

The Theory of AUDI ALTERAM PARTEM

Abstract:

The concept of Natural Justice has been taken to mean requirements of substantial justice or substantial requirements of justice. The main aim of Natural Justice is to secure justice or to prevent the miscarriage of justice. In the recent years, the concept of Natural Justice has undergone a great deal of change. They are just not mere rules but are implied from the nature of duty that is to be performed under a statute. Natural Justice in itself is a wide set of rules. Audi Alteram Partem means to hear both the sides fairly. It is one of the principles of the Natural Justice This rule of law was established to properly exercise the judicial function. This rule was basically made to guard the common man against the abusive and arbitrary usage of the power by the administrative authority. It is said to be the duty of the authority to act fairly. No side should be unheard because if any is, that would lead to the miscarriage of the justice system. This principle has been applied to make sure of truthful play and justice to affected persons. The application of this rule depends upon the factual matrix to enhance body potency, advantage and to give justice. This article deals with the applicability of Audi Alteram Partem in the administrative proceedings and the necessary ingredients required for a fair hearing. Audi Alteram may be wide concept than what it looks like but this rule embraces a whole story of justice in itself.

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Introduction:

Principles of Natural Justice occupies an important plays in the study of Administrative Law, they are neither fixed in any court nor embodied in rules. They are judge made principles for the purpose to secure justice and prevent miscarriage of justice. This observation was given in the case *A.K. Kripal v. Union of India*.¹

The Principles of Natural Justice has now been extended even in pure administration function. They are treated as a part of the constitutional guarantee contained in Article 1, as held in the case of *Union of India v. Tulsi Ram Patel*.²

¹ AIR 1970 SC

² AIR 1984 SC

Non-compliance of the rule of law would have lost its importance if the administrative authority fails to discharge their duty in a fair and just manner as held in the case of *A.K. Kripal v. Union of India*³. Non-compliance with the principles of Natural Justice results in arbitrariness which is same as the discrimination and violation of Article 14 of the Constitution of India.

According to *Lord Widgery*, the Principles of Natural Justice were those fundamental rules, the breach of which will prevent justice from being seen to be done.

According to *Justice P. N. Bhagwati*, Natural Justice is a duty to act fairly.

Principles of Natural Justice:

The most important principles of Natural Justice are:

- A. Audi Alteram Partem (to hear both the sides).
- B. Rule Against Bias(Nemo Judex in Causa Sua- No man shall be judge of his own cause)



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Audi Alteram Partem:

This Principle of Natural Justice focuses on that no one should be condemned unheard. It requires that both the sides should be heard before passing the order. This principle supports the rule of fair hearing. In the case, *National Central Co-operative Bank v. Ajay Kumar*⁴, the court gave the observation that before passing any of the order against any person, reasonable opportunity of hearing must be given to him. The person should be given information on the charges entered against him and should also be given the opportunity to submit his explanation.

³ AIR1970 SC

⁴ AIR 1994 SC

Ingredients of Fair Hearing:

1. Notice:

It is the first step when the hearing starts by the authority concerned to the effected person. We can say that notice is the starting point of the hearing unless the person knows the case against him; he cannot defend any proceeding started without giving a notice of violation of principle of natural justice as held in the case of *Co-operative Society v. Andhra Pradesh Government*⁵..

The notice should give sufficient time to the person concerned to prepare his case as held in the case of *Public Prosecutor v. K.P. Chandrashekhara*⁶. The time given in the notice to the affected person should be sufficient and according to the facts of the case. The notice should be adequate and reasonable in itself and should contain the time, place, the nature of hearing and also about the legal authority under which the hearing will be done. If the notice is not proper, it will be declared as invalid as held in the case of *Punjab National Bank v. All India Bank Employees Federation*⁷. The notice is required to be clear and unambiguous, if it is ambiguous or void it will not be treated as reasonable or proper notice as held in the case of *Abdul Latif v. Commissioner*⁸.

