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AUDI ALTERAM PARTEM: RIGHT OF ACCUSED PERSON

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ABSTRACT

The second long arm of natural justice is Audi alteram partem, which protects the accused against unreasonable administrative measures when his right to person or property is threatened. R v. University of Cambridge, decided in 1723, was one of the first decisions to discuss audialterm partem, in which the Court of King's Bench ruled that the University of Cambridge could not revoke a great but rebellious scholar's degree without giving him a chance to explain himself. In this instance, it was also said that even if there is no legislative need that all parties be heard, the common law justice would compensate for the legislature's omission. The primary goal of this concept is to ensure that no one is condemned without a fair trial. This concept is used in administrative action to guarantee that the affected individual is treated fairly and fairly. Under Audi alteram partem, the right to counsel is a right. The primary goal of this article is to distinguish between the Right to Counsel and the Right to Legal Representation, and to determine if they may both be called Fundamental Rights.

KEYWORDS: *Counsel, Friend, Hear, Legal, And Rights.*

INTRODUCTION

The right to counsel refers to a person's right to consult with and get advice from a lawyer about his case, while the right to legal representation refers to a person's right to be legally represented by a lawyer in a court of law during his trial. Though the terms "right to counsel" and "right to legal representation" are used interchangeably, they have distinct meanings. In most administrative proceedings, legal counsel is not regarded an essential component of the principles of natural justice, since oral hearing is not included in the minimum standards of fairness.

For a long time, the prevalent thought was to keep attorneys out of the administrative adjudication arena. The denial of legal counsel is justified on the grounds that it saves money and therefore defends the poor against the wealthy, minimizes delays, and keeps the procedures formal and technical. "Experience has shown me that to refuse a person who is unable to articulate themselves the services of a competent man is very misguided kindness," writes Sir Carleton Kemp Allen in his book Administrative Jurisdiction[1].

A.'s situation is an example of this. The court in *K. Roy v. Union of India* adopted a wider interpretation of the phrase "legal advisor." The officers from the concerned department came before the board to justify the detention order, according to the court. Because "anyone helps or advises on facts or law must be considered to be in a position of a legal advisor," these officials were found to be legal advisers. Officers' appearance before the board amounts to accomplishing something indirectly that cannot be done directly.

In the case of *Bhagat Ram v. State of Himachal Pradesh*, the court went so far as to say that while the employee does not have to request to be represented by a lawyer, the enquiry officer must inquire of the employee before beginning the investigation as to whether he would like to use the services of a legal practitioner whenever the investigation is underway[2].

LITERATURE REVIEW

M.P.Jain and S.N.Jain's *Principles of Administrative Law* – This book went through the idea of the Audi Alteram Partem, the Right to Counsel, and the Legal Representative in great depth, with a lot of case law to back it up.

Administrative Law by I.P.Massey - This book provides a thorough explanation of the idea of a friend's right in the situation of a person under preventive custody, with many case laws to aid comprehension.

C.K. Takwani's *Lectures on Administrative Law* - This book briefly discussed the Right to Counsel and the Right of Friend.

DISCUSSION

Legal Advice and Representation

Although the right to be represented by a lawyer is not regarded a component of natural justice and cannot be asserted as such, the right to appear via counsel has been recognized under administrative law. J. Lyell wrote in *Pett v. Greyhound Racing Assn. Ltd. (No.2)*: "I find it difficult to argue that legal counsel before a tribunal is an essential component of the proper administration of justice." It seems to me that it only occurs in societies that have achieved a certain level of complexity in their activities.

The extent to which legal counsel may be used in court varies depending on the laws in question. Factory rules, for example, prohibit legal representation; but, Industrial Dispute Acts allow it with the approval of the tribunal, and certain legislation, such as the Income Tax Act of 1961, allow it as a matter of right. A standing order may also limit your right to legal counsel by a lawyer or agency of your choosing. The Supreme Court ruled in *Crescent Dyes and Chemicals Ltd. V. Ram Naresh Tripathi* that a standing order limiting the right of representation to factory employees exclusively would not be deemed a violation of natural justice sufficient to invalidate an administrative inquiry[3].

If the matter is straightforward, such as whether the sum in question has been paid or if the assessment orders were accurate, the request for legal counsel may be denied. However, if the oral evidence presented at the inquiry necessitates the use of a lawyer for cross-examination of witnesses, or if there are any legal complexities, or if a complicated question of fact or law arises, or if the evidence is voluminous and the party concerned may not be able to deal with the situation effectively, or if he is pitted against a trained p These are all valid reasons to exercise the right to legal counsel, and refusing to allow legal representation in these situations may result in severe prejudice to the individual and may amount to a denial of a fair chance to be heard.

