

The Fundamental Principles of Natural Justice in Administrative Law

Muhammad Zubair, Sadia Khattak

Assistant Professor of Law at Abdul Wali Khan University Mardan K.Pk Pakistan

Received: July 13, 2014

Accepted: September 22, 2014

ABSTRACT

The natural law is considered to be the base of natural justice from which it originated during the Greek's period. According to this theory, it is the nature which provides a certain order from which the human beings can set a standard for their conduct with the help of the reason. The standard which these principles provide is that there should be the right to fair hearing and absence of biasness to the individuals in the decision making process. The importance of these principles can be measured from the fact that with the passage of time they over ride all other laws. As Lord Evershed, Master of the Rolls in *Vionet v Barrett* remarked, that "Natural Justice is the natural sense of what is right and wrong." Generally it may be said that these principles apply to the exercise of a decision-making power by a public body where this may have detrimental consequences for the person or persons affected. In a sense the rules perform a similar function to the due process clause in the constitution of the United States of America. In this article an effort has been made to explore the concept of natural justice and its impact on the human beings.

KEY WORDS: Principle, Natural Justice, Constitution, Fair hearing, Bias, Standard, Law.

INTRODUCTION

It is believed that the origin of the Natural Justice came from the concept of Natural Law during the Greek's period. According to the Natural Law theory, nature provides a certain order from which the human beings can set standard for their conduct with the help of the reason. Based on such a primitive theory, it was even known to people in the ancient times such as Greeks and Roman's. The standard these principles provide is that there should be the right to fair hearing and absence of biasness to the individuals in the decision making process [1].

Later on English Jurist adopted these principles which were so much fundamental that they over ride all other laws. The concept of natural justice manifests that justice which is based on an individual's own conscience. As Lord Evershed, Master of the Rolls in *Vionet v Barrett* remarked, that "Natural Justice is the natural sense of what is right and wrong [2]." These principles have been explained by various jurists in a number of ways; such as unwritten laws or laws based on reason [3]. Since their application varies according to the circumstances therefore these are principles rather than rules and are traditionally expressed in the form of two Latin maxims. *Audi alteram partem* translates as 'Hear the other side', but essentially requires that a person affected by a decision must have a proper opportunity to put his case.

Nemo judex in sua causa potest means literally, 'No man shall be judge in his own cause', but acts as a requirement that not only must there be an absence of actual bias in decision making, but there must be an absence of an appearance of bias [4].

These two Latin maxims thus signify the standards which are to be met in the decision making process. They seek to ensure that an individual is given a proper opportunity to present his side of the case prior to a decision being reached, and that the decision itself is reached in an objective manner by an independent and impartial decision-maker [1].

Generally it may be said that the principles apply to the exercise of a decision-making power by a public body where this may have detrimental consequences for the person or persons affected. In a sense the rules perform a similar function to the due process clause in the constitution of the United States of America. They have been described as the 'principles of fair play' by Maughan J, in *Macleay v The Workers' Union* [1929][5].

Even the American and French revolutions increased its importance by deciding to make it an integral part of the future constitution. Hence these principles became an A Priori (Derived) principle to support legislation from being sub versed with arbitrariness, unfairness and unreasonableness by decision-makers [6].

SCOPE OF THE PRINCIPALES OF NATURAL JUSTICE:

These principles occupy a unique place particularly in the field of administrative law because they provide the standards which focus attention on the important question that how far is it right for the courts to try to impart their own standards of justice to the administration [7].

The principles of natural justice under the English Law perform the same function as the due process performs under the U.S law. The result is that these principles enjoy constitutional sanctity and even the legislature does not possess the authority to relieve administration from their demands.

Since these principles of natural justice according to English Judges having their base in morality and ethics which are embodied in the common law justice, which they assert, 'will supply the omission of the legislature'. However the position in Sub-Continent (Pakistan & India) is that these principles stand somewhere in between the English law and U.S Constitution because the due process clause has not been stated in the constitution in so many words but similar principles have been laid down in the constitution though couched in different words [8].

The relevant position in Pakistan is that these principles are equally applied to all proceedings whether they are judicial, quasi-judicial or administrative except in those conditions where the Parliament expressly excludes its application [9]. Therefore these principles are applicable to all proceedings of administrative tribunals which are adjudicating on private rights except in those cases where their application is expressly barred [10].

