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Exceptions to the Principles of Natural Justice in India: Critical Analysis

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ABSTRACT

The principles of natural justice have been recognised as a crucial facet of the right to equality before law under Art. 14, wherein it is essential that each individual has been given an adequate and reasonable opportunity to be heard in the court of law prior to any official decision taken by the court. Furthermore, no person can be a judge in his own case. The judicial approach has seen that the adherence to the principles is essential for a just, due process of the law. While Art. 14 does provide for the equality before the law, and the same has been held as an essential feature of the basic structure of the Constitution; it ought to be noted that Art. 14 has another limb in the equal protection of the laws. The law provides for a positive discrimination based on an intelligible differentia with a rational nexus in order to achieve the objective that is sought. The State as well as the courts of law have laid down various exceptions to the right to be heard in certain extraordinary circumstances. These exceptions are either explicitly provided in statutes, or have been implicit and thereby, been interpreted by the Supreme Court in several cases. This paper provides for a critical analysis of the scope of the principles of natural justice under Art. 14 of the Constitution by elucidating the exceptions to the principles and analysing the rationale for the same. The author has further provided the various judicial approaches to the concept and the validity of the same in light of the due process of law. The constitutional validity of the exceptions has been explored by providing various illustrations that provide sufficient, lucid arguments to assert the same. The author has concluded by providing a critical analysis of the scope of the exceptions in relation to Art. 14 and the justifications for the same.

Keywords: *Natural Justice, Art. 14, Equality, Arbitrariness.*

I. INTRODUCTION

The scope of Natural Justice has evolved along with civilization, and they frequently reflect the level of development of a society. There is an inherent liberty with each individual to defend oneself from what is perceived to be an unfair application of the law. Man has always found attraction in the excesses of organised authority, appealing to something outside of himself.

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Only God/Nature can fulfil this role, and all temporal laws and activities must abide by these laws, whether they be divine law or natural law. This is how natural justice was first conceived. It is the natural sense of what is right or wrong, and is equated with fairness in its broadest sense.² Natural justice implies equity, reasonableness and fairness. Natural justice is the equivalent of Constitution of the United States of America's "due process"³ as per the 14th Amendment.⁴ The Indian context of the concept of the due process of law has evolved through time and it is essential that no person shall be deprived of their life or personal liberty except in accordance to the procedure established by law.⁵ The essence of the 'procedure established by law' has now evolved into the due process of law.⁶ It is therefore important to note that the evolution has led to a shift from justice according to law, to law according to justice.

The principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights.

The principles of Natural justice have emerged as a significant tool in the modern administration of justice as the Supreme Court has characterised them as the foundational and fundamental concepts which are part of the legal and judicial process.⁷ Widely, the principles of natural justice are two-fold viz., (i) *Audi Alterem Partem*, which translates to 'listen to the other side', wherein it is essential that each party to any dispute has the right and the opportunity to be heard before the pronouncement of the judgement or verdict; and (ii) *nemo judex in causa sua*, which translates to 'no one should be a judge in their own cause', wherein it is essential that no judge in any hearing presides his own case to prevent any form of bias. The doctrine of bias has been expanded to include various other facets of the rules against bias to prevent the probable scenarios of a judge pronouncing judgements based on any preconceived notion. Both the principles are generally included in the term of fair hearing and is primarily a procedural concept.

II. NATURAL JUSTICE, THE INDIAN CONSTITUTION AND JUDICIAL INTERPRETATIONS

Article 14 of the Constitution includes two concepts, viz, 'equality before law' and 'equal

² MP JAIN, PRINCIPLES OF ADMINISTRATIVE LAW 368, (Vol. 1), (8th ed. 2017).

³ IP MASSEY, ADMINISTRATIVE LAW 188, (9th ed 2017).

⁴ U.S. CONST. amend. XIV § 1.

⁵ CONST. INDIA, art. 21.

⁶ Maneka Gandhi v. Union of India, AIR 1978 SC 597.

