UNDERSTANDING THE PRINCIPLES OF NATURAL JUSTICE

Kalpana Rajeev Desai, Masters Student
School of Law – Ajeenkya D Y Patil University, Pune.
Dr Samraggi Chakraborty, Assistant Professor,
School of Law – Ajeenkya D Y Patil University, Pune

ABSTRACT

Justice is the tenet to initiate national order. The Principle of Natural Justice protects people against the arbitrary exercise of power to ensure fair play. The term 'Natural Justice' guarantees fair mindedness, integrity, uprightness, reasonableness, neutrality and equality in the proceedings. The motto[1] '**Every time justice is done to the citizen, the United States Government wins!'** sums up the concept of natural justice.

The justice system is dynamic in nature and has therefore advanced with civilisation to help the individuals to deal with the ills of the society. Principles of natural justice bestows them with adequate opportunity to defend themselves in a fair and reasonable manner. It is an intrinsic part of Administrative law, and helps the citizens to protect themselves against organised power. The standard which these principles provide is that there should be the right to fair hearing and absence of biasness to the individuals in the decision-making process. The importance of these principles can be measured from the fact that with the passage of time they over ride all other laws. As Lord Evershed, Master of the Rolls in **Vionet v Barrett**[2] remarked, that "Natural Justice is the natural sense of what is right and wrong."

Generally, it may be said that these principles apply to the exercise of a decision-making power by a public body where this may have detrimental consequences for the person or persons affected. In a famous English decision in **Abbott vs. Sullivan**[3], it is stated that "the Principles of Natural Justice are easy to proclaim, but their precise extent is far less

easy to define". There is no single definition of Natural Justice and it is only possible to enumerate with some certainty the main principles.

In the first segment of this paper, there will be a discussion about the origin and application of the Principles of Natural Justice and the later segments will deal with evolution and importance of

[1] This motto was written in front of the office of the Attorney General of USA.
[2] (1885) 55 LJQB 39
[3] (1952) 1 K.B.189 at 195

Principles of Natural Justice in India. This analytical study describes the significance of Natural justice in Indian Judiciary and administrative law relating to tribunals and other fast track courts.

Keywords: - Natural justice, administration, adjudicating authority, administrative law

INTRODUCTION

In the modern era of the welfare state, the Administration has come to enjoy wide powers to interfere with the person and property of individual. There is no hope that the powers of the Administration would diminish in the near future. In such a situation, it becomes a question of major importance to ensure that the Administration exercises its powers properly and after taking into account all relevant factors.

Natural Justice becomes an important procedural safeguard against any abuse, or arbitrary or wrong or undue use of its powers by the Administration in several ways. Growth of natural justice in administrative process is the result of the feeling that since the administration has acquired substantive safeguards, some protection to a person's rights may be given by making bureaucracy follow due procedures in discharging their functions.

Natural justice is a great humanizing principle intended to invest law with fairness, to secure justice and prevent miscarriage of justice. It is an implied mandatory requirement, non-observance of which invalidates the exercise of power. It will always apply – however silent a statute may be.

In India, there is no statute laying down the minimum procedure which administrative agencies must follow while exercising decision-making powers. This minimum fair procedure refers to the principles of natural justice. Natural justice is a concept of common law and represents higher procedural principles developed by the courts, which every judicial, quasi-judicial and administrative agency must follow while taking any decision

adversely affecting the rights of a private individual. Natural justice connotes fairness, equity and equality.

ORIGIN OF THE CONCEPT

The Rules of natural justice are of very ancient origin and were known to Greek and Romans. Later, these Prinicples were strengthened by the judges of the common law in England and after Independence the same common law traditions were followed in Indian courts.

However, these ideals of natural justice were not alien to ancient India. Procedural fairness is a part of our cultural heritage. In ancient India, the foremost duty of a judge was is integrity which included impartiality and total absence of bias. **Brihaspati** says "A judge should decide cases without any

consideration or personal gain or any kind of bias; and his decision should be in accordance with the procedure prescribed by the texts. A judge who performs is judicial duties in this manner achieves the same spiritual merit as a person performing Yajna. The judges and counsellors guiding the king during the trial of a case were required to be independent and fearless and prevent him from committing any error or injustice.

