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Evaluating the Constitutional Validity of E-Assessment, Faceless Hearing and Appeal Scheme Under the Indian Income Tax Act, 1961 in the Light of Application of the Principles of Natural Justice

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ABSTRACT

In the budget proposal in 2021, the finance minister suggested introducing a faceless e-assessment system. The scheme was put in place to eliminate the necessity for a human interface between the Indian Revenue Service and the taxpayer. After getting an income tax scrutiny assessment notice, taxpayers are not required to talk with a tax officer, visit an Income Tax office, or run to poles and pillars under this plan. However, the faceless approach eventually leads to constitutional challenges due to the role being played by the assessing officer during the examination. As the assessee has no opportunity for physical representation nor can he make oral representation due to this new scheme and therefore it is essential that we dig in the principles of jurisprudence to investigate and determine the constitutionality of the scheme.

In this research paper authors will evaluate the viability and practicality of faceless schemes, its pros and cons. Further the authors will evaluate efficacy and constitutionality of Face Less Hearing Scheme and the process of Appeals under this Scheme in the light of jurisprudential, constitutional and legislative perspective especially with the emphasis on the Principles of Natural Justice and fundamental rights under the Part-III of the Constitution of India.

KEYWORDS

Faceless Hearing Scheme, Appeal Process, Constitutional validity, E-assessment Scheme, Assessee, Tax, Tribunal, Income, Principles of Natural Justice

INTRODUCTION

Faceless assessment scheme was adopted in the Finance Act of 2019, and the Finance Act of 2020 expanded the principle to first appeals. The entire assessment process is done remotely by a team of officers without any physical interaction with the assessee in faceless assessment. For example, a notice from the Mumbai office could be sent to a Pune resident, and the response could be seen by another officer in Delhi. Without visiting the tax office, all notices must be responded to electronically. Moreover, neither the assessee nor the assessing officer is aware about the party on the other end.

By migrating the appeal process online, the Finance Bill, 2021 attempts to transform the Income Tax Appellate Tribunal (ITAT) in the same way, thereby determining the overall fact-finding agency faceless as well. The impression is that the government is rushing into the "faceless period" without allowing the faceless assessments and first appeals enough time to settle down. At the same time, experiments in the course of a tax dispute signal imminent catastrophe. The clauses and procedures governing faceless assessments and appeals have already been criticized harshly.

This scheme is arguably the most significant tax reforms that the Income Tax Act of 1961 has

seen in recent years. True, the idea behind this scheme is game-changing, as it promises to streamline the tax administration while also increasing transparency and accountability. This is a dramatic change in the tax administration process, as it reduces the amount of paperwork. Moreover, this can also be said to be a major change in the direct tax management procedure, as it reduces the authority of tax authorities, tax extremism, and the potential for corruption and lawsuits.

While faceless evaluations can be useful in straightforward situations, it is a different story when it comes to complicated conflicts. The problems include a lack of sufficient infrastructure for data uploading; file size and number of documents limitations; difficulty describing complicated facts, business structures, and convoluted legal aspects, among others and therefore the faceless scheme seems to be a step in the right direction, but it has a lot of conflict be it from a jurisprudential perspective, constitutional perspective and legal perspective. It is therefore essential to place this scheme on the scale of the Constitution of India in order to determine its constitutionality. In this paper authors will analyze and uncover the various aspects of the Faceless Scheme, highlighting its pros & Cons. Further, authors also will determine the constitutionality of the scheme on the golden thread of fundamental rights and application of the principles of Natural Justice.

