

PRINCIPLES OF NATURAL JUSTICE FOR PROCEDURAL FAIRNESS

Justice C.V. KARTHIKEYAN

Madras High Court

NJA

National Seminar on Constitutional and Administrative Law

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INDIAN CONSTITUTION AND PRINCIPLES OF NATURAL JUSTICE

- Although the Indian Constitution does not use the term ‘Natural Justice’ anywhere, the following parts of the Constitution with their respective expressions lay the idea of Natural Justice.
 - **Preamble:** ‘Social, Economic and Political’ justice, liberty of belief, thought, worship, and equality of opportunity and status.
 - **Article 14:** Equal protection of the law for all citizens of India and equality before law.
 - **Article 19:** Protection of rights vis-à-vis reasonable restrictions on the exercise of such rights.
 - **Article 21:** Right to liberty and life.
 - **Article 22:** Provision of fair hearing for an arrested person.
 - **Article 39-A:** Free legal services for disabled and indigent people.
 - **Article 311:** Constitutional protection for civil servants.
 - **Article 32, 136, and 226:** Constitutional remedies for violations of fundamental rights.

There are mainly two Principles of Natural Justice.

‘Nemo iudex in causa sua’. No one should be made a judge in his own cause, and the rule against bias.

‘Audi alteram partem’ means to hear the other party, or, no one should be condemned unheard.

PRINCIPLES OF NATURAL JUSTICE

WEDNESBURY PRINCIPLE

“Irrationality” is applicable in a decision which is outrageous in its defiance of either logic, or morals, that no sensible person could have arrived at that conclusion on proper application of mind

The order to impound a passport could be declared invalid under Article 19(1)(a) and (g) if it was so drastic in nature as to impose unreasonable restrictions on the individual's freedom covered by these two clauses.

**MANEKA GANDHI
VS
UNION OF INDIA
AIR 1978 SC 597**

The Judgment established a relationship between Articles 14, 19 and 21 of the Constitution (known as the ‘golden triangle’ or ‘trinity’).

It held that a ‘procedure’ under Article 21 of the Constitution cannot be arbitrary, unfair, oppressive or unreasonable.

DOCTRINE OF PROPORTIONALITY

The Doctrine is applicable in cases where rights are violated by administrative action more extreme than it should be to achieve the desired result – **One cannot use a cannon to shoot a sparrow.**

The court would not allow administration to use a sledgehammer to crack a nut where a paring knife would suffice.

Courts should analyse administrative objectives and procedures for making or reversing a decision.

**COIMBATORE
DISTRICT CENTRAL
COOPERATIVE BANK
VS
EMPLOYEES ASSOCIATION
(2007) 4 SCC 669**

RULE OF PRUDENCE

Prudence is defined as a reasonable standard of judgment, management, and conduct under the circumstances, based on what was known or should have been known at the time a decision was made or the action was completed. Prudence involves a duty of care to others.

