Nature and Evolution of Rule Against Bias Under Indian Administrative Law Jurisprudence

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Abstract:

This paper seeks to understand the modern jurisprudence of natural justice under Indian administrative law whilst examining the rule against Bias and its evolution in the Indian context through decided cases. Further it aims to analyse the Indian courts approach/position towards dealing with apparent bias through the application of the 'real-likelihood' or 'reasonable-suspicion' test along with the exception of the 'Doctrine of Necessity' and examine the evolution of the necessity doctrine in the modern Indian judicial discourse with the establishment of the 'Doctrine of Absolute Necessity'. Through this paper I would further attempt to highlight the Watershed Doctrine i.e. the intertwining of administrative law and constitutional Law in the application of natural justice principles

Introduction:

The doctrine of natural justice embarks a foundational structure under the ambit of Administrative Law Jurisprudence derived from the natural law theory and over the years evolved as a common law principle globally accepted as the very embodiment of the justice system. Sir Mathew Hale in 1676 set out 18 tenets for the administration of justice as the chief justice of the King's Bench, the sixth tenet read as "That I suffer not myself to be possessed with any judgment at all till the whole business of both parties be heard."[1] The two-fundamental principle of natural justice can be shaped from this dictum as the Rule against bias "*nemo judex in causa sua*" and the right to fair hearing/ right to be heard "audi alteram partem". The dictums of natural justice as a mandate is applicable to all tribunals and administrative authorities in enforcing quasi-judicial decisions. Lord Hewart, The then chief justice of the king's bench in a Landmark judgement held "justice should not only be done but should manifestly and undoubtedly be seen to be done" [2] and the prominently acclaimed dictum continuous to have astounding application on foundational

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[1] 1756. The Magazine of Magazines: Compiled from Original Pieces, With Extracts from The Most Celebrated Books, And Periodical Compositions, Published in Europe... The Whole Forming A Complete Literary and Historical Account of That Period..., Volume 12. 12th ed. Europe: Andrew Welsh, p.548.

[2] R v Sussex Justices, ex parte McCarthy ([1924] 1 KB 256, [1923] All ER Rep 233) [1924] (High Court of Justice).

structure of administrative law pertaining to administrative/tribunal adjudications even after almost a century since the existence of the dictum.

Rule Against Bias: Fundamental Tests- 'Real-Likelihood 'Test & 'Reasonable Suspicion' Test

The principles of natural justice come under the ambit of common law principles thus the discourse of Indian courts are partially similar to that of the UK courts but however the pattern of tests for apparent bias has been dissimilar as Indian courts have emphasized on the use of 'Real-Likelihood' test in contrast to the 'Reasonable-Suspicion' test adopted in the UK. The 'real-likelihood' test delves into the matter through evaluation of facts of the matter from the perspective of the courts analyzation on whether this would indeed lead to a real likelihood of bias thus looking for existence of probability of bias rather than the possibility of it. The court engages by assessing the situation from its eyes instead of the public perception of the matter.

The courts in this sense have also undertook to explain what free/absence of bias means i.e. there should be absence of conscious or unconscious prejudice to either of the parties as laid down in Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transport Corporation and others [AIR 1959 SC 308] [3]. In R v. Inner West London Coroner ex. p. Dallagio Lord Bingham MR held : "(If) despite the appearance of bias the court is able to examine all the relevant material and satisfy itself that there was no danger of the alleged bias having in fact caused injustice, the impugned decision will be allowed to stand"[4], the same principle translates into the possibility test. The other test of apparent bias is the "reasonable suspicion" test which looks into the public perception of the facts of the case to ascertain whether there exists any probability of bias therefore imposing a greater emphasize on burden as it undertakes to visualize the matter under the perception of a reasonable person and this rule is derived from Lord Hewart CJ dictum that "Justice should not only be done but should manifestly and undoubtedly seem to be done". Either tests set out a specific purpose while the former ensures Efficiency in administration of justice the latter sets to instil greater public confidence in the justice delivery system.

[3] Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transport Corporation and others [AIR 1959 SC 308] [1959] (Supreme Court).
[4] Regina V Inner West London Coroner ex parte Dallagio, And ex parte Lockwood Croft: CA 16 JUN 1994 [1994] (Court of Appeal).

