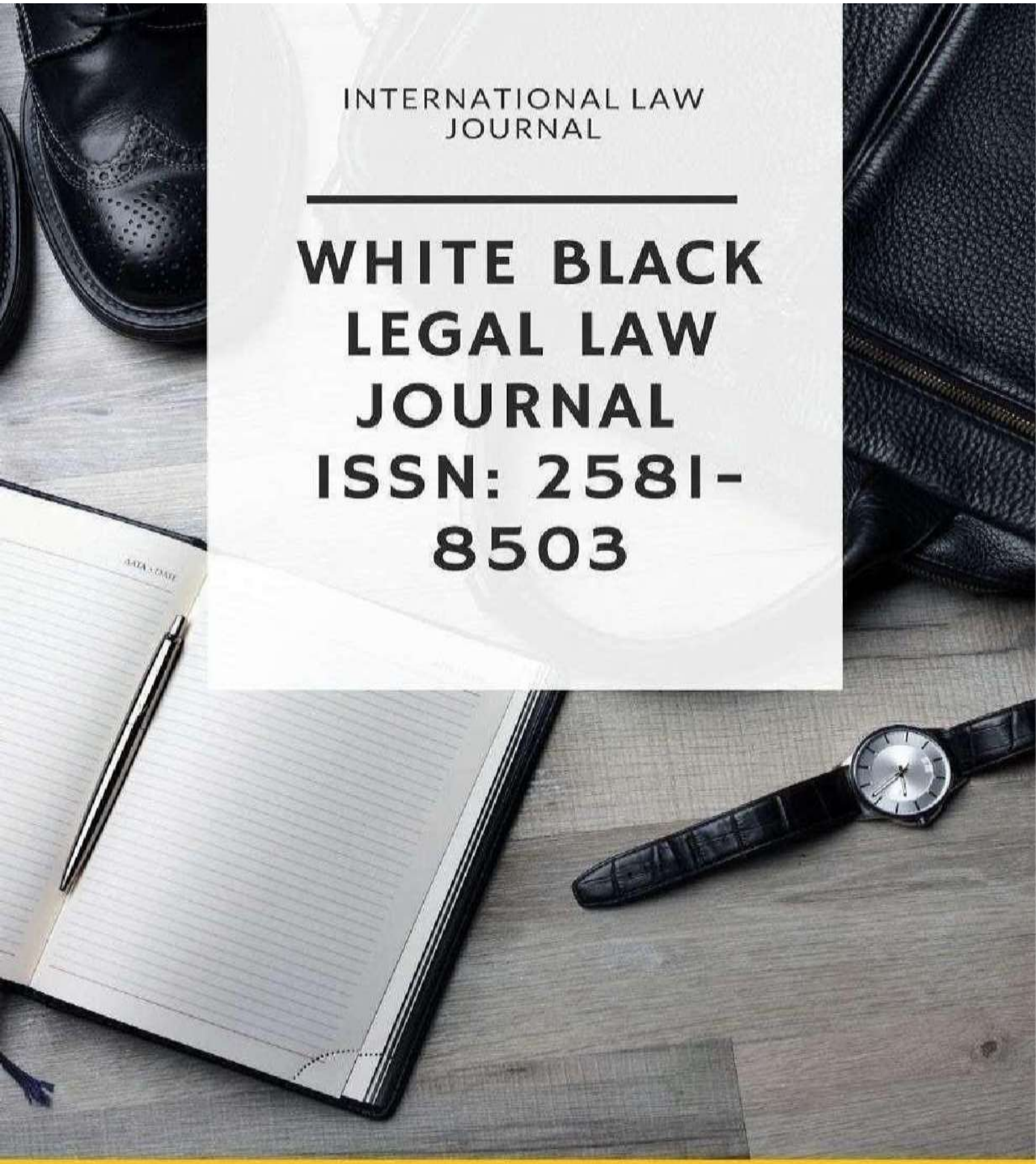

INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

"RESONATING JUSTICE: AUDI ALTERAM PARTEM - UNVEILING ITS PHILOSOPHY, EXCEPTIONS, AND LEGAL SIGNIFICANCE"

AUTHORED BY - VAISHALI YADAV

INTRODUCTION

To avoid mistakes in the administration of the administrative authorities' outsourced adjudication power, the courts developed natural justice principles, which are judge-made laws and continue to be a typical example of judicial activism. The objective behind the principle is to ensure equity, fairness, and reasonableness and to defend human liberty against arbitrary action of the State.

Although it is not explicitly stated in any of the law's articles, we can infer the concept of natural justice from the numerous values that other nations' constitutions and laws have received. Many changes have occurred in the legal process over time, as has the evolution of the notion of natural justice, which is intended to be an intrinsic aspect of every law or regulation.

