

## Ensuring Justice: The Crucial Role of Notice in Fair Hearings and Judicial Oversight in India

*Seena B Nair\* & Dr. S. Ambika Kumari\*\**

*\*Research Scholar, Vels Institute of Science, Technology and Advanced studies, Chennai*

*\*\*Dean, School of Law, Vels Institute of Science Technology and Advanced studies, Chennai*

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### Abstract

The concept of “natural justice” provides that prior to the initiation of proceeding, the relevant authority shall ensure adequate chance to the opponent against whom matter is brought and thereby assure that they can appropriately defend their case. The foremost step is to notify the opponent which is very vital during proceeding. If a trial is carried out without any notice, it will result into contravention of natural justice & will therefore be deemed as invalid. Serving notice is considered as the bare minimum requirement. It is indispensable part of fair trial. Right to trial or hearing gets blurred where the concerned person is not aware about the accusations made against him. The sufficiency of notice is tested on the ground that the adequate material & details for the relevant individual is made available for defending his interest in the case. Thus, some of the significant factors in deciding the fulfilment of natural justice are- content to be mentioned in a notice, the person having right to obtain the same and proper time at which it has to be issued. Enough time shall be given to the opponent to satisfy the notice and its requirement. The notice in hearing plays a vital role in ensuring the attainment of natural justice and thus, it shapes the entire judicial system. In this research article, the author will deal with the relevance of notice in fair hearing and thereby securing justice. The author would further address the necessary requisites of legal notice and legal effect of its non-issuance. The

author will analyze the research topic in the light of judicial pronouncement by the Indian Apex Court.

**Keywords:** *Notice, Fair hearing, Justice, Natural Justice.*

## 1. Introduction

The expression “Notice” is derived from the Latin term “Notitia” which means as being known. In common terms, it involves knowledge or intelligence regarding information. Under the ambit of legal arena, it encompasses an awareness of the conditions or situation which seeks to induce belief or suspicion of the said fact.

Notice signifies the principle of fairness and is considered earlier. It must be concise and clear in order to provide sufficient details of the legal proceeding which he has to attend. Reasonable time shall be provided to the defendant so to frame an effective reply. Absence of notice and an option to file response vitiates the decision of authority in totality.

Where any statute specifies the need to serve notice then the same shall be served in a manner directed by the relevant law. The Apex Court has ruled very recently that when a cheque is being bounced, an adequate notice shall be served on them in accordance with the procedure laid down under Negotiable Instrument Act 1881 i.e., through personal, courier or postal service to the drawer, otherwise it will not suffice<sup>1</sup>.

Notice to the defendant or opponent forms as the initial phase of any legal proceeding. Until an individual is made aware regarding the main issue and subject matter of the alleged suit, he would not be able to file defense. Merely notifying an individual is not enough, it shall also be sufficient. The adequacy (sufficiency) of such notice is a relative word and shall be determined as per the given case. Usually, in order to call a notice as adequate, it shall have following essentials-

- (i) Date, location and nature of legal matter to be conducted.
- (ii) Hearing is conducted under which legal authority.
- (iii) Specifying the particular charges which an individual has to defend.

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<sup>1</sup> The Hindu 20-12-2007.

- (iv) Specific legal action or sanction which is sought to be granted as relief.

The Apex Court in the matter of *State of UP v. Vam Organic Chemicals Ltd<sup>2</sup>*, pointed out that prior to issuance of notice, there shall be an adequate reasons behind proposing any legal action. These factors shall be specified in the notice which is sought to be served. As per the factual matrix of the instant case, an individual was awarded an acknowledgment certificate for the purpose of dealing certain product. However, afterwards the said certificate was revoked by the State. It was concluded by the Court that adequate reasons are essential condition for serving a notice and it shall be mentioned inside the notice.

For example, a notice is held to be improper and insufficient by the Court where it was served before 24 hours of demolishing a building in dilapidated condition. Likewise, where the notice comprises mainly 1 charge, the individual shall not be penalized for any other offence which has not been mentioned in the notice<sup>3</sup>.

