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# The Balance of Power: Examining the Principles of Natural Justice in India

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## ABSTRACT

*The Principles of Natural Justice are important in order to have a fair trial and administer justice. This concept of natural justice has been in practice since recorded human history began. Principles of natural justice ensure that justice is done without bias and done fairly. It includes the rule against bias and right to fair hearing. This concept is based on two maxims:*

1) *Nemo in propria causa iudex, esse debet: "No one should be made a judge in his own cause". It is also popularly known as rule against bias; and*

2) *Audi Alterum Partem: "Hear the party" or "give a fair hearing".*

*There are certain exceptional circumstances where these principles are not followed. A few of them are exclusion in emergency, exclusion in matters which are purely administrative exclusion in case of legislative action etc.*

*The breach of principles of natural justice makes a decision voidable but not void. Principles of natural justice are flexible and practical. The principles of natural justice come to the rescue of those persons who are not able to validate their claim on the base of any law and yet have to endure injustice and adverse consequences. Principles of natural justice do not apply where the procedural rules are openly or implicitly provided by law.*

## I. INTRODUCTION

The term 'principles of natural justice' is derived from the Latin expression "jus naturale" which is a philosophical expression as per Roman jurists. Historically, these were meant to be a set of rules and principles to be followed by a person in a civil society. When someone breaks the rules, the process of delivering justice meted out should be fair and reasonable. These are the principles of natural justice, and they derive strength from equity and good conscience. They give us means to arrive at right conclusions fairly, for any given case. The rules are not codified but are deep-seated in the morality of man. Justice is natural ethics and morals. They are universal. With the growth of civilization, the progress in the rules of natural justice was also seen. Globally these principles have enriched the subject of law.

The concept of natural justice is very ancient, since the time of Romans and Greeks. According

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to the Bible, Adam acknowledged the concept of natural justice. When Adam and Eve ate the fruit of knowledge, they were considered to have committed a sin. Prior to giving any punishment by God both Adam and Eve were given an opportunity to defend themselves. The principles of natural justice were given by God to Adam and Eve prior to the punishment for disobeying His command.

In the medieval period, an authoritative approach to such judicial problems gave way to more a personalized approach to each case. Later on in the medieval periods – approximately during the 16<sup>th</sup> century - a more focused study into each problem was implemented, that meant an analysis of each individual fact pertaining to the case. Thus the focus was on the individual, rather than a blanket approach to each offence. In course of time a more logical pattern developed out of this individual approach, which led to the general principles for universal application. These were later proclaimed to be the "Principles of Natural Justice".

In the ancient period in India the concept of dharma was introduced for justice. This concept was acknowledged in Kautilya's Arthashastra, where he described that the king was looked upon as a guardian of dharma and should administer justice by following dharma, evidence, customs and written law for maintaining order *in* society. If the king fails in his duties and goes against the notions of dharma, he would be answerable to the public. The people were free to ask him questions. This concept of dharma is the same concept as seen in the principles of natural justice.

Although the term "natural justice" is not found in the Indian Constitution, even a superficial study reveals ample evidence that it is based on the principles of natural justice. In Articles 14, Article 21 and Article 311 - fairness is to be imparted in the social and economic activities of the society. The duty to act fairly is a fair procedure mentioned. Every public authority or institution is guided by the principles of natural justice. These principles cannot be ignored or dishonored as it will be the violation of the fundamental rights guaranteed under the Indian Constitution. It is also very clear that in cases classified as quasi-judicial, it is the duty of the concerned authority to act judicially by following the principles of natural justice whereas in the cases related as administrative it is the duty of the authority is to act fairly. It is also believed it is based on the principle that 'justice should not only be done, but must also seen to be done'

## II. PRINCIPLES OF NATURAL JUSTICE

The principles of natural justice are based on the twin maxims of "Nemo in propria causia judex, esse debet", and "Audi Alterum Partem".