Natural justice originates from *"jus natural"* of Roman law, which means the law of nature. The principle is ancient that dates back to ancient times. This notion was likewise known to Greek and Roman people. It has to do with Common law that is founded on moral principles that aren't taken from any law or Constitution but rather from natural law itself. Countries like Britain are well-recognized, so the law is not codified and is mainly dependent upon the principles of Common law established by various judicial precedents.

The idea of natural justice is to make a distinction between what is right and what is wrong or what ought to be done to establish equity, justice, and fairness among the people of the society and to prevent unfair and arbitrary actions of the authorities, forming part of the administrative discretion.

Two well-established principles of natural justice are recognized across the globe; they are as follows: -

1. ***"Nemo judex in causa sua"*** means "No one should be made a judge in his cause," "*the rule against bias*" as it reinforces a judge's impartiality, ensuring the judgment is delivered solely on the evidence put forward before the Court without having the scope to dilute its coherence.

Bias refers to any action, whether conscious or unconscious, that results in an unjust judgment on a particular case or party. This is the earliest theory of natural justice, which contends that no one should be allowed to judge another person's case and that any authority with the ability to make decisions must be fair and impartial when considering each case.

2. ***"Audi Alteram Partem"*** means that "no one should be condemned unheard." ***Every person should be given a reasonable opportunity to present his case and defend himself.*** The maxim resembles the rule of fair hearing.

Here, we are essentially focused on this principle which is the formation of the three Latin words, indicating that a person should not be punished or convicted without being provided with a fair chance to prove his case and being heard by the decision-making body.

To put it simply, it can be said that both sides in a case must have an equal opportunity to convey their points of view and that authorities must conduct a fair trial as a result. This is an essential law of natural justice because it stops powers from punishing somebody without a sound and valid reason.

A person should be given advance notice so that he knows the charges against him and can prepare adequately. This is also known as the rule of fair hearing. The ingredients of fair hearing are not static. It varies depending on the authority and the circumstance.

The notion of natural justice is to be followed and embraced to protect public rights from arbitrary administrative actions. The concept of fairness and honesty is therefore included in the rule of natural justice because they are enduring and help to maintain honest dealing.

The Bible's writings, which claim that Eve and Adam were forbidden by the deity after eating the fruit of knowledge, provide a clear explanation of the notion. But before the sentence was applied, they had a fair opportunity to defend themselves, and the same process is still used today.

EXPLORING THE PHILOSOPHICAL UNDERPINNINGS

OF AUDI ALTERAM PARTEM

The basic purpose of natural justice is to prevent miscarriages of justice, establish the concept of fairness, give all parties an equal opportunity to be heard, cement the gaps or loopholes to invoke the just process of law, protect the fundamental rights of the people and the basic tenets of the direction of the land, the grundnorm, and to promote the concept of a welfare state ensures that justice is not only served but also seen to be served.

The majority of disputes are not settled in many nations after receiving a fair hearing. The rule's exact meaning is that a fair trial should be conducted and that all sides should have a reasonable opportunity to present any relevant arguments.

This is an essential natural justice norm, and its purest form is not to punish somebody without a reasonable and justifiable basis. A person should be informed in advance to prepare to learn what charges have been filed against him. It is often referred to as the rule of fair hearing. Fair hearing components are not permanent or inflexible. It changes depending on the circumstances and the authority.

The doctrine in the administration of justice is applied to ensure "*fair play and justice*" and hence is a ***"sine qua non"*** of every civilized society.

"Hearing is a crucial component of Audi alteram partem since both sides must be heard before any order is issued," as held by the Supreme court in ***Maneka Gandhi v. Union of India***[1]. Furthermore, it is essential that the party making the decision be impartial and have a fair hearing. Thus, unless specifically or implicitly prohibited by statute, everyone has the right to be heard.

Byles J in ***Copper v. Wandsworth Distt. Board of Works***[2] observed:
The laws of God and man both allow the party to make his defense if he has any. I remember having it observed by a very learned man, upon such an occasion, that even God Himself did not pass sentence upon Adam before he was called upon to make his defense. 'Adam' (says God), 'Where art thou? Hast thou not eaten of the tree, of which I commanded thee thou shouldest not eat? And put the same question to Eve also.

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[1] AIR 1978 SC 597; (1978) 1 SCC 248
[2] (1863) 14 CBNS 180; 143 ER 414

DECIPHERING THE COMPONENTS OF THE PRINCIPLE OF AUDI ALTERAM PARTEM

1. ***Right To Notice***

The necessary parties in the case shall receive valid and appropriate notice before the fair trial methodology is carried out. Even if the statute does not require it, notice will be provided before any decisions are made, as was decided in Fazalbhai vs. Custodian[3].