The requirement of the notice will not be insisted upon as a mere technical formality. It must be communicated to the effected person as held in the case of *Keshav Mills Co. Ltd. v. Union of India*⁹.

2. Hearing:

This is the second most important ingredient of Audi Alteram Partem. If the order is passed by the authority without providing the reasonable opportunity to the effected person, it will be invalid and must be set aside since the reasonable opportunity of hearing is an essential ingredient of the Audi Alteram Partem rule, as in the case of

⁵ AIR 1977 SC.

⁶ AIR 1957 STC (Madras).

⁷ AIR 1960 SC.

⁸ AIR 1978 (Allahabad).

⁹ AIR 1973 SC.

Lawrence v. State of Bombay¹⁰. The authority has to provide opportunity to the person affected to make written representation to meet the case against him as held in the case of *Union of India v. J.P. Mittar*¹¹.

Though USA and England acknowledges oral and personal hearing, but the courts of India considered oral or personal hearing as a part necessary unless the context requires otherwise, Indian courts instead provide opportunity in written representation for this purpose as held in the case of *A.K. Gopalan v. State of Madras*¹². If all the circumstances have been taken into account by taking written representation before taking the action, the action cannot be set aside merely because personal or oral hearing cannot be given as held in the case of *Union of India v. Prabhakar*¹³. In the case of *Bishanlal v. State of Haryana*¹⁴, an adequate opportunity to answer in writing was given in the show cause notice served on effected person, the court held that it is not necessary to give him personal or oral hearing before passing the order of termination of his services.

Requirements of Fair Hearing:

A hearing will be treated as fair hearing if the following conditions are fulfilled:

- a. All the evidence which the authority wishes to see against the party should be placed before the party for his comment.
 - Right to know the evidence against him.
 - It is the general principle, that the evidence should be placed before the party. If the evidence is used without disclosing it to the affected party, it will be against the rule of fair hearing was held in the case of *North Bihar Agency v. State of Bihar*¹⁵.
- b. Providing the affected person an opportunity to produce all relevant materials which he wishes to produce.

¹⁰ AIR 1956 SC

¹¹ AIR 1971 SC

¹² AIR 1950 SC

¹³ AIR 1973 SC

¹⁴ AIR 1978 SC

¹⁵ AIR 1981

- Right to present the evidences.
 - For hearing to be treated as affair hearing the adjudicating authority has to provide the effected person an opportunity to produce all the materials relevant, which he wishes to, produce. If the adjudicating authority does not allow, the refusal will be the violation of the rule of fair hearing was held in the case of *Dhakeshwari Cotton Mills v. CIT*¹⁶. The authority has the power to summon the witness and the documents and the effected party requests the authority to refuse the request. It will be against the rule of fair hearing, the observation was given in the case of *Sitaram v. Union of India*¹⁷.
- c. Providing the effected person an opportunity to rebut.
- This provides the right to :
 - a. **Cross Examination:**

Cross examination is a right and depends upon the provision of the statute under which the hearing is being held on the facts and circumstances of the case are regarded as an essential part of the Natural Justice as held in the case of *Meenglass Tea Estate v. Their Workmen*¹⁸. In case of disciplinary proceedings initiated by the government against the civil servant the right to cross examine is included in the rule of fair hearing as held in the case of *Central Bank of India v. Karumamoy*¹⁹. In USA, the right to cross examine has been included in the due process of law and the Administrative Procedure Act, 1946. In the case of *Gurubachan Singh v. State of Bombay*²⁰, the Hon'ble Supreme Court observed that sometimes the identity of the witness is required to be kept confidential because the disclosure may be dangerous to that person or property, in such a case, the refusal to cross examine was not taken as violation of the Natural Justice.
 - b. **Legal Representation:**

Where the case involves a question of law, the denial of legal Representation will amount to violation of Natural Justice as held in the

¹⁶ AIR 1955 SC

¹⁷ AIR 1967

¹⁸ AIR 1963 SC

¹⁹ AIR 1968 SC

²⁰ AIR 1952 SC

case of *J.J. Mody v. State of Bombay*²¹. Where the matter is complicated and technical, the denial of legal Representation will amount to the violation of fair hearing as held in the case of *Natyaraiyam v. State*²².

