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Application of Audi Alteram Partem to Administrative Proceedings and Exceptions

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This paper attempts to shed light on the legal maxim “Audi Alteram Partem”, which is interpreted as “The Right to be heard”. The first chapter is the introduction which would provide a short introduction to this maxim explaining that it is a basic rule of natural justice and the purpose of the existence of natural justice. This chapter briefly explains the importance of audi alteram partem and the crucial reason as to why it must be respected and properly followed. Different imperatives of this maxim are discussed in this chapter. An example of applying this legal maxim has also been discussed at the end of this chapter for a better understanding. The second chapter is concerned with the Rights of Audi Alteram Partem. This chapter alludes to the rights that are included under Audi Alteram Partem which are incorporate the right to legal representation and rebut adverse evidence, the right to present cases and adduce evidence, the right to an oral or personal hearing and cross-examination, the right to issuance of notice and reasonable judgment. One of the basic rights of a person while proceeding with a judicial action is the right to a fair trial. This right is included under the ambit of Article 21 of the Constitution of India. The third chapter hence explains the relation between the right to a fair trial and the right to be heard. It also explains how crucial this connection is for the reason that it involves a fundamental right. Every rule cannot be literally and strictly followed. All principles have one or more exceptions that are used in extraordinary circumstances. Therefore, the fourth chapter addresses the exceptions of Audi Alteram Partem. The six exceptions are statutory exclusion, legislative function, relevant documents to be made available, national security, post decisional hearing, and matter of emergency. All the exceptions provide a proper

explanation concerning their circumstances which require the need for exceptions. Lastly, the last chapter concludes the paper and summarizes the major arguments made in the paper.

Keywords: *right, heard, hearing.*

INTRODUCTION

The introduction to the concept of Fair Hearing was first coined in the seventeenth century and it slowly picked up momentum in the courts and was soon recognised as one of the most important principles to be followed as part of rules of natural justice. Audi Alteram Partem is one of the most fundamental facets of the Rules of Natural Justice as it basically translates to parties should be given a fair and equal chance of hearing at the court. The rules of natural justice hence exist in order to secure the ends of justice or rather prevent the miscarriage of justice due to factors like biasness or party being unheard which have been formulated into rules of natural justice.¹ It must be noted that this rule of audi alteram partem is crucial to judicial or quasi-judicial proceedings as it is always imperative to maintain a balance in order to ensure justice, and this balance is practised in the form of audi alteram partem where it is required for both the parties to be present during the legal proceedings and equal opportunities shall be given to both parties to be heard. The main reason as to why this must be followed is because it is only in the presence of both the parties get a fair chance to adduce their evidence in front of the court to decide on the matter. Moreover, the parties also get an opportunity to cross-examine the witnesses so that none of the proceedings go further in the absence of one of the parties which might contribute to grave injustice to the absent party as a decision could possibly take effect against the said party without his/her presence.²

Audi Alteram Partem primarily focuses on three imperatives devoid of which the rule would lose its essence. The first requisite is that there should be a notice issued to the person who is concerned with during the proceedings so that they are aware of the adverse action being

¹ *Suresh Koshy George v The University of Kerala and Ors* AIR 1969 SC 198

² *India v TR Venkatarama Aiyar* AIR 1957 SC 882

taken against them, the said person shall have enough time and opportunity to put forth their contentions with regard to the dispute or the case against them and finally, the court or the authority shall consider both sides, especially the side that would be affected by the decision. The notice that is to be served to the person concerned who is being charged with something is one of the basic factors which is a pre-requisite and the steppingstone for the rule of audi alteram partem. A notice denotes the communication of the charges to the person it is charged against. Failure of such communication of notice which carries the charges against a person even after it is expressly stated within a statute, any act against the charged person would render to be void.³

In order to address the question with regard to the application of audi alteram partem it is important to take a few examples such as the Motor Vehicles Act, 1939 wherein case there any new proposals for fare hikes are being made by the minister under the Motor Vehicles Act, 1939 it is expected of the ministry to provide copies of proposals, relevant materials should be provided for inspection as well as provided to the representatives of the concerned parties.⁴ Similarly, with regard to the educational institutions where the universities are expected to notify any student against whom there are charges related to violation of university policies or cheating during examination. In a case, the university had taken immediate action against the student without properly notifying the student in question and debarred him from the examination. The court held that the student was neither given notice nor a chance or opportunity to be heard. It is extremely important to take such steps in order to prevent arbitrary abuse of their power.

