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A theoretical analysis of the principles of natural justice: Bangladesh perspective

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Abstract
'Natural Justice' is originated from the Roman term 'Jus Naturale' which means principles of natural law, justice, equity, and good conscience. The use of this legal term "Natural Justice" is very important and frequent in the judicial context. There is an adjective entitled by "natural", qualifying the noun "justice", the concept has nothing to do with laws of nature which rather runs counter to it. With the advancement of the civilization our lives started to be dominated more by the rules of various laws, rather than law of nature. Principles of natural justice is an ancient origin and was known to Greek and Romans. Here the principles of natural justice was said to have been adopted by English Jurists to be so fundamental to override all laws. The principles of natural justice were connected with a few 'accepted rules' which have been built up and pronounced over a long period of time. The word 'Natural Justice' indicates justice according to one's own conscience. These principles did not derive from any divine power, but are the outcome of the necessity of judicial thinking, as well as the necessity to evolve the norms of fair play. These are some principles in which every disciplinary authority should follow during taking any decision, which may adversely affect the rights of individuals. It is seen that rules of natural justice are not codified anywhere. They are strategic in nature and their aim is to ensure delivery of justice to the parties. According to the rules of natural justice, as recognized by civilized societies, is of supreme importance, when a quasi-judicial body embarks on determining disputes between the parties or any administrative or disciplinary action is in question. The rules of natural justice serve as encompass against any terrible discrimination against rights of individuals.

Keywords: natural justice, legislature, judiciary, equity, good conscience

1. Introduction
The term entitled by "Natural Law" does not mean the law of the nature or jungle where lion eats the lamb and tiger eats the antelope but a law in which the lion and lamb lie down jointly and the tiger frisks the antelope. Natural Law is another name for common-sense justice. Natural Laws are not codified and are based on natural ideals and values which are universal. In case of absence of any other law, the Principles of Natural Justice are followed. The Principles of Natural Justice are appraised as the basic Human Rights because they attempt to bring justice to the parties naturally. Man lives in a society. But he can't do anything to his sweet will here. He or she has to maintain the peace and order of the society. He or she is bound to obey the established laws of his or her land. But if he or she does otherwise or disobeys any law or disturbs the peace and order of the society, he or she is punished. But still he or she possesses some rights naturally that he or she has to be given prior notice of the case, a fair opportunity to answer it, the opportunity to present his or her own case, the ruling must be made by someone free of bias and the judgment must be based on evidence, not on speculation or suspicion, and the decision must be interfaced, in a way that makes clear what evidence was used in making the decision. These are called the principles of natural justice. The main principles of natural justice concern procedural fairness and ensure a fair decision is reached by an objective decision maker. I sense of English Law, natural justice means the technical terminology for the rule against bias and the right to a fair hearing. The term *natural justice* normally refers to "duty to act fairly" [1].

2. Objectives of the Research
1. To analyze the application of the principles of natural justice in the judicial system of Bangladesh.
2. To find out the loop holes of such application.
3. To provide appropriate recommendation to the concerned authority to make such application more effective.
4. To implement the principles of natural justice in the judicial system.

3. Research Methodology
Our proposed research is a library based research. This research is originated from many articles & books which are written by prominent writers of the respective arena. The methods of this research are primary as well as secondary in nature.
Methods which are followed in this research paper is analytically comprising the following steps-
1. Collection of study materials with the help of concerned teachers, friends, other students, related
2. Persons and institutions.
3. Collection of respective papers through internet browsing.
4. Concentrated study through many books, journals, national and international publications with their references.
5. Contemplating over concentrated study.

4. Literature Review
In 2001, C.k. Takwani, showed on his lectures based on Administrative Law., He has mainly focused on his book about the definition, meaning and history of the principles of natural justice [2]. In 2012, I.P. Massey also provided the

concept of the Administrative Law, providing the basic concept of the principles of natural justice [3]. In 2018, Shivaraj Huchhanavar introduced in his paper entitled "Introduction to Natural Justice" about the basic concept of Natural Justice about a rational animal lie human being [4]. A paper published in 2016 by Dr. S. B. M. Marume, *et al*. introduced about the Principles of natural justice in public administration and administrative law [5].

