

## EXCEPTIONS TO THE PRINCIPLES OF NATURAL JUSTICE BY MS.MOUSHUMI SARMAH\*

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### 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.*

- *The Committee on Minister's Powers*

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. 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.

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\* Department: Law [ Pursuing LL.M(2014-15)], Gujarat National Law University, Attalika Avenue, Knowledge Corridor, Koba, Gandhinagar (382007), Gujarat, India

When we say about PNJ, there are mainly two principles which must be followed:

- *Nemo judex in causa sua*: No man shall be a judge in his own cause, or the deciding authority must be impartial and without bias.
- *Audi Alteram Partem*: To hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that there must be fairness on the part of the deciding authority.

The PNJ at one time applied only to judicial proceedings and not to administrative proceedings but in *Ridge vs. Baldwin*,<sup>1</sup> it was stated that the principles of natural justice are applicable to 'almost the whole range of administrative powers'.

This principle is applicable in India also. In *State of Orissa vs. Binapani*,<sup>2</sup> the SC observed that: "It is true that the order is administrative in character, but even an administrative order which involves civil consequences...must be made consistently with the rules of natural justice..."

Now it has been well established that the Principles of Natural Justice supplements the enacted statute with necessary implications and accordingly administrative authorities performing public functions are generally required to adopt "fair procedure". A person may also have *legitimate expectation* of fair hearing or procedural fairness/treatment but where their observance leads to injustice they may be disregarded as Natural Justice Principles are to be invoked in doing justice only. There are several well established limitations or exceptions on the Principles of Natural Justice and the existence of such circumstances deprives the individual from availing its benefits.

As the Principles of Natural Justice are ultimately weighed in the balance of fairness and hence the Courts have been unwilling in extending these principles 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 and in such situations the principles of natural justice can be discarded. The application of the principles

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<sup>1</sup> (1963) 1 Q.B 539

<sup>2</sup> 1967 AIR 1269, 1967 SCR (2) 625

of natural justice can be excluded either expressly or by necessary implication but it must be subject to the provisions of [Article](#) 14 and 21 of the constitution.<sup>3</sup>

### **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. 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.<sup>4</sup>

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 Courts allow such person to decide. In *Ashok Kumar Yadav vs. Haryana*,<sup>5</sup> 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.

##### ➤ *Doctrine of Absolute Necessity-*

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<sup>3</sup> <http://www.legalservicesindia.com/article/article/exceptions-to-the-principles-of-natural-justice-1529-1.html> (last visited Dec. 6th, 2014)

<sup>4</sup> S.P SATHE, *ADMINISTRATIVE LAW 200* (Lexis Nexis, 2004)

<sup>5</sup> AIR 1987 SC 454.

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*,<sup>6</sup> 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. 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 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.<sup>7</sup>

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

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<sup>6</sup> [1966] 4 SCC 104

<sup>7</sup> Sathe, *Supra* note 3 at 202

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.<sup>8</sup> But such situations where nothing unfair can be inferred by not affording a fair hearing must be few and exceptional in every civilized society. 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.<sup>9</sup> For *example*, a party would forfeit its right to hearing if undue advantage obtained is protecting the proceedings somehow and nullifying the objectives.<sup>10</sup>

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*,<sup>11</sup> 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.<sup>12</sup>

Some of the exceptions are as follows:

➤ **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

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<sup>8</sup> *Maneka Gandhi vs. Union of India* [1978] 1 SCC 248 597 (SC)

<sup>9</sup> *Karnataka Public Service Commission vs. B.M. Vijay Shankar* [1992] 2 SCC 206

<sup>10</sup> *Ram Krishna Verma vs. State of U.P* [1992] 2 SCC 620

<sup>11</sup> [1987] 4 SCC 328 2257 (SC)

<sup>12</sup> M.P JAIN & S.N JAIN , *PRINCIPLES OF ADMINISTRATIVE LAW* 252 (5<sup>th</sup> ed. 2007)

person. A statute can exclude natural justice either expressly or by necessary implication. But such a statute may be challenged under Art.14 so it should be justifiable.<sup>13</sup>