THE RIGHT TO BE HEARD IS MENTIONED IN LEGISLATIONS

The maxim Audi Alteram Partem has not been mentioned in any statute or legislation, however, the words “Right to be heard” have been mentioned in a few. The first one is the Consumer Protection Act, 1986 under Section 6(d). This section ensures the consumer their right to be heard and the interests of the consumers will be considered in the appropriate

³ *Gokak Patel Volkart Ltd. v Collectors, Central Excise Belgaum* AIR 1987 SC 1161

⁴ *Akhil Bharatiya Grahak Panchayat (Bombay Branch) v State* AIR 1985 Bom 14

consumer forums. This section guarantees the consumer's right to address their concerns to the forum without any restrictions. The second legislation is the SC/ST (Prevention of atrocities) Act, 1989, which explains the concept of a right to be heard under 15A. The victims would have the right to be heard concerning matters such as bail, conviction, release, arrest, discharge, parole, or sentence. An individual has the right to defend themselves under any of the above by adducing evidence and arguments in favor of them. The third legislation that has included the right to be heard is the Code on Social Security 2020 under Section 56(9) which states that the parties should be given a right to appeal and obtain the opportunity to be heard, modify and reverse the order of a competent court or authority. This section enables the parties to take action against an order passed by an authority and use the right to be heard in the court to present their case. The fourth legislation that includes the right to be heard is the Occupational Safety, Health, and Working Conditions Code, 2020 under section 4(2). This section states the procedure after receiving the appeal. It says that after receiving the appeal, the parties should be given the opportunity of being heard before the disposal of the appeal takes place.

RIGHTS OF AUDI ALTERAM PARTEM

The Rule of Audi Alteram Partem consists of multitudes of rights that are conferred upon the persons in question. Primarily there are five important rights under the umbrella of Audi Alteram Partem namely, Right to notice, Right to rebut adverse evidence, Right to present cases and adduce evidence, disclosure of evidence to the party, and furnishing of inquiry report.

- *Right to legal representation and rebut adverse evidence*, is one of the rights under audi alteram partem where the party or parties are entitled to have legal representation by an advocate or legal counsel. The apex court of this country has held in a case that the assistance of a lawyer is essential in order to meet the expectations of the procedure established by law.⁵ The party should also have the right to rebut the evidence adduced against them.

⁵ *MH Hoskot v Maharashtra* AIR 1978 SC 1548

- *The right to present cases and adduce evidence* is another right that allows the parties to prove the allegations made against them to be false. The parties would have the opportunities to cite precedents that support the contentions made by them. These would help the parties to bring the court in their favour and pain relief. The evidence can be adduced orally or by document. Oral evidence would include statements made by witnesses and documentary evidence would include documents relevant to the case, videotapes, recordings, etc.
- *Right to oral or personal hearing and Cross-Examination*, as it has been mentioned before an opportunity to be heard in the court of law is one of the fundamentals to principles of natural justice where a party gets a chance to be heard or rather gets a chance to put forth their contentions regarding the issue. This right objectively means a person's right to confront the charges put up against them in the court of law but in detail, this right also entails the right to produce evidence, witnesses, cross-examine witnesses, dispute the material or documents or evidence put forth by the opposing counsel. Although it is usually an essential right that is exercised in courts of law, it is however not an absolute right in all cases. Oral hearings are not allowed unless it is expressly prescribed by the court. It has been established that cross-examination is part of the right to an oral hearing.
- *Right to Issuance of a Notice*; a person is entitled to be informed about the reason for the action taken against them. According to the case, *Competition Commission of India v Steel Authority of India Anr.*, the Right to notice is a pre-requisite in a judicial proceeding and it is a mandatory principle of natural justice. Violation of the Right to notice would invalidate the whole proceeding from the beginning.⁶ Without notice, a person would not be able to obtain legal aid in order to defend themselves. For the proceeding to be able to be a fair proceeding, it should initiate with the person fully informed about the action that is being taken against them. The grounds on which an administrative action is being taken against a person should be clearly established without any ambiguity. The right to notice also includes informing the person of the place, date, and time of the hearing or inquiry. The person must be clearly informed about the charges filed against them for them to be able to

⁶ *Competition Commission of India v Steel Authority of India Anr* 2010 10 SCC 744

rebut the allegations and argue in favour of dropping the charges.⁷ The Right to notice is also connected with Article 22 of the Constitution of India. Articles 22(1) and 22(5) are relevant in the context of this paper. Article 22(1) says the person arrested shall be informed of their grounds of arrest and should be allowed to consult an attorney for their defence. Article 22(5) says the authority has the responsibility of explaining the order and the grounds behind the order to the person who has been detained. The detained person shall also go against the order with the help of their legal representative. Violation of the right to notice can eventually violate the fundamental right of a person.

