NATURAL JUSTICE, A CREED FOR FAIRNESS

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Unlike the United States of America and England which lay down the procedure for administrative agencies to exercise their decision making power, in the form of the Administrative Procedure Act, 1946 and Tribunals and Enquiries Act, 1971 respectively, the Indian Legislature has not prescribed any such statute to guide decision making. In such a scenario the Indian courts have insisted that the agencies in question must at least follow the bare minimum procedure for arriving at a fair decision, which is provided by the principles of natural justice. Often described as common sense justice[1] or the enforcement of a fairness discipline[2], natural justice seeks to provide the minimum protection to an individuals' rights against arbitrary procedure. They aim to supplement the law. Under the Indian Constitution, it is Article 14 and 21 that embody the principles of natural justice as the duty to act fairly, being a part and parcel of the right to fair procedure. This by implication means that the principles of natural justice cannot be excluded, expressly or by implication, by the legislature.[3]

Natural Justice has, traditionally, embodied two principles: '*nemo judex in causa sua*', translating literally to mean no man shall be the judge in his cause or the rule against bias and '*audi alteram partem*', which means the right to a hearing. Bias is generally defined as the presence of a preconceived notion or opinion without reference to the factual situation at hand. Courts have classified bias generally as being personal, pecuniary, subject matter or official bias. Though bias can never be proved by direct evidence, the courts have been least successful in tackling the problem of official bias in the administrative realm.[4]

It was the case of State of Orrisa v. Binapani dei[5] that first established the elements of the right to be heard to include: the opportunity to set up a defense, to receive the information of the allegations an charges against the accused, the right to know evidence, the right to controvert the evidence[6] and a fair opportunity to be heard. The right to notice but is the very first limb of this principle.[7] However, the finest interpretation of this rule came from

[1] *Canara bank v. Debasis Das*, AIR 2003 SC 2041
[2] IP Massey, Evolving Administrative Law Regime, accessible at: http://14.139.60.114:8080/jspui/bitstream/123456789/713/7/Evolving%20Administrative%20Law%20Regime.pdf
[3] *Olga Tellis v. Bombay Municipal Corp*, (1985) 3 SCC 545
[4] *GNR v. APSRTC*, AIR 1959 SC 308, AIR 1959 SC 1376
[5] 1967 AIR 1269
[6] See Also: *State of TN v. Sabanayagam*, (1989) ILLJ 485 Mad
[7] *Canara Bank v. VK Awasthi* , 2005 (6) SCC 231

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the judgment of Maneka Gandhi v UOI[8] that established the necessity of the right to a post decisional hearing when the requirement of a prior hearing is to be dispensed with, to avoid the frustration of the decision at hand. Natural justice aims to prevent the failure of justice and thus the requirement of following natural justice principles can be dispensed with only to prevent the same and on the satisfaction of certain circumstances that invoke the doctrine of necessity or by the waiver of the principles by the parties.

The principles of natural justice were extended beyond quasi-judicial action and to the realm of administrative proceedings only in the year 1969. The case of AK Kraipak v. Union of India[9], while differentiating between an administrative and a quasi- judicial power, thus held that if the aim of the principles of natural justice was to promote fair play and prevent arbitrariness and miscarriage of justice, then there was no reason to not extend these principles to administrative proceedings as well. They further found that an administrative decision being unjust would have more harmful effects than a quasi-judicial one. Natural justice principles are thus applicable to all authorities, who are bound to make decisions based on reasonableness, in good faith and in good conscience, for these principles give an assurance of justice and fairness.

An expansion in the scope of administrative proceeding came with the court bringing in the concept of due process under Article 21, ensuring that any act which involved a public element, whether by a private or public body, was now encapsulated under the doctrine of fairness.[10] A further expansion came with the bold move of the Supreme Court of India, in the case of S.L Kapoor v. Jaganmohan[11], wherein the court opined that the non-application of principles of natural justice in itself would constitute as prejudice. Prior to this decision, the aggrieved had a higher standard of proof wherein, in addition to the non-application of natural justice principle, the presence of prejudice had to be proved as well. An administrative action in violation of natural justice thus is a nullity and the trial is *coram non judice.*[12]

It is thus evident that the rules of natural justice have undergone significant changes over the past years. There is no straightjacket formula for the application of these rules and what rule ought to be applied and to what extent depends upon the facts and circumstances of each case. What remains constant however is the importance and significance that courts have time and again attached to the existence and the application of these principles, which have a sound jurisprudential basis.[13]

[8] (1978) 1 SCC 248
[9] (1969) 2 SCC 262
[10] *Maneka Gandhi v. UOI*, (1978) 1 SCC 248
[11] (1980) 4 SCC 379
[12] *A.R. Antulay v R.S. Nayak* (1988) 2 SCC 602; *R.B. Shree Ram Durga Prasad v Settlement Commr* (1989) 1 SCC 628; *Ravi S. Nayak v Union of India* 1994 Supp (2) SCC 641.