In *Charan Lal Sahu vs UOI*<sup>14</sup> (Bhopal Gas Disaster case) is a classical example of 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, had been challenged on the ground that because the Central Government owned 22 percent share in the Union Carbide Company and as such it was a joint tortfeasor and thus there was a conflict between the interests of the government and the victims. The court negative the contention and observed that even if the argument was correct 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 no attracted.<sup>15</sup>

➤ **Legislative Function-**

A ground on which hearing may be excluded is that the action of the Administrative in question is legislative and not administrative in character. Usually, an order of general nature, and not applying to one or a few specified persons, is regarded as legislative in nature.<sup>16</sup> 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. On the same logic, principles of natural justice can also be excluded by a provision of the Constitution also. The Indian Constitution excludes the principles of natural justice in Art. 22, 31(A), (B), (C) and 311(2) as a matter of policy. Nevertheless, if the legislative exclusion is arbitrary, unreasonable and unfair, courts may quash such a provision under Art.14 and 21 of the Constitution.<sup>17</sup>

In *Charan Lal Sahu vs. UOI*, the constitutional validity of the Bhopal Gas Disaster (Processing of Claims) Act, 1985 was involved. This legislation provide for details of how to determine claims and pay them. The affected parties approached the SC and contended that

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<sup>13</sup> *Id.* at 260

<sup>14</sup> [1990] 1 SCC 613 1480 (SC)

<sup>15</sup> I.P MASSEY, *ADMINISTRATIVE LAW* 261 (Eastern Book Company, 8<sup>th</sup> ed. 2012)

<sup>16</sup> *Supra* note 11 at 252

<sup>17</sup> I.P MASSEY, *ADMINISTRATIVE LAW* 256 ( Eastern Book Company ,8<sup>th</sup> ed. 2012)



no hearing was provided to them and it was violative of Audi Alteram Partem. The SC held, “For legislation by Parliament no principle of natural justice is attracted, provided such legislation is within the competence of the Legislature.”<sup>18</sup>

➤ **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.<sup>19</sup>

In *Mohinder Singh Gill vs. CEC*,<sup>20</sup> whether notice and right to be heard must be given or not was laid down before the SC. In Firozhpur Constituency Parliamentary Election counting was being going on where in some segments counting were going on and in some it was over. One candidate was having a very good lead but before the declaration of the results, in a mob violence in some segments ballot papers and boxes were destroyed. The ECI acting under Article 324, 329 without giving any notice or hearing to the candidates cancelled the Election and ordered for fresh Election. The SC rejected the claim of notice and audi alteram partem and held that in case of emergency, Audi Alteram Partem can be excluded.

➤ **Confidentiality-**

Exclusion of natural justice can also take place when confidentiality is demanded and is necessary to be maintained.

In *Malak Singh v. State of P&H*,<sup>21</sup> the SC held that the maintenance of Surveillance Register by the Police is a confidential document and neither the person whose name is entered in the Register nor any other member of the public can have access to it. Furthermore, the Court observed that observance of the principles of Natural justice in such a situation may defeat

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<sup>18</sup> *Id* at 257

<sup>19</sup> I.P MASSEY, *ADMINISTRATIVE LAW* 251 (Eastern Book Company, 8<sup>th</sup> ed. 2012)

<sup>20</sup> [1978] 1 SCC 405 851 (SC)

<sup>21</sup> [1981] 1 SCC 420 760 (SC)

the very purpose of surveillance and there is every possibility of the ends of justice being defeated instead of being served.

➤ **Impracticability-**

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*,<sup>22</sup> the Board conducted final tenth standard examination. At a particular centre, where there were more than thousand students, it was alleged to have mass copying. Even in evaluation, it was prima-facie found that there was mass copying as most of the answers were same and they received same marks. For this reason, the Board cancelled the exam without giving any opportunity of hearing and ordered for fresh examination, whereby all students were directed to appear for the same. Many of the students approached the Patna HC challenging it on the ground that before cancellation of exam, no opportunity of hearing was been given to the students. The HC struck down the decision of the Board in violation of *Audi Alteram Partem*. The Board unsatisfied with the decision of the Court approached the SC. The SC rejected the HC judgment and held that in this situation, conducting hearing is impossible as thousand notices have to be issued and everyone must be given an opportunity of hearing, cross-examination, rebuttal, presenting evidences etc. which is not practicable at all. So, the SC held that on the ground of impracticability, hearing can be excluded.