Moreover, the Court highlighted that where the notice relates to the correction of any error, it shall be served if it is prejudicial for the individual. The correction cannot take away the right of a person to receive notice.

In *Joesph Vilangadan v. Executive Engineer<sup>4</sup>*, it was discovered by the Court that notice served was not adequate. The appellant didn't begin the work on time as per the agreement and thereafter obtained a notice from the engineer wherein it was mentioned that - "You are therefore requested to show cause within seven days from the receipt of this notice why the work may not be arranged otherwise at your risk and loss through other agencies after debarring you as defaulted." Delay was caused in responding to the said notice, due to the conduct of respondent. Consequently, the contract was rescinded and he was restrained from executing any future contracts under PWD. While quashing the order, the Court remarked that the expression "debarred as defaulter" was incorrect and an adequate notice was required to debar the individual from signing the contracts of PWD in future.

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<sup>2</sup> (2010)6 SCC 222

<sup>3</sup> State of J&K v. Haji Wali Muhammed, (1972) 2 SCC 402

<sup>4</sup> (1978) 3 CCC 36

Moreover, the Supreme Court in *Appropriate Authority v. Vijay Kumar Sharma*<sup>5</sup>, outlined that the rule pertaining to natural justice were abridged when the ground for mandatory purchase of property by IT Department was not mentioned in the relevant notice, and the place for conducting the proceeding was altered without providing sufficient time to transferor.

A notice was issued as per Section 105B of Bombay Municipal Corporation Act 1888, to allottee of the municipal corporation for the purpose of evicting them. It was not required that every individual residing with the allottee<sup>6</sup> shall be served. Similarly, rules of natural justice are not deemed as contravened in the cases wherein information by way of notice is not provided to every member of society agreeing for entering into amalgamation<sup>7</sup>. But while disconnecting a tele-service or altering a dealership contract<sup>8</sup>, notice becomes essential<sup>9</sup>.

A notice to public at large can be provided by publicizing it in local or daily newspaper and a separate intimation is not needed to meet the rules of natural justice. The Court in the matter of *Shiv Sagar Tiwari v. Union of India*<sup>10</sup> stated that a newspaper containing the notice was enough and sufficient to enable out-of-turn allottees of the governmental premises in order to defend their rights before the Apex Court against an order aiming to cancel the allotments.

The necessity of notice would not be required or strictly implemented where the alleged parties clearly know the allegations or case against them and it not prevented from presenting an effective plea for defense. For instance, the Court, in *Keshav Mills Co. Ltd*<sup>11</sup>, affirmed the order of the State to acquire the mill for 5 years, even where no prior notice was served to the appellants. This ruling was made on the ground that a complete proceeding was already being carried out, and no further information was required to be served to the appellants. Likewise, in *Maharashtra State Financial Corporation v. Suvarna Board Mills*<sup>12</sup>, the Court underscored that a notice requiring payment in fifteen days, with the condition for taking over the industry if not been complied, was adequate and the notice was not required to be re-issued.

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<sup>5</sup> (2001)10 SCC 739

<sup>6</sup> *Ajit v Best Undertaking*, AIR 1985 Bom.362

<sup>7</sup> *Daman Singh v State of Punjab* (1985)2SCC 670

<sup>8</sup> *Sub-Divisional Controller VV Rattann*, AIR 1985 Cal 281

<sup>9</sup> *Union of India v Narayanbhai*, AIR 1985, Guj 31

<sup>10</sup> (1997)1SCC 444

<sup>11</sup> (1973)1SCC 380

<sup>12</sup> (1994)5 SCC 566

Further, fresh notice is not needed for demolition of an illegal building where a notice for the same has been issued beforehand<sup>13</sup>. In *State of Karnataka v. Mangalore University Non-Teaching Employees Association*<sup>14</sup>, it was ruled that the action by government for restoring the overpayments cannot be held to be invalid merely on the ground of lack of sufficient opportunity because no harm was caused to the employees. The Court held that no further information was required to be intimated.