Article 21 of the Constitution of India, provides that no person shall be deprived of his/her life or personal liberty except according to the procedure established by law, so if the procedure, does not provides for the free legal representation service to the poor and needy person cannot be referred as reasonable, fair and just. It would be violation of Article 21 as held in the case of *Hussainara Khatoon v. Home Secretary*²³. In USA, the right to legal representation has been guaranteed by the Administrative Procedure Act.1946 by which the Federal Agencies of America develops and issues the regulations.

c. Institutional Decision:

The literal meaning for institutional decision is the one who hears should decide or one who decides must hear.

In many of the Administrative proceedings, the decision made, is not of one man or one authority. It should not be personal decision, this decision is treated as a decision of the concerned department. In the case of *Gullapali Nageshwar Rao v. Andhra Pradesh State Road Transport Corporation*²⁴, an administrative action was challenged on the ground that one who decided the case has not heard it. In this case, the order of the government confirming the scheme of nationalisation was challenged. The honourable Supreme Court held that the decision has violated the principle of Natural Justice. The problem of Institutional Decision was also raised before the House of Lords in the case of *Local Government Board v. Arlidge*²⁵, in this case borough council made a closing order on a house as being unfit for human habitation, hearing was given by the inspector but the actual decision came from the local governmentboard. The decision was challenged by the owner of the house on the ground that the

²¹ AIR 1962

²² AIR1962 (Orissa)

²³ AIR 1979 SC

²⁴ AIR 1959 SC

²⁵ (1915) AC 120

petitioners were not given fair chance of hearing in the case so far as the person who decided upon the case did not allow them to appear. The Court observed that the duty cannot be performed by one who has not considered evidence or argument. It is not an impersonal obligation and it is also a duty that has to be fairly performed because the one who decides, must hear.

d. Reasoned Decision (Speaking Order):

A reasoned decision means a decision which contains reasons in support of the facts, evidences, etc. When the adjudicatory body gives reasons in support of their decisions, the decisions are treated as reasoned decision. It is also called speaking order. In such a condition, the order tells its own story. The reasoned decision enables a court to understand the mind of the concerned authority and enables the court to take the decision as to whether there is any legitimate ground for the court to interfere with the decision as held in the case of *Bhagat Raja v. Union of India*²⁶. Supreme Court in *Union of India v. J.P. Singh*²⁷, held that the reasons should introduce clarity in the order. The least a tribunal can do is to disclose its mind. The compulsion of disclosure guarantees consideration. This observation was given by the court in the case *M.P. Industries v. Union of India*²⁸. In the case of *Hari Narayan Sugar Mills v. Shyam Sundar*²⁹, the hon'ble court held that if an order does not give reasons, it does not fulfil the elementary requirements of a quasi-judicial process. The condition to state reasons, minimises the scope of arbitrariness, it gives a satisfaction to the party against whom the order is made. It also enables an appellate court to keep the tribunals within the bounds as held in the case of *M.P. Industries v. Union of India*³⁰. In the case of *Alexander Machinery (Dudley) Ltd. v. Crabtree*³¹, it has been observed that failure to give reasons amounts to denial of Justice. The reasons are live links between minds of the decision maker and how the decision or conclusion arrived. In USA, the requirement of giving reasons for decisions has been given

²⁶ AIR 1967 SC

²⁷ AIR 2007 SC

²⁸ AIR 1966 SC

²⁹ AIR 1961 SC

³⁰ AIR 1966 SC

³¹ 1974) LCR. 120

statutory force. Section 8 (b) of the American Administrative Procedure Act, 1946 requires all the administrative decisions to be accompanied by the findings and the conclusions as well the reasons. In the case of *U.S. v. Chicago*³² (1935) US, the Supreme Court of America held that the Reasons are essential for enabling the court to effectively exercise its power of judicial review.



³² (1935) US.