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RESEARCH ARTICLE

When Exception Becomes the Only Way to Serve Justice: An Appraisal of the Exceptions to *Nemo Judex in Causa Sua* in Judicial, Quasi-Judicial and Administrative Proceedings

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Abstract

Natural justice is founded on two main principles: Nemo judex in causa sua (no one should be a judge in their own cause) and Audi alteram partem (no one should be condemned unheard). These principles, often referred to as canons, are essential for evaluating the propriety of judicial, quasi-judicial, and administrative actions. Although not constitutionally enshrined, these principles have evolved with human civilization to ensure fairness, reasonableness, equity, and equality. Nemo judex in causa sua underscores the necessity for impartiality in decision-making, asserting that any authority issuing a judgment must be unbiased to maintain the rule of law. Historically, even ancient civilizations like the Greeks recognized the importance of hearing all parties before making a judgment. The principle has exceptions, notably illustrated by the biblical account of God's judgment on Adam and Eve. Modern courts have also established exceptions, acknowledging that bias can be subjective and multifaceted. Lord Hewart, in R v Sussex Justices Exparte McCarthy, emphasized that justice must not only be done but must also be visibly done. Bias is defined as any mental condition preventing impartiality, encompassing predispositions or preconceived opinions that hinder fair evaluation. Justice Frank, in Re Linahan, noted that complete absence of preconceptions in a judge's mind is impossible, as inherent biases exist from infancy and through education. Initially, natural justice principles were confined to judicial proceedings. However, landmark cases such as Ridge vs. Baldwin (1963) and State of Orissa v Binapani (1967) extended these principles to administrative actions, recognizing that administrative orders affecting civil rights must also adhere to natural justice. Despite its importance, the rule against bias is subject to numerous exceptions, which will be examined in the context of judicial, quasi-judicial, and administrative proceedings. These exceptions highlight the complexity and nuanced application of the principle in various legal contexts.

Keywords	*Nemo Judex in Causa Sua; Natural Law; Quasi-Judicial Proceedings; Audi Alterem Partem; Doctrin Necessity*
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Introduction

Fair trial is sine quo non, indispensable to the rule of law. Rule of law is crucial for the protection against human rights abuses because it entails that all persons are equal before the law and have unfettered right to judicial fairness. If there is any one single right which has been so vigorously agitated in our courts, it is the right to fair hearing. The right to fair hearing requires that an individual shall not be penalized by a decision affecting his rights or legitimate expectations unless he has been given prior notice of the case against him, opportunity to answer it as well as opportunity to present his own case. The person hearing the matter must be an unbiased person or have a likelihood of bias. All parties must be placed on an equal pedestal to testify including their witnesses because fair hearing presupposes that the court shall hear both sides not only in the case but also on all material issues in the case before reaching a decision including that the proceedings shall be held in public. Without fair hearing, the principles of natural justice and the concept of rule of law cannot be established and grown in the Nigerian Society. *S. C Eng. Nig v Nwosu* (2008) 3 NWLR (Pt. 1074) particularly at page 306-307 Paras H-B The rule of fair hearing has been said to be an omnibus provision whose compliance will automatically mean compliance with the rules of natural justice. *Aiyetan v Nifor* (1987) 3 NWLR (Pt. 59) 48. Failure to abide by the rule of fair hearing renders both the proceeding and its outcome meaningless.

Fair Hearing and Natural Justice

Fair hearing covers a plenitude of natural justice in the narrow technical sense of the twin pillars of justice expressed by the use of Latin expressions, namely: *Audi alteram partem* (which literally means hear the other side) and *Nemo judex in causa sua* (No one should be judge in his own cause). While the first of the expressions means that parties must be given adequate notice and opportunity to be heard, the second means that an adjudicator should be disinterested and unbiased. Fair hearing is synonymous but not coterminous with the natural justice. The two principles of natural justice are inherent in the provision for fair hearing rule but the provision goes beyond the rules of natural justice *Ori-Oge v A. G. Ondo State* (1982) 3 NCLR 743.12 Underscoring the distinction between fair hearing and natural justice, the oracle of Common Law- Lord Denning, in an English case of Been v A. E. U.13, succinctly but lucidly held thus:

> It will be seen that they are analogous to those required by natural justice but not necessarily identical. In particular a procedure may be fair although there has not been a hearing of the kind normally required by natural justice. Conversely, fairness may sometimes impose a higher standard than that required by natural justice. Thus, the giving of reason for decisions is probably not required by natural justice, but, it has been said, may be required by fairness because "the giving of reasons is one of the fundamentals of good administration" (1971) 2 QB 175, 191

The point being canvassed here is that the practicalities of a fair hearing should best be located in those twin principles of natural justice viz: audi alteram partem (hear the other side) and Nemo judex in causa sua (No man shall be a judge in his own cause).

Audi Alteram Partem

This rule is said to be as old as the world itself. That no man is to be judged unheard was a precept known to the Greeks, enshrined in the scriptures as captured in the biblical account of man's transgression at the Garden of Eden. God did not pass sentence upon Adam and Eve without hearing from them first, their defense and subsequent sentencing. 'Adam' (says God) 'where art thou? Hast thou eaten of the tree whereof I commanded thee that thou shouldst not eat 3:9-12' Questions were put to Eve too, Genesis 3:9-12 – before God pronounced judgment on the serpent; Genesis (3:11), Eve; Genesis (3:16) and Adam; Genesis 3: 17 – 19. However, while the *audi alteram partem* rule was observed by God in Adams case, *nemo judex in causa sua* was not applied. Per Fortesque J, in *R. v Chancellor, University of Cambridge*. In this case, the University of Cambridge deprived one Dr. Bentley of his degree without giving him an opportunity to defend himself. The Court held that the action of the University authorities were void because it violated the audi alteram partem rule. Fortescue J, held;

> The laws of God and man both give the party an opportunity to make his defence, if he has any…even God did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God) 'where art thou? Hast thou eaten of the tree whereof I commanded thee that thou shouldst not eat?' And the same question was put the Eve also.

Similarly, the Bible also recorded the case of Cain where in furtherance of the tenet of fair hearing also applied the first recorded cross examination in the history of mankind as Cain tried to defend himself When the Lord asked Cain, "where is Abel thy brother?" Cain replied, I know not: Am I my brother's keeper?" Genesis 4:6-12. The Supreme Court of Nigeria in the case of *Garba v University of Maiduguri* (1986) 1 NWLR (Pt. 18) 550., per Oputa, JSC, explained this rule thus: "God has given you two ears, hear both sides." In fact, he who shall decide anything without the other side having been heard, though he may have said what is right, but he could not have done what is right. *Adedeji v Public Service Commission* (1968) NMLR 102/106.

Historical Perspective to "*Audi Alteram Patem*"

The rules of procedural fairness, otherwise referred to as rules of natural justice were derived from natural law as is demonstrated by English cases of the seventeenth and eighteenth centuries.

Chief Justice Coke, played a leading role in the exposition and development of audi alterem partem and the prerogative remedy of mandamus canvassing from the provisions of the Magna Carta that:

> No free man shall be taken or imprisoned, ruined or disseized or outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers or by the law.

The Bagg's Case of 1615 11 Co. Rep. 93b, 77 ER 1271 provided the foundation upon which this principle was considered. Bagg's case concerned a certain municipal misbehavior, leveled against Mr. Bagg. The Mayor and Chief Burgesses of the Borough of Plymouth had removed one of their members, James Bagg, from the office of Chief Burgess on the grounds of his misconduct. They made a number of allegations against him; that he had called the previous Mayor, Mr. Trelawney, a 'cozening knave' and 'an insolent fellow' and that he had also threatened to crack the neck of the current Mayor, Thomas Fowens. Mr. Bagg challenged his removal from office by the Mayor and other Burgesses in the Court of Kings. The Court ordered the Mayor and the Burgesses to either restore Mr. Bagg to office or to show cause why he was removed to which they insisted referring to Mr. Bagg's very bad behavior. However, the Court was not satisfied that the reasons given in the return to the writ justified his removal. On the question of how and by whom and in what manner a citizen of burgess should be disenfranchised, Coke CJ said:

> … although they have lawful authority either by charter or prescription to remove any one from the freedom, and that they have just cause to remove him; yet it appears by the return, that they have proceeded against him without … hearing him answer to what was objected, or that he was not reasonably warned, such removal is void, and shall not bind the party.

Mr. Bagg's Case was an early judicial expression of the fair hearing rule, although by no means the first. Perhaps, its beauty lies on the fact that it is most notable as one of the first occasions on which prerogative remedy of mandamus was also used as a tool for judicial review of administrative action. In justifying the issue of the writ, Coke asserted the jurisdiction of the court of the King's Bench in sweeping terms as:

> "not only to correct errors in judicial proceedings, but other errors, and misdemeanors [sic] extra judicial, tending to the breach of peace, or oppression of the subjects, or to the raising of faction, controversy, debate, or to any manner of misgovernment; so that no wrong or injury, either public or private, can be done but that it shall be (here) reformed or punished by due course of law".

In another related case in 1723, the Court of King's Bench issued yet another mandamus to the University of Cambridge involving the restoration to one Dr. Bentley of the degrees of Bachelor of Arts and Doctor of Divinity which the University had deprived him without following the rule of fair hearing. The facts are as follows; Dr. Bentley had been served with a summons to appear before a University court in an action for debt recovery. He considered the process illegal and declined to obey, insisting that the Vice-Chancellor (VC) was not his judge. His action was considered by the University as contempt and without further notice proceeded to deprived him of his degrees by the 'congregation' of the University. The judgment of Per Fortescue J in the case read:

> "The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defence."

The Audi alteram partem maxim has two pillars; the first being notice followed by hearing. Parties must be given a notice before the proceedings take place and also become aware of the facts in issue of the case that is going to be adjudicated. This is done to give the parties sufficient amount of time to prepare for his defense. The parties should additionally be allowed to represent themselves either by self or their counsel. Audi alteram partem rule presupposes the following:

1. A person who is liable to be affected by any decision, acts or proceedings (whether administrative, judicial or quasi judicial) must be given adequate notice of the allegations against him such that he may be in a position to make representation by himself or through his counsel at the hearing or inquiry.
2. Every party appearing before a tribunal must be given equal opportunity to state his case. He must be given the name of the accuser, and be informed of the accusation against him. It is not enough to invite the person as a witness. *Deduwa v Okororddudu* (1976) 9/10 SC. 329
3. A tribunal must base it's decision on evidence of some probative value. It must not take evidence in the absence of the parties. *Queen v Lt. Governor, Eastern Region* (1975) 2 FSC 46, 489
4. An accused person must be accorded reasonable opportunity to call his witnesses and for them to be accorded hearing opportunity.
5. It is wrong for an adjudicating body to withhold from an accused the nature of the evidence which had been given against him before purporting to impose punishment on him. He must be given a fair opportunity to correct or contradict evidence given against him. *Wilson v A. G. Bendel* (1985) 1 NWLR (Pt. 4 572
6. The discretion to grant an adjournment must be exercised judiciously. Where it is exercised capriciously and unreasonably it may amount to a denial of fair hearing

The Supreme Court of Nigeria evolved a set of principles in *Baba v. Nigerian Civil Aviation Training Centre* SC 78/1987 where it formulated the following standards for a fair hearing before a judicial or quasi judicial body. It stated that in order to be fair, the hearing must protect;

- **a.** the right of the person to be affected to be present all through the proceedings and hear all the evidence against him.
- **b.** to cross examine or otherwise confront or contradict all the witnesses that testify against him
- **c.** to have read before him all the documents tendered in evidence at the hearing
- **d.** to have disclosed to him, the nature of all relevant material evidence including documentary and real evidence prejudicial to the party, save in recognized exceptions;
- **e.** to know the case he has to meet at the hearing and have adequate opportunity to prepare for his defense; and
- **f.** to give evidence by himself, call witnesses if he likes, and make oral submissions either personally or through a counsel of his choice.

In England, this doctrine was formulated with precision in the case of *Ridge v. Baldwin* (1963) 2 All E.R. 63 where Lord Hudson said:

> No one, I think, disputes that three features of natural justice stand out: (1) the right to be heard by an unbiased tribunal; (2) the right to have notice of the charge of misconduct; and (3) the right to be heard in answer to those charges.

