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ADMINISTRATIVE LAW AND PRINCIPLES OF FAIR HEARING

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ABSTRACT:

The current study focuses on the Fair Hearing Rules in the context of Administrative Law. Public authorities, in this case, must explain the decisions that they make for the public good and the fairness of the decision to the average man as a reasonable owner would do. The case of Re Haughey was a watershed moment that established the fundamental components of natural justice even in cases involving the infringement of rights and liberties including the right to one's own reputation as enshrined in the Constitution. Any action taken contrary to the rules of natural justice is tantamount to a breach of the fundamental right guaranteed under Article 21 of the Constitution. – Justice belief. The principles of natural justice exist to ensure that justice is not abused in any way. One of the principles of natural justice is to hear the other side or the party. Hence, a duty to observe natural justice by the tribunal is in the nature of a substantive right of the parties to the proceedings to be treated without fear or favor. That is Fairness is achieved by allowing the other party to be heard which helps in the fairness of the process adopted by the adjudicator. What is fair hearing, why notice is important, why notice must not be vague are the main issues, which are dealt with in the text. The consequences of non-observance of this doctrine are also considered. The right of legal representation is addressed too, as well as circumstances in which non-adherence to the principle is unlikely to affect the outcome of the proceedings.

Constitutional Law and Adiministrative Law are often considered as the Public law. According to Holand[710] , while constitutional law describes the various organs of the sovereign power as at rest, administrative law describes them as in motion. Administrative Law can be defined as that branch of public law which deals with the organization and powers of administrative and quasi-administrative agencies and prescribes principles and rules by which an official action is reached and reviewed in relation to individual liberty and freedom[711]. Administrative law is the by-product of intensive form of government.

Administrative function need not be discharged by the judges of the High Court themselves. They can be Delegated[712]. The choices, therefore, made by the administrative authorities are typically of a subjective type, in the sense that such decisions are made without applying any standard at all other than that of expediency[713]. However the situation is not the same anymore. Hence Gopal krishna v. State of M.P[714] held that when an administrative authority has to arrive at a decision with respect to certain facts in hand, that decision is called quasi-judicial. The phrase 'objectively' used by the Hon'ble Court was explained with reference to Cf. R v. L.C.C[715]., in which it was held by Kings Bench that objectivity is when the proposal and the evidence for or against it are considered.

Let us illustrate this point with an example of application for a license. It lies with the licensing authority to determine whether an individual possesses the legal qualifications to

[710] Thomas Erskine Holland, Jurisprudence, 374 (13th ed. 2013).
[711] I.P. Massey, Administrative Law, 4(8th ed. 2012).
[712] Jamaluddin v. Abu Saleh, AIR 2003 SC 1917 (India).
[713] Labour Relations Board v. J.E.I Works, (1949) A.C. 134 (149) (U.S)
[714] AIR 1968 SC 240 (India)
[715] (1931) 2 K.B. 215 (233) (C.A)

secure a license. They will not look for any proof or any material in order to come to this conclusion, other than the policy as maybe made by the department or the government so to speak. But once it has been ascertained that the individual is legally entitled to possess the license in question, it is upto them whether to consider the evidence or material, and decide whether to issue a license to that individual or not. The former action of the authorities defines administrative function while the later one can be termed as 'quasi-judicial function.

Every administrative authority exercising its function of discretion may be labeled as quasi-judicial one if it imposed a duty upon the authority to act in a judicial manner and in other circumstances, purely administrative. This paper will focus on the quasi-judicial functions and one natural justice principle which is the doctrine of audi aleterm partem or fair hearing will be explained in similar context. Justice Chinappa Reddy held[716] *"Natural justice, like ultra virus and public policy, is a branch of the public law and is a formidable weapon, which can be wielded to secure justice to the citizen…While it may be used to protect certain fundamental liberties-civil and political rights-it may be used, as indeed it is used more often than not, to protect vested interests and to obstruct the path of progressive change"*

Looking at the situation, it is imperative to note that any judicial or quasi-judicial tribunal resolving the disputes involving the rights of persons should adhere to the principles of 'natural justice' if the 'rule of law' is to be maintained[717]. The justification for such a stance can be illustrated in the context of General Medical Council v. Spackman[718]. Court therein said that these principles have been adopted as the soul of natural justice and therefore, compliance with the said principles is mandatory.

It has been observed that different 'natural justice principles' apply at different levels depending on the makeup of the specialized statutory agency and the guidelines established by the legislature. As such, any evaluation of whether there has been a breach in a given instance is not determined by arbitrary standards of what they could be, but rather, in accordance with the pertinent information.

Thus we may conclude that the concepts of natural justice are not absolute and vary according to the constitution of a nation. However most people agree that there are certain broad principles which can be drawn from the two Latin maxims which are the basis of the doctrine and to all cases where the doctrine is applicable[719]. These maxims are: Nemo debet esse judex in propria cause and Audi Alteram partem.

