
THE QUIET EROSION OF NATURAL JUSTICE

Dr. Ranjeet Kumar, Visiting Faculty at Chanakya National Law Institute

A. Introduction

Law does not begin only in the statutes; it begins in the human instinct for fairness. It is evident through the historical texts that long before the existence of the codified rules, statutes, and constitutional guarantees, the idea that no person should be condemned unheard was embedded in moral consciousness. This basic moral intuition, which we now call the principles of natural justice, finds its resonance not only in modern administrative law but deep within India's civilizational past.

The concept of natural justice, though it did not propound the words as they evolved through the Latin maxims, yet its essence is unmistakable in the legal history of India as well. Texts like the Dharmashastras and the Arthashastra of Kautilya reveal a governance structure wherein the King had to deliver justice with fairness, reasoned decision-making, and impartiality, etc¹. Kautilya advised rulers to decide disputes only after careful hearing of both parties, warning that a king who acts arbitrarily invites disorder and loss of legitimacy². Similarly, in the Mahabharata, justice is portrayed not as rigid authority but as dharma, a balance of righteousness, duty, and fairness³. The seeds of *audi alteram partem*, hearing the other side,

¹ Kautilya, *King, Governance, and Law in Ancient India: Kautilya's Arthashastra: A New Annotated Translation*, (Patrick Olivelle tr, Oxford University Press 2013).

² Kautilya, *Kautilya Arthashastra*, translated by R. Shamasastry (Mysore Printing and Publishing House 1956) Book III, ch 1, 'Determination of Forms of Agreement and Legal Disputes'.

³ *Duty, goodness, justice, law and custom all have something to do with it, but they all fall short. Dharma refers to 'balance' – both moral balance and cosmic balance. It is the order and balance within each human being which is also reflected in the order of the cosmos... It is the moral law that sustains society, the individual and the world.* Gurcharan Das, *The Difficulty of Being Good*, (Penguin Books, New Delhi, 2012) xiii "The last chapter includes a detailed description and analysis of Krishna's endeavour to seek peace as an emissary in the court of Dhritarashtra. Even as this attempt fails, Krishna achieves three important objectives that successfully convince the wider fraternity that their endeavour is in line with the principles of dharma. He convinces the gathering, which includes several generals on the opposite side of the divide, of the righteous cause of the Pandavas. Simultaneously, he also proves beyond doubt that the Pandavas are more than willing to be flexible in their demands, which indicates their reasonable approach that is aimed at reconciliation. Finally, he makes it clear that the Pandavas could resort to force if justice is not delivered. In a sense, it suggests using a carrot-and-stick policy through the layered approach of diplomatic acumen. Krishna's approach at Dhritarashtra's court establishes certain important principles of natural justice, thereby elevating the war to a dharma yudhha." Vivek Chadha, *Mahabharata's Strategic Insights: Navigating the Dharmic Compass* (Pentagon Press LLP 2024) 91 <https://idsa.in/wp-content/uploads/2025/07/book-Col-Vivek-Chadha-Mahabharatas-Dharmic-Compass.pdf>

were thus culturally ingrained long before their formal recognition.

Centuries later, this moral intuition evolved into a structured legal doctrine within common law traditions. Jurists across generations have emphasised that natural justice is not merely procedural; it is foundational⁴. This articulation captures the dual purpose of natural justice: ensuring fairness and preserving public confidence in legal processes. Likewise, William Blackstone in 1769 underscored the primacy of fairness, observing that ten guilty persons would rather escape than for one innocent suffer a sentence that reflects the underlying caution against arbitrary decision-making.

In India, the constitutional era elevated these principles into enforceable guarantees. Through judicial interpretation, natural justice became inseparable from the “procedure established by law” under Article 21⁵. Fairness was no longer aspirational; it became a constitutional mandate. However, this trajectory has not been linear or absolute⁶. The law has simultaneously recognised that in certain circumstances, such as administrative urgency, national security, or impracticability, strict adherence to natural justice may be excluded⁷. It is within this tension that the modern discourse unfolds. Yet, this is not an abandonment of fairness but a recalibration. The emergence of the doctrine of prejudice further refined this balance, shifting the focus from mere procedural violations to actual harm⁸.

Thus, the journey of natural justice from ancient Indian notions of dharma to contemporary constitutional adjudication reveals a dynamic interplay between idealism and pragmatism⁹.

⁴ Lord Hewart famous for his 1924 ruling in *R v Sussex Justices*, “Justice should not only be done, but should manifestly and undoubtedly be seen to be done.”; Justice P.N Bhagwati transformed natural justice into a living concept in *Maneka Gandhi v. Union of India*, he argued that the procedure established by law must be just, fair, and reasonable, not just any procedure enacted by a legislature.

