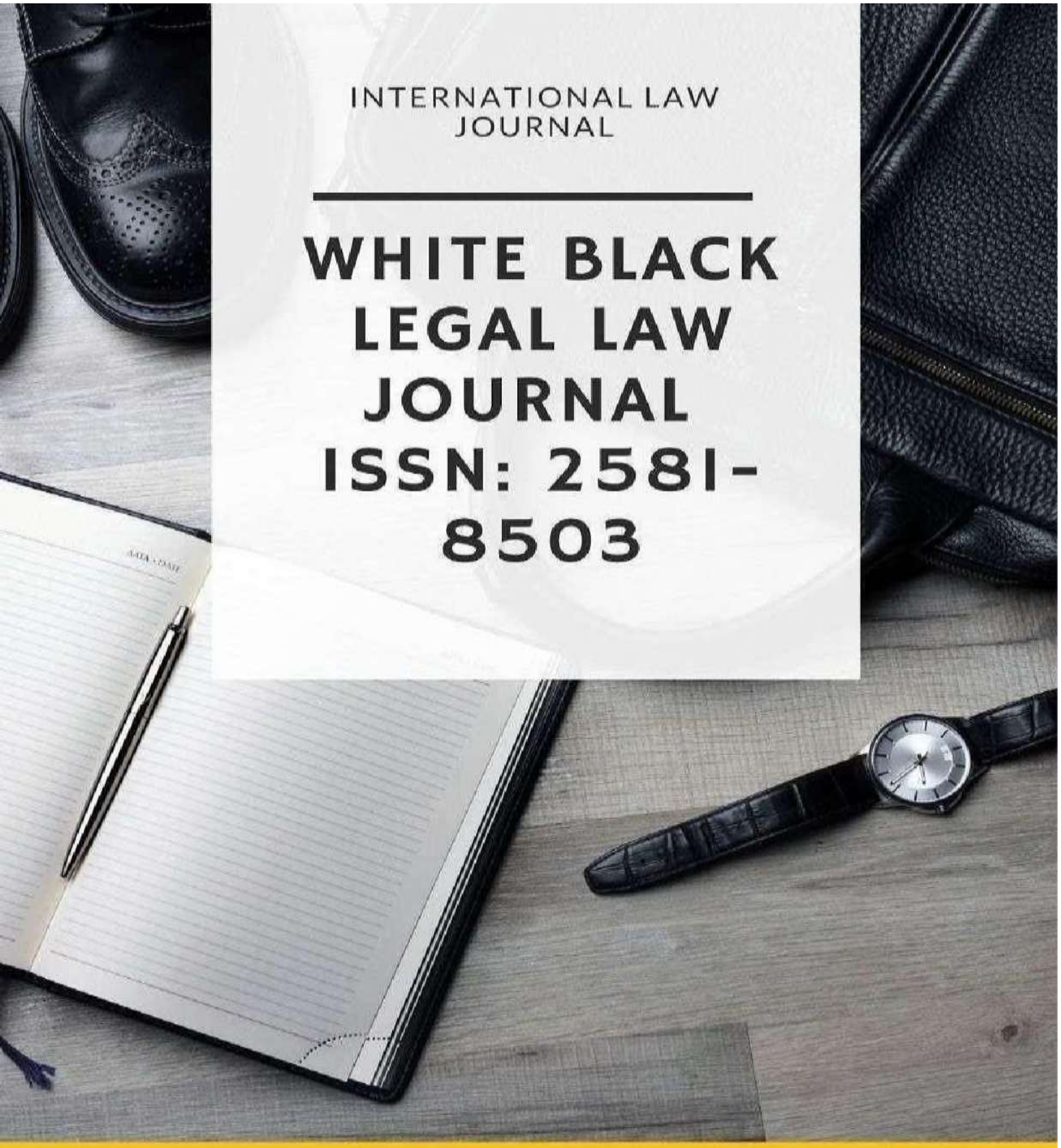

INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

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APPLICATION OF PRINCIPLES OF NATURAL JUSTICE IN ADMINISTRATIVE LAW

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ABSTRACT

The evolution of the concept of Principles of Natural Justice is not of recent origin. The term Natural Justice can be traced in English common law. It involves the fair and reasonable procedure. The administrative Law is a branch of Public Law which also deals with power, organisation and functions of Administrative and quasi-administrative authorities. It also deal with the study of discretionary power exercised by authorities in just and reasonable manner. Thus, the principles of Natural Justice have great significant in the study of Administrative Law. It is also known as substantial justice or fundamental justice or Universal justice or fair play in action. The principles of natural justice are not codified rules. They are judge made rules. This Research paper discuss the origin and implementation of Principles of Natural Justice in context of Administrative Law. It also discuss the traditional two principles of Natural Justice i.e. Nemo judex in causa sua and Audi Altrem Partem with case laws.

