AUDI ALTERAM PARTEM: A FUNDAMENTAL PRINCIPLE OF NATURAL JUSTICE

Jyotsana Singh & Pratyasha Sahu, Symbiosis Law School, Hyderabad

ABSTRACT

"Natural Justice" is taken from the Roman law term 'Jus Natural,' and it is directly connected to public laws and ethical principles, but it isn't codified. The notion of procedural fairness is held in high regard by all people of civilized states. "Natural Justice" simply refers to the process of rendering a sound and fair conclusion on a certain topic. It doesn't always important what is the viable solution; what counts is the process and who is involved in making the rational decision. It is not limited to the notion of 'fairness;' it has several hues and tints that vary based on the situation. It essentially comprises three key elements. The first includes the "right of hearing," which provides that the individual or entity affected by the judgement reached by the group of specialists is entitled to a reasonable opportunity to present his or her view of the situation and justify himself. Second, the "Bias rule" suffices to say that a group of professionals should be free of bias while making a conclusion. The choice should be made in a free and impartial manner in order to comply with the rule of "Natural Justice". Finally, a "Reasoned Decision" says that order, decision, or judgement issued by the governing authority on a legitamate and appropriate basis. The second rule of "Natural Justice" is addressed in this paper. The right to a hearing, also referred as "audi alteram partem," states that a person should not be convicted if he or she cannot be heard.

Keywords: "Natural Justice", Right of hearing, Indian Constitution, Audi Alteram Partem

INTRODUCTION

"Natural Justice" has long been a significant aspect of Administrative Law. The term ""Natural Justice"" refers to the fundamental principles of law to which a petitioner has access throughout a trial. It has existed in the legal system that since beginning of time. "The Principles of "Natural Justice" are straightforward to proclaim, but their full breadth is far less straightforward to explain," according to a famous English ruling in Abbott vs. Sullivan. It has been claimed that there isn't a single definition for "Natural Justice" and that its main concepts could only be enumerated with certain accuracy. Previously, the term "Natural Justice" were usually used interchangeably, but in recently, a narrower connotation has been assigned to explain particular standards of Judicial Process.

This principle can be found throughout the early Greek and Roman empires, and it is even mentioned in Kautilya's Arthashastra. The Indian philosophy of dharma is comparable to the conception of "Natural Justice" in more ways than one. The king maintained all state apparatus, along with the executive, legislative, and judicial branches. As a result, the king was under responsibility to reform and create the legal code in order to preserve order and fairness in the state.

The important laws governing the concept were established by the Indian ruler Ashoka. He was extremely concerned about rationality in the execution of justice, alertness and forbearance in the application of penalties, and so on.

In Swadeshi Cotton Mills V. Union of India[1], Iit was stated that, the principle of "Natural Justice" was discovered to be a form of public law and a potent force that can be used to obtain justice for citizens. Also in Canara Bank V. V K Awasthi[2] The supreme court stated that "Natural Justice" concepts are those laws that have been layed by courts as the reasonable level protection of a person's freedom against it arbitrarily defined technique that may be embraced by a judiciary, quasi-judicial, or administrative agency when making a decision. influencing those protections. These guidelines are designed to prevent such authorities out of doing wrong. The idea of audi alteram partem is the fundamental tenet of "Natural Justice". Nobody should be pronounced unhearable because of the philosophy's intrinsic omnipotence. This notion has

1 Swadeshi Cotton Mills V. Union of India, AIR 1981 SC 818.
2 Canara Bank V. V K Awasthi, AIR 2005 6 SCC 321.

been implemented in the realm of body action to ensure genuine participation and fairness for impacted individuals.

Its implementation is based on the factual matrix to increase body efficacy, benefit, and morality. The phrase audi alteram partem simply meant that an individual should be given the chance to justify oneself. The notion is a sine qua non of every civilized country. A implication inferred from this principle is when aliquid statuerit parte inaudita altera, aequum, licet dixerit haud aequum facerit.

RESEARCH QUESTIONS

* What is the principle of ‘Audi Alteram Partem’?

* What are the various rights imbedded in the principle?

* How does this principle correlates with "Natural Justice"?

RESEARCH OBJECTIVES

* To know about the principle of ‘Audi Alteram Partem’.

* To conduct an analysis on the various rights imbedded under this principle.

* To know how does this principle is correlates with the "Natural Justice".

SCOPE OF THE STUDY

The second long branch of "Natural Justice" is 'Audi Altrem Partem,' which defends the "Little Man" from any disciplinary measures anytime his right to property or person is endangered. Thus, one of the goals of holding a hearing in accordance with "Natural Justice" concepts is to prevent an unlawful action choice from being made. Any incorrect order might have a negative impact on an individual and it is for these purpose that a meaningful possibility must be offered before imposing an order. This paper aims to highlight the basic rights imbedded under this concept of ‘Right of Hearing’.

