

Natural Justice in Islam and Humans Law

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Abstract

This piece of work examines and makes comparison between Natural Justice in Islam and Natural Justice in Human law. This study reveals that the basis of natural Justice in Islam is based on 3 fundamental principles which are the Quran, Sunnah and Hadith. While in Natural human justice, justice is solely based on moral force (fairness i.e. what is right and or wrong).

1.0 Introduction

Society cannot achieve peace and prosperity without some form of social control. Outlawry can only lead to social disequilibrium. Before comparing the differences and similarities of natural law in Islam and human law, meaning, explanation and application of these laws needed to be checked. Starting with natural justice in Islam that can also be referred to Islamic law or Islamic jurisprudence (*fiqh*) or Islamic Sharia¹ deriving its roots from three main sources according to Islamic scholars which are:

- i. The Quran
- ii. Hadith
- iii. Sunnah

The holy Quran is the Islamic holy book written by the supreme order of Allah through Prophet Mohammed (S.A.W). The Quran, the sacred scripture of Islam, considers justice to be a supreme virtue. It is a basic objective of Islam to the degree that it stands next in order of priority to belief in God's exclusive right to worship (*Tawheed*) and the truth of Muhammad's prophet hood. God declares in the Quran:

“God commands justice and fair dealing...” (Quran 16:90)

The hadith is said to be the “*saying*” of the Prophet while Sunnah is the way of life prescribed as normative for Muslims on the basis of the teachings and practices of the Islamic prescient Muhammad and interpretations of the Quran. Islamic jurisprudence covers virtually all spheres of life starting from politics, business, and health down to social life. And also from secondary sources which are “*Qiyas*” which refers to analogy and “*Ijma*” consensus. **The *Sunna* [custom, practice] of the prophet:**

Recorded in *Hadith* [reports]: Huge literature on many topics, not all of it reliable. Attempts to collect the *reliable* traditions in authoritative collections by **Al-Bukhari, Muslim**, etc. (9th century), includes traditions about what the Prophet

- said
- did
- permitted

Main criterion of authenticity: Accuracy of "chain of tradition," *Isnad* ("certification").

Narrators were evaluated for their trustworthiness.

On the other natural justice in human law implies a moral force; whether or how this constrains inhumanity which invariably involves acts of armed violence is unclear. Users of the words “humanity” and “humanitarian” are often perceived as placing themselves on a moral high ground. It is unclear whether humanity has been usurped by or become integrated into contemporary concepts such as human rights, development, humanitarian intervention and human security. It also means giving others equal treatment. In Islam, justice is also a moral virtue and an attribute of human personality, as it is in the Western tradition. Justice is close to equality in the sense that it creates a state of equilibrium in the distribution of rights and duties, but they are not identical. Sometimes, justice is achieved through inequality, like in unequal distribution of wealth.

The Prophet of Islam declared:

“There are seven categories of people whom God will shelter under His shade on the Day when there will be no shade except His. [One is] the just leader.”(Saheeh Muslim)

God spoke to His Messenger in this manner:

“O My slaves, I have forbidden injustice for Myself and forbade it also for you. So avoid being unjust to one another.” (Saheeh Muslim)

Thus, justice signifies moral righteousness and impartiality, since it means things should be where they belong.

1.1 Equality in Justice

The Quranic standards of justice transcend considerations of race, religion, color, and creed, as Muslims are commanded to be just to their friends and foes alike, and to be just at all levels, as the Quran puts it:

“O you who believe! Stand out firmly for justice, as witnesses to Allah, even if it be against yourselves,

¹ Throughout this work the three names will be used interchangeably.

your parents, and your relatives, or whether it is against the rich or the poor..." (Quran 4:135)

According to another Quranic passage:

"Let not the hatred of a people swerve you away from justice. Be just, for this is closest to righteousness..." (Quran 5:8)

With regards to relations with non-Muslims, the Quran further states:

"God does not forbid you from doing good and being just to those who have neither fought you over your faith nor evicted you from your homes..." (Quran 60:8)

The word 'Natural Justice' manifests justice according to one's own conscience. It is derived from the Roman Concept 'jus - naturale' and 'Lex naturale' which meant principle of natural law, natural justice, eternal law, natural equity or good conscience.

