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Fair Hearing: Meaning, Scope, Elements and Exceptions

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Abstract

The right to a fair hearing universally encompasses six essential principles. Firstly, it guarantees a fair and public hearing within a reasonable time, overseen by an independent and impartial decision-maker. Additionally, it ensures access to all relevant information, openness to the public (with exceptions for highly sensitive cases), the right to representation and an interpreter if needed, and a public decision followed by an explanation of the reasoning behind it. These principles find resonance in historical and religious contexts. In the Biblical account of Adam's trial, God exemplified the importance of hearing both sides before passing judgment. Similarly, Islamic Hadith emphasizes the necessity of listening to both parties before making a decision. The Magna Carta of 1215 marked the first statutory recognition of these principles, establishing a rule of law for England's sovereigns. Chief Justice Sir Mathew Hale's 1676 tenets stressed the importance of considering the entire case before forming a judgment. Chimamanda Ngozi Adichie's work "The Danger of a Single Story" illustrates the consequences of one-sided narratives. The concept of "Audi Alteram Partem," meaning 'hear the other side,' emphasizes fair hearing not just in judicial proceedings but in all aspects of governance and social interactions. The Supreme Court's ruling in Akoh v. Abuh reinforced the idea that fair hearing involves confronting witnesses, challenging evidence, summoning witnesses, and presenting evidence without hindrance. Legal proceedings entail pre-trial, trial, and post-trial rights, all of which must be respected for justice to prevail. This study, reliant on secondary sources, delves into these principles, highlighting their significance across historical, religious, and legal contexts. The essence of fair hearing, rooted in nature, remains unchanged, ensuring a just and equitable society.

Keywords: Natural Justice; Audi Alterem Partem; Nemo Judex in Causa Sua; Rule of Law; Fair Hearing

Introduction

Audi alteram partem is a Latin maxim frequently used in legal jurisprudence means; hear the other side, or no man should be condemned unheard or both sides must be heard before passing any order. The Constitution of the Federal Republic of Nigeria supported this expression vide a verbose Section 36 (1) where in the opening paragraph it stated thus; "In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality". Fair hearing under our constitution especially in criminal matters is supported and guaranteed under Section 36 (6) thus; Every person who is charged with a criminal offence shall be entitled to -

a. be informed promptly in the language that he understands and in detail of the nature of the offence;
b. be given adequate time and facilities for the preparation of his defence;
c. defend himself in person or by legal practitioners of his own choice;
d. examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and
e. have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

This doctrine is commonplace under both traditional and international jurisprudence. This is the first principle of civilized jurisprudence and is accepted by both laws of men and God. Generally, this maxim includes two elements:

(i) Notice; and (ii) Hearing. They will be expatiated to reveal their fundamental values and how glossing over them can invalidate any judicial or quasi-judicial proceedings and outcome.

Meaning/Scope of Fair Hearing

I. **Notice**

The first feature of *audi alteram partam* (hear the other side) is the question of Notice. The fundamental question here is what constitutes a notice in its legal sense. The ingredients of a valid notice must comprise and specify the time, place/date of hearing, jurisdiction under with the case is filed, the charges, and proposed action against the person. Prior to commencement of any action, the affected party must be adequately notified via a notice to show cause against the action and seek his explanation. It is elemental, fundamental and a *sine qua non* to the entire process. Any decision passed without giving notice in its strictest sense is against the principles of natural justice and is void *ab initio*. Without knowing the facts of the case, no one can defend himself, either through self or through his attorney. The right to notice means the right to know the facts of the suit. Any missing part of

the said ingredients goes to the root of the proceeding for the notice must be unambiguous to be adjudged proper and adequate. If it is ambiguous or vague, it will not be treated as reasonable and proper notice. If the notice does not specify the action proposed to be taken, it is taken as vague and, improper. *Abdul Latif v. Commr.* Notice will also be vague if it does not specify the property proposed to be acquired as was the issue in the case of *Tulsa Singh v. State of Haryana*. Whenever a statute clearly specifies that a notice must be issued to the party, non-compliance makes the act void. However, non-issue of the notice or any defective service of the notice do not affect the jurisdiction of the authority but violates the principle of natural justice. In James Bagg's case, he was reinstated by a mandamus as no notice of hearing was served before passing the impugned order. In the case of *Punjab National Bank v All India Bank Employees Federation*, the notice contained certain charges but the penalty was imposed on the charges other than those mentioned in the notice: Held invalid. If the person affected is aware of the case against him and not prejudiced in preparing his defense effectively, the requirement of notice will not be insisted upon as a mere technical formalities and proceeding will not be vitiated merely on the technical ground.