Moreover, the Court denied to invalidate the order passed by the Election Commission (EC) without serving the opponent due to the fact that it didn't caused injury to the alleged political party. In the instant case, a direction was issued to the "All India Anna Dravida Munnetra Kazhagam (AIADMK)" by the EC for removal of "2 leaves symbol/sign" from the buses run by State with a view to avoid any ambiguity in symbol of the party's logo. The validity of order was questioned based on absence of notice. It was noted by the Court that judicial authorities shall follow the contextual, reasonable and practical approach to secure justice instead of strictly complying the procedural complexities<sup>15</sup>. While determining potential injustice or prejudicial aspect, the Court shall stress on the material of the case rather than only complexities.<sup>16</sup>

Likewise, where a notification providing a specific kind of tax advantages were annulled by a subsequent statute having effective retrospectively, no fresh notice was needed to restore the sum which was refundable. Issuance of notice afresh in such a scenario will be unnecessary formalities because it will not injure the parties<sup>17</sup>. But the Apex Court in the case of *Union of India v. Narendra Singh*<sup>18</sup> concluded that even in the cases where error in the decision is required to be rectified involving adverse outcome for a person, then in such a case notice shall be served. In the present matter, an incorrect advertisement was annulled without complying with the due process of law. It was stated by the Court that no opportunity is needed in a case where error is prima facie evident.

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<sup>13</sup> Cantonment Board v. Mohanlal (1996) 2SCC 23

<sup>14</sup> (2002)3 SCC 302

<sup>15</sup> All India Anna Dravida Munnetra Kazhagam v. Election Commr, (2014) SCC Online Mad 761

<sup>16</sup> State v N.S. Gunaeswaran (2013) 3 SCC 594

<sup>17</sup> R.C. Tobacco (p)Ltd v Union of India (2005) 7 SCC 725.

<sup>18</sup> (2008) 2 SCC 750.

Article 21 of the Indian Constitution provides that a person detained shall be entitled to know about the basis of detention. If such grounds are not adequate, the order for detaining the person shall be liable to be quashed by the High Court<sup>19</sup>. With respect to administrative decision/actions, notice would be considered as unclear where it fails to mention the proposed action<sup>20</sup>, the estate to be obtained, or the basis for annulling a license<sup>21</sup>. But the necessity for notice as required by legislation can be waived where it is merely for the advantage of the relevant person.

## 2. Research Objectives

The author has formulated following objectives to the present research-

- To study the significance of notice in conducting fair hearing.
- To examine the pre-requisites pertaining to a valid notice.
- To analyze the judicial trend related to the role of serving notice in a trial or hearing.
- To describe the legal effect of non-issuance of a valid notice.

## 3. Necessary Pre-Conditions of Notice

### (i) Properly serving the Notice

A mere service of notice doesn't satisfy the purpose of it. Every reasonable effort shall be taken to assure that notice is received by the opponent in actual manner. If the provision requires the serving of notice as an essential condition, it shall be appropriately addressed, otherwise, it shall be invalidated.

### (ii) Time-bound Service of Notice

When a notice is served to the concerned parties in order to enable them to represent themselves, an adequate time shall be provided for making the representation efficient. Submissions against charges shall be stated within a

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<sup>19</sup> State of Bombay v. Atma Ram, AIR 1951 SC 157

<sup>20</sup> Abdul Laatif Nomani v. Commr. AIR 1968 All 44

<sup>21</sup> Tulsa Singh v. State of Haryana AIR,1973 Punj 263

reasonable period to permit the affected person to file his response or defense. The sufficiency of time given to the parties will be dependent on the facts of each case.

(iii) Stating Time and venue in the Notice

The notice shall mention the venue and time regarding the proceeding to be conducted in clear and unambiguous manner. An adjudicatory authority having quasi-judicial power shall ensure parties with an effective notice containing the date, venue and time of the proceeding. Non-compliance to mention the particulars like charges, allegations, incidents, proposed measures and its ground would amount to contravention of rules of natural justice.