STRUCTURAL SET UP AND THE FUNCTIONING OF FACELESS APPEAL SCHEME

In essence, a faceless appeal process would be carried out online under a dynamic jurisdiction. The entire appeal process will be conducted online, eliminating the need for any physical interface between assessee and their approved representatives and authorities. The framework also establishes an online procedure for filing supplementary grounds, admitting substantial evidence, instituting penalty procedures for notice of non-compliance, and initiating rectification proceedings. To carry out faceless appeal proceedings in accordance with the scheme's provisions, the Central Board of Direct Taxes (CBDT) has established the National Faceless Appeals Centre (NFAPC), Regional Faceless Appeal Centres (RFAPCs), and Appeal Units. (Income Tax Department, Government of India, 2020)

During and after appellate proceedings, the functions and procedures of taxpayers and the NFAPC will be largely the same as they are now in the ‘physical hearing' environment. Furthermore, the NFAPC's internal operations and practices, as well as those of its various units, will be akin to faceless evaluation proceedings. Before any additional grounds for appeal submitted by an appellant are accepted, the scheme requires that they be referred to the AO or the (National Faceless Appeals Centre) NFAPC for their comments. It's worth to note that the Income Tax Act, 1961 provides that the Commissioner of Income Tax has complete discretion in admitting any new basis if it is satisfied that the omission was not deliberate or illogical. As a result, it appears that the government may need to rethink the scheme's provisions in order to prevent increased litigation.

The Faceless Appeal Scheme's plan for order review is a standout feature. If the aggregate amount due in respect of problems contested in appeal exceeds the threshold to be prescribed by the CBDT, a draft appeal order would be required to be reviewed by an Appeal Unit other than the one that released the draft appeal order. Other orders would be subject to scrutiny, based on the CBDT's risk management approach. If the NFAPC has sent the draft order to a review appeal unit, which has submitted comments on the order, it would have to send it to another Appeal Unit to prepare a revised draft appeal order. The original appeal unit appears to have been denied the chance to provide remarks, which may or may not be consistent with judicial principles.

In order to obtain a personal hearing, taxpayers or their representative must submit a written request. Their request may or may not be approved by the RFAPC's Chief Commissioner or Director General if he is of the opinion that the prayer is covered by the situations listed in clause (xi) of paragraph 13 of the said Scheme. When the Chief Commissioner or the Director General in charge of the Regional Faceless Appeal Centre approves a request for a personal

hearing, the hearing will be held entirely through video calls or conferencing, hence totally eliminating the personal or actual presence before the authority. (Sanjay Sanghvi, 16)

DEFECTS IN FACELESS HEARING AND APPEAL SCHEME

By the very nature of the role played by the assessing officer during the evaluation, the faceless scheme inevitably leads to constitutional and legal challenges as it is argued that the scheme paves no way for the assessing officer to resolve any questions that may arise during the course of the evaluation. Furthermore, the assessing officer is unable to make such a request, potentially resulting in a substantial miscarriage of justice and a significant violation of the doctrine of Audi Alteram Partem. Moreover, the said scheme is also said to be in violation of Section 250 and Section 251 of the Income Tax and going against the concept of oral hearing in light of natural justice as the assessee is not being given an opportunity to be heard in person. Scheme has been tested in the light of its constitutionality and legality by elaborating and comparing it with the concept of natural justice, *Audi alteram partem.* This scheme is being violative to the basic principle of natural justice i.e. fair hearing as well as the Section 250 and 251 of the Indian Income Tax Act, 1961.

ORAL HEARING AND PRINCIPLES OF NATURAL JUSTICE

A hearing is an opportunity for someone who is facing an unfavorable action to show why it shouldn't be done. The hearing must be "fair," according to common law. Natural justice principles are giving emphasis on "fairness" in administrative operations for avoiding arbitrary execise of powers by administrative authorities and miscarriage of justice. *Nemo judex in causa sua* (the rule against prejudice) and *Audi alteram partem* (no one should be condemned without being heard) are the two main inalienable facets of the of the natural justice principle (Sathe, 1999) The terms "impartiality" and "fairness" are used to describe the underlying ideas of the necessity of the application of the principles of natural justice. Though jurists may disagree on whether both ideas should be grouped under the heading of "fair hearing" or addressed separately, such concepts have been rooted in the system of justice administration. While courts follow formal laws of evidence and process. Administrative agencies such as tribunals, disciplinary committees, and statutorily constituted authorities follow the principles of natural justice to ensure procedural fairness and achieve the ends of justice.

