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“Ex Parte Decrees And Principles Of Natural Justice”

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Abstract

The jurisprudence surrounding ex parte decrees in Indian civil law reveals a complex interplay between judicial efficiency and procedural fairness. Ex parte decrees pronounced in the absence of a defendant who, despite sufficient service of summons, fails to appear—serve a pivotal function by enabling courts to avoid unnecessary delays and ensure timely justice. However, this power is far from absolute; it exists as a necessary exception to the overarching principle that every litigant must be provided an opportunity to be heard.

The grant of ex parte relief, though generally valid and enforceable as any other decree, presents fundamental questions about compliance with the principles of natural justice—particularly the right to a fair hearing (*audi alteram partem*) and freedom from bias (*nemo judex in causa sua*). While expedient decision-making prevents miscarriage of justice in urgent cases or where one party adopts delaying tactics, there remains an intrinsic risk of arbitrary adjudication or denial of justice for the absent party. Recognizing this, the CPC has embedded procedural safeguards, such as mandatory proof of adequate notice, judicial scrutiny at the time of granting ex parte decrees, and avenues for challenging or setting aside such decrees on limited but substantive grounds (improper service or sufficient cause for non-appearance).

Contemporary judicial practice has also evolved robust remedial frameworks, empowering defendants to contest ex parte decrees through applications under Order IX Rule 13 and appellate mechanisms, thereby reconciling the flexibility of the ex parte process with the requirement of fairness and transparency. The Indian judiciary, through landmark judgments, continually reiterates that while ex parte decrees address

judicial urgency, their use must remain exceptional, proportionate, and always subject to review to prevent their misuse or abuse as tools of harassment or unfair advantage.

This research explores the statutory, doctrinal, and comparative dynamics of ex parte decrees, critically examining procedural safeguards, judicial trends, and leading case law to illuminate best practices for balancing judicial efficiency with the indispensable imperatives of natural justice.

Keywords Ex Parte Decree, Natural Justice, Code of Civil Procedure (CPC), Audi Alteram Partem, Nemo Judex in Causa Sua, Order IX Rule 6, Setting Aside Ex Parte Decree, Judicial Efficiency, Procedural Safeguards, Fair Hearing.

Research Methodology

This research adopts a doctrinal and analytical approach by examining statutory provisions, procedural rules under the Code of Civil Procedure (CPC), and relevant judicial decisions related to ex parte decrees in Indian civil law. It involves critical scrutiny of case law to understand the principles governing issuance, safeguards against abuse, and remedies available. Comparative analysis includes evaluating how courts balance judicial efficiency with natural justice principles. The study relies primarily on secondary sources such as judgments, legal commentaries, and procedural laws to develop a comprehensive understanding of the topic.

Introduction

The civil justice system, as established in India and comparable jurisdictions, is deeply rooted in the bedrock principle of natural justice. At its core, natural justice is designed to ensure fairness, equity, and impartiality in the adjudicatory process. This foundation is enshrined in constitutional guarantees and has evolved through centuries of legal tradition, judicial interpretation, and legislative craftsmanship. The very legitimacy of the judiciary depends on upholding these cardinal values, particularly the right to a fair hearing (audi alteram partem) and the imperative of impartial adjudication (nemo judex in causa sua).

The right to a fair hearing is an indelible principle of natural justice and civil litigation. This right guarantees that no person shall be condemned without being given an adequate opportunity to present one's case. It encompasses multiple facets: the service of notice, the opportunity to plead and rebut, and the entitlement to be heard by an unbiased tribunal. The Civil Procedure Code, 1908 (CPC) has incorporated these principles throughout its scheme, ensuring that both plaintiff and defendant participate meaningfully in the proceedings.

While the civil process generally requires adjudication in the presence of both parties, there are practical circumstances under which this becomes impossible or leads to undue delay. Order IX Rule 6 of the CPC empowers the civil court to proceed ex parte if, on the scheduled date, the plaintiff appears and the defendant fails to appear despite valid service of summons. Such an ex parte decree is an exception to the fundamental rule of participation, justified by the necessity of swift justice and the prevention of mischief through deliberate absence. The Supreme Court and various High Courts have continuously affirmed that the doctrine of ex parte decree serves the utility of discouraging procrastination and ensuring the administration of justice does not become hostage to one party's obstructions or non-cooperation.