TEST OF REASONABLENESS AND ARTICLE 14 OF CONSTITUTION

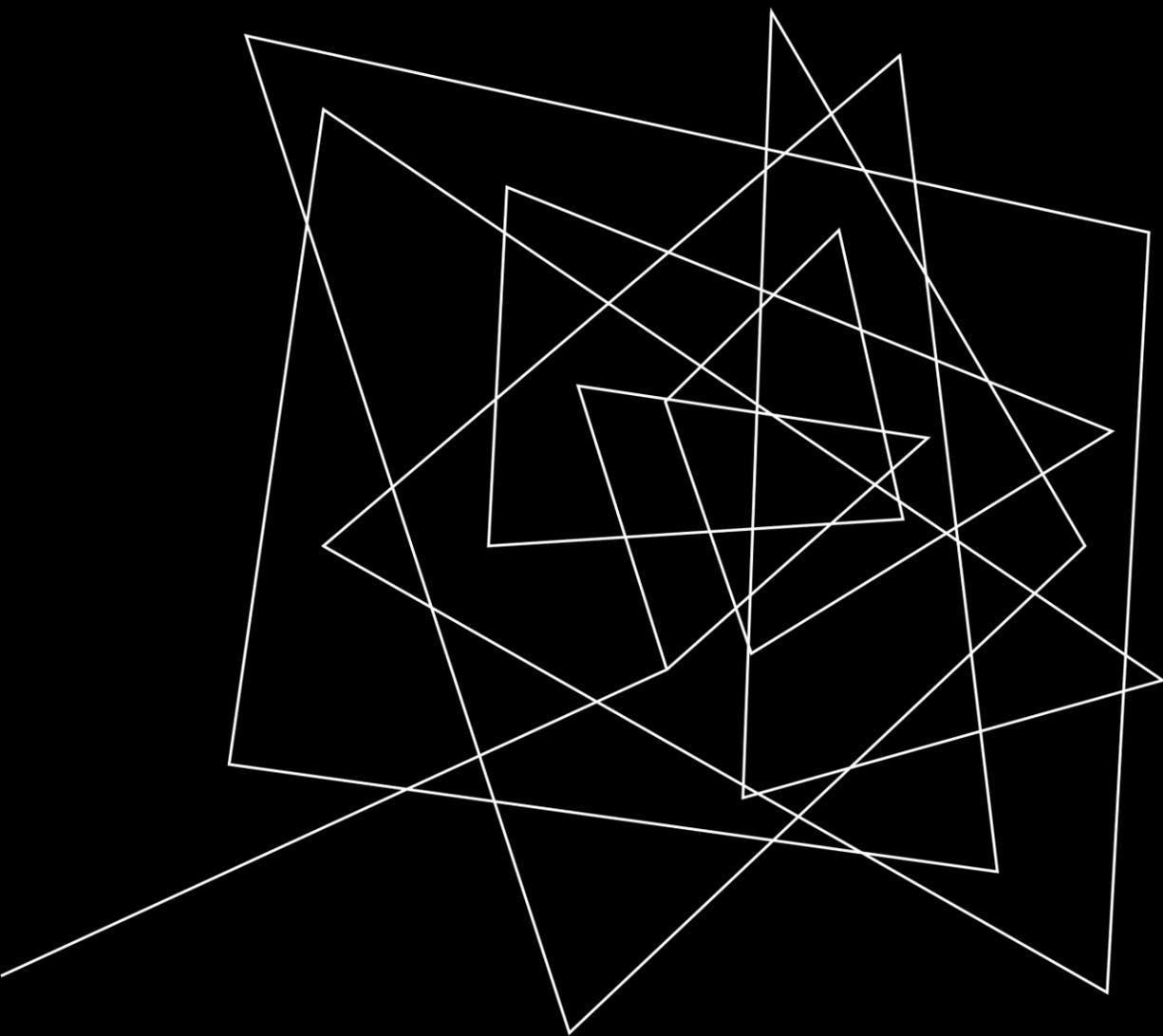
Article 14 embodies the idea of equality expressed in preamble. Article 14 declares that **‘the State shall not deny to any person equality before the law or equal protection of law within the territory of India.’**

Thus Article 14 uses the two expressions ***“equality before law”*** and ***“equal protection of law”***.

TEST OF REASONABLENESS AND ARTICLE 19 OF CONSTITUTION

The test of reasonableness shall be on the basis of the following grounds:

“The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time”.



JUDICIAL PRECEDENTS

**ALLAUDDIN MIAN
AND ORS SHARIF
MIAN AND ANR
VS
STATE OF BIHAR
(1989) 3 SCC 5**

A Judge should indicate the basis upon which he considers a sentence of a certain magnitude justified. If a Judge finds that he is unable to explain with reasonable accuracy the basis for selecting the higher of the two sentences, his choice should fail on the lower sentence.

The choice of the sentence has to be made after following the procedure set out in sub-section (2) of section 235 of the Code.

The requirement of hearing the accused is intended to satisfy the rule of natural justice. If the sentence is made without giving the accused an effective and real opportunity to place his antecedents, social and economic background, mitigating and extenuating circumstances, etc. before the Court, the Court's decision on the sentence would be vulnerable.

**GOVIND RAMJI
JADHAV
VS
STATE OF
MAHARASHTRA**

**(1990) 4 SCC
718**

In matters of enhancement of sentence **the Court should give the accused a reasonable opportunity of showing cause against such enhancement** as contemplated under the first proviso to Section 386 as well under Sub-Section (3) of Section 377 of the Code

The High Court had enhanced the sentence unmindful of the relevant provisions of the Code of Criminal Procedure and also the rules of natural justice and by over-stepping its jurisdiction adopted a leeway enhancing the sentence from 3 years to 7 years for the conviction under Section 201 IPC which exercise of powers in violation of the prescribed procedure, is impermissible for the reasons stated albeit.

**STATE OF PUNJAB
VS
V.K. KHANNA AND
ORS.
(2001) 2 SCC 330**

Whereas fairness is synonymous with reasonableness - bias stands included within the attributes and broader purview of the word 'malice' which in common acceptation means and implies 'spite' or 'ill will'.

The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained: If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefore would not arise.

**SANTOSH KUMAR
SATISHBUSHAN
BARIYAR
VS
STATE OF
MAHARASHTRA**

(2009) 6 SCC 498

Power of the Sessions Judge is independent of the provisions contained in Section 306 and he can pardon an approver after recording sufficient reasons for it.

For awarding death sentence, the Court, while applying the rarest of rare case doctrine, is duty bound to **equally consider both aggravating or mitigating circumstances and then arrive at the conclusion.**

**POONAM
VS
SUMIT TANWAR**

**(2010) 4 SCC
460**

In case, petitioner's counsel is not able to raise a factual or legal issue, though such a point may have a good merit, **the Court should not decide the same** as the opposite counsel does not "have a fair opportunity to answer the line of reasoning adopted".

