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DO EXCEPTIONS OF PRINCIPLES OF NATURAL JUSTICE COMPROMISE FAIRNESS?

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Abstract
Principles of Natural Justice find its origin in Article 14 of the Constitution of India and intend to ensure a fair play by judicial, quasi-judicial and administrative authorities. PNJs originated against along with mankind history. In order to protect against the excess of organized power, man always desired to have a law above everyone which would be fair, just and equal in nature. Principles of natural justice are based on the idea of rule of law and intended to uphold this principle. Often questions are raised whether there are any exceptions to Principles of Natural Justice or such exceptions do not form exceptions because they in no way compromise the fairness of procedure? In order to answer such questions, one must critically study the trend in which Indian courts have interpreted the application of Principles of Natural Justice. It can be observed that these exceptions are merely circumstantial and do not apply in situations where such circumstances do not exist. This means that there exists an intelligible differentia which seeks to make a balance between the rights of an individual and interest of state.

Introduction
The two major components of Principles of Natural Justice are: a) Nemojudex in causasua which means that no one shall be a judge in his own cause b) Audi AlteramPartem which means that no one shall be condemned unheard. Earlier, the courts followed the structural test while applying principles of natural justice and classified administrative actions and quasi-judicial functions while applying these principles. With change in time, when no clear distinction could not be made between administrative actions and quasi-judicial actions, the courts started relying on functional test under which Principles of Natural Justice are applied where prejudice is caused to the party. This means that such test allowed a scope to apply Principles of Natural Justice even to administrative actions if such action leads to civil consequences and caused prejudice to the party.

Since the ulterior motive of Principles of Natural Justice is to ensure fairness, the Court is unwilling to extend these principles to those situations where more injustice would be caused rather than serving the ends of justice. Following the same principle, the Supreme Court has observed thatprinciples of natural justice cannot be applied in any straitjacket
formula and are very flexible in nature. Their application is dependent upon case to case basis and also upon how much an individual is likely to get affected.

In this paper I am going to focus on certain exceptions of Principles of Natural Justice (hereinafter referred as PNJ) and make a claim that these exceptions do not in any way compromise the fairness of procedure because the contours of fairness depends upon various factors such as facts and circumstances of case, prejudice caused to party, civil consequences.

**The Notion of Arbitrariness, Reasonableness and Fairness**

Article 14 of the Constitution states that “States shall not deny any person equality before the law or the equal protection of the laws within the territory of India”. However a classification made on reasonable grounds is allowed under the Constitution. The twin test of reasonable classification as laid down under Article 14 must satisfy the two tests: **Intelligible Differentia**, which distinguishes persons or things that are grouped together from those that are left out of the group and **Reasonable Nexus**, which means that such differentia must seek to achieve an objective.

The Constitution guarantees that all legal proceedings should be fair and individuals shall be given an opportunity to get heard before a decision is taken by an authority. In the famous case of *Maneka Gandhi v. Union of India* the court has observed that a procedure lacking fairness is void in nature. Justice Bhagawati observed that the procedure should not be oppressive, arbitrary or bizarre and should fulfil the test of reasonableness as laid down under Article 14. This means that any deviation from usual procedure would not curtail “fairness of procedure” if it is done within the defined boundary of reasonableness.

I believe that the various scenarios which I would be discussing shortly, clearly satisfy the test of a reasonable classification because in each circumstance there exists an intelligible differentia because of the exceptional circumstances surrounding each case and such differential treatment, seeks to achieve an objective which could not be achieved otherwise in case PNJ are followed.

Following is an extensive list of factors under which PNJ could be relaxed without compromising fairness of procedure. A plain reading of these factors would make us interpret that the definition of ‘fairness’ in each case differs from any other below

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196 AIR 1978 SC 597.
mentioned scenario and therefore any relaxation to application of PNJ could be allowed in such case.

A. **Exceptions to Audi Alteram Partem:** Despite there being an increase in application of PNJ, Courts, in certain situations, have denied the right of hearing to parties which get affected. Despite Supreme Court’s wording in *O.P. Gupta v. Union of India*\(^{197}\) stating that ‘right to hear a party’ before a decision is taken forms an essential fundamental rule of law, it would be wrong to presume that PNJ has to be applied universally in all administrative processes.