➤ **Academic Evaluation-**

Where nature of authority is purely administrative no right of hearing can be claimed. In *Jawaharlal Nehru University v. B.S. Narwal*<sup>23</sup>, B.S Narwal, a student of JNU was removed from the rolls for unsatisfactory academic performances without being given any pre-decisional hearing. The Supreme Court 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 asses the work of a student over a period of time and declare his work unsatisfactory, the rules of natural justice may be excluded.

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<sup>22</sup> AIR 1970 SC 1269

<sup>23</sup> [1980] 4 SCC 480 1666 (SC)



➤ ***Inter-Disciplinary Action-***

In Inter- Disciplinary action like suspension etc. there is no requirement to follow the principle of natural justice.

In *S.A Khan vs. State of Haryana*,<sup>24</sup> 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 PNJ as he was not given an opportunity to be heard. The SC held that the suspension being interim-disciplinary action, there is no requirement to afford hearing. It can be ordered without affording an opportunity of hearing.

➤ ***Useless Formality Theory-***

‘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 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.<sup>25</sup>

In *Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution v. Education Appellate Tribunal*,<sup>26</sup> a lecturer, who had been granted leave for doing M. Phil, in violation of leave condition, had joined a Ph. D course. She was given notice and after considering her reply, wherein she had admitted joining Ph. D course, her service was terminated. She challenged the termination order before Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 subsequently it is appealed to HC where termination was held invalid, but SC held that opportunity to show cause was not necessary where facts are undisputed and the affected person could not fourth any valid defence.

➤ ***Government Policy Decision-***

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<sup>24</sup> AIR 1993 SC 1152

<sup>25</sup> S.L Kapoor vs. Jagmohan [1980] 4 SCC 379,395 136 (SC)

<sup>26</sup> [1997] 7 SCC 332.

In *Balco Employees' Union Vs UOI*,<sup>27</sup> the Supreme Court was of the view that in taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. In this case, the employees had challenged the government's policy decision regarding disinvestment in public sector undertaking. The court held that unless the policy decision to disinvest is capricious, arbitrary, illegal or uninformed and is not contrary to law, the decision to disinvest cannot be challenged on the ground of violation of the principles of natural justice.

### **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. 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.

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.<sup>28</sup>

### **Exceptions to Bias:**

➤ *Necessity-*

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<sup>27</sup> [2002] 2 SCC 333

<sup>28</sup> NEIL HAWKE, *AN INTRODUCTION TO ADMINISTRATIVE LAW 142* (Universal Book Traders, 2<sup>nd</sup> ed. 1993)

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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*,<sup>29</sup> it was held that the Lord Chancellor's signature on an enrolment 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*,<sup>30</sup> 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.<sup>31</sup>

➤ **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.<sup>32</sup> The courts have construed such statutory provisions strictly.<sup>33</sup> 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.<sup>34</sup>

➤ **Waiver-**

It is permissible for an individual to waive the interests of an adjudicator,<sup>35</sup> and the Courts were quick to infer such a waiver.<sup>36</sup> Later Courts have been more reluctant to so infer, particularly where the applicant did not know of the right to object at that stage. In order for a waiver to be valid the party waiving the right had to be aware of all the material facts and the consequences of the choice open to him and should be given a fair opportunity to reach an

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<sup>29</sup> [1852] 3 H.L.C. 759

<sup>30</sup> [1870] L.R 6 Q.B 1

<sup>31</sup> PAUL CRAIG, *ADMINISTRATIVE LAW* 425 (Sweet and Maxwell, 6<sup>th</sup> ed. 2008)

<sup>32</sup> E.g Justices Jurisdiction Act, 1742

<sup>33</sup> *Frome United Breweries Co. Ltd vs. Bath Justices* [1962] A.C 586

<sup>34</sup> Local Government Act 1972 ss. 82, 94, 97. Similar provisions in licensing legislation have been strictly construed, *Barnsley Licensing Justices*, n.11.