⁵ *ADM Jabalpur v. Shivkant Shukla* (1976); *A.K. Gopalan v. State of Madras* (1950) these depict the stricter and literal interpretation however in *Maneka Gandhi v. Union of India* (1978) Gopalan was overruled where the courts held that “procedure established by law” must be a fair and reasonable; and thereafter the cases such *Sunil Batra v. Delhi Administration* (1979); etc, followed the broader interpretation.

⁶ *Institute of Chartered Accountants of India v. L. K. Ratna*, AIR 1987 SC 71, *Charan Lal Sahu v. Union of India*, (1990) 1 SCC 613 : (AIR 1990 SC 1480), (Bhopal Gas Leak Disaster Case) and *C. B. Gautam v. Union of India*, (1993) 1 SCC 78, “the doctrine that the principles of natural justice must be applied in the unoccupied interstices of the statute unless there is a clear mandate to the contrary, is reiterated”.

⁷ Abhinav Viswanath, ‘Exceptions to the Principles of Natural Justice in India: Critical Analysis’ (2023) 6(2) *International Journal of Law Management & Humanities* 833.

⁸ See *State Bank of Patiala v. S.K. Sharma* 1996 AIR 1669; *Canara Bank v. V.K. Awasthy* 2005 (6) SCC 321; *Chairman Lic Of India & Ors vs A Masilamani* AIRONLINE 2012 SC 426

⁹ *Suresh Koshy George v. The University of Kerala and Ors.* 1969 AIR 198, “the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance

This paper seeks to explore that uneasy equilibrium, where justice is not always about hearing, but increasingly about harm and whether silence, in law, can ever truly be justified.

This study is guided by a set of interrelated research questions that seek to interrogate the evolving position of natural justice within Indian administrative law. First, to what extent can the principles of natural justice be legitimately excluded under constitutional and statutory frameworks, particularly in light of decisions such as *Union of India v. Tulsiram Patel* and service jurisprudence on compulsory retirement? Second, how has the judiciary reconciled such exclusion with the constitutional mandate of fairness under Articles 14 and 21? Finally, what is the precise scope and application of the doctrine of prejudice does it merely filter out trivial procedural violations, or does it risk diluting the substantive guarantee of a fair hearing?

Despite extensive judicial and academic engagement with natural justice, a significant research gap persists in the Indian context. Existing literature tends to examine either the principles of natural justice in isolation or the doctrine of prejudice as a procedural safeguard, without sufficiently exploring their intersection. There is a limited comprehensive analysis of how the exclusion of natural justice is operationalised across different legal domains and how the doctrine of prejudice functions as a judicial tool to either justify or restrain such exclusion. This paper seeks to bridge that gap by offering an integrated analysis that situates exclusion, prejudice, and judicial review within a single conceptual and practical framework.

B. Concept of Exclusion of Natural Justice

The doctrine of natural justice is one of the strongest safeguards in administrative law¹⁰ as it stands for procedural fairness before the State takes an adverse decision. The Court in *A.K. Kraipak v. Union of India*¹¹ significantly expanded the scope of natural justice by relying upon its earlier decision in *State of Orissa v. Dr. (Miss) Binapani Dei*. It emphasised that even where an order is administrative in character, if it entails civil consequences, it must conform to the

of that was necessary for a just decision on the facts of that case."

¹⁰ Angus Morrison-Saunders and Gerard Early, "What Is Necessary to Ensure Natural Justice in Environmental Impact Assessment Decision-Making?" (2008) 26 Impact Assessment and Project Appraisal 29 <https://www.researchgate.net/publication/43980977_What_is_necessary_to_ensure_natural_justice_in_environmental_impact_assessment_decision-making> ; Rimali Batra and Col Rajeev Anand, "Principles of Natural Justice: Definition, Application to Administrative Proceedings and Contours of Application" (*SCC Times*, April 22, 2025) <<https://www.scconline.com/blog/post/2025/04/22/principles-of-natural-justice-application-scope-administrative-proceedings/>> .

¹¹ (1969) 2 SCC 262

principles of fairness¹². In *Binapani Dei*, Justice Shah observed that;

“We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State.”

The Court further stated in *A.K. Kraipak v. Union of India*¹³ that:

“The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it.- The concept of natural justice has undergone a great deal of change in recent years.”

The Court herein stated, making it clear that fairness is not confined only to judicial or quasi-judicial proceedings¹⁴ but extends equally to administrative action where rights and interests are affected.

In *Kraipak*, the Supreme Court reaffirmed this position and declared that *“the rules of natural justice operate in areas not covered by any law validly made, that is, they do not supplant the law of the land but supplement it.”* This observation is foundational because it establishes that natural justice is not a rigid statutory code but a supplementary doctrine ensuring justice where the law is silent. The Court categorically held that these rules *“are not embodied rules,”* and therefore their application depends upon the facts and circumstances of each case¹⁵, the framework of the law, and the nature of the authority exercising power.

