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Principles of natural justice, their relevance and importance to doctors

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Introduction

In the medical curriculum, teaching of law is restricted to learning a few elementary aspects of medical jurisprudence which deal with application of scientific and medical knowledge to legal problems such as inquests. In general, medical law deals with medical negligence, consent, pregnancy-related issues (e.g. abortion), assisted reproduction, organ donation, dying, death etc.

This paper will focus on *principles of natural justice*, which is a key area coming under administrative law, which is distinct from medical law. Administrative law keeps the powers of the government, within their legal bounds [1]. This area of law is vital to medical practitioners in administrative inquiries in different settings.

During the course of our professional lives, either as clinicians or as academics, we are called upon to hold administrative positions of varying degrees of responsibility be it as an institution head, department head, ward consultant or postgraduate trainer. These may be in different settings; Hospitals, Department of Health, Universities and the Medical Council.

In the course of discharge of these duties, we invariably get involved in the conduct of hearings on disciplinary matters and other purported inappropriate conducts of those serving under our administration. The 'errant' medical student, the 'difficult' registrar or the 'troublesome' junior colleague in the department are experiences many of us have faced. On the other hand, we ourselves may be the subject of an inquiry. Some institutions may have procedures for inquiries laid down whilst some others may not have. Whilst complying with institutional and statutorily defined procedures, the person who holds administrative authority is expected to adhere to principles of natural justice. No institution cannot conduct an inquiry in an *ad hoc* or an arbitrary fashion without following these basic tenets of administrative law. Even when institutional procedures are clearly laid down, if they are at variance with tenets of administrative law and principles of natural justice, the institutional procedures will not be valid if challenged in a court of law by an aggrieved party.

The Principles

Principles of natural justice bring forth the relationship between common law and moral principles. This nexus with morality gives it a high level of validity and acceptability. Having originated in the English legal system, these principles have become universal values following the adoption by other legal systems as well [2]. The principles aim to achieve a 'just end' using 'just means'. That is ensure 'procedural fairness' and a 'fair decision'. There are two fundamental principles of natural justice.

The first principle – the right to a fair hearing

We need to ensure procedural fairness. The first principle of natural justice is *audi alteram partem* – "Hear the other side". This emphasizes that both sides must be heard and the person under scrutiny, should be given the opportunity to state his side of the story. This principle ensures a right to a fair hearing. The adoption of the following steps will ensure that the procedure is fair [3].

(a) The person facing the procedure has a right to **know in advance** the alleged charges or misdemeanors. The factual basis and any documentary evidence need to be provided. Preferably, these communications need to be provided in writing. The often-adopted practice of requesting a person to appear for an inquiry without informing them what the charges against them are, is not acceptable. It is essential to present them with a charge-sheet or a similar document prior to the enquiry.

(b) A **reasonable time** must be given to prepare a response. It is not unknown to simply request the person be present at an inquiry, inform the charges there and expect an immediate response. The benefit of being provided the details of the charges will be of little value unless sufficient time is provided to prepare an answer. The aim should always be to ascertain the truth and not tricking the person facing the inquiry into giving compromising answers. If indeed the charges are presented for the first time at the inquiry, the person must be given another appointment date, after a suitable time interval, to return to provide answers.

(c) The person must be provided the opportunity to present **his own side** at the hearing, either verbally or in writing. He must be given an opportunity to fully present his side of the story without coercion or intimidation. Clarifications may be sought by the inquirers permitting sufficient opportunity for the person to respond. The clarifications sought have to be aimed at ascertaining all relevant facts and not merely at 'fixing' the person. Insinuations, innuendos and personal insults pertaining to the 'general character' of the person and any matters outside the particular charges being inquired into, should be avoided.

(d) The facts presented and clarifications made by the person needs to be **documented** and presented again to the person to verify the written document accurately reflects what the persons stated. Once that is agreed upon, he may be requested to place his signature in the document by those conducting the inquiry. If the proceedings are to be recorded in electronic form, this must be informed to the person at the beginning of the inquiry.

(e) Ultimately, once the inquiry is over, the decision made by those who conducted the inquiry, must be conveyed to the person in **writing** setting out adequately the **reasons** for arriving at it. The obligation extends to appropriate timing too. A **timely decision** is essential as an inordinate delay may cause an injustice to the person. An undergraduate or postgraduate trainee's opportunity to complete an examination may be jeopardized by a delay in arriving at a decision. This would in effect result in a dual punishment. Justice delayed is indeed justice denied [4].

The Sri Lankan case of *Karunadasa v Unique Gem Stones Ltd* exemplifies the importance of giving reasons to an arrived decision. In this case it was held by Mark Fernando J "Natural Justice also means that a party is entitled to a reasoned consideration of his case; and whether or not the parties are also entitled to be told the reasons for the decision, if they are withheld, once judicial review commences, the decision may be condemned as arbitrary and unreasonable" [5].

(f) The sanction or punishment has to be **reasonable,** in keeping with the shortcoming or misdemeanor proven in the inquiry. For instance, to repeat an entire clinical training of a postgraduate trainee for having one misdemeanor may not be justifiable. Equally importantly, sanctions cannot be imposed even if the decision makers feel that there has been an offence but it could not be proved with available evidence. Just as we make clinical decisions, the administrative decisions also need to be scientific and evidence-based. It might amount to stating the obvious but, if the offence could not be proven and the person is exonerated of the charges, thereafter imposing a punishment is procedurally wrong and amounts to a travesty of justice.

If we could as academic and clinical leaders adopt the above six measures in an inquiry, the highest standards

of **procedural fairness** can be achieved. The possibility of courts of law reversing the decisions as well as sanctioning inquiring members for inappropriate conduct will lessen.

