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PRINCIPLES OF NATURAL JUSTICE IN THE LIGHT OFADMINISTRATIVE LAW: A CRITICAL ANALYSIS

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ABSTRACT: Administrative law is a separate branch of legal discipline in India and is not codified. There are several principles of administrative law which has been evolved by the court for the purpose of controlling the exercise of power so that it doesn't lead to arbitrariness or despotic use of power. One of the most important of these principles is the principle of Natural justice. Natural justice means fairness, reasonableness, equity and equality. It is also known as law of nature and is another name for common sense justice. The concept of natural justice is not new to our Indian judiciary and it has been in existence since the beginning of our justice delivery system. It ensures law with fairness. Non observance of these principles leads to unfairness, arbitrary etc. It is an important concept and available to everyone litigant during trail. However, principles of natural justice can be excluded in some situations. This paper aims to critically analyze the principles of natural justice, its origin and exceptions to this rule with the help of some judicial pronouncements.

KEYWORDS: Administrative law, Natural Justice, Bias, Fair hearing, Arbitrariness, Exception.

I. INTRODUCTION

Natural justice is also known as fair play in action or fundamental justice or Universal justice or substantial justice. It shields personal liberty against the arbitrary action. Though these principles are not provided in Indian constitution they are considered as necessary element for the proper administration of justice. Principles of natural justice are the rules made by the judges and are classical example of judicial activism. These principles were developed by the courts to prevent use of powers unfairly by the administrative authorities. These principles are applied to courts, tribunals, statutory authorities and administrative authorities. There is no statute in India which lays down the minimum procedures that are to be followed by the administrative agencies while exercising their decision-making powers. Hence, there is bewildering variety of administrative procedure. Sometimes the statute under which the administrative agency exercises power lays down the procedure which the administrative agency must follow but at times the administrative

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agency is at liberty to devise its own procedure. However, the courts always insist the administrative agencies to follow a minimum of fair procedure. This mandatory minimum fair procedure that should be followed is the principles of natural justice. There are two basic principles of natural justice which provides foundation on which whole superstructure of judicial control of administrative actions is based. Those are:

1. Nemo in propria causa judex, esse debet – Rule against Bias (no one should be a judge in his own case)

2. Audi alteram partem – Rule of fair hearing, or hear the other party, or no one should be condemned unheard

II. ORIGIN

The word natural justice is derived from the roman word ***'jus-naturale'*** and ***'lex-naturale'*** which means justice, equity and good conscience. The concept of natural justice is not a new phenomenon and it is very old concept. It has its origin quite early than Greek and Roman empires. These principles are also found in Manusmriti, Kautilya's Arthasastra and in various other texts. According to the Bible, when Eve and Adam ate the fruit of knowledge then before sentencing Eve he was provided with fair chance to defend himself. It was derived from our moral conscience. The great Babylonian king Hammurabi ensured that if any judge delivers an incorrect decision should be fined and removed permanently from the bench. The concept of natural justice is similar to the concept of our Indian concept ***Dharma***. While application of sentence, the King Ashoka has insisted fairness and arbitrariness in the exercise of justice, caution and tolerance. Aristotle called it as Universal law.

III. RULE AGAINST BIAS

This is the first long arm of natural justice. It means that the deciding authority should not be partial and must decide the case based on evidence on record without any bias. Bias means an act which leads to unfair activity and an act is said to be biased if the deciding authority or judge is in favor of one party or against the other party. The judgment should not be influenced by bias in any manner, whether personal, pecuniary, subject matter, departmental or preconceived notion. The main aim of this principle is to ensure unbiased decision. Bias is only a presumption.

Types of bias

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1.Personal bias- Personal Bias arises a person is judge in his own case or where there is relationship between the deciding authority and one of the parties before him/her Such relationship may be in various forms like personal or professional hostility or friendship or enmity. If a person wants to challenge administrative action on the ground of personal bias then he should prove that there is a reasonable suspicion of bias or a real likelihood of bias. To find bias by the judge then there should be real likelihood of bias and not mere suspicion of bias.

S.P. Kapoor vs. State of H.P[1]- In this case the department promotional committee has prepared a selection list. The officer who prepared this list is one of the candidates. So, S.C. has quashed the list on the ground of personal bias.

2. Pecuniary Bias: pecuniary bias arises when the deciding authority has financial or monetary benefit in the case before him/her. Pecuniary interests in the case leads decision null and invalidate the proceedings and will disqualify the judge. Even the non participation of the biased member in the proceedings will disqualify him/her.

J. Mohapatra &Co. v. State of Orissa[2]**-** In this case some of the authors of the books were members of textbook selection committee are their books were considered for selections. So the Supreme Court quashed the decision on the ground of pecuniary bias.

3. Subject Matter Bias: when the deciding authority is directly or indirectly involved in the subject matter of the case then subject matter bias arises. There should be a real likelihood of bias in the particular case.

Gullapalli Nageswara Rao vs. APSRTC[3]–In this case the secretary of the transport department has subject matter interest. He was the person who initiated the scheme and also he was the person who gave the hearing. So the secretary is biased and his decision was quashed.

