

## FAIR HEARING: AN ESSENTIAL PRINCIPLE OF NATURAL JUSTICE

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### INTRODUCTION

The concept of fair hearing has been drawn from the principles of natural justice. There is no statute laying down the minimum procedure which administrative agencies must follow while exercising decision making powers. In the absence of accepted norms a self styled administrative procedure is being followed. There is no objection to the variety of administrative procedure till these procedures conform to the principles of natural justice but the moment the procedure deviates from natural justice, it becomes questionable and open to cannons of propriety. In an ancient case titled as *The King v. Chancellor, University of Cambridge*, Justice Eyre remarked that the laws of God and man have given the party an opportunity to make his defence, if he has any grievance. Even God did not pass sentence upon Adam and Eve before they were called upon to make their defence.<sup>1</sup> The court further held that even the finest subjective wisdom poured in the administrative decision gets vitiated if made in the absence of fair hearing to the other party.

When God afforded Adam and Eve opportunity of personal hearing before awarding punishment for tasting the forbidden fruit in the heaven, it established the rule of natural justice and enabled Him to assess the circumstances leading to the disobedience of His commands by both. Analysis of the facts and circumstances of any act vary from person to person but if the deciding authority comes to the conclusion without hearing the party who is involved in the act, the finding of the authority becomes questionable and against natural justice.

Fair hearing emanates from the principles of natural justice. Sometimes the statutes under which the administrative agencies must exercise powers lay down the procedure which the agency must follow but at many times, the administrative agency is left free to devise its own procedure. The courts have always insisted that the administrative agencies must follow a minimum of fair procedure.

It has been seen that conclusions drawn on the basis of facts made available from the record sometimes take reverse turn when the parties to the act explain their side through personal hearing. In

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<sup>1</sup> (1723) 1 Str.757: 93 ER 698.

India, there is no statute laying down minimum procedure for the agencies to follow while exercising decision making powers. Even otherwise, the purpose of any decision making is to sit in the bottom of the issue which can be achieved by providing fair hearing to the parties to the act. It helps the deciding authority to weigh all facts and arguments put forth by the parties to the hearing, apply his logic without fear or favour and come to a sane conclusion. Although, the concept of fair hearing has been drawn from the principles of natural justice yet it is of utmost importance in reaching the core of the act and analyzing it from all angles.

### **NATURAL JUSTICE: MEANING**

Principles of Natural Justice developed with growth of civilization. In order to protect himself against the excesses of organized powers, man has always appealed to some superior power. Such power could be God and His laws, divine or natural laws to which all actions and laws made by man must conform. However, natural law is not the law where lion devours the lamb and the tiger feeds upon antelopes but it implies fairness, reasonableness, equality and equity where the lamb and the antelope have space for each other and live at peace and harmony and it is akin to American due process of law. In *Union of India v. Tulsiram Patel*<sup>2</sup> the court held that the natural justice represents higher procedural principles developed by judges which every administrative agency must follow while taking decision adversely affecting the rights of a private individual. Principles of natural justice are not codified but ingrained in the conscience of man. Natural justice is another name for common sense justice. It is not something which requires very cumbersome and technical rules of justice, the lack of knowledge of which may land an innocent person in trouble or the non observance of which may vitiate the entire proceedings of any case. It is a bunch of simple dos and donts' which help in the dispensation of justice and push the conscience of man that he should have observed even if the decision in a matter is against him. The Supreme Court in the case of *Uma Nath Pandey v. State of Uttar Pradesh*<sup>3</sup>, held that violation of principles of natural justice is opposed to the fair adjudication and conscience. Natural justice is based upon natural ideals and values which are universal. It is not circumscribed by linguistic technicalities and logical conclusions. It is the substance of justice which determines its form itself. The extent of natural justice depends upon the facts and circumstances of a particular case. In *Commissioner of Customs v. M/s Daniel and Samuel Logistics*<sup>4</sup>, the Court held that natural justice is the essence of fair

<sup>2</sup> (1985) 3 SCC 398,464.

<sup>3</sup> 2009(237) ELT 241(SC).

<sup>4</sup> 2016(336) ELT 437.

adjudication, deeply rooted in tradition and said order, if suffers from violation of principles of natural justice, cannot be sustained.

Whenever legal justice fails to achieve this purpose, natural justice is called in aid of legal justice because at times a decision conforming to the legal principles denies natural justice to the parties. Side by side need for evolving a new and secularized type of universalism known as 'Enlightenment' was felt and a systematic pattern of ideas and values had to be evolved out of the doctrine of natural law for its universal application and acceptance. Thus dogmatic approach to problems of dark age gave way to more particularized approach to problems.

