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AUDI ALTERAM PARTEM VS. STATE NECESSITY: BALANCING RIGHTS AND SECURITY

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ABSTRACT

The principle of audi alteram partem, meaning “hear the other side,” is a basic part of natural justice and administrative law. It ensures that no person is punished or affected by a decision without first being given a fair chance to present their case. In normal times, this rule protects individuals from arbitrary and unfair actions of the State. But in emergency and national security situations, applying this principle becomes more difficult. The government may argue that urgent action is needed to protect public order, and giving a prior hearing may cause delay or risk to national safety.

This creates a conflict between two important concerns: the rights of individuals on one hand, and the duty of the State to protect society on the other. Indian courts have given mixed rulings on this issue. In some cases, like *Maneka Gandhi v. Union of India*, they stressed that fair hearing is an essential right. In other cases, such as during the Indira Gandhi Emergency (1975-1977), *ADM Jabalpur v. Shivkant Shukla* during the Emergency, they allowed the government to act without hearing individuals, which later became highly criticised because the principle of natural justice was completely set aside, leaving a dark mark in constitutional history.

This paper argues that the rule of audi alteram partem should remain the general law, but in genuine emergencies and national security cases it may be limited for urgent reasons. However, such limits must come with safeguards, such as giving the person a hearing after the decision and allowing courts to review government action. In this way, the State can act quickly to protect the nation, but at the same time, people’s rights are not left unprotected.

Keywords: Audi Alteram Partem, Natural Justice, Fair Hearing, Judicial Review, National security.

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HYPOTHESIS

The principle of audi alteram partem is a fundamental safeguard of fairness in administrative law. Even in emergency and national security situations, it should not be completely denied. While the State may need to act urgently, the principle should be applied in a flexible way, with safeguards such as post-decisional hearings and judicial review, to prevent misuse of power and protect individual rights.

INTRODUCTION

The principle of audi alteram partem, is a fundamental pillar of natural justice and administrative law. It ensures that no individual is punished, deprived of rights, or affected by a decision without first being given a fair opportunity to present their case. In normal circumstances, this principle protects citizens from arbitrary or unjust actions by the State.

However, India's application of this principle has often been inconsistent. While courts emphasize the importance of fair hearings in ordinary situations, the same courts have, at times, allowed the State to bypass this right during emergencies or national security threats. The Indira Gandhi Emergency (1975–77) and the Supreme Court's ruling in *ADM Jabalpur v. Shivkant Shukla* highlight this double standard, where personal liberties were sacrificed in the name of national security. This paper critically examines this tension and argues that even during emergencies, safeguards like post-decisional hearings and judicial review are essential to prevent misuse of power.

DEFINITION OF THE PRINCIPLE OF AUDI ALTERAM PARTEM

The principle of audi alteram partem, which literally means “hear the other side,” is a fundamental rule of natural justice and administrative law. It ensures that no person shall be punished, deprived of rights, or adversely affected by any decision without first being given a fair opportunity to present their case, respond to allegations, and defend their interests.

AS EMPHASIZED BY JUSTICE P.N. BHAGWATI OF THE SUPREME COURT OF INDIA

“The right to be heard is a fundamental principle of natural justice which must be observed in all administrative and judicial proceedings where an individual’s rights are affected.”

In simple terms, this principle safeguards individuals from arbitrary or unjust actions by the State and ensures fairness, transparency, and accountability in all proceedings affecting a person’s rights.

LITERATURE REVIEW

The principle of audi alteram partem has been widely discussed by scholars and legal analysts in recent years, highlighting its significance as a cornerstone of natural justice. Jindal and Pandey (2023), in their article *Audi Alteram Partem and Nemo Judex In Causa Sua: The Two Pillars of Natural Justice*, provide a comprehensive discussion of the theoretical foundations of natural justice. They explain that audi alteram partem, along with the rule against bias (*nemo judex in causa sua*), forms the twin pillars of fairness in administrative and judicial proceedings. Their work underlines the principle’s role in preventing arbitrary decision-making and promoting accountability in governance.

The controversial case of *ADM Jabalpur v. Shivkant Shukla* during the Emergency period is analysed by Law Bhoomi (2025), which highlights how the Supreme Court allowed the government to suspend fundamental rights, effectively bypassing the principle of fair hearing. This study shows how, in times of national crisis, the principle can be ignored, exposing individuals to the risk of arbitrary detention and abuse of state power.

