

Rules of natural justice with emphasis on *Nemo Judex in Causa Sua*: An insight into administrative law

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Abstract

"It is the spirit and not the form of law that keeps justice alive". Earl Warren

This paper contains a brief overview of the concept of Natural Justice and how the two rules of *Audi Alteram Partem* and *Nemo debet esse judex in propria causa* forms the integral part of it. Briefly there are three rules that in totality defines Natural Justice – The first being the “rule of hearing” whereby the opportunity to be heard is to be given to all person where a decision is let out by the panel or adjudicating authority. Second is the “rule against bias” whereby the deciding authority should be free from any kind of bias while deciding a matter; and Lastly, the “reasoned decision” whereby reasonableness is one vital ground to be kept in mind while deciding a matter This article consists of two major parts; one that defines the principle of Natural Justice tracing its origin and development through judicial trends and the second part focusing majorly on the Rule against Bias, the origin and evolution and trends in the judicial procedures while deciding cases affecting the rights of individuals and questioning the validity of actions of the administrative authority that has civil consequence; and ultimately the conclusion that ends the topic with the controversies that surround the principle.

Keywords: natural justice, rule against bias, rule of hearing, reasoned decision, administrative authority, civil consequence

Principle of Natural Justice: Brief Overview

"It is not wisdom but authority that makes the law" – **Thomas Hobbes**

One among the various concepts of Administrative Law is the principle of natural justice which is also considered the most important aspect of Administrative Law. According to Megarry J., Natural Justice is nothing but, "justice that is simple and elementary, as distinct from justice that is complex, sophisticated and technical".ⁱ The principle being the sine quo non to dispensing public law has been derived from Roman term "**Jus Natural**" denoting the principles of justice, equity and good conscience. The applicability of the principle was very limited in Britain during or before 1963 as seen in the case of **R v. Metropolitan Police Commissioner**ⁱ *Kautilya's Arthashastra* and also *Adam* recognized the concept of natural justice. Being highly attractive and potential and at the same time exhibiting vagueness and ambiguity, it is difficult to provide for a scientific as well as a universally acceptable definition to the expression which has also been immensely criticized for the lack of precision.ⁱ Various authors, lawyers and diverse systems of law have divergent and distinct views on the principle. "It has many colours, and shades and many forms and many shapes".ⁱ

Natural Justice can be referred to as what is right and what is wrong.ⁱ In India the concept first came into picture with the case of **Mohinder Singh Gill v. Chief Election Commissioner**ⁱ whereby it was held that the executive whether it exercises a judicial or quasi-judicial, purely administrative or quasi legislative function; must be fair in its actions. Since Administrative law is a branch of Public Law and Natural Justice being one important aspect of it; also belongs to the same branch and is used as a weapon to protect the rights of the citizens and secure them justice. These refer to the basic values that have been treasured by humans for a long time now. The values that are enshrined in the principles of natural justice are embedded in the Constitution and the glory of it can in no situation be let out to be tarnished as per the demand of the various cases and circumstances.ⁱ

According to Wade, an unbiased decision coupled with consideration of the views of people that are affected by such decisions is not just much acceptable but also one of supreme quality. So long as there is no clarification or tuning that the law by itself suggests, both justice and efficiency forms the two sides of the same coin and are weighed equal.ⁱ During the days of the origin of the concept it was placed to such a supreme position that no human laws could possibly sustain in case it is contradictory of natural justice.