This led to individualization of justice. The basis of the principles of natural justice is rule of law. The observance of these principles is demanded by our sense of justice. It is a concept of changing content without changing the core values enshrined in the spirit of natural justice like equal opportunity to all, inherent right of hearing and Rule against bias besides many more things to many writers, lawyers and legal thinkers. It is used interchangeably with Divine law, jus gentium and the common law of the nations. However, the principles of natural justice can be identified through various decisions of courts with variable applications as per the facts and circumstances. It is flexible, pragmatic and not rigid and ritualistic. It is neither a bull in china shop nor a bee in one's bonnet, Justice Krishna Iyer in *Mohinder Singh Gill v. Chief Election Commissioner*<sup>5</sup> said that Natural justice has many colours and shades, many forms and shapes and except where valid law excludes it, applies where people are adversely affected by administrative authority.

In *Shahid Balwa v. Directorate of Enforcement*<sup>6</sup>, the Delhi High Court quashed the order of the Single Bench rejecting the writ petitions filed by the appellant on the ground that he had not been permitted to cross examine the Directors of Enforcement on whose report a show cause notice was issued to him.

The principles of natural justice have found prominent place in constitutions all over the world. The concept of social and economic justice, in the Preamble of the Indian Constitution is the concept of fairness in social and economic activities of society which is the basis of the principles of natural justice. Article 311 contains all the principles of natural justice without using the expression as such. Similarly Article 14 and 21 speak of duty to act fairly. All the principles of natural justice can be read in Article 21 when it comes to a person deprived of life and personal liberty.

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<sup>5</sup> AIR 1978 SC 851.

<sup>6</sup> LPA 80/2013 & CM 2332/2013.

Article 14 also applies to arbitrary discriminatory state action as violation of natural justice and thus violation of natural justice is violation of Equality clause of Article 14. Hence, the principles of natural justice which have been guaranteed by Article 14 and 21 of the constitution can not be disregarded. In *Satyavir Singh v. Union of India*<sup>7</sup> and the *State of U.P. v. Vijay Kumar Tripathi*<sup>8</sup>, the Supreme Court held that the principles of natural justice must be read into the provisions of law. In *Saji Panchayat v. state of Gujarat*<sup>9</sup> in which government had transferred panchayat area as notified area and there was no provision for hearing before transfer of land, the court held that denial of such opportunity is not in consonance with the scheme of law governing our society. The validity of law that excludes principles of natural justice becomes suspect. In *Hindustan Petroleum Corpn. v. H.L. Trehan*<sup>10</sup>, Supreme court held that it would be arbitrary to take action without hearing and thus violative of Article 14 of the constitution. In *D.K. Yadav v. J.M.A. Industries Ltd.*<sup>11</sup>, the Supreme Court held that even where the statutory standing orders empowered the management to terminate the services of an employee who overstayed the leave period, without hearing the termination of services would be violative of Article 21 of the constitution.

In *Ayub Khan Noorkhan Pathan v. State of Maharashtra*<sup>12</sup>, the Supreme Court upheld the appeal of the appellant as the High Court had upheld the cancellation of the caste certificate by the screening committee meant for this purpose without hearing the appellant. The Court further fined Rs. One lac on the respondent No. 5 i.e. the complainant for unnecessarily harassing the appellant.

In *Chamoli District Co-op Bank Ltd v. Raghunath Singh Rana and Others*<sup>13</sup> the respondent employee was suspended for making payment to the bearers of cheques without their prior collection thus causing loss to the appellant bank. Respondent submitted reply to the chargesheet. The Inquiry officer did not hold any inquiry nor was any opportunity to produce witnesses given. Supreme Court quashed the order of termination holding that reasonable opportunity was not given to the respondent.

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<sup>7</sup> AIR 1986 SC 555.

<sup>8</sup> 1995 Supp (1) SCC 552.

<sup>9</sup> (1999) 2 SCC 372.

<sup>10</sup> (1989) 1 SCC 764.

<sup>11</sup> (1993) 3 SCC 259.

<sup>12</sup> C.A. 7728 of 2012.

<sup>13</sup> Civil Appeal No 2365 of 2011 D/D May 17 of 2016.

## PRINCIPLES OF NATURAL JUSTICE

The principles of natural justice have their roots in following two principles applied by Anglo American courts. These two principles are:

- ***Nemo in propria causa judex, esse debet***– No one should be made a judge in his own case, or the rule against bias.
- ***Audi alteram partem***– Hear the other party, or the rule of fair hearing.

