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Analysis of Exceptions to rules of Natural Justice & Case of S. N. Mukherjee v Union of India 1990

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'Exceptions' is a word that we all are acquainted with. It is a term that is pervasive and finds its application in all the fields known to humankind in some way or the other. However, to many people's surprise, we get to see exceptions even in something as unimaginable as natural justice. It is a bit peculiar because the Principles of Natural Justice are such rules which cannot be avoided such that if they are not abided by a trial or decision or an order is invalidated if the Principles of Natural Justice are not abided by. So it is a bit intriguing that we get to see exceptions even in such an indispensable area. This article endeavours to screen the famous exceptions to the Principles of Natural Justice, analyse the logic behind the exceptions, and weigh the interest affected by the application or non-application of these exceptions to judicial proceedings or decisions.

Keywords: *exception, natural justice, invalidated, indispensable.*

INTRODUCTION

Justice is not as easy and convenient to acquire as we live in an imperfect world. However, with the advent of the legal field and human civilisation, people recognized the fact that rules are

which lay down the procedure that ensures fairness, justness, and impartiality so that justice is not only done but seems to be also done. To suit this need the principles of natural justice were formed over many years. Cases after case acted like fire testing the silver which has to prove its purity after many tests finally we have three principles of natural justice, they are: 1) No one should be made judge in his cause, 2) No one should be condemned unheard and 3) Reasoned decision (reasons should be given for each decision). These three principles together complement each other and strive to give a fair chance for the resolution of disputes when they come to the judiciary. These principles fulfill the maxim that justice should not only be done but seem to have been done when they are followed. The principles are not a straight jacket formula however their importance is always stressed as one must have a fair hearing at the same time one cannot apply these principles blindly to all situations ignoring other factors which make it difficult for the courts or any other administrative authority to adhere to these principles. To suit the need of such situations the exceptions to natural justice were recognized. Just like any other situation we face in the practical world there can be situations that do not allow the exercise of principles of natural justice or the observance of these principles is not expedient hence these exceptions give certain relief and also give a certain taste of practicability and reasonability. These exceptions make those orders or decisions legal which under normal circumstances would vitiate the order or the decision.

The purpose of this article is to screen all the exceptions to the principles of natural justice and analyse them, discern whether the particular exception is useful or not, and what can be added or removed from the existing understanding of the particular exception. The case of S.N. Mukherjee v Union of India will also be analysed to see how an exception was used to settle the dispute.

EXCEPTIONS TO THE PRINCIPLES OF NATURAL JUSTICE

1. Exception in case of emergency: One of the most famous exceptions is the exception due to an emergency. Such kind of exception is used when swift and decisive action is required and the tenets of natural justice will slow down the process.[1]

Analysis - Indeed this doctrine is very logical and sensible during times of emergency as it is quite understood that rules should not be shackles. Rules are made for the fulfillment of the greater good in society and when such rules stand in the way of expediency and relief they must not be observed for the time being however not be cancelled if they are inoperative only for a certain period.

During times of emergency, there is a lot on the line and it is not reasonable to have quick relief and at the same time follow all the rules and norms knowing that they will result in slowing down the process. In times of war, famine, disaster or pandemic natural justice can be pronounced as inoperative as it impairs rather than solving the problems at hand. One might say that how can natural justice be abandoned as they are what constitutes a fair hearing and if a hearing or a process is not fair and just then how can the decision of the process or judicial decision be upheld?

To sum it up I would like to mention the maxim is also titled hurry versus hearing which means that either the relief will be acquired quickly or the after the hearing, hence the maxim hurry versus hearing.[2] It is also important to understand that this exception cannot be sought after just like that or whimsically for the sake of administrative ease or expediency, only if the delay by the process will cause loss or damage to public interest only then can this exception be utilised[3].

2. Confidentiality: Sometimes it is necessary to keep specific information confidential such as the information of the complainant or the information about the parties to a case or any other information which cannot be made public to suit such needs the exception of confidentiality can

[1] IP Massey, *Administrative Law* (10th edn, EBC 2022)
[2] Adv Shriya Maini, 'Exceptions to Principles of Natural Justice' (*Lex Quest*, 22nd March 2018) <https://www.lexquest.in/exceptions-to-principles-of-natural-justice-part-ii/>accessed 19 December 2022
[3] *Ibid*

be used. In situations where certain information cannot be given to a person to protect this information, the principles of natural justice can be avoided.

