

Do “Unruly” Passengers Deserve Procedural Justice in India?

“The Nation Wants to Know”.

- S. Kushi¹

“The laws of God and men both allow the party to make his defense if he has any. I remember to have heard it observed by a very learned man upon such an occasion that even God himself did not pass a sentence upon Adam before he was called upon to make his defense. Adam (says God) where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou should not eat? And the same question was put to Eve also.”²

(Vortescue, J., 1723)

I. ABSTRACT:

The first limb of the principles of natural justice provides for a fair hearing subject to the fact that not providing the same might result in significant prejudice being caused to that person³. The validity of this proposition is evident from the quote mentioned above wherein Adam and Eve would have been punished without even being granted a reasonable opportunity to present their case. Further, Audi Alteram Partem forms the bedrock of all administrative inquiries, especially when they culminate in civil⁴ consequences. Therefore, non-application of this rule, which is either expressly or impliedly provided for by a statute, results in the violation of Article 14 (arbitrariness) and 21⁵ (failure to follow due procedure) of the Indian Constitution⁶. Besides, the Supreme Court has directed all the administrative and quasi-judicial bodies to read the principles of natural justice into the statute unless it has been explicitly excluded⁷. However, contrary to the same, Indigo airlines did not comply with the procedural safeguards⁸ mentioned in the concerned statute and banned Mr. Kunal Kamra for six months for allegedly heckling⁹ Mr. Arnab

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² R v. University of Cambridge (Dr. Bentley’s Case), (1723) STRA 557.

³ Maneka Gandhi v. Union of India, 1978 SCR (2) 621.

⁴ State of Orissa v. Dr. (Miss.) Binapani Dei & Ors., 1967 SCR (2) 625.

⁵ A.K. Kraipak v. Union of India, AIR 1970 SC 150.

⁶ The Indian Constitution, 1950.

⁷ Union of India v. Ram Lakhan Sharma, (2018) 7 SCC 670.

⁸ The Wire. 2020. *How Legal Was Indigo’s Quick Suspension Of Kunal Kamra?*. [online] Available at: <<https://thewire.in/rights/indigo-kunal-kamra-arnab-goswami-2>> [Accessed 4 June 2020].

⁹ Twitter Video of the incident-Twitter.com. 2020. Twitter. [online] Available at: <<https://twitter.com/kunalkamra88/status/1222109025812320257?s=20>> [Accessed 4 June 2020].

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Goswami without even giving him a fair hearing. This incident was followed by an immediate ban by three other airlines on the advice of the Ministry of Civil Aviation.

STRUCTURE OF THE PAPER:

Thus, in this article, the researcher would throw light on the administration's recklessness in following the procedure. Accordingly, the piece is divided into seven parts namely, (1) Introduction, (2) Birth of "Unruly" Passengers in International Law, (3) Comparative analysis between the U.S. and U.K. passenger laws, (4) Evolution of "Unruly" passenger laws in India, (5) Critical Legal Analysis of the Kamra Fiasco, (6) Aftermath of the controversy and (7) Conclusion.

II. BIRTH OF "UNRULY" PASSENGERS IN INTERNATIONAL LAW:

Air rage incidents¹⁰, wherein the air travelers act violently, abusively, or disruptively¹¹ against the crew and other passengers have been prevalent right from the inception of commercial flights. Violence inflicted upon the crew after excessive drinking¹², smoking¹³ in the plane (which is prohibited), sexually assaulting an air marshal¹⁴, defecating on passenger seats¹⁵, delaying the landing,¹⁶etc. are some common examples of air rage incidents. Due to the multiplicity of such events, the *Tokyo Convention*¹⁷ of 1963 came into place with 186 signatories, which condemned such disruptive behavior of passengers¹⁸. To improvise on the same vision, the *Montreal Protocol*,¹⁹ 2014, was introduced, which gave a clear and precise definition of the term "unruly passenger." However, it is interesting to note that this protocol has only 22 signatories, including India and other "developing" countries, whereas the U.S. and the U.K. are non-signatories to this protocol.