## AUDI ALTERAM PARTEM i.e. RULE OF FAIR HEARING

The concept of *audi alteram partem* ensures that no one should be condemned unheard and this is the second longest arm of natural justice which protects the little man from arbitrary and administrative actions when his right to person and property is jeopardised. Moreover, it is the first requirement of civilized jurisprudence that a person against whom adjudication has to be made is to be given a chance to present his view point by affording him opportunity of hearing and defending himself. In *BALCO Employees' Union v. Union of India*<sup>14</sup> the court held that hearing means fair hearing. Any proceeding taken in the absence of the person who has a right to be heard would vitiate the natural justice and render the entire proceedings invalid.

The ingredients of fair hearing are flexible and variable. There are no fixed standards of reasonableness of fair hearing. The norms of fair hearing not only vary from person to person but from case to case even in relation to the same body. Administrative authorities have to be given free scope within their legitimate sphere but keeping an eye on the procedure followed by them. It has to be ensured that the adjudicating authority has not only given hearing to the person who is going to be affected by his adjudication just to make the hearing appear but a fair hearing i.e. the person/ party has been ensured fair hearing right from the start of the proceeding to the final adjudication. It suggests that the party has been given proper notice affording reasonable time to represent himself and plead, given notice of the allegations or issues to be dealt with during the proceeding, opportunity to him to defend himself through legal person if not specifically barred, incorporate his pleadings in the proceedings, adjourn the hearings on genuine grounds of the party if requested and finally intimate in writing action proposed to be taken. In nutshell the procedure adopted must be just and fair. In *Sarat*

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<sup>14</sup> (2002) 2 SCC 333.

*Kumar Dash v. Bishwajit Pathak*<sup>15</sup> the court held that there are no uniform procedural norms for adjudicatory bodies functioning outside the procedural ambit of courts. The purpose is to ensure a fair hearing to the person whose rights are going to be affected. Natural justice is not a complex justice but an elementary. If the cumbersome procedure of courts is thrust upon the adjudicatory bodies, the purpose of setting up adjudicatory bodies will evaporate in the air and the persons will languish in the technicalities of legal procedure. Fair hearing does not stipulate the proceedings as formal and technical as in courts. In *Mineral Development Corporation v. State of Bihar*<sup>16</sup>, the Supreme Court observed that the concept of fair hearing is “an elastic one and is not susceptible of easy and precise definition.” To over judicialize the procedure of natural justice is to undermine it. As it is flexible and non specific, it at certain times varies from case to case keeping in view the gravity of the cause. For example, procedure in the case of domestic enquiry by the employer against his employee in labour matters, the Supreme Court has laid down strict standards of hearing to eliminate the risk of victimization i.e. the right of cross examination of witnesses etc but the same is not regarded in other situations. The procedure of tribunals is more formal and akin to court like procedure and technicalities than the departmental adjudicatory bodies.

The decision of the courts on the question whether the individual concerned had reasonable opportunity of being heard or not in a particular situation bases on the facts and circumstances of each case including the nature of the decision making body, the nature of the action proposed, grounds on which the action is proposed, the nature of the plea raised by him in reply, the genuine requests for adjournments or for further opportunities to present his case.

In *Shahid Balwa v. Directorate of Enforcement*<sup>17</sup> in which the allegation against the noticees was that, during the period 2008 to May, 2010, foreign direct investment was made in Etisalat (which was formerly known as Swan), camouflaged as a domestic investment, thereby contravening the extant rules and regulations which required that a non resident, under the automatic route could not invest beyond 49% in the equity of a company. In this device, according to the respondents, Genex, amongst other entities / persons was, inter alia used, to route FDI, without requisite permission of the Secretariat of Industrial Approvals (in short SIA) and / or the Foreign Investment Promotion Board (in short FIPB) in Swan (now known as Etisalat). Delhi High Court held that it is not possible to say that in every case the rule of audi alteram partem requires that a particular specified procedure is to be followed. It may be

<sup>15</sup> 1995 Supp (1) SCC 38.

<sup>16</sup> AIR 1960 SC 468.

<sup>17</sup> LPA 80/2013&CM 2332 of 2013.

that in a given case the rule of *audi alteram partem* may import a requirement that witnesses whose statements are sought to be relied upon by the authority holding the inquiry should be permitted to be cross-examined by the party affected while in some other case it may not. The procedure required to be adopted for giving an opportunity to a person to be heard must necessarily depend on facts and circumstances of each case.

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#### **Requirements of *audi alteram partem***

Detailed requirement of *audi alteram partem* or right to fair hearing starts from issue of notice to the final determination.