4. Departmental/Institutional Bias: Departmental bias arises where there is non application of mind totally or when the deciding authority has pre-adjudicated the issue or when the functions of both the prosecutor and the judge are combined in the same department.

1. S.P. Kapoor vs. State of H.P , (1981) 4 SCC 716.
2. J. Mohapatra &Co. v. State of Orissa, (1984) 4 SCC 103.
3. Gullapalli Nageswara Rao vs. APSRTC, AIR 1959 SC 308.

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Hari vs. Dy.Commr. Of Police[4]- in this case the police department initiated the proceedings .the same department heard and decided the case. This was challenged. But the court rejected the claim on the ground that initiation and decision were discharged by different officers. Hence there is no chance for bias.

5. Preconceived Notion Bias: It is also known as unconscious bias**.** It means where a deciding authority will not sit with a blank sheet of paper and has an opinion formed before head without adequate evidence**.** It means personal belief without proof.

IV. RULE OF FAIR HEARING

This Rule simply means that the judge should hear both the parties in a case. Every person in a case must be given an opportunity to defend himself/herself. If a person is not provided him with an opportunity to defend himself or his side is not heard then it is violation of Article 14 and 21 of the constitution of India. A Fair hearing maintains public confidence and trust in judiciary and administrative authorities. In the case of **Bank of India vs. Apuraba Kumar Saha**[5]- in this case it was held that if a person refuses to participate in an enquiry without any valid reason then at a later stage he cannot plead that principle of natural justice is violated. **Union of India vs. J.P. Mittar**[6]- It was held that personal hearing is not needed for correction of date of birth and a mere representation is enough and sufficient.

The important components of this rule are as follows:

1. Right to notice

'Notice' is the first step in any hearing. Notice means being known or knowledge. A person can defend himself/herself in a case, only if he knows formulation of subjects and issues involved in the case. It is not only enough to give a notice but the Notice given should also be adequate .The adequacy of notice is a relative term and it depends on each case In the case of **Shiv Sagar Tiwara vs. Union of India**[7] it was held that the notice can also be published in newspaper if it should be given to large number of people. Such a notice is adequate and sufficient. Sufficient time should be giving to the person to whom the notice is given to comply with the requirements of notice.

4. Hari vs. Dy.Commr. Of Police, AIR 1956 SC 559.
5. Bank of India vs. Apuraba Kumar Saha, (1994) 1 SCC 615.
6. Union of India vs. J.P. Mittar, AIR 1971 SC 1093.
7. Shiv Sagar Tiwara vs. Union of India, (1997) 1 SCC 444.

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The Notice should contain the following particulars:

1. Time, place and nature of hearing,

2. The Legal authority under which the hearing is going to held,

3. Statement of specific charges which the person is going to meet.

2. Right to present case and evidence

Every party in a case has a right to present his case and if it is not done then it will be against the principles of natural justice. And right to present evidences on his side. This can be done either orally or in written. In the case of Dhakeswari **Cotton Mills Ltd. v. CIT**[8] the assessee was not allowed to produce his material evidence. So, the Supreme Court quashed the decision of the administrative authority.

3. Right to rebut adverse evidence and right to know the evidences against him

It means a person should be informed about the evidences available against him. It is enough to provide with him the summary of the contents and should not be misleading. On the discretion of deciding authority the rebuttal can be made either orally or in writing. Rebuttal involves two things cross examination and legal representation.

4. Cross- examination

Cross examination is the weapon to find out the truth. If a witness in a particular case refuses to cross examine him then it is against the rule of fair hearing. In the case of **Kanungo &Co. vs. Collector** [9]of Customs it was held that under the Sea Customs Act, in the matters of seizure of goods the principle of natural justice doesn't apply.

5. Legal representation

Where the party is illiterate, or he is facing a trained prosecutor, or the matter is complicated and technical, or expert evidence is on record or a question of law is involved then he should be provided with some professional assistance to defend himself. If by standing order, the right to legal representation is restricted then it will not leads to denial of natural justice.

6. Report of the enquiry should be shown to the other party

8. Dhakeswari Cotton Mills Ltd. v. CIT, AIR 1955 SC 65.
9. Kanungo &Co. vs. Collector, (1973) 2 SCC 438.

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There is unsolved question that is whether not supplying of report of inquiry to the other party is violation of principles of natural justice.

7. Post decisional hearing.

It means hearing should be afforded before a decision is taken by an authority or an individual should be provide with opportunity to be heard after a tentative decision has been taken by the authorities. When pre decisional hearing is not possible because it is not feasible for the authority to provide the party with that opportunity then post decision hearing should be provided. It was developed to maintain a balance between administrative efficiency and fairness to the individual.

8. Reasonable Decisions or Speaking orders

The decision affecting rights of an individual should be speaking orders. It means that the order should mention the grounds or reasons on which the particular decision is arrived and the party against whom an order is passed should know the reasons of passing the order. So that if any party is aggrieved by that decision he/she can prefer an appeal based on such reasons. Reasons mentioned are either expressed or implied. The orders need not be lengthy but it should show that proper mind is applied. There is no particular foam in which orders should be passed.

