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# Principles of Natural Justice in the Light of Unlawful Activities Prevention Act, 2019

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**Abstract:**
***Natural Justice Principles are precisely what the name implies: an underlying thread that is weaved both implicitly and expressly into the provisions of particular legislation as well as the Supreme Law of the Land, the Constitution. If all laws are to be evaluated at the altar of the grundnorm, i.e. the Constitution, then the Constitution must pass the litmus test of this inalienable and uncodified moral code known as the Principles of Natural Justice.***

***While it is officially stated in several Constitutional guarantees such as the Right to Equality, the Right to Life, and laws defining the rights of an arrested person, it pervades every judicial, quasi-judicial, and administrative action intangibly. The concept itself is centuries old, and it has been accepted by numerous international authorities from the dawn of time. This is because, whether formally recognized or not, it is the bedrock of all government action. The concept is based on 'fairness.' Natural law's international status differs according to its premise. The concept of Natural Justice is not widely employed inthe United States since the Constitution protects 'due process of law' whenever an individual's life, liberty, or property is harmed by government action. While the term "natural justice" has common law roots and has been used in numerous Indian judicial decisions, P.N. Bhagwati, J, stated that all proceedings must be "just, fair, and reasonable," rather than capricious, whimsical, or arbitrary. Arbitrariness, he said, was antithetical to equality and the "principle of reasonableness," which is both legally and intellectually important.***

***KEYWORDS: natural justice, administrative laws, UAPA, terrorism laws.***

## Introduction

Administrative law was formed as a part of public law to address disputes between citizens andthe state, or public authorities. Post-independence, India's administrative law grew. The most important cause was a shift in the definition of state. Because of numerous socioeconomic factors, the concept of the state has evolved as well as political shifts Because laissez-faire failed, the role of the state has to be reconsidered. The notion was that the state's operations should not be limited to conventional functions, but should instead widen their horizons in orderto meet new difficulties. The urge for government intervention in social welfare was bolstered by socialist and humanitarian beliefs. As a result, many welfare projects have been implemented.

‘Administrative law arose from the accumulation of authorities in the modern sense. Its main goal is to promote the rule of law, which is based on fairness and constitutionally ordered government. Aside from exercising sovereign functions, the state performs a variety of other duties. The authorities, their subordinates, and other departments are given broad discretionary power in order to properly perform the various responsibilities. Under the principles of natural justice and the rule of law, such administrative preference is required.

The capacity to make a decision or perform conferring to an individual’s judgement is referredto as discretion. The term "may" in a statute before specifying the power indicates that the authority has the ability to act or not act, or to act in one manner or another. However, it is critical to highlight that the availability of broad discretionary powers increased the potential formisuse and ambiguity about how they would be used. In recent years, administrative law has been chastised for failing to ensure that such discretionary dominance is appropriately exercisedby and within the constraints of the law conferring it. The complexity of State functions and the advancement of judicial control of administrative action went hand in hand. It fell to the courts to strike a balance between administrative authority's freedom and arbitrariness. This became a difficult process for the courts to complete. Absolute discretion is a harsh master, and there must be an adequate mechanism in place to govern it. Discretionary power is not inherently bad, but it allows for a lot of abuse. The fundamental issue is that the executive has far too much power. In the lack of legal rules, such as broad discretion, the Supreme Court warned that this may be a dangerous practice. The solution does not lie in abolishing authority; rather, it resides in strengthening the procedure. When natural justice concepts are brought into play, the field of administrative discretionbecomes more difficult.

## INDIA AND PRINCIPLE OF NATURAL JUSTICE

Natural justice is an acculturate notion that seeks to instill fairness and security in the law. It has been an unwelcoming rule for many years, negatively hurting administrative action.[1] Administrative discretion and natural justice are said to go hand in hand. Both might be thought of as mainstays of administrative law. Administrative prudence arose with the development of a welfare state, but natural justice is inherent in nature itself. Even when natural justice isuncodified, courts and administrative bodies must uphold the three basic principles of natural justice. The administrative authorities must also decide the questions fairly. This is a key criterion of natural justice. The administration is gifted with enormous discretionary authority, which, if allowed complete freedom to wield, might lead to abuse of power. "It is  properly stated that all authority corrupts, and absolute power corrupts utterly." Greater authority in the hands of authorities will result in greater control. If a legislation offers discretion, it must also include rules for using that discretion. When there is an abuse of discretion, the remedy is to go to court. However, it is generally recognized that the court is not permitted to interfere with the operation of administrative bodies when they use their administrative discretion. There is no doubting that such discretionary powers are necessary for attaining public order and making the rule of law a certainty, but this does not imply that the government may exercise its power without an effective control system. Discretion is not exempt from any legal  constraints imposed by legal works. On the one hand, the courts can interfere in administrative judgments ifthe authorities exercised their discretionary power for a purpose that is not permitted by the statute. On the other hand, the law court can interfere if the authorities used their power to achieve a certain goal in a way that was deemed arbitrary, illogical, or excessive. Such unrestricted powers are subject to judicial review, and the extent of such review varies fromcase to case. When dealing with the issue of administrative discretion, Apex Court has placed a high value on when it breaches natural justice principles.[2]

It is difficult to find a balance between administrative discretion and the implementation of natural justice principles in the absence of any rules. Administrative authorities completely disregard an individual's rights as the governmental workload grows in this fast-paced time. Natural justice consists of three Principles:

[1] AIR 1954 SC 224.
[2] (1973) 4 SCC 225 (Para. 577), 1981 Supp SCC 87 (Para 332) AIR 1957 SC 882, AIR 197 SC 232.