Under the Indian Constitution, criminal defendants have a right to counsel, according to the Supreme Court of India. The court said that under Article 22(1) of the Constitution, a court cannot resolve a criminal matter without the presence of a lawyer for the defendant, and that

in the event that the defendant is unable to get counsel, the court should appoint counsel. The Supreme Court of India went on to say that even defendants in the Nuremberg trials, like defendants in England and ancient Rome, had a right to counsel, citing the US Supreme Court decisions of *Powell v. Alabama*, *Gideon v. Wainwright*, and *Brewer v. William* to buttress its judgment[4].

The court decided that it was “not creating a new concept, but merely acknowledging what previously existed and which civilized people have long enjoyed” as a result of this. In *R.Jeevaratnam v. State of Madras*, disciplinary procedures were initiated against four workers, one of whom was denied the right to retain counsel while the other three were represented, but it was ruled that the fourth employee be assisted by the lawyers of the other three.

He enlisted the help of other workers' legal counsel, and there was no accusation that he was biased in his defense. The employee was given a fair chance to defend himself. The service rule said in *J.K. Aggarwal v. Haryana Seeds Development Corp. Ltd.* that if allegations against the delinquent employee were severe enough to result in his removal from service, the inquiry officer may allow him to be represented by counsel. As a result, the regulation gave the inquiry officer latitude. Despite the fact that the presenting officer on behalf of the company was a lawyer, the employee's request to be represented by a lawyer was refused. The Supreme Court held that the refusal to authorize the employee's use of a lawyer during the inquiry was an improper use of discretion that resulted in the natural judges' failure[5].

If You Are Being Held Without Charge As A Result Of A Preventive Detention:

In light of the fact that, on one hand, preventive detention laws deny legal representation while, on the other hand, they attempt to hold people for unproven offenses, legal representation and counsel in preventive detention cases is a perplexing problem. Regardless, it's worth noting that the Courts have recently provided some encouraging signs of development.

The court in *Nandlal Bajaj v. State of Punjab* allowed the prisoner to have legal representation through a lawyer, despite the fact that section 11 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, and section 8(e) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) prohibited the prisoner from claiming legal representation through a lawyer. Even though the legislation does not provide for legal counsel for the detainee, the Supreme Court said that he is competent to make such a request, and that the advisory board must examine it on its merits and that it should not be denied when the State is represented by a lawyer.

In a case involving the legality of the National Security Act of 1980, the court in *A.R. Roy v. Union of India* ruled that if the Act forbids a detainee from having legal counsel, the state cannot seek the aid of a lawyer. To protect the detainee's interests, the court in *Phillippa Anne Duke v. State of Tamil Nadu* gave him the option of appearing via a friend who is not a legal practitioner and is not a comrade-in-profession of the detainee for whom he is imprisoned. Along these lines, even if a detainee is denied constitutional and statutory legal counsel, he has a common law right to representation via a "friend[6]."

Right to Call Friend:

An employee is usually permitted to represent himself in departmental procedures and domestic investigations via a friend, coworker, or union representative. In *Dunlop Rubber Co. (India) Ltd. V. workers*, the Supreme Court said that in domestic enquires, employees should be allowed to be represented by a person of their choosing provided there is no standing rule prohibiting such a course of action and if the request is not otherwise inappropriate. This right, however, is restricted and may be controlled by legislation.

The Supreme Court held in *Railway Protection Force v. RaghuramBabu* that the common law right of representation by a friend may be limited by legislation. In this instance, a standing order regulation allowed a person to enlist the help of a friend who was a police officer. This means that help from a buddy who is not a member of the force is not possible. The court emphasized that no one has a right to be represented by a lawyer in a departmental or domestic investigation unless the law allows for it or a person has experienced severe prejudice, since such procedures are not litigation or criminal prosecutions.

In *JohneyD'Cuoto v. State of Tamil Nadu*, the Supreme Court held that the advisory board made a mistake in denying the detainee's plea. He had the right to have a friend represent him. Friendship does not just refer to someone who is well-known, but also to someone who is an ally in a battle or a supporter of a cause. A person who isn't a friend in the traditional sense may be called upon to help the advisory board. Furthermore, the board had no reason to deny the detenu's request since the authority had the aid of high-ranking excise officers[7].

