry Officer may postpone the hearing (for up to 30 days) and allow the employee to: Inspect the documents listed in the charge-sheet, submit a list of additional documents and witnesses they wish to present, Receive copies of witness statements.

Evidence Presentation: Disciplinary Authority must present oral and documentary evidence to prove the charges, and witnesses will be examined by presenting officer. Also, before concluding the case, the Enquiry Officer may allow new evidence, call for additional documents, or recall witnesses.

Final Report: After completing, the Enquiry Officer prepares a report that includes: A summary of the charges and accusations, employee's defence for each charge, evaluation of the evidence presented, final decision on each charge with reasons for the conclusion.

CONCLUSION

Fundamental justice is natural and universal justice, serves as the foundation of Domestic Enquiry. This system was originally designed to protect workers' rights and freedoms, particularly in times of increasing industrial disputes. However, the reality is far from this ideal. Instead of safeguarding workers, Domestic Enquiry has often been used to undermine their rights. A concerning practice has emerged where Enquiry Officers are chosen based on their familiarity with the employers, leading to biased decisions that agrees management. This creates a deeply unfair situation, as workers who trust the justice system may unknowingly fall victim to manipulation. Due to their limited awareness of legal procedures and the system's inner workings, many workers are unjustly found guilty, further eroding their rights and access to fair treatment.

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