Analysis-This is another useful exception. We live in such a world where not a nuclear missile or a long-range sniper rifle or agents but 'information' is the greatest weapon and Achilles heel for many, hence it is the duty of lawmakers to keep this in mind and strike a balance between what needs to be kept secret and what needs to be disclosed as rightly suggested by L.J.Simon Brown "what is required is a balance to be drawn between the need for confidentiality and disclosure".

This exception is indeed helpful. It may happen that if a certain trial is allowed, as in if the principles of natural justice are observed and one may get vital information about parties to the case and can misuse it by harming the person in these cases this exception is handy as it protects that person. One such application was seen in the case of ***Hira Nath Mishra and Ors v The Principal, Rajendra Medical College***.[4] In this case, some boys from the college had entered the premises of the girl's hostel and misbehaved with some girls. Many girls complained against them and they were immediately suspended from the college, however, before their suspension, they were given a chance to defend themselves in writing in the office of the principal which they failed to do, hence this resulted in their suspension which was given to them without a hearing or trial to keep the information of the girls confidential so that these could not later misuse this information about who complained against them and then later harass those girls who have suffered enough already. Hence this doctrine is useful and in many situations has proved its effectiveness, however, there is a subjective factor that whether something should be kept confidential or disclosed will be decided by the judge on a case-to-case basis hence judges must be very prudent in deciding, and must consider that the pros and cons of keeping something confidential or disclosing it.

3. Purely academic matters: When matters in dispute do not involve the determination of someone's rights but are only a relationship between a rule and its violation resulting in an

[4] *Hira Nath Mishra & Ors v The Principal, Rajendra Medical College* AIR 1973 SC 1260

adverse judgment by a competent authority such a matter is called a purely administrative matter. To understand this better we can see an example, let's consider a rule in a company that if a particular employee does not fulfill his target for the subsequent 8 quarters his services will be terminated then if, after his subsequent defaults in completing his target if he is terminated without any notice or hearing, there is nothing wrong as it is a purely administrative matter.

Analysis-This is a straightforward exception. A lot of times the matter is all about rules and administration and nothing more is needed to be known other than whether a particular guideline or rule or instruction is violated to make an action valid. Many cases have been there where such a situation has been witnessed for example in the case of ***JNU v B.S.Narwal***[5] where a student was struck off from the rolls for not performing well in academics without any notice or hearing. The Supreme Court pronounced that if the adjudicating authority is competent to take such a decision then the decision is valid[6]. As we can see the usage of this exception is precise and straightforward, there is no hearing as there is no need for any explanation, and the precondition if fulfilled is enough to validate any adverse action without any notice. In usual cases, there are hearings because there are facts, issues, and then contentions to consider then laws to screen, and then comes a comprehensive judgement but in this, there is no need for it.

4. Impracticability

As the name suggests this particular exception acquires its chance to act when the number of people affected by an act is many. Hence it is impractical to give each person a personal chance of trial.

Analysis -From my understanding, this doctrine is pretty straightforward to understand. Every legal action must be reasonable and all the procedures in law are there for a logical reason

[5] 'Jawaharlal Nehry University v BS Narwal' (*Indian Kanoon*) <https://indiankanoon.org/doc/1440833/> accessed 19 December 2022

[6] Anshal Dhiman, 'Exceptions to the Principles of Natural Justice' (*Ipleaders*) <https://blog.ipleaders.in/exceptions-rule-natural-justice/#:~:text=Exception%20during%20situations%20of%20emergency,-India%20has%20witnessed&text=This%20means%20that%20any%20hearing,obviated%20for%20the%20time%20being.> accessed 19 December 2022

because they have a certain role and they strive to achieve that. However, when procedures or protocols are nothing but empty works, there is no logical reason why one should adhere to them when the circumstances deem them to be illogical. It is quite obvious that a judge cannot try so many people at once hence there is an option called Public Interest Litigation (PIL) where one public-spirited person who wants to raise the voice of people on their behalf can file a petition in the court. But the point is PIL is used because it is inconvenient to hear so many aggrieved people at once. In the same way, when an administrative decision is taken, it is not possible to hear everyone and give a customised decision to each party as this will stall the result, hence for the sake of reasonability and expediency one can rightly avoid protocols if they are impracticable.

To further substantiate my analysis I would like to mention the case of ***R. Radhakrishnen v Osmania University***[7] where the whole of the MBA selection examination was terminated and nullified because there was mass cheating hence the administration without any notice cancelled the exams, when the matter went to the court, the court uplifted the administrative decision on grounds that it is neither reasonable nor expedient to hear each candidate and then decided whole paper must be cancelled and who should be allowed. According to me, this is a supplementary step that must be taken to halt all objectionable actions quickly and then investigate further to get a detailed report on who was the culprit. It might be an inconvenience for the innocent but it is a small price to pay for avoiding a bigger disaster.