The discretion to pass ex parte decrees is circumscribed by stringent checks and requirements. Courts are not permitted to proceed blindly; they must satisfy themselves that summons have been appropriately served and that the defendant has been given a real and sufficient opportunity to respond. Even in the absence of the defendant, the plaintiff's burden of proof remains undiminished—the court must examine the merits of the claim and only then pronounce a decree, thereby minimizing instances of unjust deprivation for the non-appearing party.

The CPC enforces procedural safeguards by allowing the defendant to approach the court with a plea for setting aside the ex parte decree—if it can be demonstrated that proper service was not effectuated or that some compelling, sufficient cause prevented attendance. This right represents the equilibrium the law seeks: refusing to allow procedural technicalities to override substantive justice, while equally not permitting willful absence to paralyze the judicial process.

Further, the courts have a duty to guard against the misuse or abuse of this mechanism—be it through fraudulent practices, misleading service of notice, or strategic non-appearance by one of the parties. Any such misuse not only dilutes the sanctity of the process but also invites judicial censure and remedial action, including imposition of costs and even setting aside of the decree.

Ultimately, the rationale behind ex parte decrees is to prevent frustration of justice by one party's inaction or malicious conduct, provided the absent party's procedural protections remain intact. The legal framework, therefore, is a product of sustained efforts to reconcile the requirements of judicial efficiency with the demands of fairness and transparency. The appellate and revisional remedies, alongside the opportunity to have the decree set aside, reinforce the judiciary's commitment to ensuring that no party is ultimately denied the right to present its case.

Accordingly, this paper undertakes a doctrinal and analytical study of the legal and constitutional framework governing ex parte orders in India. It explores their procedural and judicial aspects, evaluates statutory remedies against misuse, and critically assesses whether the current safeguards adequately protect the principles of natural justice. Ultimately, the study underscores that while ex parte orders serve an

important function in urgent or exceptional circumstances, their validity and legitimacy hinge on judicial restraint, procedural compliance, and post-decisional fairness.

Concept of Ex Parte decree

Meaning of "Ex Parte"

The core essence of an ex parte order is that it is made "from one side only." It respects the principle that courts cannot wait indefinitely if one of the parties remains absent, possibly to delay justice. For instance, if a plaintiff files a suit for recovery of money against a borrower and duly serves a summons to the defendant, but the defendant chooses not to appear on the hearing date, the court may hear the plaintiff's side and pass an ex parte decree ordering the defendant to pay the amount.

What Does an Ex Parte Decree Mean?

An ex parte decree is a formal judgment rendered against a defaulting party who, after being notified, does not present themselves in court. The court looks at the evidence presented by the plaintiff and pronounces a decision in their favor. Such a decree is legally binding and enforceable just like any other judgment and can only be challenged through specific legal remedies.

For example, in a landlord-tenant dispute, if the landlord sues for eviction due to non-payment of rent and serves proper notice to the tenant, but the tenant fails to appear in court, the court can proceed ex parte and issue an eviction order against the tenant.

When is an Ex Parte Decree Passed?

According to CPC Order IX Rule 6, an ex parte decree is passed under the following conditions:

- The plaintiff appears on the scheduled hearing date.
- The defendant is absent without any sufficient cause or explanation.
- The court is satisfied that the summons was duly served on the defendant to inform them of the hearing.
- The plaintiff is ready to proceed with their case, including presenting evidence and arguments.

Once these conditions are met, the court can proceed without the defendant and pass a decree accordingly. For example, if a defendant was served with the summons a reasonable time before the hearing and does not show up without any valid justification such as medical emergency or unavoidable absence, the court may exercise its discretion to adjudicate the matter ex parte.

Concept of Principles of Natural Justice

The principles of natural justice form the foundation of fairness, impartiality, and procedural propriety in every legal system governed by the rule of law. While the Indian Constitution does not explicitly mention the term “natural justice,” its essence is deeply entrenched in constitutional guarantees—particularly Article 14 (equality before law) and Article 21 (right to life and personal liberty). These principles function both as moral imperatives and as enforceable legal doctrines aimed at preventing arbitrariness in judicial, quasi-judicial, and administrative actions. They ensure that power is exercised with fairness, reasonableness, and accountability, thereby protecting the integrity of justice delivery mechanisms.

Nemo Judex in Causa Sua – “No One Shall Be a Judge in Their Own Cause”

This rule embodies the doctrine against bias in decision-making. It prohibits any individual from participating in a decision or adjudication in which they possess a direct or indirect interest—personal, financial, or relational. The objective is to preserve impartiality and public confidence in the adjudicatory process. As famously articulated by Lord Hewart in *R v. Sussex Justices, ex parte McCarthy* (1924), “Justice must not only be done but must also be seen to be done.”