Lord Evershed, in *Vionet v. Barrett*¹ remarked, "Natural Justice is the natural sense of what is right and wrong." But Natural justice has meant different things to different peoples at different times. In its widest sense, it was formerly used as a synonym for natural law. It has been used to mean that reasons must be given for decisions; that a body deciding an issue must only act on evidence of probative value. The principles of natural justice constitute the basic elements of fair hearing, having their roots in the innate sense of man for fair play and justice which is not the perverse of any particular race or country but is shared in common by all men". Natural justice is another name for common sense justice rules of natural justice are not in codified form these principles imbedded or ingrained or inbuilt in the conscience of human being. It supplies the omission made in codified law and helps in administration of justice. Natural justice is not only confined to 'fairness' it will take many shade and color based on the context. Thus natural justice apart from 'fairness' also implies reasonableness, equity and equality. They are neither cast in a rigid mould nor can they be put in legal straitjacket. These principles written by nature in the heart of mankind, they are immutable, inviolable, and inalienable.

It is true that the concept of natural justice is not very clear and, therefore, it is not possible to define it; yet the principles of natural justice are accepted and enforced. In *Ridge V. Baldwin* Court 1964² observed that "in modern times have sometimes been expressed to the effect that natural justice is as vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist". The term natural justice signifies fundamental rules of judicial procedure and fair play in action. According to Lord Widgery "the principles of natural justice were those fundamental rules; the breach will prevent justice from being seen to be done". Earliest expression of 'natural justice' could be found in philosophical expression of Roman Jurist (jus natural) and signified rules and principles for the conduct of man which were independent of enacted law or customs and could be discovered by the rational intelligence of man and would grow out of and conform to his nature.

2.0 Human Rights in Islam

Islam provides many human rights for the individual. The life and property of all citizens in an Islamic state are considered sacred, whether a person is Muslim or not. Islam also protects honor. So, in Islam, insulting others or making fun of them is not allowed (Al-Muala 2006). The Prophet Muhammad may the mercy and blessing of Allah be upon him, said: **"Truly your blood, your property, and your honor are inviolable."** (Saheeh Muslim). Racism is not allowed in Islam, for the Quran speaks of human equality in the following terms:

"O mankind, we have created you from a male and a female and have made you into nations and tribes for you to know one another. Truly, the noblest of you with Allah is the most pious. Truly, Allah is All-Knowing, All-Aware." (Quran 49:13).

Islam rejects certain individuals or nations being favored because of their wealth, power, or race. Allah created human beings as equals who are to be distinguished from each other only on the basis of their faith and piety. The Prophet Muhammad said: **"O people! Your God is one and your forefather (Adam) is one. An Arab is not better than a non-Arab and a non-Arab is not better than an Arab, and a red person is not better than a black person and a black person is not better than a red person, except in piety."** (Saheeh Muslim).

One of the major problems facing mankind today is racism. The developed world can send a man to the moon but cannot stop man from hating and fighting his fellow man (Ahmad 2007). Ever since the days of the Prophet Muhammad, Islam has provided a brilliant example of how racism can be ended. The annual pilgrimage (Hajj) to Makkah shows the real Islamic brotherhood of all races and nations, when about two million Muslims from all over the world come to Makkah to perform the pilgrimage (Brown 2007). Islam is a religion of justice. Allah has said: **"Truly Allah commands you to give back trust to those to whom they are due, and when you judge between people, to judge with justice...."** (Quran 4:58) And He has said: **"...And act justly. Truly, Allah loves those who are just."** (Quran 49:9) We should even be just with those who we hate (Mofty 2013), as Allah has said: **"...And let not the hatred of others make you avoid justice. Be just: that is nearer to piety...."**

¹ *Vionet v. Barrett*, 1885 (55) LJR D 39

² *Ridge -v- Baldwin* (No 1); HL 1964

(Quran 5:8). The Prophet Muhammad said: "**People, beware of injustice, for injustice shall be darkness on the Day of Judgment.**" (Saheeh Muslim) and those who have not gotten their rights (i.e. what they have a just claim to) in this life will receive them on the Day of Judgment (Mahdi 2006), as the Prophet said: "**On the Day of Judgment, rights will be given to those to whom they are due and wrongs will be redressed**" (Saheeh Muslim).