II. **Hearing**

The second feature of *audi alteram partam* (hear the other side) rule is the rule of hearing. The reasonable opportunity of hearing is an important ingredient of the *audi alteram partem* rule. (Hear the other side, or both sides.) It is the first principle of the civilized jurisprudence and a basic requisition of rule of law - described as fundamental and a foundational concept. The universality of application of the concept of *audi alteram partem* maxim and its flexibility in operation was brought out by Lord Loreburn L.C who stated that the maxim applied to everyone who "decides anything" while recognizing also that the manner in which a person's case was heard did not necessarily have to be the same as an ordinary trial. However, to claim fair hearing in any circumstance, an assumption is made that there must be:

1. Sufficient and valid notice to be given to allow for adequately preparation

2. That a person will be entitled to know what evidence has been produced against him or her. All evidence in form of arguments, allegations, documents, photos, etc presented by one party must be disclosed to the other party, who may then subject it to scrutiny. In our jurisprudence, it is also called "front loading" of all material facts.

3. A reasonable chance to consider their position and prepare a response. What is reasonable can vary according to the complexity of the issue, whether an urgent decision is essential or any other relevant matter.

4. Proper opportunity to contest, correct or contradict any such evidence from the adversary and raise any relevant matters before the tribunal.

5. An opportunity to reply in a way that is appropriate in the circumstance.

6. Opportunity to receive all relevant information before preparing his/her reply as decision must be based upon logical proof or evidence (material).

7. Opportunity for his/her reply to be received and considered before the decision is made.

8. A genuine consideration of any submission. One needs to be fully aware of everything written or said, and proper and genuine consideration to his/her case. An investigator or decision maker should be able to visibly point to the evidence on which the inference or determination is based.

Fair hearing may also include being provided with legal representation, the right to cross examination of witness or reasons for a decision or order. India, U.S.A. England like other Common Law countries do not consider the right to oral or personal hearing as part of the principle of *audi alteram partem* unless the statue under which the action is taken by the authority specifically provides for it and it is the duty of the authority to ensure that the affected party be given an opportunity of oral or personal hearing unless the context requires otherwise. Hearing order if passed by the authority without correspondingly providing the reasonable opportunity of being heard to the person affected by it will adversely be worthless and must be set aside. *National Central Co-operative Bank v. Ajay Kumar*. This condition may be complied by the authority by providing written or oral hearing which is at the discretion of the authority, unless the statue under which the action being taken by the authority provides otherwise. Personal or oral hearing is important when the context requires it as was held in the case of *A.K. Gopalan v. State of Madras*.

III. Legal Representation

A vital question is whether right to be heard includes right to legal representation? A fair hearing in administrative proceeding will not automatically include the right to legal representation as it is not considered as an indispensable part of the fair hearing but it is tacit and desirable in criminal trials. Section 36 (6) (c) of the constitution of the Federal Republic of Nigeria provides thus; "every person who is charged with a criminal offence shall be entitled to - defend himself in person or by legal practitioners of his own choice". If a suspect is considered indigent such that he cannot pay for the services of a Lawyer, government provides for him so as to ensure for transparency and justice delivery. In certain situations, if the right to legal representation is denied, it amounts to a violation of natural justice. Where the case involves question of law as in case of, *Jagmohandas Jagjivandas Mody v State of Bombay (Now Gujarat)* and in *Krishna Chandra v. Union of India*, the courts ruled that denial of legal representation will amount to a violation of natural justice because in such conditions the party may not be able to understand the question of law effectively and, therefore, he should be given an opportunity of being heard fairly epitomized in legal representation.

IV. Cross Examination

The adjudicating authority in a fair hearing is not required only to disclose the person concerned the evidence or material to be taken against him, but he should be provided an opportunity to rebut the evidence or material. The important question before the authority is that the witness should be cross-examined or not. Courts do not insist on cross examination in administrative adjudication, unless the circumstances are such that in the absence of it a person cannot put up an effective defense. In *Kanungo & Co. v. Collector of Customs* the business premises of a person were searched and certain watches were seized by the authority under the Sea Customs Act of India. He was not allowed to cross-examine the persons who gave information to the authority: Held: No violation of the natural justice hence the principles of natural justice do not require the authority to accord the respondent/defendant the right to cross examine the witnesses in the matters of seizure of goods under the Sea Customs Act.