Injuria comes under the jurisdiction of the maxim Nemo debet esse judex in propria causa. For these reasons it is only the second doctrine that will be looked at in this essay. The second doctrine is referred to as Audi Alteram Partem which presupposes that all the parties concerned have been properly informed and given adequate time to be heard[720].

What this simple meaning suggests is that this rule requires that every intersted party in the adjudication should be served with a notice and with an opportunity to be heard. It was held that doctrine of *Audi Alteram Partem* has three basic essentials.[721]

To begin with, it is important to mention that a person against whom an order is required to be passed must be given an opportunity to be heard. This ingredient of the rule was explained by V. Aiyar [722]and he says thus: *"Rules of natural justice requires that a party should have the opportunity of adducting all relevant evidence on which he relies, that the evidence of the*

[716] Swadesi Cotton Mills v. Union of India, (1981) 1 SCC 664, 771 (India)
[717] Cf. Rep. of the Committee on Minister's Powers, (1932) Cmd. 4060.
[718] (1943) A.C 627 (U.S).
[719] 4DURGA DAS BASU, ADMINISTRATIVE LAW, 242 (6th ed. 2012).
[720] 5S P SATHE,ADMINISTRATIVE LAW, 191, (7th ed. 2012)
[721] Auto Piston Mfg Co.(P) Ltd. v.Emp.P.F.Appellate Tribunal, 2013 (1) SCT 307 (P&H) (India).
[722] Union of India v. TR Verma, AIR 1957 SC 882, 885 (India).

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opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witness examined by that party, and that no material should be relied on against him without his being given an opportunity of explaining them."

This principle, in essence, quite succinctly captures the entire doctrine. No authority, whether judicial or quasi-judicial, is entitled to base its decision on any material put forward by one party against the other unless that other party has been afforded a fair opportunity to respond. One cannot resolve a dispute solely on the basis of one party's narrative. Even the Judges are bound by the law to hear the person against whom the charges have been leveled. The apppearance of this essential is further strengthened by two inherent elements in it first is NOTICE and second is HEARING. At the very outset, notice is a basic requirement of natural justice. It is only proper that an individual who is bound to put forth his/her version of events is made aware of the accusations levelled against him/as before. A notice that's being issued should be specific and precise, failing to give such notice would render the act (quasi-judicial) null and void, if the law states so distinctly. It is the first stage in any departmental investigation. The word notice is commonly used in a form of 'show cause notice' which is the same as.

The second important aspect of this principle is hearing. Notice would simply achieve nothing unless the individual is also afforded an opportunity to be heard. It allows the person to do everything possible in order to prove that he is innocent. He is allowed to challenge the evidence offered by the opposition or the intra-departmental inquiries wherein he is provided with the information through an external witness. He is also able to provide evidence that disproves the claims against him and also provide his own evidence that rebuts that of the accusor. The law does not concern itself with what form of hearing, if any, the offender is provided with. There appears to be only an allowance of hearings in law. It might be in writing or oral. Nevertheless, an oral hearing is not required in all circumstances. The burden is upon the party to demonstrate to the court that it is impossible for the person to present his\her\their case properly without an opportunity to be heard through oral hearing.

In addition, the concerned authority should facilitate a just and unbiased process. It is not enough to only provide a chance for hearing. It should be relative and hence the term 'hearing' is frequently prefixed with the term 'reasonable'. The Supreme Court had taken a judicial notice of the element of fair hearing. A person cannot be dismissed from the position over which they engage without according them a fair hearing.[723] What is implied by the word 'fair' in this case is actually 'full'. Reducing the time allocated for making the case would be equivalent to the suppression of a fair hearing. In the same manner preventing a party from accessing charge documents about them while also appearing for their case would be equivalent to preventing a fair hearing[724]. As it is with criminal law, in administrative law as well, the individual has the right to obtain all the evidence relied on by the authorities in order to build a case against him. However, it is not obligatory to furnish the individual with unrelated documents and the same cannot be reason for nullifying the entire proceedings[725]. Certain situations may occur when the law does not provide for any specific procedure concerning this type of quasi-judicial action. Article 21[726] must take care of such situations. A minimum fair procedure thus, woul,d be required in each and every case, even when the statute governing the rules and regulations of employment are silent[727].

There is another aspect of this underlying principle, which is how the situation is portrayed within the context. The quasi-judicial acts performed by the authority in question do not

[723] arnail Singh v. State of Punjab, AIR 1986 SC 1626 (India);see also:RajinderKaur v. State of Punajb, AIR 1986 SC 1790 (India).
[724]State Bank of Bikaner & Jaipur v. Srinath Gupta, (1996) 6 SCC 486(India).
[725] ChandramaTewari v. Union of India, (1987) Supp SCC 518 (India).
[726] INDIA CONST. art. 21.
[727] Maneka Gandhi v. Union of India, AIR 1978 SC 597 at ¶ 57-58 (India).

affect the party's legal right to have an attorney of record or any other authorized representative, if they so wish. The High Court has recognized this aspect and held that the absence of legal representation while carrying out judicial functions nullifies the process concerned as it is essentially akin to incarcerating an individual.