Natural Justice is one such principle which finds no mention in any of the statutes that are enacted. This often raises the question as to the relevance of the principle and

whether for executive and adjudicating authority it is a mandate to follow it. It was in the case of **Cooper v. Wandsworth Board of works**ⁱ ; whereby Cooper owned a block of land in Wandsworth. The requirement that was laid down under the statute governing the matter stated that a 7 days' notice has to be given to the Board in case any parson wants to build on the land. Cooper did not comply with the requirement. The house build on his land was ordered to be pulled down without any further information being received from Cooper. The issue that popped up to be decided by the court was whether Cooper had a right to being heard before any decision is made for right of fair hearing forms a pivotal element of Natural Justice. The court held that, even at the instance of the statute being silent on to the right of party to be heard, it is the duty of the *justice of common law to supply the omission of the legislature*.ⁱ

Natural Justice: Indian Position

Courts in India followed the principles that were laid down in the cases settled in the courts of England. One such instance was seen in the case of **Kishan Chand v. Commissioner of Police, Calcutta**ⁱ wherein the Court applied the principle and observation which was also laid down later in the English case of **Franklin v. Minister of Town and County Planning**ⁱ and held that principle of natural justice particularly the right of hearing- "Audi Alteram Partem" could be applied exclusively to proceedings that are judicial or quasi-judicial in nature. However, the scope of the principle as held by the Courts of England and also the Indian Courts including the Supreme Court was extended to all kinds of administrative proceedings.

Natural Justice in the Indian system of the Administrative setup is the fundamental and the foundational principle of which the law including Natural Justice as one of its part is now well settled and is also made a mandate in judicial procedures. Not just this but it is also indispensable for the administrative authorities to abide by the concept while indulging in the decision and rule making process which in turn affects the individuals.ⁱ

In the case of **Bharat Ratna Indira Gandhi Engineering College v. State of Maharashtra**ⁱ and also **Uma Nath Pandey v. State of Uttar Pradesh**ⁱ it was held that the principle of Natural Justice is a well settled concept that has roots in our traditions. It forms the core of fair adjudication and thus prevents miscarriage of justice.

Since violation of rule of natural justice in all ways lead to arbitrariness; this is in many ways synonymous to the word discrimination, thus Supreme Court in the case of **Union of India v. Tulsiram Patel**ⁱ weighed it parallel to Article 14 of the Constitution of India; *therefore violation of a principle of natural justice by a State action is a violation of Article*

14.ⁱ From the days of Adam as well as Kautilya's Arthashastra; Natural Justice was considered to be embedded in the concept of Rule of Law which defined Social Justice.

Development in The Principle of Natural Justice Through A.K. Kraipak & Maneka Gandhi Case

The principle was defined and evolved also its scope and applicability extended through various judicial pronouncements. However, the concept gained momentum and wide acceptability with the two landmark judgements i.e. first in the case of **A.K. Kraipak v. Union of India** and secondly in the very famous case of **Maneka Gandhi v. Union of India**. It was so well settled that any action or proceedings be in administrative, judicial or quasi-judicial in nature must abide by the principle of Natural Justice which although has not been expressly laid down in any statute but in turn affects the rights and interests of the parties leading to civil consequences.ⁱ To begin with the first case, J. Hedge speaking for the Supreme Court propounded –

“The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it”.ⁱ

In the second case, CJ. Beg observed that; even when a cause against action that is to be taken against a private person affecting the right of such individual, has no backing by a rule or any statutory provision made to that effect, there has to be given reasonable opportunity of being heard. This reasonable opportunity is implied from the very nature of the functions that an authority exercises while taking punitive action.ⁱ

Basis of the Application of the Principle of Natural Justice

The principle of Natural Justice originated from the Common Law; based on 2 maxims:
Nemo debet esse judex in popria causa Audi Alteram Partem

The very first maxim under the head i.e. *Nemo debet esse judex in popria causa*, meaning that no man shall be a judge in his own cause is often also referred to as the Doctrine of Bias. According to this, the authority judging a matter must act fair and in an impartial manner without any kind of biasness.