¹⁰Morgan, M. and Nickson, D., 2001. *Uncivil aviation: a review of the air rage phenomenon*. International Journal of Tourism Research, 3(6), pp.443-457.

¹¹Schaaf, M., 2001. *Air Rage: A Policy Research Study*. Collegiate Aviation Review International, 19(1).

¹²LEOW, A., 2020. *Travellers From Hell: 9 Stories Of Air Rage*. [online] The Straits Times. Available at: <<http://www.straitstimes.com/world/passengers-from-hell-8-stories-of-nightmare-air-rage>> [Accessed 4 June 2020].

¹³Orr, A., 2020. *Perth Man's Alleged Air Rage Incident*. [online] The Sydney Morning Herald. Available at: <<http://www.smh.com.au/wa-news/perth-mans-alleged-air-rage-incident-20121218-2bkii.html>> [Accessed 4 June 2020].

¹⁴Justice.gov. 2020. *Woman Arrested For Assaulting A Federal Air Marshal*. [online] Available at: <<https://www.justice.gov/usao-edva/pr/woman-arrested-assaulting-federal-air-marshal>> [Accessed 4 June 2020]

¹⁵AP NEWS. 2020. *Passenger Accused Of Defecating On Airliner Pleads Guilty To Making A Threat*. [online] Available at: <<https://apnews.com/7de0d25edb271d51200479ea23077782>> [Accessed 10 June 2020].

¹⁶2020. [online] Available at: <<http://www.manchestereveningnews.co.uk/news/greater-manchester-news/woman-passenger-punches-captain-face-11319709>> [Accessed 4 June 2020].

¹⁷Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963.

¹⁸Dönmez, K. and Uslu, S., 2020. *The effect of management practices on aircraft incidents*. Journal of Air Transport Management, 84, p.101784.

¹⁹The Montreal Protocol (MP14), 2014.

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III. PROCEDURAL LEGALITY OF "UNRULY" PASSENGER LAW IN THE U.S. AND U.K.:

Since the U.S. is a non-signatory to the Montreal Protocol, the laws dealing with "unruly" passengers do not provide for procedural safeguards/ principles of natural justice to the persons charged. Regulations 91.11, 121.580, 135.120 of the Federal Aviation Regulations²⁰ warn the passengers not to indulge in activities that intimidate or threaten the crew or fellow passengers. The repercussions for a passenger engaging in such unruly behavior might result in the imposition of compensation up to \$25,000²¹ or prosecution on criminal charges. It should be noted that there is no procedure established by law that considers the principles of natural justice of the persons accused under any of these regulations²². Such violations have been envisaged in U.S. Airways Flight 732²³ and the incident in Las Vegas Flight²⁴.

In contrast, the United Kingdom Flight Safety Committee²⁵ has drafted rules on "unruly passengers" which categorizes²⁶ the veracity of disruptive acts committed, gives ample opportunity to the accused to put his/her defense after consultation with the commander of the aircraft, the affected passengers and the crew before pronouncing the final decision. Thus, such legislation acknowledges the importance of pre-decisional hearing, which is the sine qua non against arbitrariness.

IV. EVOLUTION OF "UNRULY" PASSENGER LAWS IN INDIA:

Before the advent of this provision, police reports were the airline's only recourse to address disruptive behavior. These reports were quite demanding, and hence the above rule came into being after a multitude of air rage incidents in India. Some of them are as follows:

²⁰ Federal Aviation Regulations, 1958.

²¹Faa.gov. 2020. *Passengers & Cargo – Unruly Passengers*. [online] Available at: <https://www.faa.gov/data_research/passengers_cargo/unruly_passengers/> [Accessed 4 June 2020].

²²Galluzzo, M. and Galluzzo, M., 2020. *Criminal Laws Pertaining To Unruly Airplane Passengers*. [online] Firm News and Legal Information Centre. Available at: <<https://www.gjllp.com/news/criminal-laws-pertaining-to-unruly-airplane-passengers/>> [Accessed 4 June 2020].

²³Law360.com. 2020. *Ex-Nelson Mullins Partner Gets Probation For Flight Fiasco - Law360*. [online] Available at: <<https://www.law360.com/articles/775025/ex-nelson-mullins-partner-gets-probation-for-flight-fiasco>> [Accessed 4 June 2020].