- "Hearing rule," - every individual or party affected by decision of concerned authority must be provided with a fair chance to defend himself.
- "Bias rule" – adjudicating authority must be devoid of bias whilst making a conclusion. The choice should be made in a free and fair way in order to comply with the norm of natural justice.
- "Reasoned Decision" states that order, decision, or judgement of the court issued by the adjudicating authority must be on a legitimate and reasonable basis.

The notion of Natural Justice Principles was introduced in India at an early stage. In *Mohinder Singh Gill versus. Chief Election Commissioner*[3], the it was declared that principle of impartiality must be present in all actions, whether they are judicial, quasi-judicial, administrative, or quasi-administrative in nature.

According to the Supreme Court, the goal of administrative judicial bodies is to achieve a reasonable and justified result. The primary goal of natural justice is to avert losses of justice.

Natural justice can be asserted while operating judicially or quasi-judicially, such as panchayats and tribunals. It encompasses the notion of fairness, fundamental moral standards, and many types of biases, as well as why natural justice is essential and what exceptional scenarios or situations are included when natural justice rules will not be relevant.

Initially, administrative authorities were not compelled to use the concept of natural justice in administrative obligations, although they might if they wished. However, due to the serious consequences of administrative authorities disregarding the notion of natural justice, it was made a procedural requirement for them to follow the rules of natural justice. When theauthorities in question refuse to follow the rules of procedure, judicial action is necessary. Because Natural Justice Principles are not rigorously applied, they are regarded as a critical technique of controlling administrative discretion? When it comes to natural justice, there are nohard and fast laws.

Initially, the judiciary concluded in favour of not applying procedural fairness in all types of administrative action. However, in 1963, an English court judgement modified this viewpoint.In England, courts were steadfastly adopting natural justice principles in administrative

[3] 1978 AIR 851.

proceedings as well. As a result, even in India, the gap between quasi-judicial and administrative tasks was eroded, and natural justice concepts were elevated in prominence.

## UNLAWFUL ACTIVITIES PREVENTION ACT, 2019

Though the judiciary is attempting to strike a balance, it is equally possible to argue that there is excessive interference. Even after significant involvement, it is shown in many situations thatthe adjudicating authority reaches the determination that the rules of natural justice changebased on the various conditions of the case, resulting in a lack of consistency in its implementation. Though the judiciary frequently insists that administrative authorities exerting their will must follow at least a minimal routine hearing before taking action, the authorities must not permit to ignore the application of principles of natural justice for modern administration. In the United States, it was recognized that allowing the affected individual to state his case before making a choice improves the quality of the discretionary judgement. As a result, the Fifth and Fourteenth Amendments firmly demand on some type of hearing in cases ofunrestricted power involving problems of public interest or policy where an individual's rights are jeopardized.

Coming to India, the year 1978 saw the introduction of the notion of post-decisional hearings in response to administrative exigencies. Hearings are important in achieving a just judgement and investigating the authorities' abuse of authority. The right to a hearing originated as a guardianof justice since it protects the rights of the party in dispute. A procedural safeguard is a check on arbitrary activity. The right to a post-decisional hearing is not the same as the right to a pre-decisional hearing. Allowing post-decisional hearings signifies failing to observe procedural fairness properly. Furthermore, the courts develop two doctrines: 'empty formality' and 'prejudice doctrine.' If adopting the principles of natural justice yields no results, then following the rules of procedural fairness will become a meaningless formality. Even though the allegations were accepted and no defense could be presented, the court persisted on not following procedural fairness, despite a statutory obligation. Empty formality is dangerous because it might lead to a failure of justice by not giving a side a hearing on the assumption that such a hearing will be futile. Even while adopting natural justice principles is time-consuming,it is necessary for authorities to do so in order to maintain a society regulated by the rule of law.

The courts are attempting to keep the principles flexible, as it is widely acknowledged that thereis excess justice. As a result, the law should not be enforced, but the judiciary should provide

natural justice with little involvement. The judiciary must be able to combine administrative discretion with its own activity. However, the flip side of the coin is that governmental institutions frequently violate natural law norms, necessitating court intervention.

It is a well-known truth that when it comes to combating terrorism, there are no opposing voices. This country's 1.38 billion inhabitants are united in their opposition to terrorism. Thus, the goal of these emphasizing arguments is not to impede terrorist investigations or convictions, but to guarantee that the investigations are fair and impartial, and that the rudiments of democracy be preserved. So far, the fundamentals of the rule of law have been largely respectedin India's anti-terror laws. Our country's national security strategy has always strived for zero tolerance for terrorists and the enactment of procedural protections to avoid encroachment on freedoms and maximize the superstructure of rule of law.