V. EXCEPTIONS

The principle of natural justice is not absolute. It has some restrictions. In various situations this principle can be excluded. If the statue either expressly or by implications excludes the principle of natural justice then it is not unfair or arbitrary. Those exceptions are as follows:

1. Exclusion in case of emergency:

Where prompt actions are to be taken then it is not mandatory to issue notice and hearing is also not necessary.non issue of notice or unfair hearing in such a case is not against the principle of natural justice. **Nathubhai vs. Municipal Corporation**[10]- If dangerous building is to be demolished then there is no need of following principles of natural justice.

2. Confidentiality

10. Nathubhai vs. Municipal Corporation , AIR 1959 Bom 332

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The observances of principles of natural justice can be excluded in the cases of confidentiality.

Malak Singh v. State of Punjab and Haryana[11]- the police maintains a surveillance register which is very confidential document. So the person whose name is mentioned in that book or any public cannot access to it.

3. Purely administrative matters

Where in a case pure administrative matters are involved then it is not needed to comply with the principles of Natural Justice.

Jawaharlal Nehru University vs. B.S. Narwal[12]- In this case a student was very dull in his academics so he was removed from the rolls without giving any pre decisional hearing. The student challenged the decision. The court rejected the plea on the ground that principles of natural justice can be excluded in academic matters or purely administrative matters,

4. Administrative Impracticability

Where practical impossibility or practical inconvenience arises then we can ignore principles of Natural Justice.

R. Radha Krishnanan vs. Osmania University[13]-

There was a mass copying in MBA entrance exam and hence it was cancelled. The students challenged on the ground that notices were not given to them before taking decision. The court held that it was practically impossible to give notices to all the students and rejected the plea.

5. Interim preventive action

When actions are only for the sake of prevention but not a final order then also these principles can be excluded.

Abhay Kumar vs. K. Srinivasan[14]- In this case a student stabbed his co student and a criminal case was filed against him. So the institution debarred him from entering the premises and attending classes till the disposal of the case and court held that principles of natural justice cannot be attracted in such cases.

6. Legislative actions

11. Malak Singh v. State of Punjab and Haryana, (1981) 1 SCC 420
12. Jawaharlal Nehru University vs. B.S. Narwal, (1980) 4 SCC 480
13. R. Radha Krishnanan vs. Osmania University, AIR 1974 AP 283.
14. Abhay Kumar vs. K. Srinivasan, AIR 1981 Del 381.

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Principles of Natural Justice can be excluded by a provision of constitution, legislative actions, subordinate actions, and plenary actions. The principle of natural justice is not attracted where there is no express statutory requirement for hearing.

7. Where there is no violation of right of an individual.

Where a statue didn't confer any right on a person or there is no infringement of any right of a person then these principles will not come into the scene.

8. Necessity or statutory exception

If the person is the only deciding authority in the case then decision given by him in such a case is not bias. Necessity should be fair and real. If such exception is not given then it leads to grinding halt of whole administrative system. **Sub-committee on Judicial Accountability vs. Union of India**[15]- In this case the Speaker of Loksabha has affiliated congress party. This was challenged. The court held that the speaker is the only authority to take all the actions as under Judges Enquiry Act.

9. Contractual agreements

Principles of Natural justice are not applied in contractual agreements because in termination of agreement 'duty to act judicially' doesn't attract - **State of Gujarat vs. M.P. Shah Charitable Trust**[16]**.**

10. Exceptions in case of government policy decisions

Where it involves Policy decisions in the case of economic matter then principles of natural justice can be excluded.

11. Theory of useless formality

Where in a case one conclusion is possible, one penalty is permissible, result would not be different then these principles can be excluded. **Karnataka SRTC vs. S.G. Kotturappa**[17] - If a respondent commits misbehavior acts repeatedly and undergone minor punishments then principles of natural justice doesn't attract.

15. Judicial Accountability vs. Union of India, (1991) 4 SCC 699.

16. State of Gujarat vs. M.P. Shah Charitable Trust, (1994) 3 SCC 552.

17. Karnataka SRTC vs. S.G. Kotturappa , (2005) 3 SCC 409.

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VI. CONCLUSION

Natural justice has meant different things to different lawyers, writers and system of law. It has different shades, forms, shapes and color. Principles of natural justice are not defined in any statute but are still accepted and enforceable. The violation of principles of Natural justice is against article 14 and 21 of constitution of India and results in arbitrariness, unfairness, inequality. Principles of natural justice are procedural norms and by providing impartial and independent authority it aims to prevent the miscarriage of justice. These principles of natural justice are very flexible and they cannot be applied in any straitjacket formula. The application of these principles varies from case to case for example in some cases oral hearing is enough and it depends upon the factual aspect of the case. These principles are attracted whenever an individual suffers a civil consequence or in any administrative action, a prejudice is caused to him. The decisions delivered in violation these principles are only voidable and not void and of no value. Statutory provisions should be read carefully, interpreted and applied so it will not be inconsistent with the principles of Natural justice. These principles supplement law of land.

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