²⁴2020. [online] Available at: <<http://www.manchestereveningnews.co.uk/news/greater-manchester-news/stag-party-terrorise-passengers-trash-11484893>> [Accessed 4 June 2020].

²⁵ This guide has been produced as a draft by the UKFSC at the request of its members. Members are advised to consult their own company management or solicitors before adopting or adapting the draft for company use. Members are referred to IATA Guidelines for handling disruptive/unruly passengers – first edition 1998 for further detail

²⁶Caa.gov.il. 2020. [online] Available at: <https://caa.gov.il/index.php?option=com_docman&view=download&category_slug=2015-10-13-06-39-02-6&alias=4802-cabin-safety-disruptive-passenger-guide&Itemid=669&lang=he> [Accessed 4 June 2020].

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A male passenger slapping a female crew member of the Vistara Airlines²⁷, BJP MP Pragya Thakur delaying the landing of a SpiceJet plane by two hours²⁸, Sonu Nigam entering into an altercation with Jet Airways for not playing his songs in the flight²⁹, a female passenger holding the collar of a senior Air Asia personnel³⁰, the owner of an Indian electronics company slapping the airport security officer and walked away³¹. In all these cases, the airline authorities took no substantial action against any of them. Interestingly, all these "unruly" passengers were influential or famous in Indian society/ or had some nexus with the ruling party.

However, the two incidents that triggered the creation of "unruly" passenger law in India was when the Shiv Sena politician Mr. Ravindra Gaikwad³² had hit an Air India personnel with his slipper and was banned for a meager two weeks. Secondly, when a Gujrati businessman, Birju Kishore Salla³³, had pasted a note about a hijacker and a bomb in the lavatory of the Jet Airways Mumbai- Delhi flight. For this act, he was thrown in the no-fly list of all the Indian airlines. After these incidents, a need for a law was felt to regulate the behavior of such passengers.

On September 8, 2017, Rule 133A of the *Aircraft Rules, 1937*, under the *Aircraft Act, 1934*, provided for the Directorate General of Civil Aviation to issue *Civil Aviation Requirements (CARs)*³⁴ concerning "unruly" passengers in India. This provision was enacted to fulfill India's obligations under the Montreal

²⁷Chowdhury, A., 2020. *Is Kunal Kamra Right In Seeking Damages From Indigo For Flying Ban?* Here's What Experts Say. [online] The Economic Times. Available at: <<https://economictimes.indiatimes.com/industry/transportation/airlines/-aviation/is-kunal-kamra-right-in-seeking-damages-from-indigo-for-flying-ban-heres-what-experts-say/articleshow/73863451.cms?from=mdr>> [Accessed 4 June 2020].

²⁸India Today. 2020. *Pragya Thakur On SpiceJet Row: My Seat Didn't Have Emergency Written On It*. [online] Available at: <<https://www.indiatoday.in/india/story/sadhvi-pragya-thakur-reaction-spicejet-delhi-bhopal-flight-delay-1630867-2019-12-23>> [Accessed 4 June 2020].

²⁹The Times of India. 2020. *When Sonu Nigam's In-Flight Singing Led To Suspension Of Cabin Crew - Sonu Nigam: When The Singer Courted Controversy | The Times Of India*. [online] Available at: <<https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/photo-features/sonu-nigam-when-the-singer-courted-controversy/When-Sonu-Nigams-in-flight-singing-led-to-suspension-of-cabin-crew/photostory/58220479.cms>> [Accessed 8 June 2020].

³⁰NDTV.com. 2020. *Woman Alleges Sexual Harassment By Air Asia Crew, Airline Contends Charge*. [online] Available at: <<https://www.ndtv.com/bangalore-news/woman-alleges-sexual-harassment-by-airasia-crew-airline-contends-charge-1774020>> [Accessed 8 June 2020].