#### **Right to notice**

The term 'Notice' originated from the latin word 'Notitia' which means 'being known'. In other words, it means knowledge of circumstances that ought to induce suspicion or belief as well as direct information of that fact. Notice is first requirement of fair hearing and must precede an adverse order. In *Govind Singh v. Subbarao*<sup>18</sup> the court held that the notice should give adequate time to the person to defend himself. It should also contain time, place and nature of hearing, legal authority under which hearing is to be held and statement of specific charges which the person has to meet. It suggests that contents of notice define the circumference of the hearing because if the notice contained only one charge the person cannot be punished for any other charge for which notice was not given.

In *Joseph Vilangandan v. Executive Engineer (PWD)*<sup>19</sup>, the petitioner received a notice to showcause within 7 days from the receipt of notice as to why the work should not be got done from some other agency at his risk and cost after debarring him as a defaulter. The reply was that the delay was caused by the conduct of the respondent. The contract was cancelled and the appellant was

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<sup>18</sup> AIR 1971 Guj 131.

<sup>19</sup> (1978) 3 SCC 36.

debarred from all future contracts. The Supreme Court while quashing the order held that the word 'debarring you as a defaulter' did not give adequate notice to the appellant with the PWD.

Similarly in *Appropriate Authority v. Vijay Kumar Sharma*<sup>20</sup>, the Supreme Court held that if the material on the basis of which compulsory purchase of property by the Income Tax Department was not disclosed in the show cause notice and venue of hearing was changed without giving reasonable time to transferor to reach the venue, there is violation of principles of natural justice.

Under Section 105-B of the Bombay Municipal Corporation Act, 1888, notice for eviction of a premises need not be given to all the persons living with the allottee. Similarly natural justice is not defied if notice is not given to all the members of a society proposing amalgamation of the society.

In *Shiv Sagar Tiwari v. Union of India*<sup>21</sup>, the court held that if notice is to be given to a large class of educated persons, it may be given by publishing in the newspaper. However, the requirement of notice will not be insisted as a mere technical formality when the party concerned clearly knows the case against it.

In *State of Karnataka v. Mangalore University Non Teaching Employees Association*<sup>22</sup>, the court held where no prejudice is caused to the persons on account of non affording of hearing, violation of natural justice should not be insisted upon.

In *State of Bombay v. Atma Ram*<sup>23</sup> the court held that Article 21 of the Constitution clearly mentions that a detenu must be furnished grounds of his detention and if the grounds are not sufficient, the courts should quash the orders.

### Right to Hearing

Another cardinal principle of *audi alteram partem* is that the affected person has the right to hearing and this is obviously the purpose of issuing notice. The adjudicatory body should not deny the opportunity of hearing to the affected party and not to decide the matter in the absence of sufficient opportunity to the affected party to present his case. Deciding authority should hear both the parties

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<sup>20</sup> (2001) 1 SCC 739.

<sup>21</sup> (1997) 1 SCC 444.

<sup>22</sup> (2002) 3 SCC 302.

<sup>23</sup> AIR 1978 All 44.



and bring on record arguments and documents submitted by both the parties even if any party has nothing to say.

There are two principles of modes of hearing:

- Oral hearing or personal hearing before the adjudicatory body;
- Hearing through written representation.

The purpose of natural justice is to give fair hearing to the affected party. But nowhere, it is mandatory that the party has to be given oral hearing. The authority can dispense with the oral hearing if it is satisfied that sufficient explanation to the allegations mentioned in the show cause notice has been given. As the concept of natural justice is flexible, so it is not definite when personal /oral hearing is to be given to the party. Whether the opportunity should be given by written representation or through oral hearing depends upon the facts and circumstances of the case but if both the minimum of hearings are not adhered to, the principles of natural justice will be violated. In *M.P. Industries case*<sup>24</sup> it was observed that whether opportunity of hearing should be given by written representation or by oral hearing depends upon the facts and circumstances of the case. However where stakes are high and the parties insist for explaining some technical points and the deciding authority is satisfied, oral hearing can be given. In *Ridge v. Baldwin case*<sup>25</sup> Lord Morris observed that the essential requirements of natural justice at least include that before some one is condemned he is to have an opportunity of defending himself.

Further, A court martial under the Army Act has three stages i.e. trial of the accused officer by the court –martial; confirmation of the sentence passed by the court-martial and A post-confirmation review of the sentence.

The court martial has to give a personal hearing to the concerned officer at first stage but there is no need to give hearing at the other two stages. In the instant case, the cantonment Board served a show cause notice to the owner of a building against an illegal construction. He filed a written representation and after considering, it the Board issued demolition order. The order of Board was held valid. Hence, it is clear that provision of oral hearing is not mandatory requirement. It depends upon the analysis of the facts and circumstances of the case.