Key Words: Principles of Natural Justice, Administrative Law, Fair, Audi Altrem Partem, Rule against Bias

INTRODUCTION

Administrative law is part of the branch of law commonly referred to as public law, the law which regulates the relationship between the citizen and the state and which involves the exercise of state power. It deals with the procedures, rules, and regulations of a number of governmental agencies. Administrative law specifically deals with such administrative agencies' decision-making capabilities, as they carry out laws passed by state and federal legislatures. The branch of administrative law was developed in post-independent era. The most appropriate reason for the development of administrative law was the transformation of a police state to a social welfare state. And this gave rise to administrative discretion. The statute confers the discretionary power to the executive and also contains the guidelines to use those

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powers. The purpose of Administrative Law is to keep a check on the administrative authorities exercising discretionary power. As wide discretion leads to arbitrariness and unfairness. Whenever there is misuse or excessive use of the discretionary power, the judiciary can intervene in it. However, it can intervene only when it is invited by any person or persons who feel that his or their right has been abrogated by any action of the administrative authority. "The judiciary has laid down certain principles to adjudge the validity of statutory provisions conferring discretionary powers. They are a violation of fundamental rights, abuse of discretion, non- application of mind, ultra virus act and non-observance of principles of natural justice."[2] The principles of Natural Justice are attracted when prejudice is caused to the person, because of some administrative action. "Observance of principles of natural justice can be made as a fundamental tool to control administrative discretion."[3]

Origin of the Concept of Principles of Natural Justice

The origin of principles of natural justice can be seen in early days and was known to Greek and Romans. The Principles were acknowledged as early as in the days of Adam and of Kautilya's Arthashastra. According to the Bible, when Adam & Eve ate the fruit of knowledge, which was forbidden by God, the latter did not pass sentence on Adam before he was called upon to defend himself. Same thing was repeated in case of Eve.

Later on, the principle of natural justice was accepted by English Jurist to be so essential as to over-ride all laws. The principles of natural justice were related with a few 'accepted rules' which have been fabricated up and prominent over a long period of time. The word 'Natural Justice' establishes justice according to one's own morality. It is derived from the Roman Concept 'jus - naturale' and 'Lex naturale' which intended principle of natural law, natural justice, eternal law, natural equity or good conscience. Lord Evershed, Master of the Rolls in ***Vionet v. Barrett*** remarked, "Natural Justice is the natural sense of what is right and wrong."[4] However, in India the principle is prevalent from the ancient times. Taking reference from Kautllya's Arthashastra in the case of ***Mohinder Singh Gill v. Chief Election Commissioner***[5], may be usefully quoted:

"Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens

[2] A.Beula Chrismak Darius and Ms.R.Dhivya, "Applicability of Principles of Natural Justice to The Administrative Proceedings" 120 IJPAM 2015 (2018)
[3] Id
[4] 1985, 55LLJ QB, 39, (Page 45)
[5] AIR 1978 SC 851,(para 43)

legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of authority. It is the bone of healthy government, recognised from earliest times and not a mystic testament of judge-made law. Indeed from the legendary days of Adam-and of Kautllya's Arthashastra-the rule of law has had this stamp of natural justice, which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system."

It was also observed in ***Swadeshi Cotton Mills v. Union of India***[6] , that Natural justice is a branch of public law and is a formidable weapon which can be wielded to secure justice to the citizen. Also in ***Canara Bank v. V K Awasthi***[7] the supreme court observed that principles of natural justice are those rules which have been laid down by courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, Quasi–judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

PRINCIPLES OF NATURAL JUSTICE

Thus, the principles of natural justice are those rules which have been laid down by the courts as being minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. The two traditional principles of natural justice are:

A. **Nemo judex in causa sua** - No one should be made a judge in his own cause or the rule against bias. It is also called as the ‘doctrine of bias’ as the judge may have a prejudice in the case.
B. **Audi alteram partem** - Hear the other party or the rule of fair hearing or the rule that no one should be condemned unheard. In other words, No person accused of any charge or likely to suffer any civil consequences, must be adjudged unless and until he is aware of the proceedings together with a notice thereon and an opportunity to present his case fully.