[13] *Dharampal Satyapal Ltd vs Dy.Commr.Of Cen.Exc.*,CA No. 4458-4459 of 2015; *Managing Director Ecil Hyderabad vs B. Karunakar*(concurrent judgment by J.Ramaswamy), (1993) 4 SCC 727

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To further emphasize the indispensable nature of the rules of natural justice, let us consider a hypothetical. Consider a situation wherein the application of the rules is absent i.e. the rules do not govern any administrative action. Now, a student X in a university, is found to be guilty of possessing chits of paper during an exam. X is suspended from the college for the semester and is debarred from appearing in any other exams. He is pronounced guilty of using unfair means. However, the review board arrived at this decision without giving X an opportunity to present his defense or without conducting a proper enquiry into the matter. Moreover, it later turns out that the chits in fact belonged to student Y, who implanted these chits on X out of fear, when the students were being frisked for the same during the exam. The decision of the review board in this case, without the application of the principles of natural justice is prima facie unfair, arbitrary and unreasonable.

Now further consider that Y is given a disciplinary hearing for his conduct but the member on the board refuses to hold Y accountable for his actions as Y's father holds an influential position in an industry in which this board member's wife works. Any decision marred by personal bias vitiates the proceeding and the trial is void ab initio.[14] However the lack of natural justice here would not invalidate the proceeding and the decision would hold good despite its blatant inequity.

The absence of the rules of natural justice take away the rather 'humanising factor' that ensures the dignity of individuals. Natural justice rules thus seem to be something of the very basic nature and a bare minimum standard for the protection of rights, something that ensures fairness in decision making. It thus is the very sense of what is right or wrong in a given situation, something that prevents the miscarriage of justice. In this case, had X been given an opportunity to be heard, to set up his defense and perhaps controvert the evidence by say showing handwriting samples to prove that the chits did not belong to him or challenge the invalidity of the proceedings against Y on grounds of bias, in short had the rules of natural justice been adhered to, the decision would have been a correct decision, free from arbitrariness and ensuring fairness and ultimately leading to social good.

Alan[15] had stated that the rules of natural justice are rooted in the rule of law. The rule of law, as is well settled, is the Constitution of India[16], the supreme law of the land and is anti-thesis of arbitrariness and leads ultimately to good governance. It is the absolute predominance of regular law as opposed to the influence of wide discretionary power. The rule of law is also recognized as a basic feature of the constitution that 'runs like a golden thread through every provision of the constitition'[17]. It could thus even be argued that the absence of the rules of natural justice, having its roots in the rule of law, is the very violation of the constitution and its basic structure. It is particularly violative of Article 14 and Article

[14] *State of UP v. Mohd Nooh*, 1958 AIR 86.
[15]Judicial Review of Administrative Action, Alan Morrison, 1980, pp.161
[16] *ADM Jabalpur v. Shiv Kant Shukla*, 1976 AIR 1207, *Bachan singh v. State of Punjab*, (1982) 3 SCC 24
[17] Supra n.9

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21 of the Constitution of India and anything violative of the rule of law is unconstitutional, hence liable to be struck down.

The concept of natural justice is not new to India and the origins of it can be traced back to the Dharma Shastras, Neeti Shastras and the Artha Sashtras. Not only is the adherence to these rules, as recognized by all civilized states, of supreme importance but the principles of natural justice are ingrained into the very conscience of the man.[18] The principles not only discover new public law standards on moral and social principles but are, importantly, fundamental to dispense justice and arrive at a well-reasoned, fair decision. Critics of administrative law have often found the requirement of not giving reasons for an administrative decision to be a setback of administrative adjudication. However, Massey argues, that a speaking order may be a requirement under natural justice for the practice of keeping reasons off record would make the basic feature of judicial review as embodied in the constitution meaningless.[19] This requirement fills in the lacunae created when the statute does not mandate providing the reasoning of a decision and the case is not one of violation of fundamental rights. Wade has even gone on to call the principles of natural justice as being 'impliedly mandatory requirements, the non-observance of which invalidates the exercise of that power'.[20]

Thus given the vast significance and advantages of natural justice rules as recognized and acknowledged by the courts time and again, it seems absurd to argue that the objects and purposes of natural justice principles- which is to prevent arbitrariness and unfairness- could be better achieved in the absence of these rules, which in itself makes the decision grossly vulnerable to what it ought to prevent!

[18] Supra n.7
[19] Supra n.2
[20] Administrative Law,4th edn, HRW Wade, 1977, pp. 395

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