



Principles of Natural Justice and Judicial Response in India : An Analysis

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It is believed that the origin of the Natural Justice came from the concept of Natural Law during the Greeks period. According to the Natural Law theory, nature provides a certain order from which the human beings can set standard for their conduct with the help of the reason. Based on such a primitive theory, it was even known to people in the ancient times such as Greeks and Romans. The standard 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.¹

The two basic principles of natural justice are –

1. Nemo judex in causa sua :

No one should be a judge in his own cause or Rule against Bias² :

The requirement of the principle is that the decision-maker should be opened to persuasion but don't require that he/she must be with a blank mind.³ Biasness may be financial/pecuniary or personal one.

In *M/s Builders Supply Corporation v. The Union of India and others*⁴, "it is obvious that pecuniary interest, howsoever small it may be, In a subject matter of the proceedings, would wholly disqualify a member from acting as a judge".

In *Manak Lal v. Prem Chand*⁵, the SC held that, where a committee was constituted to enquire into the complaint made against an Advocate, the Chairman of the Committee was one who had once appeared earlier as counsel for the complainant. Constitution of such a committee was held to be bad and it was observed, "in such cases the test is not whether in fact the bias has affected the Judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributed to a member of the Tribunal might have operated against him in the final decision of the Tribunal."

In, *J. Mohopatra & Co. v. State of Orissa*⁶ SC quashed the decision of the Textbooks' selection committee because some of its members were also the authors of the books, which were considered for selection. The Court concluded that withdrawal of person at the time of consideration of his books is not sufficient as the element of quid pro quo with other members cannot be eliminated.

2. Audi alteram partem:

Hear the other party or No one should be condemned unheard or Rule of fair hearing. In *State of U. P. v. Vijai Kumar Tripathi*,⁷ the Hon'ble Supreme Court has held that it is up to the competent authority to decide whether In the given circumstances the opportunity to be provided should be a prior one or post - decisional opportunity. Normal rule, of course, is prior opportunity.

Components of Fair Hearing

- Notice Hon'ble Supreme Court reported in *Maharashtra State Financial Corporation v. Suvarna Board Mills and Anr.*⁸, it has been observed that the natural Justice cannot be placed in a strait Jacket; rules are not embodied and they do vary from case to case and from one fact-situation to another. All that has to be seen is that no adverse civil consequences are allowed to ensue before one is put on notice that the consequence would follow if he would not take care of the lapse, because of which the action as made known is contemplated. No particular form of notice is the demand of law. All will depend on facts and circumstances of each case.

SC in *MP Industries Ltd. v. Union of India and others*⁹ held that, where personal hearing was not considered to be necessary. A mere written representation as provided under the Rules was held to be sufficient to



comply with the principles of natural justice

- Right to present case and evidence

In *Khem Chand v. Union of India*,¹⁰ Chief Justice S. R. Das observed that, “reasonable opportunity” is:

(a) An opportunity to deny his guilt and establish his innocence which he can only do, if he is told what the charges leveled against him are and the allegations on which such charges are based,

(b) An opportunity to defend himself by cross examining the witness produced against him and by examining himself or any other witnesses to support his defence and finally,

(c) An Opportunity to make his representation as to why the proposed punishment should be inflicted on him which he can do only if the competent authority, after the enquiry is over and after applying his mind to the gravity or other wise of the charges proved against the Government Servant, tentatively proposes to inflict one of the three major punishments and communicates the same to the Govt. Servant

- Right to rebut evidence

In *Town Area Committee v. Jagdish Prasad*,¹¹ the department submitted the charge, got an explanation and thereafter straightaway passed the dismissal order. The court quashed the order holding that the rule of fair hearing includes an opportunity to cross-examine the witness and to lead evidence.

In *Hira Nath Misra v. Principal, Rajendra Medical College*¹² the court disallowed the opportunity of cross-examination on the grounds of practicability. The SC rejected the contention of the appellants that they were not allowed to cross-examine the girl students on the ground that if it was allowed no girl would come forward to give evidence, and further that it would not be possible for the college authorities to protect the girl students outside the college precincts.

- Fairness/No evidence should be taken at the back of the other party

In *Srikrishna v. State of M. P.*¹³, It has been observed that the principles of natural justice are flexible and the test is that the adjudicating authority must be impartial and fair hearing must be given to the person concerned.

- Right of Legal Representation

The SC in *J. K. Aggarwal v. Haryana Seeds Development Corporation Limited*¹⁴ held that refusal to sanction the service of a lawyer in the enquiry was not a proper exercise of the discretion under the rule resulting in failure of natural justice; particularly in view of the fact that the Presenting Officer was a person with legal attainments and experience.

The courts in India have held that in following situations, some professional assistance must be given to the party to make his right to defend himself –

- a) Illiterate
- b) Technical or complicated nature of issues
- d) Question of law is involved

- Disclosure copy of documents to the other party.

In, *Union of India and Ors. v. Mohd. Ramzan Khan*¹⁵ honorable SC held that, non-furnishing of the enquiry report would amount to denial of the principles of natural justice.