5. Temporary preventive action: Natural justice was a concept that was propounded to prevent prejudice against a person due to not having a fair hearing and a chance to prepare his case properly. However, if the observance of these principles poses a threat to the safety or peace of society then without a second thought they should not be abided by. In such a situation, the exception of temporary preventive measures or action comes into action.

Analysis - This is another well-designed exception that is needed in today's world as innumerable crimes are taking place, criminal operations are being carried out and in a world

[7] 'R Radhkrishnen and Ors v Osmania Univeristy and Ors' (*Indian Kanoon*) <https://indiankanoon.org/doc/886917/> accessed 18 December 2022; IP Massey (n 1)

where war can break out any moment such kinds of actions ensure the safety of the people are vital even if it comes at the cost of their inconvenience and their rights. Laws should not be empty words that do not respect the circumstances in which they are seeking to apply, this is why every law can be applied only when certain boxes are ticked as in circumstances demanding their implementation are present. Hence any authority is right in prejudicing one for the safety of many. This is seen in the case of Abhay Kumar Yadav v K. Srinivasan[8] in this case a criminal case was pending against a student who had stabbed another student hence the Principal suspended him until the judgment of the criminal action was out. Hence I would like to conclude by saying that this exception is very useful and the application of this rule is very straightforward there is no ambiguity as to when can it be applied as when the security and peace of society are at risk it is quite evident so prompt decision can be taken.

6. Exclusion by way of legislation: There is another way in which natural justice can be circumvented with the help of legislative action. The legislature can through legislation or statutes negate the requirement of adherence to the principles of natural justice for the sake of administrative expediency and swiftness. It enables them to decline any request for any oral hearing or other kinds of procedures required for a fair hearing as it has been deemed unnecessary by the statute. However, the bottom line is that the exclusions should not be unreasonable or arbitrary if they are of the such kind they can be challenged under Articles 14 and 21 of the Indian Constitution.[9]

Analysis

Once again through this particular exception, we see how can reasonability is bigger than rules and regulations. It is quite obvious that Principles of Natural Justice are not to be trifled with however sometimes through legislation they can be negated and that is acceptable according to me if the reason for their exclusion is not arbitrary or unreasonable. For example in Tort in the concept of absolute liability when a corporation or a company or any group of people carrying

[8] 'Abhay Kumar Yadav v K.Srinivasan and Ors' (*Indian Kanoon*) <https://indiankanoon.org/doc/222128/> accessed 19 December 2022; 'A K Kraipak & Ors Etc v Union of India & Ors' (*Indian Kanoon*) <https://indiankanoon.org/doc/639803/> accessed 19 December 2022

[9] IP Massey (n 1)

out an activity poses a threat to society if there is an accident hence the government can make laws that can neglect the principles of natural justice and penalize the corporation or company without any hearing or trial depending upon the damage caused by the accident caused by their carelessness. If the Principle of Natural Justice is avoided to suit the needs of the people by and large and is reasonable to a prudent man then there is no reason why they should be abided by.

7. No right infringed: There can be situations where there is a dispute but there is no right infringed. Such cases will witness the redressal of dispute without resorting to a hearing or trial.[10]

Analysis

We know that a trial or a hearing is conducted with the sole motive of settling the dispute. The dispute is mainly about the rights and liabilities of each of the parties in the case. In normal cases, there are two parties one who brought the action and one who responds to the action. In the end, the rights and liabilities of both parties are adjudged. However, this only happens when there is a violation of the right in question. For example, in a murder case the right to life is violated so similarly there must be a right violated. If there is no right logic dictates there should be no procedure to analyse its violation. As we know that the Principles of Natural Justice are designed to rationally adjudge a dispute of violation of right. If there is no right there should be no reason to adhere to the Principles of Natural Justice.

8. Doctrine of Necessity: This Doctrine allows the acceptance of a biased decision when a biased decision maker cannot be substituted.

Analysis

The doctrine of necessity is a peculiar doctrine. At first sight, it can compel a prudent man to ponder over a question. "When can this Doctrine be applied?". Normally this Doctrine can be very easily applied when the decision maker cannot be substituted. However, the real problem with this exception is that it is easy to take refuge in this exception as one can easily give a law

[10] *Ibid*

as an excuse that does not allow the substitution of a decision maker or may give an excuse that he cannot be replaced because the body of which he is a member does not allow anyone else to take a decision other than him. According to me, the usage of this doctrine is most of the time legal but not moral. Usage of this doctrine means tolerating the fact that one will not get unbiased judgement simply for the reason that the decision-maker cannot be changed. I do not have a problem if he cannot be substituted for any practical reason like during a time of war, calamity, or any other event which does not allow the change of the biased person then there is no option but to accept a biased decision but if justice is negated only on the basis that he cannot be substituted because a rule says that then it is just a way of denying justice for the sake of adherence to a rule or devised governance.