³¹Staff, S. and Staff, S., 2020. *Passenger Allegedly Slaps An Air India Staff Member At Delhi Airport After Missing Flight*. [online] Scroll.in. Available at: <<https://scroll.in/latest/859547/passenger-allegedly-slaps-an-air-india-staff-member-at-delhi-airport-after-missing-flight>> [Accessed 8 June 2020].

³²News, I., 2020. *Ravindra Gaikwad: Govt Bows To Shiv Sena, Asks Air India To Let MP Ravindra Gaikwad Fly | India News - Times Of India*. [online] The Times of India. Available at: <<https://timesofindia.indiatimes.com/india/air-india-revokes-flight-ban-on-shiv-sena-mp-gaikwad/articleshow/58065176.cms>> [Accessed 4 June 2020].

³³News, C. and News, M., 2020. *Birju Salla: Birju Salla, Who Caused Flight Hijack Scare, Keeps Company Of Pranksters, Says Childhood Friend | Mumbai News - Times Of India*. [online] The Times of India. Available at: <<https://timesofindia.indiatimes.com/city/mumbai/birju-salla-who-caused-flight-hijack-scare-keeps-company-of-pranksters-says-childhood-friend/articleshow/61374477.cms>> [Accessed 4 June 2020].

³⁴164.100.60.133. 2020. [online] Available at: <<http://164.100.60.133/cars/D3M-M6.pdf>> [Accessed 4 June 2020].

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Protocol, 2014, with its essential components: categorizing "unruly" acts committed into three levels (with equitable punishments) and establishing an Internal Committee to decide such matters. Besides, the Internal Committee would have to mandatorily comply with the whole procedure laid down to uphold the principles of natural justice (Annexure 8.2 presents a detailed explanation of the working of this section). Hence, Mr. Kamra was banned under this section and was added to the no-fly list of Indigo airlines.

V.CRITICAL LEGAL ANALYSIS OF THE KAMRA FIASCO:

The legal grounds upon which the ban wasn't justified are as follows:

NO NOTICE SERVED:

Firstly, it is argued that no notice was served upon Mr. Kamra regarding his ban, which violates his principles of natural justice. Mr. Kamra had uploaded his conversation with Mr. Goswami on twitter; within 6 hours, the Minister of Civil Aviation, Mr. Puri, had tweeted about his ban and advised other airlines to ban him. It is a well-established principle of administrative law that serving of notice is the most crucial facet of Audi Alter Partem³⁵ as a person needs to know about the principal allegation against him/her. Further, even if the notice had been given, it would've been impossible to reply to it within a short span of six hours. The Supreme Court stated that sufficient time must be provided for responding to a notice³⁶. It should be noted that the decision to ban was communicated informally on Twitter solely to defame him in public as he was formally communicated about the ban only the next day via a mail. It is strange to note that the three other airlines, namely: SpiceJet, Go Air and Air India banned him as well without giving any notice or intimation. It is accepted that though it is well within the Aviation minister's powers to suggest the imposition of the ban, yet these airlines still had to mandatorily comply with the procedure established under Clause 6 of the CAR and then ban him. However, airlines like Air Asia³⁷ had stated that they would consider the ban only post the dispensation of the procedure laid down.

NO REASONABLE OPPORTUNITY GIVEN TO PRESENT THE CASE:

Secondly, it is argued that no reasonable opportunity was granted to Mr.Kamra, which violates his principles of natural justice. To avail a reasonable opportunity to present the case, it is mandatory under

³⁵ G. Kondala Rao v. Registrar, Shri Venkateswara University, AIR 1995 AP 338.

³⁶ Ravi S Nayak v. Union of India, AIR 1994 SC 1558.

³⁷The Week. 2020. *Ban For Right To Speech Not Shocking, Says Kunal Kamra As Go Air Also Suspends Him*. [online] Available at: <<https://www.theweek.in/news/india/2020/01/29/ban-for-right-to-speech-not-shocking-says-kunal-kamra-as-goair-also-suspend-him.html>> [Accessed 4 June 2020].