This maxim includes in itself 3 rules that are:

- I. No man shall be the judge in his own case
- II. Justice should not only be done but undoubtedly be seen to be done

III. Judges like Ceaser's wife should be above suspicion

The Second principle which is that of Audi Alteram Partem, in simple terms means; let the other side be heard. It is also referred to as the rule of fair hearing. With the passing of time this principle has evolved and has gained distinct form and shape. It found its relevance first in the 'Magna Carta' in 1215, made by Runnymede. As per this principle, no person shall be punished/condemned unheard. This implies in itself the fairness that is essentially required to be exercised by the deciding authority. Here, reasonable opportunity is a mandate that is to be given to any individual before any decision is taken that affects him. The first and foremost essential also termed as the limb of the principle of natural justice is the Notice. There is a duty on the part of the deciding authority to give notice to a person before taking any action. It must be reasonable, precise and unambiguous in the sense that in any case if any notice is termed as defective or in any way vague; post that all the proceedings would become void.ⁱ It was in the case of ***Punjab National Bank v. All India Bank Employees' Federation***ⁱ that a notice did not contain the charges against which the fine was imposed. The Supreme Court quashed the fine holding the notice as defective.

1. RULE AGAINST BIAS AND JUDICIAL PRONOUNCEMENTS

To understand the concept enshrined in the maxim ***Nemo debet esse judex in propria causa***, which forms the core of this paper, we need to first look into the meaning of the word *Bias*. Bias is nothing but a pre-conceived notion or in other words a pre-determination to settle an issue in a manner which leaves the mind not open to conviction. This kind of a mental state which is pre-occupied results in swaying the judgement and making the judge partial under a case.ⁱ Bias is anything which tends to or may be regarded as tending to cause a person to decide a case, otherwise than on evidence, must be held to be biased. The maxim makes it clear that adjudicating authority must be unbiased and should in all cases deliver justice in a pure and impartial manner. It is obligatory on the part of the Judges to act judicially and on the basis of the principles of evidence.

The maxim of Rule against Bias wherein it is seen that the element of Bias disqualifies a person who acts as a judge is based on the following two rules –

- No one should be a judge in his own cause – A person adjudicating dispute must not hold any proprietary or pecuniary interest in the subject matter; and
- Justice should not only be done but undoubtedly be seen to be done – Adjudicator must be able to show that he was acting fair and while delivering the decision there was conducted proper enquiry.

It's merely a basic requirement that the principle of Natural Justice requires the authority that delivers judgement must comprise of persons who are impartial acting fairly without prejudice.ⁱ A biased decision is null and void and the trial in which such partial decision is delivered is termed as "*Coram non judice*".

The term Bias that has been into use here is however different from the word 'mala fide' and prejudice. Although seeming similar the words 'bias' and 'mala fide' have been clearly distinguished by Prof. M.P. Jain that 'Bias' is a result of an attitude of the mind which ultimately leads to difficulties in proving balance of probabilities for which a man supposedly expected to act judicially, acted biasedⁱ. On the other hand the term 'mala fide' indicates a person's interior motives of which proving require the court to insist on proof for the same. No proof is required by court in the case of 'Bias'. Similarly, 'Bias' and 'Prejudice' are not same. Where, the former is the inclination or prepossession of mind, not leaving it indifferent; the latter as defined by Webster pre-conceived opinion without due knowledge.ⁱ

1.1. TYPES OF BIAS

Bias is generally of four types –

Pecuniary Bias

Pecuniary Bias arises when the judge has monetary or economic interest in the subject matter of dispute. The judge while deciding a case must not have any pecuniary or proprietary interest in such case being decided upon. In the case of ***Vishakhapatnam Cooperative Motor Transport Ltd. v. G Bangar Raju***ⁱ the District Collector as the Chairman of the Regional Transport Authority, granted Motor permit to the above Cooperative Society to which he was also the President. The Court set aside Collector's action on the basis of proprietary Bias.ⁱ

Personal Bias

The second type of bias is the Personal Bias. It generally arises from the close, near and dear relationships be it friendship, business or professional contacts, etc. Such relations disqualify a person from acting as a judge.