(iv) Preciseness and clarity of Notice

Where the alleged notice is ambiguous or vague, it causes obstacle in the capability of recipient to draft an appropriate defense, contravening the rule of natural justice. As per Section 544(a) of the Administrative Procedure Act, the persons having right to receive notice shall be promptly intimated regarding-

- Nature, venue & time of the proceeding to be held.
- The jurisdiction & legal sanctity under which proceeding would be conducted.

In the case of *Cooper v. Wandsworth Board of Works*<sup>22</sup>, it was ruled that persons entitled to hearing before judgment substantially influenced their property rights. In the present case, Cooper (claimant) failed to give the necessary notice prior to constructing the house, resulting into directing demolition of house by Board of Works without seeking additional details from him. It was enunciated by the Court that the said act was unlawful because claimant should have been provided with an opportunity to describe his acts before taking a serious decision. The Court emphasized on the significance of compliance of natural justice and right to fair hearing, particularly in the matter where rights are materially impacted. This decision elaborated the rule that judgement shall not be made without permitting the affected individual to demonstrate their perspective, and thereby securing justice and fairness in the legal proceeding.

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<sup>22</sup> (1861-73) All ER Rep Ext 1554

In a case, reinstatement of *James Bagg*<sup>23</sup> as chief burgess of Plymouth by way of mandamus was issued as he was earlier removed from the post even without appropriate hearing or notice. The reasonable efforts to serve such notice was significant and is often treated acceptable. The relevant authorities or bodies constituted under legislation include measure for public notice wherein numerous people are affected and exact number is uncertain, which aims to properly intimate those people who are like to be affected. The said approach is in consonance with the rule of natural justice, which mandates that notice should be effective, reasonable and fair in fulfilling its intended objectives<sup>24</sup>. A noteworthy case is *Maharashtra State Financial Corporation v. Suvarna Board Mills*<sup>25</sup>, which stressed that a notice requiring repayment within fifteen days, non-compliance of which would result into taking over of factory as per the relevant procedure.

In the case related to service matter is *UPSRTC v. Ram Chandra Yadav*<sup>26</sup>, wherein the Court outlined the analysis that whether there was infringement of natural justice or whether the worker was properly made aware of the charges, provides a reasonable opportunity to plead defense and whether the concerned adjudicatory authority acted in bona fide manner. The respondent contended that there was clear abridgment of natural justice when order for examination was passed on a specified day. But the Court enunciated that as the prior notice was served to the respondent for the said change, it doesn't amount to infringement of natural justice.

In the *Dev Dutt case*<sup>27</sup>, a person obtained a "good" grade in the yearly confidence report. However, he was not given promotion as the benchmark needed for getting promotion was "very good grade". The question arose as the office memorandum of State didn't mandate for "good" rating as it was considered adverse. While putting emphasis on the rule of natural justice and its relevancy in various situations, the Apex Court held that "all kinds of ratings, whether negative or positive, shall be communicated. Non-compliance with respect to informing the remarks would be treated as contravention of Article 14 of the Indian Constitution and natural justice".

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<sup>23</sup> *Rex v. Mayor & c. of Plymouth*, De Smith, Administrative Law

<sup>24</sup> *Willson v. Secretary of State for the Environment (1973)*, De Smith. Administrative law