In the Indian context, courts have consistently applied this maxim to guarantee neutrality in adjudicatory and administrative functions. For example, judicial officers, tribunal members, or administrative heads are required to recuse themselves from cases where bias might reasonably be apprehended. The rule aims not only to ensure objectivity but also to reinforce societal faith in the administration of justice.

Audi Alteram Partem – “Hear the Other Side”

The second vital tenet of natural justice emphasizes that no individual should suffer a legal detriment without being afforded an opportunity to be heard. It incorporates several cardinal facets of fair procedure, including:

- **Right to Notice:** Every person against whom action is proposed must be clearly informed of the charges, evidence, or decisions contemplated.
- **Right to Present a Defense:** The concerned party must have the ability to produce documents, arguments, and witness testimony in support of their case.
- **Right to Cross-Examine:** The opportunity to challenge adverse evidence and witnesses ensures a level playing field.
- **Right to an Impartial Hearing:** Decisions must be rendered by a neutral and competent authority.

The overarching purpose of this doctrine is to prevent miscarriage of justice by guaranteeing that decisions are made after considering all sides of a dispute. Courts in India have repeatedly underscored that this rule forms the “heart and soul of justice,” applying it even when statutory provisions are silent on procedural fairness.

Misuse or Abuse of Ex Parte Decree and Its Violation of Natural Justice

An ex parte decree under the Code of Civil Procedure (CPC) can, in certain circumstances, infringe upon the principles of natural justice, particularly the right to a fair hearing embodied in the principle of *audi alteram partem*. The most frequent occurrence of such a violation arises when the decree is passed against a defendant who was not duly notified of the proceedings. When the summons is defectively served—due to an incorrect address, inadequate service, false proof of delivery, or insufficient time to appear—the defendant is effectively deprived of a genuine opportunity to present their defence. This lack of fair notice undermines the right to be heard, which lies at the core of natural justice.

A further breach of natural justice occurs when an ex parte decree is procured through fraudulent means, misrepresentation, or suppression of material facts. If the decree is obtained by concealing essential information or fabricating evidence, it ceases to be a mere procedural irregularity and becomes an act of injustice. The courts have consistently held that such decrees, grounded in fraud or concealment, are voidable as they erode the foundation of impartial adjudication and procedural fairness.

In addition, a serious violation arises when an ex parte decree is passed mechanically without genuine judicial application of mind. A decree rendered without proper evaluation of evidence or reasoned findings indicates non-observance of fair procedure. Passing an order without substantive examination of the merits amounts to condemning the defendant unheard and reflects a denial of justice.

Natural justice is also compromised when the court refuses to consider valid explanations for a party’s non-appearance, such as illness, late service of summons, or other unavoidable circumstances. Disregarding such legitimate causes makes the decree arbitrary and unjust in nature.

Furthermore, negligence in adhering to procedural safeguards, such as those under Order IX Rule 13 of the CPC—which provides for setting aside an ex parte decree—or the exercise of the court’s inherent powers under Section 151 CPC to prevent injustice, undermines judicial integrity and the fairness of proceedings.

In essence, an ex parte decree contravenes the principles of natural justice when it is:

- Passed without due or proper service of summons;
- Rendered without affording reasonable time for appearance;

- Obtained through fraud, concealment, or misrepresentation;
- Issued mechanically without judicial reasoning or assessment of evidence;
- Passed without considering sufficient cause for non-appearance; or
- Made in disregard of available procedural remedies and statutory safeguards.

Therefore, where ex parte proceedings deny a litigant a true opportunity to be heard—whether through procedural lapses, deception, or lack of judicial scrutiny—the resulting decree stands contrary to the fundamental tenets of natural justice and is liable to be set aside.

Judicial Reconciliation: Case Law Analysis

1. **Rakesh Roshan v. State of Bihar** (2022) 5 GSTPanacea 93 (Patna HC)

In this case, the Patna High Court held that ex parte decrees passed without providing the affected party an adequate opportunity to be heard violate the principles of natural justice and are liable to be set aside. The Court emphasized that expediency in judicial proceedings cannot come at the expense of fairness. Thus, procedural remedies are available to correct such injustices, reinforcing the judiciary's duty to ensure proper notice and hearing before ex parte orders are passed.