When an administrative decision has "civil repercussions" for a party, it is generally agreed in administrative law jurisprudence that the right to a fair hearing cannot be waived. Around this idea, the courts have created a kind of code of equitable administrative procedure, which is the subject of the current article. It's impossible to highlight the exact content of the *audi alteram partem* concept. Natural justice's requirement changes over time and in different situations. However, it must meet two essential criteria: first, an opportunity of being heard must be provided, and second, that opportunity must be appropriate and equitable.

After determining that a fair hearing process is an integral part of the legal system, the legal machinery must now determine the scope of procedural safeguards. There are certain other alternatives available in this regard. An all-encompassing procedural code is on one end of the spectrum, while ad hoc judicial rulings are on the other. There are a variety of choices in between. Now talking about oral hearing in light of Natural Justice we can contend that the terms "oral hearing" and "personal hearing" are not highlighted or laid down in any statute. The benefits of a personal or oral hearing over other forms of hearing might clarify a surge in lawsuits on the subject of personal hearing. First and foremost, the Supreme Court (SC) recognized a two-pronged intention (intrinsic and instrumental) of a fair hearing process in the *Olga Tellis case* (Olga Tellis & Ors vs Bombay Municipal Corporation, 1985).

It serves a variety of purposes, including preventing arbitrariness, guaranteeing objective and unbiased decision-making, and respecting the affected party's right to information and dignity. It also has inherent value in that it allows people or organizations to engage in the decision making process. The resulting accountability gives administrative bodies the

much-needed reputation. The resulting accountability gives administrative processes the much-needed legitimacy, restoring public trust in the government system. It is also helpful in ensuring that substantial justice not only is done, but also "manifestly appears to be done" in the end.

Now talking about oral hearing as a mandatory requirement it can be contended that the courts have not mandated the requirement of Oral hearings and have acknowledged that this is not feasible for the government to hold such a hearing in every case since it is time intensive, costly, and may result in chaos. The same was laid down in the case of *Union of India v. Jyoti Prakash Mitter*. (Union of India v. Jyoti Prakash Mitter, 1971) The conflict in this case concerned the age of the respondent who was a judge, and the Home Ministry forwarded papers to the President of India. The respondent was given the opportunity to make formal representations and submit all required evidence. Despite the fact that he requested oral hearings, he communicated with the President only through the Ministry. The respondent filed a writ petition in the High Court (HC), which was granted on the grounds that the President had not given the petitioner a personal hearing while exercising his quasi-judicial function. To which the court held that the right to a fair hearing does not always include a right to a personal or oral hearing, according to the court as the Article 217 of the Constitution of India does not require a personal hearing, the issue would be left to the President's discretion, which he might exercise in appropriate cases. Despite the fact that the decision did not specify the criteria for applying such discretion, it is evident that it had to be done reasonably. On the facts of the case, the court determined that the failure to exercise discretion did not jeopardize the norms of fairness. (R v. Sussex Justices, Ex parte Mc Carthy, 1924) Later, in *Union of India v. Jesus Sales Corporation*, a similar stand was taken on the question of whether the respondent was entitled to an oral hearing under the Indian *Imports and Exports Control Act, 1950*. The appellate authority was given the power to waive the payable duty's pre-appeal deposit requirement, and the need for an oral hearing was raised. To which the court concluded that, providing personal hearing is a matter of discretion of authorities and providing a personal hearing to each one will result in chaos. (Union of India v. Jesus Sales Corporation, 1996) As a result, having a chance to be heard does not always imply a face-to-face hearing. Although special circumstances justify the authority's exercise of discretion in deciding the petition or appeal after a personal hearing, an order is not considered invalid simply because no personal hearing has been held.