<sup>25</sup> (1994) 5 SCC 566

<sup>26</sup> (2000) 9 SCC 327

<sup>27</sup> (2008) 8 SCC 752



In of *Oryx Fisheries v. Union of India*<sup>28</sup>, a private corporation (appellant) was operating in the business of export and manufacture of seafood, was served a notice from the chairperson of Authority namely “Marine Products Export Development Authority.”. The said notice required an explanation regarding why their certificate for incorporation not be revoked based on the accusation of transporting faulty goods and non-complying to deal the complaints. Despite the fact that appellant denied the said allegation, the registration was cancelled by respondent even without giving adequate opportunity or reasons for the same. The order cancelling the same contained the same reasons as provided under the notice and highlighted that substandard good was sent to the purchased and there was failure to fulfil the agreement, resulting into injury to the business relations with the UAE. The Court noted that while beginning a proceeding for show-cause notice, a quasi-judicial body shall act with open mind and in fair manner. The aim of such proceeding/hearing is to enable the said individual a proper opportunity to file objection the alleged charged levelled in the said notice. In this phase, the authority who has issued the charge-sheet is not sufficient to confront the person so as to prove his guilt in conclusive manner but shall also inform them regarding the charges levelled against them, which would enable them take defense and establish their innocence<sup>29</sup>. This assures that the procedure is unbiased, impartial and provide them with appropriate chance to be shown by the parties involved<sup>30</sup>.

#### 4. Essentials of Valid Notice

In order to constitute an effective and valid notice, the concerned authority shall give adequate time to the person for preparing his defense. Giving merely one day or requiring an immediate reply results into refusal to opportunity to file response.

In the case of *Abdul Latif v. Commr*<sup>31</sup>, the Court opined that the concerned authority shall take into account the facts of the case in order to decide whether period designated for notice was

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<sup>28</sup> (2010) 13 SCC 427

<sup>29</sup> Ajith Kumar Nag v. Indian Oil Corpn. (2005) 7 SCC 764

<sup>30</sup> C.K. THAKKER, ADMINISTRATIVE LAW (2<sup>nd</sup> edn., Eastern Book House, 2012).

<sup>31</sup>AIR 1968 All.44

adequate. The Court in *Canara Bank Case*<sup>32</sup> pointed out that notice is the foremost pre-requisite for assuring that no person is left unheard. The notice so served shall be free from ambiguity, concise and comply with the norms of natural justice. Moreover, in *Sohan Lal Gupta*<sup>33</sup> the Court elucidated that valid notice forms an important element of just and reasonable opportunity. In the matter of *Satish Chandra v. Union of India*,<sup>34</sup> a 7-day notice was given by the Union government to the Municipal Corporation of Delhi with respect to supersession on several grounds. Although the said action by the government was affirmed, the dissenting judge view was worth mentioning. It was alleged that there shall be extension of time as unlike a person, a company is a group of more than 100 persons, having complicated procedure for arriving at a decision.

The Apex Court in the case of *J. Vilangandan v. Executive Engineer*<sup>35</sup> came to a conclusion that a notice was insufficient because it failed to state the proposal to restrain the contractor in clear manner, who was later on prohibited from future contracts. Judiciary shall determine the sufficiency of notice. It was concluded by the High Court of Delhi that only citing the provisions is not sufficient; a valid notice shall also state the action to be conducted. Making a long, vague and ambiguous notice degrades one's right to avail notice.

A notice is said to be vague, where:

- (i) The relevant chargesheet fails to contain specific details of the alleged fraud.
- (ii) It doesn't cite the venue, time and date of the proceeding and incident.
- (iii) It states charges without mentioning the proposed action.
- (iv) It provides 1 ground or basis and takes measure on another ground.
- (v) It adopts measures on such grounds which was not stated in the notice.
- (vi) It enumerates various grounds without mentioning which are relevant.

The Apex Court in *N.S. Transport v. State of Punjab*<sup>36</sup> pointed out that criminal sanctions shall be specified for every permit, providing details about the beach of particular conditions.

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<sup>32</sup> *Canara Bank v. Debasis Das* (2003)4 SCC 557

<sup>33</sup> *Sohanlal Gupta v Asha Devi Gupta* (2003)7 SCC 492

<sup>34</sup> AIR 1983 Del 1

<sup>35</sup> AIR 1983 Del 1, AT 28

<sup>36</sup> AIR 1976 SC 57

Accordingly, the decision made by the transport commissioner was quashed because of insufficiency of notice.

## 5. Service of Notice

Where a legislation mentions a specific mode of serving the notice, that particular mode shall be complied. For instance, if legislation mandates notice to be:

- (i) Served personally,
- (ii) Delivered by registered courier or post,
- (iii) If the aforesaid mode is failed, affixing the notice on outer door of the residence.