2. **Bhanu Kumar Jain v. Archana Kumar & Anr.** (2005) 2 SCC 473

The Supreme Court clarified that a defendant aggrieved by an ex parte decree has multiple remedies. Both an application to set aside the decree under Order IX Rule 13 CPC and a statutory appeal under Section 96(2) CPC are available concurrently. This judgment highlights the judiciary's commitment to substantive justice by allowing defendants ample opportunity to challenge ex parte decrees.

3. **Rabindra Singh v. Financial Commissioner, Punjab** (2008) 4 SCC 466

The Supreme Court invalidated an ex parte decree where the defendant was not properly served with summons, stressing that service of notice is a fundamental right and prerequisite for any legitimate ex parte proceedings. The Court underscored that every litigant deserves fair notice and real opportunity to defend, and failure in this regard breaches natural justice.

4. **M/s Chandan Tech Tractors v. State of U.P.**, ILR 2005 All 1023 (Allahabad HC)

The Allahabad High Court ruled that procedural lapses resulting in ex parte decrees should not compromise the litigant's right to be heard. It held that such lapses warrant vacating the decree and restoring the case to its original stage, thereby offering the aggrieved party a genuine chance to defend themselves.

These cases affirm that ex parte decrees promote judicial efficiency but must uphold the fundamental right to be heard. They emphasize the necessity of proper notice and a genuine chance for parties to appear. Multiple remedies exist to challenge wrongful ex parte orders, reflecting the judiciary's balanced approach. This balance is essential for maintaining both speedy justice and procedural fairness, vital to the rule of law and public trust.

Remedies Against Ex Parte Decree

The Code of Civil Procedure, 1908 ("CPC"), provides a detailed framework of remedies to protect parties against the risk of injustice arising from ex parte decrees. These remedies are designed to balance the need for judicial efficiency with the imperative of fairness and the right to be heard. The key remedies available under the CPC are as follows:

1. Application for Setting Aside the Ex Parte Decree (Order IX Rule 13, CPC)

Under Order IX Rule 13, a defendant against whom an ex parte decree has been passed can file an application to set aside such decree. The application must demonstrate one of the following grounds:

- The summons was not properly served.
- The defendant was prevented by sufficient cause from appearing before the court when the suit was set for hearing.

If the court is satisfied with either of these grounds, it will pass an order setting aside the ex parte decree. This remedy effectively restores the suit to its original status (*status quo ante*), allowing both parties to present their cases on merits, thus ensuring fairness and adherence to natural justice.

However, as laid down in the landmark Supreme Court decision in *Arjun Singh v. Mohindra Kumar* (AIR 1964 SC 993), this remedy is available only if the decree is truly ex parte—that is, when the defendant has not participated in the proceedings at all. If the decree has been passed after a defendant's limited participation, this remedy may not be invoked.

2. Statutory Appeal Against the Ex Parte Decree (Section 96(2), CPC)

Section 96(2) of the CPC provides the aggrieved party with a statutory right of appeal against the ex parte decree. Unlike the application under Order IX Rule 13, this appeal is filed before the appellate court and involves a re-examination of the entire matter, including evidence and legal points.

This right of appeal is unfettered, meaning the appellate court can confirm, modify, or set aside the ex parte decree based on the merits of the case. The Supreme Court in *Bhanu Kumar Jain v. Archana Kumar & Anr.* reinforced the significance of this remedy, recognizing it as a vital safeguard protecting defendants' rights and ensuring substantive justice.

3. Review and Revision (Sections 114 and 115, CPC)

In exceptional cases, parties may seek review or revision of an ex parte decree:

- **Review (Section 114, CPC)** allows the court which passed the decree to reconsider its order if there is discovery of new and important evidence or to correct any apparent error on the face of the record.
- **Revision (Section 115, CPC)** permits a higher court to scrutinize the decision to correct errors of jurisdiction or procedural irregularities that do not amount to appeals.

Together, review and revision operate as checks within the judicial system to correct mistakes related to ex parte decrees when standard remedies are insufficient.

4. Filing a Fresh Suit on Grounds of Fraud or Collusion

Where an ex parte decree is obtained by fraud, misrepresentation, or collusion between parties, the aggrieved party may institute a fresh suit seeking a declaration of the decree's nullity or appropriate relief. The Supreme Court in *S.P. Chengalvaraya Naidu v. Jagannath* (1994) 1 SCC 1 highlighted that fraud vitiates every solemn act, and courts possess inherent power to prevent fraud on the process.

This remedy is crucial in situations where procedural safeguards have been subverted, and the ex parte decree, therefore, cannot be undone by procedural applications alone.