The rule now seems to have been summarized as follows:

a. that a person knows what the allegations against him are;
b. that he knows what evidence has been given in support of such allegations;
c. that he knows what statements have been made concerning these allegations;
d. that he has a fair opportunity to correct and contradict such evidence; and,
e. that the body investigating the charge against such person must not receive any evidence behind his back.

Nemo Judex In Causa Sua

The rule against bias and is expressed in the Latin maxim *nemo judex in causa sua* which means that "a man must not be a judge in his own cause". The natural justice principle "**Nemo judex in causa sua**" states that when it is broken, the right to equality is also violated. When a man becomes a judge in his own case, bias is imputed except under the exception rule. The rule against bias is defeated by the rule of necessity. Partiality or bias basically refers to any element which influences an individual to decide in favour or against their own apprehensions regarding the situation of the case. A decision-maker will have the "**appearance of bias**" where a fair minded and informed person, having considered the facts, would conclude that there was a real possibility that the decision-maker was biased.

Bias may be actual or implied. This rule is based on the premises that it is against the human psychology to decide a case against own interest. The application of the bias rule is mostly established when the person who is in the position of the accuser is also the decision maker or participates in the investigation, decision or gives advice throughout the course of the matter. Actual bias or the real likelihood of bias includes prejudice, partiality or unfairness that occurs from that irregularity which would impinge on the public perception of the decision of the courts or tribunal or erode public confidence in court thereto.

Lord Hewart in the case of *R v Sussex Justices Exparte McCarthy* (1924) K. B. 256 or (1923 All E. R stated that:

> It is not merely of importance (nemo judex in causa sua) but it is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done.

Development of the Rule

The rule against bias, gained prominence in 1610 in the case referred to as *Dr. Bonham's Case* 8 Co. Rep. 113b at 118a where Chief Justice Coke said that

> "the Court could declare an Act of Parliament void if it made a man as judge in his own cause, or otherwise 'against common right and reason".

Dr. Bonham was a Doctor of Physics of Cambridge University, Bias was the grounds for disallowing the claim of the College of Physicians to fine and imprison Doctor Bonham, for practicing in the city of London without the license of College of Physicians. The statute under which the College acted (contrary) to the rule of natural justice provided that fines should go half to the King half to the College, making it glaring that the College had financial interest in its own judgment and worst still, a judge in its own cause. The nature of the rule against bias as a kind of natural or

constitutional limiting force upon parliamentary authority, was further reechoed by Lord Chief Justice Hobart in the case of *Day v Savadge* (1614) Hobart 85, when he said;

> "that a statute 'made against natural equity, as to make a man Judge in his own case, is void in itself, for *jura naturæ sunt immutabilia* **(**the laws of nature are unchangeable), and they are *leges legum* **(**laws that apply to law)".

After Savadge case, it was in *City of London v. Wood*, *(1701)*, 12 Mod. 669. that Chief Justice Holt reaffirmed the rule against bias as an expression of the natural law. By that time, the idea that a person could not be a judge in his own cause was already well established. In so holding, Chief Justice Holt expressed support for Dr. Bonham's Case saying:

> "it is a very reasonable and true saying, that if an Act of Parliament should ordain that the same person should be party and Judge, or, which is the same thing, Judge in his own cause, it would be a void Act of Parliament; for it is impossible that one should be Judge and party, for the Judge is to determine between party and party, or between the Government and the party; and an Act of Parliament can do no wrong, although it may do several things that look pretty odd; for it may discharge one from his allegiance to the Government he lives under, and restore him to the state of nature; but it cannot make one that lives under a Government Judge and party."

Furthermore, in *Dimes v Grand Junction Canal,* (1852) 3 HLC 759. The House of Lords in that case set aside a decision involving a canal company in which the Lord Chancellor, Lord Cottenham, who had presided, even as a shareholder. There was nothing to suggest that he was influenced by his pecuniary interest in the case but the appearance of bias sufficed and so it was held. Lord Campbell, after affirming that no-one could suppose that Lord Cottenham would be biased in the remotest degree or influenced by his interest took the opportunity to deliver what was regarded as a stern warning to all lesser dispensers of justice thus:

> This will be a lesson to all inferior tribunals to take care not only that in their decrees they are not influenced by their personal interest, but to avoid the appearance of labouring under such an influence.