[6] 1981 AIR 818, 1981 SCR (2) 533
[7] AIR 2005 6 SCC 321

A. NEMO JUDEX IN CAUSA SUA (Rule Against Bias)

The literal meaning of the Latin maxim 'NEMO JUDEX IN CAUSA SUA' is that 'No man shall be a judge in his own cause' i.e. to say, the deciding authority must be impartial and without bias. It implies that no man can act as a judge for a cause in which he has some Interest, may be pecuniary or otherwise. Bias means an operative prejudice, whether conscious or unconscious, in relation to a party or issue. Such operative prejudice may be the result of a preconceived opinion or a predisposition or a predetermination to decide a case in a particular manner so much so that it does not leave the mind open. It can be

a) Personal bias b) Pecuniary bias c) Subject matter bias
d) Departmental bias e) Policy notion bias f) Preconceived bias

a. Personal bias

This principle is applicable in such cases also where the deciding authority has some personal Interest in the matter. It may arise in case of some personal relationship of deciding authority with one of the parties or ill will against any of them. If the deciding authority has some personal relation the the whole process of selection was held to be vitiated on the ground that one of the candidate for the selection of the post of Chief Conservator of Forest was also a member of selection board. In the case of ***A.K.Kraipak v. Union of India***[8], Naquishband, who was the acting Chief Conservator of Forests, was a member of the Selection Board and was also a candidate for selection to All India cadre of the Forest Service. Though he did not take part in the deliberations of the Board when his name was considered and approved, the SC held that `there was a real likelihood of a bias for the mere presence of the candidate on the Selection Board may adversely influence the judgement of the other members'. The SC also observed the precaution taken could not cure the defect of being a judge in his own cause since he had participated m the deliberations when the names of his rival candidates were being considered for selection on merit. The position, however, may be different when merely official capacity is involved in taking a decision in any matter as distinguished from having a personal Interest. There are certain statutes which provide that named officers may resolve the controversy, if any, arising between the organisation and the other persons, e.g., in the matters relating to nationalisation of routes, Government officers or authorities were vested with the power to dispose of the objections. In such matters

[8] AIR 1970 SC 150.

as above, it has been held by the Hon'ble Supreme Court that proceeding will not vitiate as It was only in official capacity that the officer was Involved and It would not be correct to say that he was a judge in his own cause being an officer of the Government. It is a kind of statutory duty which is performed by a public officer, unless of course bias is proved in any case. In another case ***Manak Lal v. Prem Chand***[9] , where a committee was constituted to enquire into the complaint made against an Advocate, the Chairman of the Committee was one who had once appeared earlier as counsel for the complainant. Constitution of such a committee was held to be bad and it was observed, "in such cases the test is not whether in fact the bias has affected the Judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributed to a member of the Tribunal might have operated against him in the final decision of the Tribunal." However, such objections about the constitution of committees or Tribunals consisting of members having bias should be taken at the earliest opportunity before start of the proceedings otherwise, normally, It would be considered as waiver to that objection. Lord Denning observed in, ***Metropolitan Properties Ltd. v. Lunnon***[10], "The reason is plain enough. Justice must be rooted in confidence and confidence is destroyed when right minded people go away thinking, the Judge was biased". But we find accusation given that the suspicion should be that of reasonable people and must not be that of capricious and unreasonable person. The principle is of great importance and it works on two principles:

I. No man shall be a judge in his own cause
II. Justice should not only be done but should manifestly and undoubtedly be seen to be done.

b. Pecinary bias

Pecuniary interest affords the strongest proof against impartiality. The emphasis is on the objectivity in dealing with and deciding a matter. In case of ***M/S Builders Supply Corporation v. The Union of India and others***[11] , Justice Gajendragadkar, observed that "it is obvious that pecuniary interest, howsoever small it may be, in a subject matter of the proceedings, would wholly disqualify a member from acting as a judge". Judicial approach is unanimous and decisive on the point that any financial interest, howsoever

[9] AIR 1957 SC 425
[10] (1969) 1 OB 577
[11] AIR 1965 SC 1061

small it may be, would vitiate administrative action. The disqualification will not be avoided by non-participation of the biased member in the proceedings if he was present when the decision was reached. In case of ***J.Mohopatra & Co. v. State of Orissa*** [12] Supreme Court quashed the decision of the Textbooks' selection committee because some of its members were also the authors of the books, which were considered for selection. The Court concluded that withdrawal of person at the time of consideration of his books is not sufficient as the element of quid pro quo with other members cannot be eliminated.