V. Right to Notice

Valid notice is the starting point of any hearing exercise. Except a person knows the formulation of subjects and issues involved in the case, he cannot defend himself. Notice therefore embodies rule of fairness, and must herald an adverse order. The adverse party must have adequate time within which to respond to the points raised. If requirement of notice is a statutory requirement, then notice must be given in a mode provided by law. Notice must also be adequate, which usually means it must state: (i) time, (ii) place (iii) nature of the hearing, (iv) legal authority under which the hearing is to be held, and (v) specific charges which the person has to meet. In *Gajendra Bahadur* v. *District Land Reform Office Kathmandu,* it was held that merely publishing notice in a newspaper, without duly serving notice pursuant to the law was valid as decision cannot be taken in the absence of the concerned party.

VI. **Right to Know Evidence against Him**

In an administrative proceeding and as well as other processes of adjudication, it is trite that nothing should be used against the person, which has not been brought to his notice. Every person before an administrative authority exercising adjudicatory powers has the right to know the evidence to be used against him. Our laws abhor arm bushing o opponents in trials and supports the requirement right to know evidence against him through the adoption of front loading in our courts of record.

VII. Right to Present Case and Evidence

The adjudicatory authority should afford reasonable opportunity to the party to present his case and such presentation can be done orally or through writing. Statutes or any other legal instrument providing in the contrary will be voided for inconsistency with the rule of natural justice. This was the basis of the decision in *Nyuchhemaya Tuladhar* v. *Rupandehi Dist. Court* where proceedings required inclusion of registered persons other than the borrower, and the auction notice which was published did not include such registered persons, therefore, the proceeding requiring such registered persons to make payment without the opportunity to be heard is against the principle of natural justice.

VIII. Right to Rebut Adverse Evidence

Usually, people get confused between right to hearing and right to fair hearing. For fair hearing, it is not enough that the party should know the adverse material on file but it is further necessary that he must have an opportunity to rebut the evidence. Rebuttal can be done either orally or in writing as the party concerned may elect. In *Pett v. Greyhound Racing Assn (I),* Lord Denning observed that:

> "When a man's reputation or livelihood is at stake, he not only has a right to speak by his mouth. He also has a right to speak by counsel or solicitor"

The right of hearing will be of little value if the concerned party is kept in dark as to the evidence against him and he is not given an opportunity to deal with it. The adjudicating authority must disclose all material evidence placed before it in course of proceedings. The authority cannot base its decision on any material unless the person against whom it is sought to be utilized has been given an opportunity to rebut or explain the same. For making the opportunity to rebut evidence meaningful, it is necessary to consider the following two factors viz; – Legal Representation or Right of Counsel and Cross- Examination.

IX. Legal Representation or Right of Counsel:

A fair hearing in administrative proceeding will not necessarily include the right to legal representation. Representation will, however, normally be required, permitted, however, in criminal proceedings, per section 36 (6) (c), it is advocated. In *MH Hoskot v. State of Maharashtra*, the Indian Supreme Court ruled that the right to personal liberty implies provision by the state of free legal service to him who is indigent or disabled from securing legal assistance where the end of justice so demands.

X. Cross- Examination

Cross examination is one of the effective modes of establishing truth and establishing false-hood. Courts do not insist on cross examination in administrative adjudication, unless the circumstances are such that in the absence of it a person cannot put up an effective defence. However, the right of cross- examination of witnesses is regarded as an essential content of natural justice and fairness.

XI. One who must hear must Decide, or Institutional Decision

It is trite that one who must hear must decide matters before a law courts. However, in administrative proceeding this is not a strong injunction because it is not often the decision of one man from start to finish often called concept of institutional decision. Frequently one person hears and another decides. This shared task may work contrary to the concept of fair hearing. Whatever may be the merit of this rule, the fact remains that in view of the complexity of modern administration, a literal application of this rule will bring the wheels of administration to a grinding halt. Therefore, the person or authority charged with the responsibility of taking a decision may take help from subordinates, but he must be personally considered and appraise the evidence and independently come to a decision.

XII. No Evidence Should Be Taken at the Back of the Other Party

For fair hearing it is necessary that the concerned party must be given right to present his case and evidence. Whatever information, sometimes described as evidence obtained by the administrative authority must be disclosed to the other part, and an opportunity to rebut it must be provided. The adjudicating authority must give full opportunity to the affected person to produce all relevant evidence in support of his case.

XIII. Report of Enquiry to Be Shown to the Other Party

A copy of the report of the inquiry officer should be made available to the affected party before the deciding authority takes a stand on the guilt or otherwise, including meting out the consequential punishment on the basis of the report of the inquiry officer. Often, especially in disciplinary matters, it happens that the inquiry is entrusted to someone else and on the report being submitted; action is taken by the competent authority.

XIV. Decision Post-Haste

Fundamentals of 'fair hearing' require that the administrative authority must not haste in making decisions. It may compromise procedures related to fair hearing. In *S.P. Kapoor v. State of H.P* the SC quashed the action of the government taken in haste. The SC held that the way that the whole thing was completed in haste gives rise to the suspicion that some high-up was interested in pushing through the matter hastily; hence the matter requires to be considered afresh.

XV. Reasoned Decision or Speaking Orders

The Supreme Court of Nepal often times uses the term 'judicial conscience', an analogous in meaning to reasoned decision. Reasoned decision speaks to the fact that an official with authority to take a judicial or quasi-judicial decision, while deciding, must consider evidence and decide by giving reasons for the decision. In *Kalar Thakur Hajam* v. *District Land Reform Office Saptari* - the Indian court could not agree less that reason must accompany decision in a judicial or quasi – judicial decision, further reiterating **use of judicial conscience.**

XVI. Rule against Dictation

The rule against delegation is related to the rule against acting under dictation. Dictation occurs where an inferior authority having a discretion in a matter allow some unauthorized superior authority to dictate to it by declining to act without the superior authority's consent or by submitting to the wishes or instructions of that superior authority in its decision-making. This is to ensure that when a specific person or body is given a statutory discretion, the discretion is exercised by that person or body and not by someone else. Where there are fixed laws there is certainty and there is certainly impartiality and consistency – all things being equal. A person may stand upon his legal rights without fear or favour. Discretion, on the other hand, undermines justice. There are three major types of discretion.
Executive Legislative and Judicial.

Executive Discretion

Of all discretions, executive discretion is the most dangerous of all forms of all, because its impact upon the citizen is immediate and uncertain.

Legislative Discretion.

Legislative discretion has the attribute of uncertainty but not immediacy.

Judicial Discretion

Judicial discretion on the other hand is immediate but not uncertain. The combined effect of immediacy and uncertainty in favour of executive discretion throws it open to the greatest possible abuse.
The administrator has direct unfettered power over the individual who stands at his mercy. The opportunities for arbitrary, insolent, discriminatory, intrusive and corrupt activity as well as totalitarian social engineering are maximized at this point. However, generally, non - exercise of discretionary powers by a public authority can be said to be insupportable or intolerable. A private person has an unfettered power to allow whom he pleases to use his land, to release a debtor, regardless of his motives etc. This is the extent to which he can use his unfettered discretion. However a public authority may do none of these things save it acts reasonably in good faith and upon lawful and relevant grounds of public interest. The underpinning of the government of laws is legal control over human discretion. The existence of widespread discretion is therefore directly inimical to the existence of a liberal order. To that extent, discretions need to be exercised on the basis of justice or some real justification or even of mere reason. An unfettered discretion is an opportunity for temptation and for arbitrary, insolent, discriminatory, intrusive, socially engineering and corrupt, government. Any administrative authority invested with the power of decision-making must exercise this power in exercise of its own judgment. If a decision is taken at the direction of any outside agency, there is violation of fair hearing. Courts intervene when discretionary power is not exercised properly such as in non – application of mind, acting under dictation and unauthorized delegation of power.

Non- Application of Mind

An authority conferred with powers has to apply its mind to the facts and circumstances of the case before taking action. Where an authority is given discretionary powers, it is required to exercise it by applying its mind to the facts and circumstances of the case in hand and come to its own decision. If he does not do so it will be deemed to have failed to exercise its discretion and its action or decision will be bad and then the action or decision taken by it will be bad because it has not exercised its discretion. Non- Application of mind on part of the administrative authority and acting mechanically is recognized as another ground of control of administrative discretion. In *Jaganath v State of Orissa*, in the order of detention, six grounds were verbatim reproduced from the relevant section and it was proved in the Court that the Minister was "personally satisfied" only of two out of the six grounds mentioned in the statute. The Supreme Court ruled that the Minister had acted mechanically and quashed the order of detention. In *Sukumaran s/o Sundaram v Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia* the High Court quashed a detention order made under section 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969. The order in question was signed by the Timbalan Menteri without applying his mind. According to the wording of the Order, it was the Minister, and not the Timbalan Menteri, who was satisfied that the concerned person be detained but he did not sign the order. The Timbalan Menteri who signs were not personally satisfied. These rules deter the person or body which has discretionary power to act mechanically, merely as a "rubber stamp" or a "postman", and will compel him to apply his minds on each and every fact of the case that is put before him, and consider its merits.

Acting under Dictation

This is a Common Law Principle against acting under dictation. An authority or agency entrusted with a discretion must not, in the purported exercise of its discretion, act under the dictation of another body or person. It must be exercised by him without being influenced by the will of the superior authority. Thus discretionary power shall not be exercised under dictation. It is immaterial that the external authority had not sought to impose its policy on the inferior authority. Traditionally, the courts have taken the same view and held that a decision-maker must personally exercise a discretion conferred on him by statute unless the statute expressly or by implication authorizes delegation of that discretion or confers power on another to give. The principle abhors an inferior authority having discretion in a matter to allow some unauthorized superior authority to dictate to it by declining to act without the superior authority's consent or by submitting to the wishes or instructions of that superior authority in its decision-making. Where a discretionary power is vested in a decision-maker personally, the decision-maker must turn his or her mind to the exercise, and cannot act at the discretion or behest of another person. A repository of a personal discretionary power will act invalidly if he or she makes a decision without exercising his or her own independent discretion but instead merely carries out instruction given by his or her superiors. A public body (X) upon which a discretion has been granted may not exercise that discretion in accordance with the dictation (whether real or imagined) of another body (Y), unless that other body has a power to give directions. Body (X) will have fettered its discretion; if body (Y) has actually sought to exercise a power to give directions that it does not have, it will too have acted unlawfully. Acting under dictation is known by other terms such as "acting under the bidding of others", acting at "the direction or behest of another person" *Bread Manufacturers v Evans*, acting under "the undue influence" of another In *Indian Railways Construction Co v Ajay Kumar* the court laid down

> "that in general discretion must be exercised only by the authority to whom it is committed and the authority must itself genuinely attend to the matter, not attending to the dictates of a senior officer".

There is a duty on the official to make their own investigation and decision and not rely on what others say. *Kendall v Telsta Corporation Ltd* in *Patto v CPO,* a Malaysian case; Under section 27(2) of the Police Act 1967, the Licensing Authority to issue permits for holding meetings in public places is the OCPD (Officer in Charge of Police District) of the district where the meetings are to be held. The CPO (Chief Police Officer) has no jurisdiction in this matter save that he is the appellate authority after the OCPD has decided the matter at first instance. Through a departmental arrangement, the OCPD did not apply his mind at all to applications for such permits. He acted as a mere conduit pipe to transmit such applications to his superior authority, the CPO, for decision. The Supreme Court in no uncertain terms ruled that

> "the OCPD, as the licensing authority under the act, had abdicated his functions by transmitting the applications for consideration and determination by the CPO. He has acted under dictation and in consequence fettering the discretion legislatively vested in him which must be exercised by him and him alone".

Unauthorized Delegation of Power

The rule against delegation is related to the rule against acting under dictation. The principle is derived from the Latin maxim *Delegates Non Potest Delegare* which means that a delegate cannot further delegate the power to someone else. This is to ensure that when a specific person or body is given a statutory discretion, the discretion is exercised by that person or body and not by someone else. The interpretations of the maxim *delegates non potest delegare* principle is that where a function has been entrusted by statute to body "X", the function should be performed by "X" and not delegated by "X" for performance by body "Y". However, the rule does not entail an unconditional prohibition on delegation. It usually operates as a principle of interpretation that a statute will only be interpreted as permitting delegation of discretion powers if express words to that effect are used or power to delegate is very clearly implied in the statute. Enabling provisions in the UK commonly require the authority making delegated legislation to consult. Sometimes the requirement is to consult a specified body, and any delegated legislation made under such an enabling provision will declare in its preamble that there has been consultation with the body specified. This principle, when taken to an extreme, could operate as a severe restraint on administrative decision-making. Therefore, there are certain exceptions to this rule.