3.0 Origin and development of principles of natural justice in common law system.

It is said that principles of natural justice are of very ancient origin and was known to Greek and Romans. The notion of a natural justice system emerges from religious and philosophical beliefs about how we see ourselves with respect to nature. Kluckhohn's (1953) analysis provides one of the most noted descriptions of the philosophical principles that govern our relationship with nature. He claimed that humans think of themselves as being 1) subjugated to nature, 2) an inherent part of nature, or 3) separate from nature. Each of these views shapes a particular natural justice belief and thus a distinct moral stance toward nature.

Some cultures emphasize their submissiveness to nature and would tend to adopt a morality of divinity. Others emphasize their harmonious relationship with nature and would tend to adopt a morality of caring. Still others emphasize their control over nature and would tend to adopt a morality of justice. The Principles were accepted as early as in the days of Adam and of Kautilya's Arthashastra. According to the Bible, when Adam & Eve ate the fruit of knowledge, which was forbidden by God, the latter did not pass sentence on Adam before he was called upon to defend himself. Same thing was repeated in case of Eve. Later on, the principle of natural justice was adopted by English Jurist to be so fundamental as to over-ride all laws. The principles of natural justice were associated with a few 'accepted rules' which have been built up and pronounced over a long period of time. In the West, in the olden days of laissez-fair practice, when industrial relations were governed and administered by the unscrupulous and harsh weighted law of hire and fire, the management was in supreme command and at its best with the passage of time, notions of social justice developed and the expanding horizons of socio- economic justice necessitated statutory protection to the workmen. The freedom to hire men/women is embedded in the management philosophy and thinking and the liberty is restrained to firing them arbitrarily or at its own will.

The passage demonstrates that the rule against bias, like the hearing rule, was treated as an expression of the natural law regarded by Roman legal scholars as 'that ideal body of right and reasonable principles which was common to all human beings'.

Those principles are said to have emerged from Cicero's Latin renderings of Greek Stoic philosophy, written in the first century BC. They became the underpinnings of Thomas Aquinas's philosophy and were regarded as divine law informing creation and binding human beings.

3.1 De Smith submitted as follows:

No proposition can be more clearly established than that a man cannot incur the loss of liberty or property until he has had a fair opportunity of answering the case against him. For this he gives following assertion, even God did not pass sentence upon Adam before he was called upon to make his defense. Adam, says God, „Where art thou? Has thou not eaten out of the tree whereof I commanded thee that thou should not eat? Accordingly even though person has committed a wrongful act he must be heard before sentenced, specially where decision affecting liberty or property is to be made fair opportunity of hearing must be provided, for this reason whatever the meaning of natural justice may have been, and still is to other people, the common law lawyers have used the term in a technical manner to mean that in certain circumstances decisions affecting the rights of citizens must only be reached after a fair hearing has been given to the individual concerned. And in this context fair hearing requires two things, namely, AUDI ALTERAM PARTEM and NEMO DEBET ESSE JUDEX IN PROPRIA SUA CAUSA.

3.2 Audi Alterm Partem –A Historical Prescriptive

The rules of procedural fairness, as rules of natural justice were derived from natural law as is demonstrated by English cases of the seventeenth and eighteenth centuries. The first limb to be considered in this connection is the so-called hearing rule.

The evolutions of hearing rule come into view in many cases in the Year Books. Chief Justice Coke, who played a leading role in its exposition and the development of the remedy of mandamus where it had been breached, inferred it from the provision of the Magna Carta that: No free man shall be taken or imprisoned ruined or disseised or outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land.

