



Evolution and Significance of Natural Justice – An Analysis

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Abstract:

The application of principles of natural justice is not a new phenomenon in the legal system. It pertains to moral justice and is governed by the laws of equity. The principles of natural justice ensure that a justice is met out to all and not only to one of the parties in a judicial proceeding. One person's justice shouldn't jeopardize it for another. The righteousness of the law lies in maximizing the beneficiaries and decreasing the disadvantaged. This has led to the significance of due process and rule of law in judicial proceedings and the legal system. There exists a close connection between moral principles and legal procedures as per principles of natural justice, rather than being two watertight compartments. Principles of natural justice can be said to be the rules of fair play. It is a common law concept that represents higher procedural aspects developed by courts which every judicial, quasi-judicial, and administrative body must abide by. Natural justice equates with fairness, equality and equity. The concept also extends to a general duty to act fairly and to ensure that fair decision is reached by an objective decision maker. The chance to be heard by an impartial judge is what lies at the heart of the principle and procedural fairness. Ensuring procedural fairness protects individual rights and enhances public trust in the process.

Key Words: Natural Justice, Reasonableness, Justice, Equity, Good Conscience.

Introduction

Natural justice is an important concept in administrative law. The principles of natural justice or fundamental rules of procedure for administrative action are neither fixed nor prescribed in any code. They are better known than described and easier proclaimed than defined. It has many colours and shades and many forms and shapes. According to De Smith, the term "natural justice" expresses the close relationship between the common law and moral principles and it has an impressive ancestry. It is also known as "substantial justice", "fundamental justice", "universe justice" or fair play in action". It is a great humanizing principle intended to invest law with fairness, to secure justice and to prevent miscarriage of justice.

Definition

It is true that the concept of natural justice is not very clear and, therefore, it is not possible to define it; yet the principles of natural justice are accepted and enforced. In reply to the aforesaid criticism against natural justice, Lord Reid in the historical decision of Ridge v. Baldwin (Ridge) observed: "In modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist."

Nature and Scope

Natural justice is a branch of public law. It is a formidable weapon which can be wielded to secure justice to citizens. Rules of natural justice are "basic values" which a man has cherished throughout the ages. They are embedded in our constitutional framework and their pristine glory and primary cannot be allowed to be submerged by exigencies of particular situations or cases. Principles of natural justice control all actions of public authorities by applying rules relating to reasonableness, good faith and justice, equity and good conscience. Natural justice is a part of law which relates to administration of justice. Rules of natural justice are indeed great assurances of justice and fairness.

Object

There are certain basic values which a man has always cherished. They can be described as natural law or divine law. As a reasonable being, a man must apply this part of law to human affairs. The underlying object of rules of natural justice is to ensure fundamental liberties and rights of subjects. They thus serve public interest. The golden rule which stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. Its essence is good conscience in a given situations; nothing more-but nothing less.

As Wade said: A decision which is made without bias, and with proper consideration of the views of those affected by it, will not only be more acceptable, it will also be of better quality. Justice and efficiency go hand in hand, as long at least as the law does not impose excessive refinements.

Historical Development

The term “natural justice” expresses the close relationship between the common law and moral principles and describes what is right and what is wrong. It has an impressive history. It has been recognized from the earliest times: it is not judge-made law.

In days bygone the Greeks had accepted the principle that “no man should be condemned unheard”. The historical and philosophical foundations of the English concept of natural justice may be insecure, nevertheless they are worthy of preservation. Indeed, from the legendary days of Adam and of Kautilya’s Arthashastra, the rule of law has had this stamp of natural justice which makes it social justice.

The rules of natural justice were placed so high that it was declared that “no human laws are of any validity, if contrary to this”, and that a court of law could disregard an Act of Parliament if it is contrary to natural law. The origin and development of equity in England owed much to natural law. The concept of natural law and natural rights influenced the drafting of the US Constitution. It also provided a basis for international law and international conventions, covenants and declarations.

Natural Justice and Statutory Provisions

Generally, no provision is found in any statute for the observance of the principles of natural justice by the adjudicating authorities. The question then arises whether the adjudicating authority is bound to follow the principles of natural justice. The law is well-settled after the powerful pronouncement of Byles J in *Cooper v. Wandsworth Board of Works* (Cooper), Wherein His Lordship observed:

A long course of decisions, beginning with Dr. Bentley’s case and ending with some very recent cases, establish that although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature.

In the famous case of *A.K. Kraipak v. Union of India* (A.K.Kraipak), speaking for the Supreme Court, Hedge J propounded: The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.

In *Meneka Gandhi v. Union of India* (Meneka Gandhi), Beg CJ observed: It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action.

In *Olga Tellis v. Bombay Municipal Corpn.* (Olga Tellis), an interesting question arose before the Supreme Court. Section 314 of the Bombay Municipal Corporation Act, 1888 empowered the Commissioner to remove or demolish illegal construction without notice. Vires and constitution validity of the said provision was challenged contending that it was violative of principles of natural justice. Considering the ambit and scope of Section 314 and describing it in the nature of enabling provision, the court applied the principle of “reading down”. It was held that the Commissioner may without notice remove the encroachment but it was not mandatory. The court stated: We must lean in favor of this interpretation because it helps sustain the validity of the law. Reading Section 314 as containing a command not to issue notice before the removal of an encroachment will make the law invalid.

