

The right to be heard in administrative decision-making Reconsidering ‘natural justice’ as a human rights guarantee

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Abstract

Natural Justice is a key principle in common English law which requires the procedural fairness in the administrative law. In relating to the natural justice principle “Audi Alteram Partem” implies that no one should be condemned without fair hearing. This principle demonstrates a fair hearing before every decision which is affecting the individuals’ rights. The main component of the fair hearing includes the cross examination, legal representation and prior notice. In the case of *Ridge v Baldwin* it is clearly mentioned that if the rules are ignored the decision can be declared invalid. An early example of applying the fair hearing rule is *Bagg’s* case, where judicial review was sought through the mandamus. In this case it made it clear that all proceedings without a fair hearing are invalid, supporting the Court of King’s Bench stance. Natural Justice has two main doctrines, ‘audi alteram partem’ and ‘nemo iudex in causa sua’ which means no one should judge their own case while the right to a fair hearing is absolute and the rule against bias has some exceptions. Many constitutions like Nigeria include provisions for fair hearings in civil disputes. Sir Matthew Hale, in 1676 points out the importance of hearing both sides before deciding. The idea was reinforced in the *Cooper v Wandsworth Board of Works*, where the division of fairness was mentioned.

I. INTRODUCTION

Audi- Alteram Partem- hear the other side is among the oldest maxims in the common law principles, and it remains one of the most argumentative in modern administrative practice. In the traditional concept, the right to be heard was framed as a rule of natural justice of a judge-made presumption about how statutory powers should be addressed, defeasible by clear legislative language.¹ This article outlines the cross-constitutional democracies in which the hearing right is increasingly treated not as a procedural courtesy implied into a statute, but as a substantive human rights guarantee grounded in dignity, equality, and the rule of law. This reclassification changes who will claim the right, what a decision maker considers, and how legislatures may displace it.

Procedural Presumption to Constitutional Norm

The classical position confined natural justice to the main bodies acting ‘judicially’. The significant decision came with the case *Ridge v Baldwin* (1964) AC 40², which restored the principle to the administrative action in general and with *Ex parte Doody*³ and the multiple cases holding that fairness is a flexible standard responsive to context rather than a fixed checklist. Considering fairness in this meaning is not an add-on to lawful decision making and it is a condition of administrative principles.

When considering human rights concepts widely, Article 14 of the ICCPR⁴, Article 6 of the ECHR⁵ and other equivalent domestic guarantees, United States fundamental rights under section 7 of the Canadian Charter⁶, the Article 21 of jurisprudence in the India

¹ Mohd Aqib Aslam, Principles of Natural Justice in the Light of Administrative Law. Online Legal Advice. <https://www.legalserviceindia.com/legal/article-1659-principles-of-natural-justice-in-the-light-of-administrative-law>, Accessed 02/10/26

² *Ridge v Baldwin* (1964) AC 40

³ *R v Secretary of State for the Home Department, ex parte Doody* [1994] 1 AC 531 (HL).

⁴ *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 14

⁵ *Convention for the Protection of Human Rights and Fundamental Freedoms* (European Convention on Human Rights, as amended) (ECHR) art 6

⁶ *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

following *Maneka Gandhi v Union of India* (1978)⁷ will examines the procedural protection within a rights framework rather than a presumption of a statutory intent. In Sri Lanka article 12(1)⁸ equally carries read to procedural fairness obligations in the excessive of the public power, illustrating how equal protection and the hearing right is converged.

International Human Rights Perspective

International human rights law implies important support for implementation of procedural fairness through a right based framework. Article 10 of the Universal Declaration of Human Rights⁹ introduces the right to fair and public hearing by impartial tribunal or an independent in the determination of rights and obligations. Article 14 of the International Convention on Civil and political rights¹⁰ similarly protects fair hearing rights in the determination of rights and obligations, if some proceedings failing within its scope of the judiciary. These principles basically concern in judicial practices and proceedings and their application to administrative decision-making process depends upon the circumstances. It makes stronger and widen the international recognition of participation and fairness as important elements of protection of rights. Human rights principles such as access to justice, equality before the law support an understanding of administrative fairness that goes beyond technical procedural requirements. When considering about European human rights framework¹¹, they have developed extensive jurisprudence concerning about fair procedures. While if the fair hearing procedure guarantees the nature of the decision the wide capacity of development illustrates how procedural safeguards can become connected with rights of protection. In practical judicial system natural justice and human rights operate together to protect individuals against arbitrary exercises of public power.