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clause 6.1. of section 3 of the CAR to establish an Internal Committee upon the complaint received by the pilot-in-charge. Thus, the pilot in charge's complaint becomes a prerequisite for forming an Internal Committee, which would listen to the matter and come up with a decision within 30 days. Ironically, the pilot of the plane had written a no objection letter to the airlines, stating that he didn't find Mr. Kamra's behavior unruly.³⁸ As a result, no Internal Committee had been set up, and the Aviation minister unilaterally gave the decision without consulting the DGCA or any Internal Committee. This action amounts to an abuse of power on the part of the minister who failed to provide Mr. Kamra with a reasonable opportunity to present his case. Therefore, failure to give a reasonable opportunity to present one's case leads to procedural injustice.³⁹

NO FAIR HEARING GIVEN:

Thirdly, it is argued that no fair hearing was availed to Mr. Kamra, which grossly violates his principles of natural justice. Though the right to a fair hearing is not absolute, it should be given when not giving the same might result in significant prejudice. It is also necessary to supply a person with all the relevant information that could be used against him/her to ensure a fair hearing⁴⁰. But in this matter, none of the two requirements were satisfied. Further, Mr. Kamra was denied both pre-decisional and post-decisional hearings.

Importance of Pre-decisional Hearings:

Pre-decisional hearing⁴¹ is the most legal and valid form of hearing. A person charged with any misconduct is allowed to present his case before a decision arrives. At this stage, the minds of the administrators are all ears to the defense presented and would go through the merits of the case without any preconceived notions⁴². In this matter, Clause 6 states that an Internal Committee should be set up. Still, there is no mention of calling upon the accused person for a hearing, unlike the United Kingdom Flight Safety Committee's drafted rules, which contemplates a pre-decisional hearing to the accused.

However, the Supreme Court had suggested that the administration should broaden the ambit of a

³⁸News18. 2020. 'Disheartened' Indigo Pilot Questions Airline's Decision To Ban Kunal Kamra, Says He Was Not Consulted. [online] Available at: <<https://www.news18.com/news/auto/disheartened-indigo-pilot-questions-airlines-decision-to-ban-kunal-kamra-says-he-was-not-consulted-2479973.html>> [Accessed 4 June 2020].

³⁹ Gautam v. Union of India, (1993) 1 SCC 78.

⁴⁰ Managing Director, ECL v. B. Karunakar, AIR 1994 SC 1074.

⁴¹Sorensen, R., 1984. *Uncaused decisions and pre-decisional blind spots*. Philosophical Studies, 45(1), pp.51.

⁴² S. N. Mukherjee v. Union of India, AIR 1990 SC 1984.

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statute silent on fair hearing and read the same into it. Thus, Mr. Kamra should have been called for a pre-decisional hearing.

The Relevance of Post-decisional Hearings:

It has been laid down in *Maneka Gandhi* that if a pre-decisional hearing is not possible, it is appropriate to resort to post-decisional hearing⁴³. It is assumed that once the administration comes up with a decision, they might approach the hearing with a closed mind and a judgmental attitude. In the U.S., to the contrary, post-decisional hearings⁴⁴ are not looked down upon or conducted as a mere formality but done in an exceptionally just manner. Besides, in this matter, even post-decisional hearing was not done. Therefore, a denial of both the pre and post decisional hearings are violative of a person's natural justice principles.⁴⁵

FAILURE TO GIVE A REASONED DECISION:

Fourthly, it is argued that no reasoned decision was given to Mr. Kamra while imposing the ban, which violates his principles of natural justice. Generally, it is a good administrative practice⁴⁶ to specify the reasons which led the administrators to a particular conclusion. Such practice enhances accountability, transparency, and credibility⁴⁷ of their order, which indicates their application of mind. However, they aren't obligated to record the reasons for their orders in every case. It is highly subjective and depends upon the facts and circumstances of a case. But the Supreme Court had stated that the requirement to record reasons could be read into statutes that are silent on this aspect. In this controversy, Indigo noted that as per condition 15 of the Indigo's Contract of Carriage⁴⁸, they could do anything they deem fit if a passenger causes any discomfort to fellow passengers or crew members. This argument could be refuted because section 3 of the CAR would trump the applicability of such an internal condition. Further, the Aviation minister had banned Mr. Kamra without giving a reasoned decision and in the absence of any relevant rules/sections. Hence, it is against the relevant established procedural mandate (please refer to Annexure 8.1 to view the tweet).