Principles of Natural Justice

The traditional English law recognizes two principles of natural justice:

1. *Nemo debet esse iudex in propria causa*: No man shall be judge in his own cause, or no man can act as both at the one and the same time – a party or a suitor and also as a judge or the deciding authority must be impartial and without bias.
2. *Audi alteram partem*: Hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that there must be fairness on the part of the deciding authority.

1. Absence of bias, interest or prejudice

The first principle of natural justice consists of the rule against bias or interest and is based on three maxims: i) “No man shall be a judge in his own cause”; ii) “Justice should not only be done, but manifestly and undoubtedly be seen to be done”; and iii) “Judges, like Caesar’s wife should be above suspicion”.

The first requirement of natural justice is that the judge should be impartial and neutral and must be free bias. He is supposed to be indifferent to the parties to the controversy. He cannot act as judge of a cause in which he himself has some interest either pecuniary or otherwise as it affords the strongest proof against neutrality. He must be in a position to act judicially and to decide the matter objectively. A judge must be of sterner stuff. His mental equipoise must always remain firm and un-deflected. He should not allow his personal prejudice to go into the decision-making. The object is not merely that the scales be held even; it is also that they may not appear to be inclined.

If the judge is subject to bias in favor of or against either party to the dispute or is in position that a bias can be assumed, he is disqualified to act as a judge, and the proceedings will be vitiated. This rule applies to the judicial and administrative authorities required to act judicially or quasi-judicially.

Bias is of four types:

- a. Pecuniary bias
- b. Personal bias
- c. Official bias or bias as to the subject-matter
- d. Judicial obstinacy

a. Pecuniary Bias:

A pecuniary interest, howsoever small or insignificant, will disqualify a person from acting as a judge. Dr. Bonham’s Case, the Royal college of Physicians had convicted and imprisoned Thomas Bonham for practicing medicine without a license and also imposed fine. When Bonham challenged his imprisonment, Sir Edward Coke, Chief Justice of England’s Court of Common Pleas ruled that the Royal College lacked the authority under its charter and a parliamentary statute to imprison for practicing without a license and Coke also noted that the College cannot be a judge in a case to which it is party.

In *Mohapatra & co. Vs. State of Orissa* some of the members of the Committee set up for selecting books for educational institutions were themselves authors whose books were to be considered for selection. It was held by the Supreme Court that the possibility of bias could not be ruled out. Madon J. observed: “it is not the actual bias in favor of the author member that is material, but the possibility of such bias.”

b. Personal Bias

Various circumstances may give rise to personal bias in the judge against one party in a dispute before him. He may be a friend or relation of the party, or have some businesses or professional relationship with him, or may have some personal animosity or hostility against him. All these factor create bias either in favor or, or against, the party and will operate as a disqualification for a person to act as a judge.

In *A.K. Kraipak V Union of India* one N was a candidate for selection to the Indian Foreign Service and was also a member of the Selection Board. N did not sit on the Board when his own name was considered. Name of N was recommended by the Board and he was selected by the Public Service Commission. The Candidates who were not selected filed a writ petition for quashing the selection of N on the ground that the principles of natural justice were violated. Quashing the selection, the court observed: “it is against all canons of justice to make a man judge in his own biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased”.

In *Manak Lal V Prem chand* a complaint alleging professional misconduct against Manak Lal an advocate of the Rajasthan High court, was filed by Prem Chand. The bar council tribunal, appointed by the Chief Justice of the High Court to enquire into the alleged misconduct of Manak Lal, consisted of the chairman and two other members. The chairman had earlier represented Prem Chand in a case. He was however, a senior advocate and was once the advocate-General of the Rajasthan High Court. The Supreme Court has no hesitation in assuming that the Chairman had no personal contact with his client and did not remember that he had appeared on his behalf in certain proceedings. The court was thus satisfied that there was no ‘real likelihood of bias’ but still it held that the chairman was disqualified on the ground that ‘justice not only be done but must appear to be done to the litigating public.’ Actual proof of prejudice was not necessary, reasonable ground for assuming the possibility of bias was sufficient.

c. Official Bias

The third type of bias is official bias or bias as to the subject-matter. The may arise when the judge has a general interest in the subject matter. According to Griffith and street, “only rarely will this bias invalidate proceedings”.

In Gullapalli Nageswara Rao V A.P.S.R.T.C The petitioners were carrying on motor transport business. The Andhra State Transport Undertaking published a scheme for nationalization of motor transport in the State and invited objections. The objections filed by the petitioners were received and heard by the Secretary and thereafter the scheme was approved by the Chief Minister. The Supreme Court upheld the contention of the petitioners that the official who heard the objections was 'in substance' one of the parties to the dispute and hence the principles of natural justice were violated.

