

THE EXEMPTIONS OF PRINCIPLES OF NATURAL JUSTICE

¹M.GOKUL MITHUN KUMAR

¹ Student 2nd YEAR BA LLB (HONS), Saveetha School Of Law, Saveetha Institute Of Medical And Technical Sciences, Saveetha University, Chennai- 77,Tamilnadu,India.

²R.DHIVYA

²Assistant Professor , Saveetha School Of Law, Saveetha Institute Of Medical And Technical Sciences,Saveetha University, Chennai- 77,Tamilnadu,India.

¹mithunmurugesan@gmail.com , ²divyar.sll@saveetha.com

ABSTRACT

Principles of Natural Justice are ultimately weighed in the balance of fairness and hence the Courts have been circumspect in extending principles of natural justice to situations where it would cause more injustice rather than justice so, where a right to be fairly heard has been denied it is more probably a case of bad decision than of true exception, then principles of natural justice can be discarded. Application of the principles of natural justice can be excluded either expressly or by necessary implication, subject to the provisions of Article 14 and 21 of the constitution. However, along with constitutional limitations in India Common Law exception are also preferred. Now it is well established preposition of Law that the Principles of Natural Justice supplements the enacted statute with necessary implications, accordingly administrative authorities performing public functions are generally required to adopt “fair procedure” and in relation to a variety of different circumstances, we considered the content of the requirements of procedural fairness. A person may also have legitimate expectation of fair hearing or procedural fairness/treatment but as Natural Justice Principles is to be invoked in doing justice, where their observance leads to injustice they may be disregarded. There are several well established limitations on Principles of Natural Justice. Existence of certain circumstances deprives the individual from availing the benefit of principles of natural justices, authors in this research work undertakes to cover the circumstances in which judiciary admitted the exceptions to the observance of Principles of Natural Justice.[\(Singh 1986\)](#) .The requirements of procedural fairness are on first appearance

applicable to Judicial, Quasi-Judicial and Administrative Proceedings, however, the decision maker may be exempt from all or some of the procedural safeguards that would otherwise be required. Several factors may be identified as capable of excluding the normal procedural fairness

KEY WORDS: Natural justice, Article 14 ,Article 21,Common law Exceptions

INTRODUCTION

It is beyond doubt that there are certain canons of judicial conduct to which all tribunals and persons that have to give judicial or quasi- judicial decisions ought to conform. The principles on which they rest are, we think, implicit in the rule of law. Their observance is demanded by our national sense of justice. Rules of natural justice have developed with the growth of civilization. It is not the creation of Constitution or mankind. It originated along with human history. In order to protect himself against the excess of organized power, man has always appealed to someone which is not been created by him and such someone could only be God and His laws, Divine law or Natural law, to which all temporal laws must and actions must conform. It is of 'higher law of nature' or 'natural law' which implies fairness, reasonableness, equity and equality. Natural justice rules are not codified laws. It is not possible to define precisely and scientifically the expression 'natural justice'. They are basically common – sense justice which are built- in the conscience of human being. They are based on natural ideals and values which are universal in nature. ' Natural justice' and 'legal justice' are substances of 'justices' which must be secured by both, and whenever legal justice fails to achieve this purpose, natural justice has to be called in aid of legal justice. Natural justice has an impressive history which has been recognized from the earliest times.³ The Greeks had accepted the principle that 'no man should be condemned unheard'. It was first applied in 'Garden of Eden' where opportunity to be heard was given to Adam and then providing him punishment. ([Sharma 2004](#)).

Aim of the study:

To know that all statutory provisions are interpreted and applied so as to be consistent with the principles of natural justice

³ "Exceptions To The Principles of Natural Justice - Legal Services India."
<http://www.legalservicesindia.com/article/1529/Exceptions-To-The-Principles-of-Natural-Justice.html>.
Accessed 5 Jun. 2018.