- Decision post haste – the decision should not be taken in haste. Reasonable time should be given to both the parties for hearing.
- Reasoned decision or speaking order.

S. N. Mukherjee v. Union of India,¹⁶ the SC observed that,

The requirement to record reasons could be regarded as one of the principles of natural justice. An administrative authority must record the reasons in support of their decisions,

unless the requirement is expressly



or by necessary implication excluded. The reasons cited would enable the court to effectively exercise the appellate or supervisory powers. The giving of reasons would guarantee consideration of the matter by the authority and would produce clarity in the decisions and reduce arbitrariness.

- Rule against dictation.

The authority deciding the dispute (judicial or quasi judicial authorities), shall not act and decide the matter under dictation of superior authorities or others.

- Financial assistance to attend the enquiry

The financial incapacity of a party in putting evidence should not come in way. Evidence and witnesses should be brought at the expense of the government to facilitate fair hearing.¹⁷

Non application of principles of Natural Justice

Application of the principles of natural justice can be excluded in the following cases.

- Emergency
- Confidentiality
- Routine matters
- Impracticability
- Interim preventive action/order
- Legislative actions
- No (statutory or common law right) right of the person is infringed
- Doctrine of necessity¹⁸

Breach of the Principles

Breach of the Principles of Natural Justice will result in,

- A decision rendered in violation of the rule against bias is voidable and not void.
- The aggrieved party may waive his right to avoid the decision.
- But any action in violation of the *audi alteram partem* rule is completely void and can be challenged before appropriate authority.

*Maneka Gandhi v Union of India*¹⁹ SC

observed that, the principles of natural justice have for sometime past, come into common use in our country. But it is difficult to ascertain from the law reports or other source as to how these principles came to be applied in the field of Industrial Law. There is no legal provision found anywhere which prescribes them.

Raj Kishore Prasad Jaiswal v Subak Narain Singh and Anr.,²⁰ has aptly observed: "It is well-established rule of law that rule of natural justice is applied only where the law itself is silent and is not inconsistent with what it provides, but where any provision as to the rule of natural justice is expressly or by necessary implication negated by law that cannot be a ground for holding that the enactment giving that law is *ultra vires* or unconstitutional".

In the *Province of Bombay v Madhukar*²¹, Vyas J concluded, "It is clear that all that is meant by compliance with the rules of natural justice by a domestic tribunal is that the tribunal must act honestly and in good faith, and must give the delinquent a chance of explanation and defence. If its rules postulate an enquiry, the delinquent must have a reasonable opportunity of being heard and of correcting and contradicting relevant statement prejudicial to his view."

In, *C. Gabriel v. State of Madras*,²² Madras High Court has summarized the principles of Natural Justice in the following words:

1. That every person whose civil rights are affected must have a reasonable notice of the case he has to meet.
2. That he must have reasonable opportunity of being heard in his defence.
3. That the hearing must be by an impartial tribunal, i.e., the case, *Nemo debet esse judex in propria causa*.
4. That the authority must act in good faith, and not arbitrarily but reasonably.

Conclusion :

Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people



are affected by acts of authority. It is the bone of healthy government, recognised from earliest times and not a mystic testament of judge-made law.²³

In absence of any specific statutory recognition, the judiciary in India has remained steadfast in protecting and developing the principles of natural justice. These principles ensure fair treatment and equitable justice which are basic notions of any democratic society. Broad interpretation of these principles by the judiciary in India, particularly by the Supreme Court, has filled the gap of statutory recognition of same. However, strict adherence to these principles may result in delay in process of dispute resolution and hence may be restricted in cases of emergency, necessity and impracticability.

Endnotes

1. Neil Parpworth, *Constitutional and Administrative Law*, 7th Ed. By H Pp. 38, 300 (2012)
2. Operative prejudice in relation to a party or issue
3. Matthew Groves, *Australian Administrative Law*, Pp. 317, 326 (2007)
4. AIR 1965 SC 1061
5. AIR 1957 SC 425
6. AIR 1984 SC 1572
7. AIR 1995 SC 1130
8. (1994) 5 SCC 566
9. AIR 1966 SC 671
10. AIR 1958 SC 300
11. AIR 1978 SC 60, 1978 (37) FLR 108, (1979) 1 SCC 60
12. AIR 1973 SC 1260
13. AIR 1977 SC 1691
14. 1991 AIR 1221, 1990 SCR Supl. (3) 13
15. (1991) 1 SCC 588: (AIR 1991 SC 471)
16. (1990) 4 SCC 594
17. Sana Murtaza, *Principles of Natural Justice*, Available at, <http://sanamurtaza.blogspot.in/2012/07/principles-of-natural-justice.html>
18. When there is no other judge available, the rule against bias may be ignored. In cases of emergency, requiring a quick action, even a biased judge can take the decision and in such cases, it would not vitiate the action.
19. AIR 1978 SC 597
20. AIR 1959 Pat 89
21. AIR 1952 Bom. 37
22. 1959 2 M. L. J. 15
23. *Mohinder Singh Gill v. Chief Election Commissioner* AIR 1978 SC 851