Any hearing must begin with a notice. Since it is one of the individual's rights to defend himself, he should be knowledgeable about the topic in order to refute the statement and defend himself. A person cannot defend themselves if they do not comprehend the terminology used to describe the subjects and problems raised by the case. In a lawsuit, giving notice is sufficient, but it must also be sufficient.

Notice adequacy is a relative concept that must be determined case by case. However, in general, appropriate notice must include the following:

- Time, place, and nature of the hearing,
- Legal authority under which the hearing is to be held,
- Statement of specific charges that the person has to meet,
- Individual penalty or action which is proposed to be awarded/taken.4

2. ***Right To Legal Representation***

Representation through a pleader is seen as an essential component of the rule of natural justice. Denial of such a right is unjust in terms of the administration of justice.

Courts in India have ruled in a number of decisions that a party must be given professional assistance in order for his right to self-defense to be effective when the person is illiterate, the case is intricate and technical, expert testimony is on file, a legal issue is raised, or the person is up against an experienced prosecutor. The right can, however, be fairly controlled and is not absolute.

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[3] ***1961 AIR 1397, 1962 SCR (1) 456***

[4] ***Gorkha Security Services v. Govt. (NCT of Delhi), (2014) 9 SCC 105.***

The "due process" provision in the Constitution and Section 6(a) of the Administrative Procedure Act of 1946 together gives everyone in the United States the right to legal representation.

The principles of a fair hearing in England typically do not include a lawyer's entitlement to legal representation. The rejection of legal representation, however, is seen as the very reverse of a fair hearing where there is a privilege to attend in person or where a technical matter of law and fact is at issue.

The Franks Committee also suggested that, barring extreme circumstances, the right to counsel be upheld.

3. ***Reasoned Decisions Or Speaking Orders***

A necessary element of the rule of law is "reason." It establishes a connection between reality and judgment, guards against irrationality, and upholds public confidence in judicial and administrative institutions. The idea that justice must be done and shown to be done is another purpose of reason.

There is no general requirement in India for administrative agencies to explain their decisions in the absence of a specific statutory mandate. Assume, however, that the agency's operating statute demands reasoned conclusions. In that scenario, courts deem it obligatory for the administrative agency to provide reasons, which should not be mere "rubber-stamp" reasons but rather a succinct, clear statement establishing a link between the information on which certain conclusions are based and the actual decision.[5]

4. ***Right To Cross-Examination***

The right to a fair hearing includes the right to cross-examine the parties' statements. Authorities would be in violation of natural justice principles if they denied the right to cross-examination. It is the best method for locating and confirming the truth. However, in administrative adjudication, the courts won't order cross-examination unless the situation would make it impossible for the witness to present a convincing defense without it.

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[5] ***Gurdail Singh Fijji v. State of Punjab, (1979) 2 SCC 368; AIR 1979 SC 1622.***

Additionally, all copies of the pertinent documents must be given; otherwise, the principle would be violated. Officers who are involved in the process of investigating and conducting cross-examination should be made available by the department. Cross-examination is defined in **Section 137 of the Indian Evidence Act of 1872** (amended).

In the United States, there is a right to cross-examination under the Administrative Procedure Act of 1946 and the due process principle. Courts are working out the nuances of the right to cross-examination under English law, which is the same as Indian law.

5. Right To Present The Case

The accused must be given enough time to prepare and make his case after receiving the notification in order to do so honestly and persuasively. The refusal must not be based on arbitrary or irrational criteria.

The adjudicatory authority should give the parties a reasonable opportunity to submit their argument. Unless the statute under which the authority operates requires otherwise, this can be done in writing or orally at the discretion of the administration.

The Supreme Court ruled in **A.K. Roy v. Union of India.**[6] If the detainee wishes to question witnesses, he must keep them present at the given time, and the advisory board is not responsible for summoning them. The board can also set a time limit for the detainee to conclude his evidence.

6. The Duty To Act Judicially Or The Duty To Act Fairly

The administrative authority must behave justly and fairly, not capriciously and arbitrarily, as has been established. The "fairness theory" was developed primarily to combine "fairness to the individual" with "flexibility of administrative action" within the administration's "administrative or executive" obligations, where the principles of natural justice are not drawn.