1. The principle does not prevent the exercise by civil servants of powers entrusted by legislature to the ministerial head of department or entrusted to the Department itself.
2. Parliament may provide express authority to a body, whom it has conferred powers, to delegate, and even for that delegate to sub delegate, those powers. The maxim *delegates non potest delegare* is a presumption of interpretation which must give way to clear contrary legislative intention. Where a power of delegation does exist, the courts may still interrogate whether the delegate has acted within or beyond the scope of the powers delegated.
3. The rule against delegation has been interpreted as requiring that the ultimate power of decision as to whether and how a discretionary power is to be exercised should be retained by the designated statutory body. It does not stop that body

from delegating to another body some preliminary tasks leading up to that final decision. In so doing the appointed body is adopting a procedure by which it seeks assistance in reaching what can still be regarded as its own decision on the matter. Thus, a body may delegate certain fact-finding tasks to, and even seek recommendations from, another body (or its own sub-committee). It must, however, retain to itself the power of final decision – it must not allow itself to be dictated to by the delegate, nor can it confer power to make any binding decision (as distinct from non-binding recommendation) on the delegate.

Exceptions to the Rule of Natural Justice (*Audi Alteram Partem)*

Contempt of Court

Contempt of Court is going to receive an elaborate discussion as an exception to the principle of *Audi Alteram Partem* because of its peculiar nature and the circumstances of how and where it operates in our judicial system. "Contempt of Court" is the act of putting into disrepute, disdain or denigrating the integrity of the court either directly or constructively which may be civil or criminal. Contempt of Court affects in one part a person who is a party to a proceeding in a Superior Court of record where he fails to comply with an order made against him or an undertaking given by him or on another part a person whether a party to a proceeding or not but does any act which may tend to hinder the course of justice or show disrespect to the court, it's proceedings. Contempt occurs both in as civil or criminal trial where it can be competently captured under two headsviz; direct (*in facie curiae*) and indirect (constructive) (*ex facie curiae*) respectively. The subject is complicated since several different conceptions are brought under the same heading of contempt of court'. Learned Justice Agbaje JSC (as he then was) succinctly captured the concept into two and posits thus:

> "Contempt is of two kinds, direct or constructive. When the contempt is direct i.e. committed in the immediate view and presence of the court or so near the presence of the court as to obstruct or interrupt the due and orderly course of proceedings they are said to be contempt committed *in* - icuriae facie i.e contempt in the face of the court. On the other hand, that contempt which arise from matters not occurring in or near the presence of the court, is said to be constructive or indirect contempt, are referred to as contempt committed ex - facie curiae."

Generally, not all types of contempt operate as an exception to the *nemo judex rule*. It is direct or in facie curiae contempt that operates as exception for various purposes and reasons. For instance, an accused person scandalizing the court can be swiftly punished for denigrating the integrity of the temple of justice. This is based on the policy of law that: '*the honesty and integrity of a judge cannot be questioned but his decision may be impugned for error of law or fact*' but this is not to conclude that a judge cannot be justifiably be required to disqualify himself on valid and reasonable ground(s).

There is a retinue of provisions under our law which empowers the judge to maintain the high standing and the integrity of our courts so as to shield it from denigration. The **1999 Constitution of the Federal Republic of Nigeria - Sections** 6(6)(a), 17 (2)(e), and 39(3)(a)**; Criminal Code Act CAP. (C38 LFN 2004) -** 6 and 133, **Sheriffs and Civil Process Act -** 66 and 72**.** The provisions of the 1999 Constitution categorically protect and empowers the courts to commit for contempt, particularly Sections 6 where it stated that

> *"Nothing in this Act or in the code shall affect the authority of courts of record to punish a person summarily for the offence commonly known as contempt of court; but so that a person cannot be so punished and also punished under the provisions of the code for the same act or omission."*

Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society – 39 (3)(a)

(a) for the purpose of preventing the disclosure of information received in confidence,
(b) maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films;

The court can punish by committal to prison instantly of any person (including Lawyers appearing before it) without the process of formal trial because the punishment is meant to preserve and protect the integrity and utmost authority of the court. Note that the emphasis is on the court but not on the Judge in person. **Lord Widgery CJ** submitted **in *A.G. v. Times Newspaper Ltd*** that the punishment in the index case clearly violates the *nemo judex rule* because the judge is 'the complainant', 'the witness', 'the prosecutor' and at the same time, 'the judge'.

The Supreme Court in *Atake v. A.G Federation* **the court held that:**

"In proceedings instanter or trial brevi manu (i.e., punishment instantly for contempt in the face of the court), the judge before who is the contemnor, is the prosecutor, witness and judge".

