

Jurisprudential Overview of Principle of Natural Justice in India: A Comparative Study with The Uk and The Usa

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Abstract: Every civilized nation irrespective of the form of government that they observe i.e., either ‘Parliamentary form or Presidential form of government, objects to secure the rights of its citizens as well as non-citizen by following the principle of ‘Rule of Law’ and not ‘Rule of Men’. The former principle prescribes three essentials first ‘Supremacy of Law’ which means no person is above the law; second ‘Equality before the law’ which means that every person is equal before the law and classification among individual would be possible only if there is reasonable ‘intelligible differentiate’; And, the third important essential is ‘Constitution is the Result of Ordinary Law’ which means that statutory provisions which are enshrined under the ordinary law are upheld by the judicial authority which ultimately results in upholding the Constitution. In essence ‘rule of law’ secures the principle of fairness by compelling every administrative, quasi-judicial or legal agency to uphold the principle of law and to treat every individual equally. However, at times the statute permits adjudicatory agencies to exercise their discretionary power and decide on their own procedure for adjudicating disputes. Such, discretion may occasionally lead to procedures that compromise the administration of justice. In these instances, the ‘doctrine of judicial review’ allows constitutional courts to intervene and determine whether the procedure employed adhere to the ‘principle of natural justice’ or not? The determination is primarily based on examination whether both sides has been given fair chance of hearing or not? And, whether the adjudicatory authority is related in any manner with the parties or matter in issue? Basically this study deals with an overview of jurisprudential aspects of the principle of natural justice and its application in Indian context along with same researcher has tried to give a blue print of comparative analysis of principle of natural justice in India vis-à-vis UK and USA.

Keywords: *Natural justice, rule of law, judicial review, audi alteram partem, nemo judex in causa sua, due process, fair trial, and legitimate expectation.*

Introduction: The combined reading of both the doctrines i.e., ‘Rule of Law’ and ‘Natural Justice’ disclose a common underlying object of fairness. While ‘Rule of Law’ establishes the standards that all authorities must be exercised within the bounds of law, ‘Natural Justice’ provides the procedural framework for ensuring that provisional laws are achieved fairly. Together, both the doctrines complement each other to secure justice. However, if we briefly analyse the broad elements of natural justice i.e., ‘Audi Alteram Partem’ and ‘Nemo Judex in Causa Sua’ it could be revealed that the principles guaranteed under ‘natural justice’ is not codified under any statute which makes it an obligatory duty on the administrative bodies to compulsorily observe the principle. The researcher in

the present paper will investigate whether the administrative agencies as discussed herein before upholds the elements of '*principle of natural justice*' or not when there is absence of any written codified statute. In addition, the researcher will also ascertain whether the said principle is followed uniformly throughout the world in the same sense to achieve the common object of fairness or not? To address these issues the researcher will conduct a comparative study of 'United Kingdom', 'United States' and 'India' to trace the origin and evolution of principle of natural justice.

Research Objectives

1. To evaluate whether the principle of natural justice is followed uniformly in same sense in UK, US and India or not.
2. To conduct a comparative analysis of the procedural approach of UK, US and India if there is any discrepancy under their principle of natural justice.
3. To examine the historical origin of the principle of natural justice and its evolution in UK, US and India.
4. To determine the role of administrative and judicial bodies in expanding the scope of principle of natural justice.

Literature Review

The article title 'International Norms on Fair Hearing: The of US, UK and India' 6th July, 2021, Harsh Sethi, Modern Diplomacy, Independent European Media Ltd. Bulgaria¹, aims to discuss the concept of fair hearing which is one of the fundamental rules of '*natural justice*' under the '*administrative law*'. The paper considers that the core element of fair hearing as studied by individual is not limited to right to free and fair hearing whereas it also encompasses the right to independent tribunal and right to present oral hearing. Furthermore, the paper at its core addresses the debated issue i.e., whether the '*principles of natural justice*' are uniformly followed in UK, US and India or not. To scrutinize the issue the paper traces the origin and evolution of the right of fair hearing. Identifies the different elements and explores the judicial pronouncement & statutory norms passed by legislative authorities on the right of fair hearing in all the three countries.