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<sup>24</sup> 1966 AIR 671.

<sup>25</sup> [1964] AC 40.

In *Travancore Rayons v. Union of India*<sup>26</sup>, the Supreme Court held that where complex and difficult questions requiring familiarity with technical problems are raised, if personal hearing is given, it would conduce to better administration and more satisfactory disposal of the grievances of the citizens.

### EXCEPTIONS TO THE RULE OF NATURAL JUSTICE

Exceptions to rule of fair hearing means compromise with the principle of audi alteram partem which is the seed point of the principle of law of natural justice as under the garb of this exception, the law of audi alteram partem becomes inapplicable. The argument behind this exception made by its supporters is that it is applicable in very few situations and that too only when nothing unfair can be inferred by not affording opportunity of fair hearing or where the fair hearing will circumvent the deliverance of justice and hence prove counterproductive. But, the courts are always vigilant and attempt to ensure that these exceptions do not deny an individual unnecessarily the natural right of fair hearing and resultantly cause more injustice than justice. Some of the exclusionary situations are as under:

#### Exclusion in Emergency

No law of any land can afford to sacrifice the life and interest of the general public at the cost of or to promote the interest of an individual and if it does so, it cannot be held to be a welfare state following the rules of natural justice. But again the situations warranting the protection of the interest of the general public at the cost of the individual are very ticklish and such situations are not meant for the decision makers who are conscientiously anaesthized. Such situations are of exceptional emergency. Where prompt action is badly needed to save the life and health of the people, the requirement of notice and hearing can be dispensed with. Shooting a terrorist on the spot, indulging in terroristic activities or closing a dangerous trade on the spot will not call for notice and its negation will not violate the principle of fair hearing. Where a dangerous building is to be demolished, or theft of electricity is detected on the spot, action without notice will not violate the principles of natural justice.

However, the administrative determination of an emergency situation calling for excluding rules of natural justice is not final. Courts may review the determination of such situations. In *Swadeshi*

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<sup>26</sup> 1971 AIR 862.

*Cotton Mills v. Union of India*<sup>27</sup>, the Supreme Court held that the word “immediate” in Section 18-AA of the Industries Development and Regulation Act cannot exclude the rule of natural justice. The question was whether section 18-AA excludes the principles of natural justice.

Natural justice is flexible and amenable to compulsive pressure of circumstances and their dispensation sometimes gets prompted due to the personality cult or over anxiety of the deciding authorities more than the genuine demand of the situation. In *Satvir Singh v. Union of India*<sup>28</sup> the Supreme Court observed that natural justice must be confined within its proper limits and must not be allowed to run wild. The concept of natural justice is a magnificent thoroughbred on which this nation gallops forward towards its proclaimed and destined goal of justice, social, economic and political. This thoroughbred must not be allowed to run into a wild unruly horse, careering off where it lists, unsaddling its rider and bursting into a field where the sig ‘no pasaran’ is put up<sup>29</sup>

In *Ved Mittar Gill v. Union Territory Administration of Chandigarh and Others*<sup>30</sup> the appellant who was working as Superintendent Burail Jail, Chandigarh was dismissed for utter dereliction of duty leading to the escape of the accused of Beant singh murder case through a tunnel. The Supreme Court held that the Competent Authority rightly dismissed the plaintiff without inquiry when viewed dispassionately with reference to the duties assigned to him. The Court further held that the competent authority was justified in concluding, that the four prisoners referred to above could never have escaped, if the appellant - Ved Mitter Gill, and the petitioners, had diligently discharged the duties assigned to them. Supreme Court held that the reasons for dispensing with the departmental enquiry, cannot be dependent upon the holding or not holding of criminal proceedings, against the appellant/petitioners. Once the parameters stipulated in clause (b) of the second proviso to Article 311(2) of the Constitution of India are satisfied, the submissions advanced at the hands of the learned counsel for the appellant/petitioners, would not arise.

#### **Exclusion in Cases of Confidentiality**

In *Malak Singh v. State of Punjab*<sup>31</sup> the Supreme Court held that the maintenance of surveillance register by the police is a confidential document. No person can have access to it. If it is allowed in the

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<sup>27</sup> (1981) 1 SCC 664.

<sup>28</sup> (1985) 4 SCC 252.

<sup>29</sup> (1985) 4 SCC 252, 263.

<sup>30</sup> 2015 Lab IC 1790.

<sup>31</sup> (2002) 3 SCC 146.

interest of justice it will lose its relevance and the purpose will be defeated. The same principle was followed in *S.P. Gupta v. Union of India* in which the Supreme Court held that no opportunity of being heard can be given to an Additional Judge of a High Court before his name is dropped from being confirmed.