RESEARCH METHODOLOGY

The paper’s methodology is based on the Doctincal Research method. Doctrinal research, is also known as ‘non-empiricial research’, is a type of research in which the topic of the inquiry

is discovered in ‘existing material such as books, articles, statutes, laws and etc. Primary and Secondary data on the subject have been researched and analysed, and the paper will emphaises on the essential conclusion.

LITERATURE REVIEW

This paper has reviewed following Literatures:-

1. Audi alteram partem might be a wider category than what it appears. It's one of the fundamental rules of "Natural Justice", yet relying on fairness while taking the principle of audi alteram partem into account would be improper. It means the rights to be heard. Although this sentence appears simple, it encompasses the entire story of law, from issuing notification through comment hearing. There are certain instances when this concept is not implemented. These exclusions, in contrast hand, must be even. There must be a rationale for avoiding this dreadful thought that serves as the dreadful foundation of justice. Then the question of which areas to skip and when not to emerge. There is no strait jacket solution for this. It is more dependent on the details and circumstances that surround the case. However, we can deduce from the preceding instances that audi alteram partem, or the right to a hearing, is a general idea, with Accomplice in Avoiding this being an exception. [3]

2. Human evolution has strengthened the concept of "Natural Justice". It sprang not from the Constitution of India, but from civilization itself. When charges are levelled against a person, everyone has the right to speak up and be heard. The Latin phrase "Audi Alteram Partem" is a criterion of distinguishing impartiality in which each participant has a chance to be heard. The importance of a phrase itself states that no one will go unnoticed. In the presence of yet another party, no judgement will be rendered.There are various instances in which this principle of "Natural Justice" is violated, and no possibility is provided to the entity to be heard. "Natural Justice" indicates that equity should be provided to both sides in a straightforward sensible and reasonable manner, under the steady gaze of the trial, where both sides are equal and have an equal chance to express themselves and demonstrate themselves.4

3 Ganesh.B, Dhivya.R, *Applicability of Audi Alteram Partem in Administrative Proceedings*, Volume 120 No. 5 IJPAM 1909-1918 (2018).
4 Uzma Sultan, *Explained: In-Depth Analysis of the Legal Principle “Audi Alteram Partem”*, VOLUME 6 ISSUE 5 IJLDAI 260-266 (2020).

3. The major goal of reconciling the exclusion and inclusion of "Natural Justice" elements of protection is to effectively comprehend persons' inalienable rights to be represented and equitable justice, in addition to the public benefit. Where justice requires, the bigger public purpose is to be permitted to take precedence over the enjoyable activity.[5]

4. After examining these legal and constitutional structures of these two nations, it is clear that the principle of presumption of innocence is a vital protection of the people's basic rights. So, something ought to be implemented to maintain this balance of power approach against state authority in place. Alternatively, this should pose a significant threat to individual rights. In the Indian context, I believe the Judiciary should be more liberal in its interpretation of any statute relating to fundamental human rights.

And, there in British context, I believe they are doing the correct thing by giving genuine validity to person's basic rights as well as the principle of law of nature. Finally, I'd want to emphasise that the principle of natural law is a fundamental component of every just judicial process. This principle exists in every effective legal system around the world, albeit in a modified ways or in a remotely - sensed.6

RIGHT TO NOTICE

The word “notice” is derived from the Latin phrase “notitia,” which signifies “to be known.” Take an addendum at the beginning of any hearing. A person will not be able to defend himself unless he knows the articulation of the issue and the challenges involved in the case. A proper statement should comprise:

a. “Time, place and nature of the hearing,”
b. “Legal authority beneath that hearing is to be controlled,”
c. “Statement of specific charges (or grounds) and projected action (or grounds) that the person has got to meet.”

The trial of notice sufficiency is to decide if it gives adequate information and information to any individual worried should mount major areas of strength for a. Subsequently, the notification prerequisite won't be forced as a simple specialized convention at whatever point the closely involved individual is appropriately educated regarding the body of evidence

5 Meghana Gade, Retreat From "Natural Justice": A Study on Evolution of The Principle of "Natural Justice", Volume 1 Issue 1 JAL&R 1-17 (2020).
6 Sayani Mitra, Protecting the Rule of "Natural Justice" SSRN 1-10(2011).

against him and isn't burdened in any capacity in that frame of mind up a decent guard. So, in *Keshav Mills Co. V Union of Bharat*[7], "the court refused to vacate the order of the go-taking on the mill for a period of five years on the technical ground that the appellants were not served with notice before this action was taken because, at an earlier stage, a final hearing was already given and there was nothing more additional that the appellant needed to grasp."