Origin And Evolution

The '*principle of natural justice*' is considered as the basic rule of fairness meaning thereby that if any adjudicatory body decides upon the rights of any person i.e., either natural person or artificial person, they should observe the '*principle of natural justice*'. It is highlighted under the given sub-head that '*natural justice*' as discussed hereinbefore was first followed in common law countries *viz-a-vis* '*United Kingdom, Australia, India and Canada*' etc. The judicial authorities therein developed a fundamental rule that if any adjudicatory body is deciding upon the rights of any person which would affect the civil status of the person in question, then under those circumstances they should '*act judicially*' by observing the '*rule against biasness*' which means that the adjudicatory authority should not hold any interest in the matter. And, secondly the '*right to a fair hearing*' which means that the person whose rights will be affected by the decision of the adjudicatory authority he/she should be given fair chance to present their side of the contention. However, if a comparison between '*common law countries*' and '*European countries*' is put together it is observed that '*European countries*' primarily stress on examining the substantive/non-procedural questions such as whether the adjudicating authority have appropriate jurisdiction or power to decide in the matter? Or whether the decision pronounced by the adjudicatory authority holds correct legal reasoning or not? Furthermore, if the ideology of 'Unites States' is scrutinized on the rule of fairness the apex Court therein have developed a much broader aspect wherein the court treats the rule not just as a legal technicality, however, as fundamental rule of

¹ <https://moderndiplomacy.eu/2021/07/06/international-norms-on-fair-hearing-the-case-of-us-uk-and-india/>

calling it *'the essence of the scheme of ordered liberty'*²i.e., if the liberty of any person is to be secured then the *'principle of natural justice'* is to be followed.

To scrutinize more over the difference in origin between the 'United States', 'United Kingdom' (i.e., European Country) and 'India' (i.e., Common Law Country) it can be inferred from the legal writings of academicians that 'United States of America' revolves around the concept of *'Due Process'* which essentially means that the government should not only strictly follow the procedure, however, it should validate whether the procedure is fair and justified as well. The apex court in *Crowell v Benson*³ and *Ohio Valley Water Co*⁴ validate the principle of *'due process'* as stated hereinbefore with an additional clarification that the principle places a restriction on the power of the administrative bodies. In contrast, if the origin of *'natural justice'* in 'United Kingdom' is examined it can be observed under article: 6 of the *'Human Right Act 1988'*⁵ that it prescribes *'right to a fair trial'*⁶. The said provision provides that every individual whose civil rights are determined or any person who is accused of any 'criminal charge', he/she be entitled for fair and public hearing within a justified time by a neutral/impartial adjudicatory authority established by law. Furthermore, the provision directs the authority to pronounce the judgement publicly however media or press houses could be excluded as per the discretion of the judge. In addition, the provision provides that the accused in a criminal trial would be considered innocent until he/she is proven guilty for the offence. And, before conducting his trial he shall be informed of the charges in the language which he/she understands. Reasonable time should be provided to the accused to prepare his defence. And, legal assistance of his choice should be provided to him.

If the root of *'natural justice'* under the 'Indian administrative law' is delved into the 'Indian constitution' under article: 14 provides 'right to equality' (i.e., right of equal representation and no interest in matter by adjudicatory authority) while deciding the matter in issue. And, article: 21 provides that 'life and personal liberty' of any individual cannot be taken away until or unless the procedure reflecting the essence of *'natural justice'* in statutes are not followed. In essence, India follows the principle of *'Audi Alteram Partem'* which means that hear both side of the parties. And, *'Nemo Judex in Causa Sua'* which means that no one would be judge in its own case. Furthermore, if the rights under principle of fair hearing in India is delved into then under those circumstances several rights such as right to notice, present your case, evidence and reasoned decision is recognised by the judicial precedent.

Following the analyses of three countries of different jurisdiction it can be conferred that each of them has different origin for the *'principle of natural justice'*. For instance, the 'United Kingdom and India' do not hold the concept of *'due process'*. But nevertheless, the principle holds universal applicability.

Elements Of Fair Hearing In Us, Uk & India

In the previous sub-head different origin of *'natural justice'* in the given three jurisdictions of *'United State, United Kingdom and India'* was discussed in detail. However, it lacks to explain the practical working of the principle in any proceeding. The given sub-head specifies that in 'United States' the principle of fairness is not limited to representing your contention however, it also means each party should have the opportunity to know the contention of the other side as well so that either side of the party can prepare their defence. In addition, if any claim is contested against the government by any individual even then the party who has claimed against the government has the right before the final decision is passed by the adjudicatory authority to be informed of the proposal of the government and hear on them. However, the right for face-to-face hearing in any proceeding conducted before any adjudicatory authority in 'United States' is not considered as fundamental rights whereas it is subject