9. Contractual Arrangement: In this kind of exception a person allows the violation of the Principles of Natural Justice by signing a contract that contains a clause that does not allow him to demand adherence to the Principles of Natural Justice.

Analysis

I think this is one of the most reasonable exceptions. According to me if a person agrees in all his consciousness, understanding the effects of letting go of the Principles of Natural Justice then the courts cannot do anything about it. If a person himself, readily does not worry about letting go of his rights for one contract then afterward he is bound by estoppel and cannot demand the right he has let go of.

10. Policy Decisions of the Government: Governments of all countries formulate policies. When a policy is formed a person cannot object to it unless it is wrong or arbitrary.

Analysis

I agree with this exception. Policymaking is the work of the government and unless and until the formulation of policy is proved to be capricious, arbitrary, or with the intention of personal gain it cannot be questioned on the ground of the Principles of Natural Justice. For example, in

the case of ***Balco Employees' Union v Union of India,***[11] the employees of a particular PSU were challenging the government's move of disinvestment. They contended that as they are interested in the decision and it will affect their life they have a say in it. However, the Court opined that the only ground for objection available to them is if the decision is being taken capriciously or arbitrarily[12]. I agree with the logic behind this judgment. Natural Justice has a role only when a right is violated if a certain policy has not yet been applied, and its effects have not been felt yet by society there are no grounds to challenge them as they are yet to affect any right as such. Hence if no right is affected the question of Natural Justice does not arise.

11. Nothing but a formality: Sometimes the whole transaction is all about a cause-and-effect relationship. Something happened and adhering to Newton's Third Law of Motion there is an equal and opposite reaction. What I am insinuating is that Natural Justice is not attracted where the focus is all on the happening of an undisputed event which leads to an effect befitting it, to be precise a penalty for that event or action.

Analysis

Another reasonable and logical exception. The sole point of the evolution of The Principles of Natural Justice was to ensure that a fair and square judgment is provided to a particular person. However, as we already know as I have mentioned in this article quite a lot of times that hearing implies a right in dispute, hence when the problem is simple, the cause-and-effect relationship is transparent, if certain events happen such as the penalty or result then it needs no hearing or trial to understand or determine anything. The right holder knew that if he does the impugned act he will face the stipulated penalty, hence no Principles of Natural Justice are attracted here.

[11] 'Balco Employees' Union v Union of India' (*Indian Kanoon*) <https://indiankanoon.org/doc/1737583/> accessed 19 December 2022
[12] IP Massey (n 1)

12. Waiver: Waiver is a situation where a person agrees to let go of his right to hearing or trial, once he has agreed to not sue someone or not demand trial as a remedy he will be bound by estoppel and cannot demand judicial review anymore.[13]

Analysis

This is similar to the exception of a contractual arrangement. When a person lets go of his right to a hearing which is nothing less than a weapon or a privilege then nothing can be done because it is like a man is willingly throwing a pearl that he was provided. Hence this exception is rightly put to suit the situations where the person sacrifices his right. These kinds of waivers are seen when people want to do typically dangerous activities such as sky diving before which a waiver is signed where a person waives off any right of his which can lead to the prosecution of the service provider.

CASE ANALYSIS of *S N Mukherjee v Union of India*

INTRODUCTION

This case is an intriguing one as this touches on a very prominent right of a person. The right to a reasoned decision is the third pillar of the principles of natural justice. It implies that a judicial authority must give reasons for its orders or decisions if they prejudice a party. However, there is an exception to this particular principle, which is exclusion by way of legislation which I have mentioned under point 6 of this article. The whole dispute, in this case, is about whether a reasoned decision was supposed to be given to the appellant of the writ petition. With the help of facts of the case, issues, contentions of both sides, and the judgment we will be able to with which lens did the court look at this case.

FACTS

The appellant was an army officer, Captain in the Indian Army. He was court-martialled on disciplinary grounds, however, was not provided with any reasons for his court-martial.

[13] *Ibid*

ISSUES

1. Are administrative bodies duty-bound to provide reasons for their decisions?
2. If there is a duty as such, is it applicable to this case to be precise on order confirming the findings, sentence of a court martial, and post-confirmation proceeding under the act?