- *Reasonable Judgement*: The court should consider the evidence and the arguments adduced by the parties thoroughly and form a proper judgment accordingly. The judgment should be fair and should be backed by legal reasons for the said judgment. It is the duty of the court to unravel the truth and eventually bring justice. Therefore, the judgments should be reasonable, fair, and considerate.

THE RELATION OF RIGHT TO FAIR TRIAL AND AUDI ALTERAM PARTEM

In a democratic and a non-biased judicial proceeding, two parties with contradictions approach the court for relief. Both the parties get the right to present their arguments through their attorney. In this process, it is reasonable for an accused person or a victim to speak what they wish concerning the case in the court of law. To ensure fair justice to the parties, it is the responsibility of the court to provide them the right to speak and permit the parties to be heard. If the parties are not provided the right to be heard it automatically violates the right to a fair trial. As the right to a fair trial and the right to be heard are intertwined, we can say that right to be heard is included under the ambit of the right to a fair trial. The Right to a fair trial is inclusive under Article 21 of the Constitution of India. As a connection is established between Art 21 and the right to be heard, this will increase its importance in the court of law and support the parties through the proceedings. The parties are reasonably entitled to a fair

⁷ *Golak Patel Volkart Ltd* (n 3)

and unprejudiced trial and it is the responsibility of the prosecution to respect the rights of the accused.⁸

The rules of natural justice also apply in the case of a fair hearing. According to the case, *India v TR Verma*, the judge provided the rules of natural justice which included the right of the parties to adduce proper evidence in favor of one's contention, the opportunity of cross-examining the evidence adduced by the opponent. The court also provided important features to be considered under Audi alteram partem. First, the person should be properly informed as to why action against them is being initiated. Second, the person should get an opportunity to adduce evidence to discard an allegation formed against them. Third, the court should respectfully consider the evidence and the arguments presented by the parties and take the decision accordingly.⁹ The concept of the right to a fair trial is similar to what the judge had ruled in the aforementioned case. The right to fair trial also includes the right of a person to represent themselves without any restrictions. Every principle that attempts to ensure a non-arbitrary trial is connected with each other. The right to a fair trial, the rules of natural justice and the right to be heard are all the principles protecting the parties in a judicial proceeding. The protection is offered for the sake of unearthing the ultimate truth by providing all parties equal opportunities to speak and be heard.

LANDMARK JUDGEMENTS OF AUDI ALTERAM PARTEM AND ADMINISTRATIVE LAW

In this chapter a few cases pertaining to the principle of Audi Alteram Partem and its application in the Administrative field. One of the important aspects of the right to be heard is the right to know the charges against oneself or the reason the charges were filed against him/her. This aspect is discussed in the case *Pradip Kumar v Utkal University*¹⁰. In the case, the petitioner was arbitrarily denied his opportunity of giving his examination and his results were retained. The petitioner's professors came to his residence and searched for his sixth

⁸ *Ankush Maruti Shinde and Ors. v State of Maharashtra* AIR 2019 SC 1457

⁹ *India v TR Verma* AIR 1957 SC 882

¹⁰ *Pradip Kumar v Utkal University* AIR 1987 Ori 98

paper as they assumed that he had written the paper but did not submit the same. The petitioner was then taken to the principal where the decision of withholding his paper was made. The petitioner approached the university for releasing his results as his paper going missing was not his default. But his requests were not duly considered, and he was not provided an opportunity to explain the situation. The petitioner was not informed about the reason for denying to release his results. The court alluded that every person against whom an action is being initiated must have knowledge about the action taking place, the reason for the charges filed against him/her. In this case, the opinion, thoughts, and defence of the petitioner have been completely ignored. The court, therefore, held that the petitioner did not get to exercise his right to be heard and was arbitrarily punished without initiating any investigation to find out the truth. Thus, the university had violated the principles of natural justice. The court ordered the university to publish the results of the petitioner. The petitioner in this case had no knowledge of what was happening and why it was happening to him. In order to defend himself, the petitioner has the right to have the knowledge and be prepared to deal with the consequences. Another crucial aspect of the right to be heard is having knowledge about the evidence against a person after an allegation has been made. The evidence should also be provided to a person in order to prepare their defence. But this right of the petitioner was granted in the case of *Ichhu Devi Choraria v Union of India and Ors.*¹¹ In this case, the petitioner was arrested for smuggling goods and abetting the smuggling of goods. After the arrest, the petitioner was provided with the grounds of detention which were inclusive of documents and tape records of the petitioner's conversations. For the purpose of his defence, the petitioner requested to receive the evidence against him which will aid him in defending himself through his legal representation. Along with the evidence the petitioner also requested the grounds for his detention. The petitioner requested the said evidence and grounds of detention several times, but they were not supplied to him. The contentions made by the petitioner included the reference of Article 22 of the Constitution of India which states that the detenu must be communicated about the grounds of detention and the charges against him. The defence of the petitioner completely depended upon the evidence gathered and the grounds of detention. Therefore, the court held that as the evidence and the grounds of

