

Doctrine of Post Decisional Hearing

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Abstract

In an effort to find the correct balance between administrative effectiveness and individual fairness, the concept of a post-decisional hearing has developed over time. Pre-decisional hearings are those held by the authorities prior to the making of a decision or judgement, and post-decisional hearings are those held by the authorities following the making of the decision (Provisional). The idea of a post-decisional hearing provides individuals. The authorities can only make a preliminary decision not a final one without consulting the party in issue, which is one of the most crucial things to keep in mind at a post-decisional hearing. In order to undermine the goal of delivering a fair hearing and make it less effective than a Pre-Decision Hearing, the objective is to make it harder for the authorities to change their minds after the Final Decision (similar proposition was held by the Apex Court).

Keywords: Apex court, doctrine, administrative, right to hearing

INTRODUCTION

The principles of natural justice have been developed by the courts to control the activity of power regulation in order to stop the despot's ruthless use of power. The audi alteram partem rule, which stipulates that no one will be convicted without being heard, is one of these principles. The idea of post-decisional hearing has gained the most exposure and application because to this principle. When an earlier hearing would compromise the purpose and justification for the exercise of authority, a post-decisional hearing should be held instead.

THE RIGHT TO HEAR

A person's innate feelings serve as the foundation for the ethical and legal idea known as "natural justice." Natural justice principles were developed together with civilization, and their substance is frequently seen as a suitable ratio of the level of civilization and Rule of Law that predominates in the network.

Unquestionably crucial to judicial and quasi-judicial tasks are the principles of natural justice, and this is a matter of recognized law. However, the key question is whether these principles also apply to administrative activities. In the past, courts had adopted the position that administrative demands did not fall under the purview of natural justice.

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In *Kishan Chand v. Commissioner of Police* [1], the Supreme Court was represented, and it was determined that the legal principle of hearing before passing judgement, or audi alteram partem, only applies to judicial or quasi-judicial procedures.

However, recently, as a result of *A.K. Kraipak v. Union of India* [2], It was found that the courts had previously assumed that applying the principles of natural justice was not required by law.

Additionally, it was decided that if the Rules of Natural Justice were just intended to prevent injustice, there was little reason why they couldn't also apply to administrative decisions.

Right to Hearing is also a component of Natural Justice. The reasoning behind this is that because the right to a hearing is protected by a Code of Procedure, it applies to all stages of an administrative order's development. The right to a hearing is a crucial line of defence against abuse of administrative authority.

The equivalent of American "due process" is Natural Justice. According to the law, everyone must be given notice and an opportunity to be heard. Similar emphasis is given to the Constitution's natural justice standards in India. Article 311 emphasises the right to a hearing as a fundamental tenet of natural justice. Courts have made references to the rule of natural justice while determining the legality of reasonable constraints. Similar to the due process of law in the United States is the procedural reasonable limitation.

The Constitution's Articles 14 and 21 both provide examples of natural justice concepts.

When an individual is deprived of his life and individual freedom, Article 21 of the Constitution, which includes "due process," upholds all the reasonableness that is cherished in the principles of natural justice. As for the other sectors, Article 14 exemplifies natural justice's tenets.

According to the argument, Article 14 covers tyrannical or harmful state conduct in addition to discriminatory class-based legislation. The argument is that natural justice violations lead to arbitrary behaviour, and all things considered, natural justice violations violate the tenet of uniformity enshrined in Article 14.

In this way, the Indian Constitution is based on the ideas of natural justice. Finally, it's safe to say that the skyline of fairness and the right to a fair trial, whether as a component of natural justice or another concept, is expanding. Any time an action has been performed that affects the rights of the parties, procedural fairness along with natural justice should be recommended.

AUDI ALTERAM PARTEM

This guideline emphasises that no one should be censured without being heard. In a civilised society, it is assumed that everyone who is the target of legal action or whose privilege or right is in jeopardy will be given the opportunity to defend themselves.

Natural justice requires that, before taking any action, the person who would be impacted be given notice to object and be given the opportunity to explain. It is a requirement for fair hearing. Any order made without prior notification is deemed to be void from the start and is in direct violation of the principles of natural justice.

Regardless of whether the request negatively impacts a person's entitlements, notice must be made even if it is not specifically included in the legislation. Furthermore, it's crucial that the notification is unequivocal, specific, and obvious, and that the accusations aren't murky or uncertain. Notice must be satisfactory in addition to being given in a specific circumstance. The certainty and circumstances of each instance are what determine whether or not the notice was sufficient. The communication must also include a reasonable deadline for agreeing to the instructions it references. As a result, it is inappropriate and insufficient to give a structure 24 hours to disintegrate after it has been determined to be in a broken-down state.

The second criterion of the audi alteram partem maxim is that the party in question must be given an opportunity to be heard prior to any adverse action being taken against him.

THE TERM “POST-DECISIONAL HEARING” AND WHAT IT MEANS

Before making a decision or approving an order, a pre-decisional hearing is held. In contrast to its counterpart, a post-decisional hearing is one that the adjudicating authority has after reaching a decision.

A hearing should typically be provided before an authority makes a decision.