C.K. Thakker rightly concluded that ***"...acting fairly' is an additional weapon in the armory of the Court. It is not intended to be substituted for another much more powerful weapon, 'acting***

[6] (1982) 1 SCC 271; AIR 1982 SC 710.

judicially.' Where, however, the former 'acting judicially' cannot be wielded, the Court will try to reach injustice by reasonably resorting to the latter's less powerful weapon 'acting.[7]

The right to a fair hearing is a procedural right that applies to every stage of administrative adjudication, from notification through the conclusion. Some critics have asserted that the Audi alteram partem rule is no longer in effect because of the law of fair hearing's malleable nature as a result of the unreconcilable accumulation of judicial decisions.[8] Lord Reid, on the contrary, has criticized this perspective as being "marred by the repeated fallacy that anything cannot be cut, dried, nicely weighed or measured; it obviously does not exist."

ASSESSING THE LEGAL RAMIFICATIONS OF AUDI ALTERAM PARTEM

- **Administrative action**
- **Civil consequences**
- **The doctrine of Legitimate exception**

Even though people do not have a legal claim to certain benefits or advantages, those who get them as a result of government policy cannot have those benefits or advantages taken away from them by changing the policy without complying with the rules of fair hearing.

Only situations where the conduct amounts to the deprivation of a right or where it is arbitrary, unreasonable, and not in the public interest would be eligible for relief in such situations.[9]

- **Fairness in action**

If the legislature, administration, or any other interested authority allows action without a hearing, the legislation would be in violation of the principles of fair hearing and thus in violation of any laws wherein such natural justice principle has been accepted.

- **Disciplinary proceeding**

EXCEPTIONS TO THE RULE

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[7] C. K. Thakker, "From Duty to Act Judicially to Duty to Act Fairly," (2003) 4SCC J-1, 11.
[8] Benjafield and Whitmore, Principles of Australian Administrative Law (1971) 145.
[9] Union of India v. Hindustan Development Corporation, (1993) 3 SCC 499.

A. Emergency

Although the fundamental structure of the Constitution cannot be upheld in an emergency, the principles of natural justice can.

The requirement for notice and hearing may be waived in exceptional cases where fast action, either preventive or remedial, is required. The right to be heard would be prohibited by law if it hampered the process.

A debating society is believed to be unable to command an army. However, it is also true that the British Prime Minister at the time, much to the dismay of all allies and to the pleasure of all enemies, questioned the life-or-death nature of the Supreme Command amid the fiasco, calamity, agony, and crisis of World War II. Therefore, if criticizing the unheard is wrong, it is also undesirable unless it is outweighed by a pressing social need.[10]

The fact is that when promptitude and urgency call for immediate action, the principles of natural justice cannot be invoked to stifle the use of administrative power. Under the compulsive pressure of circumstances, it is encapsulated and pragmatically flexible.[11]

B. Public Interest

Administrative orders must be implemented as soon as possible because delays may create public harm.

According to Maneka Gandhi v. Union of India (supra), passports may be seized for the public good without the approval of natural justice. The Administrative Authority's decision is not final, the Court ruled, but public interest is a legitimate problem.

C. Privileged Communications

In Malak Singh v. State of Punjab and Haryana[12], the Supreme Court ruled that the police's maintenance of the surveillance register is a confidential record. The person whose name is on the registry, as well as any other member of the public, is not permitted to view it. Furthermore, the Court stressed that adopting the principle of natural justice in such a circumstance may contradict

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[10] ***Extract from the judgment of Krishna Iyer J in Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405, 432; AIR 1978 SC 851.***

[11] ***Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405, 436;***

[12] **(1981) 1 SCC 420; AIR 1981 SC 760. Generally, the Court is inclined against confidentiality and would prefer an open government. See S.P. Gupta v. Union of India, 1981 Supp SCC 87; AIR 1982 SC 149.**

the entire purpose of monitoring and that the aims of justice may be defeated rather than achieved.

In a nation like India, where surveillance may severely restrict people's freedom, the upkeep of the surveillance registry must be strictly administrative or non-judicial, making it difficult to imagine applying natural justice principles.

D. Statutory Exclusion

Any federal or State law may disobey natural justice principles even when it expressly or obliquely forbids doing so. However, at their discretion, courts may rule such legislation ultra vires.

E. Based On Impracticability

Anyone analyzing judicial behavior may conclude that the courts have regarded fairness and administrative convenience as discrete values, highlighting the inherent mistake in judicial conduct and exposing the administration's passivity and inertia.

Orders were given to move thousands of people with Japanese ancestry on the West Coast to allocation camps after Japanese bombs landed on Pearl Harbor on December 7, 1941, plunging the United States into a global struggle for survival during World War II.