These precautions include rules pertaining to witness protection; for example, section 44 of the U.A.P.A. Act 1967 prohibits the court from disclosing the identify and address of the witnesses. It also allows for the procedures to be held in private. Furthermore, the National Investigation Agency Act mandates that trials for terrorist offences be handled by special courts in order to ensure the prompt and impartial administration of justice. Anti-terror law in India also allowsfor processes of appeal against orders of seizure of property, special court judgments, and ordersof rejection of bail.

Laws, such as the U.A.P.A. and NIA Act 2019, allow the government to "tag a person as a terrorist" without even a due process (U.A.P.A.) and to prosecute individuals only "if it is thought" that their actions are against the "interests of India" (NIA). Such revisions to anti- terrorism laws obviously contradict the fundamentals of a democratic state and the survival of the rule of law. Because "human rights preservation and promotion beneath the rule of law are critical in the forestalling of terrorism.[4] Therefore, these anti-terrorism laws need to be constructed in terms of what they claim to oppose and what they actually oppose. India's experience with these laws shows that what they actually protect is the power of the ruling party, ignoring human rights. If left uncorrected, these changes will sooner or later lead to a deep sedation to freedom. For this reason, the following changes are recommended:

[4] AIR (2003) SC 2363.

- To revoke the amendment to the U.A.P.A. Act that gives the government the authority to label someone a terrorist, given that there are already several procedures for punishing individual members of an illegal organization.
- Declare Section 35, of the U.A.P.A., 2019, to the degree it affects an Individual, as unconstitutional and void.
- Declare Section 36 Unlawful Activities (Prevention) Amendment Act, 2019, unlawful and invalid to the degree it applies to an individual, as it breaches Articles 14, 19(1)(a), and 21of the Indian Constitution.
- Amend phrases like "affecting India's interests" since the term "interests of India" is not clearly defined and might lead to excessive misapplication. There are several well-defined terms to employ, such as "affecting India's national security" or "affecting the country's sovereignty."
- Avoid statements like 'if the government believes' since they lack emphasis and end up handing the government boundless authority. The government can punish even silent protests or dissent if it 'believes' it is against India's 'interests.'
- Sessions courts should not be designated as special courts since they are already overburdened with outstanding matters. However, more special courts must be established with new judicial nominations.
- A compensation mechanism should be established for people who have been wrongfully imprisoned.
- The central government should establish procedures to improve administrative and judicial oversight of terror-related investigations and prosecutions.
- Form a committee to monitor human rights breaches during the prosecution of an accused in a terror case. Governments must play an active role in improving the Counterterrorism Tripod's other two elements, the NCTC - National Counter-terrorism Center and the NATGRID -National Intelligence Grid.

## CONCLUSIONS AND SUGGESTIONS

The Anti-Terrorism Act is one-of-a-kind, yet it is ineffective on its own. They must be enforced with the assistance of the same authorities that help police, prosecutors, and the judges in traditional criminal procedures. Current criminal law is frequently chastised for failing to handlesevere national security concerns. Terrorism and other activities that endanger territorial integrity are not successfully combated by law enforcement agencies. Moreover, special laws enable for the effective and timely investigation, prosecution, andadjudication of terrorism-related offences, conveying a powerful democratic message to the offenders of such actions. At the same time, the use of special laws may intensify underlying human rights concerns about the efficacy and legitimacy of the existing criminal justice system. Currently, the U.A.P.A proposes far more drastic action than is required in the name of justice by overly broadening and obscuring the definition of terrorism. Violated the principle of legality. Bail and detention provisions that violate due process and the right to a fair trial. Lack of oversight by police and prosecutors. Discriminatory and non-uniform application; and provide a thorough exemption for officials who fail to protect the public. Moreover, unlike T.A.D.A and POTA, which include either regular reviews or decommissioning clauses, U.A.P.A does not include such clauses or review procedures for a successful implementation. According to the Mali math Committee Report on Reform of the Criminal Justice System,[5] the IPC can include such provisions in order to avoid a "legal vacuum" while dealing with terrorismand national security. After all, unusual laws cannot be permitted to exist in perpetuity without parliamentary scrutiny, and the legislature cannot build reality out of an exception by constantly altering the terms of legislations like U.A.P.A. When it comes to developing a successful anti- terrorist regime that does not violate human rights, the most important step is determining what does not fall under the ambit of terrorism. Terrorism is not the same as conventional criminal offences, or even justified governmental responses, such as counter-terrorism operations, or even national liberation battles. In terms of the Indian counter-terrorism rhetoric, it is critical that, rather than continuing to use special legislation to confront threats to the country's unity, integrity, and security, the conventional criminal justice system be improved and reinforced. Special anti-terrorism legislation should be reviewed on a regular basis and only be in effect for a limited time, andmore attempts should be made to achieve political resolution of problems.[1]

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[1] [5] Committee on Reforms of Criminal Justice System, Report Vol. I, March 2003, Ministry of Home Affairs https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf.