EXPLORING THE RIGHT TO REASONED DECISION-MAKING IN THE INDIAN CONTEXT

Chetan R[*]

ABSTRACT

The right to give reasons or the right to a speaking order is one of the most important rights individuals have when they come up against the state in various administrative procedures. Due to this reason, this right has also been considered as the third principle of natural justice. Although this right may seem simple and straightforward, in the larger picture, it imposes different kinds of checks and balances on the government authorities while reinforcing the separation of powers and the rule of law, which becomes all the more important in the current day and age. In this article, the author has explored the extent of this right in India's administrative section, as propounded by various Supreme Court decisions and statutes to be part of the principles of natural justice and the fundamental right to equality and freedom. In this endeavour, the author has also identified different lacunas in the application of this right, such as non-uniformity, non-mandatory and non-applicability against non-judicial administrative functionaries. To remedy this, the author has performed a comparative analysis with the American and the English standards of the right to reasoned decision making, and suggested a route through which these lacunas could be addressed and better protection of the interests of the citizens can be ensured.

[*] Chetan R, 2nd Year, BA LLB, National Law School of India University, Bangalore.

INTRODUCTION

Historically, the giving reasons for any action (speaking order) is entirely a relational enterprise.[402] Parties give reasons to establish, affirm, repair, negotiate, or deny the relationship which exists between them. Furthermore, the type of relationship which exists between the parties, also ascertains the kind of speaking orders given. This relational understanding of giving reasons is better understood when seen in the context of the relationship between administrative authorities and citizens/firms/general public.[403] This essay will mainly be focussing on democratic countries having roots in common law as the basis of the relationship between the administrative state and the public. In classical common law, there was no mandatory requirement on the part of administrative authorities to provide reasons for their decisions. It is in modern times, with evolution in constitutional and administrative jurisprudence, that reasoned decision-making for administrative authorities has come about as judge-made law.[404]

In view of this, I have divided this essay into 3 parts. *Firstly*, I will analyse the need for reasoned decision-making in a democratic set-up by highlighting the virtues of speaking orders for administrative actions using the transaction cost perspective. *Secondly*, I will demonstrate how the Indian administrative law has incorporated reasoned decision-making into its folds through multiple varied ways. *Thirdly*, I will highlight the lacunas present in the Indian adaptation of reasoned decision-making before suggesting reforms which can be brought into the Indian administrative law through a comparative study with the jurisdictions of the United States ("US") and the United Kingdom ("UK").

ANALYSING THE VIRTUES OF REASONED DECISION-MAKING

Transaction Cost Analysis

Decision-making/Transaction costs refer to the costs incurred by the state while making any decision, which include the time and effort put in by the state for any decision. Social cost refers to the cost which the society/individuals have to bear as a result of the state action.[405] The utilitarian aim of this theory is to ensure the least social cost is imposed on the society

[402] Charles Tilly, *Why?* (Princeton University Press 2008).
[403] Jerry L Mashaw, "Reasoned Administration: The European Union, the United States, and the Project of Democratic Governance" 76(1) *The George Washington Law Review* 99 (2007).
[404] M.P. Jain and S.N. Jain, *Principles of Administrative Law* (first published in 2011, 7th edn, Lexis Nexis India 2017).
[405] William F. Shughart II, "Public Choice", *The Library of Economics and Liberty*, *available at* <https://www.econlib.org/library/Enc/PublicChoice.html> (last visited on 01 April 2021).

while balancing the decision-making/transaction cost as per the different scenarios and state actions.[406]

Reasoned decision-making essentially requires the administrative authorities and officers to record reasons for each and every administrative decision undertaken by them. These reasons can be in different forms but should essentially justify the cause for making any administrative decision concerning the public.[407] This causes considerable time and effort expenditure for the administrative authorities as well as certain opportunity costs.

While these decision-making costs may *prima facie*, appear excessive, the social costs being avoided, far outweighs them. These social costs are being avoided in a variety of ways, and all of which benefit the citizens and general public. *Firstly*, the authorities will become more transparent and fairer when they record reasons after applying their minds. The decisions become less subjective - in the sense that it will minimise the chances of capricious, extraneous or prejudiced considerations in decision-making – and will become more objective.[408] *Secondly*, it promotes accountability of the administrative authority as the fact of having to explain to others will oblige the officer to carefully marshal and weight the evidence and provide impartial satisfactory arguments, lest the administrative decision should be challenged and struck down.[409] *Thirdly*, it imposes a lesser cost on the individual as they will be in a better position to understand the reason for their rejection, and hence act accordingly, i.e., either be content with the reasons or file for an appeal.[410] *Fourthly*, the appellate courts and authorities will also bear less costs while examining the appeal. Instead of going into the complete merits of the case, they could adjudicate over the reasons of the administrative authority and determine its validity.[411] *Fifthly*, justifying all actions with adequate reasons also instils public confidence in the administrative process. This legitimises the authorities in the eyes of the public as it is fulfilling their legitimate expectation of knowing the reasons for their rejection.[412]

These consequences of giving reasons enhance the social benefit derived from any administrative action of the state and hence, for providing maximum benefit for the maximum

[406] Jonathan R. Macey, 'Transaction Costs and the Normative Elements of the Public Choice Model: An Application to Constitutional Theory" 74(2) *Virginia Law Review* 471 (1988).
[407] Anju P. Singh, "Reasoned Decision: The Necessity and Importance to Achieve Transparent and Accountable Society" 3(1) *Journal of National Law University, Delhi* 163 (2015).
[408] *Supra* note 3.
[409] *Supra* note 5.
[410] R. Vijayan, "Administrative Decisions and Duty to Give Reasons A Search for Justification" 26(1/2) *Journal of Indian Law Institute* 70 (1984).
[411] *Supra* note 3.
[412] *Supra* note 9.

number with reasonable costs, the state should be mandated to give reasons for all or atleast most of its administrative actions.

Reinforcing Separation of Powers

Separation of powers is essentially the division of power and state roles between the 3 organs of the state, i.e., the legislature, executive and judiciary. With modern states giving increased functions and scope of operation to the executive bodies, it calls for certain accountability mechanisms to be set as a form of checks and balances.[413] Reasoned decision-making is one such mechanism which effectively places a check on the powers of the executive.

Along with demanding careful consideration of all matters by the administrative authorities, giving reasons enables the judiciary, through their appellate jurisdiction, to place a firm check on the powers and actions of the administration. By perusing through the reasons provided by the authorities, the judiciary can effectively and efficiently decide whether the officers abused their powers or made irrelevant decisions.[414]

Furthering Rule of Law

Prof. A.V. Dicey, in his book *Introduction to the Law of Constitution*, has elaborated and laid down three principles which constitute the doctrine of rule of law. The first principle is that government officials should not have any discretionary powers in their hands so that rule of law is supreme. The second principle protects individuals from suffering or being deprived or property save for breach of established law in the ordinary legal manner before ordinary courts. The third principle locates the rights of individuals in custom, conventions and judicial decisions.[415]

It is argued that reasoned decision making furthers this conception of rule of law in the first two principles. When administrative authorities give reasons for their actions, they are on the alert and have to carefully formulate objective reasons for their actions, which minimises the chances of abuse of powers by such authorities.[416] Absence of such requirements, results in a wide scope for abuse of their discretion and creates a feeling of injustice and suspicion towards

[413] "Separation of Powers". *britannica*, available at <https://www.britannica.com/topic/separation-of-powers> (last visited on 02 April 2020).
[414] *Supra* note 9.
[415] Yashomati Ghosh, *Textbook on Administrative Law* (1st edn, LexisNexis 2015) 21.
[416] V.S. Chauhan, "Reasoned Decision: A Principle of Natural Justice" 37 *Journal of Indian Law Institute* 92 (1995).

the state. Hence, this process of reasoning greatly limits the discretionary powers in the hands of government officials and furthers social welfare.

Further, when administrative officials undertake any actions which adversely affect individuals, the reasons which they provide for justifying their actions, always has to be based on established law through established procedure, for it to be convincing and legitimate according to reasonable standards. This will ensure that justice is not only done, but also seen to be done as reasoned decisions, which may inherently be just, will also have the appearance of justice for those reading them.[417] Therefore, the state authorities will be affecting the rights of the individuals using ordinary law and in the ordinary legal manner, which in turn, can be questioned by the individuals in ordinary courts of law.

Therefore, giving reasons for administrative actions is one of the fundamentals of good administration.[418]

REASONED DECISION-MAKING IN THE INDIAN CONTEXT

In this section, I aim to illustrate the various approaches existing in Indian jurisprudence which warrant administrative authorities – both quasi-judicial and non-judicial – to give reasons for their actions.