**"Nemo in propria causia judex, esse debet"** implies "*No one should be made a judge in his*

*own cause*". It is also popularly known as rule against bias. "Bias" means prejudice or unfairness in relation to the party involved in any issue which is to be dealt with. It is a predetermined judgment formed in order to decide a case in a particular order. It is not based on reason but is instilled by self interest which may be mostly personal or pecuniary. All these factors bias the judge in forming or arriving at a decision in any particular case. The judge should be neutral, impartial and free from bias. He should be unbiased, that means he should be free from prejudice and should not support favoritism. He should not be in support of or be against either party to dispute, if so the judge shall be disqualified. The judgment should be given based on the evidences and state of affairs presented in the court of law. The requirements of natural justice are that the concerned person must act impartially, fairly and without bias. This is how impartiality, objectivity, public confidence gives the foundation for the structure of the rule against bias. Bias cannot be assumed but must be proved from the facts of the case. It manifests in various forms thus affecting the decision in many ways.

In *A. K. Kraipak Vs Union of India*<sup>2</sup>

The Indian Forest Service was constituted in the year 1966 and the officers who were to be selected for it were from those in service of the forest department of the State. A selection board was constituted according to the All India Services Act, 1952 and of the Indian Forest Service (recruitment) Rules. An acting chief conservator of forest was appointed by name Naquishbund who was from the state of Jammu & Kashmir and was also a candidate for the said selection. However, his appointment overlooked the senior officers by name - Basu, Baig and Kaul. Although Naquishbund, did not take part in the discussions of the board when his name was taken into consideration, the Supreme Court held that there was a possibility of bias. The Supreme court opined that the judgment of the other members in the selection process may be affected simply by the presence of Naquishbund. Thus the court held that the basic principle of "Nemo in propria causia judex, esse debet"- No one should be made judge in his own cause or rule against bias was violated.

Broadly, there are 6 types of bias – pecuniary, personal, subject matter, departmental or institutional, policy and bias on account of obstinacy.

- a) **Pecuniary Bias:** It is when a judge or deciding authority has any pecuniary interest or financial benefit through the proceedings. As per the principles of law, if a judge or a deciding authority accepts any bribe or has personal interests, he or she will be disqualified from his / her position. In any instance when pecuniary interest is observed to be held by

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<sup>2</sup> (1969) 2 SCC 262

any one of the members the pronouncement is voidable and is thus reversed.

In *J. Mohapatra and Company Vs State of Orissa*<sup>3</sup>

In this case, a committee was formed in the State of Orissa for recommending and selecting books by various authors and publishers for various school subjects. Some of the persons whose books were in the selection list, were also members of the select committee in the meeting of the committee for assessing the books. It was opined - when a book was taken up for consideration, who was the author/publisher of it then that particular member would withdraw for the aforesaid. However, that individual member participated in the deliberations and the result was the approval of the books by the assessment committee.

On the ground of bias, this action of the State of Orissa was challenged. The Supreme Court quashed the action stating that there is every likelihood of bias when such members whose books were in the selection list and at the same time were members of the assessment and select committee.

- b) **Personal Bias:** This arises when a relationship exists between the deciding authority, i.e., the judge, and the party. In such situations it is observed that the judge or the deciding authority gives the judgment in favour of his party. It may be due to professional relationship, friendship or pecuniary related.

In *D.K. Khanna Vs Union of India*<sup>4</sup>

The son-in-law was a member of a committee entrusted with the duty of selecting the promotion list to the Indian Administrative Service, where his father-in-law was a candidate. Though the son-in-law did not participate in the deliberations when his father-in-law's candidature was considered, his selection was quashed by the Himachal Pradesh High Court on the ground that one member of the selection committee was personally related to the candidate.

- c) **Subject-matter Bias:** When the judge or the deciding authority is involved in the subject matter of a case there is real likelihood of subject matter bias.
- d) **Departmental Bias or Intuitional Bias:** It is very common in every administrative process. When the authority who decides and the persons who are the accused persons, are of the same department. Such situations may give rise to departmental bias or intuitional bias

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<sup>3</sup> (1984) 4 SCC 103

<sup>4</sup> 1972 SCC OnLine HP22: AIR 1973 HP 30

### In Gullapalli Nageeswara Rao Vs State of APSRTC<sup>5</sup>

This case is the leading case showing the departmental bias. The petitioner was having motor transport business. The Andhra Pradesh Government wanted to nationalize the road transport business, and called for objections through newspapers. The petitioner filed objections. The objections were received and heard by the Secretary. However, the Chief Minister nationalized the transport, without considering petitioner's objections. The petitioner challenged it. The Supreme Court held that it was clear departmental (official) bias, as objections were heard by one authority and decided by another authority.