OBJECTIVES

- 1.To Study about the sense of fairness and justice in all administrative actions
- 2.To study about common law exceptions to the principles of natural justice

HYPOTHESIS

H0:Exemptions of principles of natural justice does not protect the natural rights of the people

Ha:Exemptions of principles of natural justice protect the natural rights of people

RESEARCH METHODOLOGY

Doctrinal research is a theoretical study where mostly secondary source of data are used to seek to answer one or two legal propositions or questions or doctrines. Its scope is very narrow and there is no such need of field work. But non-doctrinal research lays lesser emphasis upon doctrines and it is not solely dependent on the traditional or conventional sources for data. Non-doctrinal or empirical research is more concerned with social values and people and thus, primary data are used in this type of research. Here field work is the most important part. Thus, scope is wider. Empirical research tries to find out the effect of legal decision.

Exceptions To The Principles Of Natural Justice

Now it is well established preposition of Law that the Principles of Natural Justice supplements the enacted statute with necessary implications, accordingly administrative authorities performing public functions are generally required to adopt “fair procedure” and in relation to a variety of different circumstances, we considered the content of the requirements of procedural fairness([Cooper 1934](#)). A person may also have legitimate expectation of fair hearing or procedural fairness/treatment but as Natural Justice Principles is to be invoked in doing justice, where their observance leads to injustice they may be disregarded⁴. There are several well established limitations on Principles of Natural Justice. Existence of certain circumstances deprives the individual from availing the benefit of principles of natural justices, authors in this research work undertakes to cover the circumstances in which judiciary admitted the exceptions to the observance of Principles of Natural Justice.

⁴ "exceptions to the principles of natural justice by ... - Law Mantra Journal."
<http://journal.lawmantra.co.in/wp-content/uploads/2015/05/22-new.pdf>. Accessed 5 Jun. 2018.

Common Law Exceptions to the Principles of Natural Justice:

The requirements of procedural fairness are on first appearance applicable to Judicial, Quasi-Judicial and Administrative Proceedings, however, the decision maker may be exempt from all or some of the procedural safeguards that would otherwise be required⁵. Several factors may be identified as capable of excluding the normal procedural fairness requirements in Common Law Courts are([Thakur and Soni 2011](#)):

- (i) Exclusion in case of emergency,
- (ii) Express statutory exclusion,
- (iii) Where disclosure would be prejudicial to public interests
- (iv) Where prompt action is needed,
- (v) Where it is impracticable to hold hearing or appeal,
- (vi) Exclusion in case of purely administrative matters.
- (vii) Where no right of person is infringed,
- (viii) The procedural defect would have made no difference to the outcome.
- (ix) Exclusion on the ground of 'no fault' decision maker.

Exclusion of Natural Justice in India Exceptions to Bias:

Doctrine of Necessity-

The doctrine of necessity is an exception to 'Bias'. The law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety([Takwani and Thakker 2008](#)). The doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. It can be invoked in cases of bias where there is no authority to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit from it. If the choice is between either to allow a biased person to act or to stifle the action altogether, the choice must fall in favour of the former as it is the only way to promote decision-making([English 2013](#)).

Where bias is apparent but the same person who is likely to be biased has to decide, because of the statutory requirements or the exclusiveness of a competent authority to decide, the

⁵ "Exceptions to Principles of Natural Justice: Part I - LexQuest." 15 Mar. 2018, <http://lexquest.in/exceptions-to-principles-of-natural-justice-part-i/>. Accessed 5 Jun. 2018.

Courts allow such person to decide. In *Ashok Kumar Yadav vs. Haryana*, the Court held that a member of the Public Service Commission could not entirely disassociate himself from the process of selection just because a few candidates were related to him. He should disassociate himself with the selection of the persons who are related to him, but need not disassociate with the selection of other candidates. Though his presence on the selection committee could create a likelihood of bias in favour of his relations yet, since the PSC is a constitutional authority, such a member cannot be excluded from its work and his presence in the recruitment process is mandatorily required. The Court further held that where substitution is possible, this doctrine would not apply.⁶

Doctrine of Absolute Necessity-

The doctrine of 'absolute necessity' is also taken as an exception to 'Bias' where it is absolutely necessary to decide a case of Bias and there is no other option left. In *Election Commission of India vs. Dr. Subramaniam Swamy*,⁶ the SC was asked to decide whether the CEC TN Seshan, who was allegedly biased in favour of Swamy, because of the long friendship, could participate in the giving of opinion by the EC. The opinion was to be given on the alleged disqualification of Jayalalitha, the then CM of Tamil Nadu under Article 191 of the Constitution. Swamy had made a petition to the Governor alleging that Jayalalitha had incurred a disqualification under Article 191 read with Sec 9 of the RPA, 1951, to get elected to the legislative assembly, as at the time of the election she was a party to a contract with the Government. Under Art 192 of the Constitution, before giving any decision on such question of disqualification, a Governor is required to obtain of the EC, and has to act according to such opinion ([Social Exclusion and Justice in India...](#)). The Governor forwarded Swamy's petition to the EC for its opinion. Jayalalitha moved the HC of Madras under Art 226 of the Constitution, seeking a writ of prohibition enjoining upon Seshan not to participate in giving opinion. The HC, through a single judge Bench, held that Seshan shouldn't give opinion in view of his prejudice against Jayalalitha. The Single Judge also held that she had not incurred any disqualification. On appeal, the Division Bench held that the single judge Bench had been wrong in deciding the question of Jayalalitha's disqualification, because that question could be decided by the EC alone. The Division Bench, however agreed with the Single Judge Bench that Seshan suffered from Bias, and therefore, should not give his opinion. The

⁶ "Exceptions To The Principles of Natural Justice ~ Legal Service India." 6 Jun. 2013, <http://legalserviceindia6.blogspot.com/2013/06/exceptions-to-principles-of-natural.html>. Accessed 5 Jun. 2018.

Division Bench observed that in view of the appointment of additional two members on the EC, the EC could give opinion through members other than the CEC.⁷

On appeal, the SC confirmed that Seshan should not give opinion. The Court, observed that in view of the multi-member composition of the EC and its earlier decision in T.N Seshan vs UOI, where it was held that decisions of the EC should be by majority, while giving opinion under Art 192(2) of the Constitution, the CEC could get himself excused from sitting on the Commission, while an opinion on a matter in which he was held to be biased was being given. If the other two members differed, the CEC could give opinion, and the opinion of the majority would be the opinion of the EC. In that case, though he was biased, he would be required to give opinion under the doctrine of necessity and not only mere necessity but absolute necessity. Thus, the doctrine of bias would not be applied.

Exceptions to Audi Alteram Partem:

The word exception in the context of natural justice is really a misnomer, but in the below mentioned exclusionary cases, the rule of audi alteram partem is held inapplicable not by way of an exception to “fair play in action”, but because nothing unfair can be inferred by not affording an opportunity to present or meet a case, But such situations where nothing unfair can be inferred by not affording a fair hearing must be few and exceptional in every civilized society (Binmore 2005). Principles of natural justice are ultimately weighed in the balance of fairness and, hence the Courts have been circumspect in extending these principles to situations where it would cause more injustice rather than justice. For example, a party would forfeit its right to hearing if undue advantage obtained is protecting the proceedings somehow and nullifying the objectives.⁸

In spite of the phenomenal increase in the range of applicability of natural justice, there still remain a number of situations where the Courts have denied the right of hearing to the affected persons. Although the SC has asserted in OP Gupta vs. Union of India,¹¹ that “it is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case”, it will be wrong to suppose that natural justice is universally applied in administrative process.

(MacDonald 1985)

⁷ "Law Notes for LLB & LLM Students: What is rule of natural justice" 8 Apr. 2015, <https://lawnotes4students.blogspot.com/2015/04/constitutional-law-of-india-1-qwhat-is-8.html>. Accessed 5 Jun. 2018.

⁸ "exceptions to the principles of natural justice by ... - Law Mantra Journal." <http://journal.lawmantra.co.in/wp-content/uploads/2015/05/22-new.pdf>. Accessed 5 Jun. 2018.

