

EXPLAINED: IN-DEPTH ANALYSIS OF THE LEGAL PRINCIPLE “AUDI ALTERAM PARTEM”

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PRINCIPAL OF NATURAL JUSTICE

The term *Principles of Natural Justice*, derived from the expression “Jus Natural” of the Roman Law, does not have force of law as they may or may not form part of statute but they are necessarily to be followed. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice. The rules of natural justice do not supplant the law of the land but only supplement it. It is now firmly established that in the absence of express provisions in any statute dispensing with the observance of the principles of natural justice, such principles will have to be observed in all judicial, quasi-judicial and administrative proceedings which involve civil consequences to the parties. (A.K Karpiak vs. Union of India (AIR 1970 S.C.150) & Makena Gandhi (AIR 1978 S.C.597). Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

NATURAL JUSTICE RECOGNIZES TWO PRINCIPLES:-

- (1) Nemo judex in causa sua (Rule against bias)
- (2) Audi Alteram Partem (Rule of fair hearing)

Nemo Judex In Causa Sua means rule against bias. It is the first principle of natural justice which says no man shall be judge in his own cause or a deciding authority must be impartial and natural while deciding any case. Thus principle signify that in a circumstance where a judge or deciding authority is suspected to be bias and partial then he/she shall be disqualify from determine any case before them. It formulated that justice should not only be done but seen to be done. Proceedings before any adjudication authority must be according to the principles of natural justice.

Where it is found that a judge who is deciding any dispute has its own interest or some outcome derived from such case then the dispute by the authority shall not be execute or it remains void. It is said that impartially is the best characteristics for good administration. Human nature is such that a person ordinarily cannot take an objective decision in a case when he him self found an interest, as very rarely can person take decision against his own interest. A person can apply his mind effectively when he follows impartiality. The rule against bias thus avoids possibility of partial decision. It also ensure public confidence in legal system of a country.

DIFFERENT TYPES OF A BIAS

1. Personal Bias
2. Pecuniary Bias
3. Subject matter Bias

Audi Alteram Partem:- This is second long arm of Natural Justice which protects the “Little Man” from arbitrary administrative actions whenever his right to person or property is jeopardised. Thus, one of the objective of giving a hearing in application of the principles of natural justice is to see that an illegal action decision does not take place. Any wrong order may adversely affect a person, and it is essentially for this reason that a reasonable opportunity may have to be granted before passing an administrative order.¹The principle of audi alteram partem is the basic concept of the principle of natural justice. The omnipotence inherent in the doctrine is that no one should be condemned unheard. In the filed of administrative, actions, this principle has been applied to ensure fair play and justice to affected person. However, the doctrine is not the cure to all ill in the process. It’s application depends upon the factual matrix to improve administrative effiviwncy, expediency any to mete out justice The procedure

adopted must be just and fair.ⁱⁱ The expression *audi alteram partem* simply implied that a person must be given an opportunity to defend himself. The principle is a *sine qua non* of every civilised society corollary deduced from this rule is *qui aliquid statuerit parte inaudita altera, aequum, licet dixerit haud aequum facerit*. The who shall decide anything without the other side having been heard, although he may have said what is right, will not have done, what is right, the same principle was expressed by Lord Wright when he said, "It is not merely of some importance, but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."ⁱⁱⁱ As has been frequently observed, the benefit of this rule was given to Adam and Eve even by God before they were punished for disobeying his command. Administrative difficulty in giving notice and hearing to a person can not provide any justification for depriving the person of any opportunity of being heard^{iv}. Further more, observance of the rules of natural justice has no relevance to the fatness of the stake, but is essentially related to the demands of a given situation.^v The whole course of decision beginning with *R. V. University of Cambridge*^{vi} also known as the *DR Bentley* case, in which the court of king's bench held that the university of Cambridge could not cancel the degree of a great but rebellious scholar without giving him an opportunity of defending himself, firmly established that although there may not be a statutory requirement that both parties shall be heard, yet the justice of the common law will supply the omission of the legislature. In the same manner even if legislatures specifically authorise an administrative action without hearing, then except in cases of recognised exception, the law would be violated of the principle of fair hearing, now also read into Article 14 and 21 of the Indian constitution.^{vii} The court thus, held that though the rules permit a ward of censure entry without notice and hearing, yet the principles of natural justice should be read into such rules and no censure entry can be awarded without any notice and hearing.^{viii} However, refusal to participate in an enquiry without a valid reason cannot be pleaded as violation of natural justice at a later stage^{ix}.

THE GENERAL ELEMENT OF AUDI ALTERAM PARTAM

1. **Notice**:- If an order is passed without giving notice, then it is against the principle of natural justice and is void ab initio which means void from the beginning. Before any action is taken against any person, a notice must be served to them to give him a chance

to show cause. Before taking any action. It is the right fact of the case, no one can defend himself.

The notice must contain the date, time, place of the hearing, and also the jurisdiction under which a case is filled. It must also contain the charge proposed against the person. If any of the thing are missing in the notice then the notice will be considered invalid. Non- issuance of notice does not affect jurisdiction but affect the rule of natural justice. In the case of *Keshav Mills co.Ltd.v.union of the india*, It was held that the notice which is given to the parties should be clear and unambiguous. It is not clear then the notice will not be considered as reasonable and proper.