5. The principles of Natural Justice

The rules or principles of natural justice, also known as procedural fairness, have been developed by courts to ensure that the process by which a decision is made is fair and reasonable. The principles of natural justice requires a decision maker to give a person or organization who will be affected by the decision maker's decision an opportunity to "have their say" regarding the case against them in which the decision maker must then take into account during making a decision [6]. Another principle of natural justice requires a decision maker making a decision not to have a personal interest in the outcome and to make a decision impartially. The principles of natural justice concern strategic fairness and ensure a fair decision is reached by an objective decision maker. During maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process. A word used to refer to situations where *audi alteram partem* (the right to be heard) and *nemo judex in parte sua* (no person may judge their own case apply.

The principles of natural justice were derived from the Romans who believed that some legal principles were "natural" or self-evident and did not require a statutory basis [7]. These two basic legal safeguards govern all decisions by judges or government officials when they take quasi-judicial or judicial decisions.

6. Reasons for ensuring the application of the principles of Natural Justice

Of course, the laws of nature are designed to promote survival rather than justice. Nature is governed by principles such as the survival of the fittest and prevalence of might over right. When a herd leaves its weak members behind there is no question of the weak being supported or protected.

Therefore, 'natural' justice is not justice found in nature; it is a compendium of concepts which must be naturally associated with justice, whether these concepts are incorporated in law or not. [8] Justice is a great civilizing force. It ensures that the rule of law rather than the rules of nature prevail in regulating human conduct.

The principles of natural justice have evolved under common law as a check on the arbitrary exercise of power by the State. As the State powers have increased, taking within their ambit not just the power of governance but also activities in areas such as commerce, industry, communications and the like, it has become increasingly necessary to ensure that these powers are exercised in a just and fair manner. The common law, which is a body of unwritten laws which govern the legal systems of England, USA, Canada, Australia and other commonwealth countries including India, has responded to this need to control the exercise of State powers through applying the principles of natural justice to the exercise of such powers.

What exactly are these principles? Basically, these are principles which are necessary for a just and fair decision making. These principles are often embedded in the rules of procedure which govern the judiciary. For example, the Civil Procedure Code prescribes a detailed procedure under which the Defendant has the right to reply to the Plaint; both sides have the right to inspect the documents relied upon by the other side and both sides have the right to cross-examine one another's witnesses. The judgment must give reasons for the decision.

In the case however, of quasi-judicial or administrative Tribunals or bodies, the common law has laid down some basic principles which such bodies must follow. If there is any substantial departure from these principles of natural justice, the decision can be challenged and set aside through the judicial process. One of the well-known enunciations of the principles of natural justice is in the case of *Ridge vs. Baldwin* [9]. In that case Lord Hudson observed: "No one, I think, disputes that three features of natural justice stand out. Which looked at the files of other candidates? The acting Chief Conservator of Forests was selected by this Committee for the post of Chief Conservator. The Supreme Court came down heavily against this decision calling it contrary to the principles of natural justice. The Court also held that it would no more accept in this country any

1. The right to be heard by an unbiased Tribunal,
2. The right to have notice of charges of misconduct,
3. The right to be heard in answer to that charge."

Thus decisions of quasi-judicial bodies became open to scrutiny to ensure that these rights are not violated. This was in sharp contrast to the old traditional dictum to the effect that King can do no wrong. Officers of the King became subject to judicial scrutiny when they delivered quasi-judicial decisions. For a long time considerable judicial effort was spent on making a distinction between quasi-judicial bodies and administrative bodies because it was held for a long time that administrative decisions were not subject to such scrutiny. Indian judiciary was the first to do away with the distinction between administrative decisions and quasi-judicial decisions, realizing that the line between administrative decisions and quasi-judicial decisions was very thin. It also shows how administrative law has evolved from case to case as a response to the need to have a check over arbitrary exercise of power. In the famous case of *A.K. Kripak vs. Union of India* the Supreme Court held that administrative decisions were also subject to judicial scrutiny and could be tested on the anvil of natural justice [10]. In the case of Kripak, the acting Chief Conservator of Forest was a part of the Selection Committee along with the Members of the Union Public Service

Commission to select a permanent incumbent to the post of Chief Conservator. He was also one of the candidates for the post. When his file was scrutinized he excused himself from the Selection Committee saying that he cannot be a party to a decision which would affect him. He, however, remained on the Selection Committee distinction between administrative decision making and quasi-judicial decision making.

