International Journal of Juridical Studies & Research (IJJSR), Vol. 1, Issue 2, December 2024 Page 261 - 267

Kaleidoscopic Unpredictability of Natural Justice Principles

VAGISHA NANDINI

Abstract

This paper explores the dynamic and unpredictable nature of natural justice principles within the context of administrative adjudication in India. Drawing on the metaphor of a kaleidoscope, it highlights how the application and content of natural justice—primarily the rule against bias, the right to a fair hearing, and the duty to provide reasoned orders—shift according to varying circumstances and judicial interpretations. The analysis delves into the flexibility and adaptability of these principles, their exceptions, and the resulting challenges, including procedural uncertainty and potential arbitrariness. Key issues discussed include the unpredictability of application, the enforceability of natural justice violations as rights violations, and the legal consequences of breaching these principles. The paper concludes by emphasising the need for legislative and judicial reforms to harmonise procedures and resolve doctrinal conflicts, ensuring that the "kaleidoscopic unpredictability" of natural justice does not undermine the pursuit of fairness and justice in administrative processes.

1. Introduction

A kaleidoscope is a tube of mirrors that produces constantly changing symmetrical designs. Kaleidoscopic, thus, refers to something that is continuously changing in pattern. Unpredictability is also attached to the use of a kaleidoscope, as one can never predict the next pattern the kaleidoscope will make once we move it. The phrase "kaleidoscopic unpredictability" aptly describes the position of natural justice principles, whose content changes in different circumstances in administrative adjudication, and one is always uncertain whether they will apply in a given situation or not, unless decided by the courts. As Massey puts it, natural justice principles have *"many colours and shades, many forms and shapes, and save where valid law excludes it, applies when people are adversely affected by acts of any administrative authority."*[1]

[1] I.P. MASSEY, ADMINISTRATIVE LAW, 190 (9th ed. 2018).

1. Principles of natural justice

Rules of natural justice have been a part of civilisation since time immemorial. They have been described as a part of natural law, i.e., these tenets have existed even when there was no codified law. Natural justice principles have been ascribed to be based on the natural sense of man and his notions of right and wrong. One needs to be armed with legal expertise to understand the importance of these principles. Though natural justice principles have been an integral part of common law, they have also been recognised in other systems, albeit under different names. It represents 'due process' in the U.S., 'dharma' in India and 'proportionality' in the civil-law system.

Natural justice principles are not rigid. The courts have repeatedly pointed out that since *"fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction"*[2], the same applies to the natural justice principles. In ***Satyavir Singh v. Union of India***[3], the Apex Court pointed out:

"It is well established both in England and in India that the principles of natural justice yield to and change with the exigencies of different situation and do not apply in same manner to situations which are not alike. They are neither cast in a rigid mould nor can they be put in a legal strait-jacket. They are not immutable but flexible, and can be adapted, modified or excluded by the statute and statutory rules as also by the constitution of the tribunal which has to decide a particular case and the rules by which such tribunal is governed."

Natural justice principles are applicable in all situations where a person suffers a civil consequence or a prejudice is caused to them as a result of any administrative action. Civil consequences refer to the infringement of personal or proprietary rights, the infringement of civil liberties, or the material deprivation or suffering of other damages.

The two fundamental principles of natural justice are:

i. Rule against bias (*nemo in propria causa judex, esse debet*)- No one should be a judge in his own cause
ii. Rule of fair hearing (*audi alteram partem*)- No one should be condemned unheard.

[2] Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, 1978 AIR 851(India).
[3] Satyavir Singh v. Union of India, (1985) 4 SCC 252 (India).

A third principle, which has been recently recognised as part of the natural justice principles, is the duty to pass speaking orders, i.e., reasoned orders.

2.1. Rule against bias

'Bias' refers to an operative prejudice harboured by the authority, whether consciously or unconsciously, in relation to a party or issue. In ***G.N. Nayak v Goa University***[4], the Court defined bias in the following words:

"Bias may be generally defined as partiality or preference…. It is not every kind of bias which in law is taken to vitiate an act. It must be a prejudice which is not founded on reason, and actuated by self-interest whether pecuniary or personal."