Lord Hardwick observed in one of the cases, "In a matter of so tender a nature, even the appearance of evil is to be avoided." Yet it has been laid down as principle of law that pecuniary interest would disqualify a Judge to decide the matter even though it is not proved that the decision was in anyway affected. This is thus a matter of faith, which a common man must have, in the deciding authority.

c. Departmental Bias Or Institutional bias

The problem of departmental bias is something which is inherent in the administrative process, and if not effectively checked it may negate the very concept of fairness in administrative proceeding. The problem of departmental bias also arises in a different context when the functions of a judge and prosecutor are combined in the same department. It is not uncommon to find that the same department which initiate a matter also decides it, therefore at times departmental fraternity and loyalty militates against the concept of fair hearing.

d. Policy Notion Bias

Bias arising out of preconceived policy notions is a delicate problem of administrative law. On one hand, no judge as a human being is expected to sit as a blanket sheet of paper and on the floor, preconceived policy notions may vitiate a fair trial.

B. AUDI ALTERAM PARTEM

The maxim *Audi Alteram Partem* means the rule of fair hearing. It lays down that no one should be condemned unheard. It is the first principle of the civilised jurisprudence that a person facing the charges must be given an opportunity to be heard, before any decision is taken against him.

[12] 1984 AIR 1572, 1985 SCR (1) 322

Hearing means 'fair hearing'. The norms of reasonableness of opportunity of hearing vary from body to body and even case to case relating to the same body. The courts, in order to look into the reasonableness of the opportunity, must keep in mind the nature of the functions imposed by the statute in context of the right affected. The civil courts, in India, are governed in the matter of proceedings, through the Civil Procedure Code and the criminal courts, by the Criminal Procedure Code as well as the Evidence Act. But the adjudicatory bodies functioning outside the purview of the regular court hierarchy are not subject to a uniform statute governing their proceedings.

The components of fair hearing are not fixed but are variable and flexible. Their scope and applicability differ from case to case and situation to situation. In ***Mineral Development v. State of Bihar***[13], the apex court observed that the concept of fair hearing is elastic and not susceptible of a precise and easy definition. The hearing procedures vary from the tribunal, authority to authority and situation to situation. It is not necessary that the procedures of hearing must be like that of the proceedings followed by the regular courts. The objective of the giving the accused an opportunity of fair hearing is that an illegal action or decision may not take place. Any wrong order may adversely affect a person. The maxim implies that the person must be given an opportunity to defend himself. In another landmark case of ***Olga Tellis v. Bombay Municipal Corpn.***[14] , the court held that even if the legislature authorises the administrative action, without any hearing, the law would be violative of the principles of fair hearing and thus violative of Articles 14 and 21 of the Indian Constitution. In ***Cooper v. Wandsworth Board of Works***[15], BYLES J. observed that the laws of God and man both give the party an opportunity to defend himself. Even God did not pass a sentence upon Adam before he was called upon to make his defence.

Law envisages that in the cases classified as 'quasi-judicial', the duty to follow completely the principles of natural law exists. But the cases which are classified as the 'administrative', the duty on the administrative authority is to act justly and fairly and not arbitrarily. In the 1970 case of ***A. K. Karaipak v. Union of India***[16], the Supreme Court made a statement that the fine distinction between the quasi-judicial and administrative function needs to be discarded for

[13] AIR 1952 SC 252(A)
[14] 1986 AIR 180 1985 SCR Supl.(2) 51
[15] [1863] 143 ER 414
[16] AIR 1970 SC 150.

giving a hearing to the affected party. Before the *Karaipak's case,* the court applied the natural justice to the quasi-judicial functions only. But after the case, the natural justice could be applied to the administrative functions as well.

COMPONENTS OF RIGHT TO FAIR HEARING.

1. **Right to notice.** The term 'Notice' originated from the Latin word '*Notitia'* which means 'being known'. Thus it connotes the sense of information, intelligence or knowledge. Notice embodies the rule of fairness and must precede an adverse order. It should be clear enough to give the party enough information of the case he has to meet. There should be adequate time for the party, so that he can prepare for his defence. It is the *sine qua non* of the right of hearing. If the notice is a statutory requirement, then it must be given in a manner provided by law. Thus notice is the starting point in the hearing. Unless a person knows about the subjects and issues involved in the case, he cannot be in the position to defend himself.

   The notice must be adequate also. Its adequacy depends upon the case. But generally, a notice, in order to be adequate must contain following elements:

   - Time, place and nature of hearing.
   - Legal authority under which hearing is to be held.
   - Statements of specific charges which the person has to meet.

   The test of the adequacy of the notice will be whether it gives the sufficient information and material so as to enable the person concerned to prepare for his defence. There should also be sufficient time to comply with the requirements of a notice. Where a notice contains only one charge, the person cannot be punished for the charges which were not mentioned in the notice.