⁴³Fisch, L., 1988. *A fair hearing*. BMJ, 297(6662), pp.1541-1541.

⁴⁴Brasher, H., 2006. *Listening to Hearings*. American Politics Research, 34(5), pp.583-604.

⁴⁵ *Swadeshi Cotton Mills v. Union of India*, (1981) 1 SCC 664.

⁴⁶Wade, H. and Forsyth, C., 2014. *Administrative Law*. Oxford: Oxford University Press.

⁴⁷ See supra 37 at 4.

⁴⁸The Quint. 2020. *Kunal Kamra Vs Arnab: What Are The Rules On Flight Bans In India?*. [online] Available at: <<https://www.thequint.com/news/india/kunal-kamra-arnab-dgca-civil-aviation-requirements-2017-unruly-behaviour-rules-ban>> [Accessed 4 June 2020].

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Excessiveness of The Ban Without A Reasoned Decision:

Indigo airlines had banned Mr. Kamra for six months as a penalty for committing a level 2 offense (physical abuse) under clause 8.1 of section 3 of the CAR. It is argued that this ban was excessive as the Indigo couldn't have imposed a ban for more than three months. The nature of Mr. Kamra's act could (hypothetically) be covered only under level 1 offenses (verbal abuse). Moreover, the other three airlines (Air India, SpiceJet, and Go Air) had imposed a ban on Mr. Kamra until further notice. This step refers to an indefinite ban. Clause 6.2 provides that the Internal Committee has to lay down its decision within 30 days, and during the pendency of the decision, a 30-day ban could be imposed on the person under scrutiny. Thus, the excessiveness of the ban has failed the legitimate expectation of Mr. Kamra, who, even in the worst circumstances, wasn't anticipating a ban beyond three months. Thus, the Aviation minister abused his powers, imposed an arbitrary ban on Mr. Kamra, which violated his principles of natural justice and his fundamental right under Article 14.

Right to Information:

The administration had received a lot of RTIs regarding the excessiveness of the ban. Still, none of them have either been replied to or given any heed because of the inability of the government to defend such blatant violation of principles of natural justice (maybe).

The abovementioned legal grounds form the essence of Audi Alter Partem, and none of them have been fulfilled. Some additional legal/political grounds in favor of Mr. Kamra are as follows:

VIOLATION OF FUNDAMENTAL RIGHTS:

Fifthly, it is argued that the arbitrary imposition of a ban on Mr. Kamra has violated his fundamental rights under the Constitution. It has violated his Article 14 owing to the arbitrariness of the ban, Article 21⁴⁹ (failure to follow the due procedure established by law), Article 19(1)(d)⁵⁰ (refrained from traveling due to unreasonable restrictions) and Article 19(1)(a)⁵¹, because, despite multiple attempts to initiate a polite conversation with Mr. Goswami by Mr. Kamra, he kept ignoring him. Mr. Kamra also duly followed the crew's instructions and even apologized for any inconvenience that he might've caused them.

⁴⁹Venkata Subbarao, G. and Koteswar Rao, K., 1998. *Indian Constitutional Law*. Hyderabad, A.P.: S. Gogia & Co.

⁵⁰Sathe, S., 1970. *Administrative Law In India*. Bombay: N.M. Tripathi.

⁵¹Saiyed, I. and Oka, A., 2007. *Administrative Law*. Mumbai [India]: Himalaya Pub. House.

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In the video uploaded by Mr. Kamra, it is clear that he was merely asking him critical questions and not heckling Mr. Goswami, who is a supposed propagator of free speech in the garb of hate speech.

POSSIBLE ULTERIOR MOTIVES FOR THE BAN:

Sixthly, it is perceived by the researcher that the ban could be a result of certain ulterior motives in the mind of the administration. This is because Mr. Goswami manages to procure a clean chit in every matter, possibly because of his substantial political nexus with the party in power. This case was also possibly one in the lot. However, this is my personal opinion and maybe speculative.