In the discussion that I am going to lead, one should keep in mind that the word ‘exception’ in the following situations is a misnomer as it merely means relaxation of PNJ because nothing unfair is inflicted upon the parties by not affording an opportunity to get heard.

➤ **Exclusion in case of emergency:**

In situations of national security, it is held by the Court that parties cannot insist on strict observance of the principles of natural justice. The Court has observed that in case of threat to national security, say threat to socio-political stability or territorial integrity or ecological balance or external peace etc., nobody can insist on compliance with principles of natural justice as a precondition for taking any action even leading to civil consequences.\(^{198}\)

In situations such as cancellation of election due to meddling with secret ballot box\(^{199}\), it is observed that an exclusion of right to prior notice and being heard could be justifiably avoided as it would otherwise obstruct the undertaking of prompt action in urgent situations. It has to be noticed that the Supreme Court of India came up with the concept of post decisional hearing where party is given a right to get heard once a decision is passed under public urgency.

I believe that non-compliance of PNJ before passing an order amid emergency situations would not compromise fairness of procedure because in such circumstances interest of state shall paramount to right of party. Further it should be observed that if an immediate hearing is given, a delay in passing an order would cause serious prejudice to public at large. Say, if an authority suspects an absconding person to have close relations with terrorist group and therefore

\(^{197}\) (1987) 4 SCC 328.


\(^{199}\) Mohinder Singh Gill v. CEC, (1978) 1 SCC 405.
impounds the passport of such individual without giving any prior notice or hearing, it would be justifiable considering the seriousness of situation because expansion of PNJ would paralyze the administrative process and defeat the measure taken in urgency.

It should be noticed that urgency clause does not allow abuse of power because the court allows post decisional hearing in such circumstances. Therefore it could be concluded that non-compliance of PNJ in emergency clauses does not compromise fairness and is also held by the court on multiple occasions that if importing the right to get heard paralyses the administrative process in situations of urgency, then natural justice could be avoided\(^{200}\). It should be observed that the seriousness and urgency of matter creates an intelligible differentia to such cases and serving public interest in the best possible manner provides a reasonable nexus for making a reasonable classification.

➢ **Policy decisions and Public Interest:**

Indian Courts have observed that non-compliance of right to hearing in cases involving public interest and policy decisions does not amount to violation of principles of natural justice. An ideal example of an order passed in pursuance of policy decision could be looked into *BALCO v. Kaiser Aluminum Technical*\(^{201}\) where the Government of India came up with a policy decision and disinvested 51% shares of BALCO in favor of a private entity. The petitioners contended that this lead to serious civil consequences because it affected worker’s rights and protection under Article 14 and Article 16 of Constitution as it changed the nature of company from public to private. Since the workers of BALCO were not heard before and during the disinvestment process, they challenged this order on the grounds of non-compliance of principles of natural justice. The court here held that there is no need to comply with principles of natural justice in this case for giving hearing to those people who are generally “*affected as a class by an economic policy decision*” of the Government. As per my understand, creation of an exception to application of principles of natural justice to policy decisions does not compromise fairness as such decision by executive is taken keeping in view the larger interest of public at larger and therefore if one applies utilitarian approach to such situations, then interest of public should paramount the interest of a class of people. Further it should be seen

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\(^{200}\) *DTC v. Mazdoor Congress, AIR 1991 SC 101.*

\(^{201}\) (2012) 9 SCC 552.
that absence of obligation on executive to comply with PNJ in implementing policies intending to promote public interest would provide a wider latitude to the functioning of executive. Therefore, while answering the extent of fairness involved in a policy decision, say BALCO case, and one should look at the larger public interest involved and should consider the delay in implementing a policy if workers were provided a right to hearing before any such implementation.