¹¹ *Ichhu Devi Choraria v Union of India and Ors* AIR 1980 SC 1983

detention were not supplied to the petitioner on time the detention would be quashed. Providing evidence to a person is the essence of the right to be heard. To be able to rebut the opposition counsel, all information regarding the case should be available to a person. Another case where a person was not informed about documents that were being used against him is the *State of Tamil Nadu v Senthil Kumar and Anr.*¹² In this case, the detenu was arrested after he was found with Rs. 57,21,401/- foreign currency in Chennai airport. The respondent was placed on arrest on the same day. Three important documents were sent to the respondent but the purpose or the person who sent the documents was not communicated to the respondent. The lack of knowledge did not give the respondent an opportunity to make any preparations. Therefore, this violated the principle of natural justice. The court stated that the principles of natural justice emerge from Article 22 of the Constitution of India. Therefore, the court held that the respondent was not informed of the purpose of the documents which did not permit him from getting legal representation which led to violation of the right of the respondent guaranteed under Article 22(5) of the Constitution of India. Hence, the order for detention was quashed. In this case, the judge stated that the rule of natural justice emerges from Article 22 of the Constitution of India. This is not acknowledged by the courts as much as it should be. It is important for people to realize the importance of this principle and that it has a connection to a fundamental right. The last case is with regard to notice and its contents. When a notice is being issued to a person for any reason, the notice should specify the reason for the issuance of the notice, and it should be inclusive of all the relevant information. This aspect of the right to be heard is discussed in the case, *Sub-Divisional Controller, F&S v Amulya Ratan.*¹³ In this case, the agreement of Modified Ration Dealer was entered between the state government and the petitioner, but the agreement was canceled after two violations. The petitioner contends that he had not been charged with the two violations from the two notices sent to him, but he was found guilty for the same. The notice provided was ambiguous and invalid. Therefore, the court ruled that the petitioner had been found guilty arbitrarily and the principle of natural justice have been infringed. The court ordered the parties to quash the cancellation of the contract. The notice should never be ambiguous as it can be interpreted in different ways. The

¹² *State of Tamil Nadu v Senthil Kumar and Anr* AIR 1999 SC 971

¹³ *Sub-Divisional Controller, F&S v Amulya Ratan* AIR 1985 Cal 281

notice should be clear, direct and should include all the information that is concerning the reason for the issuance of notice and nothing else.

EXCEPTIONS TO THE PRINCIPLE OF AUDI ALTERAM PARTEM.

As old and essential as the principles of natural justice which include Audi Alteram Partem are, they are not absolute in nature. The courts have stated that there are some situations where there is a possibility of not infringing the principles of natural justice while restricting the rule of audi alteram partem. Moreover, even though there have been several judgments where the courts have stated that it is a fundamental rule of law, and it should not be violated at any cost but this rule does not have an absolute application in every case and hence would be erroneous to be applied to all administrative processes.¹⁴

Statutory Exclusion:

As mentioned earlier, Principles of natural justice are one of the very fundamental concepts which have been a mandate in judicial procedures but one of the exceptions to this rule is if a statute expressly bars the application of audi alteram partem in certain cases. This statutory exclusion is envisaged in the Constitution of India itself under Article 311 where the Second proviso of Article 311(2) states that authorities are conferred with the power to dismiss or retire a civil servant from their ranks and this needs to be recorded in writing and further states that it would not reasonably be practical to hold an inquiry and hence should be disposed of with. This Article was well interpreted by the apex court of India in the case of *Union of India And Another v Tulsiram Patel and Others*¹⁵ where the question in front of the bench was, how one determines the reasonability with respect to the impracticability of inquiry under Article 311 of the Constitution. The Article, according to the supreme court, does not resort to absolute impracticability of the inquiry rather it only seeks to dispense the requisite of inquiry in those cases where it is perceived to be impracticable from the reasonable person's perspective. The insertion of the proviso to the clause under Art. 311 is to be read as a precaution in the interests of the public and to uphold the public policy. Here the court took a