The second principle – the rule against bias

The second principle of natural justice relates to how a fair decision is arrived at, once the fair procedure is in place. It is the principle against bias, nemo *iudex causa sua* – "No man, a judge in his own cause". This principle fundamentally is a rule against bias. It emphasizes impartiality. Our obligation is to ensure that those who judge and provide the final decision are unbiased, objective and arrive at fair decision. Those in the inquiry panel must be knowledgeable and competent to decide on the matter being enquired into and be unbiased. They should not be in anyway having a personal interest in either the complainant or the person facing the inquiry. The person who decides must not be or fairly suspected to be biased. Bias may be actual, imputed or even apparent [6].

1. **'Actual'** bias is when the decision-maker is motivated by a personal like or dislike against or in favour of the person facing the inquiry [7]. For instance, a trainer with whom the 'difficult registrar' worked with earlier, should not be a decision maker.
2. **'Imputed'** bias is when the decision-maker either represents the complainant party or stands to personally benefit from the outcome. The next in line for the post, currently occupied by the person facing inquiry should not be a decision maker as he stands to benefit directly if the person is judged to have done a misdemeanor.
3. **'Apparent'** bias is the one which will be most difficult for us to avoid. The decision maker must appear as unbiased, to a 'reasonable minded outsider'. For instance, selecting as decision makers colleagues of a complainant consultant may give rise to an 'apparent' bias.

The adherence to principles of natural justice has benefits for all parties. For the consultant / trainer / administrator, it provides a foundation and guidance to act fairly. Fairness lies at the core of values of human conduct. For the person facing an allegation, it increases confidence that a fair decision could be expected from the administrative system and the administrator. If the outcome of the inquiry is felt to be unfair, the person subjected to the inquiry and facing sanctions or punishment, may exercise the right to challenge the findings at a relevant legally-defined appellate body or in a court of law. Violations of or deviations from the principles of natural justice in making administrative decisions form an important basis for the annulment of such decisions during judicial review. The broadening of the scope of principles natural justice has made them closer to fundamental rights. Article 140 of the current Constitution of Sri Lanka vests the authority of issuing different types of writs in cases of administrative violations with the Court of Appeal. However, there is a current trend of seeking redress through fundamental rights jurisdiction of the Supreme Court rather than seeking traditional writs for administrative violations from the Court of Appeal. Hence from the institution perspective, it lessens the possibility of the person facing the inquiry subsequently seeking a judicial review of decisions perceived as 'unfair'.

Most importantly, following these principles helps us to facilitate a just and a fair outcome. Above all we are obliged to respect and abide by principles of natural justice on moral and legal grounds.

Abridgement of natural justice

However, there can be situations where principles of natural justice can be excluded or limited by laws. From a Sri Lankan context, such statutory abridgements can be challenged only before they are passed by Parliament while in some other countries, 'unfair statutes' can be annulled by courts of law. There are instances where courts could accept the exclusion of the fairness afforded by these principles under certain circumstances. e.g. enforcement of quarantine, to prevent the spread of a disease as has been witnessed during the COVID pandemic. Mask mandates and limitations / restrictions on persons without vaccination may be legally enforced in the future [8].

Principles of natural justice in medical practice

Although principles of natural justice formally form a key and fundamental component of procedural propriety in inquiries, they can be used routine clinical practice as well. Their foundation based on morality, affords the principles high acceptance, recognition and respect.

In a situation of a dispute between doctors or doctors and other categories of staff, these principles would help immensely in conflict resolution. The application of rule against bias and fair adjudication ("hearing") by clinicians outside a formal inquiry setting will help to bring in harmony in the clinical milieu. Most of such disputes unfortunately tend to end up in trade union actions with their ensuing repercussions. There may be instances of complaints against medical staff by patients. As the lead clinician, one will need to hear both sides of the story, take fair, reasoned and transparent decisions, maintain good communication and mediation between disputing parties and strengthen systems in order to prevent recurrence of similar problems. This process likely to inspire confidence in patients and medical staff that a fair hearing has been given to their grievances and prevent complaints to higher administrative authorities and courts of law which could be distressing to all parties.

The principle of a fair hearing ("hear both sides") can be adapted in the clinical enquiry process as well. This calls for comprehensive patient assessment. The thoroughness of delving into all aspects of the clinical history and physical examination, rather than taking a one-sided and biased view in the diagnostic pathway will immensely help the patient.

The imputed right to know the reason for a decision that comes under the fair hearing rule has a medico-legal value in the consenting process. There are three key elements for an informed consent obtained from a patient to be valid – the patient should be competent; the patient should have received sufficient information about the decision; the consent should be voluntary without any coercion or manipulation. The right of the patient to know the reason for clinical decision can be considered to come within the sufficient information element.

Conclusion

The stringent adherence to principles of natural justice ensures equity and justice to the concerned parties and it enhances both better decision making and greater respect for the integrity of the decision maker. Our ignorance of law and due process will not be a valid defence if challenged in a court of law. We need not have formal legal education to understand and apply principles of natural justice in the discharge of our administrative responsibilities. It is our administrative and moral duty. Following principles of natural justice is not a virtue. It is a moral necessity.

The application of principles of natural justice transcend the boundaries for formal inquiry processes. Their moral basis and conceptual value are of immense value in clinical practice as well. e.g. in dispute resolution, clinical assessment, obtaining consent from patients.

"It is not merely of some importance, but of fundamental importance that justice should not only be done, but should manifestly be seen to be done"

Lord Hewart, Lord Chief Justice of England and Wales [9].

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