The underlying objective of PNJ is to prevent failure of justice. Indian courts operate on the principle that where State or Public required curtailing of the rule of PNJ, the court should balance the interest with the requirements of natural justice.\textsuperscript{202} Cases involving orders issued in pursuance of public interest, say, an order of compulsory retirement are considered valid without any violation of principles of natural justice and Article 21 of the Constitution of India\textsuperscript{203} because the Court holds the view that an order of compulsory retirement does not amount to punishment and need not compulsorily apply principles of natural justice in passing such order as it would not cause prejudice to the party\textsuperscript{204}. I believe compulsory retirement in cases where employees have served for a certain length, does not amount to violation of PNJ because compulsory retirement brings pensions and other benefits to the employee which is not in case where an employee is dismissed or removed. Non-compliance of right to hearing to any employee who is compulsorily retired, does not amount to any prejudice as the employee is already paid certain benefits with such retirement.

To understand this argument, one should understand that there is no deprivation of accrued benefit as there stands a clear distinction between profits already made and loss of prospect to earn more profits. Therefore, compulsory retirements made under public interest do not compromise PNJ as it does not cause civil consequences. Hence, the differentia created in cases involving public interest and public policy is reasonable and would not amount to unfair treatment as it serves to promote interest of public at large.

\begin{itemize}
  \item \textbf{Exclusion in cases of confidentiality:}
\end{itemize}

Right to disclosure of documents finds a place under right to hearing. However courts have carved out an exception to this general principle where disclosure of certain

\textsuperscript{203} State of Sikkim and Others v. Sonam Lama and Others, 1991 SCC (L & S) 919.
\textsuperscript{204} Baikuntha Nath Das v. District Medical Officer, (1992) 2 SCC 299.
evidential material might cause serious harm to the person directly concerned or might be injurious to public interest because it involved revelation of official secrets which would make the extraction of information impossible once the crime is detected. Similarly the court has observed that maintenance of a surveillance register by police is a confidential document and cannot be accessed by the person whose name is entered into the register or by any another member of public.

I believe that placing public interest in the box of exceptions to PNJ would not be unfair because it would cause serious prejudice to public at large if the courts do not allow such an exception, say, if public documents such as surveillance register are made accessible to public, then it would defeat the very purpose of surveillance and hence would defeat the ends of justice. Therefore cases involving confidentiality entail an intelligible differentia and such differentia serves to a reasonable nexus which is protection of documents from tamper and prevention of injury to people due to revelation of such documents. Therefore the reasonable nexus lies in meeting the ends of justice.

- **Legislative Function:**

  Usually it is seen that courts do not extend application of PNJ to those functions which are legislative in nature. Following the same, the court felt the need of not applying PNJ in a case involving termination of service because it amounts to legislative direction i.e. an order passed pursuant to directions issued by legislature. PNJ could be relaxed if the actions of administrative in question are legislative in nature and not of administrative character. While explaining the reasons behind not applying PNJ to legislative actions, the court reasoned that a legislative action is of general nature and does not usually apply to one or a few specific individuals. The courts have made it clear that legislative actions, plenary or subordinate are not subject to PNJ because such rules lay down policy without referring to any particular individual. It is observed by the courts that in case of parliamentary legislation proposition is self-sufficient, while subordinate legislation itself provide for a notice

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206 Supra note 195.
209 Supra at 197.
and hearing.\textsuperscript{211} Therefore, courts have interpreted that PNJ need not be followed in case termination of service follows legislative direction i.e. an order passed pursuant to directions issued by legislature.\textsuperscript{212}

I believe that relaxation of PNJ to legislative actions would not compromise fairness as this would open the flood gates for a huge number of cases challenging orders passed in day to day life pursuant to any legislative act. Also it should be seen that even if courts disallow challenging an order passed under a legislature on grounds of PNJ, it allows to get any provision of such legislature struck down under Article 14 and 21 on the grounds of unreasonableness and arbitrariness.

- **Academic Adjudication:**

PNJ are relaxed in cases which involve academic adjudication by an authority as principally the courts have agreed that an authority can fix minimum marks for cracking a competitive exam for appointing candidates in Government service without giving notice to the candidates.\textsuperscript{213} Similarly where state board cancelled board exams without giving hearing to students and ordered fresh board exams on account of mass copying in previously conducted exam, the court did not see any miscarriage of principles of justice in such an order.\textsuperscript{214}

I believe that relaxation of PNJ to above scenarios does not compromise fairness of procedure as it becomes practically impossible to hold individual hearing for each candidate who intends to appear for examination. Therefore on the grounds of impracticability, hearing to party can be excluded.