The rule of bias requires the judge to be impartial so that he can listen to the parties with an open mind and give a fair decision. When bias arises from a personal relationship between the deciding authority and the parties, such bias is known as personal bias.[5] Bias occasioned on account of monetary interest in relation to the subject matter of the case is referred to as pecuniary bias.[6] Bias can also arise when the deciding officer is directly or otherwise involved in the subject matter of a case, giving rise to what is known as subject matter bias.[7] If there is a conflict between duty and the department's interest in conducting the inquiry, and it leads to bias in the proceedings, such bias is referred to as departmental or institutional bias.[8] The Apex Court has observed that bias can arise on account of obstinacy, as well, when the deciding officer refuses to accept 'no' as an answer and acts in violation of the rules.

2.2. Rule of fair hearing

Audi alteram partem is inherent to any adjudicative process. A person should be given a chance to present his case before the authorities decide to rule on his fate. This principle ensures fairness in adjudication, providing every affected individual with a reasonable opportunity to be heard. The rule of fair hearing encompasses within itself numerous requirements, such as- duty to act judicially or fairly[9], right to notice[10], right to know the evidence[11], right to present

---

[4] G.N. Nayak v Goa University, (2002) 2 SCC 712 (India).
[5] Mineral Development Corporation Ltd. v State of Bihar, AIR 1960 SC 468 (India).
[6] Jeejeebhoy v. Collector, AIR 1965 SC 1096 (India).
[7] G. Nageswara Rao v. A.P.SRTC, AIR 1959 SC 308 (India).
[8] Krishna Bus Service (P) Ltd. v. State of Haryana, (1985) 3 SCC 711 (India).
[9] Keshav Mills Co. Ltd. v. Union of India, (1973) 1 SCC 380 (India).
[10] State of U.P. v. Vam Organic Chemicals Ltd., (2010) 6 SCC 222 (India).
[11] Dhakeswari Cotton Mills Ltd. v. CIT, AIR 1955 SC 65 (India).

case[12], right to rebut adverse evidence[13], requirement that no evidence should be taken at the back of the other party[14], right to copy of the enquiry report[15] and lastly right to reasoned orders[16].

2.3. Exceptions to the rule of natural justice

Although the rules of natural justice are considered to be ingrained as a minimum requirement for fair proceedings, their application may be excluded in certain circumstances. However, this happens not as an exception to "fair play in action", but because nothing unfair can be inferred by not affording an opportunity to present or meet a case.[17] Accordingly, the application of natural justice principles may be excluded expressly or by necessary implication, subject to the provisions of Articles 14 and 21 of the Constitution.[18] The principles of natural justice can be set aside in cases of emergency when prompt action is necessary.[19] The application can also be excluded on the grounds of confidentiality, when the observance of natural justice principles would otherwise defeat the ends of justice, as in the case of surveillance.[20] It has been consistently held by the courts that purely administrative matters also do not require the application of principles of natural justice.[21] The Courts have also excluded natural justice principles on the grounds of administrative impracticability when it is impossible to afford everyone affected the opportunity to be heard.[22] It is also settled that in case of a legislative act of the legislature, no question of application of natural justice principles arises, provided such legislation is within the competence of the legislature.[23] It has been held that when there is no infringement of the rights of the individual concerned, application of natural justice principles is not warranted.[24] Furthermore, the exclusion of natural justice principles is also justified in cases involving statutory exception[25]s or necessity[26].

---

[12] RBI v. Sahara India Financial Corporation, (2008) 7 SCC 135 (India).
[13] State of Kerala v. K.T. Shaduli Grocery Dealer, (1977) 2 SCC 777 (India).
[14] Shantidevi Kamaleshkumar Yadav v. State of Maharashtra, (2008) 9 SCC 718 (India).
[15] Premnath K. Sharma v. Union of India, (1988) 6 ATC 904 (India).
[16] M.J. Sivani v. State of Karnataka, (1995) 6 SCC 289 (India).
[17] Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India).
[18] Supra note 1
[19] Ajit Kumar Nag v. Indian Oil Corporation Limited, (2005) 7 SCC 764 (India).
[20] Malak Singh v. State of Punjab & Haryana, (1981), 1 SCC 420 (India).
[21]Jawaharlal Nehru University v. B.S. Narwal, (1980) 4 SCC 480 (India).
[22] R. Radhakrishen v. Osmania University, AIR 1974 AP 283 (India).
[23] Charan Lal Sahu v. Union of India, (1990) 1 SCC 613 (India).
[24] J.R. Vohra v. India Export House Pvt. Ltd. and Another, (1985) 1 SCC 712 (India).
[25] Sub-Committee on Judicial Accountability v. Union of India and Ors., 1992 AIR 320 (India).
[26] Election Commission of India v. Subramaniam Swamy, (1996) 4 SCC 699 (India).