2. **Hearing:-** The second ingredient of audi alteram partam(Hear the other side) rule is the, rule of hearing. If the order is passed by the authority without providing a reasonable opportunity of being heard to the person. Affected by it adversely will be invalid and must be set aside as was held in the case of *Harbans lal v commissioner National co-operarive Bank v Ajay Kumar and Fateh Singh v state of Rajasthan*.
3. **Evidence:-** Evidence is considered as one of the most important part which are brought before the court when both the parties are present there are the judicial or Quasi judicial authority will act upon the evidence which is produced before the court
4. **Cross Examination:-** The adjudication authority in a fair hearing is not required only to disclosed the person concerned with the evidence or material to be taken against him, but he should be provided an opportunity to rebut the evidence or material.
5. **Legal Representation:-** An important question is whether the right to be heard includes right to legal representation? Fairly speaking, the representation through a lawyer in the administrative adjudication is not considered as an indispensable part of the fair hearing. But, in certain situations, if the right to legal representation is denied, then it amounts to a violation of natural justice. Thus where the case involves the question of law as in the case of *J.J. Mody v. the State of Bombay* and another case of *Krishna Chandra v. Union of India*, where it was held that the denial of legal representation will amount to a violation of natural justice because in such conditions the party may not be able to understand the question of law effectively and, therefore, he should be given an opportunity of being heard fairly.

EXCEPTION TO AUDI ALTERAM PARTEM

The rule of *audi alteram partem* is held inapplicable not by method for a special case to “Reasonable play in real life”. But, since nothing unjustifiable can be derived by not managing a chance to present a case.

STATUTORY EXCLUSION

Natural justice is submitted by the court when the parent statutes under which an action is made by the administration is quiet as to its application exclusion to make reference to one side of hearing in the statutory arrangement does not reject the hearing of the other parts.

CASE: Maneka Gandhi v. Association of India, Karnataka Public Service Commission v. B.M Vijay Shankar and Ram Krishna Varma v Province of UP.

A rule could be bar natural justice either explicitly or by necessary implication. However, such a rule might be tested under Article 14 it ought to be legitimate.

LEGISLATIVE FUNCTION

There are certain circumstance in which hearing might be prohibited. It is just that the activity of the administrative being referred to is authoritative and not regulatory in character. Generally an order which is of general nature is not applied to one or more specified person and is regarded as legislative in nature.

Administrative activity, entire, is not liable to the guidelines of natural justice. In light of the fact that these standard set out an approach without reference to a specific person on a similar rational, standards of natural justice can like wise be prohibited by an arrangement of the constitution too. The Indian constitution reject the standard of natural justice in Article 22, 31(A), (B),(C),and 311(2) as an issue of arrangement. However, it the legislative exclusion is mainly concerned with arbitrary, unreasonable and unfair, court may cancel such a provision under Article 14 and 21 of the constitution of India.

IMPRACTIBILITY

The concept of Natural justice is involved when It is practicable to do so but it is not applied in the case where it is impracticable to apply the rule and in such a situation is excluded.

INTER DISCIPLINARY ACTION

The words like suspension etc, which is inter disciplinary action in such cases, there is no need of the rule of Natural justice.

CASE:- S.A khan state of Haryana in this case, Mr khan was at the post of deputy inspector, general Haryana and was IPC officer. He was suspended by the Haryana government because many complaints were made against him. He filled a suit in the Supreme Court that he does not get an opportunity of being heard. The Supreme Court held that suspension was Because of inter disciplinary approach and there is requirement of hearing

CONCLUSION

Rule of natural justice has advanced by human progress. It has not developed from the Indian constitution but rather from human kind itself. Each individual has the privilege to talk and be heard when charge are being put to wards the person in question. The Latin Maxim, " *Audi Alteram Partem*" is the standard of characteristic equity where each individual gets an opportunity of being heard. The significance of a proverb itself says no individual will be denounced unheard. Thus judgment of a case will be not given in the absence of another party. There are numerous situations where this rule of natural justice is barred, and no opportunity is given to the party of being heard natural justice implies that equity ought to be given to both parties in a simply reasonable and sensible way, under the watchful eye of the court, both the parties are equivalent and have an equivalent chance to speak and to prove themselves.

REFERENCES

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- ii Sarat Kumar Dash v. Biswajit patnaik 1995 Supp(I) SCC 434.
iii R.V sessex justice, Exp. Mc Carthy, (1924) IKB256, 259, 1923 AIR ER Rep 233.
iv Bhagwant Singh v. Commr. Of police,(1985)² SCC,537: AIR 1985, SC, 1285.
v Jain exports(p) Ltd. V union of India,(1988)³ SCC 379.
vi (1723) I str. 757:93 ER 698.
vii (Olga Telis v. Bombay. Municipal corp. (1985)³ SCC 545, sec also D.K Yadav v J.M.A industries Ltd,(1993)³ SCC 259.
viii State of u. P v.Vijay Kumar Tripathi, 1995, supp (I) SCC 552. Sec also, saji Gram panchayat v. State of Gujarat, (1999)² SCC 366, piara singh v. State of Punjab , (2000) ⁵ SCC 765.
ix Bank of India v. Apurba Kumar saha (1994)² SCC 615.