The Court questioned this limitation and observed that *“if the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made*

¹² Ibid.

¹³ Supra at 10.

¹⁴ “A judicial decision is made according to law. An administrative decision is made according to administrative policy. A quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial. A quasi-judicial decision is, therefore, an administrative decision which is subject to some measure of judicial procedure, such as the principles of natural justice.” (Administrative Law by H.W.R. Wade 6th Ed. p. 46-47).

¹⁵ See also, *Canara Bank Vs. V.K. Awasthy*, 2005 (6) SCC 321

inapplicable to administrative enquiries.” It further acknowledged that “*often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries,*” and that an unjust administrative decision may, in fact, have “*more far-reaching effect than a decision in a quasi-judicial enquiry.*”

The Court also recognized that the doctrine itself has evolved beyond the traditional rules of *nemo judex in causa sua* and *audi alteram partem*. It observed that another principle has now become part of natural justice namely, that enquiries “*must be held in good faith, without bias and not arbitrarily or unreasonably.*” This was directly applied in *Kraipak*, where the Acting Chief Conservator participated in the selection process while his own promotion dispute was pending. The Court held that there existed “*a conflict between his interest and duty and he was a judge in his own cause,*” thereby vitiating the entire selection process on the ground of bias and unfairness.

Yet the doctrine is not absolute, as the law treats natural justice as the default rule, but not as a rigid straightjacket. The Supreme Court has recognised that where a statute is silent, the presumption is in favour of compliance with natural justice, unless the rule is excluded by express words or by necessary intendment¹⁶. In that sense, natural justice is not an inflexible formula applicable in every case in the same manner; its content depends on the facts, the statutory framework, the nature of the power, and the kind of decision being taken.

That flexibility is also what explains exclusion. Where insisting on a prior hearing would frustrate the very object of the statute, delay urgent action, or undermine public interest, the law may permit departure from the ordinary rule. *Tulsiram Patel* is one of the clearest examples of express exclusion¹⁷. So, the court does not ask in the abstract whether natural justice exists;

¹⁶ In *Swadeshi Cotton Mills v. Union of India* 1981 AIR 818, in his dissenting judgment, Justice O. Chinnappa Reddy, had made the following pertinent observations :-

“106. The principles of natural justice have taken deep root in the judicial conscience of our people, nurtured by Dr. Bina pani⁵⁶, A.K. Kraipak⁵⁷, Mohinder Singh Gill⁵⁸, Maneka Gandhi⁵⁹. They are now considered so fundamental as to be “implicit in the concept of ordered liberty and, therefore, implicit in every decision- making function, call it judicial, quasi-judicial or administrative. Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced.....”

Also in *Mangilal v. State of M.P.* 2004 (2) SCC 447, SC declared that “even if a Statute is silent and there are no positive words in the Act or the Rules made thereunder, principles of natural justice must be observed.”

¹⁷ (This shall be discussed later in detail) The Constitution itself says that Article 311(2) “*shall not apply*” in the

it asks whether, in the particular context, a hearing is necessary to secure a just decision. That is why exclusion must always be narrowly read and carefully justified, never casually assumed.

I. Express exclusion

A fundamental question in administrative law is whether, even where a quasi-judicial duty to hear affected parties ordinarily arises under the common law through the principles of natural justice, the obligation to observe such fairness can nevertheless be excluded by legislation. The answer, both in India, is that the application of natural justice may indeed be excluded either expressly or by necessary implication, provided such exclusion does not violate the constitutional guarantees of fairness embodied in Articles 14 and 21 of the Constitution of India¹⁸. The rule, therefore, is not that natural justice is absolute, but that its exclusion must be justified with clarity, necessity, and constitutional legitimacy.

De Smith, in his celebrated work *Judicial Review*, captures this principle with precision when he states that Parliament may dispense with the requirements of fair procedure “provided it does so clearly and expressly,” as illustrated in *Wiseman v. Borneman*¹⁹²⁰. This reflects the

specified situations, the hearing requirement cannot be reintroduced through a side door. The deeper principle, then, is that fairness remains central, but it yields where the Constitution, the statute, or the necessities of the situation clearly demand a different procedure.

¹⁸ *RC Cooper v. Union of India* (1970) 1 SCC 248. See also, *Canara Bank vs. V. K. Awasthy* 2005 (6) SCC 321 “8. Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values”.

¹⁹ 1971 AC 297

²⁰ “There are certain well recognised exceptions-to the audi alteram partem rule established by judicial decisions and they are summarised by S.A. de Smith in *Judicial Review of Administrative Action*, 2nd ed. pages 168 to 179. If we analyse these exceptions a little closely, it will be apparent that they do not in any way militate against the principle, which requires fair play in administrative action. The word ‘exception’ is really a misnomer because in these exclusionary cases, the audi alteram partem rule 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. The audi alteram partem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law ‘lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation’. Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the audi alteram partem rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the Court should not be too ready to eschew it in its application to a given case. True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the audi alteram partem should be wholly excluded. The Court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that “natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances”. The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must

strength of legislative supremacy and parliamentary sovereignty, whereby the legislature may deliberately curtail procedural safeguards such as prior notice, oral hearing, or representation in order to secure administrative efficiency, urgency, confidentiality, or public interest. However, such exclusion is never presumed lightly; it must either be clearly expressed or necessarily implied from the statutory scheme.

The clear recognition of this principle in Indian judicial history emerged in *Union of India v. J.N. Sinha*²¹, where the Supreme Court upheld the compulsory retirement of a government servant in public interest without granting him a prior hearing. The Court reasoned that compulsory retirement did not amount to punishment and carried no civil consequences of stigma; therefore, the statute expressly excluded the requirement of *audi alteram partem*.

The doctrine of implied exclusion, where the legislative intent to exclude natural justice is inferred from the structure and purpose of the statute has also been recognised. In *Dr Umrao Singh Choudhary v. State of M.P.*²² and *Union of India v. M.E. Reddy*²³, the Supreme Court

have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker, L.J., emphasised in *Russel v. Duke of Norfolk* that “whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case”. What opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation. It may be a sophisticated full-fledged hearing or it may be a hearing, which is very brief and minimal: it may be a hearing prior to the decision or it may even be a post-decisional remedial hearing. The *audi alteram partem* rule is sufficiently flexible to permit modifications and variations to suit the exigencies of myriad kinds of situations, which may arise.”

²¹ In *Union of India v. Col. J.N. Sinha* 1971 AIR 40, the Supreme Court upheld the validity of compulsory retirement under Fundamental Rule 56(j) read with Article 310 of the Constitution of India. Col. J.N. Sinha challenged his compulsory retirement on the ground that he was not given an opportunity to be heard, alleging violation of natural justice. The Court held that compulsory retirement in public interest is not a punishment, carries no stigma, and does not deprive the employee of earned pensionary benefits. Therefore, it does not attract the safeguards of Article 311 or the full application of *audi alteram partem*. The Government has an absolute right to retire an employee if it is satisfied that such retirement is necessary for efficiency, integrity, and public interest. Judicial review is limited only to cases of *mala fide*, arbitrariness, or lack of evidence, not the merits of the administrative decision.

²² 1994 SCC (4) 328, “In view of this statutory animation the contention that the petitioner is entitled to the notice and an opportunity before taking action under Section 52(1) would be self-defeating.” In this case, the Supreme Court upheld the removal of the Vice-Chancellor of Devi Ahilya Vishwavidyalaya under Section 52(1) of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973, holding that the principles of natural justice were excluded by necessary implication. The petitioner argued that his removal before the expiry of his tenure without notice or hearing was arbitrary and violative of natural justice. However, the Court distinguished between Section 14, which provides for removal by way of punishment after enquiry and hearing, and Section 52, which permits the State Government to act where university administration cannot be carried on without detriment to its interests. Once the Government is satisfied that such a situation exists, it may issue a notification, and under Section 52(4)(ii), the Vice-Chancellor automatically ceases to hold office. The Court held that requiring prior notice under Section 52 would defeat the purpose of urgent administrative intervention. Thus, natural justice was excluded by necessary implication. The action remained subject to judicial review for *mala fides* or arbitrariness, but no such defect was found.

²³ 1980 AIR 563. “It may be noted here that the provision gives an absolute right to the Government and not merely a discretion, and, therefore, impliedly it excludes the rules of natural justice.”

held that even in the absence of explicit words, natural justice may be excluded by necessary implication²⁴. In *M.E. Reddy*, the Court, while analysing the law, stated that “*That the Government has an absolute right to retire the Government servant concerned because the word “require” clearly confers an unqualified right on the Central Government;*”... “*It may be noted here that the provision gives an absolute right to the Government and not merely a discretion, and, therefore, impliedly it excludes the rules of natural justice.*”

The Court interpreted the word “require” as conferring an “absolute” and “unqualified” discretion, thereby dispensing with the need for a prior hearing. Yet this approach has been strongly criticised, for discretion and natural justice are not inherently inconsistent. Merely vesting power in a high constitutional authority, even the President, does not automatically exclude fairness requirements. Courts must therefore be cautious not to infer exclusion merely because the statute is silent or because power is broadly worded.

The Supreme Court in *Umrao Singh* beautifully articulated the doctrinal foundation of this principle by observing that: “*The principle of natural justice does not supplant the law, but supplements the law. Its application may be excluded, either expressly or by necessary implication Section 52 in juxtaposition to Section 14, when considered, the obvious inference would be that the principle of natural justice stands excluded.*” This statement reflects the true position of law: natural justice fills the gaps of statutory silence, but where the legislature consciously chooses exclusion, the Court will ordinarily respect that intent unless constitutional fairness is compromised.