Sources of Bias

In all probability the most common ground for bias requiring such a judicial review is a pecuniary interest. '*Dimes*' decision. *Dimes v. Grand Junction Canal Co Proprietors* Ever since the famous *'Pinochet'* case in *R. v. Bow Street Metropolitan Stipendiary Magistrate ex parte Pinochet Ugarte (No.2)* (2000) 1 A.C. 119, a non-pecuniary interest could also lead to the exclusion of a judge or a judge recusing self. For determination was whether the dictator, Augusto Pinochet could be extradited. A member of the judiciary, Lord Hoffmann, was involved in Amnesty International Charity Ltd. (AICL), an organization closely related to the accuser Amnesty International (AI) but Hoffman did not make public his link to the organization and bias was eventually imputed. Other personal interests such as family relationships, business connections and commercial ties, as well as membership of an organization also fall within the realm of bias. However, family relationships, business connections and commercial ties, and such other levels require a more qualified suspicion to ground bias.

Per Horgan, the sources of these biases may however vary from jurisdiction to jurisdiction and may be segmented into four namely:

i. When the judges have a financial interest in the matter to be so decided (a pecuniary interest)
ii. Biases arising from the judges' personal attitude, relationships or beliefs in the case;
iii. Loyalty to an institution that may affect the judge to be so committed to the objective and interest of the said institution; and,
iv. Prior involvement in a case or prejudgment of the issue.

Sources of interests or circumstances that may disqualify a Judge or a person from adjudicating in a matter has been expanded further since after Hogan viz;

i. Pecuniary Interests, that is, financial interests or doing a favour. *Dimes v. Grand Junction Canal Co*. (1852) 10 ER 315
ii. Previous participation, decision or involvement in the matter *Eriobuna v. Obiorah* (1999) 8 NWLR PT 616 p. 622 (CA)
iii. Relationship with a Party or Parties, such as Secretary, Kinship, Family, Friendship, Enmity, Special Association, etc. *Iwo Central LG v. Adio* 2000) 8 NWLR PT 667 p. 115; (1995)7 NWLR PT 405 p. 1*Abiola v. Federal Republic of Nigeria* (SC 246/1994) (1996) 1 (21 May 1996)
iv. Unwarranted verbal or other attack on a Party
v. Foreknowledge or previous knowledge of the facts of the case
vi. Hobnobbing with a Party
vii. Combining the function of a Judge with that of a Prosecutor, Witness or other Party Inhibiting or denying a Party from effectively stating his case *Olaye v. MDPDT*, (1997) 5 NWLR PT 506 @p. 550 (CA); *Okoduwa v. The State*, (1988) NWLR (Pt.76) 333 *Omoniyi v. Central Schools Board*. (1988) 4 NWLR PT 89 p.448
viii. Personal attitude, hostility, preference or one side inclination of the Judge, and a host of other interests or circumstances from which the inference or suspicion of a real likelihood of bias may be drawn
ix. Biased, partisan or unbecoming comment in support of a Party
x. Descending into the arena in support of one side

In *Garba v University of Maiduguri* (1986) 1 NWLR (Pt 18) 550 the court quashed the decision of an administrative panel set up by the 1st Respondent which was headed by the Deputy Vice Chancellor of the University. There had been riot in the school whereof many properties were touched including that of the Deputy Vice Chancellor. The applicant was among those found liable by the DVC's panel. The Supreme Court per Oputa JSC setting aside the panel's findings stated thus:

> It has to be a super human to be able to obliterate from his mind his personal plight to be able to approach their assignments with impartiality, objectivity and fairness required of those acting in a judicial or quasi-judicial capacity.