Exclusion in cases of Emergency:

In India it has been generally acknowledged that in cases of extreme urgency, where interest of the public would be jeopardized by the delay or publicity involved in a hearing, a hearing before condemnation would not be required by natural justice or in exceptional cases of emergency where prompt action, preventive or remedial, is needed, the requirement of notice and hearing may be obviated. Therefore, if the right to be heard will paralyze the process Law will exclude it.⁹

Therefore in situations where dangerous buildings is to be demolished, or a company has to wound up to save depositors or there is an eminent danger to peace or trade dangerous to society is prohibited, dire social necessity requires exclusion of elaborate process of fair hearing. In the same manner where power theft was detected by officials, immediate disconnection of supply is not violative principles of Natural Justice.

The emergency power (defense) Act, 1934 authorized the Government, to make regulation under the Act "For the detention of a person whose detention appears to the secretary of the state to be expedient in the interest of public safety or the Defense of the Realm". Repealing the contention that the legislation which encroached upon the liberty of the subject should be construed in favour of the subject, the House of Lords held that the legislation was war measure relating to the safety of the nation itself which required a drastic "invasion of the liberty of the subject", the Lord Maugham Observed that Under the Statute and Regulation made there under the Secretary of the State was under no duty to give prior notice or opportunity to be heard. In the same manner in India also similar exclusion were created in emergency legislations, which is dealt under separate heading in succeeding part of this paper.

In cases of urgency or where the giving prior notice would defeat the very object the action, where the function is purely administrative in nature and the principle of prior hearing as required by natural justice does not apply, but prior hearing must be given where an administrative action will result in civil consequences to the party to the dispute.

⁹ "Principles of natural justice - SlideShare." 17 Oct. 2016, <https://www.slideshare.net/Anjalisharma357/principles-of-natural-justice-67286250>. Accessed 5 Jun. 2018.

In *Swadeshi Cotton mills v. Union of India* the Court held that the word “immediate” in Section 18AA of the Industries (Development and Regulation) Act cannot stand in the way of the application of the rules of the Natural Justice. U/Sec 18AA of above said Act the Central Government can take over an industry after investigation, but U/Sec 18AA(1) the Govt. can take over without any notice and hearing on the ground that production has been or is likely to be affected and hence immediate action is necessary the question was whether Sec 18AA(1) excludes the principles of Natural Justice the Govt. took the plea that since Section 18AA clause (1) relates to emergent situations, therefore Principles of Natural Justice are excluded. Furthermore it also contended that since Section 18A provides for hearing and Sec 18AA(1) does not provides for conduct of hearing, consequentially parliament has excluded hearing therein, Court rejecting these arguments held that even in emergency situations the competing claims of ‘hurry and hearing’ are to be reconciled, no matter the application of the Audi Alterm Partem rule at the pre-decisional stage may be a ‘short measure of fair hearing adjusted’, attuned and tailored to exigency of the situation([Elliott and Varuhas 2017](#)).

2. Express Statutory Exclusion:

As we already analyzed in *Liversidge v. Anderson* exclusion can be made through “clearly and expressly” made Act of the parliament¹⁰. An Act of Parliament may dispense with the requirements of fair procedures where they would otherwise be required. A statute may, for example, permit the exercise of powers without notice. In the interests of administrative efficiency and expedition, the requirements of fairness have been excluded by statutory provisions which, for example, enable decision makers to decline to conduct an oral hearing, or to entertain particular kinds of representations and objections([INTRODUCTION 1985](#)).