Other countries have slowly come around to the same view. In another classic decision in the case of *Maneka Gandhi vs. Union of India the* Supreme Court discussed in detail the various aspects of the rule of natural justice [11]. Basically there are two norms which a decision-making body must follow. Both are expressed in Latin maxims but are in essence very simple principles; *audi alteram partem* which means that the person concerned must be heard before a decision is taken; and the second principle is *nemo judex in causa sua*

which means a person will not judge a case in which he is himself interested.

Recently a third principle has also been added which is in plain English because it is a more recent development. It says that the decision must give reasons. There are several refinements or facets to these principles which have evolved as a result of extensive case law dealing with an amazing variety of circumstances. Many of these refinements or variations have evolved in cases dealing with service matters – selection of candidates, disciplinary enquiries, dismissal or discharge of employees and so on. Other decisions have dealt with granting of licenses or permissions by public authorities, allotment of petrol pumps and the like. I must make it clear that these principles do not apply to legislative decision-making although it may affect the rights of citizens. Legislatures do not have to hear the persons whose rights are affected. This is under a belief that different viewpoints are represented by the legislators in Parliament since the legislators represent the people.

There are, however, areas where the power of legislation is delegated to subordinate authorities, usually to the executive. Is it necessary to hear the persons affected before such subordinate legislation is framed? This is a grey area where any clear judicial authority is absent.

Let us therefore come back to the decision-making process of quasi-judicial and administrative bodies. Natural Justice requires that the person who is likely to be affected by the decision must be heard before a decision is given. The hearing may be oral or it can be through a written representation. This, in turn entails that such a person must be informed about the nature of the enquiry and if any charges have been framed against him, of the charges. There are many income tax cases where it has been said that the documents on which the Department relies must be disclosed to the other party. What is more, the Department should disclose to the other parties not just the documents on which it relies but all relevant documents on which it may be able to rely. So from the right to be heard, one travels to the right to disclosure of documents because without such documents a proper representation cannot be made.

Then, one comes to the right of cross examination. If one is relying on a document of a third party, an opportunity should be given to cross examine the third party. The right of cross examination may not be absolute or available in all circumstances. In fact principles of natural justice cannot be put in a straitjacket. These will have to be applied depending upon the facts and circumstances of the case. The right of cross examination can be more readily inferred in the case of a formal enquiry. But when the enquiry is informal and is conducted in the presence of all concerned, a formal right of cross examination may not be inferred. The judicial trend appears to be towards expanding the application of principles of natural justice to cover the right of cross examination. However, there have been cases where the Court has declined to infer such a right. In a case where the inmates of a girl's hostel had complained to the Principal about misbehavior and molestation by boys of the adjoining hostel, the Court accepted the plea that the request of the boys to cross examines the girls could not be granted in public interest.

Does the right to be heard imply the right to engage a lawyer who will represent the concerned person? The case law has clearly laid down that there is no right to engage a lawyer in a Departmental enquiry unless the other side is represented by a lawyer. In a matter involving complex legal issues, the Tribunal may permit both sides to engage lawyers. But this is not normally done.