In *University of Calabar v Esiaga* 4 (1997) 4 NWLR (Pt. 5020) 719 @ 745 the court enumerated what constituted bias and established that it may arise from the following situations, viz; pecuniary interest in the litigation, blood filial or other form of personal relationship with any of the parties and natural aversion to the facts of the case will lead to the inability of the judge to naturally suppress his instinctive tendencies with regard to the case See also *Adegboye Ibikunle v The State* (2007) 1 S. C. (Pt. II) 3244),.

The test for bias is not whether there was actual bias, but whether there is likelihood of bias which can be deduced from available facts, figures and circumstances of a particular case. In *Alakija v Medical Practitioners Disciplinary Committee*, (1959) 4 F.S.C. 38, the plaintiff whose name was ordered by the defendant to be removed from the Medical Register of the Medical and Dental Council of Nigeria for misconduct for a period of two (2) years had his name restored by the Supreme Court because the Registrar of the Medical and Dental Council, who was the prosecutor (accuser), took part in all the trial proceedings of the Committee which found the appellant liable.

Also, in the case of *Nnamdi Azikiwe University v Nwafor*, (1999) 1 NWLR (Pts 584-588) 116, the disciplinary action against the respondent for examination malpractice was quashed by the Court of Appeal because the members of the Examination Committee who allegedly caught the respondent took part in the meeting of the University Senate which met and ratified the disciplinary action which offended nemo judex rule.

The Basic Exceptions to Nemo Judex in Causa Sua Rule

The Natural Justice principle of Nemo Judex in Causa Sua have some recognizable exceptions as posited by different legal scholars and learned writers – though sometimes differing in their approaches. Classically, Mr. Singh, in his book titled: "**The Supreme Court of India as an Instrument of Social Justice",** classified the exceptions to the Nemo Judex in Causa Sua into four categories:

1. Necessity;
2. Contempt;
3. Waiver; and
4. Purely Administrative Duty**.**
5. **Emergency**

Mr. Craig, in his book Administrative Law, narrowed the exceptions to the first three espoused by Singh - exempting the last one. The purely administrative in Singh's classification appears wooly, as all authorities including administrative panels are by law, required to conform to the natural justice rule and should not necessarily belong to an exception.

Doctrine of Necessity

The aptness of this doctrine lies in the aphorism that "Necessity knows no law." – Aesop.

Understanding the Doctrine of Necessity

The doctrine of necessity has its roots in the writings of Henry de Bracton, a medieval jurist who once opined;

"that which is otherwise not lawful is made lawful by necessity".

The case of *Federation of Pakistan v Maulvi Tamizuddin Khan (1955)* paved the way for the use of the doctrine of necessity by various other Commonwealth countries. However, the doctrine gathered further impetus in the contentious case of *Federation of Pakistan v. Maulvi Tamizuddin Khan (1955)* came up before the judiciary of Pakistan. The Chief Justice of Pakistan i.e., Muhammad Munir legally validated the extra-constitutional use of emergency powers by Governor-General, Ghulam Mohammad. The then Chief Justice of Pakistan referred to the maxim of Henry de Bracton thus implementing the doctrine of necessity to settle the matter. The position of Mr Bracton reverberates; in *Ex Parte* Olakunrin, The Supreme Court of Nigeria invoked the doctrine of necessity principle because by statutory authorities, the person empowered by law to exercise the disciplinary power over the appellants albeit alleged to be biased was mandated to sit and adjudicate. Per Justice Nnamani JSC (as he then was) held:

> *"Besides, it is also settled that a person who is prima facie disqualified for interest or bias may be held on grounds of necessity, competent and obliged to adjudicate if no other duly qualified tribunal can be constituted."*

In India, the landmark case of *Gullapalli Nageswara Rao v. APSRTC (1958)* is known for invoking the doctrine of necessity. The said doctrine was later modified into the Doctrine of Absolute Necessity through the case of *Election Commission of India v. Dr. Subramaniam Swamy (1996)* wherein it was held by the court that the doctrine of necessity shall only be invoked in the cases of absolute necessity.

The doctrine of necessity enables the deciding authorities to function in the following ways –

1. To take certain actions that must be taken at a particular moment, wherein such acts would not otherwise be regarded within the scope of the law in a general legal situation.
2. To invoke and apply the doctrine of necessity only in such circumstances where there is an absence of a determining authority to take the decision regarding a case.