The CPC thus provides a comprehensive set of remedies safeguarding individuals against the negative consequences of ex parte decrees. Initial relief is sought through applications under Order IX Rule 13, supported concurrently or subsequently by statutory appeals under Section 96(2). Where necessary, review and revision procedures provide further correction mechanisms. In extreme cases involving fraud or collusion, independent suits permit substantive justice beyond procedural confines. Collectively, these remedies embody the judiciary's effort to balance speedy justice with the inviolable doctrine of natural justice.

Suggestions for Law Reform

While ex parte decrees help maintain procedural efficiency, it is crucial to ensure they do not undermine fairness and justice. To prevent misuse and enhance judicial integrity, the following reforms could be considered:

1. **Mandatory Judicial Satisfaction of Proper Service:**

Courts should be required to record clear findings confirming that summons were properly served and that the defendant was given a genuine opportunity to appear before passing an ex parte decree. This would prevent arbitrary orders based on assumed service and strengthen compliance with natural justice.

2. **Stricter Penalties for Fraud and Collusion:**

There should be stronger legal consequences, including potential criminal liability and professional sanctions, for parties or lawyers involved in fraudulent service or collusion to obtain ex parte decrees. This would discourage attempts to manipulate court procedures in bad faith.

3. **Enhanced Legal Aid for Vulnerable Defendants:**

Many defendants miss hearings due to lack of legal awareness or resources. Strengthening legal aid services—such as mandatory counsel assignment or early legal counseling for those served with summons—will help protect their right to be heard and reduce unjust ex parte orders.

4. **Use of Technology for Transparent Service:**

Utilizing digital platforms to serve summons with reliable electronic acknowledgment can improve accountability and reduce disputes over whether proper notice was given. Digital records linked to court systems would increase procedural transparency.

5. **Periodic Judicial Review of Ex Parte Decrees:**

Introducing a provision for automatic or periodic review of ex parte decrees within a certain time frame, especially where defendants are unrepresented or absent, would add a safeguard to prevent wrongful deprivation of rights.

Conclusion

Ex parte decrees serve as a crucial tool in the judicial system to promote efficiency by enabling courts to proceed with cases when a defendant fails to appear despite receiving proper notice. This mechanism prevents undue delay caused by non-appearance or procrastination, thus helping to ensure the timely delivery of justice. However, the importance of ex parte decrees goes hand in hand with the need to protect fundamental legal rights, especially the right to a fair hearing and impartial adjudication, which are core principles of natural justice.

The principle of natural justice requires that ex parte decrees should only be passed after the court is fully satisfied that the summons to the defendant has been properly served and the defendant was afforded a genuine and reasonable opportunity to defend themselves. Courts must carefully scrutinize the circumstances before proceeding ex parte and avoid mechanical or arbitrary issuance of such decrees. This balance safeguards against potential misuse of the power to pronounce judgments in the absence of one party. Judicial precedents reinforce that ex parte decrees are exceptions rather than norms and must be exercised with judicial restraint.

The courts also provide robust remedial measures to challenge and set aside ex parte decrees, ensuring that no party is unfairly prejudiced. These remedies include applications under Order IX Rule 13 to set aside the decree on grounds of improper service or sufficient cause for non-appearance, appeals under Section 96(2) of the Code of Civil Procedure, and powers of review and revision. These procedural safeguards underscore the legal system's commitment to fairness, allowing affected parties to seek redress, thereby reinforcing the integrity of the administration of justice.

In essence, while ex parte decrees serve as an important mechanism for efficient case management by discouraging deliberate absence and delay tactics, they must be applied judiciously to uphold the due process rights of litigants. The exercise of this power must never override the fundamental principles of fairness, transparency, and justice. Courts have consistently emphasized that expediency cannot come at the cost of depriving a party of their legitimate right to be heard. Therefore, ex parte decrees must be counterbalanced with stringent procedural safeguards, continuous judicial oversight, and accessible remedies to prevent abuse and maintain public confidence in the legal system.

This delicate balance between judicial efficiency and natural justice is pivotal to ensuring that the legal process remains fair, equitable, and effective. It upholds the rule of law by simultaneously achieving swift justice and protecting against injustice arising from a party's absence. Thus, ex parte decrees, when grounded in careful judicial discretion and procedural fairness, contribute meaningfully to the administration of justice without compromising fundamental rights.

This expanded view highlights the nuanced role of ex parte decrees in the judicial process, the underlying principles that frame their use, the remedies designed for protection, and the overarching judicial philosophy that demands fairness alongside efficiency in the pursuit of justice.

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