Third Principle of Natural Justice

Among the many mechanisms adopted by the Indian courts to prevent the abuse of power by administrative authorities, the principles of natural justice remains the most significant.[419] The Supreme Court has accepted this principle to be a pervasive facet of our secular law which extends to all legislative, administrative and adjudicatory realms.[420] Along with the first two principles of *nemo judex in causa sua* and *audi alteram partem*, the Indian courts have also accepted the third principle of reasoned decision to be a part of our judicial system.[421] This specifically applies to administrative authorities which perform judicial and quasi-judicial functions which determine questions affecting citizen's rights. In all such cases of performing adjudicatory functions, administrative authorities have to conform to the principles of natural justice and mandatorily record clear and explicit reasons for their decision.[422]

[417] *Supra* note 6.
[418] *Breen v. Amalgamated Engineering Union*, [1971] 2 QB 175.
[419] *Supra* note 9.
[420] *Mohinder Singh Gilt v. Chief Election Commissioner*, A.I.R. 1978 S.C. 851.
[421] *Siemens bngg. & Mfg. Co. v. Union of India*, A.I.R. 1976 S.C. 1785.
[422] *Sunil Baíra v. Delhi Administration*, A.I.R. 1978 S.C. 1675.

Doctrine of Arbitrariness

Equality under Article 14 of the Constitution is a dynamic concept, which means that it cannot be "crippled, cabined and confined" within traditional and doctrinal limits.[423] Equality is anti-thesis to arbitrariness in both legislative and executive actions. It strikes at anything done in an unreasonable or non-rational manner, capriciously or at pleasure, without a determining principle.[424]

To prevent the negation of their decisions due to arbitrariness, the administrative authorities have to give convincing reasons for their actions. This prevents the functionaries from acting unfairly, unjustly and arbitrarily.[425] Any acts of administrative functionaries which curb or affect the individual's liberty in any manner have to be backed by legitimate reasons which necessitate the authorities to take up such a measure. Any lack in providing such reasons and justifying their actions would invoke Article 14 because the aggrieved party and appellate courts have no idea about the basis for the decision.[426] Hence, the doctrine of arbitrariness warrants reasoned decision making.

Violation of Fundamental Rights

Certain Fundamental rights are present under Article 19(1), such as right to freedom of speech, expression, assemble, associate, etc. Any administrative act which is restricting any of these rights will have to be located in Article 19, clauses (2) to (6). The reasonableness of any such restriction depends on the substantive and procedural aspects of the law. When no reason is given for such restriction, then the validity of the administrative decision/order can be questioned and struck down.[427] There have even been instances where a law, which authorises administrative authorities to interfere in such rights of individuals "without assigning any reasons", has been found to impose unreasonable restrictions which do not qualify under any restrictive clause of Article 19, and was hence, held unconstitutional.[428] Therefore, administrative authorities need to give reasons for their actions lest they should be struck down as being unconstitutional and violative of Part III rights.

[423] *E.P. Royappa v. State of Tamil Nadu*, A.I.R. 1974 S.C. 555.
[424] *Sharma Transport v. Government of A.P*, A.I.R. 2002 S.C. 322.
[425] *Swadeshi Cotton Mills v. Union of India*, A.I.R. 1981 S.C. 818.
[426] *Woolcombers of India Ltd. v. Woolcombers Workers Union*, A.I.R. 1973 S.C. 2758.
[427] M. P. Singh, "Duty to Give Reasons for Quasi-Judicial and Administrative Decisions" 21(1) *Journal of Indian Law Institute* 45 (1979).
[428] *Anumathi Sadhukhan v. A.K. Chatterjee*, A.l.R. 1951 Cal. 90.

Appellate and Supervisory Jurisdiction of the Supreme Court and High Courts

Apart from the Part III requirements, the courts have held that, power of the Supreme Court under Article 136 and the High Court under Article 226 and 227, to hear appeals from administrative tribunals[429] and to supervise over lower tribunals,[430] respectively, would be defeated unless reasons are given by such functionaries for their decisions. Giving reasons is one of the fundamental elements of good administration and both the judicial and administrative authorities are under a general duty to act accordingly.[431] This not only streamlines and accelerates the appeal procedure but also ensures that the appellate and supervisory functions of the higher judiciary are exercised over the decision-making of the lower courts and not on the merits of each and every case.

Statutory Obligation

Lastly and one of the most frequently used arguments in compelling administrative authorities to give reasons is the obligation placed on them by their parent statute. There are multiple statutes mandating giving reasons, such as, the Indian Police Service (Appointment of Promotion) Regulation, 1955,[432] the Industries (Development and Regulation) Act, 1951,[433] the Consumer Protection Act, 1986, the Mines Act, 1952,[434] etc. They oblige administrative and quasi-judicial authorities to give reasons for their actions and any default on this front will result in court intervention and opens a possibility for the decision/order to be struck down and even fines being paid.