In ***Jeejeebhoy v. Assistant Collector, Thana***ⁱ, it was seen that the bench so constituted by the CJ consisted of a member who also belonged to the Cooperative society for which the land had been acquired. Thus it showcases a good example of personal bias.ⁱ

Subject matter/ Official Bias

A judge having general interest in the subject matter in dispute will be disqualified on

the ground of bias. To disqualify on the ground of Official Bias, there must be direct connection between the issue in dispute and the judge. In **ICAI v. L.K. Ratna**ⁱ a member was held responsible for misconduct and was thus removed. It was on the Supreme Court to decide as to whether the Council's finding holding the member guilty was on account of Bias since the Chairman and the Vice Chairman were ex-officio president and vice president of the Council. Not just that but also the other members of the committee was drawn from the Council. The court quashed the decision on account of it being vitiated.ⁱ

Judicial Obstinacy

The word Obstinacy infers outlandish and unwavering persistence wherein the deciding official would not take no for an answer. It is a relatively new concept. This new category of bias was discovered in a situation where a judge of the Calcutta High Court upheld his own judgment while sitting in appeal against his own judgment.ⁱ To understand this kind of bias we take up the case of **A.U. Kureshi v. High Court of Gujarat**ⁱ here "*one of the judges of HC considered the so called misconduct of a member of Subordinate Judiciary on administrative side (disciplinary committee). He then decided the petition filed by the delinquent officer on judicial side. It gave enough apprehension of bias.*"ⁱⁱ

1.2. EVOLUTION OF THE RULE AGAINST BIAS

An allegation on **Lord Cottenham LC** for presiding over a matter involving a company in which he himself held shares, in the case **Dimes v. Grand Junction Canal**ⁱ, can be marked as one among the ancient instances for the applicability of the rule against bias. Even when there was lack of reasons supporting and proving his bias, the judgment so delivered was set aside. This case led to the beginning of what was laid down by Lord Hewart as "*Justice should not be only done, but should manifestly and undoubtedly be seen to be done*".ⁱ Later, Blackburn's decision in the case of **R v Rand**ⁱ gave broader insight into the concept of bias wherein he said that where a judgement is affected by the bias of the adjudicating authority due to presence of monetary interest in the subject matter of the case, such would lead to '*automatic disqualification of the judge*'.ⁱ

1.3. Rule Against Bias in India

Manek Lal v. Dr. Prem Chandⁱ traced the earliest sights of the concept in the Indian System. The case included the authenticity of Tribunal's decision awarding punishment to the appealing party for unfortunate behavior at the professional workplace. It was claimed by the litigant that the council was one-sided by virtue of the chairman having

served as the direction for the respondent at a prior phase of the case. From the decisions of English Courts it can be understood that the court endeavored to define a trial of inclination which firmly worked inside the doctrinal zone of the reasonable suspicion test. Though the court didn't explicitly utilized the term 'reasonable suspicion', the way of thinking that the court followed, was unmistakably characteristic of the two prongs of the sensible doubt test in particular, the view point test as indicated by which the court was to decide if under a given situation "*there is a sensible ground for accepting the chance of a predisposition*" and whether the presumptions "*is probably going to create in the psyches of the disputant, or the general public a reasonable uncertainty about the decency of the organization of equity*".ⁱ

This case led to the beginning of the phase of confusion pertaining to the Bias Jurisprudence in India and one of the reason being the consistently sticking to the principles that were followed in the English courts and not merely ambiguity in the process of decision making. The case failed to determine and define the test it relied upon alongside it also lacked proper treatment of the Subject matter. Such lacunae and doctrinal were subsequently seen in the case of **Gullapalli Nageshwar Rao and ors. v. Andhra Pradesh State Transport Board**ⁱ wherein the Government proposed nationalization of motor transport. Objections for nationalization were referred to be heard by the Secretary to the Government, who upheld the validity of the scheme for nationalization. "*The core issue to be decided by the Apex Court was whether the hearing by the Secretary was a judicial function and whether the same had been wreaked with bias on the ground that he himself was a party to the dispute*".ⁱ

The court held that the "state was deciding a lis and thus was to act judicially", quashed hearing for being biased. Two years after **Gullapalli Nageshwar Rao case**, there was another issue under the steady gaze of the Supreme Court involving *Personal Bias*. In **Mineral Development Ltd. v. State Of Bihar**ⁱ, the Court needed to choose the legitimacy of a choice by the Revenue Minister ending the mining lease of the applicant. The claim against the Minister, who was likewise responsible for the office managing mines, was that there was a political contention between the priest and the owner of the land who had rented the terrains being referred to the candidate. The Supreme Court put aside the decision of the Minister as being one-sided.ⁱ Then was the **A.K. Kraipak Case** in the year 1969, which was and is still the most significant cases settled by the Supreme Court in the arena of Natural justice and particularly the Rule against Bias.