2. Issues with natural justice principles in administrative adjudication

The application of natural justice principles in administrative adjudication has certainly reduced the time wasted in following the cumbersome procedures laid down for courts and promoted administrative efficiency; however, it has also given rise to some concerns that need to be addressed soon. No one can deny that the flexibility of natural justice principles imparts a certain scope of unpredictability to their application. In ***Ujjambai***[27], the Apex Court seems to have placed the natural justice principles over and above the fundamental rights, which raises some doubts as to whether natural justice principles should prevail over the constitutionally guaranteed fundamental rights, those same very rights for which the Apex Court enjoys the vast jurisdiction under Article 32 of the Constitution. Another concern with the application of natural justice is that the jurisprudence surrounding the effect of breaching the natural justice principle remains shaky. There has been a conflict in the judgments, with one spectrum comprising rulings that declare such actions to be void, whereas the other end of the spectrum comprises judgments that declare such actions to be merely voidable and not void. Thus, there are three major concerns with the application of natural justice principles:

i. Unpredictability in application
ii. Can violations of natural justice be enforced as violations of rights? - Curious case of Ujjambai
iii. Effect of breach of the rules of natural justice: action void or voidable?

3.1. Unpredictability in application

In India, the quasi-judicial authorities established under various legislations are not bound by the procedures laid down in the Code of Civil Procedure, 1908. The legislations mandate that the Appellate Tribunal[28]/Board[29]/Commission[30] *"shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the … shall have powers to regulate its own procedure."* Unfortunately, no legislation in India expressly spells out the principles of natural justice. Since the content of the rules of natural justice can vary depending on the circumstances and may be modified or completely excluded in certain situations, this leads to

[27] Ujjambai v. State of Maharashtra, (1963) 1 SCR 778 (India).

[28] The Electricity Act, 2003, § 120, No. 36, Acts of Parliament, 2003 (India); The Securities and Exchange Board of India Act, 1992, § 15U, No. 15, Acts of Parliament, 1992 (India).
[29] The Petroleum and Natural Gas Regulatory Board Act, 2006, § 13, No. 19, Acts of Parliament, 2006 (India).
[30] The Competition Act, 2002, § 36, No. 12, Acts of Parliament, 2003 (India).

an anomalous situation. The actual content of these rules remains remarkably vague, subject to the exclusions and is to be decided on a case-by-case basis by the High Courts and the Supreme Court.

This freedom of the tribunals to devise their own procedure has led to *"a bewildering variety of procedures among the different adjudicatory bodies"*[31], and this complicates administrative adjudication to a certain extent, both from the perspective of the authority and the affected person. The affected person may have no idea of the requirements to be followed by the tribunal since they are not laid down anywhere, unless they impugn the order in appeal. It ultimately falls upon the High Courts and the Supreme Court to decide the same on a case-by-case basis. Furthermore, since these principles are not rigid and do not apply uniformly in all situations, the consequent uncertainty sometimes results in arbitrary action, which is actually opposed to what a law should be, i.e., certain and clear. It is certainly true that the beauty of natural justice principles lies in their flexibility and adaptability to varying circumstances, but this also makes their application largely unpredictable.

The requirement of procedure was dispensed with in cases of administrative adjudication because it was considered that the application of natural justice principles would adequately satisfy the minimum requirements of fairness, reasonableness, and justice. However, with the exclusion of natural justice principles in certain circumstances and the variety of procedures among different administrative bodies, one wonders if justice is being sacrificed for the sake of administrative efficiency.

The administrative bodies are allowed to devise their own procedures and are mandated to follow the principles of natural justice, thereby serving the twin purposes of administrative efficacy and protection of individuals against arbitrary orders. However, this flexibility and adaptability of natural justice principles have made the law fairly uncertain. The legislature must aim to harmonise the various procedures by codifying the minimum procedure to be followed by administrative agencies in a manner akin to the Administrative Procedure Act of 1946 in the U.S.A. A minimum standard Administrative Procedure Code may go a long way in harmonising the procedures followed by the administrative authorities in India.

2.2. Can violations of natural justice be enforced as violations of rights? -curious case of *Ujjambai*[32]

[31] I.P. MASSEY, ADMINISTRATIVE LAW, 158 (9th ed. 2018).