The right to be heard in Sri Lankan administrative law

The principle of natural justice has a significant place in Sri Lankan administrative law. Sri Lankan courts have traditionally identified the procedural fairness as a means of controlling the exercise of administrative and the public power. When considering about the constitutional framework relating to the human rights context Article 12¹² of the constitution guarantees every person should be equality before the law and every person in the country has the right to equal protection of the law. Apart from that, Article 13¹³ contains important protections concerning arrest, detention and punishment. Article 17¹⁴ provides a fundamental right remedy for infringement or imminent infringement of fundamental rights by executive or the administrative action.¹⁵ When judiciary bodies making decisions, these constitutions provide an important basis of considering administrative decision making from a rights perspective.

The significance of this approach becomes particularly important where an administrative decision has serious consequences for an individual's livelihood, education, reputation, employment, or other legally protected interests. In such circumstances, merely describing the right to be heard as a technical administrative law requirement may fail to identify its broader constitutional and human rights significance. A rights-based approach can encourage decision makers to consider whether the affected person was given a meaningful opportunity to understand and respond to the legal matters that have been considered by the laws in Sri Lanka.¹⁶

Is hearing always required?

Recognising the right to be heard as an essential human rights guarantee does not mean that every administrative decision requires a formal hearing. Administrative law generally recognises that the content of the procedural fairness depends upon such circumstances.¹⁷ Preliminary decisions, urgent decisions, situations where legislation expressly provides a particular procedure

⁷ *Maneka Gandhi v Union of India* (1978) 1 SCC 248; AIR 1978 SC 597.

⁸ *Chandrasiri v University of Ruhuna and Others* [2006] 1 Sri LR 150; *Don Wimalasiri Dissanayake v People's Bank and Others* (2012) 2 SLR 43

⁹ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) art 10.

¹⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 14(1).

¹¹ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) art 6; *Bentham v Netherlands* App no 8848/80 (ECtHR, 23 October 1985).

¹² Constitution of the Democratic Socialist Republic of Sri Lanka 1978, arts 12(1), 13, 17 and 126(1).

¹³ *ibid*

¹⁴ *ibid*

¹⁵ *Chandrasiri v University of Ruhuna and Others* [2006] 1 Sri LR 150.

Rajakaruna and Others v University of Ruhuna and Others [2004] 3 Sri LR 144.

¹⁶ *Rajakaruna and Others v University of Ruhuna and Others* [2004] 3 Sri LR 144.

¹⁷ *R v Secretary of State for the Home Department, ex parte Doody* [1994] 1 AC 531 (HL), 560.

and decisions involved broad policy considerations may require different approaches.¹⁸ Therefore, the central question should therefore be whether the affected person received a reasonable and meaningful opportunity to be heard in the circumstances.¹⁹ There is a important distinction that human rights approach should not transform every administrative decision into a judicial proceeding. Instead of that, it should ensure that procedural requirements are interpreted in a manner that protects individuals from arbitrary or unjust administrative actions in Sri Lanka.

Exceptions and limitations

In Sri Lankan law there may be some circumstances in which an immediate decision is justified without a prior opportunity to be heard in the judiciary system. For an instance, urgent public interests may sometimes require immediate administrative action. In such situations, a subsequent opportunity can be raised to make representations or seek review may provide an important safeguard.²⁰ Similarly, statutory provisions can modify the procedural requirements, whenever all the legal effect of such exclusion must be interpretative through the legislation and applicable statutory principles. However, statutory authorities should not automatically be regarded as eliminating the specific requirement of fairness unless the legislation clearly and lawfully intends such a consequence. The existence of exceptions demonstrates that the right to be heard is not absolute in the procedural form. Nevertheless, this mentioned objective remains significant and administrative power should be implemented through a process that gives affected individuals a fair opportunity to make representations in matters affecting their rights or legitimate interests.²¹

Comparative constitutional perspectives in the right to be heard-New Zealand and South AfricaNew Zealand

Section 27(1) of the New Zealand Bill of Rights Act 1990²² provides that every person has the right to the observance of the principles of natural justice by a tribunal or other public authority to decide concerning about the person's legally protected rights, interests and obligations. Apart from that, section 27(2) additionally identifies the right to apply for judicial review of such determinations²³. Depending on the seriousness of the decision right to be here should involve access to information, prior notice, submissions, preparation and cross examination.