### **Exclusion in Cases of Purely Administrative Matters**

Actions of the disciplinary authorities in their administrative capacities do not necessarily call for hearing before arriving at a decision. The Supreme Court in *Jawaharlal Nehru University v. B.S. Narwal*<sup>32</sup>, held that the nature of academic adjudication appears to negative any right of an opportunity to be heard. If the academic authority assesses the performance of a student over a period of time and declares it unsatisfactory it does not amount to violation of right of natural justice. Similarly in *Karnataka Public Service Commission v. B.M. Vijay Shankar*<sup>33</sup> case when the Commission cancelled the examination of the candidate because in violation of the rules, the candidate had written his roll number on each page of the answer sheet, the Supreme Court held that the principles of natural justice were not attracted.

However, this exclusion will not apply where the academic body performs non-academic functions.

### **Exclusion based on Impracticability or Involving Large Number of Cases**

Where it is not humanly possible to hear the people involving huge number and the adherence to the principle of fair hearing proving counterproductive, the courts held that the notice and hearing of the same is not possible and excluded the principles of natural hearing on the grounds of administrative impracticability. In *Union of India v. O. Chakradhar*<sup>34</sup>, the Supreme Court maintained that where the mischief in conducting selection was so widespread and all pervasive and it was difficult to identify the persons unlawfully benefitted or unlawfully deprived of selection, even the termination of service without hearing does not attract principles of natural justice.

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<sup>32</sup> AIR 1980 SC 1666.

<sup>33</sup> (1992) 2 SCC 206.

<sup>34</sup> (2002) 3 SCC 146.

### Exclusion in Cases of Interim Preventive Action

When action is of an administrative nature and is not final, the authorities can dispense with the principles of natural justice. In administrative system, suspension of an employee is a preventive action and not a final action, it does not call for necessarily giving hearing to the official.

In *Abhay Kumar v. K. Srinivasan*<sup>35</sup> in which the student was debarred from entering the campus till the pendency of criminal case of stabbing of a student was pending against him, the Delhi High Court rejected the contention terming it as an interim order preventive in nature and upheld that denial of hearing was not violation of principles of natural rights. In *Menaka Gandhi v. Union of India*,<sup>36</sup> the Supreme Court termed the action of the Government impounding the passport of the appellant as preventive action.

In *Ramavtar Pareek v. Rajasthan Public Service Commission*<sup>37</sup> the Supreme Court held that it is well settled that if upon admitted or indisputable facts only one conclusion is possible then in such a case, the principle that breach of natural justice was in itself prejudice would not apply. If no other conclusion is possible on admitted facts it is not necessary to quash the order which was passed in violation of natural justice. Thus, the argument that the conclusion namely declaration of final result and recommendation by R.P.S.C. were void ab-initio was not binding upon the petitioners has no substance.

### Legislative Functions

The legislative action of the legislature is not subject to the rules of natural justice because legislature frames rules and policies in general and not for any individual. The principles of natural justice can be excluded by the provisions of the Constitution also. The Constitution excluded the principles of natural justice in Article 22, 31(A), (B), (C) and 311 (2). But if the legislative exclusion is unreasonable, the courts may quash it under Article 14 and 21 of the Constitution. In *Laxmi Khandsari v. State of U.P.*<sup>38</sup>, the Supreme Court held that the notification of the Uttar Pradesh Government Sugarcane (Control) order, 1966 is legislative in character and does not attract principles of natural justice. In *J.R. Vohra v. Indian Export House*<sup>39</sup>, the court held that Section 21 and 37 of the Delhi rent

<sup>35</sup> AIR 1981 SC 457.

<sup>36</sup> (1978) 1 SCC 248.

<sup>37</sup> 2015(1) SCC(L&S) 399.

<sup>38</sup> AIR 1981 SC 873.

<sup>39</sup> (1988) 1 SCC 712.

Control Act dealing with the termination of limited tenancy do not violate the principles of natural justice.

Similarly in *Panipat Woollen and General Mills Co. Ltd. v. Union of India*<sup>40</sup>, the Supreme Court held that when a decision is left to the legislature itself under the Act, the question of affording opportunity does not arise. In *Charan Lal Sahu v. Union of India*<sup>41</sup>, in which constitutionality of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 was involved the Supreme Court held that for legislation by Parliament no principle of natural justice is attracted provided such legislation is within the competence of the legislature.

