

Right of Hearing: *Audi Alteram Partem* **(No person shall be condemned unheard)**

Sapna Chadah

It is a flexible, malleable and adoptable concept. It admits situational modification. It also has capability and quality of reconciling hurry and hearing.

i. James Bagg's case (1615)

ii. R.Vs. Chancellor, Cambridge University (1723) Str. 557 per Fortesque J.

II. Circumstances giving Rise to a Right of Hearing

1. *Breen Vs. Amalgamated Engineering Union (1971) 1 ALL ER 1148*

"whether or not a person is entitled to a hearing depends on whether or not he has some right, interest, or legitimate expectation of which it would not be fair to deprive him without hearing what he has to say, where as he need not be given a hearing if he is merely seeking a privilege to which he has no particular claim". *per Lord Denning.*

2. *Durayappa Vs. Fernando (1967) 2 ALL ER 152*

(a) The nature of the property or office held or status enjoyed by the complainant.

(b) Circumstances in which the other deciding party is entitled to intervene, and

(c) When the latter's right to intervene is proved, the sanction he can impose on the complainant.

David Foulkes

Right, interest, privilege, liberty, office status, legitimate expectation. Whether the law is likely to develop satisfactorily in this field. " Civil Consequences", - adverse to the parties interest. If action is stigmatic on the career or reputation *audi alteram partem* must be complied with.

III. *Audi Alteram Partem*: Its Meaning and Contents

It requires minimum standard of fairness. The protection that the principle of "*audi alteram partem*" is designed to afford to an individual is in the nature of a right to a fair hearing. The principle characteristics of this right are contained in the following ingredients.

- (i) The right to be informed of the case which one is to meet at the hearing;
- (ii) The right to have notice of the time and place and a reasonable amount of time between the date of notice and actual date of hearing, and
- (iii) Adequate opportunity to present one's Case.

1. **(a) Notice:** *It is the Sine qua non* of any action

- (1) To make representation
- (2) To appear at a hearing or inquiry
- (3) To meet effectively the point raised

(b) Serving of notice

Choeklingam Vs. Commr. of Income Tax AIR 1963 SC 1956

S. 35 of Income Tax Act - If the action of I.T.O. has the effect of enhancing the assessment of the assessee, he must send a notice to the assessee and give him an opportunity of being heard in strict compliance with the prescribed procedure.

V.P. Mehta Vs. Mahanagar Telephone Nigam Ltd. AIR 1990 Del. 169

Notice of disconnection of Telephone, where such disconnection is due to non-payment of dues, must be given to the subscriber. Telephone, it was held, could not be disconnected unless the subscriber was given a hearing.

Olga Tellis Vs. Bombay Municipal Corporation AIR 1986 S.C. 180

The S.C. held that although Section 314 of the Bombay Municipal Corporation Act, 1888 permitted eviction of pavement dwellers without giving them notice, such eviction without notice should be practiced exceptionally. Normally a notice should be given.

Pawan Kumar Vs. New Delhi Municipal Committee AIR 1986 Del. 454

Delhi High Court held that although the Indian Electricity Act, 1911 did not provide for notice. Notice should be given before disconnection of the supply of electricity even to the consumer who was neither owner nor occupier of the premises.

Both cases show judicial awareness of the inadequacy of the property based jurisprudence to deal with the problem of an urbanised society in which people have to live on pavements or have to live as unauthorised tenants or as mere users. The property oriented jurisprudence had no place for them and therefore did not provide for a notice being served to them when an action detrimental to their interests was likely to be taken. However, in *BALCO Employees' Union Vs. Union of India*, (2002) 2 SCC 333, it was held that the employees of PSUs have no right of pre-decisional notice and hearing or of continuous consultation at different stages of disinvestments process if process does not contravene any law.

In *Union of India Vs. R.R. Hingorani*, AIR, 1987 S.C. 808 the requirement of notice was dispensed with in the case of government servant who overstays in an official quarters. He will have to pay penal rent for such overstay. In *Hyderabad Karnataka Education Society Vs. Registrar of Societies* (2000) 1 SCC 566, it was held that the notice is not necessary when the consequences for inaction or failure are stated in the provision and therefore known.

(ii) Notice of Trial or Inquiry

Case of "absconding" or failure to inform change of address will not vitiate the proceeding.

U.P.Singh Vs. Board of Governors, Maulana Azad College of Technology, Bhopal AIR 1982 M.P. 58

2. Hearing

- (i) Oral or Personal Representation
- (ii) Requirement of Fair Hearing

(a) Receiving of evidence

- (i) *Dhakeshwari Cotton Mills Ltd. Vs. Commr. of Income Tax* AIR 1955, S.C. 65

(b) Disclosure of Information

- (i) *State of Orissa Vs. Bina Pani Dei*, AIR. 1967 SC 1269.
- (ii) *Dhakeshwari Cotton Mills Vs. Commr. of Income Tax* AIR 1955 SC 65.
- (iii) *Election Commission of India Vs. Dr. Manmohan Singh and ors.* (2000) 1 SCC 591

Disclosure of evidence to the contrary is necessary in quasi-judicial enquiry.

(c) Limits of Disclosure

Krishna Chandra Vs. Union of India AIR 1974 SC 2589

"inter-departmental communications".

Official Notice: Counter part of the concept of "Judicial Notice." "Exclusiveness of the record" Official notice concept is an exception.