- e) **Policy Bias:** The issue of policy bias arises when the concerned officer is already aware of the policy and he also in advance announces the same policy to be followed. Such situations favors for the above bias.
- f) **Bias on account of Obstinacy:** This is a very unreasonable situation where the deciding officer does not accept any negative answer as the judge himself is sitting for appeal against his own judgment. This is violation of rules. No judge can sit against his own judgment.

However, there is an exception to the maxim of "Nemo in propria causa iudex, esse debet". This is the **Doctrine of Necessity**. In certain occasions the person who is acting as an adjudicator may have an interest in the said subject matter or that he may be biased. But he may still be required to, and asked to continue if there is no proper quorum to adjudicate; and also if there is no other competent person to adjudicate; or the constitution of a competent tribunal is not possible. Therefore, in such exceptional cases even where there may be a possibility of bias, a legally valid decision can be passed by such quasi-judicial or administrative authorities.<sup>6</sup>

The second principle of natural justice is "**Audi Alterum Partem**". When translated to English it means "Hear the party". Every person should be given a chance to be heard. Before an order is passed both the parties should be given a chance to represent and be heard. This is the procedure to be followed before any decision is taken. These are three latin words means that any person cannot be punished or condemned by court. The person can be punished or condemned only after being heard at the same time, give a fair opportunity of doing the same. Both the aggrieved parties should be given an opportunity to represent themselves and a fair trial shall be conducted. It should be just and reasonable. The notice should be given in advance or early to the person so that he can get enough time to prepare himself. The Indian Constitution

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<sup>5</sup> AIR 1959 SC 308

<sup>6</sup> MANU/SC/0008/1984, para 13

emphasizes this principle of fair hearing.

Fair hearing depends varies from case to case – as the cases are of different types during different issues and situations. It cannot be fixed and rigid. The objective of giving a fair hearing is to avoid inappropriate decision which may adversely affect a person. Before passing an administrative order a reasonable opportunity should be granted. To defend himself before an action is taken or an order is being passed against him a person shall be given an opportunity of hearing. This is the rule of law. A fair play and justice must be ensured to the affected person. The procedure adopted must be fair and just. The right of being heard is a procedural code that has to be followed at every step starting from notice to final stage of decision.

In *Maneka Gandhi Vs Union of India*<sup>7</sup>

The Passport was issued to Maneka Gandhi on July 1, 1976 under the Passport Act, 1967. The regional passport officer, Delhi sent a letter dated July 2, 1977 to Maneka Gandhi intimating to her that the Government of India is impounding her passport under section 10(3) of the Passport Act, 1965 in the interest of the public and also asked her to surrender it. The letter was received by her on July 4, 1977. She wrote a letter requesting them to furnish a copy of the statement of reasons. The said officer gave a reply that the copy of statements of reasons could not be given “in the interest of the general public”. Being aggrieved Maneka Gandhi filed a writ petition challenging the said act and also section 10(3)(c) that it was against articles 14, 19(1)(a), 19(1)(g) and 21. The judgement of the Supreme Court was given in favour of Maneka Gandhi. The Supreme Court quashed impounding order of passport authorities, and also criticized their attitude for not giving the reasons and as also not furnishing a copy of their decision.

In *Vipulbhai Mansinghbhai Chaudhary Vs State of Gujarat*<sup>8</sup>

Appeal was filed by Vipul bhai. He was a Chairman of the Mehsana District Co-operative Milk producers Union Milk Limited from May 2, 2011 to May 1, 2014. He continued to hold office beyond the period of three years. An order of removal and disqualification from the said post was passed against him in violation of the principles of natural justice. The Supreme Court held that where such an order is passed it should be set aside on the ground that such an order is in breach of the principles of natural justice and again the power shall be exercised by complying with the principles of natural justice.