It was in Bagg's Case (1615) audi alterm partem was considered in length the case concerned municipal misbehavior. The Mayor and Chief Burgesses of the Borough of Plymouth had removed one of their members, James Bagg, from the office of Chief Burgess on the grounds of his misconduct. They made a number of

allegations against him. They said that he had called the previous Mayor, Mr. Trelawney, a 'cozening knave' and 'an insolent fellow'. They said that he had threatened to crack the neck of the current Mayor, Thomas Fowens. Worst of all they said that: In the presence and hearing of ... Thomas Fowens, ... and very many others of the burgesses and inhabitants of the borough ... and in contempt and distain of the said Thomas Fowens, then mayor, turning the hinder part of his body in an inhuman and uncivil manner towards the aforesaid Thomas Fowens, scoffingly, contemptuously and uncivilly, with a loud voice, said to the aforesaid Thomas Fowens, these words following, that is to say, ('Come and kiss'). Mr Bagg commenced proceedings in the Court of Kings Bench challenging his removal from office by the Mayor and other Burgesses. The Court ordered the Mayor and the Burgesses to either restore Mr Bagg to office or to show cause for his removal.

An answer was given referring to Mr Bagg's very bad behavior. However, the Court was not satisfied that the reasons given in the return to the writ justified his removal. On the question of how and by whom and in what manner a citizen or burgess should be disenfranchised, Coke CJ said: ... although they have lawful authority either by charter or prescription to remove any one from the freedom, and that they have just cause to remove him; yet it appears by the return, that they have proceeded against him without ... hearing him answer to what was objected, or that he was not reasonably warned, such removal is void, and shall not bind the party.

3.3 Nemo debet esse judex in propria sua causa or Rule against Bias:

The second aspect of procedural fairness, the rule against bias, surfaced in 1610 in *Dr Bonham's Case*¹ where Chief Justice Coke went so far as to say that the Court could declare an Act of Parliament void if it made a man as judge in his own cause, or otherwise 'against common right and reason'. This was one of his grounds for disallowing the claim of the College of Physicians to fine and imprison Doctor Bonham, a Doctor of Physics of Cambridge University, for practicing in the city of London without the license of College of Physicians. The statute under which the College acted provided that fines should go half to the King half to the College, so that the College had financial interest in its own judgment and was judge in its own cause.

The character of the rule against bias as a kind of natural or constitutional limit upon parliamentary power, was also asserted by Lord Chief Justice Hobart in 1614 in *Day v Savadge*² when he said that a statute 'made against natural equity, as to make a man Judge in his own case, is void in itself, for *jura naturæ sunt immutabilia* the laws of nature are unchangeable, and they are *leges legum* laws that apply to law. After *Savadge* it was in *City of London v. Wood*, Chief Justice Holt reaffirmed the rule against bias as an expression of the natural law. By that time, the idea that a person could not be a judge in his own cause was well established. Natural law as an emanation of the divine had taken its place alongside the theories of Thomas Hobbes in which it was treated 'not as traditional right reason, but rather as a mode of reasoning about the liberty of individuals in the state of nature'.

In this case the city of London sued Thomas Wood to recover a penalty imposed upon him for refusing to accept nomination as a sheriff. Anyone who refused to accept such a nomination could be punished by a fine. The fine was four hundred pounds. To nominate unwilling but wealthy individuals to the office of sheriff was used in the City of London as a way of raising revenue from those who were prepared to pay rather than to serve. The City brought its action of debt against Mr Wood in the name of the Mayor and others and brought it in the Mayor's Court, which consisted formally of the Mayor and the Alderman. The judicial functions of the Court had for a long time been carried out by the Recorder. This did not save the proceedings from invalidity. The Mayor and the commonalty and the citizens could not sue in a court held before the Mayor and the Alderman. In so holding, Chief Justice Holt expressed support for *Dr Bonham's Case* saying: ... it is a very reasonable and true saying, that if an Act of Parliament should ordain that the same person should be party and Judge, or, which is the same thing, Judge in his own cause, it would be a void Act of Parliament; for it is impossible that one should be Judge and party, for the Judge is to determine between party and party, or between the Government and the party; and an Act of Parliament can do no wrong, although it may do several things that look pretty odd; for it may discharge one from his allegiance to the Government he lives under, and restore him to the state of nature; but it cannot make one that lives under a Government Judge and party.