Further if a student is rusticated from a college on account of continuous failure in exams, one cannot say that no fair chance was given to the student. This particular situation was held in *Jawaharlal Nehru University v. B.S. Narwal*\textsuperscript{215} where the student was removed on accounts of unsatisfactory academic performance without being given a pre-decisional hearing. I believe that the court holds a justifiable ground in creating an exception while not extending PNJ to such cases because evaluation by competent academic authorities in college is that of a continuous nature and gives fair opportunity to every candidate to perform better over a period of time.

\textsuperscript{211} Supra note 206.
\textsuperscript{213} State of U.P. v. Rafiquddin, AIR 1988 SC 162.
\textsuperscript{214} Bihar School Examination Board v. Subhash Chandra, AIR 1970 SC 1296.
\textsuperscript{215} (1980) 4 SCC 480.
B. Exception to Rule of Bias: Rule of bias finds a place under the principle of *nemo iudex in causasua* and forms an essential part of Principles of Natural Justice. Rule of bias in simple term means that no person shall be a judge in his/her own cause.

➢ Necessity of situation:
Principally, it is settled that if by virtue a decision is made by such an authority whose equivalent there is no other authority then PNJ could be avoided i.e. if there is no substitution of adjudicating authority then PNJ could be relaxed. For example, questions like whether judges should be allowed to appoint judges, disclosure of court’s assets are the matters which could only be heard by a judicial body. I believe that relaxation to PNJ in such cases is justified as if it is not allowed in unavoidable circumstances like these, then it would impede justice. If there is a choice between allowing a biased party to act or to discard the matter, one should go ahead with the former as this becomes the only way to promote decision making in the matter.216

In *Ashok Kumar Yadav v. Haryana*217, the court observed the impossibility for a member of Public Service Commission to entirely disassociate himself from selecting candidates to the commission just because certain candidates were related to him. The court here allowed the individual to take part in selection process of other candidates while disassociating him from selection of those who were related to him. Therefore where bias is apparent, but, the same person who is likely to act in a bias manner has to decide the case due to statutory requirements, courts have allowed such a person to decide the matter.218

Conclusion
The exceptions to Principles of Natural Justice are done by taking into account various factors such as civil consequences, time, necessity of hour, apprehension of danger, impracticability, utilitarian approach intending to promote greater good of larger group of people etc. These exceptions are merely circumstantial and do not apply in situations where such circumstances do not exist. This means that there exists an intelligible differentia which seeks to make a balance between the rights of an individual and interest of state.

Application of PNJ is not rigid but is flexible as it has been seen that the courts have adopted application of these rules to even those cases where a parent statute is silent upon

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217 AIR 1987 SC 454.
the right to hearing. Hence the court has not considered the silence of statue over right to hearing as a default exclusion of PNJ.

Thus to answer the question that I previously raised in the beginning, one can interpret that the main objective behind inclusion and exclusion of PNJ in different scenarios is to ensure a harmonious balance between individual’s rights in form of right to get heard and fair procedure viz-a-viz public interest at large. Through the above discussion, one can conclude that the court gives an overriding preference to interest of public at large because it seems that the courts work on the presumption that Legislature intends to uphold PNJ which supplement the law of land.
Thanking Note

The Editorial Board, Student Coordinators and the Advisory Members of the Indian Constitutional Law Review seek to express their gratitude to all members and contributors who have made immensely valuable contributions to the growth and evolution of the Constitutional law landscape of India. We express our heartfelt gratitude to all Advisory Members who have provided their valuable insights in the framing of this edition. The Student Editors have also played a crucial role in the development and outcome of this publication.

Amit Singhal
Editor-in-Chief

On behalf of the esteemed members of the Editorial Board, Honourable Members of the Advisory Council & the members of the Publishing Unit