The principles of natural justice have been given constitutional status in USA by 5<sup>th</sup> and 14<sup>th</sup> amendments which provide that no person will be deprived of life, liberty or property without the due process of law. In England, the concept of principles of natural justice reveals two opposite points. According to one point, if there is no statutory requirement of hearing, hearing will be given by courts whenever any decision affects the rights of the individual. *Cooper v. Wandsworth Board of Works*<sup>42</sup> is a glaring case in this direction. This principle is applied in a multitude of cases dealing with interference with property rights, dismissal from office, imposition of penalties and deprivation of privileges etc.

The other viewpoint was based on restrictive attitude compelling the observance of principles of natural justice in situations where there was no statutory requirement for hearing.

#### **Where no Right of the Person is Infringed**

Where the law does not specifically lay down the provisions of personal hearing and where no specific right of the individual has been denied, the principles of natural justice are not applicable. This exception has been further elucidated in *J.R. Vohra v. Indian Export House (P) Ltd.* the Court held that Section 21 and 37 of the Delhi Rent Control Act provides for the creation of limited tenancies and the effect of the above sections is that after the expiry of the limited tenancy a warrant of possession is issued by the authority to the landlord without any notice to the tenant. Upholding the validity of the warrant of possession, the Court held that a person has no right to personal hearing as he has no right to stay in possession after the expiry of period. Similarly in *Andhra Steel Corporation v. Andhra Pradesh*

<sup>40</sup> AIR 1986 SC 2082.

<sup>41</sup> (1990) 1 SCC 613.

<sup>42</sup> (1863) 14 CB (NS) 180.

*Electricity Board*<sup>43</sup>, the Board had withdrawn the concession in electricity rates without hearing the appellant. The Supreme Court held that any concession can be withdrawn at any time without opportunity of hearing.

### Doctrine of Necessity

When there is no other authority to decide the matter, disqualification against that person on the ground of bias will not be applicable. Although seemingly it is against the tenets of natural justice but the observance of the principle will do more harm than good. But it has to be clearly established that the necessity is genuine and real and any deviation from this rule of necessity will put the administration to a grinding halt.

In *Charan Lal Sahu v. Union of India*<sup>44</sup> case the Bhopal Gas Disaster (Processing of Claims Act), 1985 had authorised the Central Government to represent the case of all the victims in matters of compensation award. It was challenged on the sole ground that since government owned 22% share in the Union Carbide Company, it constituted clash of interest of the government and the victims. Rejecting the argument, the Court observed that if the government did not represent the victims then no other sovereign body could represent. Hence, it did not attract the principles of natural justice as it fell in the category of doctrine of necessity.

### Exclusion in Cases of Government Policy Decision

In *BALCO Employees' Union v. Union of India*<sup>45</sup>, Supreme Court held that in taking policy decision in economic matters the principles of natural justice are not attracted. The workers had challenged the government's policy of disinvestment in public sector undertakings. The court held that although the workers were going to be affected but unless the decision was arbitrary, biased or illegal, the decision cannot be challenged because even otherwise, it will not be possible to give hearing to all those who may be affected.

<sup>43</sup> (1991) 3 SCC 263.

<sup>44</sup> [1987] RD-SC 277.

<sup>45</sup> (2002) 2 SCC 333.

## Effects of Breach of the Rules of Natural Justice

The Courts have laid great stress on the rule of natural justice in the dispensation of justice and have acted as savior of the litigants who have suffered at the hands of administrative authorities and tribunals. In many cases, where the jurisdiction of courts is specifically barred, the courts take cognizance of the matters examining the cannons of natural justice and thus prevent the authorities from being arbitrary, unlawful and unjust. The Courts are unanimous on the point that a decision rendered in violation of the rule against bias is merely voidable and not void. But there is difference of opinion and disagreement among the jurists regarding the denial of fair hearing. The famous jurist H.W.R. Wade is of the view that denial of the principles of natural justice leads to void decisions but another jurist D.M. Gordon is of the view that procedural breaches can never render a decision void. In *Ridge v. Baldwin*<sup>46</sup> case the House of Lords was divided. One set of judges held the decision of the watch Committee which terminated the services of the constable as void as rule of fair hearing had been violated but other judges merely termed it voidable. Law is in confusion on this point.

In *Maneka Gandhi v. Union of India*<sup>47</sup> case, the Supreme Court held that the impounding of the passport of the appellant was in violation of rules of natural justice as it was done without hearing the appellant and thus could make the order void. But considering the assurance of the Government of granting post decisional hearing, declined to interfere in the matter. Similarly in *Swadeshi Cotton Mills v. Union of India*<sup>48</sup> in which the Government of India in exercise of its powers under Section 18-AA of the Industrial Development and Regulation Act passed orders for taking over of the management of the mill by National Textile Corporation, the Supreme Court held that the order had been passed in violation of principles of natural justice yet it refrained from striking down the order on the assurance of Solicitor General that a post decisional hearing would be given. Again, the question arises whether post decisional hearing can make good for the party as the pre decisional hearing. If no, then what is the relevance of banking upon it as it is well accepted that the deciding authorities seldom get reason to reverse or modify their own orders.