However, any statutory exclusion of procedural fairness will be construed strictly. Thus, where a statutory provision did not expressly or by necessary implication exclude the right to legal professional’s privilege, the provision was interpreted not to do so. Subordinate legislation purporting to exclude a hearing or to hold a hearing or conduct an inquiry is conferred by a statute, a refusal to hold the inquiry may constitute a denial of natural justice if fairness plainly demands that a hearing be held. Ex .p *Gurdian Newspaper Ltd* (Written Submissions) in this case Court held that, an express statutory power to proceed without a

¹⁰ "The Principles of Natural Justice – Origin and Relevance | India" 28 Mar. 2018, <https://corporate.cyrilamarchandblogs.com/2018/03/principles-natural-justice-origin-relevance/>. Accessed 5 Jun. 2018.

hearing will not necessarily exclude the right to make informal or written representations, similarly, an express statutory provision excluding a duty to give reasons has been held not to exclude a duty to disclose the substance of the case so that an applicant for citizenship could make representation. ([Wade and Forsyth 2009](#))

In a number of cases, the view has been expressed judicially that there is no question of invocation of natural justice, or hearing the affected party, when legislative action of an authority is brought under the scrutiny of the Courts.¹¹

In Defense of India Act, 1962 Rule 29 and 30 of the Act empowers the executive to make orders for externment for the maintenance of public order. No hearing was necessary for the purpose of making such Order to direct the removal, detention, externment, interment and the like of any person, if it is 'satisfied' that such order was necessary for the defense or efficient conduct of military operations and maintenance of Public order.

Also in *Laxmi Khandsari v. State of U.P* in this case SC held that notification of UP Govt. Sugar Cane (Control) Order, 1966 directing that no power-crusher of Khandsari unit in reserved area of a Sugar mill will work during the period Oct 9 to Dec 1st , 1980 is legislative in character hence Principle of Natural Justice attracted. In the same manner, *Charanlal Shahu v. U.O.I*, in this case the constitutionality of the Bhopal Gas leak disaster (processing of claims) Act, 1985 was involved. The SC held: "for legislation by parliament no principles of natural justice is attracted, provided such legislation is within the competence of legislature". ([Bernier and Lajoie 1985](#))

Where prompt action is needed/ exclusion in cases of interim preventive action:

Desirably, it may be to allow a hearing or an opportunity to make representations, or simply to give prior notice, before a decision is taken, summary action may be alleged to be justifiable when an urgent need for protecting the interests of other persons arises. There are in fact remarkably few situations in which the enforcement powers exist. For example, interim anti-social behavior orders made without notice are not unlawful where it is necessary for the court to act urgently to protect the interests of a third party or to ensure that the order of the court is effective ([Loveland 2015](#)).

¹¹ "exceptions to the principles of natural justice by ... - Law Mantra Journal."
<http://journal.lawmantra.co.in/wp-content/uploads/2015/05/22-new.pdf>. Accessed 5 Jun. 2018.

There are numerous illustrations of statutory provisions which for reasons of public safety or public health permit public authorities to interfere with property or other rights. For example: the destruction of infected crops; the prevention of the bus lank being carried on in a manner detrimental to the interests of the public or of depositors or other creditors; prohibition on entry to an airport; suspension of the license of a public service vehicle seizure of obscene works;

Seizure of food suspected of not complying with food safety requirements; local authorities may examine and test, drains and test sewers, drains and sanitary conveniences that it believes to be defective etc.,.

In the same manner if the administrative authority passed a suspension order in the nature of a preventive action and not a final order, the application of the principles of natural justice may be excluded. In *Abhay Kumar v. K Srinivasan*, the institution passed an Order debarring the student from entering the premises of the institution and attending classes till the pendency of a criminal case against him for stabbing a co-student. This order was challenged on the ground that it violates Principles of Natural Justice ([Takwani and Thakker 2008](#)). The Delhi High Court rejecting the contention held that such an order could be compared with an order of suspension pending enquiry which is preventive in nature in order to maintain campus peace and hence the principles of natural justice shall not apply.

It was also in *Maneka Gandhi v. Union of India* recognized that “where an obligation to give notice and opportunity to be heard would obstruct the taking of prompt action, especially action of a preventive or remedial nature, right of prior notice and opportunity to be heard may be excluded by implication”. In this case it is interesting to see that natural justice entails new meaning and place under Indian Constitution at the same time Court recognized the circumstance under which Principles of natural Justice can be discarded.