Singh (2025), in *Silence is Not Justice: A Critical Inquiry into the Application and Evolution of Audi Alteram Partem*, critically examines the inconsistent application of the principle in India. Singh argues that while Indian courts have, in some instances, upheld the right to a hearing, emergency and national security situations have often led to its temporary suspension. The article stresses the need for clear safeguards, such as post-decisional hearings and judicial review, to prevent misuse of power and maintain public trust in administrative processes.

Taken together, these studies show a consistent pattern: while audi alteram partem is recognised as essential to fairness and justice, its application in emergency and national security cases in India has been inconsistent, revealing a double standard.

CASE ANALYSIS

The application of audi alteram partem in India has been inconsistent, especially during emergency and national security situations. The following landmark cases illustrate this double standard:

1. MANEKA GANDHI V. UNION OF INDIA (1978)

In this case, the Supreme Court reinforced the principle of fair hearing under Article 21 of the Constitution. The Court held that personal liberty cannot be curtailed arbitrarily and that individuals must be given a reasonable opportunity to defend themselves before any action affecting their rights is taken.

SIGNIFICANCE

Established that audi alteram partem is an essential component of natural justice.

Emphasized that the State cannot bypass fair procedures even in administrative matters.

Represents the ideal application of the principle in India.

2. ADM JABALPUR V. SHIVKANT SHUKLA (1976)

During the Indira Gandhi Emergency (1975–77), the Supreme Court faced the issue of whether citizens could challenge preventive detention without prior hearing under Habeas Corpus. The Court controversially held that even fundamental rights, including the right to life and liberty, could be suspended, allowing the government to act without hearing the individual.

Significance:

Demonstrates India's double standard, as the principle of audi alteram partem was completely ignored.

Led to widespread criticism and is often cited as a dark chapter in Indian constitutional history.

Highlights the tension between state power and individual rights during emergencies.

3. PREVENTIVE DETENTION LAWS (MISA & PSA)

Statutes like the Maintenance of Internal Security Act (MISA) and Public Safety Act (PSA) allow the government to detain individuals without prior hearing in the interest of national security or public order.

SIGNIFICANCE

These laws give the executive broad powers to bypass the principle of audi alteram partem.

Post-decisional hearings or judicial reviews exist but are often limited, leaving room for misuse.

Reinforces the argument that India prioritizes state interests over individual rights in such cases.

ANALYSIS OF THE DOUBLE STANDARD

In normal situations (e.g., Maneka Gandhi), courts uphold the right to be heard.

In emergencies or national security cases (e.g., ADM Jabalpur, MISA), the right is ignored.

This inconsistency reflects a structural weakness in Indian administrative law, where the protection of rights depends on context rather than a uniform standard.

CONCLUSION OF CASE ANALYSIS

These cases collectively illustrate the uneven application of audi alteram partem in India. While the principle is recognized as fundamental, historical and statutory exceptions show that during emergencies, the State often prioritizes its power over citizens' rights, pointing out the need for clearer safeguards and judicial oversight.

INDIA'S CURRENT STAND

In India today, the principle of audi alteram partem is formally recognized in law and continues to be an important safeguard of fairness in administrative and judicial proceedings. Courts routinely stress that individuals should be given a fair opportunity to present their side before any adverse action is taken. Article 21 of the Constitution, which guarantees the right to life and personal liberty, has been interpreted to include the right to a fair hearing, and this has been reinforced in cases like *Maneka Gandhi v. Union of India*.

However, the application of the principle is still inconsistent, especially in the context of emergencies and national security. Preventive detention laws, such as the Maintenance of Internal Security Act (MISA) and the Public Safety Act (PSA), allow the government to detain individuals without prior notice or hearing in the interest of public order or national security. While post-decisional hearings and judicial review exist as safeguards, in practice these mechanisms are often limited or delayed, leaving individuals vulnerable to arbitrary action.

The judiciary has occasionally intervened to correct this imbalance, but there is no clear legal framework defining exactly when audi alteram partem can be limited and what safeguards must be ensured. As a result, individuals' rights remain at the mercy of the government's interpretation of "emergency" or "national security," creating a gray area that can potentially be misused. Addressing this inconsistency is critical to ensure that emergencies do not become an excuse for arbitrary or unjust actions.

COMPARATIVE ANALYSIS

To understand India's double standard in applying audi alteram partem, it is helpful to compare its approach with that of other democratic countries during emergencies and national security situations.

In the UK, the Terrorism Prevention and Investigation Measures (TPIMs) regime, established by the TPIM Act 2011, replaced the previous control orders system. TPIMs impose restrictions on individuals suspected of involvement in terrorism-related activities but who cannot be prosecuted or deported. While TPIMs are imposed by the Home Secretary, they are subject to judicial review

in the High Court. These reviews assess whether the restrictions are justified and whether the individual has been afforded a fair opportunity to contest them. The TPIMs regime aims to provide a balance between protecting national security and upholding individual rights, ensuring that the principle of audi alteram partem is respected through judicial oversight.

Australia's national security laws, particularly those under the National Security Information (Criminal and Civil Proceedings) Act 2004 (NSI Act), allow for the protection of sensitive national security information during legal proceedings. While the NSI Act permits the withholding of certain information, it also mandates that courts conduct closed hearings to determine the necessity of non-disclosure and to ensure that the defendant's right to a fair hearing is not unduly compromised. These closed hearings are conducted with the presence of special advocates to represent the interests of the affected individuals. This framework seeks to balance the need for secrecy in national security matters with the individual's right to a fair hearing, aligning with the principle of audi alteram partem.

In Canada, the Canadian Charter of Rights and Freedoms guarantees the right to a fair hearing, encompassing the principle of audi alteram partem. Even during emergencies, Canadian law emphasizes procedural fairness. For instance, in military justice contexts, regulations ensure that individuals have access to legal counsel, are informed of the case against them, and have opportunities to make submissions. The Canadian legal system strives to uphold the right to be heard, even in national security cases, by providing mechanisms such as judicial review and access to courts, thereby maintaining a commitment to procedural fairness.

COMPARISON WITH INDIA

India: In theory, fair hearing is a fundamental right, but in practice, emergency powers and preventive detention laws often allow the government to bypass audi alteram partem. Post-decisional hearings exist but are not consistently implemented.

Other democracies: Safeguards like mandatory post-decisional hearings, judicial review, and strict definitions of emergency powers are well established, limiting the scope for misuse.

CONCLUSION OF COMPARATIVE ANALYSIS

The international comparison highlights that India's inconsistent application of audi alteram partem is unusual among democracies. While other countries allow temporary restrictions on fair hearing, they ensure clear safeguards and accountability mechanisms, minimizing the risk of arbitrary state action. India, on the other hand, continues to display a double standard, where the principle is respected in normal times but often ignored during emergencies or national security concerns.

RECOMMENDATIONS

The principle of audi alteram partem should remain the default rule in all administrative and judicial actions.

In genuine emergencies, the State may take urgent action, but such limitations must be narrowly defined and time-bound.

Post-decisional hearings must always be available as soon as possible to protect individual rights.

Judicial oversight should be strengthened to prevent misuse of emergency powers or arbitrary detentions.

Clear statutory guidelines should define when and how the principle can be temporarily restricted, reducing ambiguity and preventing executive overreach.

CONCLUSION

In conclusion, the principle of audi alteram partem — the right to be heard — remains a cornerstone of natural justice and a fundamental safeguard in administrative law. It ensures that individuals are treated fairly and are not subjected to arbitrary or unjust decisions by the State. India's approach to this principle, however, has been inconsistent. While courts uphold fair hearing in ordinary situations, during emergencies and national security cases, the same right has often been bypassed. Historical events, such as the Indira Gandhi Emergency (1975–77) and the

Supreme Court's ruling in *ADM Jabalpur v. Shivkant Shukla*, reveal moments when the principle was completely ignored, exposing a clear double standard.

Even today, laws like the Maintenance of Internal Security Act (MISA) and the Public Safety Act allow the government to act without prior hearings, though post-decisional remedies and judicial review exist, their effectiveness in practice is often limited by, Delays in court proceedings, restricted disclosure of evidence, Administrative Influence and Political Pressure. This creates a tension between protecting individual rights and empowering the State during urgent situations. Comparisons with other democracies show that temporary limitations on fair hearings can be acceptable, but only when accompanied by strong safeguards to prevent misuse.

In conclusion, *audi alteram partem* should remain the default rule, even in emergencies. Any restriction should be narrowly defined, strictly necessary, and paired with post-decisional hearings and judicial oversight. Such an approach would allow the State to respond swiftly in genuine crises while ensuring that citizens' rights are protected, striking a fair and just balance between national security and individual liberty.