The consequential essence of the doctrine is that it operates to:

1. Waive compliance with due process in times of emergency or exigency;
2. Validate actions or acts which are ipso facto unlawful, to be lawful;
3. Serve as an implied mandate of a lawful sovereign;
4. Place the welfare of citizens over and above the Law of the land, in the face of looming ruination of the societal fabric.
5. In order to streamline and complement the Law, when no other thing can do in the circumstance;

Where the legislature in enacting a law, makes it mandatory that a particular person in authority must sit over a matter, then to that extent, the *nemo judex in Causa Sua rule* must as a matter of fact give way.
Justice Bello JSC concurred even more emphatically thus;

> "…the rule of natural justice must give way to the rule of necessity…The rule of necessity permits an adjudicator to be a judge in his cause if his participation is absolutely necessary to arrive at a decision."

In other Common Law jurisdiction like the United States of America and India, similar positions have been held by the courts in a plethora of cases, stating that '*it prevails over the disqualification standard'.* ***United States v. Will*****,** 1499 U.S 200 (1980).

In the Supreme Court of India cases of: ***Ashok Kumar Yadav v. State of Haryana*****;** (1985) 4 SCC 417; affirmed the necessity doctrine to the effect that;

'it prevails over the disqualification standard'.

The decisions in Tata Cellular v. UOI (1994) 6 SCC 651 and the Court of Appeal of Tennessee in: *Gay v. City of Somerville* 878 S.W.2d 124 (1994), all affirmed the necessity doctrine to the effect that 'it prevails over the disqualification standard'.

However, much as the unfairness and apprehension of the application of the exemption is evident, it has come to stay with it often been described in the word of Arnorld Rochvarg (1999) as a "regretful circumstance" and a "choice between two evils".

Exceptions to the Doctrine of Necessity

The evolution in legal jurisprudence has led us to the fact that while necessity is an exception to the rule against bias, necessity in itself has exceptions thereby limiting itself. While the doctrine of necessity shields the adjudicators from bias, it does not create a field day for the adjudicators to throw caution to the wind in their business of adjudication. If such recklessness is implicated, the doctrine wades in and recusal is prompted. Nevertheless, there are certain known exceptions wherein such biased decisions given by the adjudicator are held valid viz;.

1. Where there is no availability of another competent person for arbitration.
2. In the absence of whom (the adjudicator) a quorum cannot be formed and
3. Where there is no possibility of establishing another competent tribunal to handle the case.

Contempt of Court

Contempt of court is described as the act of putting into disrepute, disdain or denigrating the integrity of the court which may be *in facie* or *ex facie curiae* (in the face of the court or outside the face of the court), civil or criminal. 'Contempt of Court', according to Mr. Jackson, 'has a long history with periods when it attracted little public interest… Contempt of court as a subject is complicated because several different contraptions and conceptions are brought under the same heading. Justice Agbaje JSC (as he then was) **in his 1990 Judicial Lectures: reduced it to a better understanding when he classified it into two forms** polarizing the concept into two:

Firstly, when contempt is direct "in facie curiae" when it is committed in the immediate view and presence of the court or so near the presence of the court as to obstruct or interrupt the due and orderly course of proceedings of the court.

Secondly, *ex facie curiae* when contempt is committed outside or near the presence of the court. An accused person who commits contempt in the face of the court can be punished by committal to prison instantaneously by the judge without formal trial. Such committal is aims to preserve and defend the integrity and authority of the court - not the "judge sitting".

Generally, not all contempt operates as an exception to the *nemo judex rule*. It is only contempt in facie curia that does. For an example, an accused person scandalizing the court can be promptly punished. A contemnor can be punished by committal to prison instantly by the judge without the process of formal trial. The punishment is meant not to preserve and protect the judge in person but the integrity and utmost authority of the court. **See Lord Widgery CJ in *A.G. v. Times Newspaper Ltd*.** (1972) 3 All E.R, [1973] EWCA Civ J0216-2

Other legal framework provisions supporting contempt proceedings under Nigerian jurisdiction are contained in the sections 17(2) (e), 6(6)(a) and 39(3) (a) of the Constitution of the Federal Republic of Nigeria; sections 6 and 133 of the Criminal Code; and the sections 66 and 72 of Sheriffs and Civil Process Act:

Section 6 CFRN provides:

> Nothing in this Act or in the code shall affect the authority of courts of record to punish a person summarily for the offence commonly known as contempt of court; but so that a person cannot be so punished and also punished under the provisions of the code for the same act or omission.