One of the key procedural aspects that have to be followed during the principle of fair hearing

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<sup>7</sup> *AIR 1978 SC 597*

<sup>8</sup> *(2017)13 SCC 51*

is the “**Right to Notice**”. This word took its origin from ‘noticia’ which is ‘being known’. It gives an opportunity for the party to prepare his case, by gathering and arranging facts and arguments to represent his or her case. It must be issued as per law. It should be a proper notice. It is starting point of a hearing. It is an important aspect of law as it ensures adequate time for analysis and preparation to defend himself or herself.

### **III. EXCEPTIONS TO THE RULE OF NATURAL JUSTICE**

The principles of natural justice are necessary to provide justice to the society, but there are certain situations where natural justice may not be applicable. In certain situation where it is unavoidable to give a fair hearing as it may cause more injustice than justice this rule can be avoided.

These situations where the rule of natural justice requires exclusion are as follows:

- 1) **Exclusion in emergency:** In cases of extreme emergency where the interest of the public is in danger and prompt action which may be a preventive measure. The requirement of notice and hearing may be ruled out. The right to hearing will hinder the working process as it is an elaborate process. In some cases where situation demands some pre-decisional or post-decisional hearing it can be allowed depending on the facts, situations of every case.
- 2) **Exclusion in case of confidentiality:** Confidentiality is to be maintained in certain extraneous situations and hence non-compliance of the fair hearing is justified in such situations. Some of the other instances where confidentiality is to be maintained include - when disclosure of certain information would affect the privacy of the country at large and which is barred by the court from disclosure; parliamentary privileges; information which impairs the investigation or prosecution of the offender; public policy; and public interest etc.
- 3) **Exclusion in case of statutory exception:** where a person is disqualified on the grounds of possible bias in the subject matter but when such a person himself is the only competent or authorized person, then such principle will not be applicable. If he is not allowed by procedure to adjudicate then there would be no other solution for settling the matter and the process will come to a stop. The biased person has the statutory authority to take all the responsibility to handle the matter in such a situation.
- 4) **Exclusion in matters which are purely administrative:** When the issue in the matter is entirely administrative, the right to hearing cannot be claimed like - granting sanction

of prosecution, inability to execute a lease deed or when a bid is cancelled, or the requirement to deposit the amount of the security.

- 5) **Exclusion based on impracticability:** This is one of the simplest exceptions of the rule of natural justice. It can be applied only when it is impractical in nature. It can be excluded on the grounds of administrative impracticality. In certain cases it is very impractical to give an opportunity of being heard for all persons by a competent authority.
- 6) **Exclusion in cases of interim and timely preventive action is required:** in cases where a suspension order is passed by the administrative authority which is in the nature of preventive action and is not a final order, the principles of natural justice may not be applied.

Thus in cases where anti social behavior orders are involved which are interim in nature, and such orders are passed without notice, such orders would not be considered against the law, as also in situations where the court has to take prompt decision which involves the interest of the public safety or the third party.

In certain situations where there is a necessity to take prompt action the prerequisite of giving notice and the need for the other side to be heard may be given away with. This is especially in those situations where such an action would prevent further damage or is corrective in nature.

- 7) **Exclusion in case of legislative action** Legislative order is one which is applicable to all individuals and is not limited to some persons alone. The rules of natural justice are not applicable to legislative action because these policies are made for the general well being of the public without reference to any one individual or class of people.
- 8) **Exclusion where no rights of a person are infringed:** When the common law itself does not provide any provision of remedy or any statute does not confer any right, the individual cannot ask for any remedy as he does not derive any right as such as the Latin principle “*Ubi Jus ebi remedium*” stands for ‘where there is right there is remedy’ is applicable.
- 9) **Exception in Contractual Arrangement:** In case of termination of an arrangement or agreement in any contractual field which is neither quasi-judicial nor an administrative act then the principles of natural justice are not applicable. Also, there is no duty as such to act judicially so they do come within the ambit of natural principles.
- 10) **Exception in Government Policy Decision:** In taking a policy decision there is no

need to follow principles of natural justice. In government policy decisions of economic matters they have no role to play. Thus, the rule of violation of principles of natural justice cannot be invoked in such decision-making process.