Legal Representation for Civil Employees:

Because of disciplinary proceedings against civil servants, regulations provide that they may not hire a lawyer to represent them during the investigation unless the disciplinary body permits it based on the facts of the case. In this case, it is up to the disciplinary body to decide whether or not the reprobate government employee is entitled to legal counsel. However, in some circumstances, a disciplinary authority's refusal to provide legal counsel may be challenged in court as a violation of Natural Justice.

The simple fact that the case against him was being handled by a qualified prosecutor was enough to enable the appellant to hire a legal practitioner to represent him in *C.L. Subramaniam v. Collector of Customs*. That situation was totally overlooked by the disciplinary authorities. As a result, the authority obviously failed to exercise the authority granted to it by the regulation. In the circumstances, his failure to hire a legal practitioner would have resulted in severe disadvantage. As a result, the order removing him from service was overturned because the investigation into his case was tainted.

The Supreme Court held in *Krishna Chandra Tandon v. Union of India*, in a disciplinary hearing against a public servant, that the petitioner's rejection of legal counsel did not constitute an infirmity in the context of the factual situation for the following reasons:

- He was not entitled to the aid of an advocate during the investigation under the regulations.
- There was no oral evidence to be recorded at the inquiry, thus there was no need for a lawyer to cross-examine witnesses;
- The case was not complicated, and the appellant was not deprived of a reasonable chance to defend himself because he did not have a counsel.

In *State of Rajasthan v. S.K. Dutt Sharma*, the court considered the nature of the accusations as well as the fact that the departmental nominee at the time was neither a lawyer nor a prosecuting inspector. The decision denying legal aid under Rule 16(5) of the Rajasthan Civil Services (Classification, Control, and Appeal) Rule 1956 was found to be reasonable[8].

Article 39-A

The Constitution (Forty-second Amendment) Act, 1976 added Article 39-A of the Indian Constitution, which guarantees equal justice and free legal assistance to all Indian citizens. Legal Aid refers to the provision of free legal assistance to the poor and needy who cannot afford to hire an advocate to represent them in a lawsuit or legal process before a court, tribunal, or judicial body.

The State shall ensure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall, in particular, provide free legal aid, by appropriate legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen due to economic or other disabilities. Section 304 of the Code of Criminal Procedure, 1973, also mentions free legal assistance. It also mentions giving free legal assistance to select individuals. It says that if the accused does not have adequate funds to hire a lawyer, the court must provide one at the state's cost for the accused's defense.

The Supreme Court has made it plain in *State of Maharashtra v. ManubhaiPragajiVashi* that it is now well established that failing to give free legal assistance to an accused at the expense of the State, unless the accused refuses, would vitiate the trial. Justice Krishna Iyer said in *M.H Hoskot v. State of Maharashtra* that providing free legal assistance is the State's responsibility, not the government's charity.

The main distinction between Article 39-A and the Right to Counsel and Legal Representation is that the former refers to free legal assistance for the poor and needy, while the latter refers to mandatory legal representation and counsel for everyone, which is not free[9].

CONCLUSION AND SUGGESTIONS

In every case that comes before the court, there may be a legal issue, and not everyone is capable of comprehending the law. They may be jittery or uneducated. The absence of a lawyer may result in unfairness if the disagreement involves a difficult issue of law and fact or the presentation of complex evidence. The involvement of a lawyer may aid in the delineation of problems, the presentation of factual contentions in a straightforward way, cross-examination of witnesses, and the protection of the parties' interests.

All sides must have the right to be heard in order to ensure a just and fair hearing. The right to be heard should also include the right to be heard well, which is something that having a legal representation may assist with. In any situation, all parties should have a legal representation. In the case of an accused in preventive detention who is not entitled to legal representation under Article 22 of the Constitution, they should at the very least be entitled to Counsel instead of a legal representative, so that they can defend themselves in court against all allegations leveled against them.

The distinction between the right to Counsel and the right to a legal representative, as well as Article 29-A, Legal Aid, is that a person has the right to legal representation as soon as he is charged, which means he should be represented by a lawyer. According to this Article, the legal service authority provides service in the payment of court and other process fees, charges for preparing, drafting, and filing of any legal proceedings, charges of a legal practitioner or legal advisor, costs of obtaining decrees, judgments, orders, or other legal documents, and costs of obtaining decrees, judgments, orders, or other legal documents. Finally, the Right to Counsel is granted to individuals who are unable to be represented by a lawyer but nevertheless need legal assistance.

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