One of the questions in *A.R. Antulay v. R.S. Nayak*<sup>49</sup>, before the Supreme Court was whether the directions of the Supreme Court directing the withdrawal of a criminal case against the appellant from

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<sup>46</sup> [1964] AC 40.

<sup>47</sup> 1978 SCR (2) 621.

<sup>48</sup> ILR 1979 Delhi 387.

<sup>49</sup> (1988) 2 SCC 602.



the Court of special judge and its transfer to the high Court without affording a hearing to him was void and hence liable to be set aside. The Supreme Court held that violation of natural justice is a nullity and the trial “Coram non iudice.”

Instead of stretching the arguments for and against, the issue as to whether breach of audi alteram partem rule amounts to voidable or void orders, the spirit behind this principle has to be honestly invoked. Every one knows the facts of his case and the circumstances and compulsions therein although their submission before the deciding authority varies from person to person. The honesty in his facial expressions, words and body gestures certainly helps the authority to search for some unexplained but material hooks on which he can rest his conscience and reach a tenable conclusion. Denial of this cardinal rule of natural justice may even render the deciding authority judicially restless and ultimately lead to injustice. In situations of denial of fair hearing at the pre decisional stage, a post decisional hearing cannot serve any purpose.

In case *Chamoli District Co-op Bank Ltd. v. Raghunath Singh Rana and Others*<sup>50</sup> the Supreme Court while dismissing the order of termination of the respondent on the ground of lack of fair hearing held that the reply to the chargesheet submitted by the respondent had not been considered, no inquiry was held and the services of the respondent were dismissed without affording him opportunity of reasonable fair hearing which amounted to breach of Rule of natural justice.

## CONCLUSION

The motive behind the principles of fair hearing is to afford the delinquent official a reasonably fair hearing to explain himself against the charges leveled against him. It is the cardinal of natural justice that the person accused of an offence must be given opportunity to explain the circumstances and truthfulness involved in the charges before the inquiry officer arrives at a view. It is nothing but an overall revisit of the principles of natural justice.

Although, there are divergent views regarding affording of opportunity of hearing to the charged officials because the advocates of this theory are of the view that this opportunity or in strict sense the reasonable opportunity is a relaxation provided to the undeserving delinquent official who has already abused his power and caused damage to the institution he is employed in. But the law treats everyone fair and innocent unless he is proved otherwise. Moreover, facts drawn from the record during

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<sup>50</sup> Civil Appeal No. 2265 of 2011 D/D 17-5-2016.

inquiry, sometimes take U turn when the charged official explains the facts and circumstances by appearing before the inquiry officer and totally changes the mind of the inquiry officer and opens his eyes.

As the idea behind punishment is to make the delinquent realize the importance of the rules of conduct and behavior in the society or the institution he is working on the basis of their sanity and larger acceptance and not because of fear or favour and thereby rehabilitate him in the society, it can be achieved if the person is sensitized about the betrayal of conduct of values on his part by giving him a reasonable opportunity to explain himself. But if a delinquent is punished unheard or without following the principles of natural justice, there are chances of error of judgement. This error of judgement by saying good bye to the norms of fair hearing will shake his faith in the system and push him towards rebellion instead of making himself society worthy. But this is not the purpose of the system in punishing him. If the State loses the credibility of its rules and procedure in the minds of the people for whom these are framed, the idea of organizing man into society will be defeated. Moreover, departure from the principles of natural justice will force the suffering person to move the court and the findings of the courts will result in ladder and snake game. Work of the courts will unnecessarily increase.

Reasonable opportunity of hearing and its importance has been amply defined by Justice Eyre in Dr. Bentley's case in *R.V. University of Cambridge*<sup>51</sup> when he observed that even Adam and Eve had been afforded an opportunity of defending themselves for eating the forbidden fruit before suffering expulsion. The two principles of natural justice i.e. Nemo in propria cause judex, esse debet i.e. no one should be made judge in his own case and Audi Alteram partem i.e. no one should be condemned unheard are pathways towards achieving consummation of justice. Even Article 14 and 21 of the Constitution of India also apply against arbitrary state action or violation of natural justice. The rules of natural justice are canons of judicial propriety of any decision for a judge or deciding authority.

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<sup>51</sup> (1723) 1 Str 557.