At the same time, the judiciary has consistently warned against allowing this doctrine to become an instrument of abuse²⁵. If statutory exclusion were interpreted too broadly, every administrative authority could conveniently avoid procedural fairness under the mere pretext of legislative intent. Such an unchecked expansion would transform exclusion into what

²⁴ “19. Where a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of exercise of that power. A statute conferring power can, by express language, exclude the application of principles of natural justice. It is neither unknown nor unacceptable. If the legislation and the necessity of a situation can exclude the principles of natural justice, including the audi alteram partem rule, a fortiori so can a provision of the Constitution, for a Constitutional provision has a far greater and all-pervading sanctity than a statutory provision (Refer : *Maneka Gandhi v. Union of India* and Anr. (1978) 1 SCC 248).” The National Green Tribunal stated the above in *Sociedade Timblo Irmaos Ltda vs Moef* on 9 May, 2013, while analysing the law.

²⁵ *Chairman, Board Of Mining Examination vs Ramjee* 1977 AIR 965,

scholars describe as an “untamed horse,” capable of arbitrary misuse and endless litigation. This concern was reflected in *R. v. Devon and Cornwall Rent Tribunal*²⁶, *ex parte West*, where the Court held that subordinate legislation seeking to exclude hearing rights must be construed strictly. Delegated legislation cannot casually remove fundamental procedural protections unless the parent statute clearly authorises such exclusion.

Equally significant is the principle that where a statute confers discretion regarding hearing using terms such as “may” the denial of audi alteram partem may still amount to a violation of natural justice if fairness so demands. The use of discretionary language does not automatically validate exclusion; rather, it places a responsibility upon courts to apply judicial conscience and assess, case by case, whether fairness requires an opportunity of hearing. Excluding one form of hearing also does not necessarily exclude all procedural safeguards. For instance, even where a statute expressly excludes the duty to give reasons, courts have held that it may still require disclosure of the substance of the case. Similarly, the maxim *expressio unius est exclusio alterius*, the express mention of one thing implies the exclusion of another, has been approached with caution by courts, which have refused to apply it mechanically in matters involving fairness and rights.

The central inquiry, therefore, is always legislative intent: whether the omission is a conscious exclusion or merely a statutory gap capable of being filled by judicial interpretation. This question became particularly important in *Union of India v. Tulsiram Patel and Sahadeo Singh v. Union of India* concerning Article 311(2) of the Constitution. After the Forty-Second Constitutional Amendment, the second proviso to Article 311(2) permitted dismissal of civil servants without departmental inquiry in specific situations such as national security, impracticability of holding an inquiry, or where the President or Governor was satisfied that such inquiry should be dispensed with. In *Tulsiram Patel*, the Supreme Court held that natural justice was not created by Article 14; rather, Article 14 acts as its constitutional guardian. The Court further clarified that the phrase “not reasonably practicable” does not mean absolute impossibility; it refers to a practical assessment within the realm of administrative discretion.

However, the Court also imposed strict judicial control over such exclusion. In *Chief Security Officer v. Singasan Rabi Das*²⁷, the Supreme Court cautioned that authorities cannot

²⁶ [1981] EWCA Civ J1020-1

²⁷ AIR 1991 SC 1043

mechanically invoke impracticability to avoid inquiry. Courts retain the power to examine whether sufficient and relevant grounds actually existed for dispensing with the inquiry and may quash such action where the justification is arbitrary or unsupported by evidence.

Another important category of implied exclusion arises where the parent statute itself prescribes a complete procedural framework. This principle was discussed in the *Institute of Chartered Accountants of India v. L.K. Ratna*²⁸. In *Ratna*, the Supreme Court held that even where a statute provides a procedure, if that procedure falls short of the requirements of fairness, the principles of natural justice must be read into the “*unoccupied interstices*” of the statute unless there is a clear mandate to the contrary. Thus, statutory procedure does not automatically exclude natural justice; rather, it must be tested against the standards of fairness.

This approach reflects the reasoning associated with *Furnell v. Whangarei High School Board*²⁹, where it was recognised that an elaborate statutory procedure may indicate legislative intent to exclude additional procedural requirements founded on natural justice. In *Subhash Oil Industries v. State of U.P.*³⁰, the Court accepted that the Electricity Supply Act, 1948 and the Sixth Schedule constituted a comprehensive statutory mechanism governing tariff determination. Since the statute prescribed specific safeguards and omitted any requirement of individual consumer hearing, the Court declined to superimpose common-law principles of natural justice. However, Indian constitutional jurisprudence generally treats such exclusion cautiously and requires clear legislative intent before procedural fairness is considered displaced.