The European Convention on Human Rights adopted by the UK in 1950 has resulted in the using of the 'Fair-Minded Observer' test as postulated by Lord Bingham that "Public perception of the possibility of unconscious bias is the key". [5][6]

The two tests are vastly dissimilar to each other in pertinence to the level of burden imposed as well as the perspective as the probability test uses the courts knowledge of legislation interpretation and statutes as compared to the public perception, Bias is more difficult to establish in the former case and thus even if bias exists in this case the decision cannot be certainly be made void unless there exists evidence pointing that the bias played an overwhelming rule in the decision making process as the other tests would ensure only decisions/decision-makers free from any bias would stand the test of natural justice.

Indian Judicial Discourse of The Natural Justice Principles

In India the principles of Natural Justice as well as its term and its application to administrative adjudications have been debated since Independence and continuous till date, however the Indian courts over the past decades have finely refined natural justice principles through several judgements including certain landmark judgements which eventually lead to these principles being enshrined under the constitution and eventually imposing a greater burden on quasi-judicial bodies and tribunals adjudicating administrative matters. In State of Orissa Vs. Binapani Dei & Ors the distinction between quasi-judicial and administrative decisions was mitigated and held that even an administrative order/decision in matters involving civil consequences was mandated to ensure adherence of principles on natural justice[7], Consequently the term 'Civil Consequences' was explained in In Canara Bank Vs. V.K. Awasthy by the supreme court as "everything that affects a citizen in his civil life"[8].

In the landmark Supreme Court judgement of A.K. Kraipak & Ors. Vs. Union of India & Ors it was postulated that the aim of natural justice principles is to secure justice or in other words prevent the miscarriage of justice and further held that these rules do not supplant the law but rather supplement it to ensure the administration of justice. Similarly the Supreme Court has held that natural justice rules is not a general rule of universal application thereby respecting and

[5] Chatterji, A. (1968). NATURAL JUSTICE AND REASONED DECISIONS. Journal of the Indian Law Institute, 10(2), 241-258., from www.jstor.org/stable/43949992.
[6] Lawal V Northern Spirit Limited: [2004] 1 All ER 187 [2004] (House of Lords). Also, see Re Medicaments [2001] 1 WLR 700.
[7] State Of Orissa vs Dr. (Miss) Binapani Dei & Ors 1967 AIR 1269, 1967 SCR (2) 625 [1967] (Supreme Court).
[8] Canara Bank vs V.K. Awasthy on 31 March, 2005 [Appeal (civil) 2300 of 2005] [2005] (Supreme Court).

ensuring the legislative mandate.[9] Professor H.W.R Wade states that quasi-judicial function is an administrative function which is subjective to judicial procedure and norms therefore adhering to natural justice rules, his reasoning is in line with interpretation undertaken by the supreme court in its decisions over the years.[10] The debate of application of natural justice rules to administrative decisions was put to end by a landmark seven-judge bench in Maneka Gandhi v. Union of India and held that manner of exercise of power and its impact on the rights of the person affected would have to be in conformity with natural justice doctrine.[11]

Critical Evaluation of Indian Courts Adaptation of the "Real-likelihood" Test & Solution for A Reasonable Alternative & Flexible Approach Mechanism:

The principles of natural justice have been synonyms with fairness and flexibility and a rigid approach of dealing with the matters of bias would ultimately fail to be fruitful due to its complex and ever evolving nature. The courts in our country needs a modus operandi that enables a system of classification and diversification of a defined class of cases as those dealt by the courts, quasi-judicial proceedings and tribunal adjudication should favour the reasonable suspicion test which enhances public perception of belief in the system of justice and similarly administrative , ministerial and departmental enquiries and decisions favouring the real likelihood test results in fruits of efficiency which is in imminent requirement in India. Similarly, the "audi alteram partem" rule is already ensured by the courts in its proceedings and the right to fair hearing has also become a dictum in administrative, ministerial decisions.