Now talking from the perspective of statutes it can be contended that as the scope of an authority assigned to an administrative agency is often subject to the parent Act, the Judicial strategy in the aforementioned cases has been to look at the governing provision's content first. As a result, if a statute expressly or by necessary implication requires an oral hearing, it is mandatory. In this regard, the case of *Farid Ahmed Abdul Samad v. Municipal Corporation* (Farid Ahmed Abdul Samad v. Municipal Corporation, 1976) is instructive. The provisions of the *Land Acquisition Act, 1894* (Per N.P. Singh, J. Union of India v. Jesus Sales Corporation) were held to be valid in the case of a compulsory land acquisition order because they were consistent with the Parent Act. As a result, in accordance with section 5A of the Act, a personal hearing was required. Although, according to the ruling in *Ondal Coal Co. v. Sonepur Coalfield*s, (Ondal Coal Co. v. Sonepur Coalfields, 1970) when a law uses words like "an opportunity to make a representation against the order suggested," it does not mean anything more than a written representation. The Madras High Court construed a similar perception in the *Motor Vehicles Act, 1988*, which provides for the cancellation of a stage carriage permit if any of its terms are breached, as not requiring a personal hearing.

In a case if a legislation does not specify the type of hearing, the next issue to consider is that whether the matter is to be left to the administrative machinery for subjective judgment or is there any yardstick by which procedural fairness requires shall be determined as inclusive of an oral hearing. It should be noted that natural justice is a procedural idea that does not put substantive constraints on the administrative authority's decision. Indeed,

administrative law is concerned with the nature and scope of administrative powers as well as the way in which they are exercised, but same is not relevant in respect with the exercise of the concerned powers by administrative authorities. As a result, when the courts' writ jurisdiction is invoked, a judicial investigation into the decision-making process is conducted rather than a review of the decision's merits. If the decision-making process is found to be in violation of natural justice principles, the case is remanded back to the administrative authority to make a decision using the procedure upheld by the courts. Moreover, the court in the case of *Travancore Rayons v. Union of India* (Travancore Rayons v. Union of India, 1969) laid down that if personal hearings are granted in cases where complicated and difficult questions requiring technical knowledge are raised, it would result in better administration and a more satisfactory resolution of citizens' complaints. The Supreme Court also stated that where the stakes are high for the lessees (due to significant financial investments), and a number of grounds necessitate the determination of factually complex issues, the authority should have provided a personal hearing and an opportunity to provide evidence. (Travancore Rayons v. Union of India, 1969)

Moving on when contending about the faceless hearing from an aspect of fundamental rights one can contend that when any fundamental right is in question, there needs to be a hearing in person. In *Union of India v. Smt. Chand Putli* (Union of India v. Smt. Chand Putli, 1978), a woman applied to the Central Government *under section 9 of the Citizenship Act, 1955*, to determine her status as an Indian citizen and prevent deportation. Despite numerous requests, she was refused a personal hearing. As her right to move freely in the world was sought to be restricted, the Court affirmed her request for a personal hearing. Furthermore, statements by the judges in the landmark decision of *Maneka Gandhi v. Union of India* (Maneka Gandhi v. Union of India, 1978) has *expanded* horizons of the application of the principles of natural justice in administrative adjudication. On the question of whether a passport holder is entitled to a hearing at the time of impoundment, the Court first determined that the action has violated Article 21 of the Constitution of India i.e. right to personal liberty. The court described the application of natural justice principles as "*fair play in action*" after uplifting the appellant's right to the status of a basic constitutional right. It is worth to note that the focus was on the nature of right in danger, rather than power. (Sutaria, 2013)

The *Maneka Gandhi* case leads the debate to a critical point about the intent of laws or administrative action. In no case is the judicial interpretation done in such a way that the scheme of the Act or the intent of the administrative action is defeated. A pre-decisional hearing would have defeated the intent of impounding the passport, as the person might escape after being served with a notice. As a result, in emergency or urgent cases, courts have reconciled conflicting questions of the right to an oral hearing and the public interest by allowing a post-decisional hearing. The goal is to alleviate the inequity caused by the lack of a pre-decisional hearing. (Maneka Gandhi v. Union of India, 1978)

AUDI ALTERAM PARTEM AND ITS APPLICABILITY TO FACELESS HEARINGS, APPEAL SCHEMES

Audi alteram partem is one of the underlying principles of natural justice. It is essential to know that the *audi alteram partem* principle aims to guarantee procedural consistency in relationships between public institutions and individuals. Even if there is no explicit clause to that effect, courts sometimes found this procedural obligation implicit in a statute in order to guarantee the full degree of justice in such dealings. The philosophy of *audi alteram partem* is intended to provide a person with the guarantee of a right to a fair hearing. There are three main features of this right to hearing; (I) the right to be told of the argument that will be heard, (ii) the right to be given notice of the time and place of hearing, and (iii) a fair period of time between the date of notice and the actual date of hearing to allow him to prepare his defense.