Where it is impracticable to hold hearing or appeal:

It is one of the most convincing reason that the number of persons affected by a particular order, act or decision is so great as to make it manifestly impracticable for them all to be given an opportunity of being heard by the competent authority beforehand. This is the

reason why representation may not be required for the making of regulation of a legislative character in absence of legislative requirement.

For example, In R v. Aston University Senate Ex.p the large number of applicants competing for scarce resource may make it impracticable to offer each applicant a hearing. If, for example, there are 1,000 applicants for 100 places available in University law department it may be impossible to afford interviews to many of those who, from the particulars supplied with their written applications, appear sufficiently meritorious or suitable to warrant fuller personal consideration(Leyland and Anthony 2016). In this circumstance even if the court finds that a breach of procedural fairness has occurred, administrative impracticability may still be relied upon as a reason for refusing a remedy in its discretion.

Exclusion in case of purely administrative matters:

Where nature of authority is purely administrative no right of hearing can be claimed, where a student of the university was removed from the rolls for unsatisfactory academic performances without being given any per-decisional hearing. The Supreme Court in Jawaharlal Nehru University v. B.S. Narwal held that the very nature of academic adjudication appears to negative any right of an opportunity to be heard. Therefore if the competent academic authorities examine and assess the work of a student over a period of time and declare his work unsatisfactory, the rules of natural justice may be excluded¹².

In the same manner in Karnataka Public Service Commission v. B.M. Vijay Shanker when the commission cancelled the examination of the candidate because, in violation of rules, the candidate wrote his roll number on every page of the answer-sheet, the Supreme Court held that the principles of natural justice were not attracted, the Court observed that the rule of hearing be strictly construed in academic discipline and if this was ignored it would not only be against the public interest but also erode the social sense of fairness. However, this exclusion would not apply in case of disciplinary matter or where the academic body performs non-academic functions granting sanction of prosecution is purely administrative functions, therefore, principles of natural justice are not attracted. In the same manner cancellation of bid for failure to execute lease deed and to deposit security amount, held, would not attract principles of natural justice.(Barry 1981)

¹² "Principles of Natural Justice." 31 Mar. 2015, <https://www.nacenkpur.gov.in/download3.inc.php?rid=164>. Accessed 5 Jun. 2018.

Where no right of person is infringed:

In some case it has been suggested that a claimant who is for some reason undeserving for certain claims (due to absence of right to claim) may forfeit the right to procedural fairness. Where no right has been conferred on person by any statute nor any such right arises from common law the principles of natural justice are not applicable, this based on the principle “**Ebi Jus ebi remedium and Injuria sine damano**” the earlier stands for ‘where there is right there is remedy’ and later stands for ‘there shall be legal right or interest to claim some interest or benefit’.¹³

In *J.R. Vohra v. Indian Export House (p) Ltd.* The Delhi Rent Control Act makes provisions for the creation of limited tenancies, Section 21 and 37 of the Act provide for the termination of limited tenancies. The combined effect of these sections is that after the expiry of the term a limited tenancy can be terminated and warrant of possession can be issued by the authority to the landlord without any notice of hearing to the tenant. Upholding the validity of warrant of possession without complying with the principles of natural justice, the Supreme Court held that after the expiry of the period of any limited tenancy, a person has no right to stay in possession and hence no right of his is prejudicially affected which may warrant the application of the principles of natural justice.

The procedural defect would have made no difference to the outcome:

There are several instances where Court discarded principles of natural justice after satisfying that the outcome of the case could not have been different had natural justice been fully observed. These decisions have been sought to be explained on the ground that the relief sought was discretionary, or on the ground breach makes an order voidable rather than void. It is submitted that neither explanation is sufficient. As to the former, it is right to note that a refusal of relief on the ground that it would make “no difference” may be explained either as an exercise of the Courts discretion as to the grant of relief, as a part of the consideration of whether the principles of fairness have in fact been infringed at all.