THE WAY FORWARD

While there may be various elaborate ways through which administrative authorities are compelled to give reasons for their actions, there also exist various lacunas in the operation of the law with regards to this crucial aspect of accountability. To that effect, in this section, *firstly*, I will highlight the lacunas present in the law with regard to the administrative authorities giving reasons. *Secondly*, I will perform a comparative analysis of the US and the UK administrative law on reasoned decision-making with the Indian law. *Thirdly*, I will make

[429] *Hari Nagar Sugar Mills Ltd. v. Shyam Sunder*, A.I.R. 1961 S.C. 1669
[430] *Bhagat Raja v. Union of India*, A.I.R. 1967 S.C. 1606
[431] *Govt. Branch Press v. Belliappa*, A.I.R. 1979 S.C. 429.
[432] *Uma Charan v. State Of Madhya Pradesh*, A.I.R. 1981 S.C. 1915.
[433] *Anil Kumar v. Presiding Officer And Ors*., A.I.R. 1985 S.C. 1121.
[434] *Union Of India v. Essel Mining & Industries Ltd*., A.I.R. 2005 S.C. 5160.

certain suggestion to reform the Indian administrative law for furthering the spirit of the third principle of natural justice.

Lacunas in the Indian Law

The first and most important lacuna in this system is the inconsistency and non-uniformity present in the law to mandate administrative authorities to give reasons. While the court in most cases opines in favour of the citizen, there have been sporadic instances where the court has denied any recourse to the individual and chose to not interfere in the authority's stance of not providing reasons for their actions.[435] This is particularly visible in situations where the parent act of the administrative authority is silent on the requirement of giving reasons.[436]

However, while recent case laws have mandated judicial and quasi-judicial bodies to give reasons, the same has not been entirely and uniformly reflected in non-judicial administrative authorities.[437] This is a very pertinent point to consider because in the case of tribunals, even if they are not mandated to provide reasons, oral and personal hearings still exist. This enables the party to atleast bring their case before the judge who can then apply his mind and decide the issue. However, in the case of non-judicial administrative authorities, barring a few exceptions, there exists no such opportunity for the aggrieved party.[438]

Another instance of non-uniformity is seen in how the courts respond to the administrative authorities which do not give reasons. Certain times, they quash the entire decision and ask the authorities to review the matter all over again,[439] while other times, they just ask the authorities to merely consider the matter and just record the reasons for reaching that decision.[440]

The second lacuna in this system is that when the parent statute is silent on giving reasons, the authority, in numerous instances, just recuses itself from giving reasons, until it is forcibly directed by the court to do so. This has the potential of becoming the norm in such administrative actions. This creates a large burden on the individuals being affected by such actions as they will have to keep going to the court to get any recourse.[441] While this may be

[435] *Supra* note 26.
[436] *Nandram Hunatram, Calcutta v. Union of India*, A.I.R. 1966 S.C. 1922.
[437] *Kishan Chand Arora v. Commissioner of Police*, A.I.R. 1961 S.C. 705; *Mahabir Jute Mills v. Shibban Lai*, A.I.R. 1970 S.C. 1302.
[438] *Supra* note 26.
[439] *Institute of Chartered Accountants of India v. K.L. Ratna*, A.I.R. 1987 S.C. 71.
[440] *Neelima Misra v. Harinder Kaur Paintal*, A.I.R. 1990 S.C. 1402.
[441] *Supra* note 6.

feasible for individuals with expendable money and time, majority of the citizens who do not have access to such resources will be at the mercy of such authorities.[442]

The third lacuna is that there is no overarching landmark judgement, guidelines or legislations which lay down the standard for measuring the adequacy of the reasons. There is a vacuum regarding the detailed structuring and formulation of these reasons by the authorities. In certain cases, the court has held that it need not go into the adequacy of the reasons,[443] while in other cases, it has rejected the reasons stating that they are not sufficient enough to show that the officers have properly applied their mind to the case.[444] Therefore, such inconsistencies and obscurities in the law warrant for some changes to be brought about.

Comparative Analysis with the US and UK Administrative Law

The various lacunas of the Indian law can be contrasted against the more enabling provisions present in the American and English jurisdictions.