⁷ Union of India v. Tulsiram Patel, AIR 1985 SC 1416.

protection of laws'.⁸ The Supreme Court has explained that that the two expressions 'equality before law' and 'equal protection of law' do not mean the same thing even if there may be much in common between them.⁹ While the interpretation of the meaning to the first facet of equality is derived from the Rule of Law propounded by AV Dicey followed by the United Kingdom¹⁰, the interpretation of the meaning to the second facet of equality is derived from the Constitution of the United States of America.¹¹ The principles of natural justice generally finds its place in the first facet of equality, that is, equality before law. The State shall ensure that all persons are treated equal before the eyes of law, and therefore, all persons be provided with the right of fair hearing keeping in mind the principles of natural justice.

Art. 14 guarantees equal protection not only as regards substantive laws but procedural laws as well. Art. 14 condemns discrimination not only by a substantive law but also by a law of procedure.¹² It is thus in this regard that the principles of natural justice are applied to make sure that the due process of law is followed and no procedure is done so by ignoring the principles. The same has to be done so considering that Art. 14 provides meaningful guarantee against any action of the administration which maybe arbitrary, discriminatory or unequal.¹³

(A) Arbitrariness

Reason is the soul of any order and the heartbeat of every conclusion.¹⁴ Any action undertaken by the organs of the State ought to stand with the test of reason and ought not be arbitrary, excessive or vague. Art. 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically is an essential element of equality or non-arbitrariness pervades Art. 14 like a brooding omnipresence....¹⁵ From a positivistic point of view, equality is antithetic to arbitrariness.¹⁶ In fact, equality and arbitrariness are sworn enemies. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and therefore it is violative of Article 14.¹⁷ Any unreasonable or arbitrary exercise of discretion violates Article 14.¹⁸ It has been reiterated by the Supreme Court further that Art. 14 strikes at arbitrariness

⁸ CONST. INDIA, art. 14.

⁹ Sri Srinivasa Theatre v. Government of Tamil Nadu, AIR 1992 SC 1004.

¹⁰ AV DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION, 1885.

¹¹ U.S. CONST. amend. XIV § 1.

¹² Charan Lal Sahu v. Union of India, AIR 1990 SC 1480.

¹³ Shrinivasa Rao v. J Veeraiah, AIR 1993 SC 929.

¹⁴ Raj Kishore Jha v. State of Bihar & Ors. AIR 2003 SC 4664; Vishnu Dev Sharma v. State of Uttar Pradesh & Ors. (2008) 3 SCC 172; Steel Authority of India Ltd. v. Sales Tax Officer & Ors., (2008) 9 SCC 407.

¹⁵ Maneka Gandhi v. Union of India, AIR 1978 SC 597.

¹⁶ EP Royappa v. State of Tamil Nadu, AIR 1974 SC 555.

¹⁷ *Id.*

¹⁸ Shrilekha Vidarthi v. State of U.P., AIR 1991 SC 537.

because any action that is arbitrary must necessarily involve a negation of equality.¹⁹

(B) Absolute Discretion

In order to ensure that administrative discretion is properly exercised, it is necessary that the statute in question lays down some norms or principles according to which the administrator has to exercise the discretion. Whimsical usage of power creates the danger of official arbitrariness which is subversive of the doctrine of equality. To mitigate this danger, the courts have invoked Art. 14.

Discretion must be exercised reasonably in furtherance of public policy, public good and public cause.²⁰ Discretionary action taken without application of mind will be annulled as an arbitrary exercise of power.²¹ The Constitution envisages a society governed by rule of law and absolute discretion uncontrolled by guidelines which may permit denial of equality before law is the antithesis of rule of law. Any law conferring absolute or uncontrolled discretion in an authority negates the protection given under Art. 14.²² When unguided and unfettered discretion is conferred on any authority, whether it be the executive or the judiciary, it cannot be exercised arbitrarily or capriciously by such authority.²³