Says **Katyayana** "If the king want to inflict upon the litigants (vivadinam) an illegal or unrighteous decision, it is the duty of the judge (samya) to warn the king and prevent him.". The king was to adhere to the rules of dharma and he must be above the worldly detachments in deciding the cases.[4]

Even Indian emperor Ashok laid down the important rules as to what nature of justice should be. He had great concern for fairness in the exercise of justice, caution and tolerance in application of sentences etc.

Natural justice has also been acknowledged in Kautilya's Arthashastra.

According to the Bible, God did not punish Adam and Eve immediately after they ate the forbidden fruit, but gave them an opportunity to explain their conduct.

Evidently, principles of natural justice are not novel or manmade. It has emanated from our core moral sense and designed by several philosophers, jurists, kings and teachers. Aristotle being the biggest advocate of natural justice as a pillar for a virtuous existence that advances lives of individuals and promotes perfect community; people should employ practical wisdom or active reason to be consistent with a virtuous existence.

CORE ELEMENTS OF PRINCIPLES OF NATURAL JUSTICE

a) **Rule against bias: Nemo deb et esse judex in propria causa**
b) **Rule of audi alteram Partem**:
c) Reasoned Decision

Rule against bias: Nemo deb et esse judex in propria causa

Bias' means an operative prejudice whether conscious or unconscious in relation to a party or issue. This rule emerges from Latin maxim - Nemo deb et esse judex in propria causa which means that a person will not judge a case in which he is himself interested. Therefore, the 'Rule Against Bias' strikes contrary to those factors which may improperly influence a judge in arriving at a decision in any particular case. The first requirement of natural justice is that judge must be impartial, neutral and must not have a

[4] Justice S S Dhawan, The Indian Judicial System: A Historical Survey

predisposed mind. This element of natural justice requires the judge to be impartial and the should decide a case based on the facts and evidence brought before the court.

Bias may have following forms: -

- **Personal Bias** = This kind of bias arises when there exists a relationship between the authority and the parties which would incline him unfavourably or otherwise while taking decision.
- **Pecuniary Bias** = If the administrative authority receives any monetary /financial benefits, then it would fall under this category and would vitiate the decision.
- **Subject-matter bias** = when the administrative authority is directly or otherwise linked to the subject-matter of the case, then the bias falls in this category.
- **Pre-conceived notion bias** = At times many individuals have a preconceived notion, which is likely to affect the decision
- **Bias on account of Obstinacy**: - This is a recent category of bias which arises from thoroughly unreasonable obstinacy/stubbornness and administrative authority /deciding authority would not take no for an answer.

In the case of **A.K.Kraipak v. Union of India**[5] the Supreme Court stated that the fine distinction between the quasi-judicial and administrative function needs to be discarded for giving a hearing to the affected party.

Before the **Kraipak's case**, the court applied the principles of natural justice to the quasi-judicial functions only. But after this case, the principles of natural justice could be applied to the administrative functions as well.

Rule of audi alteram Partem:

This rule ensures that no one should be condemned unheard. It is a first principle of civilised jurisprudence that a person against whom any action is sought is to be taken, or whose right or interest is being affected should be given a reasonable opportunity to defend himself. Hearing means a "fair hearing".

In the infamous *Dr. Bentley Case*, the Court of King's Bench held that the University of Cambridge could not cancel the degree of great, but rebellious student without giving him an opportunity to defend himself.

[5] AIR 1950 SC 150

This rule covers various stages through which most of the adjudication process passes, starting from notice to final determination. **Right to fair hearing thus encompasses** -

1) **Notice**: A basic principle of natural justice is that before the process of adjudication starts, the concerned authority should give the affected party a notice of the case against him and the action proposed to be taken, so that he may adequately defend himself. Notice is bare minimum binding/compulsory condition. It is a pre-requisite of a fair hearing [6]. The notice to be well founded and justifiable must be served properly. Parties must be afforded reasonable time and opportunity to put forth his case. A hearing without any notice is void.

2) **Hearing:** To give hearing to the affected person is a necessary element of the rule of audi alteram partem. It is essential that before convicting or taking any action against a party, reasonable opportunity ought to be given to him to defend himself. The deciding authority has to hear both the sides. The supreme Court has emphasised that the normal rule is that before making any decision, the concerned authority should give a hearing even if the parties have no effective answer to give [7].