In this case, one Mr. A, a candidate for selection to the IFS who also was the member of the Board, did not sit on the Board while his name being considered. He was

subsequently selected by the PSC. The unselected candidates filed a writ quashing A's selection.ⁱ The case took the standards of the principle past the reasonably unpredictable domain of "Judicial and Quasi-Judicial functions" to administrative too. For all its criticalness in any case, the decision additionally does not have a legitimate examination of the reasons why the court felt it important to substitute the sensible doubt test with the genuine probability test. With regards to past points of reference, which indicated next to zero exertion with respect to the Supreme Court to take part in a hypothetical investigation of the Bias test (regardless of whether sensible or likelihood), the decision flopped wretchedly in elucidating the doctrinal differentiations between the reasonable suspicion and likelihood test. Thus, there are majorly evolved two tests of the Rule of Bias:

- a) The Reasonable Suspicion Test
- b) The Real Likelihood Test

1.4. Exclusion of Bias

1.4.1. Exclusion of Bias by Statute –

Under certain specific circumstances/situations the rule against bias might get excluded by any law. In such a case a person would not be disqualified even when he acts as a judge in his own cause. The state in such case empowers the adjudicating officer to decide onto an issue even when he has personal or pecuniary interest in it. Thus, it is evident that a law in certain case can by itself remove applicability of the principles. However, Natural Justice particularly rule against bias can in no way override a lawⁱ - **B. K Mehra v. LIC**.

1.4.2. Exclusion of Bias by Necessity –

Another element that excludes the rule against bias is the element of necessity. There are certain cases under which a person although originally imputed to be biased can adjudicate –

1. No person is available for adjudicating.
2. That person forms an important part of the quorum without whom it cannot be formed.
3. Constitution of any other competent tribunal is apparently is not possible

In this case, necessity takes over rule against biasⁱ - **Mohapatra & Co. v. State of Odisha**ⁱ

1.4.3. Waiver of Bias –

"A person may waive his objection to the dispute being adjudicated by a biased person or a

person having an interest in the dispute”ⁱ. Both expressly and impliedly, bias can be waived. However, there are certain conditions to it –

1. The person waiving must have the knowledge of the adjudicator being disqualified on the ground of bias.
 2. He is aware of his own right to waive; and
 3. He has failed to object the bias at the first instance
- ***Vidya Prakash v. Union of India***ⁱ

Combining function of prosecutor and judge - In case one official discharges twin function of being a judge as well as a prosecutor in a proceeding under an administrative setup, if not backed by a valid law, indicates bias.

Conclusion

To conclude with the paper, we see that the contents and matter of principles of natural justice is dynamic and has undergone immense change in its shape, shade and form with the change in the values that society holds. The principles that can be efficiently applied to the various situations and issues that the society faces are dependent on the variable of fairness and how willingly people accept ‘fair-play’ It was noted by the words of De Smith, Woolf and Jowell; *“The decision maker should not be biased or prejudiced in a way that precludes fair and genuine consideration being given to the arguments advanced by the parties. Although perfect objectivity may be unrealistic objective, the rule against bias thus, aims at preventing a hearing being a sham or a ritual or a mere exercise!”* The various tests that have been laid down as the result of various judicial pronouncements form the basis of the rule against bias in the Indian Jurisprudence. However, the Supreme Court lacks on the part of explaining how the standard of reasonable person can be a yardstick of measuring bias and neither does it anyway depicts the judges personifying themselves as reasonable one – as evidently seen through all the cases so solid in this article.

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