A brief fact of the case in Senator Atake are as follows; Senator Franklin Oritsemueyiwa Atake rose from his seat and told the court that he had "a preliminary point to raise before the ruling should be read"; although hardly an appropriate time to raise "a preliminary point" in a suit or matter in court, he was allowed to raise his point. From what followed, it turned out that the "preliminary point" was in fact an oral application for the learned Chief Judge to transfer the entire proceedings (including the matter upon which the ruling was about to be made and on which arguments had been taken without prior objection whatsoever) before him to another judge for hearing and determination on the ground that in the opinion of the applicant he, (the Chief Judge) was unlikely to do justice in the proceedings. One thing led to another and Atake was committed to prison for contempt. Note the submission of the trial Justices at the Supreme Court at paragraph 6 of grounds for appeal. Held:

> "…. The Learned Justices of the Court of Appeal erred in law in finding the Appellant in contempt on the ground that the word "Gratification" mean a reward, recommence, gratuity, bribe when(a) The word gratification also means delight, pleasure, satisfaction. (b) The learned trial Judge did not so inform the Appellant…… *(in apparent reference to the altercation which ensued between the Judge and the Contemnor which later snowballed into committal)* (italics mine)."

This ruling possibly stems from the fact that issues of bias can be raised at any time of the proceeding and in fact could be after delivery of judgment thereby constituting grounds for appeal. The general norm has remained that at the end of it all, it must serve the essence of justice and justice must be served. Judges have however cautioned against careless invocation of punishments in contempt cases Per: Stephen L.J in ***Bologh v. St. Albans Crown Court*** that the punishment:

> *"Must never be invoked unless the ends of justice really require such drastic means"*

In *R.C Cooper v. Union of India* the Supreme Court of India as an orbiter remarked that if another judge can try the contempt *in facie curiae* committed before a brother judge, it is a *desideratum* (something desired as essential or something that is needed or wanted).

Legislative-Function

A ground on which hearing may be excepted is in question that is legislative and not administrative in character. Typically, an order of a general nature; not applying to one or a few specified persons, is regarded as legislative in nature. Legislative action, plenary or subordinate, is not subject to the rules of natural justice because these rules lay down a policy without reference to a particular individual. Nevertheless, if the legislative exclusion is arbitrary, unreasonable and unfair, courts may quash such a provision. Cases of extreme urgency has been generally acknowledged as excusable of hearing, where interest of the public would be jeopardized by the delay or publicity involved in a hearing. Also, in extraordinary cases of emergency where time bound actions which may be preventive or remedial, is required, the obligation of notice and hearing may be obviated in tandem with the aphorism that, if the right to be heard will paralyze the process, law will exclude it. In such a circumstance, the system may choose other law-making provisions to carry on the business of the state, such as issuing executive order as was applied during the 2019/2020 Covid 19 pandemic where executive lock down and other corollary orders were issued towards the containment of the pandemic.

Contractual Arrangement
Termination of an arrangement/agreement is neither a quasi-judicial act, so the duty to act judicially is not attracted.

Delegated Legislation
In matters of Delegated Legislation, it has been held that failure to comply with the rules of natural justice in the course of making such delegated legislation does not invalidate the decision made thereto. *Bates v. Lord Haislam*. The rationale being that delegated legislation tends to affect large number of people and if all had a right to be heard system is upheld, it would grind to halt for lack of time and money. Furthermore, the process of delegated legislation is seen as part of political rather than judicial system. In relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived. *State Bank of Patiala v. S.K. Sharma*.

Preliminary Hearing

In a matter requiring preliminary hearing, a decision will not generally be invalidated for failure to give hearing if (merely preliminary) to a later decision for which the hearing must be given. 'Preliminary' in the sense here amounts that no issue will be conclusively settled by earlier hearing in such a way as to prevent it being raised at later hearing.