As Bhagawati, J., has observed: “The law always frowns on uncanalised and unfettered discretion conferred on any instrumentality of the State.”²⁴ Where power granted is open to use disproportionately, the purpose to be achieved is invalid in the absence of guidelines or principles or norms which are ‘essential’ for exercise of such power.²⁵ Absolute discretion not judicially reviewable inheres the pernicious tendency to be arbitrary and is therefore violative of Art. 14.²⁶ Equality before law and absolute discretion to grant or deny benefit of the law are diametrically opposed to each other and cannot co-exist.²⁷

(C) Principles of Natural Justice

It is now considered that non-compliance with the rules of natural justice amounts to arbitrariness violating article 14²⁸ The court has repeatedly emphasized that the principle of natural justice has now come to be recognised as being an integral part of the constitutional

¹⁹ *Ajay Hasia v. Khalid Mujib Sehravardi*, AIR. 1981 SC 487.

²⁰ *Consumer Action Group v. State of T.N.*, AIR. 2000 SC 3060.

²¹ *Onkar Lal Bajaj v. Union of India*, AIR 2003 SC 2562.

²² *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75.

²³ *Bachan Singh v. State of Punjab*, (1982) 3 SCC 483.

²⁴ *Sheo Nandan Paswan v. State of Bihar*, AIR 1987 SC 895.

²⁵ *District Registrar and Collector v. Canara Bank*, AIR. 2005 SC 186.

²⁶ M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* 911, (7th ed. 2014).

²⁷ *Sudhir Chandra v. Tata Iron and Steel Corporation Ltd*, AIR 1984 SC 1071.

²⁸ *Rajasthan State Road Transport Corporation v. Bal Mukund Bairwa* (2), (2009) 4 SCC 299.

guarantee contained in article 14.²⁹

The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind.³⁰ Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.³¹ When any action is taken which involves deprivation or restriction on fundamental rights, the authorities must see that justice is not only done but manifestly appears to be done as well. This principle would obviously demand disclosure of reasons for the decision.³² Whatever may be the powers given to the government, the necessity of disclosing the reasons for curtailing the valuable rights already accrued in favour of the petitioner cannot be dispensed with.³³

When it comes to the right to a fair hearing, a mere pretence of compliance would not satisfy the requirement of law.³⁴ The core of rule is that the person affected must have a reasonable opportunity of being heard and the hearing must be genuine one.³⁵ The Supreme Court has held that principles of natural justice are applicable even if it was not statutorily required.³⁶ It is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute.³⁷ Such principle applies during the exercise of power by any statutory body, irrespective of whether such body is administrative or quasi-judicial.³⁸

III. EXCEPTIONS TO THE PRINCIPLES OF NATURAL JUSTICE

In the context of natural justice, the word 'exception' is actually a misnomer because, in these exclusionary cases, the rule of right to fair hearing is held to be inapplicable not because of an exception to 'fair play in action', but rather because nothing improper can be inferred from not providing a chance to present or meet a case.³⁹ While Art. 14 does provide for equality before

²⁹ Maneka Gandhi v. Union of India, AIR 1978 SC 597.

³⁰ CCT v. Shukla & Bros., (2010) 4 SCC 785.

³¹ State of Orissa v. Binapani & Ors., AIR 1967 SC 1269.

³² Maneka Gandhi v. Union of India, AIR 1978 SC 597.

³³ Kamil Siedczynski v. Union of India, (2020) 3 Cal LT 235.

³⁴ Siemens Engg. and Mfg. Co. of India Ltd. v. Union of India, (1976) 2 SCC 981.

³⁵ Anwar v. The State of J & K., AIR 1971 SC 337.

³⁶ C.B. Gautam v. Union of India & Ors., (1993) 1 SCC 78.

³⁷ Sarbananda Sonowal v. Union of India & Ors., AIR 2005 SC 2920.

³⁸ Automotive Tyre Manufacturers Assn. v. Designated Authority, (2011) 2 SCC 258.