[32] Ujjambai v State of Maharashtra, (1963) 1 SCR 778 (India).

In this case, the validity of the order of assessment was challenged in a petition under Art. 32 before the Supreme Court on the main ground that the levy of the tax amounted to infringement of her fundamental right to carry on trade and business guaranteed by Art. 19(l) of the petitioner. The court, however, refused to interfere because it was made under the authority of a valid law, and no fundamental right could be invoked to challenge the order unless such an order was one without jurisdiction or in violation of the principles of natural justice. Thus, it was held by the Court that, even if the authority had jurisdiction to decide rightly or wrongly, the decision, even if it was erroneous, was valid because it pertained to a matter over which the statute had given the authority complete jurisdiction to decide. Such an erroneous decision could not be impeached on the grounds of violating fundamental rights. The remedy was by way of appeal. The Court created a distinction here between administrative acts performed in a 'quasi-judicial' capacity and those performed in an executive capacity.

In case of administrative acts done in an executive capacity violating an individual's fundamental rights, such a person can avail himself of a writ remedy, whereas in case of quasi-judicial orders, violating an individual's fundamental rights, the writ remedy would only lie when the administrative action violates the principles of natural justice or lacks jurisdiction. The Court in ***Maneka Gandhi v. Union of India***[33] ruled that the distinction between quasi-judicial acts and administrative acts was largely irrelevant, specifically when applying the principles of natural justice. The ratio of ***Maneka Gandhi*** and ***Ujjambai*** taken together appears to permit a writ remedy even in cases of administrative acts violating the principles of natural justice. However, in cases of quasi-judicial orders (which violate fundamental rights) that do not contravene the principles of natural justice and are still within jurisdiction, the Court continues to apply ***Ujjambai*** and exclude writ remedies. It is vital that the Supreme Court resolve this conflict, as it leads to a small body of acts committed by administrative authorities remaining insulated from constitutional review for violations of fundamental rights, and further places natural justice principles, which are largely uncodified, above and beyond the constitutionally guaranteed fundamental rights.

The Apex Court must demolish the ***Ujjambai*** test, which creates an arbitrary distinction between administrative actions and quasi-judicial actions for availing writ remedy, as this leads to an unusual situation where "*a violation of fundamental right committed by an organ of the*

[33] Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India).

State ceases to be one when committed by the same organ acting in a slightly different capacity".

2.3. Effect of breach of the rules of natural justice: action void or voidable?

The Courts are unanimous that a decision rendered in violation of the rule against bias is merely voidable and not void. However, a fundamental disagreement remains over the impact of breaching the rule of fair hearing on administrative actions. There are two lines of thought, one that suggests that such decisions are merely voidable, whereas the other suggests that such proceedings are null and void and hence, cannot be validated at a later stage.

In the case of ***Nawabkhan Abbaskhan v. State of Gujarat*** (1974) 2 SCC 121, the Apex Court categorically held that an order which infringes a fundamental freedom in violation of the audi alteram partem rule is nullity. However, in ***Maneka Gandhi v. Union of India*** (1978) 1 SCC 248, the Supreme Court changed its stance when it ruled that an order impounding a passport in violation of the rule of hearing could be made valid by a provision allowing for a post-decisional hearing.

Thus, the court treated such orders as merely voidable, rather than void. It is vital that the Court resolves this conflict soon, as denying a fair hearing at the pre-decisional stage renders providing a post-decisional hearing at a later stage ineffective in serving the principles of natural justice. Also, if the principle of natural justice is so inherently linked to the notions of justice, courts should not allow the defect caused by the violation of natural justice principles to be cured at a later stage for the sake of administrative convenience. Such proceedings must be declared invalid/void, and de novo proceedings should be initiated.

3. Conclusion

Natural justice principles form the backbone of administrative adjudication in India. They certainly have proved efficacious in imparting fairness, reasonableness, equity and equality to the procedure followed by the tribunals across the country, even when no concrete procedure exists. Their adaptability and flexibility enable them to be applied in various circumstances. However, there are some concerns that tend to obfuscate their efficiency. Swift resolution of these concerns is of utmost importance in the context of administrative adjudication. This would require immediate efforts on the part of the legislature and the judiciary so that the "kaleidoscopic unpredictability" of the principles does not ultimately weigh down the scales of justice.