In case, notice was not delivered in accordance with the prescribed mode, or it gets returned underdelivered, (iv) the Court will then declare that notice is unserved and no action can be proceeded with. Small irregularities in the said notice doesn't impact the rights of individual and doesn't infringe the fair trial sections, but material irregularities amount to infringement of those rights.<sup>37</sup>

## 6. Notice and its Waiver

The Courts differentiated between the matter involving personal right and those safeguarding public rights. In private cases, waiver of notice is permitted. However, it cannot be waived in the matters pertaining to public interest.

## 7. Ex-Parte Proceedings

In case an individual fails to attend the proceeding despite getting the adequate notice, the concerned authority has power to proceed ex parte and the pre-requisites of natural justice

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<sup>37</sup> KA Abdul Khader v Dy Director, AIR 1976 MZD 233

would be deemed as satisfied. In *Jethmal v. Union of India*<sup>38</sup>, the action was brought against the appellant under Section 19 of the Foreign Exchange Regulation Act and Section 167(8) of the Sea Customs Act for indulging anti-smuggling gold in Indian territory. A notice was sent to him related to seizure of the gold. The appellant failed to file response. Accordingly, the authority ordered for confiscating gold and thereby inflict sanctions. The Apex Court ruled that in the present case there was no contravention of natural justice.

But it will cause infringement of natural justice where the authority denies to listen the individual who failed to be present in the first hearing. In *Sangram Singh v. Election Tribunal*,<sup>39</sup> the Top Court highlighted that Indian procedural legislations are found on the basis of natural justice principles, which provides that a person shall not be left unheard and the judgment shall not be passed behind their backs, the hearing impacting their daily life and property shall not be allowed to continue and people shall not be barred from getting involved. Provisions should be interpreted in the light of natural justice. If reasonable and sufficient grounds for not appearing before the authority are explained, the said matter should be restored by the authority and it will hear the parties even where he had to proceed with ex-parte decision.

In the case of *Ratnish Kumar Choudhry v. Indira Gandhi Institute of Medical Sciences, Patna*<sup>40</sup>, the dismissal of appellant was made on the basis that his recruitment as a chest therapist was unlawful because the area of general therapy & chest therapy was distinct from one another. The dismissal was set aside by the Apex Court as it is an established law that where an ex-parte proceeding is carried out hiding from the delinquent workers and comprises of unethical remarks, it will serve as foundation rather than motive. Thus, dismissal of the workers without conducting inquiry or framing charges contravenes the principle of natural justice.

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<sup>38</sup> AIR 1970 SC 1313

<sup>39</sup> AIR1955 SC 425

## 8. Legal Effect of Non-Issuance of Notice

Not issuing notice or error in issuance or faulty service of notice will not impact the authority's jurisdiction. Issuing notice in accordance with law forms a vital element of providing just opportunity of being heard. If injury occurs due to invalid or non-issuance of notice, then the hearing would be vitiated. However, irregular service will not make the proceeding invalid. If service of notice is defective or is not being issues, the principle of natural justice will be infringed. The concerned authority will have to proceed the matter de novo with adequate notice. Contravention of natural justice will not vitiate the hearing but the order so made will be vitiated. A show cause notice if comprises of unintelligible, vague or unspecified accusations would signify a refusal to grant appropriate opportunity of being heard.

## 9. Conclusion

From aforesaid analysis, it is evident that notice forms the essential part of Indian legal setup which seeks to ensure justice to the parties against whom allegations are made. It is an inevitable part of natural justice and thus hold a substantial value in promoting fair trial. A valid notice shall include certain elements such as concise details related to allegation made, the time and place to file the appearance. It can be served either personally by various modes such as speed post or online medium. Non-issuance of notice results into vitiation of legal proceeding and the trial would be dealt afresh. Thus, it can be concluded that legal notice is an essential requirement for assuring fair trial to both the parties.