CONTENTIONS

Appellant - The appellant contended that there was another case of Som Datt Datta wherein the judgment was that there is no general principle where the administrative body must give reasons for decisions should be reconsidered as it does not align with the other cases decided by the Supreme Court.

Respondent - The respondent contended the court should not entertain the petition as there is no law in India as such which obligates an administrative body to give reasons for its decisions.

JUDGMENT

The court looked at the practices prevalent in different countries and also mentioned the understanding of administrative accountability in other countries. In America, the idea was that the administrative authorities must give reasons as that is how the process will be transparent. In England, the idea of accountability emerged after the Donoughmore Committee Report after which an act was passed 'The Tribunal & Enquiries Act 1958'.In England also the administrative bodies had to give reasons for decisions. The court answered both issues as follows:

Issue 1 - There is no law in India that obligates an administrative body to provide reasons however reasoned decisions are the third pillar of The Principles of Natural Justice which was propounded in the case of ***A.K. Kraipak v Union of India***. Hence administrative authorities must give reasons except where it is expressly or impliedly prohibited or where providing reason will cause more harm than benefit.

Issue 2- Whether or not this principle will apply to this case is dependent upon the provisions of the Army Act 1950 which govern all the affairs of the Army. Section 66 (1) orders reasons only

when the Bench recommends mercy on the alleged officer other than that on any other occasion there is no obligation for reasons. Section 162 says that reasons need to be given unless the Bench reverses or changes a decision. Under Section 164(2) it is provided that if in the first two stages, reasons are not given then how a reason can in the third stage be demanded?

Hence it is clear according to the court's decision that in this particular case if the reasons are not necessary for the preliminary stages of pronouncing judgment then how can it be required in the subsequent or advanced stages? The details of the case of the appellant did not demand reasons according to the legislation which governs court martial. The particulars were such that it was legal even if reasons were not given.

CONCLUSION OF CASE ANALYSIS

Reasoned decisions according to me are like diamonds in a crown, which means they are precious, and without them, a trial may feel nothing less than a dictatorial act, however, one must see more than what meets the eye. Reasoned decisions should be adhered to in general wherever prejudice happens to a party and should be excluded where it is excluded by legislation or does more harm than benefit, however, another thing should be considered that just because a statute excludes giving the reason it does not mean that it is right or moral however legal it may be. When prejudice befalls a person he at least has that base right to know as to the logical holdings which have led to his loss however if the facts are undisputed and only one result is set aside for it and no amount of trial or reasons are needed means they are just formalities only then should reasons not be given. Considering that an Act may exclude the need for a reasoned decision however for the sake of transparency and on humanitarian grounds reasons should be given however brief would be better than no reasons at all.

I agree with the judgment of this case as the facts of indiscipline were undisputed and only the judgment was due and the appellant was court-martialled. Even if we add reasons it will not make a difference as the transaction was clear, and the appellant was proved to be indisciplined and hence court-martialled, no amount of reason can satisfy anything as the appellant knows the ground for his court-martial and does not need any explanation.

CONCLUSION

Exceptions are vital and are pervasive. They are found in every field possible because humans recognize the fact that instances may occur which are peculiar or different hence to suit these instances there must be some deviations from previously established standards or rules. However, since these exceptions mean deviations from previously devised rules it is important to keep strict conditions to check whether a particular situation needs the aid of an exception. The interest of the party should also be kept in mind, how the application of the exceptions will affect the parties? If the answer is negative especially if it does not establish justice then exceptions need not be applied.

Exceptions come in a variety and the ease of their application varies. One exception may be applied more often because the situation where it can be applied simply repeats itself more often than others. However, I would like to point out that exceptions were devised for situations that could not be aided with normal rules or regulations however we must not be relaxed instead people have become more detail-oriented than ever which has led to a better and exhaustive set of rules which cover practically all the problems effortlessly. If we notice many exceptions were devised at a time when laws and the legal world were still developing and the legal personnel was limited by the skills and resources of its time. The exceptions devised 100 years ago are now vulnerable as better rules or protocols can be made to alleviate the possibility of applying an exception. The exception is a reality however it must not be made peace with as with the advent of legal knowledge and skill people can devise laws that do not provide the scope of application of exceptions. Exceptions are important only to the extent where the law is silent or rather the law cannot find application.

Nevertheless, exceptions are not innately bad many exceptions may compel one to question it and another will compel that person to praise the decision maker who applied that exception which resulted in a good decision. Hence exceptions are valuable but those exceptions which visibly don't seem to do justice must be alleviated to an extent as much as possible as it is important that not only justice is done but it also seems to be done.