But in Gullapalli II case the Supreme Court qualified the application of the doctrine of official bias. Here the hearing was given by the Minister and not by the Secretary. The court held that the proceedings were not vitiated as the 'the Secretary was a part of the department but the Minister was only primarily responsible for the disposal of the business pertaining to the department.'

Similarly it would be wrong for the person who takes an initial decision to sit with the appellate authority while hearing an appeal from his own decision though, under the relevant statute, he is a member of the appellate authority. In *K. Chelliah V Chairman, Industrial Finance Corporation* disciplinary action by way of dismissal was taken by the chairman of the corporation against an employee. There was a provision in the statute for an appeal from the chairman to the Board of Directors. He chairman was an ex officio member of the board and he participated in the meetings of the board in which the employee's appeal was considered. The board had also obtained chairman's comments on the appeal preferred by the employee. The court quashed the board's order. The presence of the chairman created a reasonable impression in the party whose rights were being adjudicated upon that there was a real likelihood of bias.

There are just a few popular ones.

- Class: bias favoring one social class and bias ignoring social class.
- Commercial: advertising, coverage of political campaigns favoring corporate interests, or reporting favoring media owner interests.
- Cultural bias: interpreting and judging phenomena in terms particular to one's own culture.

d. Judicial obstinacy

There may also be a judicial bias, i.e. bias on account of judicial obstinacy. In *State of W.B. v. Shivananda Pathak*, a writ of mandamus was sought by the petitioner directing the government to promote him. A Single Judge allowed the petition ordering the authorities to promote the petitioner "forthwith". But the order was set aside by the Division Bench. After two years, a fresh petition was filed for payment of salary and other benefits in the terms of the judgment of the Single Judge (which was reserved in appeal). It was dismissed by the Single Judge. The order was challenged in appeal which was heard by a Division Bench to which one Member was judge who had allowed the earlier petition. The appeal was allowed and certain reliefs were granted. The State approached the Supreme Court.

Allowing the appeal and setting aside the order, the Supreme Court described the case of a new form of bias (judicial obstinacy). It said that if a judgment of a judge is set aside by a superior court, the judge must submit to that judgment. He cannot rewrite overruled judgment in the same or in collateral proceedings. The judgment of the higher court binds not only to the parties to the proceedings but also to the judge who had rendered it. Recently, in *A. U. Kureshi v. High Court of Gujarat*, one of the judges of the High Court considered the so-called misconduct of a member of subordinate judiciary on administrative side (disciplinary committee). He then decided the petition filed by the delinquent officer on judicial side. It was held that there was reasonable apprehension of bias.

2. Audi alteram partem

"Hear the other side" i.e. a person whose interest will be affected by the decision should be given a hearing before that decision is made. As regards the rule audi alteram partem, up to 1964 the legal position in England was that in judicial and quasi-judicial proceedings opportunity of hearing had to be given, but it was not necessary to do so in administrative proceedings. This legal position changed in *Ridge V Baldwin* in which the House of Lords held that opportunity of hearing had to be given even in administrative proceedings if the administrative order would affect the rights and liabilities of the citizens. This view of the House of Lords was followed by the Supreme Court in *State of Orissa V Dr. Binapani dei* and *State of Maharashtra V Jalgaon Municipal Council* wherein it was that administrative orders which involve civil consequences have to be passed consistently with the rules of natural justice. The expression "civil consequences" means where rights and liabilities are affected thus, before blacklisting a person he must be given a hearing.

In the well-known decision *A.K. Kraipak v. Union of India*, Hedge, observed: "The dividing line between an administrative power and a quasi-judicial power is quite thin and being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously."

Speaking Order

Till a few years back, it was said that requirement to give reasons was not a principle of natural justice, but there has been clearly a change of judicial approach in this regard. In England the Franks Committee insisted that there should be a general practice for adjudicatory bodies to give reasons for their decisions.

Giving of reasons will impose some restrictions on an executive officer in a matter involving personal rights. If an adjudicator is obligated to give reasons for his conclusions, it will make it necessary for him to consider the matter carefully. The condition to give reasons introduces clarity and minimizes arbitrariness for 'compulsion of disclosure guarantees consideration'. The adjudicator will have to give such reasons for his decision as may be regarded fair and legitimate by a reasonable man and thus it will minimize chances of irrelevant or extraneous considerations from entering his decisional process, and it will minimize chances of unconscious infiltration of personal bias or unfairness in the conclusion. Giving of reasons also gives satisfaction to the party against whom the decision is made. Unreasoned decision may be just but may not appear to be so to the person affected. A reasoned decision, on the other hand, will have the appearance of justice.

Conclusion

The administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. Its essence is good conscience in a given situation; nothing more-but nothing less. "In modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried nicely weighed or measured therefore it does not exist. The idea of negligence is equally unsusceptible of exact definition, but what a reasonable man would regard as fair procedure in particular circumstances and what he would regard as negligence in particular circumstances are equally capable of serving as tests in law, and natural justice as it has been interpreted in the court is much more definite than that".

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