Pre-emption of The Ministry of Aviation's Possible Arguments:

Since the ultimate decision regarding the validity of the ban has not been adjudicated upon, the researcher here tries to pre-empt some of the administration's (both of the Ministry and the Airlines involved) possible arguments. There are two possibilities: they might either argue that the ban was imposed after applying natural justice⁵² (challenging to prove because of the legal grounds presented above) or can vouch for the exclusion of natural justice. The probable arguments for justifying the exclusion of natural justice could be as follows: express exclusion by the statute⁵³, implied exclusion by the statute⁵⁴, a matter of national security⁵⁵, proving the absence of prejudice⁵⁶, need for prompt action⁵⁷, urgency because of the multiplicity of similar cases⁵⁸ and lastly if it could be established that the hearing involved a legislative process⁵⁹. The arguments presented above would convincingly dismiss each of these future administration's possible arguments. However, many newspaper reports talk about the administration's inclination towards the first possibility (natural justice duly followed).⁶⁰

VI. AFTERMATH OF THE CONTROVERSY:

On social media, this incident gained a lot of publicity with the passengers flashing placards in favor of

⁵²Jain, M., Jain, S. and Dharmadhikari, D., n.d. *Principles Of Administrative Law*.

⁵³Mohinder Singh Gill v. Chief Election Commissioner, New Delhi, 1978 SCR (3) 272.

⁵⁴Union Of India And Another vs W.N. Chadha, AIR 1993 SC 1082.

⁵⁵Council of Civil Service Unions v Minister for the Civil Service, [1984] 3 WLR 1174.

⁵⁶S.L. Kapoor v. Jagmohan, 1981 SCR (1) 746.

⁵⁷Laxmi Khandsari vs State Of U.P., 1981 SCR (3) 92.

⁵⁸Ghanshyam Dass And Others vs Dominion Of India, 1984 SCR (3) 229.

⁵⁹Bates v. Lord Hailsham, [1972] 1 WLR 1373.

⁶⁰The Indian Express. 2020. *Explained: Why Indigo Has Reduced Kunal Kamra Flying Ban From Six To Three Months*. [online] Available at: <<https://indianexpress.com/article/explained/kunam-kamra-indigo-ban-6289409/>> [Accessed 8 June 2020].

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Mr. Kamra in the Indigo airlines (please refer to Annexure 8.3), which was unusual. In the legal arena, after the imposition of the ban, Mr. Kamra approached the Delhi High Court in January 2020⁶¹ with the following pleas: to issue a writ of mandamus against all the four airlines directing them to set aside the ban, to issue a writ of mandamus directing the DGCA to take action against the four airlines for breaching his principles of natural justice or in the alternate, to provide him a post decisional hearing. The Single Judge ordered a post decisional hearing to be conducted within eight weeks to ensure procedural fairness. Interestingly, threatened by the Court's order, the Indigo airlines had immediately reduced the ban on Mr. Kamra to 3 months without even giving him a hearing. Now, this situation contemplates two legal concepts: firstly, the Court's acknowledgment of denial of procedural fairness to Mr. Kamra and remedying the same with a post-decisional hearing and secondly, the Indigo administration's recognition of the breach of proportionality (ban being reduced to 3 months) in the case of Mr. Kamra. It is essential to note that the Courts do not usually deal with proportionality in the quantum of punishment imposed by the administration because they relied upon the Wednesbury principle⁶². As per this principle, the Courts would not decide upon the quantum of punishment imposed unless it is shockingly disproportionate. This exhibits that the Indian Courts somehow fail to mark a clear distinction between the actual test of proportionality and the Wednesbury principle. They tend to read the latter into the former and come up with absurd decisions⁶³. Moreover, when a punishment (in the case- the ban) infringes upon the fundamental rights of a person under Article 19 and Article 14, the threshold of proving the reasonability of restrictions imposed rises. Further, the doctrine of proportionality⁶⁴ could be applied when there aren't any circumstances pointing towards the necessity of imposing the ban. In the absence of proving all/any of these criteria, it is argued that the 6-month ban imposed upon Mr. Kamra was against the doctrine of proportionality.