A flexible approach ensures that the courts have the option to choose which approach fairness or efficiency predominates depending on the decision-making adjudicatory body as well as the seriousness of the consequences of the decision as well as statutory guidelines governing it. I am of the opinion that the reasonable suspicion test can be entertained in administrative and policy decisions as this enhances the efficiency which is of utmost importance to policy and governance and the assessment of the bias should be given to the hands of the court instead of the unaware general public while on the other hand judicial proceeding , arbitral tribunals and other tribunal adjudication must lean towards the real likelihood test due to the importance of public perception

[9] A. K. Kraipak & Ors. Etc vs Union of India & Ors on 29 April, 1969 [1969] (Supreme Court). See Also, M/S Sahara India (Firm), Lucknow v/s Commissioner Of Income Tax, Central-I & Another[CIVIL APPEAL NO. 2783 OF 2008 Arising out of S.L.P. (C) No.20209 of 2006] [2008] And Automotive Tyre Manufacturers Association v/s The Designated Authority & Others[CIVIL APPEAL NO.949 OF 2006 WITH CIVIL APPEAL NO.8012 of 2010 & CIVIL APPEAL NO.2007 OF 2006 & CIVIL APPEAL NO.2115 OF 2006] [2007].
[10] Wade, H. and Forsyth, C., 2004. Administrative Law. Oxford: Oxford University Press.
[11] Maneka Gandhi v. Union of India, (1978) 2 S.C.R. 621, ('78) A.S.C. 597 [1978] (Supreme Court).

in administration of justice and the impact on the citizens life and livelihood a less burden of proof is placed, ultimately efficiency is not the goal rather it's the public belief in the justice system , negatively put to prevent miscarriage of justice. Indian courts have certainly used the real likelihood test whenever a matter relating to bias is discussed but however this approach is unambiguous and as suggested earlier a more considerate and a flexible approach needs to be resolved on case to case basis depending on the nature, civil consequence of the subject and the statutory framework involved.[12]

Evolution of the "Doctrine of Necessity" In India, An Exception to The Rule Against Bias

The rule against bias as stated by the supreme court is not a universal application rule and comes with certain exceptions such as the Doctrine of Necessity which was articulated in Bracton's Maxim 'that which is otherwise not lawful is made lawful by necessity', The Indian courts in several judgements have highlighted the doctrine rather impliedly than expressly in Gullapali Nageshwar Rao v State of Andhra Pradesh where the chief minister heard fresh objections and rejected the contention and went ahead with the policy , the court held that it was in the power of the chief minister to do so and the fact that he was also the transport minister did not change the equation as if not for him nobody can make the decision thus bringing in the necessity doctrine[13] , this can be supported by professor

Wade statement that "Ministerial and Departmental policy cannot be regarded as a disqualifying bias"[14]. The court in Institute of Chartered Accountants v. L.K. Ratna[15] stated that when there is no express compulsion or mere absence of statutory requirement for operation of necessity principle then the doctrine would simply cease to exist. Another landmark case implored the doctrine in Ashok Kumar Yadav v State of Haryana where a member of Haryana state public service commission selection committee interviewed a relative and personal bias was substantially established but the court was of the opinion that reasonable likelihood test would be applicable to show the existence of official bias but however the power of the selection committee was

[12] Rajasingham, S., 2007. REFORMING THE RULE AGAINST BIAS IN ADMINISTRATIVE LAW. [online] Docs.manupatra.in. Available at: http://docs.manupatra.in/newsline/articles/Upload/39A179C2-ECA3-45CD-ADE1-68A7F2EDBC5B.pdf.
[13] Ibid. [AIR 1959 SC 308] [1959].
[14] Ibid.
[15] Institute of Chartered Accountants of India v/s L. K. Ratna and Others [Civil Appeals Nos. 1911-12 of 1980] [1986] (Supreme Court).

postulated by Article 316 of the constitution , hence ruled expressly that the doctrine of necessity would stand the test of rule against bias and held the committee decision valid .[16]

Similarly in Tata Cellular v Union of India the Director general of Telecommunications decision of selection of his son's tender was upheld as there would be no substitute/replacement of the post and without whose existence the very process of evaluation and selection would fail and rejected the contention of personal/ official bias by virtue of liberal interpretation of the necessity doctrine[17], However the court in Election Commission of India v. Dr. Subramaniam Swamy expanded the doctrine of necessity by bringing within its ambit the 'doctrine of absolute necessity' whereby the same can be instituted in situations of 'absolute 'necessity.[18]