Interim-Disciplinary-Action

In Interim- Disciplinary action like suspension (applied administratively) etc. particularly where the suspension has an interim term, there is no obligation to follow the principle of natural justice. In *S.A Khan vs. State of Haryana*, Mr. Khan an IPS Officer holding the post of Deputy Inspector General of Haryana; Haryana Govt., was suspended by the Haryana Government due to various complaints against him. Thus, he approached the Supreme Court on the ground of violation of Principles of Natural Justice (PNJ) as he was not given an opportunity to be heard. His lawyer has vehemently contended that the suspension order was a *mala fide* exercise of the discretionary power for improper purpose; for the simple reason that the petitioner has been in charge of the investigation of a case of corruption registered against Bhajan Lal. He further contended that the order of suspension was patently unconstitutional and illegal besides being vitiated by malice both in law and facts. Furthermore, he asserted that it is in gross violation of Indian Constitution as it had been passed by misuse of power in a very arbitrary and capricious manner. The SC held albeit that the suspension being an interim-disciplinary action, there was no requirement to afford hearing. It was not violative of the principles of an opportunity of hearing.

Master and Servant Relationship

In master and servant relationship, the rule of hearing does not apply to a large extent as it falls into the category of simple contract. A servant can be dismissed without hearing *Ridge v. Baldwin*. One reasoning therein appears that a servant owe duty only to his master, not to the public at large. There is no relevant public interest underpinning which would justify an application of requirements of natural justice which is seen as a part of public law in broad sense but where officials and others have power to make decisions affecting the rights of individuals the rule of natural justice must be observed.

Academic-Evaluation

Where nature of authority is purely administrative such as evaluation of academic performance of a candidate and associated decisions there in, no right of hearing can be claimed. This was the case in *Jawaharlal Nehru University v. B.S. Narwa*. B.S Narwal, a student of Jawaharlal Nehru University was removed from the rolls for unsatisfactory academic performances without notice or hearing. The Supreme Court held that the very nature of academic adjudication appears to negative any right of an opportunity to be heard. The Supreme Court contended that if the competent academic authorities saddled with the responsibility of examining and assessment of the work of a student over a period of time it worthy and appropriate to declare his work unsatisfactory, the rules of natural justice may be excluded.

Statutory-Exclusion

Natural justice is implied by the Courts when the parent statute under which an action is being taken by the Administration is silent as to its application. Omission to mention the right of hearing in the statutory provision does not *ipso facto* exclude a hearing to the affected *Karnataka Public Service Commission v. B.M. Vijay Shankar*. Nevertheless, a statute can exclude natural justice either expressly or by necessary implication. The Indian case of *Charan Lal Sahu v UOI* (Bhopal Gas Disaster case) epitomizes the application of this exception. In this case the constitutional validity of the Bhopal Gas Disaster (Processing of Claims) Act, 1985, which had authorized the Central Government to represent all the victims in matters of compensation award, was interrogated. The applicant had challenged it on the ground that because the Central Government owned 22 % of the share in the Union Carbide Company and as such it was a joint *tortfeasor*, a situation which created enough conflict between the interests of the government and the victims. The court negatived the contention and rightly observed that even if the argument was correct on its own, the doctrine of necessity would be applicable to the situation because if the government did not represent the whole class of gas victims no other sovereign body could so represent and thus the principles of natural justice were not tenable.

Impractibility

Natural justice can be followed and applied when it is practicable to do so but, in a situation, when it is impracticable to apply the principle of natural justice then it can be excluded. In *Bihar School Examination Board vs. Subhash Chandra* the Board conducted final tenth standard examination. Students of a particular centre numbering more than one thousand were accused of mass cheating. Prima-facie evidence corroborated the allegation of mass copying as most of the answers were same and they received same marks. On this ground, the Board cancelled the exam without giving any opportunity of hearing from the applicants in the extant case and ordered for fresh examination, requiring all students to appear for the same. Many of the students approached the Patna High Court challenging it on the ground that before cancellation of exam, no opportunity of hearing was given to the students to defend their complicity or otherwise. The High Court struck down the decision of the Board in violation of *Audi Alteram Partem*. The Board dissatisfied appealed the decision to the Supreme Court. The Supreme Court rejected the High Court on grounds of impractibility and held that in this situation, conducting hearing is impracticable as thousands of notices have to be issued and served to everyone and all ordinarily requiring to be given an opportunity of hearing, cross-examination, rebuttal, presenting evidences etc would not be practicable at all. Administrative agencies are not bound by the technical rules of procedure of law courts; substantial aspects of the law must be copiously adhered to. This brings out the need to pursue the minimum procedure of fair hearing.

Conclusion

This work has succinctly captured the fair hearing as a doctrine, highlighting the meaning, scope, elements and exception with hope that judges and administrators saddled with the responsibilities of determining cases between parties should adhere to the tenets as applicable. This will save and validate their decisions so as to uphold the sanctity of the judiciary and in quasi-judicial practices as well.

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