   The requirement of notice can be dispensed with, where the party concerned clearly knows the case against it and thus avails the opportunity of his defence. Thus in the case of ***Keshav mills Co. Ltd. v. Union of India***[17], the court upheld the government order of taking over the mill for a period of 5 years. It quashed the argument of the appellants that they were not issued notice before this action was taken, as there was the opportunity of full-scale hearing and the appellant did not want to know anything more.

[17] 1993 AIR (SC) 1407

2. **Right to know the evidence against him.** Every person before an administrative authority, exercising adjudicatory powers has right to know the evidence to be used against him. The court in case of ***Dhakeshwari Cotton Mills Ltd. v. CIT***[18], held that the assessee was not given a fair hearing as the Appellate Income Tax tribunal did not disclose the information supplied to it by the department. A person may be allowed to inspect the file and take notes.
3. **Right to present case and evidence.** The adjudicatory authority must provide the party a reasonable opportunity to present his case. This can be done either orally or in written. The requirement of natural justice is not met if the party is not given the opportunity to represent in view of the proposed action.

   Courts have unanimously held that the oral hearing is not an integral part of the fair hearing, unless the circumstances call for the oral hearing. In ***Union of India v. J P Mitter***[19], the court refused to quash the order of the President of India in respect of the dispute relating to the age of a High Court judge. It was held that where the written submission is allowed, there is no violation of natural justice, if the oral hearing is not granted.
4. **Right to cross-examination.** The right to rebut adverse evidence presupposes that the person has been informed about the evidence against him. Rebuttal can be done either orally or in written, provided that the statute does not provide otherwise. Cross examination is a very important weapon to bring out the truth. Section 33 of the Indian Evidence Act, 1972, provides for the rights of the parties to cross-examination. The cross-examination of the witnesses is not regarded as an obligatory part of natural justice. Whether the opportunity of cross examination is to be give or not depends upon the circumstances of the case and statute under which hearing is held. ***State of Jammu and Kashmir v. Bakshii Ghulam Mohd.***[20] , the Government of Jammu and Kashmir appointed a Commissioner of Inquiry to inquire into the charges of corruption and maladministration against the ex-Chief Minister of the state. He claimed the right to cross-examin the witnesses on the ground of natural justice. The Court interpreted the statute and held that only those witnesses who deposed orally against the chief Minister can be cross-examined and not of those who merely filed affidavits.

[18] [1954] 26 ITR 775
[19] AIR 1971 S.C. 1093
[20] 1967 AIR 122 1966 SCR (4) 1

Similarly, in ***Hira nath mishra v. Rajendra medical College, Ranchi***[21], some male students of medical college entered the girls hostel and misbehaved with the girls. An enquiry committee was set up against whom the complaints were made. The complainants were examined but not in presence of the boys. On the report of the committee, four students were expelled from the college. They challenged the decision of the committee on the ground of violation of the natural justice. The court rejected the plea and held that in presence of the boys, the girls can not be cross-examined that that may expose them to the harassment.

5. **Right to counsel.** For sometime the thinking had been that the lawyers should be kept away from the administrative adjudication, as it saves time and expense. But the right to be heard would be of little avail if the counsel were not allowed to appear, as everyone is not articulate enough to present his case. In India few statutes like the Industrial Disputes Act, 1947, specifically bar the legal practitioners from appearing before the administrative bodies. Till recently the view was that the right to counsel was not inevitable part of the natural justice. But this view has been almost done away with.

Thus the principles of Natural Justice forms the cornerstone of every civilized legal system. Even though it is not found in the codified statutes yet it is inherent in the nature. However, it lays down the minimum standard that an administrative agency has to follow while exercising their authority or power. The requirements of natural justice come from general administrative law, not the particular statute being administered. Many statutes do, however, spell out procedures that must be followed when making decisions; for example, the statute might stipulate who is entitled to notice, when notice should be given and in what form, what kind of hearing is to be given, and how much time is allowed for a person to respond. Natural justice imposes similar requirements, independently of the statute. If the statutory procedures are equivalent or superior to what natural justice would require, compliance with the statutory procedures will also satisfy the requirements of natural justice. On the other hand, if the statutory procedures fall short of what natural justice would require, the question of whether the statute establishes a complete procedural code arises. Where the legal justice fails, the role of natural justice becomes evident in preventing the miscarriage of justice. Even God never denied the natural justice to the human beings. So the human laws also need to be in conformity with the rules of natural justice.

[21] (2002) 4 SCC 275