- 11) **Useless Formality Theory:** In situations where facts are admitted; or are undisputed; and there can be only one conclusion; and so also the law provides only one penalty the adherence of the principles of natural justice may not be insisted by the court as it would be ineffective in its observance.

In Karnataka SRTC Vs S.G Kotturappa<sup>9</sup>

The KSRTC appointed the respondents as badli conductors meaning daily wage contractors. Their services were not satisfactory and accordingly their services were terminated by the KSRTC. The court held that since the badli Contractors (the 'Respondents') accepted the minor punishments that were imposed on them because of their repeated acts of misconduct it would not be proper to apply the principles of natural justice as then it would be a mere application of the principle. But the Supreme Court held that depending on each case the extent of application of principles of natural justice may vary.

- 12) **Exclusion in case of waiver:** If a person who has a right to hearing declines the offer of hearing given to him by an administrative authority, he shall be deemed to have waived his right to hearing, and on that account cannot claim judicial review.

#### **IV. EFFECTS OF BREACH OF PRINCIPLES OF NATURAL JUSTICE**

The breach of principles of natural justice makes a decision voidable but not void. Any decision which is made in contravention of the rule against bias is not void but nearly voidable. In order to avoid the decision the aggrieved party may waive their right.

But in cases where an action is taken in violation of the principle *audi alteram partem* is of no value and is completely void. The affected party is entitled to compensation or any other remedies whenever there is breach of natural justice. In instances wherever a party suffers any loss because they have been deprived of the right to be heard he may be entitled to compensation for any loss incurred by him.

In Krishnadevi Malchand Kamathia & Ors Vs Bombay Environmental Action<sup>10</sup>

A notification was issued declaring privately owned lands from the list of 'Mangrove Areas' as

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<sup>9</sup> (2005) 3 SCC 409

<sup>10</sup> (2011) 3 SCC 363

Forest Land". In this particular notification the land of the appellant was also included and hence the appellant could not restart the salt manufacturing. The appellants also filed an application to seek permission for repairing the damaged bund, this application was allowed by High Court allowing them to seek relief from District Collector. The appellants had been guilty of destroying the mangroves to a great extent and the contempt proceedings were initiated by the respondent. The disciplinary proceedings started by the authority including the District Collector who was also a witness, accepted the enquiry report and imposed punishment. The Supreme Court held the proceedings void. It was further opined by the court that an action will be considered as valid even though it is void, unless it is declared by court as void.

## V. CONCLUSION

Thus, we see how the principles of natural justice have enriched the delivery of justice within the framework provided by the Indian Constitution and the Indian Legal system. They are flexible and practical, and adapt according to the required situations. These principles can be adopted, modified and excluded by the Constitution, rules or statutes. They are essential to the fundamental practice of law. Principles of natural justice ensure that justice is done without bias and fairly<sup>11</sup>. It includes the rule against bias and right to fair hearing. The Principles of natural justice help to prevent any mismanagement of law. Thus its violation will mean that the decision and order will be considered as null and void. For any administrative settlement to be considered legal and valid it is imperative to follow the principles of natural justice. Its applicability depends on various factors like nature of rights which is of concern to the individual, jurisdiction and the concerned administrative authority. Fair play is the essence of natural justice, hence its application is universally recognized

In the implementation and the application of law the principles of natural justice and law complement one another and not supersede it. The administrative authorities are prevented by these principles from passing arbitrary decisions and thus protect public interests. The principles of natural justice come to the rescue of those persons who are not able to validate their claim on the base of any law and yet have to endure injustice and adverse consequences. This benefit of support of the principles of natural justice is available to even those persons who suffer from civil damages. These include non-pecuniary damage, infringement on the property rights and occasions when civil liberties are violated.

A new dimension can be added for transparent and good judgment. Principles of natural justice

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<sup>11</sup> <https://sociallawstoday.com/principle-of-natural-justice/>

do not apply where the procedural rules are openly or implicitly provided by law. They shall not be raised in the event of legislation adopted by parliament. At the same time they cannot be applied where there is exclusion to the said principles where the civil procedure code or the criminal procedure is applied. Therefore the judiciary or the quasi-judicial body administering the justice is given the discretion to adopt the said principle of justice and a balance of power has to be administered while applying the principle of natural justice.

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