THE TWO LIMBS OF THE PRINCIPLES OF NATURAL JUSTICE:

The principles of natural justice comprise of the following two limbs:

- the rule against bias (*nemo iudex in causa sua* – no one should be a judge in his own cause);
- The right to a fair hearing (*audi alteram partem* – hear the other side).

THE RULE AGAINST BIAS (NEMO JUDEX CAUSA SUA):

The main aim of this rule is that the principles of fairness and impartiality must be observed by treating all the parties to dispute fairly and equally. Here by fairness is meant that all the parties to dispute be given equal opportunities to participate in the decision making process without favouring anyone. The requirement under impartiality is that a judge should approach an issue without predisposition of a character or strength which prevents him/her from a conclusion against his/her previous position. This principle has qualifications and is not absolute. The requirement of the principle is that the decision-maker should be opened to persuasion but don't require that he/she must be with a blank mind [11]. The rule against bias has its origin in the following principles, which are:

- 1). No one should be a judge in his own cause;
- 2). Justice should not only be done but manifestly and undoubtedly be seen to be done.

Therefore not only impartiality for decision-makers is necessary but must objectively apply their mind for the solution of disputes [12]. In the words of Atkin LJ in *R v Sussex Justices ex parte McCarthy* (1924), 'justice should not only be done, but should manifestly and undoubtedly be seen to be done'. Therefore the maxim of *nemo iudex in causa sua* i.e. a decision-maker should not adjudicate upon a cause in which he is interested, was recognised in English law at an early stage [13].

Bias, which can vitiate proceedings before a tribunal, may be divided into three kinds which are described as official bias, personal bias and pecuniary bias. For the convenience of classification, bias resulting from prejudgment on issues of law and policy is called an 'official bias'. Where the mind of the judge is influenced in favour of one party or against another party, it is described as 'personal bias'. Where the decision-maker has some financial interest in the subject-matter before him/her for adjudication, his/her decision is also said to suffer from bias [8].

a) OFFICIAL BIAS:

In such type of bias the decision-maker has no mala-fide intension against the party but may wish to defend a particular departmental policy which may stop him/her from adjudication of the issue based on fairness and impartiality [14]. Although the courts in Sub-Continent initially applied the rule against bias to the decision-making process by the administrative bodies (entrusted with policy formulations), but now adopting the position prevailing in Anglo-America, i.e. that having preconceived views on policy matters does not disqualify a person from adjudication [8].

b) PERSONAL BIAS:

This is another kind of bias, where a decision-maker may be motivated by personal like or dislike against or in favour of one side or another. Such type of biasness may due to personal relation of friendship or animosity or profession [15]. In *Cottle v Cottle* (1939), a magistrate who was a friend of the mother of one of the parties was disqualified [16].

Courts rely upon the dictum that justice should not only be done, but should manifestly and undoubtedly be seen to be done [17]. The relevant position in English law is, however, towards the 'real likelihood' test which connotes a narrower application of the rule [18]. The relevant position under the U.S law is that the rule of personal bias is recognised but is less rigidly applied as compared with the English law.

However, there may be cases where involvement will not invalidate a decision, for example, where Parliament has provided that a person or body performs a dual role. So, in *R. v. Frankland Prison Visitors ex parte Lewis* (1986), a prison visitor was not disqualified from acting as chairman in disciplinary proceedings when he had previously taken part in determining the same prisoner's application for parole. In *R v Manchester Metropolitan University ex parte Nolan* (1993), the presence of invigilators at a meeting of the Common Professional Examination Board to consider the penalty to be imposed on a student who had taken unauthorised notes into an examination did not invalidate the Board's decision. Similarly, where only one person is empowered to act, necessity will dictate that natural justice gives way [16].

c) PECUNIARY INTEREST:

A decision-maker with a direct financial interest is disqualified and decisions made by the same are thereby rendered void. Actual bias need not be shown. The existence of the financial interest is sufficient. In *Dimes v Grand Junction Canal Proprietors* (1852), a decision of the Lord Chancellor was set aside for bias because he had a financial shareholding in the canal company. It was emphasised that the finding of bias contained no inference that the Lord Chancellor had been 'in the remotest degree influenced by the interest that he had in this concern'.