New Zealand context is essential since natural justice principles established within the statutory human rights framework rather than the common law principles. The New Zealand legislation itself clearly states that its purpose of introducing protect and promoting human rights to affirm the New Zealand commitment to the International Convention on Civil and Political Rights.²⁴ It implies that concepts of natural justice and right to be heard are not separate legal proceedings, while right to be heard can operate as a mechanism for protecting legally recognised individual interests against the public authorities.

South Africa

Article 33(1)²⁵ of the constitution implies that everyone has the right to administrative action that may be reasonable, lawful and procedural fair. Section 33(2) further provides a right to written reasons where rights have been adversely affected by the administrative action.²⁶ Therefore, we can assume that South Africa leads to an explicit constitutional model. In south Africa Administrative Justice Act in 2000²⁷ was enacted to give effect to the constitutional rights. This act legally follows the fair procedures and provides mechanisms through which administrative decisions may be challenged. With relating to Sri Lankan context South African approach is particularly relevant since procedural fairness is constitutionally connected with the administrative practice. The requirement of fairness is a part of the constitutional relationship between the individual and exercise of the public power rather than technical doctrine that developed to control administrative discretion.²⁸ Giving an affected person an opportunity to participate and providing reasons for an adverse decision together contribute to transparency, accountability and meaningful judicial review.

¹⁸ *R v Secretary of State for the Home Department, ex parte Doody* [1994] 1 AC 531 (HL), 560; *Rajakaruna and Others v University of Ruhuna and Others* (2004) 3 SLR 141 (CA).

¹⁹ *Chandrasiri v University of Ruhuna and Others* [2006] 1 Sri LR 150; *Rajakaruna and Others v University of Ruhuna and Others* (2004) 3 SLR 141 (CA).

²⁰ *R v Secretary of State for the Home Department, ex parte Doody* [1994] 1 AC 531 (HL), 560.

²¹ *Chandrasiri v University of Ruhuna and Others* [2006] 1 Sri LR 150 (SC)

²² *New Zealand Bill of Rights Act 1990*, s 27(1).

²³ *New Zealand Bill of Rights Act 1990*, s 27(2).

²⁴ *New Zealand Bill of Rights Act 1990*, long title.

²⁵ Constitution of the Republic of South Africa, 1996, s 33(1)

²⁶ *ibid*, s 33(2)

²⁷ Promotion of Administrative Justice Act 3 of 2000 (South Africa), long title.

²⁸ I.P Massey, Administrative law (Eastern Book Company, Lucknow, 8th edn. 2012)

Why the human right approach matters

When considering about the human rights approach right to be heard strengthens the accountability. Administrative authorities more likely to provide reasons, consider relevant evidence and errors when individuals have meaningful opportunities to challenge decisions. Secondly, it promotes the legitimacy. Individuals are more likely to accept public decisions when they believe their views are genuinely considered, even where the final decision is adverse.²⁹ And it strengthens access to the justice. A meaningful opportunity to be heard at the administrative stage may prevent disputes from unnecessarily progressing to the judicial review or other formal proceedings.³⁰ Apart from that it reinforces the principle that public administration exists to serve the public and must exercise power consistently with fundamental rights and the rule of law.

The right to be heard has traditionally been regarded as a fundamental principle of natural justice and procedural fairness. However, its significance extends beyond procedure. By allowing individuals to participate in decisions that may significantly affect their rights and interests, the principle protects values closely associated with human dignity, equality, participation, accountability, and access to justice.

II. CONCLUSION

A human right approach does not require every administrative decision to become a formal judicial proceeding. It requires decision makers to recognition that procedural fairness is an important means of protecting individuals from arbitrary exercises of public power. For Sri Lanka strengthening the rights-based understanding of public fairness can contribute to more accountable, transparent and participatory in public administration. So, right to be heard should not be considered as old procedural rule inherited from natural justice, but as a continuing safeguard that gives practical meaning to the protection of individual rights in the exercise of administrative power. Ultimately, the principle '*audi alteram partem*' reflects a fundamental idea gathered that public power is used against an individual, that individual should ordinarily have a meaningful opportunity to be heard.

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Legislation and International Instruments

1. Constitution of the Democratic Socialist Republic of Sri Lanka 1978.
2. Constitution of the Republic of South Africa, 1996.
3. European Convention on Human Rights.
4. International Covenant on Civil and Political Rights 1966, 999 UNTS 171.
5. New Zealand Bill of Rights Act 1990.

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