Analysis of The Intertwining of Administrative Law Principles & Constitutional Law- Watershed Doctrine:

Administrative law has evolved over the years and has become globally recognized as a separate and distinct segment of legal jurisprudence but the operation of administrative law principles in our country has closely been intertwined with constitutional law as several provisions of the former can be traced to the constitution. The Indian constitution has remarkable characteristics that enable several administrative functions a constitutional status. The Indian constitution is very complex and distinct from other countries as it not only provides a textbook for laws, rights and duties of the citizen but rather mandates the limitation and extent of administrative characteristic operating in our country , thus this would lead one to the argument that the two branches of the law are not only interlinked but undoubtedly supplement and complement each other i.e. the watershed doctrine, summarising the same in the words of Keith "It is logically impossible to distinguish administrative from constitutional law and all attempts to do so are artificial."[19]

Article 13 of the constitution brings under its ambit administrative/executive order, regulation, rules and bye-laws or anything 'having the force of law' by defining the term "law". Leaning back to the natural justice arguments it is a paradox that natural justice principles are plainly absent and find no mention in the constitution but it is by interpretation of the fundamental rights which have

[16] Hasan, S. (1992). SUPREME COURT AND APPOINTMENT'S TO THE JUDICIAL SERVICE: A NEED FOR JUDICIAL RETHINKING. Journal of the Indian Law Institute, 34(1), 125-132 From www.jstor.org/stable/43951412

[17] Tata Cellular v/s Union of India [Civil Appeal Nos. 4947-50 of 1994 with Nos. 4951 and 4952 of 1994] [1984] (Supreme Court).

[18] Election Commission of India v/s Subramanian Swamy C.W.P. No. 504 (NC) [1996] (Supreme Court).

[19] Alder, J. and Syrett, K., n.d. Constitutional and Administrative Law. For reference to watershed doctrine, intertwining and interlinking of Admin law and Constitutional Law.

impliedly given a constitutional status to these principles that includes Art 14,21,22 and further the remedies under Art 32,226 and 136 for infringement that includes natural justice. In Delhi Transport Corporation v. DTC Mazdoor Union, the Apex court while analysing the "audi alteram partem" maxim held that it enables the equality provision under article 14 which was further opined in the landmark judgement of Maneka Gandhi v. Union of India that deprivation of right to fair hearing and other natural justice rules would come under the ambit of Article 14 and in the same case while exploring Art 21 stated that "procedure established by law" "cannot be arbitrary, unfair or unreasonable" as it effects the civil liberties of a citizen having 'civil consequences". Further protection includes the constitutional remedies, exclusively that of writ of certiorari, Mandamus and prohibition that can be filed when decisions of administrative bodies are affected by the rule against bias as held in U.P. Warehousing Corporation V. Vijay Narain. Article 311 also inculcates natural justice principles with regard to termination of employment of persons employed in civil bodies of union/state. [20][21]

Conclusion:

In countries like ours it is certainly more desirable to have the 'probability' test over the 'possibility' test as the administrative process and overall efficiency is improved and progressed as our country is already facing dire bureaucratic red-tapeism and low competence of governmental departments, the very aim of natural justice principles is to secure justice or in other words rather prevent the miscarriage of justice and further held that these rules do not displace the law but rather enhances it to safeguard the administration of justice.[22]

To sum up the overall arguments, the doctrine of necessity has been rather used by the courts in our country in a very recurrent and periodic manner at times defeating the very purpose of what the necessity doctrine stands for and it is of imminent and pertinent need that the courts should exploit this doctrine only in a sporadic situation and thereby giving essence only to the "absolute necessity" doctrine as the administrative functions and policy in our country has not been of utmost efficiency and there is certainly a huge lack of public belief in the administrative system and governmental policy leaving behind room for red-tapesim of the bureaucratic structure coupled with the ever growing corruption in governance which has opaquely struck our country for several decades and therefore the supreme court needs to increase the burden of proof in

[20] Ibid.
[21] Choudhry, S., Khosla, M. and Mehta, P., n.d. The Oxford Handbook of The Indian Constitution.
[22] Ibid.

matters of administrative bias and resolving to solutions instead of falling back on doctrine of necessity as the same doctrine has shown signs of great potential to be counterproductive, Similar to the our countries administrative adjudications and decisions.

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