³⁹ *Supra* Note 2, at 256.

law, it ought to be noted that it also provides for an equal protection of laws.⁴⁰ Article 14 prohibits class legislation; it does not prohibit reasonable classification of persons, objects and transactions. Classification should fulfil the following two tests:

- It should not be arbitrary, artificial or evasive. It should be based on an intelligible differentia, some real and substantial distinction, which distinguishes persons or things grouped together in the class from others left out of it.
- The differentia adopted as the basis of classification must have a rational or reasonable nexus with the object sought to be achieved by the statute in question.⁴¹

Thus, the principles of natural justice can be excluded on the basis of a reasonable classification based on an intelligible differentia having a rational nexus to achieve the objective of the State action. It ought to be noted that these exceptions also have to pass the test of due process of law as laid down by the Supreme Court.⁴² There are various instances that provide for the exception to the principles of natural justice.

(A) Express Exclusion by Law

It is rarely that a statute expressly excludes natural justice in any situation. However, there are certain instances wherein there are provisions in a piece of legal document that expressly provides for the exceptions to the principles of natural justice. The Constitution of India provides for an express provision regarding the exceptions to the principles of natural justice. Members of the Services under the Union and the States hold their office during the pleasure of the President and Governor respectively.⁴³ While Art. 311(1) provides that the principles of natural justice ought to be followed when it comes to the dismissal, removal or reduction in rank of the members employed in service⁴⁴, Art. 311(2) provides exceptions to the rule such as conduct resulting in criminal conviction, reasonably predictable to not hold an inquiry and national security.⁴⁵ Thus, the very Constitution expressly recognises the exceptions to the principles of natural justice.

(B) Implied Exclusion

Sometimes, the statute may not expressly provide for the exceptions to the principles of natural justice. However, through the interpretation of the statute's aims and objectives, the courts have

⁴⁰ CONST. INDIA, art. 14.

⁴¹ State of Haryana v. Jai Singh, AIR 2003 SC 1696.

⁴² Maneka Gandhi v. Union of India, AIR 1978 SC 597.

⁴³ CONST. INDIA, art. 310.

⁴⁴ CONST. INDIA, art. 311, cl. 1.

⁴⁵ CONST. INDIA, art. 311, cl. 2.

concluded instances wherein there has been an implied exclusion to the principles of natural justice.

The Central Government is empowered to make orders under the Foreigners Act, 1946⁴⁶, wherein the Central Government possesses insurmountable power to assert its national security obligations and sovereignty rights to wield that power, since there is no constitutional provision fettering such a discretion.⁴⁷ Such power to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering its discretion and the executive government has the unrestricted right to expel a foreigner if the government deems so fit in the light of its nation's interests.⁴⁸ The foreign nationals do not have the rights enumerated under Art. 19 as the same are reserved for the citizens.⁴⁹ Therefore, if the Government deems it that the foreign national has acted in any manner beyond the scope of his visa specifications, it is empowered to pass orders to ensure the foreign national does not remain in the territories of India or any prescribed areas therein.⁵⁰ Visa conditions imposed is not centric to one individual, but general in nature and hence, the validity of Sec. 3(2)(c) has been upheld.⁵¹ The only procedural requirement is that there must be prima facie material on the basis of which the authority can proceed to pass an order under Sec. 3(2)(c) of the Foreigners Act, 1946.⁵² States reserve the right to expel a foreign national if such a national is engaged in activities which they do not possess the right to, such as the right to vote, the right to hold public office and the right to engage in political activities.⁵³

(C) Public Interest

Primarily, there may be situations where the interests of state or public interest may call for a curtailing of the rule of *audi alteram partem*. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.⁵⁴ The Central Government in the case of any threat to the interest of the general public, such as during the period of the global pandemic, may be empowered to take measures to detain individuals creating riots. The same would have been in order to prevent the spread of the pandemic keeping in mind the health of the citizens, as it is a facet of the right to life.⁵⁵

⁴⁶ Foreigners Act, No. 31 of 1946, S. 3.

⁴⁷ Hans Muller of Nuremburg v. Superintendent, Presidency Jail, Calcutta and Ors, AIR 1955 SC 367.

⁴⁸ Louis De Raedt v. Union of India, (1991) 3 SCC 554.

⁴⁹ CONST. INDIA, art. 310.

⁵⁰ Foreigners Act, No. 31 of 1946, S. 3(2)(c).