<sup>35</sup> *Nailsworth Licensing Justices*, n.24

<sup>36</sup> *R vs. Williams Ex p. Phillips* [1914] 1 K.B 608

unpressured decision.<sup>37</sup> This restriction on waiver is to be welcomed. Such a surrender of rights should not be inferred lightly. It is in fact open to question whether it should be allowed at all, at least in certain types of cases. The premises behind the ability to waive is that it is only the individual who is concerned, and thus if that person “chooses” to ignore the fact that the adjudicator is an interested party then so much the worse for the applicant. However, there may well be a wider interest at issue, in that it may be contrary to the public interest for decisions to be made where there may be a likelihood of favour to another influencing the determination.<sup>38</sup>

### **Exceptions to the Audi Alteram Partem:**

#### ➤ *Statutory Provisions-*

Some statutory procedures exclude or limit the rules of natural justice expressly or impliedly. The Town and Country Planning Act, 1971 contains many examples. In convening an Examination in Public of a structure plan, the Secretary of State for the Environment is empowered to nominate those objectors who are to be permitted a hearing at the Examination and to define the issues to be examined by the participants.<sup>39</sup> In determining an application for planning permission the Act indicates a limited category of applications which must be publicised.<sup>40</sup>

Any person making objections in response to such a publicised application is legally entitled to have his written objections taken into account by the local planning authority.<sup>41</sup> This clearly excludes any right to an oral hearing before the authority prior to a decision being taken and also excludes any legal right to make representations for any person in respect of applications which fall outside a category requiring publicity. Finally, the statutory rules of procedure governing public local inquiries into planning appeals expressly exclude any questions being raised as to the merits of Government policy. This exclusion of discussion about the merits of Government policy was in contention at an inquiry into highway proposals in *Bushell vs. Secretary of State for the Environment (1980)*. The House of Lords decided that the inspector’s refusal to permit cross examination on traffic flow forecasts was

<sup>37</sup> R vs. Essex Justices Ex p. Perkins[1917] 2 K.B 475

<sup>38</sup> Craig, *supra* note 30 at 426

<sup>39</sup> Town and Country Planning Amendment Act, 1972.

<sup>40</sup> Act of 1971, Sections 26 to 28

<sup>41</sup> Act of 1971, Section 29.

justifiable since these forecasts are facets of Government policy relating to criteria for motorway construction. In so far as inquiries are involved in the consideration of objections or recommendations and reporting to the relevant minister, any refusal of cross-examination of witnesses does not amount to a breach of natural justice.<sup>42</sup>

➤ ***Absence Of Rights-***

An absence of rights has usually given rise to a presumption that the rules of natural justice do not apply. In *McInnes vs Onslaw Fane*<sup>43</sup>, Mc Innes applied to the British Boxing Board of Control for a boxing manager's license, demanding an oral hearing of his case together with notice of any case against him so that he could disabuse the Board of any allegations which might appear in such a case but his application was refused without any reasons being given. Thereupon, Mc Innes applied to the Court for a declaration that the Board had acted unfairly and in breach of the rules of natural justice. The court refused to grant the declaration on the basis that the Board had discharged its necessarily limited obligations in relation to natural justice by reaching an honest conclusion and without being bias. The court also suggested that all the facets of natural justice would apply where a license or other right was being forfeited or renewed whereas a first time applicant for a license would not have any legitimate expectation of a license being granted so that in law he would have no right to notice of any case against him and no opportunity to be heard.<sup>44</sup> Where the licensing body is not a 'domestic' organisation like the British Boxing Board of Control but a statutory body, the relevant statutory provisions governing its licensing responsibilities will tend to indicate that the rules of natural justice are either excluded or limited. The limited measure of fairness may involve the need to recognize either the rule against bias, as in *Mc. Innes*, or the rule that no person shall be condemned without a reasonable opportunity for his case to be heard, as in *R vs. Liverpool Corporation ex p. Liverpool Taxi Fleet Operators Association*(1972).<sup>45</sup>

➤ ***Preliminary Processes-***

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<sup>42</sup> This conclusion is based on the observation that such inquiries are concerned with non-justiciable issues:

*R vs. London Regional Passengers Committee, ex p. London Borough of Brent* (1985).