RIGHT TO GRASP PROOF AGAINST HIM

Every individual who is brought before a judicial body has the right to inspect the evidence that shall be consumed against him. This idea was definitively conventional in *Dhakeshwari Cotton Mills Ltd v. Cit*.[8], when the pursuing tax judicature neglected to divulge the department's information. "The SC ruled that the assessor was not granted a hearing. However, unless the legislation states otherwise, submitting unfavorable material in its original form is not required. It is adequate to provide an outline of the fabric's contents as long as it is not dishonest. Someone may also examine and take notes on a file. Whatever mechanism is chosen, the underlying principle remains the same: nothing should be used against the person who has committed the crime."

RIGHT TO CASE AND PROOF: This might be done orally or recorded as a hard copy. The court's square measure brought together the objective that a verbal hearing is definitely not an essential part of a hearing until circumstances are surprising to the point that an individual can't set up a decent safeguard without an oral hearing. Subsequently, on the off chance that intricate specialized and legitimate issues are tangled, or where the incentives are incredibly high, the oral trial should turn into a consultation scene. In the absence of a legal necessity for an oral hearing, courts can pursue choices in light of the subtleties and specifics of the cases. In *Union of India v. J. P. Mitter*[9], "the court refused to vacate the President of Asian Country's order in an extremely contentious disagreement over the age of state supreme court pick because the President failed to conduct an oral hearing even for the asking. The court ruled that if a person is allowed to make his argument in writing, there is no violation of "Natural Justice" principles if an oral hearing is not granted. Any administrative authority should consider gift proof, whether testimonial or documentary." In *Dwarkeshwari Cotton Mills Ltd. v. Cit*[10], "the

7 *Keshav Mills Co. V Union of Bharat,* 1973 AIR 398.
8 *Dhakeshwari Cotton Mills Ltd v. Cit,* 1955 AIR 65.
9 *Union of India v. J. P. Mitter,* 1971 AIR 1093.
10 *Supra Note 8.*

Supreme Court overturned the executive authority's decision because it did not allow the assessor to be present."

TO REBUT ADVERSE PROOF

Honor assumes that if any individual has been directed about the affirmation versus him. The stake to discredit confirmation comprises thinking about two things. Questioning is the most intense instrument for evoking and laying out the truth. In any case, the courts don't involve interrogatories in that frame of mind until the circumstances square measure to such an extent that the individual can't make a decent safeguard without it. *The Town Area Committee V. Jagdish Prasad*[11], the agency produced the allegation sheet, acquired proof, and then instantaneously disdained the order. "The court overturned the order, ruling that the rule of hearing includes the right to cross-examine witnesses and direct evidence. However, in Exeter, hearings and procedures before customs officials to determine whether or not commodities square measure black or whether or not the right of interrogatory was deemed to be outside the scope of "Natural Justice"." Based on utility, the possibility of debriefing may also be denied. In *Hira Nath Mishra v. Principal, Rajendra* [12]a health care staff, "the Supreme Court rejected the appellants' contention that they were not permitted to cross-examine female students because if they were, no lady would act to provide evidence and that it would be impossible for the school authorities to do so."

NO PROOF CAN TO BE TAKEN AT THE BLINDESIDE OF THE OPPOSITE PARTY

Court expressed in Errington v. Pastor[13] of Wellbeing that ex parte proof taken without any of the contradicting parties penetrates the standard of hearing. The conditions were that in 1933, Jarrow Enterprise gave a getting request for the destruction free from bound structures considered unsuitable for human inhabitancy and introduced it to the clergyman of wellbeing for endorsement. A test was requested, and the structure's occupants were given a meeting. Following that, some service officials returned to the area and gathered proof; however, the house proprietors knew nothing about the visit. The clearance orders were affirmed by the clergyman after the realities accumulated were thought of. The court negated the leeway choice after being tested, and justification for the same was that the ex-party statements were taken

11 *The Town Area Committee V. Jagdish Prasad* AIR 1978 SC 60.
12 *Hira Nath Mishra v. Rajendra Medical Faculty,* AIR 1973 SC 1260.
13 Errington v Wood, [*1952] 1 KB 290.*

without any contrary party while without allowing countering, disregarding the discerned ethics of natural parity.