‘Useless formality’ theory is no doubt yet another exception to the application of the principles of natural justice but it should be used with great caution and circumspection by

¹³ "Principles Of Natural Justice - Law Teacher." <https://www.lawteacher.net/free-law-essays/constitutional-law/principles-of-natural-justice-constitutional-law-essay.php>. Accessed 5 Jun. 2018.

the Court otherwise it would turn out to be wheel of miscarriage of justice. It can only be used where on the admitted or undisputed facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not insist on the observance of the principles of natural justice because it would be futile to order its observance. [\(Foster 2012\)](#)

In *R v. Haberdashers Aske's School Governors*, a decision by governors refusing to correct an inaccurate statement in a consultation paper, and refusing to extend the consultation period was held not unfair because the error in question could not have led a person reading the pamphlet to have reached a different Conclusion.

Exclusion on the ground of 'no fault' of decision maker:

Where alleged procedural unfairness is not the fault of the tribunal or other decision-maker is a claimant still entitled to have the decision quashed on the basis that he has not been accorded procedural fairness. It has been suggested, however, that these decisions should be viewed not as resting on the principles of fairness, but as based upon the alternative principles that "fraud unravels everything", or because the "process leading to conviction" has been distorted and vitiated as a result of breach of duty owed to the procedure court and to the defence prosecutor. The principles of fairness, in contrast, are "concerned solely with the propriety of the procedure adopted by the decision-maker", but this approach are the responsibility of the prosecution or respondent, but which cannot be characterized as fraud or breach of duty. In the same manner it may be futile to comply with the principles of natural justice would be where administrative action is perse illegal as an ineligible candidate has been considered for appointment. It has been held that the principles of natural justice may not be applied unless prejudice is caused and there is no prejudice if an ineligible candidate is considered for appointment. Likewise, as general rule, a person who has himself impeded or frustrated the service of notice of impending action cannot afterwards be heard to complain that he did not receive actual notice. But where the mistake is due to the conduct of the applicant's legal representative, the position is not entirely clear.

In *R v. Secretary of State for the Home Department*, the applicant had lodged an appeal against the Home Secretary's decision to make a deportation order against him. Notice of appeal was sent to his solicitors, who misaddressed the letter when sending it on to the applicant, who consequently never received notice of the appeal¹⁴. The appeal was therefore

¹⁴ "Natural justice - Wikipedia." https://en.wikipedia.org/wiki/Natural_justice. Accessed 5 Jun. 2018.

dismissed in his absence. On an application for judicial review of the decision to dismiss the appeal, on the ground that the applicant had been denied a fair (or any) hearing, the House of Lords held that a party cannot complain of a denial of fair hearing where he failed to make use of an opportunity to have his case heard through the negligence of his legal adviser, even if he himself is not responsible in any way for that failure ([Cann 2005](#)). But in India law on this issue is quite clear that it is good ground to reopen the hearing of case on the ground of negligence of Legal representative resulting injustice the party.¹⁵

.Exclusion of Natural Justice in UK

It must be emphasised at the outset that the rules of natural justice do not necessarily apply to all exercises of powers ([Longley and James 1999](#)). Previously, the Court had drawn a distinction between 'administrative' and 'judicial' functions where the rules of natural justice been applied to the latter but this distinction is now less frequently drawn so that even where a function might have been defined as 'administrative' there may now be a limited duty to observe some aspect of natural justice, that is, a duty to act fairly. It has been seen that the rules of natural justice are in two categories:

- The rule against bias.
- The rule that no person shall be condemned without being given reasonable opportunity to be heard.¹⁶

In *Gaiman vs. National Association for Mental Health* (1971), Mergary J. observed that: '... there is no simple test, but there is a tendency for the Court to apply the principles of natural justice to all powers of decision unless the circumstances suffice to exclude them'. On those occasions when the Court has excluded natural justice the circumstances have usually involved (1) express or implied statutory limitations, or (2) the absence of any rights meriting protection. ([English 2013](#))

Exceptions to Bias: Necessity-

The normal rules against bias will be displaced where the individual whose impartiality is called in question is the only person empowered to act. Thus in the *Dimes vs. Grand Junction Canal Co Proprietors*,²⁹ it was held that the Lord Chancellor's signature on an enrolment

¹⁵ "Principles of Natural Justice - Lawnotes.in." https://www.lawnotes.in/Principles_of_Natural_Justice. Accessed 5 Jun. 2018.