¹⁴ M.P. Jain, *Principles of Administrative Law* (5th Ed. Lexis Nexis, 2007) 252

¹⁵ *Union of India & Another v Tulsiram Patel & Others* AIR 1985 SC 1416

strong stand for the exclusion clause under the Article and therefore stated that Article 14 also cannot nullify the effects of the proviso under Art. 311. An example of this would be the case of *Chief Security Officer v Singasan Rabi Das*¹⁶ where an employee was relieved of his duties from service for misconduct. The concerned authorities did not hold any particular inquiry as they deemed it to be impractical and non-feasible. The disciplinary authority had stated that it is neither desirable nor practical to summon the witnesses and other employees in the railway since that would expose them and their families would have to face humiliation due to the inquiry. This reason as well as the order was quashed by the apex court on the grounds that there were insufficient reasons to believe that inquiry was irrelevant. Moreover, the court was of the view that this does not parallel with the reasonable impracticability rule laid down in the law and hence overturned their order.

Legislative Function:

The second exception deals with the legislative function disguised as administrative action where hearing or any sort of inquiry is excluded where the said administrative function is inherently legislative in nature. Some of the very common examples of such functions are a notification issued by the government extending the limits of the town area committee, an increase of electricity rates under the electricity supply act, price fixation, etc.

Relevant Documents to be made available:

In usual cases, the authorities are obliged to share the documents which are relevant to the inquiry with the person in question. There are however exceptional cases where such administrative authorities are not obliged to share the documents in situations where the documents in question that are mentioned in the charge or memo are not directly relevant to the charges or where non-disclosure of such documents would not lead to grave injustice. In the case of *Chandrama Tewari v India (1987)*,¹⁷ the court had held that during the cross-examination the officer in question cannot request or insist on disclosure of documents that

¹⁶ *Chief Security Officer v Singasan Rabi Das* AIR 1991 SC 1043

¹⁷ *Chandrama Tewari v India* AIR 1988 SC 117

were either not directly relevant or were not relied upon in the charge. The court reasoned that non-disclosure of such documents would be permitted where such an act would not lead to prejudice. A very similar approach is considered when documents mentioned in the charge are not disclosed in cases of preventive detention the courts have held that such disclosure is not necessary as the decision is not relied upon the said documents, therefore, rendering them irrelevant.¹⁸

National Security:

The courts on this matter have decided that National Security is a subject matter for the government to decide on as the courts do not have the kind of accessibility to information that governments do. Therefore, unless the matter is brought up to the courts contending the administration's/ government's action to be unfair and arbitrary then the government would be under an obligation to provide all the necessary information that was in issue.¹⁹

Post Decisional Hearing:

The idea of post-decisional hearings comes into place in situations where the concerned authorities cannot delay the process. In essence post decisional hearing refers to a situation where a hearing is conducted after the decision by the concerned authority is passed. The reason for this kind of decision making is to take preventive measures against the person in question, for example, if the passport authorities decide to impound someone's passport to prevent them from traveling away to escape the charges they cannot wait for a thorough hearing and then impound it because within that time there is a possibility that the person might escape. This was the situation in the landmark case of *Maneka Gandhi v Union of India*²⁰ where the person's passport was confiscated without a proper hearing. In that case, the court elaborated on the principle of post decisional hearing where they stated that in certain scenarios the principles of natural justice such as audi alteram partem have to be excluded.

¹⁸ *LMS Ummu Saleema v BB Gujarat* AIR 1981 SC 1191

¹⁹ *Council of Civil Service Unions v Minister for the Civil Service* UKHL 9 AC 374

²⁰ *Maneka Gandhi v Union of India* AIR 1978 SC 597

The court stressed the importance of urgency and the need for promptitude in such administrative processes where quick decisions are needed to be taken as precautionary measures.

Matter of Emergency:

In certain cases of extreme importance and emergency, the authorities have to take immediate decisions, and this sometimes requires them to skip the hearing process which in itself takes a lot of time and effort. This situation arises in cases where the authorities attempt to abstain or prevent something from happening.

CONCLUSION

Audi Alteram Partem has great importance as propagated in this paper. It is not just the fundamental principle required in judicial proceedings but also has a deep connection with the fundamental right Article 22 of the Constitution of India. An aforementioned case also alludes that the principles of natural justice have always been included under Article 22. In this paper, we studied the scope of Audi Alteram Partem, to what extent can it be used, and its limitations. For utilizing this legal maxim, it is necessary to be knowledgeable regarding the aspects of the rights included in it. It is essential for law professionals to be aware of this principle to be able to carry out justice legitimately. The scope of the right to be heard is so deep that it provides the parties right to speak and be heard and carries out the process of justice keeping in mind the democratic aspect of law.