It is not an easy task to define the scope of the principles application of the principles of natural justice. These are changing when and where the

interests of society demanded so. This versatility has assisted the healthy growth of the law, resulting in widening the horizons of the application of Natural Justice Principles. The cases concerning the applicability or not of the maxim of *audi alteram partem*, if they include the termination of a contract of employment or other matters, all ask the same question: whether the authority behaving to the detriment of the claimant, discrimination generally is required to follow the concept of the violation of the Natural Justice principles.

The scope of the common law concept of natural justice has been limited, as it has been in other areas, by virtue of constitutional requirements. As a consequence, if there is a law requiring the individual being prosecuted to be granted an equal hearing to be heard, the theory does not apply. However, where the law or legislation granted the authority broad powers to act without specifying a reasonable process, the courts have ruled that the provisions of this standard should be interpreted as inferred in such cases due to the unique circumstances of the situation. (Charan Lal Sahu vs Union of India And Ors, 1989)

Moreover, Supreme Court has illustrated about the application of the principles of natural justice in various cases is enough to have the presumption that a party to whose detriment an order is meant to be passed is entitled to a hearing extends to administrative tribunals and bodies of individuals with jurisdiction to adjudicate on civil matters. As rightly stated that, the order is administrative in nature; but, such an administrative order with civil repercussions... should be made in accordance with natural justice principles. (Rai, 2019)

SECTION 250 OF THE INCOME TAX ACT 1961 AND NATURAL JUSTICE PRINCIPLES

Another crucial aspect that needs to be highlighted in order to determine the validity of faceless hearing and after analyzing the principles of theory of Natural Justice it becomes essential that we uncover what the concerned law talks about the hearing. Section 250 provides that the commissioner shall set a date and venue for hearing the appeal, and shall send notice of the same to the appellant and the two Assessing Officers whose orders are being appealed. Sub-section 2 of the same illustrates that the appellant shall have a right to be heard 'in person' or through an authorized representative and therefore the Act is pretty clear in case of appeals. (Section 250, Income Tax Act)

After establishing and discussing the principles of Natural Justice in detail we shall move towards the analysis of the legality of the Faceless Hearing. Before that it is worth highlighting that in India the principles of Natural justice are enshrined under Article 14 and 21 of the Indian Constitution, therefore, if any regulation ought not to follow such principles the same can be said to be violative of Article 14 and 21 of the Constitution hence unconstitutional.

The faceless hearing and appeals one can contend that as there is totally no interaction between the assessing officer and the assessee, neither there is a personal interaction nor is the assessee aware about the place the said matter is being decided upon and therefore the same amounts to violation of Section 250 to the extent of appeals. While in case of hearings the Act provides no such provision and therefore needs to be investigated and analysed in light of principle of Natural justice (*audi alteram partem*).

The faceless scheme has led to setting up of National Faceless Appeal Centres (NFAPC's), Regional Faceless Appeal Centre (Income Tax Department, Government of India, 2020) which, just on the basis of documents submitted, determines that whether the appeal shall be admitted, considered or disposed of. In such a situation this is violative of principle of *nemo judex sua causa* (that is rule against bias), as the said appeal is being assessed by Income Tax Officer against the income tax authorities and there is a high chance of unintentional bias in the same.