There are also exceptions to the doctrine of *audi alteram partem*. In a case of urgency, action can be taken without a hearing. For example, if a smuggler is about to abscond to another country, his passport can be seized without waiting for a hearing. Therefore, in an emergency, if you have to do something so quickly that the very mischief sought to be averted will take place unless the principles of natural justice are waived, such waiver is permissible. Even here, the Courts have introduced the principle of a postdecisional hearing so that the person against whom the order is passed gets a right to make a representation to have the decision revoked or altered. In the *Maneka Gandhi* case, where the passport was cancelled, the Supreme Court ultimately sustained the cancellation subject to a post decisional hearing being given. There are also other cases where the decision may be upheld although no hearing has been given. For example, if the conclusion which is arrived at is obvious and no amount of hearing could have made any difference to the decision, the decision will not be invalidated because a hearing is not given. In another case, where pursuant to the Supreme Court's order the status quo ante was restored without giving a hearing to the party who had benefited in the meanwhile, the Court refused to set aside the action although no hearing had been given to the benefited party.

Article 311 (2) (b) of the Constitution has also expressly permitted a departure from holding an enquiry in cases where it is not reasonably practical in public interest to hold an enquiry [12]. However, in such cases, causes for the decision have to be given in writing. Another test which has been laid down for departure from the principles of natural justice is where infringement of the facets of the principles of natural justice has not caused any prejudice. These are usually some cases where the party aggrieved contends that an adequate opportunity was not given for a hearing. In such circumstances the Court must ascertain whether the aggrieved person did get a fair hearing and whether the lack of opportunity vitiates the final order. These are cases where a chance was in fact given but was considered inadequate by the aggrieved party. Here prejudice's test has been explained in detail in *Karunakar's* case reported in AIR 1994 SC 1074. The test of prejudice can also be exercised to cases where a procedural provision is not followed which are not mandatory. For example, if someone is dismissed without supplying him with a copy of the enquiry officer's report, it will have to be examined whether any prejudice has been caused to the aggrieved person as a result. This is not always easy to decide whether a procedural provision is essential or not. The Courts will have to see whether non-observance of these principles has resulted in deflecting the course of justice. Grievances such as enough time not being given to complete the case, lawyer not being allowed or entire component not being given, have to be examined on this touchstone of prejudice. One may also have to investigate whether the procedural provision is in public interest or whether the aggrieved party has waived the procedural provision or such other circumstances. The second important maxim is to the effect that someone will not be a judge in his own cause. In fact, the *Kripak* case is a typical example of a decision maker being personally keen to the decision. In the Bombay High Court, we have the convention of a Judge not hearing the case of a company in which he has purchased shares. This convention has resulted in a judge rescuing

himself from a case because in a multi-core company he holds a few hundreds shares. But it is always preferable to err on the safe side rather than appeal to the comment of being an interested person. Interest, of course, can be of various kinds. And it is best to bear in mind that justice must not merely be done but must be seen to be done. A fair and impartial hearing is at the root of this principle. You might recall the famous *inochet's case in the House of Lords* where one of the Law Lords who had heard the case was a trustee of a charity which was associated with one of the parties. The whole case had to be re-heard. On a smaller scale, we have many cases where committees appointed to select, for example, text books for educational institutions, have as their members, authors of some of these books. Clearly the re of such committees is vulnerable. There are also cases where the decision of the committee is arrived at on the basis of dictates of third parties such as Ministers. Allotment of flats in public housing schemes or petrol pumps can be thus affected and would be susceptible to challenge. There is only one more principle that has slowly taken root as a part of natural justice. This is the principle that all decision must contain reasons for the decision. Reasons may be elaborate or may be brief. But these are commencing to be considered necessary to ensure fair decision making. There are many grounds for requiring reasons behind it. First of all, it ensures application of mind by the decision maker to the material before them which will be casted back in the reasons given. A non-speaking order does not do this at all. That is why under the new Arbitration and Conciliation Act, it is now compulsory for Arbitrators to give reasons. Secondly, the practice of giving reasons prevents prejudices from dragging into the decision making process. Here the decision maker is forced to examine the material and apply distinct principles to the decision. It also makes it easy for the Appellate Body if there is one, or the Court exercising writ jurisdiction to confirm the reasons which prompted the decision impugned before it. There is, therefore, an increasing bias to insist on reasons for administrative and quasi-judicial decisions. Of course, not all decisions are infer decisions. When the cricket captain opts for heads or tails, he cannot be desired to give reasons for his choice. Auspiciously, one hopes that administrative decisions which affect others are not decisions of this kind. In fact, asking for reasons confirms that they are not just ipse dixit of the decision maker. It is in this context that Article 14 of the Constitution must also be looked at because Article 14 has been interpreted as a defense against arbitrary action. It is also very interesting to note that the defense of the principles of natural justice is available not just to citizens but also to non-citizens in our country, Bangladesh. In the case of *Det Norske Veritas vs. Reserve Bank of India* (1989)[13], the Bombay High Court held that the refusal of a license to a non-citizen who had been operating in India for some years must comply with the principles of natural justice. This is in sharp contrast to the decisions, for example, of English Courts while dealing with orders of immigration authorities in their country or the decisions of the U.S. Courts while dealing with defense to non-citizens. We have rightly held that the principles of natural justice relate to fair and impartial decision making. Such decisions must be made in all cases, whether they pertain to citizens or non-citizens.