3) **Disclosure of materials to the parties**: - Another fundamental principle of natural justice is that no material/evidence should be relied upon by the adjudicator without giving the parties an opportunity to deal with the same. A party should not be taken by surprise at the hearing. Any decision by the adjudicating authority without disclosing the evidence on record to the concerned party would vitiate the decision itself.

4) **Right to know the evidence**: The adjudicating authority should give parties sufficient opportunity of adducing all the relevant evidence relied upon in the matter. Refusal to accept evidence on behalf of the affected persons vitiates the decision. No evidence should be taken behind the back of any party and none of the parties must be caught unawares.

5) **Right to cross examine the witness**: Cross examination of witnesses is a very potent weapon to bring out the truth and exposing the falsehood. However, the right to hearing does not always include a right to cross examine. This right largely depends upon the facts and circumstances of each case and on the statute under which allegations are being enquired into. [8]

[6] East India Commercial CO. Vs Collector of Customs AIR 1962 SC 1973
[7] Olga Tellis vs Bombay Municipal Corporation AIR 1986 SC 178
[8] State of J & K vs. Bakshi Gulam Mohammad AIR 1967 SC 122

REASONED DECISION

The right to reason is an essential part of sound judicial review. It is the foundation of good administration. This requirement to give reasons for the decision is an approach novel to the administrative law, as at one time quasi-judicial bodies were not required give reasons in support of their decisions.

The importance of 'reason' in the legal system is to connect the dots between facts and decision; it helps in establishing precedents to the system therefore it adds more certainty. Reasons provided must be clear, convincing, credible and succinct. This characteristic works on two propositions: firstly, if lower body has given adequate reasons and higher body is affirming that decision then it is not necessary to provide further reasons but if the higher body is altering lower body's decision then reasons must be provided. Secondly, if the higher body is affirming lower body's decision who has not given adequate reasons then the latter must provide with it.

In case of **Manab Kumar Mitra Vs State of Orissa** [9], it was observed that without reason it was not possible to know, whether there was any application of mind. Reason is the soul of the order. The right to reason is an indispensable part of sound judicial review. Reason pre-supposes logic and collates with the material on which the actual conclusions are based. Recording of reasons is the only visible safeguard against possible injustice and arbitrariness and hence giving reasons is one of the fundamentals of good administration.

The Supreme Court in **Maharashtra State Board of Secondary and Higher Education vs K S Gandhi**[10] emphasised the need for recording the reason not only in quasi-judicial but also in administrative decision.

Absence of reasons may lead to arbitrariness and cause dissatisfaction to the party concerned. **In Mahabir Prasad vs The State of U. P**[11], the Supreme Court quashed an

order cancelling license under U P Sugarcane Dealers Licensing Order, 1962, as the order was blanket one without containing reasons.

In **Harinagar Sugar Mills Ltd vs Shyam Sunder**[12], the Supreme Court held that the authority is bound to give reasons even if the proceedings are confidential in nature.

[9] Manab Kumar Mitra Vs State of Orissa AIR 1997 Ori 52
[10] (1991) 2 SCC 716
[11] AIR 1973 SC 1302
[12] (1962) 2 SCR 339

In **Ratailal Bhogilal vs The State of Gujarat**[13], it was held that the authority is bound to give reasons even in a case where the disclosure of such reasons is prejudicial to public interest.

POST DECISIONAL HEARINGS

A hearing which takes place after a tentative decision is reached by the concerned authority is known as "post decisional "hearings

In urgent matter, a post decisional hearing is regarded as sufficient compliance of the Audi Alteram Partem rule. In fact, the rule of Audi Alteram Partem is excluded from the scope of post decisional hearing, but as soon as an order is passed, a fair opportunity of being heard should be given to the person so as to follow the said rule. For instance, Securities and Exchange Board of India usually passes ex-parte ad interim orders and give hearings to the parties affected later on .

By introducing post decisional hearings, Supreme Court has widened the horizons of natural justice .The concept of post decisional hearings was developed in **Maneka Gandhi vs Union of India**[14] case , wherein the Supreme Court held that held that impounding passport without any notice or hearing does attract the principles of natural justice, but with the assurance of the government that the Appellant will be provided with post decisional hearing; the court declined to interfere with the impoundment order. Thus, the decision is not void, but can be verified with post decisional hearing.