The vitiating financial interest need not be substantial but it must be direct. A financial interest will not operate as a vitiating factor, therefore, if it is too remote. Hence two justices who were trustees of institutions (a hospital and a friendly society) which held bonds in Bradford Corporation were not disqualified from acting in a case in which the Corporation was involved (*R v Rand* (1866) LR 1 WB 230). In these circumstances a finding in favour of the Corporation could not have resulted in any discernible or tangible benefit for the justices [5]. Therefore it may be concluded that the mere presence of pecuniary interest will disqualify a decision-maker from adjudication.

QUALIFICATIONS TO THE RULE AGAINST BIAS:

This rule has three qualifications. The first one which is also applicable to hearing rule is that of waiver and statutory modification having the same conceptual base in its application to the rule against bias. This rule is also subject to qualifications of necessity, which enables some decisions that might offend the rule to be preserved essentially on pragmatic grounds [11].

THE RIGHT TO A FAIR HEARING:

The second of the principle of natural justice – *audi alteram partem* – states that no person shall be condemned without being given a reasonable opportunity for his case to be heard.

This principle goes back to several centuries and has been applied in various circumstances; it is recognised as one of the foundation of English justice. Therefore it is considered one of the fundamental requirements of adjudication that, whenever the interest of a person is affected by a judicial or administrative decision, that person be provided the opportunity to know and to understand the allegations made against him/her, and to make representations to the decision-maker to confront those allegations. For instance, a fair adjudication of a matter requires the following steps:

- i. the right to be informed in advance of the case to be met – i.e. the factual basis on which the decision-maker may act;
- ii. the right to a reasonable time in which to prepare a response;
- iii. the right to be heard verbally or in writing;
- iv. the right to cross-examine persons who may have made prejudicial statements to the decision-maker;
- v. the right to be legally represented;
- vi. the right to reasons for the decision.

Irrespective of the nature of the body making the decision whether that is judicial/quasi-judicial or administrative, the main aim is that a person should be treated fairly [19]. As has been indicated, however, the right to a fair hearing is a flexible concept. This means that its requirements are not fixed or constant – i.e. it is not possible to state that whenever the rule applies its content must always consist of all the elements listed above. The case law illustrates that the requirements of a fair hearing will vary from case to case depending on the circumstances of each case.

i. The right to be informed in advance:

In most circumstances an individual affected prejudicially by the decisions of a public body will be entitled in advance to know at least the substance of the case on which that decision will be taken [20]. Disclosure of the public body's information in detail and its precise sources may be required in the exercise of judicial or disciplinary powers, particularly where these may intrude upon a legal right or other substantial interest [21].

ii. The right to reasonable time to prepare a response:

Giving a person the substance of the case to be answered will provide only minimal procedural benefit if that occurs only a short time before the actual decision is to be made. Save what has been said above about the possible effects of any countervailing public interests, the person affected will usually be entitled to sufficient time in which to digest that information and formulate a response [5].

iii. The right to be heard:

Due to the wording of this central element of the fair hearing rule, it is often assumed that it implies a right to be heard orally before the decision-maker. This is not the case. The essence of the rule is that the individual must be given a reasonable opportunity of conveying his/her views to the decision-maker whether this be orally or by written representations. The giving of oral hearings may often cause serious delays in administrative decision-making generally. The recognition of such a right will occur, therefore, only in the context of the exercise of powers which, according to the criteria already considered, attract the highest standards of procedural fairness. Hence, in *R v Army Board of the Defence Council, ex parte Anderson*, above, notwithstanding the courts view that in dealing with the applicant's allegations of racial abuse by his fellow soldiers the Board was bound to act judicially, this did not mean that the applicant should have been given an oral hearing [5].

iv. Cross-examination:

Inevitably, the question whether procedural fairness requires cross-examination will only arise in those circumstances where the individual is entitled to an oral hearing. Where this is required it has been suggested that it carries with it an automatic right to question those who give evidence to the decision-maker [22].

v. Legal representation:

The existence of a right to be legally represented before the decision-maker will be recognised only where the individual has a right to be heard orally and all the surrounding circumstances indicate that the hearing cannot be conducted fairly unless legal representation is allowed. In *R v Board of Visitors Maze Prison, ex parte Hone and McCartan*, it was argued that the right should extend to all prisoners appearing before boards of prison visitors [23].

vi. Reasoned Decision:

It has been a recognised principle of natural justice that a party is entitled to know why a matter has been decided against him/her [24]. The principle has been described in the expression 'speaking orders' by the courts in Pakistan and India. The requirement of reasoned decisions helps to widen the scope of judicial review. All decisions of administrative authorities are expected to include a statement of findings and conclusions along with reasons [25]. In the absence of any reasons, it is difficult to define what considerations, if any, prevailed with the administrative body concerned in arriving at its decision on the various points involved therein [26]. Similarly the Supreme Court of Pakistan has held that orders passed judicially should be speaking orders [27]. In Pakistan, Section 24A of the General Clauses Act, 1897 requires that all executive authorities to give reasons for their orders wherever necessary or appropriate.