After the completion of the post-decisional hearing, which didn't set the ban aside, Mr. Kamra, in February 2020⁶⁵, again approached the Delhi High Court with a writ to set aside the three-month ban. The Single Judge dismissed the writ and requested Mr. Kamra to address his grievance in front of the concerned Appellate body (so that he exhausts all his alternative remedies before filing the writ).

VII. CONCLUSION:

⁶¹Kunal Kamra v. DGCA, W.P.(C) 2052/2020 & CM 7208/2020.

⁶²Associated Provincial Picture Houses Ltd v Wednesbury Corporation, [1948] 1 KB 223.

⁶³Om Kumar v. Union of India, AIR 2000 SC 3689.

⁶⁴Ranjit Thakur vs Union Of India, 1988 SCR (1) 512.

⁶⁵2020. [online] Available at: <<https://tfipost.com/2020/03/your-behaviour-cannot-be-permitted-kunal-kamra-went-to-court-for-relief-instead-gets-humiliated/>> [Accessed 8 June 2020].

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In light of all the arguments mentioned above, it is safe to assume that though statutorily, the "unruly" passengers deserve procedural justice in India. Yet, they aren't provided with the same. One needs to ponder that if the administration continues to discard procedural fairness despite explicit rules, the ordinary people are bound to suffer. Even if we analyze the whole of the air rage jurisprudence across the world, we will spot only a few cases involving a ban. Bans should be imposed only in severe cases after taking procedural fairness into account. The weapon to ban must be used sparingly and in proportion to the act committed. But in India, acts like slapping, assaulting, delaying the plane don't deserve a ban, whereas a mere aggressive questioning does. This is ironic. The closest parallel that I could draw with the Kamra fiasco is the case involving a passenger fat shaming⁶⁶ another passenger on a United Airlines flight in the U.K. In this incident, the passenger was deplaned but not banned. Thus, in light of this case, the gravity of punishment imposed on Mr. Kamra does not seem justified. Moreover, it isn't easy to convince the Court to decide on administrative matters because of the excessive trust between the administration and the judiciary. Therefore, a person is left with no choice but to be adjudicated by the same person against whom he/she had filed a suit in the first place. In conclusion, it is suggested that the administration needs to decide with a little bit of fairness and transparency; otherwise, cases like these would continue to overburden their hand-in-glove friend (the judiciary).

VIII. ANNEXURES:

ANNEXURE 8.1: HARDEEP SINGH PURI'S TWEET

⁶⁶Griffin, D., 2020. *Video Shows Woman Kicked Off Plane For Fat-Shaming Passengers*. [online] News9.com. Available at: <<https://www.news9.com/story/5e347f15527dcf49dad75448/video-shows-woman-kicked-off-plane-for-fatshaming-passengers>> [Accessed 8 June 2020].

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ANNEXURE 8.2: FLOWCHART ON THE WORKING OF SECTION 3 OF CARs

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the flight
DGCA's RULES
ON NO-FLY LISTS FOR AIRLINES
(introduced in 2017)

THREE CATEGORIES OF UNRULY BEHAVIOUR

LEVEL 1	LEVEL 2	LEVEL 3
<i>Description</i> Verbal harassment Physical gestures	<i>Description</i> Physical violence Sexual harassment	<i>Description</i> Life-threatening behaviour
<i>Ban on Flying</i> MAX 3 MONTHS	<i>Ban on Flying</i> MAX 6 MONTHS	<i>Ban on Flying</i> MIN 2 YEARS

THE PROCESS

- Pilot makes complaint to airline.
- Internal Committee to review within 30 days.
Retired Judge + Rep from Other Airline + Rep from Passengers/Consumer Association
- Internal Committee decides category and punishment.
- Details sent to DGCA/Other airlines.
- Passenger can appeal to DGCA's Appellate Committee within 60 days of decision.
- Appellate Committee decision can be appealed in High Courts.

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ANNEXURE 8.3: PROTEST BY INDIGO PASSENGERS ON BOARD**IX. BIBLIOGRAPHY:**CASE LAWS:

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