3. Opportunity of Rebuttal or Cross-Examination

(a) *State of Punjab Vs. Dewan Chunnial* AIR 1970 SC 2086

Where delinquent officer was denied opportunity to cross-examination of witness who had made general remarks against him and who were present at the enquiry, held, the rules of natural justice had been violated.

(b) *Hiranath Mishra Vs. Rajendra Medical College* AIR 1973 SC 1260

(c) *S.K.Suri Vs. Principal, Mahakoshal Arts College, Jabalpur* AIR 1973 M.P. 278

(d) *Gurcharan Singh Vs. State of Bombay* AIR 1952 SC 221

Externment order by Dy. Supdt. of Police under Bombay Police Act, 1951 denial of Cross-examination was upheld looking to the character of the delinquent.

(e) *Friedal Vs. Board of Regents* 296 N.Y. 347 (1947)

It was held that the extent of cross-examination rests largely in the discretion of the tribunal whose exercise thereof is not reviewable unless abused.

(f) *A.K.Roy Vs. Union of India* AIR 1982 SC 710

Under the National Security Act, the detenu had no right of cross-examination of the person on whose statement the decision to detain him had been based.

(g) *Navtej Singh Vs. Satish Kumar Khurana* AIR 1970 SC 2086

Where an advocate had not given any prayer to the Disciplinary Committee of the Bar Council for issuing summons to call his witnesses for examination he could not subsequently impugn the BC's decision on the ground that the committee had failed to examine such witnesses.

4. Hearing by lawyer or Representative

a) *J.K. Aggarwal Vs. Haryana Seeds Development Corpn.* AIR 1991 SC 1221

It was held that when the delinquent officer was pitted against a legally trained mind before a domestic tribunal, refusal to permit a legal practitioner to defend would amount to violation of the rules of natural justice.

b) *Kalindi Vs. Tata Locomotive and Engineering Co.* AIR 1960 SC 914

Representation was, held not a requirement of natural justice.

c) *Board of Trustees, Port Trust of Bombay Vs. D.R.Nadkarni* AIR 1983 SC 109

Right of legal representation before the domestic Tribunal was upheld as a requirement of fair opportunity.

S.36 (4) of the Industrial Dispute Act, 1947

(i) With the consent of the parties to the proceeding, and

(ii) With the leave of the adjudicating authority

Provision seeking consent reduces the right of legal representation to redundancy as it was held by the court in *Paradeep Port Trust Vs. Their Workmen* 1976 LLR 243

Pett Vs. Greyhound Racing Association (1968) 2 ALL ER 545

Right of legal representation upheld.

Pett's (2) (1969) 2 ALL ER, 221 Lord Denning, changed his opinion of Pett's (1) Case and held that legal representation cannot be claimed as a matter of right as a part of fair opportunity.

Exclusion of Representation

The main justifications for exclusion of legal representation are informality, cheapness, quickness, reducing likelihood of subsequent proceedings in the Court.

C.K. Allen's View:

It is mistaken kindness to disallow legal representation.

C.L. Subramanian Vs. Collector of Customs, Cochin AIR 1972 SC 2178 and *Nand Lal Bajaj Vs. State of Punjab* AIR 1981 SC 2041

If the government servant denied the assistance of a lawyer when the department uses the lawyer's services, there is denial of fair hearing.

IV Post-decisional Hearing, Ex-post Facto-hearing

(a) *Maneka Gandhi Vs Union of India* AIR 1978 SC 597

" Since the life of law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, *the audi alteram partem* rule would by the experimental test be excluded, if importing the right to be heard has the impact of paralysing the administrative process or the need of promptitude or the urgency of the situation so demand. But at the same time it must be remembered that this rule is of vital importance in the field of administrative law and it must not be jettison save in very exceptional circumstances whose compulsive necessity so demand " **Justice Bhagwati at 616.**

(b) *Swadeshi Cotton Mills. Vs. Union of India* AIR 1981 SC 818

"Where an express provision in the Statute itself provides for a post decisional hearing the other provisions of the Statute will have to be read in the light of such provision and the provision for post decisional hearing may then clinch the issue where pre-decisional hearing (natural justice) appears to be excluded on the other terms of the statute." **Justice O. Chinnappa Reddy at 1540**

(c) *Liberty Oil Mills Vs. Union of India* AIR 1984 SC 1271

(d) *Charan Lal Sahu Vs. Union of India* AIR 1990 SC 1480

"The general principle as distinguished from an absolute rule of uniform application seems to be that where a statute does not in terms exclude this rule of prior hearing but contemplates a post decisional hearing amounting to a full review of the original order on merits then such a statute would be construed as excluding the *audi alteram partem* rule at the pre-decisional stage. If the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected the administrative decision after post decisional hearing was good."

Sabyasachi Mukherji

(e) *K.L. Shephard Vs. Union of India* AIR 1988 SC 686

Mishra J., refused to accept that post-decisional hearing would serve the requirements of natural justice in a case where employee had been thrown out of employment.

(f) *H.L. Trehan Vs. Union of India* AIR 1989 SC 568 **Dutt. J**

"In our opinion, the post decisional hearing does not subserve the rules of natural justice. The authority who embark upon post decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting proper consideration of the representation at such a post-decisional opportunity."

V Exclusion-express and Implied

VI Effect of Violation

"Void" or Voidable - non-observance of the rule of *audi alteram partem* will make the administrative actions void.