CONCLUSION:

To conclude the discussion with the famous saying of the U.S Lawyer L. Spooner that natural justice is the only standard through which any dispute among individuals can be adjudicated rightfully; it is such a principle that everyone demand its protection for himself/herself irrespective of their wish whether to accord it to other individuals or not; it has universal application irrespective of place, nation and time; being self-evidently necessary in all times and places; being so entirely impartial and equitable towards all; so indispensable to the peace of mankind everywhere; so vital to the safety and welfare of every human being; being too, so easily learned, so generally known, and so easily maintained by such voluntary associations as all honest men can readily and rightfully form for that purpose. The Principles of Natural Justice has always played a crucial role and its denial will lead to destruction and anarchy [6].

REFERENCES

1. Constitutional and Administrative Law 7th Ed. By NEIL PARP WORTH Pp. 38, 300 (2012)
2. <http://aipnbsf.org/files/Microsoft%20Word%20-%20Natural%20Justice.pdf> 15/05/2014
3. <http://ijtr.nic.in/articles/art36.pdf> 15/04/2014
4. Briefcase on CONSTITUTIONAL & ADMINISTRATIVE LAW 4th Edi; by David Herling & Ann Lyon P. 149, (2004)
5. Constitutional and Administrative Law 4th Ed. By ALEX CARROLL Pp.338, 346, 353 (2007)

6. <http://www.answerlglaw.com/php/displayContent.php?linkId=563> 20/05/2014
7. H.W.R. Wade, Administrative Law S.Note 96, 395 (1977)
8. Principles of Administrative Law by Hamid khan p. 249, 250 (2012) Oxford University Press
9. Ghulam Mohammad v. Collector, PLD 1973 Lah. 528, & Nawaz khan v. Central Record Officer, PLD 1967 Lah. 42
10. *Abdul Sabur Khan v. University of Karachi*, PLD 1966 SC 536, & *University of Dacca v. Zakir Ahmad*, PLD 1965 SC 90.
11. Australian administrative law by Matthew Groves Pp. 317, 326 (2007)
12. <http://www.hreat.org/impletter/PRINCIPLESOFNATURALJUSTICE.pdf> 25/05/2014
13. *Dimes v. Grand Junction Canal Proprietors*, (1852), 3 HLC 759.
14. *Venkatachelum Iyer v. State of Madras*, AIR 1957 Madras 623
15. S.A. de Smith, Judicial Review of Administrative Action p.232 (1973).
16. PRINCIPLES OF LAW by David Stott & Alexandra Felix, p. 144, 145 (1997)
17. *R. V. Sussex Justices Ex parte McCarthy* (1924) 1KB 256; *Anwnar v. The Crown*, PLD 1955 FC 185
18. *R. v. Camborne Justices* (1955) 1QB 41; *R. v. Barnsby Licensing Justices*, (1960) 2 QB 167
19. CONSTITUTIONAL AND ADMINISTRATIVE LAW 4th ed. By Hilaire Barnett, pp.901-902 (2002)
20. *Kanda v Government of Malaya* [1962] AC 322)
21. *R v Army Board of the Defence Council, ex parte Anderson* [1992] 1 QB 169)
22. *R v Deputy Industrial Injuries Commissioner, ex parte Moore* [1965] 1 QB 456)
23. *R v Board of Visitors Maze Prison, ex parte Hone and McCartan* [1988] 1 AC 379
24. *Rehmatulla v. State*, PLD 1965 Peshawar 162, *Anil Kumar v. Presiding Officer*, AIR 1985 SC 1121
25. S.P. Sathe, Administrative Law p.191 (1979)
26. *Express Newspaper v. Union of India*, AIR 1958 SC 578
27. *Mollah Ejahar Ali v. Government of East Pakistan*, PLD 1970 SC 173