Post decisional hearing, though initially disregarded by the Supreme Court, has stood the test of time and has gradually found acceptance. Though it might appear to be blatant violation of Audi Alteram Partem and Principles of Natural Justice, when delved into it comes out to be as a furtherance of these established legal principles. Not only does the concept of Post Decisional hearing flexibly furthers principles of natural justice but it helps its age-old jurisprudence to survive the test of time and makes it a very dynamic concept, equipped with complaisance and opportunity for further growth.

EXCEPTIONS TO PRINCIPLES OF NATURAL JUSTICE: -

Principles of Natural Justice are ultimately weighed in the balance of fairness. Hence the Courts have been circumspect in extending principles of natural justice to situations where it would cause more injustice rather than justice. Application of the principles of natural justice can be excluded either expressly or by necessary implication, subject to the provisions of Article 14 and 21 of the Constitution of India. The following are certain exceptions to the principles of natural justice: -

1. **Exclusion in case of emergency**
2. **Express statutory exclusion**

[13] AIR 1966 Guj. 244
[14] AIR 1978 SC 597

3. **Where disclosure would be prejudicial to public interests**
4. **Where prompt action is needed**
5. **Where it is impractical to hold a hearing or appeal**
6. **Exclusion in case of purely administrative matters**
7. **Where right of a person is not infringed**
8. **The procedural defect would have made no difference to the outcome**
9. **Exclusion on the ground of the decision maker**

PRINCIPLES OF NATURAL JUSTICE AND INDIAN CONSTITUTION

The expression 'natural justice' is not mentioned in the Indian Constitution, but the concept of these rules is embodied in the Preamble as social and economic justice; which is the idea of fairness in social and economic activities of the society forming the crux of natural justice. The Supreme Court affirmed that rules of natural justice must be read with the provision of law, and it is indispensable where the rule excludes the application of principles of natural justice.

Furthermore Article 14 and 21 of the Constitution of India talks about a fair procedure, as Article 14 is attracted when there is discriminatory class legislation or State action and Article 21 guarantees a citizen fair and adequate opportunity when he is deprived of life and personal liberty. Thus, the rules of natural justice are firmly grounded in the Indian Constitution via these articles, and the rules of natural justice cannot be overlooked as that would be violative of the fundamental rights of the citizen. Supreme Court held in **H.L. *Trehan v. Union of India*[15],** that even if the authority has statutory power to take action without hearing, it would be arbitrary to take action and violative of Article 14. In addition, Article 311 of the Indian constitution contains the principles of natural justice without using the expressions.

CONCLUSION

After analysing the concept of natural justice, it is understood that the idea behind Principles of natural justice is simply - fair adjudication. Principles of natural justice intends to identify the difference between 'the right' and 'the wrong'. The purpose is to provide impartiality and fairness. It also reposes public faith in the adjudicating authorities.

The Prinicples of natural justice have been adopted by the judiciary to protect public rights against the arbitrary decision by the administrative authorities. At all stages of the proceedings the main objective is to prevent miscarriage of justice. One must keep in mind that in order to hold the decision of the adjudicating authorities as valid, following the principles of natural justice is equally important.

[15] AIR 1989 SC 568

Natural Justice has its foundation on good conscience and human values that follows a fair procedure. If the state doesn't discharge its function in a just and fair manner the Rule of Law would lose its validity.

Natural justice is seen as the essence and the core concept to enhance the fair trial and gain the public faith. Through rules of natural justice, it is very easy for the state to impart justice to the society at large. The main objective of the principles of natural justice is to ensure fairness among common people and gain their confidence in the system.

In a social welfare state like India, the state has to perform a manifold function to realize the constitutional dream of social, political and economic justice. 'Justice' is an ideal, which cannot be attained without following the due process in every state action. Thus, every judicial, quasi-judicial and administrative authority should adopt such practices and arrive at decisions which are fair, just and reasonable. Principles of natural justice are the guiding procedural norms, which aim at the prevention of miscarriage of justice, by providing independent, impartial and unbiased adjudicatory body, guided by fair procedure and accompanied by justifiable reasons.