7. Advantages of the principles of natural justice in Bangladesh

Bangladesh is a democratic country and hence the foremost object of this welfare state is to protect the rights and interests of its citizens. And without complying with the principles of natural justice it cannot be done. The principles of natural justice ensure fair justice and through the principles of natural justice the rights and interests of the citizens can be ensured also. Natural justice can benefit the decision maker as well as the person or organisation whose rights or interests may be affected in the following ways.

1. Assists the decision maker in reaching the correct and preferable decision;
2. Provides the decision maker with relevant information, evidence or interpretation of legislation or policy which he/she has not considered;
3. Provides a useful avenue for the decision maker to ensure that the facts or information that he/she is relying on is correct;
4. Exposes any weaknesses in the decision-making process, information or evidence on which a decision is to be based, which avoids later embarrassment, including the need to re-make the decision;

8. Recommendations

From the above stated discussions the following recommendations can be drawn for removing the judicial problems like unfairness or bias and to ensure the principle of natural justice.

1. The appointment of judges (lower court to upper court) has to be neutral. The present constitutional provision for the appointment of judges by the President should be amended;
2. Remuneration of judges should be increased with other benefits, like; heir of judges (son or daughter) has to be kept in the metropolitan area with a common standard of dormitory for ensuring their proper and standard education by the expense of government;
3. Residential arrangements should be proper and without any rent;
4. Professional activity of a judge should not be intervened with any internal or external pressure, like unauthorized pressure from boss. It might hamper fair justice;
5. Judges should be rewarded depending on their professional and other performances;
6. They have to promote properly on the basis of seniority and experience; otherwise they will be demotivated;
7. Appointment of judsges in the judicial field (lower to apex court) have to be neutral / impartial, specially members of the judicial service commission have to be selected impartially;
8. Lack of consciousness, lack of democratic culture, lack of popular access to justice, lack of interaction with other court, lack of legal knowledge have to be eradicated by sufficient training;
9. The higher educational institutions like public and private universities have to be developed properly by adequate resources. Particularly legal education has to be promoted;
10. A judge should apply his or her judicial mind and avoid any nepotism.

9. Conclusion

Separation of judiciary was the main slogan in our society. It is considered to be the custodian of formal judicial independence. Today, judicial body is separated from the executive but still it does not ensure the fairness of judiciary

at all. The complete independence of judiciary is by no means possible without functional or decisional independence, financial independence and independence of judges from their judicial superiors and colleagues. Without independence of judiciary a judge might be corrupt which eventually might result into havoc for the judiciary. Uprooting the bias from judiciary is an endless process, but this debate from the late 18th century till today is enough to eradicate bias. In order to bring back trust to judiciary, it has already become very late to make this body independent functionally, and to emancipate the judges from their judicial superiors and colleagues. Only a proper judiciary can ensure human rights as well as fundamental rights as granted by the constitution of the People's Republic of Bangladesh. If the judicial edifice weakens, the democratic system will not function, and the social fabric will be broken down. So, at any cost, judicial bodies have to be kept far from bias; otherwise, judiciary will not bring good and nutritional fruit for the suffering masses seeking justice from a court of law [14].

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