¹⁶ "exclusion of the rules of natural justice - Visionary Knowledge." <http://www.visionary-knowledge.com/law/Natural%20Justice.pdf>. Accessed 5 Jun. 2018.

order which was necessary in order for the case to proceed to the House of Lords, was unaffected by his shareholding in the company because no other person was empowered to sign. Similarly, in *Phillips vs Eyre*,³⁰ it was held that the Governor of a colony could validly assent to an Act of Indemnity which protected, inter alia, his own actions because the relevant Act had to receive this signature.³¹

Statue-

Parliament has made statutory exceptions to the rule against bias, allowing justices to sit who have some type of interest in the subject-matter of the action. The courts have construed such statutory provisions strictly ([Craig](#)). Thus in *Shaw S. 258* of the Public Health Act, 1872, which enabled a justice of the peace to sit even though a member of a local authority, was held not to protect him where he acted in a prosecutorial and adjudicatory capacity. In other areas statute may, for example, create an offence to take part in a decision on a matter in relation to which a person has a pecuniary interest, and yet will allow acts thus made to remain valid.¹⁷

Conclusion

Authors are of the conclusion that the Courts both in India and England in relation to administrative proceedings created various exception to the requirement of Natural Justice Principles and procedure there off. However, these exceptions are all circumstantial and not conclusive, every exception to be adjudged admissible or otherwise only after looking into the facts and circumstances of each case. The main objective behind the reconciliation between the inclusion and exclusion of protection of Principles of Natural Justice is to harmoniously construe individual's natural rights of being heard and fair procedure as well as the public interest. Larger public interest is to be allowed to override the individual's interest where the justice demands. ([Sharma 2004](#)). Conclusion. The exceptions to the principles of natural justice in UK and India mainly relates to administrative proceedings. The Courts in both these countries especially in India created various exceptions to the requirement of natural justice principles and procedures taking into account various circumstances like time, place, the apprehended danger and so on prevailing at the time of decision-making. It must be noted that all these exceptions are circumstantial and not conclusive. They do not apply in the

¹⁷ "Groves, Matthew --- "Exclusion of the Rules of Natural Justice" [2013"
<http://www.austlii.edu.au/au/journals/MonashULawRw/2013/11.pdf>. Accessed 5 Jun. 2018.

same manner to situations which are not alike. They are not rigid but flexible. These rules can be adopted and modified by statutes and statutory rules also by the Constitution of the Tribunal which has to decide a particular matter and the rules by which such tribunal is governed. Every action of the authorities to be regarded as an exception must be scrutinised by the Courts depending upon the prevailing circumstances. The cases where natural justice principles have been excluded by implication suggest that the Courts have accepted the doctrine even though the legislature has not adopted express words to that effect but those cases appear to depend so heavily on their particular circumstances that they do not yield a clear general principle. There are arguable and also explicable instances where the courts have concluded that natural justice was not necessary.

SUGGESTIONS AND RECOMMENDATIONS

In order to invoke the exceptions the decision of the authorities must be based on bonafide intention and the Courts while adjudicating the post decision dispute must find the action of the concerned authorities to be fair and just and every such exceptions to be adjudged admissible or otherwise only after looking into the facts and circumstances of each case. The main objective behind the reconciliation between the inclusion and exclusion of protection of Principles of Natural Justice is to harmoniously construe individual's natural rights of being heard and fair procedure as well as the public interest. Larger public interest is to be allowed to override the individual's interest where the justice demands. Thus, exclusion of natural justice should not be readily made unless it is irresistible, since the Courts act on the presumption that the legislature intends to observe the principles of natural justice and those principles do not supplant but supplement the law of the land. Therefore, all statutory provisions must be read, interpreted and applied so as to be consistent with the principles of natural justice.

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