⁵¹ Sarbananda Sonowal v. Union of India & Ors., AIR 2005 SC 2920.

⁵² Union of India v. Ghaus Mohammad, AIR 1961 SC 1526.

⁵³ Sarbananda Sonowal v. Union of India, (2005) 5 SCC 665.

⁵⁴ Union of India & Ors v. A.K. Pandey, AIR 1995 SC 388.

⁵⁵ Ashok v. Union of India, (1997) 5 SCC 10.

(D) Prompt Action

Where an obligation to give notice and opportunity to be heard would obstruct the taking of prompt action, especially action of a preventive or remedial nature, right of prior notice and opportunity to be heard may be excluded by implication.⁵⁶ Taking the same example of the illustrative situation of riots during the global pandemic, the State may detain the individuals concerned causing the public nuisance due to the diligent prompt action that would have been required to curtail the issue in order to protect the health of the citizens.

(E) Mere Formality

The commission of an offence irrespective of the motive is punishable under law and forms a valid basis for penalty. In circumstances wherein the whimsical acts done by any administrative official is extremely egregious in nature that it may cause a chilling effect if the procedure established by law is followed merely for a formality, then the principles of natural justice may be excluded. The Supreme Court has opined that the principles of natural justice are not required to be complied with, if it will lead to a mere empty formality.⁵⁷

(F) Confidentiality

While a person is entitled to know the grounds of any charge in adherence to the principles of natural justice; revealing of such grounds by revealing the contents of a confidential report is not mandatory if the same is kept confidential to protect the identity of the officers involved. The observance of principles of natural justice would in fact, defeat the purpose of the consequence due to the findings of the report and justice would be defeated instead of being served and hence, adherence to principles of natural justice is not required.⁵⁸ The court has accepted the need to keep a report which formed the basis of an expulsion through state action as confidential, and did not reveal the contents of the same even while giving its order.⁵⁹

IV. CONCLUSION

No general rule of application can be laid down as to the applicability of the principles of natural justice due to the dynamic of equality before law and the equal protection of the law. The very essence of equality before law is that unequal objects/ persons cannot be treated equally. Therefore, while the exceptions to the principles of natural justice may seem arbitrary on the face of it, if applied with the test of reasonableness, it does stand the essence of equal protection

⁵⁶ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

⁵⁷ *KSRTC v. SG Kotturappa*, AIR 2005 SC 1933

⁵⁸ *Malak Singh v. State of P&H* (1981) 1 SCC 420.

⁵⁹ *Kamil Siedczynski v. Union of India*, (2020) 3 Cal LT 235.

of the laws. It ought to be noted that the classification of objects/ persons that shall be excluded from the principles of natural justice ought not be arbitrary or vague. The power of the central government under the Foreigners Act, 1946, while on the surface of it seemingly excessive and arbitrary; it also ought to be noted that the statute and its impugned provisions have been held constitutional due to the essence of equal protection of the laws keeping in mind that the foreigners do not have the same rights as the citizens under Art. 19.⁶⁰

The concept of natural justice does not supplant the law, but on the contrary, supplements the same. It is integral to good governance and the onus to explain the justification for excluding such a rule from an action undertaken is on the agency urging for the same.⁶¹

However, there may undoubtedly be exceptions to the rule. The question of whether the principle must be applied or not must be evaluated in light of the express language and fundamental design of the provision that grants the power, as well as the type of the power granted, the intent behind its grant, and the consequences of its use. It is only upon consideration of all these matters that the question of application of the said principle can be properly determined.⁶² Thus, the principles of natural justice, while an important facet of Art. 14, and thereby a part of the basic structure of the Constitution, may be excluded if the same is based on a just, reasonable and fair manner in accordance with the due process of law.

⁶⁰ Sarbananda Sonowol v. Union of India & Ors., AIR 2005 SC 2920.

⁶¹ Mohinder Singh Gill v. Chief Election Commissioner, AIR 1978 SC 851.

⁶² Sahara India, Lucknow v. CIT, (2008) 13 SCC 151; Union of India v. Col. J.N. Sinha, (1970) 2 SCC 458.

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