Stone J vehemently disagreed, refusing to accept that the government's approach could be justified by the hardship and administrative challenges of holding individual loyalty hearings for the 1.12 lakh people implicated.[13]

STANDING IN INDIA

The Indian Judiciary has, with time, effectively but cautiously evolved the principle so as not to alter its fundamental feature but at the same time to evolve as per the changing needs of the society. Courts in India address the rights of the citizens, protecting them from arbitrary policies and actions and establishing social, justice, and financial, statutory protection.

Frank Committee in 1957 laid down fundamental objectives of natural justices, which are: -

[13] **Hirabayashi v. United States, 87 L Ed 1774; 320 US 490, 102 (1942).**

1. Openness: - The party has a right to be informed of the authority's justification for its decision.
2. Fairness: - No one should be condemned unheard.
3. Impartiality: - No one should be a judge in his cause.

Even the Indian Constitution, as previously noted, does not utilize the term "Natural Justice," but its many clauses do indicate the concepts that should be ingrained there. Some of these principles include the following: -

- Firstly, the Preamble has "***social, economic and political justice, liberty of belief, thought, worship, and equality of opportunity and status."***
- Equality of law and Equal protection of laws under Article 14.
- Right to life and personal liberty as enshrined under Article 21.
- Right to fair hearing and trial under Article 22.
- Articles 32, 136, 142, and 226 protect the citizen's fundamental rights and do complete justice.
- Right to free legal aid for indigent and disabled persons under Article 39-A added by the 42nd Amendment Act, 1976, imposing an obligation on the State to ensure access to justice for all citizens.
- Apart from the provisions mentioned earlier, there are many others too inherited under various provisions of the Indian statutes, such as IPC[14], IEA[15], Cr. P.C[16], CPC[17], etc., but arduous to name them here.

When acting in a judicial or quasi-judicial capacity, as in panchayats and tribunals, natural justice can be upheld. It covers the idea of fairness, fundamental moral principles, various biases, the necessity of natural justice, and the unusual cases or circumstances that fall outside the purview of natural justice.

The notion was introduced in India at an early stage. Case of ***Eurasian Equipment and Company Limited vs. State of West Bengal[18]***: All of the executive engineers were blacklisted in this case.

[14] ***Indian Penal Code, 1860***
[15] ***Indian Evidence Act, 1872***
[16] ***Criminal Procedure Code, 1973***
[17] ***Civil Procedure Code,1908***
[18] ***1975 AIR 266, 1975 SCR (2) 674***

The Supreme Court held that a person cannot be placed on a blacklist without a legitimate reason for doing so and that he has a right to an impartial hearing.

In another case, ***"Mohinder Singh Gill vs. Chief Election Commissioner."***[19]***,*** every action, whether judicial, quasi-judicial, administrative or quasi-administrative, should adhere to the principle of fairness.

According to the Supreme Court, the objective of judicial and administrative authorities is to arrive at a fair and just conclusion.

CRITICAL ANALYSIS

The role of administrative and judicial agencies is expanding quickly to suit the civic and legal expectations of the people in a developing and welfare state like India.

Natural justice principles can be found in India's Constitution in Articles 14, 21, 22, 311, etc. As a result, any infringement of natural justice principles would render the judgment void.

Natural justice principles are general guidelines that will change depending on the situation; they are not specific rules for unchaining content. Even when natural justice principles seem to be in place, clear statutory language or needed inference may partially or completely exclude them. The idea of natural justice as a whole has thus taken on a kaleidoscopic unpredictability.

A fair hearing does not necessitate legal counsel or cross-examining witnesses, and natural justice does not call for explanations of conclusions. These formulations must be discussed in light of the Constitution's requirements of Articles 19 and 21. It is made an endeavor to ascertain the legal basis on which legal representation, cross-examination, and reasoned judgments may be designated a necessary procedural requirement for the administrative agency conducting administrative functions in the absence of legislative silence.

CONCLUSION

The Judiciary established and followed the principles of natural justice to defend public rights

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[19] 1978 AIR 851, 1978 SCR (3) 272

from arbitrary administrative decisions. It is clear to see that the norm of natural justice contains the concept of fairness: they live on and help to maintain fair dealing.

So, if any authority is delegated at all levels of the procedure, the judicial role is not purely accepted. Still, the main goal of the principal is to prevent a miscarriage of justice. It is crucial to remember that any judgment or order that contradicts the standards of natural fairness will be ruled null and void. Therefore, keep in mind that every administrative solution must adhere to the principles of natural justice in order to be regarded as legal.

The natural justice principle can be used in a variety of situations, regardless of the jurisdictional restrictions, the powers granted to the administrative authority or the specifics of the rights touched by the situation.

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