Ultimately, statutory exclusion of natural justice is a recognised legal reality, but it is an exception, not the rule. Whether express or implied, such exclusion must be interpreted narrowly, justified by legislative intent, and tested against constitutional standards of fairness. The courts have repeatedly affirmed that natural justice is not displaced by silence, convenience, or discretion alone. It survives unless clearly excluded and even then, judicial review remains the final safeguard against arbitrariness

II. Constitutional Exclusion

A more powerful exclusion arises where the Constitution itself permits departure from natural

²⁸ AIR 1987 SC 71.

²⁹ (1973) 1 All ER 400

³⁰ *Subhash Oil Industries v. State of U.P.* AIR 1975 ALLAHABAD 19

justice. The clearest example is the second proviso to Article 311(2), examined exhaustively in *Union of India v. Tulsiram Patel*³¹. Article 311 ordinarily protects civil servants from dismissal, removal, or reduction in rank without inquiry, but the proviso recognises exceptional situations where such inquiry may be dispensed with.

The Court held that where the Constitution itself contemplates exclusion, principles of natural justice cannot be reintroduced through Article 14. This is doctrinally significant because it clarifies that Article 14 cannot be used to nullify a deliberate constitutional design³². Constitutional exclusion is not judicially correctable merely because it appears harsh.

Yet, *Tulsiram Patel* does not endorse arbitrary dismissal. The Court simultaneously held that if the proviso is invoked mala fide, on irrelevant grounds, or for collateral purposes, judicial review remains available. This is the constitutional compromise: hearing may be excluded, but arbitrariness may not be protected.

Exclusion of hearing is not exclusion of legality. Administrative authorities often confuse the

³¹ 1985 AIR 1416

³² *ibid.* “What Article 14 forbids is discrimination by law, that is, treating persons similarly circumstanced differently or treating those not similarly circumstanced in the same way or, as has been pithily put, treating equals as unequals and unequals as equals. Article 14 prohibits hostile classification by law and is directed against discriminatory class legislation. The propositions deducible from decisions of this court on this point have been set out in the form of thirteen propositions in the judgment of Chandrachud, C.J., in *In Re The Special Courts Bill, 1978*. The first of these propositions which describes the nature of the two parts of Article 14 has been extracted earlier. We are not concerned in these Appeals and Writ Petitions with the other propositions set out in that judgment. In early days, this Court was concerned with discriminatory and hostile class legislation and it was to this aspect of Article 14 that its attention was directed. As fresh thinking began to take place on the scope and content of Article 14, new dimensions to this guarantee of equality before the law and of the equal protection of the laws emerged and were recognized by this Court. It was realized that to treat one person differently from another when there was no rational basis for doing so would be arbitrary act thus discriminatory. Arbitrariness can take many forms and shapes but whatever form or shape it takes, it is none the less discrimination. It also became apparent that to treat a persons or a class of persons unfairly would be an arbitrary act amounting to discrimination forbidden by Article 14. Similarly, this Court, recognized that to treat a person in violation of the principles of natural justice would amount to arbitrary and discriminatory treatment and would violate the guarantee given by Article 14.

The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that Article. Shortly put, the syllogism runs thus violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of state action, it is a violation of Article 14: therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body men, not coming within the definition of “State” in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially. (Emphasis supplied.) Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the *nemo iudex in causa sua* rule as also to the *audi alteram partem* rule.”

two. They assume that once inquiry is dispensed with, judicial scrutiny disappears. It does not. Courts may not insist on a prior hearing, but they will insist on rationality, relevance, and bona fide exercise of power.

III. Legislative Action:

One of the most firmly established exclusions is that natural justice does not ordinarily apply to legislative action. The reason is doctrinal: legislation creates general rules of conduct applicable prospectively and impersonally. It does not adjudicate individual rights in the immediate sense. This principle was affirmed in *M.R.F. Ltd. v. Inspector, Kerala Government*³³, where the Supreme Court held that natural justice is inapplicable to primary legislation enacted under Article 245³⁴. A citizen cannot challenge a law merely because no opportunity of hearing was provided before its enactment.

Similarly, in *Charan Lal Sahu v. Union of India*³⁵, concerning the Bhopal Gas Leak Disaster the Court declared that *“For legislation by the Parliament, no principle of natural justice is attracted provided such legislation is within the competence of the legislature, which indeed the present Act is within the competence of the Parliament.”* The issue is not fairness of process, but competence of law-making power.

The same reasoning governs delegated legislation. In *Union of India v. Cynamide India Ltd*³⁶., drug price fixation was treated as legislative rather than administrative, and therefore not subject to audi alteram partem. Likewise, in *H.S.S.K. Niyami v. Union of India*³⁷, zoning of sugar factories for price fixation was treated as a legislative policy decision where individual hearing was unnecessary.