²T. Koopmans, Natural Justice Rediviva? The Right to a Fair Hearing in European Law, Volume 39 Special Issue S1: Law and Reality, Netherlands International Law Review, (1992) 39(1), <https://www.cambridge.org/core/journals/netherlands-international-law-review/article/abs/natural-justice-rediviva-the-right-to-a-fair-hearing-in-european-law/E651045F5FF928996A4EBFEA6D21A20D>

³Crowell v Benson, 285 U.S. 22 (1932)

⁴ Ohio Bell Tel. Co v Public UtisCommn, 301 U.S. 292 (1937)

⁵Human Right Act 1988 | Chapter: 42

⁶European Convention on Human Right, Section I Rights and Freedoms, Article 6 Right to a fair trial

to the discretion of the court. And, even the 'fifth U.S constitutional act' does not guarantee trial type hearing in matters wherein the government interfere in the private rights. All these elements reflect that transparency while conducting proceeding is missing in 'United States'.

The practical working of the norm of fair hearing in 'United Kingdom' can largely be interpreted by judgement of *Ridge v Baldwin*⁷ wherein the court provided the ideal of 'legitimate expectation' which means that the if the government has conducted themselves or promised to conduct themselves in certain way then under those circumstances the parties in dispute can have the right to expect that they will conduct in the same manner unless or until there are reasonably justified reasons for not doing so. Hence, the adjudicatory authority has the duty to analyse the past actions for their agency. Besides this precedent the 'United Kingdom' also upholds the principles set out in 'European Convention on Human Rights' as discussed under the head 'Origin and Evolution'. The convention provides for three important standards i.e., respectful treatment which ensures the dignity of individual; second is equality of arms which ensures each side of the party is given equal preference without any disadvantage; and third is the principle of adversarial which means each side of the party in dispute has the right to inspect and argue on evidence presented in court by the other side.

The 'Indian' perspective on the functioning of fair hearing is not defined anywhere in the statute as defined in 'United Kingdom and Unites States'. However, the apex court has clearly stated minimum level of fair procedure has to be followed and no adjudicatory authority can ignore such principle. The apex court in *Maneka Gandhi v Union of India*⁸ has laid down certain norms which each adjudicatory authority has to follow i.e., the authority should be free from **biasness**, each party should be given **fair chance for presenting** their case and they must **give reason** for the decision.

Following the investigation on the functioning of the principle of 'natural justice' in all the three countries as discussed hereinabove it can be concluded all share object however the mechanism to achieve the objective is different from each other. In 'United Kingdom' natural justice is followed in every matter in issue but such principle can be curtailed when issue involves national security. In contrast, the 'United States' relies on the principle of 'due process', which ensures that 'life, liberty and property' of every individual is safeguarded. However, the drawback in 'United States' is that in some matters where government take action against the private of individual under those circumstance the principle of fairness is not followed in true sense. In 'India', any such exemption as discussed in 'United States' is not applicable and if any order/judgement/decreed is passed which violates the principle of natural justice then under that circumstance it can be declared void if the affected party wishes to do so. The article title 'How Just is Natural Justice: Comparative analysis between US and UK'⁹ aims to discuss the scope of natural justice in 'United Kingdom' and 'United States of America'. The first sub-head demonstrate the scope of 'natural justice' in 'United Kingdom'. It is argued under the head that the principle of fair administrative procedure is not enshrined under any of the statutory provision whereas the said procedures are set forth by the courts.¹⁰ 'Chief Justice Erle', 'Justice. William' and 'Justice Byles' observed while deciding the constitutionality of the 1855 act which provides that for constructing any building in 'London' a seven days prior notice has to be given to the local boards. And, if they fail to do so the board has sufficient authority to demolish the building. The court held that despite the statue empowers the boards to demolish the building without hearing the contention of the aggrieved party still the concerned party should be heard upon.¹¹ It is further observed by courts that 'principle of natural justice' is exercised under every situation wherein the statutory provision allows administrative authorities to exercise their discretionary power. In addition, the court

⁷Ridge v Baldwin [1964] AC 40

⁸Maneka Gandhi v Union of India 1978 AIR 597

⁹ Legal Desire International Journal of Law, 19th Edition (ISSN: 2347-3525) | available at <https://legaldesire.com/how-just-is-natural-justice-comparative-analysis-between-us-and-uk/>

¹⁰Volume 59, Number 1 (1981) Paul Jackson & John Alder, Book Review: Natural Justice, Canadian Bar Review