<sup>43</sup> 1978

<sup>44</sup> NEIL HAWKE, *AN INTRODUCTION TO ADMINISTRATIVE LAW* 143 (Universal Book Traders, 2<sup>nd</sup> ed. 1993)

<sup>45</sup> *Id* at 144

Where there is something in the nature of a two-stage process; the first stage involving a preliminary investigation may not affect the individual's rights. This is frequently the case where a suspension takes place pending the outcome of a disciplinary investigation. In *Lewis vs. Heffer*<sup>46</sup>, the National Executive of the Labour Party suspended the local committees and officers of a constituency Labour Party, pending the result of an inquiry by the Executive. A local officer sought an injunction to prevent the suspension on the ground that the Executive had acted unlawfully and in breach of natural justice. Similar grounds were also used subsequently by the plaintiff and another officer when they found that the Executive had it in mind to suspend them from the Labour Party membership pending the result of the same inquiry. In refusing injunctions in both cases, the Court considered that suspension as a temporary measure may be a matter of 'good' administration pending investigation so that natural justice ought not to apply.<sup>47</sup> Nevertheless, the House of Lords has taken the view that even in the course of preliminary proceedings, any provisional finding in the establishment of a prima facie case could significantly prejudice a person's rights and interest to the extent that a hearing ought to be given to that person.<sup>48</sup>

➤ ***Absence Of Contractual Or Similar Relationships-***

The absence of any contractual or similar relationship with a non-statutory domestic organisation such as trade union or professional association may indicate that natural justice does not apply to its transactions with individuals.<sup>49</sup> Thus, absence of a contractual or similar relationship means that the individual has not associated himself with the organisation and any express or implied obligation on its part to comply with natural justice.<sup>50</sup> In *Nagle vs. Feilden*,<sup>51</sup> the stewards of the Jockey Club failed to persuade the Court to strike out Nagle's claim for a declaration that the Club's policy of refusing trainer's licenses to women trainers was contrary to public policy on the ground that the plaintiff's right to work was in issue.

➤ ***Professional Advice-***

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<sup>46</sup> 1978

<sup>47</sup> NEIL HAWKE, *AN INTRODUCTION TO ADMINISTRATIVE LAW* 144(Universal Book Traders, 2<sup>nd</sup> ed.1993)

<sup>48</sup> *Wiseman vs. Borneman*, 1971

<sup>49</sup> *Byrne vs. Kinematograph Renters Society*(1958)

<sup>50</sup> *Hawke, supra* note 46 at 145

<sup>51</sup> 1966



The rules do not apply to professional advice although there is an exception where a person's rights may be affected.<sup>52</sup> In *R vs. Kent Police Authority*,<sup>53</sup> a police doctor and a consultant concluded that Godden, a police officer, was mentally ill but the Court required that their reports be produced to Godden's own consultant when the police authority sought to employ the same police doctor in order to certify Godden as permanently disabled for the purpose of the police pensions regulations. If the authority had chosen a different police doctor for this latter purpose then no doubt natural justice would not have applied in this doctor patient relationship on the ground that Godden's rights might not have been prejudiced.

➤ **Disciplinary Proceedings-**

In some cases, disciplinary proceedings can occur without reference to natural justice, usually where no rights of the individual are liable to be prejudiced. Whether the rights of an individual are in issue seems sometimes to depend on the severity of any punishment which may result from the disciplinary proceedings: a rather uncertain basis for the law.<sup>54</sup> In *Ex p. Frya*<sup>55</sup> a fireman was punished for disobeying an order. He alleged that the hearing was unfair but at first instance the Court decided that the law could not interfere with the exercise of a disciplinary power in a service such as the fire service. Such cases would suggest that natural justice should be excluded from disciplinary proceedings in institutions and organisations where discipline is perhaps the sole responsibility of the person in charge such as a headmaster.

**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

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<sup>52</sup> NEIL HAWKE, *AN INTRODUCTION TO ADMINISTRATIVE LAW* 145(Universal Book Traders, 2<sup>nd</sup> ed.1993)

<sup>53</sup> *Ex p. Godden*(1971)

<sup>54</sup> Hawke, *supra* note 51 at 146

<sup>55</sup> 1954

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 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.

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.