This doctrinal position is coherent but not beyond criticism. Modern delegated legislation often

³³ (1998) 4 SCT 813

³⁴ *Ibid.* “Principles of natural justice cannot be imported in the matter of legislative action. If the Legislature, in exercise of its plenary power under Article 245 of the Constitution, proceeds to enact a law, those who would be affected by that law cannot legally raise a grievance that before the law was made, they should have been given an opportunity of hearing. This principle may, in limited cases, be invoked in the case of sub-ordinate legislation specially where the main legislation itself lays down that before the sub-ordinate legislation is made, a public notice shall be given and objections shall be invited as is usually the case, for example, in the making of municipal bye-laws. But the Principle of Natural Justice, including right of hearing, cannot be invoked in the making of law either by the Parliament or by the State Legislature.”

³⁵ AIR 1990S.C.1480

³⁶ 1987 AIR 1802

³⁷ 1990 AIR 2128.

affects specific industries, classes, and regions with enormous economic consequences. To describe such decisions as merely “general” may be formally correct but substantively misleading. When delegated legislation becomes distributive rather than merely regulatory, the absence of consultation begins to look less like constitutional logic and more like democratic deficit. The law may not compel hearings before subordinate legislation, but constitutional morality increasingly demands consultation where legislative action functions as disguised adjudication.

IV. Public Interest and National Necessity: The Most Abused Exception

No phrase in administrative law is invoked more frequently and abused more easily than public interest. It is the broadest justification for excluding natural justice and therefore the one requiring the greatest judicial suspicion.

The classic formulation appears again in *Tulsiram Patel*, where the Court stated that natural justice may be excluded if its observance would paralyse administration or injure the public interest, particularly in matters concerning national defence, State security, or confidentiality.

Similarly, in *Satyavir Singh v. Union of India*, the Court warned that natural justice must be confined within proper limits and must not be allowed to *run wild*³⁸. Yet, importantly, it also held that the authority’s assertion of public interest is not final; the Court may examine whether exclusion was truly necessary.

This judicial supervision is indispensable, without it, public interest becomes an incantation that immunises power from scrutiny. Every administrative decision can be defended in the name of a larger social good. The constitutional response must therefore be sceptical: whose public interest, and at whose cost?

This concern was addressed most elegantly in *Maneka Gandhi v. Union of India*³⁹, where the impounding of a passport on grounds of public interest was upheld only because the Court insisted that fairness could be temporarily postponed but not permanently denied. A prior

³⁸ 1986 AIR 555 “*The principles of natural Justice must be confined within their proper limits and not allowed to run wild. The concept of natural justice is a magnificent thoroughbred on which this nation gallops forwards towards its proclaimed and destined goal of JUSTICE, social, economic and political . This thoroughbred must not be allowed to turn into a wild and unruly horse, careering off where it lists, unsaddling its rider, and bursting into fields where the sign no pasaran is put up.*”

³⁹ 1978 AIR 597

hearing may be excluded where urgency demands immediate action, but a meaningful post-decisional hearing must follow.

The genius of *Maneka Gandhi* lies in this doctrinal innovation. It refused to reduce fairness to a pre-decisional ritual while simultaneously refusing to allow public interest to extinguish procedural justice. It constitutionalized proportionality before the term became fashionable⁴⁰.

V. Emergency, Urgency, and Prompt Action: Fairness in Conditions of Crisis

A related but distinct ground of exclusion is urgency. Certain situations public safety, dangerous structures, preventive detention, epidemic response require immediate action. Delay may itself be injustice. The Supreme Court in *Swadeshi Cotton Mills v. Union of India*⁴¹ recognized that *audi alteram partem* is a flexible doctrine capable of adjustment according to the exigencies of the situation⁴². The Court held that the measure of pre-decisional hearing depends upon the degree of urgency. This is perhaps the most balanced articulation of the doctrine.

But *Swadeshi Cotton Mills* is equally remembered for its warning: exclusion must remain exceptional⁴³. The Court emphasized that fair play should not be jettisoned except in very exceptional circumstances where compulsive necessity demands it.

⁴⁰ Ibid. "Though the impugned order may be within the terms of s. 10(3) (c), it must nevertheless not contravene any fundamental right and if it does, it would be void. Now, even if an order impounding a passport is made in the interests of public order decency or morality, the restriction imposed by it may be so wide, excessive disproportionate to the mischief or evil sought to be averted that it may be considered unreasonable and in that event, if the direct and inevitable consequence of the order is to abridge or take away freedom of speech and expression, it would be violative of Article 19(1)(a) and would not be protected by Article 19(2) and the same would, be the position where the order is in the interests of the general public but it infringes directly and inevitably on the freedom to carry on a profession in which case it would contravene Article 19(1) (g) without being saved by the provision enacted in Article 19(6)."