The prime doesn't recommend that administration elements can't get information in the way they consider generally suitable. The principal focal point of the Errington case is that anything information is accumulated by the managerial authority ought to be uncovered to the contradicting party, as well as the chance to challenge it. The Supreme Court reiterated this stance in *Hira Nath Mishra v. Rajendra Medical Faculty*[14]. For the same situation, 36 women from a nursing school documented a article with the key about the trouble making of the fellows in the young lady's quarters. The ladies' assertions were recorded by the request board of trustees framed by the head, albeit without even a trace of the appellants. The ladies perceived the appellants from the photos also.

[R.L. Narasimhan, Audi Alteram Partem - Prohibition in Exceptional Circumstances.] The board passed judgment on the appellants responsible, and a removal request was given to them subsequently. The ejection administering was challenged under the watchful eye of the High Court, and one of the justifications for the protest was that the proof was acquired behind their backs. The court dismissed the case, expressing that the ladies could never have dared to offer the expressions within the sight of the appellants except if they were in incredible apprehension about reprisal and provocation. During this case, paying little mind to how much verification was assembled behind their backs, the appellants were permitted to counter the evidence.

REASONED CALL

In India, there is no broad interest for body organizations to control purposes behind their determinations with next to no communication legal interest. Notwithstanding, on the off chance that the rule under which the establishment is working requires contemplated choices, courts think of it as compulsory for the chief corporation to candid motives that mustn't be just "elastic stamp" causes however a fast, strong proclamation giving the connection between the material on which bound ends are essentially built and furthermore the undisputable ends. The Court emphasized in *M.J.Sivani v. the State of Karnataka*[15] of Region that once the standards unswerving recording of objectives, it is a round capability qua non and a condition point of

14 *Supra not 12.*
15 *M.J.Sivani v. the State of Karnataka*, 1995(3) SCR 329.

reference for a justifiable request. Albeit not a judgment, appropriate fleeting reasons are expected for a substantial request. Obviously, they should be passed on to the affected party for him to have them tried in the proper gathering. The instructor's instructive regulation. The second edition bassociate degree body request might contain reasons or the document might uncover motivations to stir things up around town showing the utilization of psyche to current realities being referred to.

CONCEPT OF POST-DECISIONAL HEARING:

The perception of the post-decisional reach was planned to sustain stability between physique supremacy and discrete fairness. Toning instrument being fashioned by the SC in *Maneka Gandhi v. Union of India.*[16] For this situation, the candidate, a columnist, had her visa seized "in the overall population interest" by Accomplice in Nursing demand dated July several, 1977, and because the public authority wouldn't give her the explanations for its call, she recorded an allure before the SC under Article 32 testing the authenticity of the impoundment demand. Furthermore, the public authority didn't give her any pre-decisional notice or hearing. The possibility of the post-decisional hearing was planned to keep up with the concordance between body power and individual conventionality. The engaged authority underlined that there was a huge opportunity for discovery. Following the request impoundment of the identification would fulfil the mission of normal equity. Swadeshi Cotton Factories v. Association of Asian Nations utilized a similar method of validating void body calls through post-decisional hearings. The court maintained the public authority's structure to assume control over the company's organization, which was passed disregarding the Audi alteram partem standard not entirely set in stone to have been drawn in by fundamental surmising because of the public authority.

K.I.Shephard v. Union of Asian Countries[17] likewise shows the best bench's idea strategy on this basic point. For this situation, three previous banks were converged by the arrangements of the subject drawn under Area 45 of the Financial Guideline Demonstration of 1949. About the subject, certain representatives of the blended banks were banished from taking an interest and their administrations were not used. A few removed workers sought a cure from the state high court under Article 226. By suggesting a post-decisional hearing, the single appointed authority gave incomplete help. The Division Seat excused the authority to report petitions

16 *Maneka Gandhi v. Union of India,* AIR 1978 SC 597.
17 *K.I.Shephard v. Union of Asian Countries,* 1988 AIR 686.

given their appeal. A few rejected representatives then, at that point, requested the High Court straightforwardly about the authority record.

CONCLUSION

Audi alteram partem might be a more extensive idea than it shows up. This is one of the basic standards of normal equity, yet depending on regular equity while considering the idea of Audi alteram partem would be ill-advised. It implies the option to be heard. Albeit this term seems basic, it envelops the whole adventure of equity, from causing notice through post-decisional hearings. Be that as it may, there are a few situations when this guideline isn't noticed. Yet, on the opposite side, these exceptions should be even. There should be a reasoning for staying away from this horrendous idea that fills in as the frightful underpinning of equity. Then, at that point, the subject of where to skip and where not to arise. It is more subject to current realities and conditions of the case. The directing adjudicator should gauge the gravity of current realities and conditions of each party. Notwithstanding, we can deduct from the first cases that Audi's alteram partem, or the right to a consultation, is an overall thought, with Partner in Skipping being an exemption.