¹¹Copper v Wand Worth Board of Works, (1863) 14 CBNS 180

highlights that if any decision is taken without following the fair procedure guaranteed under 'natural justice' it would be considered void ab initio. In *Grimshaw v Dhunbar*,¹² 'Lord Justice Jenkins' also highlighted that every party to the matter is entitled to present his contentions, argue and cross-examine the witnesses of the opposite counsel. And, if by any circumstance the justice system fails to observe the factors discussed hereinbefore it would allow the party who has missed to uphold the principle. Moreover, 'Justice Jenkins' highlights that any administrative measure taken by any authority must observe the 'principle of natural justice' before exercising their discretionary powers.

The 'Donoughmore Report' of 1932 put force on observing the principle of '*Audi Alteram Partem*' guaranteed under 'natural justice'. The report suggests that every person who is accused of any charge he/she should be aware of the charges which is levied against him. Moreover, the accused should be given sufficient time for preparing his defence and present it before the concerned adjudicatory authority. Moreover, the committee highlighted that even though there is no prescribed written procedure which needs to be followed to achieve the fundamental principle of fairness, still every administrative body including the parliament while hearing appeal from 'House of Lords' are advised to observe the principle. It is further directed by the committee in its report even though the legislature fails to adopt the 'principle of natural justice' in any particular law, still the courts and every administrative body while deciding upon the right of any individual has to follow the principle in its entirety.

Time and again it has been reaffirmed through Judicial Precedents and the reports published by committees that observing 'principle of natural justice' is an important procedure for achieving the objective of fairness. However, 'house of lords' in the judgement of *Ridge v Baldwin*¹³ have clarified that even though the scope of 'natural justice' is extended from judicial authorities to administrative and tribunal bodies. Different standards may be determined for deciding the matter fairly meaning thereby if there are any urgent actions involving public health or security then under those circumstance the strict procedure of 'natural justice' may be waived off and decision may be determined without hearing the contentions of both the parties.

The second sub-head discuss the scope of 'natural Justice' in 'United States of America'. The sub-head starts its submission by a statement '*no one should be deprived of life, liberty or property without a legal process*', meaning thereby that if any administrative, judicial or *quasi-judicial* body is determining upon the 'life, liberty and property' of any person then procedures laid down under the statutory provision shall be strictly followed.¹⁴ The statement clearly upholds the doctrine of '*Rule of Law*'. However, the apex court of the 'United States of America' in *Lawrence v Texas*¹⁵ prescribed that independently upholding the doctrine of 'rule of law' will not achieve the objective of fairness. However, complete fairness would only be achieved when the principle of '*due process*' is followed wherein the adjudicatory authority will not directly follow the procedure laid down in the statute. But the authority will determine whether the procedure laid in the statute is fair and just for deciding the matter. But nonetheless the apex court in *London v City and Country of Denver*¹⁶ and *Bi-Metallic Investment Co. v State Board of Equalization of Colorado*¹⁷ has directed that every administrative body is not bound by the principle of '*due process*' when the matter involves small number of people.

Analysis

After the brief examination conducted through the literature review as discussed hereinbefore it could be divulged out that from the combined reading of the justice system that are followed in all the three countries i.e., 'United Kingdom', 'United States' and 'India' that unlike having the written 'substantive and procedural' laws for the protection of the rights of person the core 'principle of natural justice' for

¹²Grimshaw v Dhunbar, [1953] 1 QB 408

¹³ (1963) 1 All ER 66

¹⁴ Stuart v Palmar, (74) N. Y. 183, 189

¹⁵ (2003) 123 S.Ct.2472

¹⁶210 US 373

¹⁷239 US 441

achieving fairness during proceeding is not clearly defined in the written statute. 'United Kingdom' derives the validity of 'natural justice' through the doctrine of *'legitimate expectation'* meaning thereby if any adjudicatory authority has prior observed the principles of fairness, then under those circumstance the parties to the dispute can expect that their matter would be decided as per the principle and not otherwise. In 'United States' as well the concept of 'natural justice' was introduced through judicial pronouncement wherein the court has clearly directed that any administrative or adjudicatory bodies who is deciding upon the right of person should observe the 'principle of natural justice', failure of which would make the decision void. However, after the 'fifth constitutional amendment' of the 'United States' the **'Due Process Clause'** was introduced which prescribed that 'life, liberty and property' of any person would not be taken away unless a fair and justified procedure is followed during the course of the proceeding. Such, 'due process clause' was introduced under the Indian justice system through the judgement of *'Maneka Ghandhi v Union of India'*¹⁸ wherein the apex court has interpreted Article: 21¹⁹ and held that clause (1) *'No person shall be deprived of his life or personal liberty except according to procedure established by law'* does not mean that every procedure laid down legislative authority would be valid and followed even though the procedure proves to be arbitrary and against the 'principle of natural justice'. The court clarified that the procedure needs to be justified and fair.