3.3.1 Principles of Natural Justice after *Dimes Case*:

De Smith is of the opinion that, in 1850 it was said that "no proposition can be more clearly established than that a man can not incur the loss of liberty or property for an offence by a judicial proceeding until he has had fair opportunity of answering the case against him, unless indeed the legislature has expressly or impliedly given an authority to act without that necessary preliminary". After *Dimes* it was in *Cooper v Wandsworth Board of Works* decided in 1863³. It extended natural justice to decisions interfering with property rights. The Board of Works demolished a building where the builder had not complied with a statutory requirement of seven days'

¹ *Dr. Bonham's Case*, 8 Co. Rep. 114 (Court of Common Pleas [1610])

² *Day v. Savadge*, Hobart 85, 87, 80 Eng. Rep. 235, 237 (C.P. 1614)

³ [1863] EngR 424, (1863) 14 CB NS 180, (1863) 143 ER 414

notice before commencing construction. The demolition was begun without the builder being given the opportunity of explaining his failure.

The decision of the Board was held void because of its failure to provide a hearing and its demolition a trespass. In the course of his judgment Byles J, in a frequently quoted passage, said: a long course of decisions, beginning with Dr. Bentley's case, and ending with some very recent cases, establish that, although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature.

In *Wiseman v Borneman* Lord Guest said: ... the courts will imply into the statutory provision a rule that the principles of natural justice should be applied. This implication will be made upon the basis that Parliament is not to be presumed to take away parties' rights without giving them an opportunity of being heard in their interest.

It was in the 1960s in the United Kingdom that natural justice, as procedural fairness, was brought out into the full sunlight initially by the Privy Council in *University of Ceylon v Fernando* and thereafter by the House of Lords in 1963 in *Ridge v Baldwin*. The House of Lords in the later case repudiated the confining requirement that decision-makers had to be characterized as acting judicially before attracting the application of the rules of natural justice. It reinstated the approach to the requirements of natural justice taken in *Cooper v Wandsworth Board of Works*.

4.0 International Conventions: a new dimension to Principles of Natural Justice

One of the object behind establishment of United Nation Organization is to secure respect to Human Rights within its member States, this objectives of UN compelled to enact several international convention on the Subject of Human Rights which consists 'Principles of Natural Justice within their ambit. Especially Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights, 1966, Geneva Convention on Refugees Right, 1951 and European Convention on Human Right, 1998 gave new meaning to principles of natural justice.

Universal Declaration of Human Rights, 1948 and Principles of Natural Justice: Preamble of the UDHR declares that Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common. This international convention sought to protect 'inalienable rights' of individual to achieve this object it calls member States to pledge them to achieve, in cooperation with the United Nations, the promotion of universal respect for observance of human rights and fundamental freedoms.

5.0 Conclusion

In conclusion, the most noble of acts of devotion next to belief in Allah is the greatest of all the duties entrusted to the prophets and it is the strongest justification for man's stewardship of earth. The principles of justice when augmented on the collective plane lay the foundation of society. Islam, in fact, establishes a moral and altruistic society based on high level of God-consciousness. It is a society that is humane in true sense. It transcends selfish nature of human being and creates an atmosphere where people do not respond only to their desires and ambitions but act upon the Divine Will. Islam liberates man from the domination of his own ego and makes him a true servant of Allah.

This work suggests that the principles of natural justice were not new, though they were not systematized or expressly proclaimed in ancient past. It is evident that judicial dynamism are the reason d'etre for the multidimensional growth of this concept. Lastly it is also evident that the International Conventions has had profound impact on the growth of Principles of Islamic law.

Addition to this it shows the relationship between Natural Justice in Islam and human law. The main difference between the two laws is that Islamic law is more to religion and its codified while human law is based on just on what is right and wrong it not deep. Other is that in natural justice its application is valid in shariah courts while Islamic justice is purely.

Talking about the methodology in judging the two principles, in Islam the Holy Quran, Haddith and Sunnah is referred to. In case in which such cases does not occur or the three basic sources are silent, then Ijma (consensus) is introduced. In Natural Justice, codified rules are used as basis (i.e. constitution) in cases where the constitution is silent or ambiguous, analogical deductions are being referred to is ruling.

This seems to be fair in a situation where the previous case(s) referred to is genuine. But not in all situations this is so. That is the reason why there is evolution of principles Audi Alterem Partem, Nemo debet esse judex in propria sua causa or Rule against Bias. Where by in Islam the only sources must be valid before rulings are made

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