Moreover, as stated earlier administrative decision has "civil repercussions" for a party, it is generally agreed in administrative law jurisprudence that the right to a fair hearing cannot be waived. Around this idea, the courts have created a kind of code of equitable administrative procedure, which has been applied and analyzed by the authors in the context of faceless hearing under the e-

assessment scheme initiated by the Government of India. Therefore, in a situation where the administration is performing quasi-judicial function and has power to make additions in Income, order penalty etc. which all are civil repercussions it should be in tune with the principles of fair hearing. From a practical or actual aspect in India there has been a trend of 'targets' being given to the IRS officer for tax collection who are habitual to make unnecessary additions in the income and providing for penalty in order to fulfill their 'targets', and appeals were only way out to take dismiss the said orders and unjustified additions although post the faceless appeal scheme this tend to be an additional cover for the department to drain out extra money from the taxpayers by closing their doors while still being open. In other words, there is a so-called 'way of remedy' but 'no remedy' in the said scheme.

Further, the principle of *audi alteram partem*, which talks about 'hear the other side', so following a literal interpretation the same should be heard and not read or presented digitally in the name of technological advancement and as taxation is one of the technical and complicated issues, it becomes necessary that the same is followed by giving a chance of a fair hearing in person, in accordance with the principle enunciated by supreme court in *Travancore v. Union of India*, (Travancore v. Union of India AIR 2007, SC 712)

Due to expanding horizons of Article 21 by the Supreme Court of India, right to livelihood is a fundamental right, one of the essential facet pertaining to livelihood that the Income Tax Act shall be consonance with established principles and practices ensuring the protection of the fundamental rights enriched in Article 21 of the constitution of India and the rule laid down in *Union of India v. Chand Putli* (Union of India v. Smt. Chand Putli, 1978)in this case it was observed that where the fundamental rights are involved whether directly or indirectly, a right to fair hearing accrues automatically and therefore the scheme needs to accrue a provision of fair hearing. It is true that there is a provision for appeal in person if requested by the assesse, however it is to be noted that the said hearing lies on the discretion of the Principal Commissioner and contains a 'possibility of appeal in person' and not appeal per se.

It is an established fact that the principles of Natural justice are broad in nature and in determining its applicability, we shall refer to the Parent Statute (Income Tax Act,1961) in particular Section 250. This section provides for hearing in person and therefore the said scheme is violative of Section 250 of Income Tax Act too.

CONCLUSION

On the basis of above mentioned discussion we can safely conclude that in India, the practice of 'target collection' being given to IRS as, leads to them becoming accustomed to making unjustified additions to income and providing for penalties in order to meet the set 'targets,'. Appeals are appeals are the only way to get rid of the said orders and unjustified additions. Further the faceless appeal scheme constitutes an additional path for the department to drain out extra money from the taxpaying public. It is a scheme to provide a "way of remedy" but with "no remedy."

Thus, in the light in-depth analysis of the functioning of the faceless appeal scheme it becomes very clear that the scheme is in contravention of the principles of Natural Justice. Further, analysis of the e-assessment and faceless hearing scheme in the light of Section 250 of the Income Tax Act, 1961, we can safely conclude that the scheme is violative of Article 21 and Section 250, hence unconstitutional.

SUGGESTIONS

The scheme needs to be re-evaluated and restructured in order for it to fit within the Constitutional limits to clear the constitutionality test. For that it is essential to make certain suggestions for a better implementation of the scheme which is constitutional and fulfills the purpose of transparent and unbiased redressal of the case.

- Provisions pertaining to penalizing the Assessing officer for incorrect assessment (to a particular amount) need to be incorporated in the Income Tax Act, 1961 in order to ensure that the interests of tax-payers are protected and the naïve tax-payers are filtered on the assessment level. This shall reduce the burden on the Income Tax Department and judiciary who have

to spend their valuable time on appeals caused by incorrect assessments.

- The preliminary process of assessment shall become faceless but in light of the Constitutional jurisprudence it is not advisable to make the judicial process which starts from appeal in case of Income Tax to be faceless.
- Abolishing of advance tax mechanism can be a big game change in the Taxation reform as the inconsistency in assessment of tax is because of prediction of unearned income if the same is abolished there need not be any incorrect prediction and a transparent tax system with less or no appeals as there need not be any additions.

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