While India doesn't have any general legislation dealing with state administrative authorities, in the US, there exists a federal statute called the Administrative Procedure Act of 1946, which governs the functioning of the administrative agencies of the US federal government. Since it is also one of the most important pieces of legislations in the US, it is also called the Constitution of the US administrative law.[445] Section 8 of this act has been interpreted by the US courts to mandate all administrative authorities to state their findings, conclusions and reasons on all decision reached by them. This act extends equally to both quasi-judicial and non-judicial administrative agencies.[446] The act not only provides guidance for determining the adequacy of the reasons, but also the procedure for approaching other responsibilities. Since reasoned decision-making and legal reasoning form a core part of this mechanism, it has been mandated for all administrative agencies.[447]

In the UK, on the other hand, there is Section 1.2 of the Tribunals and Inquiries Act, 1958, which provides that all tribunals listed in the statute, must mandatorily give oral or written

[442] "Legal system geared to favour the rich, powerful: Justice Gupta", *The Hindu*, 06 May 2020, *available at* <https://www.thehindu.com/news/national/legal-system-geared-to-favour-the-rich-powerful-justice-gupta/article31521708.ece> (last visited on 02 April 2020).
[443] *Anil Kumar v. Presiding Officer and Ors*., A.I.R. 1985 S.C. 1121.
[444] *Mayer Simon Parur v. Advocate-General of Kerala*, A.I.R. 1975 Ker 57.
[445] Kristen E. Hickman and Richard J. Pierce, *Federal Administrative Law: Cases and Materials* (3rd edn, West Academic Press 2020).
[446] *Motor Vehicle Manufacturers Association. v. State Farm Mutual Automobile Insurance Co*, 463 U.S. 29.
[447] John F. Duffy, "Reasoned Decision making vs. Rational Ignorance at the Patent Office" 104 *Iowa Law Review* 2351 (2019).

reasons for their decisions.[448] However, there are 2 caveats which differentiates this from its US counterpart. *Firstly*, this duty only extends to administrative agencies performing adjudicatory functions like the tribunals, and not non-judicial bodies. For other agencies, reliance has to be placed in the diverse set of common law cases proving reason. *Secondly*, the agency does not have any automatic duty to give reasons for all of its actions. It only needs to give reasons if the same is requested by the involved parties.[449]

Reforms to the Indian Law

All the lacunas which are present in the Indian system is a result of the legislative void which exists in this realm of reasoned decision making. As of now, there are multiple approaches taken by the court to direct the administrative authorities to give reasons. Besides statutory obligations, none of the basis employed by the courts are consistent and good enough to support reasoned decision-making.[450] Therefore, with the ever-expanding executive and their powers, a legislation, which squarely deals with the entire Indian administration as suggested by the 14th Law Commission, is the call of the day. Among the two systems which were discussed, I submit that the US model would be better suited for addressing all the current pitfalls in the Indian constitutional democracy.

A comprehensive document which deals with all the substantive and procedural aspects of the Indian administrative law has to be brought about. It should make it mandatory under the law to give reasons for every administrative action/decision, be it judicial, quasi-judicial or non-judicial functionaries.

The provision and its concurrent interpretation should be such that the reasons ought to be simple and logical, so that the party to whom it is addressed can understand the same.[451] The detail and amount of reasons to be given by the authorities can be established in a staggered manner, such that most of the officers should give brief reasons and elaborations for their decision which should be unique to the facts of each case. At the same time, for certain few functionaries where expedition and inexpensiveness is key, like passport, immigration, parole, etc., the mandate can be laxed. The acceptance or rejection of any application can perhaps be done by checking the relevant grounds in a pre-made response letter, as is the case in UK.[452]

[448] Paul Paterson, "Administrative Decision-Making and the Duty to Give Reasons: Can and Must Dissenters Explain Themselves?" 12 *Auckland University Law Review* 1 (2006).
[449] *Supra* note 3.
[450] H.M. Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing 2015).
[451] *Supra* note 6.
[452] *Supra* note 26.

All these detailed reforms to the administrative law can only be possible through a national-level discussion and formulation of a legislation, which caters to all these policy considerations.[453]

CONCLUSION

As the third principle of natural justice, reasoned decision making a critical role in all democracies which have a separation of power dynamics within the state. From placing a check on the abuse of power by the administrative agencies, to expediting the appellate process and legitimising the state, giving reasons plays a pivotal role for the benefit of the state and especially the citizens. The Indian state has also incorporated this practice in varied methods, mainly as a result of judicial interpretation of legal statutes and concepts. While this may be the case, there have been piecemeal and sporadic instances where the courts have ruled against the aggrieved party thus, favouring the state for not giving reasons. To rectify such instances and to ensure they do not occur again, there is a dire need of a national legislation on the Indian administrative law, which can be reflective of the American Administrative Procedure Act. Such a law will not only bring much-needed clarity to the obligations present on the ever-growing administration, but also would lay down the procedure to be followed by such authorities while executing their obligations.

[453] Ibid.