Obstinately, there is an astonishing exception to this as well. It was decided that legal aid being withheld indefeasibly does not affect the validity of the process in those instances where the charges indicated in the charge sheet are clear and straightforward[728]. This is absurd since it suggests that the gravity of the charges would dictate the application of Article 21, which is far removed from the actual intent of the architects of the Constitution. Of this, we can be sure because, even in the face of rebellion or other national emergencies, Article 21 is not suspended or isn't subject to interruption, hence it has no exceptions and no scenarios exclude it.

Another issue that comes up is whether a post-decisional opportunity of hearing can be afforded to the individual in question, and is so, whether it would invalidate the process. It was decided that where facts and circumstances of a case make it impossible for the authority to have pre-decisional hearing, post-decisional hearing can be allowed and it would not vitiate the proceedings[729]. However, such a condition should be prevented, and pre-decisional opportunity must be accorded. The aims of Article 21 are that grievous bodily harm shall not be inflicted upon any individual without the lawful process being followed. What it therefore, necessarilyu means that when one is going to be depriced of this liberty which is not the case with post-decisional hearing.

Lastly, the pertinent authority must take a decision in a reasonable manner or through a speaking order. This essential can be further divided and thus, authority adjudicating the matter has to appluy the mind and not mere discretion, and the matter must be disposed of by a speaking order. Speaking order is an order which contains the reasoning applied by the adjudicating authority while deciding the case and accordingly it aids the appellant authority to decide thhe matter if comes in appeal. It also makes sure that there is no summary disposal and the authority has applied its minds before coming to a final decision. The word 'mind' means reasoned. Authority has to apply the mind and act only after weighting the facts and evidence adduced by both parties. It is not left to the adjudicating authority to whimsically detemine the matter at hand. It is the correct use of the rules applicable to the particular case that is expected of the authority. The nccessity of providing reasoned decisions curtails the misuse of administrative power, and guarantees that the decision is not subjective, partial, or in any way biased, but rather rational, fair, and made in the best interest of the public.

Findings and Suggestions:

The doctrine that the principles of natural justice must be applied in the unoccupied interstices of the statute unless there is a clear mandate to the contrary, is reiterated. It is though true that the principles of natural justice are flexible in application but its compliance cannot be jumped over on the ground that even if hearing had been provided, it would not have served any useful purpose. The other aspect of the matter is that the party, against whom an order is passed, in fair play, must know the reasons of passing the order. It has a right to know the reasons.

In conclusion, it is found that at first the principles of natural justice used to be confined to courts of law it later however moved out of the judicial precincts to cover the quasi-judicial and later the statutory and administrative authorities which are charged with the responsibility of adjudicating civil rights or obligations of the citizenry. Normally generally speaking it is difficult to conceive of an action or a decision either judicial or administrative which

[728] HarinarayanSrivastava v. United Commercial Bank, AIR 1997 SC 3658(India).
[729] Maneka Gandhi, supra note 22.

results in civil consequences and which alters the rights of an individual. Nowadays it is unthinkable to come to a decision without allowing for a fair hearing by a fair and detached tribunal who must make known what exactly was taken into account in making the ruling bu including reasons for the decision, or as it were, bu issuing a reasoned ruling. This imperative in a country under the Rule of Law. How the laws are operationalized and how the rights are adjudeged, this is also important to teiterate, the natural justice priciples are good principles that seek to humanize law to ensure justice is not only done but seen to be done, and to protect the people from injustice. Though it is not clearly defined, the concept of separation of powers is where administrative law such theory is said to be roooted. The administrative body assumes unaffiliated powers in as much as they are administrative which warrant consideration of principles of natural justice. One such provision is the law of *'Audi Alteram Partem'* which means comprise the principles of Natural Justic. Natural Justice may not be very well articulated however everuone is cognizant of the fact that everyone is entitled to a fair hearing. One cannot be punished without listening to his or her side. This is how justice demanded bu every authority before any action taken by that authority is carried out. Courts have made an interpretation on various occasions in relation to the trenets of the doctrine. This doctrine has been integrated both in civil and criminal trials.

However, legal assistance cannot be said to have been as yet enacted in every instance of contravention of the protective norm contained in article 21 which it is entitled to . Any transgression of this principle would invalidate the entire process and fresh proceedings should be commenced from the beginning.

Reference:

1) https://lawbhoomi.com/audi-alteram-partem-in-administrative-law/ .
2) https://www.legalservicesindia.com/article/1860/Audi-Alterem-Partem-Right-to-fair-hearing.html
3) https://www.researchgate.net/publication/373575158_14_The_Right_to_a_Fair_Hearing
4) https://www.judges.org/courses/fair-hearing/
5) https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/fair-trial-and-fair-hearing-rights
6) https://indiankanoon.org/search/?formInput=audi%20alteram%20partem+doctypes:judgments