⁴¹ 1970 MP 154

⁴² Ibid. "The next general aspect to be considered is: Are there any exceptions to the application of the principles of natural justice, particularly the *audi alteram partem* rule? We have already noticed that the statute conferring the power, can by express language exclude its application. Such cases do not present any difficulty. However, difficulties arise when the statute conferring the power does not expressly exclude this rule but its exclusion is sought by implication due to the presence of certain factors: such as, urgency, where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action of a preventive or remedial nature. It is proposed to dilate a little on this aspect, because in the instant case before us, exclusion of this rule of fair hearing is sought by implication from the use of the word 'immediate' in Section 18AA(1). *Audi alteram partem* rule may be disregarded in an emergent situation where immediate action brooks no delay to prevent some imminent danger or injury or hazard to paramount public interests. Thus, Section 133 of the Code of Criminal Procedure, empowers the magistrates specified therein to make an *ex parte* conditional order in emergent cases, for removal of dangerous public nuisances. Action under Section 17, Land Acquisition Act, furnishes another such instance. Similarly, action on grounds of public safety public health may justify disregard of the rule of prior hearing."

⁴³ Ibid.

This distinction matters profoundly. Urgency is a constitutional justification only where delay would destroy the statutory purpose. It is not a bureaucratic preference for speed. Administrative authorities routinely convert urgency into convenience and necessity into impatience. Judicial review must resist that tendency. The constitutional question is not whether hearing takes time, but whether time itself would defeat justice.

VI. Impracticability and Mass Decision-Making

Natural justice also yields where compliance becomes practically impossible. This occurs where the number of affected persons is so vast that individualized hearing would make administration unworkable. In *Bihar School Education Board v. Subhash Chandra*⁴⁴, where widespread mass copying tainted an examination, the Supreme Court upheld cancellation without individual hearings. The principle is sensible: natural justice cannot demand the impossible. But the risk is obvious. Administrative impracticability is often overstated. Large numbers do not automatically justify procedural abandonment. Representative hearings, post-decisional review, or reasoned categorization may still preserve fairness.

VIII. The “Useless Formality” Theory: The Most Dangerous Exception

Perhaps the most intellectually controversial exclusion is the “useless formality” doctrine. In *S.L. Kapoor v. Jagmohan*⁴⁵, the Supreme Court observed that where admitted or indisputable facts lead to only one conclusion and one penalty, insistence on natural justice may be unnecessary because hearing would be a useless formality⁴⁶.

In *Escorts Farms Ltd. (Previously known as M/s. Escorts Farms (Ramgarh) Ltd.) v. Commissioner, Kumaon Division, Nainital, U.P. & Ors.*⁴⁷, Supreme Court, while reiterating the position that rules of natural justice are to be followed for doing substantial justice, held that, at the same time, it would be of no use if it amounts to completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. It was so explained in

⁴⁴ 1970 AIR 1269

⁴⁵ 1980 INSC 184

⁴⁶ “The “useless formality” theory postulates that where, on admitted or indisputable facts, only one conclusion is possible and under the law only one consequence can follow, non-observance of the principles of natural justice would not vitiate the action, since compliance thereof would have made no difference whatsoever.” High Court Of Punjab And Haryana At Chandigarh CWP-9646-2020 (O&M) *Manmeet Singh v. Registrar Cooperative Societies, Punjab and others*

⁴⁷ (2004) 4 SCC 281

the following terms:

“64. Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we, therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India.”

At first glance, the doctrine is pragmatic. Why compel procedure where outcome is inevitable?

But its danger is profound. It invites the authority to decide in advance that hearing would change nothing precisely the assumption that natural justice exists to prevent. Procedural fairness is not merely about changing outcomes; it is about legitimacy, dignity, and institutional trust.

This concern was carefully handled in *Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise*⁴⁸, where the Court recognized that fairness improves both substance and legitimacy of decision-making. The “useless formality” doctrine must therefore remain a judicial exception, not an administrative excuse. If applied too broadly, it transforms justice from a right into a retrospective calculation of prejudice.

C. Conclusion

The doctrine of exclusion of natural justice is best understood not as a denial of fairness, but as an attempt to reconcile fairness with constitutional necessity. Legislative action, constitutional design, public interest, urgency, impracticability, confidentiality, fraud, academic expertise, and the narrow useless-formality doctrine all demonstrate that natural justice is not absolute. But the deeper constitutional truth is this: exclusion must never become

⁴⁸ (2015) 8 SCC 519

a synonym for arbitrary power. The rule is fairness; exclusion is tolerated only because governance sometimes requires speed, secrecy, or structural necessity. Courts therefore insist on narrow construction, recorded reasons, judicial review, and post-decisional safeguards. Natural justice may bend, but it must never collapse into executive convenience. If fairness is excluded too easily, the doctrine ceases to be an exception and becomes a constitutional fraud. That is why the true test is not whether the State can act without hearing, but whether it can justify doing so without betraying the rule of law itself.