A Constable was suspected of conspiring and prosecuted by the government in the well-known case *Ridge v. Baldwin* [3], which is frequently considered to be the pinnacle of Natural Justice, but in the end, he was found not guilty and absolved of culpability. While making his decision, the judge made some comments about the constable's character that resulted to his dismissal from the police force. The Court of Appeal determined that the committee that dismissed the Constable from his position due to the judge's criticism of his character had used both administrative and judicial or quasi-judicial power, negating the application of natural justice principles in this case. The order of dismissal was not sustained since the House of Lords swiftly reversed this decision with a 4:1 majority.

POST-DECISIONAL HEARING

The post-decisional hearing principle was established by the Supreme Court in *Maneka Gandhi v. Union of India* [4]. In this case, the Supreme Court established the rule that, if swift action was essential for the sake of the public and managing the expense of a hearing before the decision was impossible, it should be managed after the ruling. The Indian government confiscated the petitioner's passport because it had a righteous concern for the general welfare. Interestingly, the petitioner was indeed a journalist.

Before making the contested move, the petitioner received no opportunity. When the legality of the impoundment request was examined, the government argued that applying the *audi alteram partem* criterion would have violated the passport's original purpose.

Although the Supreme Court rejected the dispute, it did uphold the practise of post-decisional hearings in cases of lingering importance. It outlined the idea that, in cases when an urgent situation necessitates immediate action and advance notification of the hearing is impractical, the preliminary action should be swiftly followed by a complete remedial hearing.

The Supreme Court adopted a comparable strategy in *Swadeshi Cotton Mills v. Union of India* [5], when a void administrative decision was upheld during a post-decisional hearing. The *audi alteram partem* norm was abused by an order in which the government assumed control over the management of an organisation without prior notice or hearing. Regardless, the Court upheld the contested order since the Government had agreed to a post-decisional hearing.

A request for examination was put to the test in *Liberty Oil Mills v. Union of India* [6] because the natural justice standards were violated. The Supreme Court recognised that in cases when the risk that needs to be avoided is imminent or where immediate action is required, the opportunity to be heard may not be pre-decisional at all but rather post-decisional.

A request to merge some nationalised banks with other banks was made in *Shepherd v. Union of India*. Working in the Nationalized Banks was prohibited for some Private Bank representatives. Thus, without allowing them to express themselves, their mission was completed. The Supreme Court rejected the request for a post-amalgamation hearing, stating that “there was no basis to consider a post-decisional hearing.”

A governmental entity published a circular in the case of *Trehan V. Union of India* that, without giving its employees an opportunity to be heard, changed the terms and circumstances of employment in a way that was detrimental to them. On the basis of a violation of the natural justice standards, the circular's legitimacy was examined. The organisation argued that after the circular was issued,

employees were given the opportunity to comment on the changes the circular had made. A post-decisional hearing plea was advanced in this manner. The Supreme Court rejected the argument, saying: "In our opinion, the post-decisional possibility of hearing does not subscribe to the principles of natural justice.

There is typically no chance of gaining a meaningful consideration of the representation at such a post-decisional hearing because the authority that starts the hearing will typically proceed with a closed mind. The legislature approved the petitioner bank's request for a bank under the Banking Regulations Act of 1949 in *Bari Doab Bank v. Union of India*. The Supreme Court ruled that applicants were ineligible for pre-decisional hearings prior to passing a request because post-decisional hearings at the stage of filing issues with the draught plan would suffice.

The Bhopal Gas Disaster (Processing of Claims) Act, 1985, was the subject of the case *Charan Lal v. Union of India*, in which the teaching of post-decisional hearing was given a very sincere justification. The post-decisional hearing principle was established by the Supreme Court in *Maneka Gandhi v. Union of India* the pre-decisional hearing stage where the statute does not reject the pre-decisional hearing rule but instead takes into account post-decisional hearing that adds up to a thorough review of the advantages of the original order. If the rule is silent regarding the justification for conducting a pre-decisional hearing, administrative action taken after the hearing is appropriate. It is stated that each adjudicator must continually remember the observations made by Sarkaria J in *Swadeshi Cotton Mills* regarding pre-decisional and post-decisional hearing. The key argument in this case was that a post-decisional hearing cannot serve as a pre-decisional hearing's replacement. This shows that post-decisional hearings are recognised and approved; they should, however, only be used in the right situations.

CONCLUSION

This notion is not applied in a rigid manner; rather, it is dependent on the particulars of each case and its particular facts. If pre-decisional hearing is not an option, post-decisional hearing may be used instead.

In the conclusion, I'd like to say that its applicability depends on the circumstances. In situations where the party cannot be given the option for a pre-decisional hearing, a post-decisional hearing may be used. *Swadeshi Cotton Mills v. Union of India*'s central argument was that "post-decisional hearing is not an adequate substitute for pre-decisional hearing." *Canara Bank v. Debasis Das*, on the other hand, held that "while post decisional hearing is not accepted as an adequate substitute [6] for pre decisional hearing, pre decisional deficiency can be compensated by post decisional hearing in the absence of prejudice to the party." The principle of natural justice was not violated in this case, according to the findings. These two cases show that the "Doctrine of Post-Decisional Hearing" is recognised as effective. It must be used whenever necessary and taking the circumstances into account. When applying this approach, the court's goal is to treat the parties to the lawsuit fairly. No party should experience any kind of loss as a result of it.

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