Furthermore, if an analysis of the Indian justice system is administered it can be determined that even India does not hold any written statutory law which explicitly outline the *'principle of natural justice'* and directs government agencies to strictly follow and fairly decide upon the rights of individuals. It is only the Indian constitution under Article: 311²⁰ which provide a special protection of right to hearing is given to civil servant before they are removed/dissolved or demoted from the job. And, the Constitutional courts which time and again through different judicial pronouncement i.e., *'A.K Kraipak v Union of India'*²¹ the apex court has firmly established for the application of 'natural justice' is every trial, proceeding and recruitment process, etc which affect the social and civil status of any person in the society. Further, the apex court reaffirmed in *'Narinder Singh Arora v State (Govt of NCT of Delhi)*²² that any authority which is trying a person before them should objectively be fair and free from every form of biasness.

From the brief examination of the justice system of all the three countries it has been revealed that 'natural justice' is a globally accepted principle and it is only the different name of the doctrine i.e., 'legitimate expectation in United Kingdom', 'due process in United States' and 'Principle of Natural Justice in India' which makes the different rest the core underlying objective of achieving fairness is common in every country. However, if a brief analyses of reasonable exception of the principle is determined among the three countries it can be inferred under the article: 311²³ of the constitution of India that protection of hearing is given only to civil servants and not to any ordinary citizens or any foreign national. There is no reasonable classifying why ordinary person should not have protection of law for equal hearing rights. Likewise, if the doctrine of *'legitimate expectation'* which is followed in United Kingdom is interpreted it can be outlined that the sole discretion of observing principle of fairness in any particular matter is on the adjudicatory or administrative body. Moreover, the 'fifth constitutional amendment' of the 'United States' allows adjudicatory authorities to waive of the principle of fairness if the claim is made against the government authorities. Under all circumstance as discussed herein before no reasonable classification can be made out which justified the non-observance of 'natural justice'. It is only when there is a national security or the interest of the public at large is involved the principle of natural justice should be allowed to be waived and not otherwise.

¹⁸Maneka Ghandhi v Union of India, 1978 AIR 597

¹⁹Article 21 of the Constitution of India, 1950

²⁰Article 311 of the Constitution of India, 1950

²¹AIR 1970 SC 150

²²AIR 2012 SC 1642

²³Article 311 of the Constitution of India, 1950

Conclusion: The comparative analysis of the justice system that are being followed in ‘United Kingdom’, ‘United States’ and ‘India’ reveals that while the statutory origin and the doctrines on fairness different from each other the underlying objective for securing justice against the arbitrary actions by adjudicatory or administrative bodies is guaranteed by different judicial pronouncements and constitutional provisions. Further, the evolution of the doctrine that are being followed in respective countries i.e., ‘legitimate expectation in United Kingdom’, ‘due process in United States’ and ‘natural justice in Indian’ jurisprudence have demonstrated a global ambition towards prioritizing procedural fairness over statutory adherence while deciding upon the right of persons. However, even though the study identifies a similar underlying objective of securing fairness there is significant different in their applicability. This may be because of absence of written statutory provision and wide discretionary powers given to the agencies. In ‘United Kingdom’ application of the principle of fairness is on the basis of ‘legitimate expectation’ meaning thereby the court choose to waive of the principle in any proceeding then they are allowed to do so without any sanction. Furthermore, the agency is also allowed to curtail the principle when there is any national security. Likewise, the ‘United States’ also exhibits that if private individual claims any action against government, then the principle of fairness may not be followed. Furthermore, in ‘India’ even after the wide interpretation of the apex court of India in ‘Maneka Ghandhi’ judgement specific constitutional provision guarantees right of ‘fair hearing’ primarily to civil servants only.

Ultimately, the study can deduce that for ‘natural justice’ to truly serve as the essence of fair procedure, the countries must standardize the applicability of the principle uniformly in every proceeding. Only the national security or public interest at large may be the ground of reasonable classification to narrow down the applicability.

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