Such a judgment may be violative of principles of natural justice.

**SIDDHARAM
SATLINGAPPA
MHETRE
VS
STATE OF
MAHARASHTRA
(2011) 1 SCC 694**

If a wise discretion is exercised by the concerned judge, after consideration of entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of.

The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the judges of the courts.

In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the court of Sessions or the High Court is always available.

**NARINDER SINGH
ARORA
VS
STATE
(GOVERNMENT OF
NCT, DELHI)**

(2012) 1 SCC 561

It is well settled law that a person who tries a cause should be able to deal with the matter placed before him objectively, fairly and impartially.

No one can act in a judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind or impartially.

The broad principle evolved by this Court is that a person, trying a cause, must not only act fairly but must be able to act above suspicion of unfairness and bias.

**RASIKLAL
MANICKCHAND
DHARIWAL AND ANR
VS
M.S.S. FOOD
PRODUCTS
(2012) 2 SCC 196**

“Hearing of the suit” as understood is not confined to oral hearing.

“Hearing of the suit” begins when the evidence in the suit begins and is concluded by the pronouncement of judgment.

CPC contemplates that at various stages of the hearing of the suit, the Judge may change or he may be prevented from concluding the trial and in that situation, the successor judge must proceed in the suit from the stage the predecessor Judge has left it.

**UNION OF INDIA
VS
SANDUR
MANGANESE**

(2012) 9 SCC 683

Principles of natural justice embody **the right of every person to represent his interest to court of justice** and pronouncing a judgment which adversely affects interest of the party to proceedings who was not given a chance to represent his/its case is unacceptable under principles of natural justice.

**MANOJ
SURYAVANSHI
VS
STATE OF
MAHARASHTRA

(2020) 4 SCC 451**

Now, so far as the capital punishment imposed by the learned Trial Court and confirmed by the High Court is concerned, it is the case on behalf of the appellant accused that as the learned Trial Court heard the accused on sentence the very same day on which the conviction was recorded and as such an error has been committed by the learned Trial Court and therefore it vitiates the award of sentence

Subsection (2) of Section 235 satisfies a dual purpose; it satisfies the rule of natural justice by affording to the accused an opportunity of being heard on the question of sentence and at the same time helps the court to choose the sentence to be awarded.

So, what is required to be considered is whether at the time of awarding of sentence, sufficient and proper opportunity has been given to the accused or not and when the capital punishment is awarded, whether the accused has been given the opportunity to point out the aggravating and mitigating circumstances or not?

**SATISH SAKHARAM
MANGLE AND ORS.
VS
STATE OF MAHARASHTRA
AND ANR**

(2020) 18 SCC 617

Without going into the merits of the matter, it was observed that the High Court was not right in finding fault with the officer for trying to expedite the hearing of the bail application.

For mere zest by judicial officer in taking up the bail application and expediting the hearing, no motive could be attributed to the judicial officer.

Merely because the officer expedited the hearing, it could not have been made a ground for transfer.

**SANKARAN
GOVINDAN
VS
LAKSHMI
BHARATHI AND
ORS.**

(1975) 3 SCC 351

The expression “Contrary to natural justice”, when applied to foreign judgments, merely relates to the alleged irregularities in procedure adopted by the adjudicating court and has nothing to do with the merits of the case.

If the proceedings are in accordance with the practice of the foreign court but that practice is not in accordance with natural justice, this court will not allow it to be concluded by them. In other words, **the courts are vigilant to see that the defendant had not been deprived of an opportunity to present his side of the case.**

The wholesome maxim *audi alteram partem* is deemed to be universal, not merely of domestic application, and therefore, the only question is whether the minors had an opportunity to contest the proceeding in the English court.

**NEW INDIA
ASSURANCE CO.
LTD
VS
NUSLI NEVILLE
WADIA

(2008) 3 SCC 279**

If the landlord being a State within the meaning of Article 12 of the Constitution of India is required to prove fairness and reasonableness on its part in initiating a proceeding, it is for it to show how its prayer meets the constitutional requirements of Article 14 of the Constitution of India.

For proper interpretation not only the basic principles of natural justice have to be borne in mind, but also principles of constitutionalism involved therein.

To interpret a statute in a reasonable manner, **the court must place itself in the chair of a reasonable legislator/author.**

So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act fulfilled; which in turn would lead the beneficiary under the statutory scheme to fulfill its constitutional obligations.

**IN RE
VS
MEHAR SINGH
SAINI, CHAIRMAN,
HPSC
(2010) 13 SCC 586**

A plain reading of the Rules clearly showed that no detailed procedure has been provided so far, as to how and in what manner the inquiry shall be conducted and what shall be the scope of the inquiry and the manner in which the evidence shall be recorded.

In other words, it has been left to the discretion of this Court to follow a procedure which is in consonance with the language of Article 317 (1), read with the Rules and Principles of Natural Justice.



THANK YOU