Section 39(3) provides:

> Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society –

Section 39(3) (a)

> for the purpose of preventing the disclosure, of information received in confidence, maintaining the authority and independence of courts…

Our courts have also pronounced support for this principle. The Supreme Court in *Atake v. A.G Federation* 1(1982) 11 SC 153;(1982) LPELR-SC 5 held that:

> *"In proceedings instanter or trial brevi manu (i.e. punishment instantly for contempt in the face of the court), the judge before whom is the contemnor, is the prosecutor, witness and judge"*

A comparison of the Atake case with Chief Gani Fawehinmi will reveal the unanimity of our law that in contempt proceedings, the nemo judex in causa sua doesn't operate no matter how far it is stretched. LPDC v Fawehinmi (1985)LPELR -SC.177/1984 thus :

> And so, we arrived at the situation in which the Attorney General of the Federation…drafted the charges as the prosecutor and got himself to sit as a judge …such a proceeding would obviously have been null and void on that score as being an infringement of the principle nemo judex in causa sua.

A contempt proceeding can be pressed against a mischief maker who deliberately chose to flagrantly disrupt the proceeding of the court. A lawyer can a well be disciplined if he decides to throw caution to the wind and disrespect to the rules, ethics or procedures of the court. At such times, the presiding judge will be left with no option than to weld the big stick by invoking the contempt tool in a bid to protect the integrity of the court via *trial brevi manu*. ***R v. William Stone***

However, if another judge is available to conduct the contempt *in facie curiae* against a brother judge, it is a *desideratum*. This was the opinion held obiter in ***R.C Cooper v. Union of India*** **by T**he Supreme Court of India. However, Stephen L.J in ***Bologh v. St. Albans Crown Court*** 31975) 1 QBD 73 @ 90 cautioned Judges against free use or abuse of contempt proceedings and the punishment thereof thus:

> The punishment must never be invoked unless the ends of justice really require such drastic means; it appears to be a rough justice, it is contrary to natural justice; and it can only be justified if nothing else will do.

It must never be invoked unless the ends of justice really require such drastic means.

In Statutory Exceptions

Statutory exception acknowledges that the legislature in her wisdom might have valid reasons to circumvent right to nemo judex rule. That will be tolerated and yet justice will still be seen to have been achieved. Such exception may be fashioned towards accelerating the process of making decisions or achieving a specific policy goal. But even in such times, the decision-maker ought to continue to act fairly and reasonably as well as take into account all relevant circumstances before making a decision.

The Doctrine of Waiver

The doctrine of waiver operates to acknowledge that there may be valid justifications for parties out of their volition decide to give up their right to natural justice by process of waiver. Such a desire may be to move quickly to reach a resolution or prevent needless delays. The doctrine operates under the legal maxim "that *he who does not complain is deemed to have consented irrespective of whether or not irregularities exist against him".* It is crucial to remember that the waiver doctrine needs to be "informed and voluntary". If someone was forced, induced or deceived into giving up his right to natural justice, that person cannot be considered to have done so. To that extent, this doctrine can only constitute an exception, if and only if the affected person knows of his civil and constitutional rights chances, and chooses otherwise. Once more Craig stated it correctly when he said:

> "The premise 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."

In Emergency Situations:

The emergency exception can be invoked to safeguard national security; the natural justice principles may be altered albeit or suspended to enable prompt action geared towards containing a particular dire situation. The law now excludes the right to be heard in order to facilitate the government's smooth and seamless operation. This suggests that the use of natural justice principles would not be applicable to any hearing or procedure in so far as that can endanger the interests of the general public.

Academic Evaluation:

If the power of authority is completely administrative then the rule of natural justice can be excluded.

Interdisciplinary Action:

No rule of natural justice is applicable in a situation of interdisciplinary actions like suspension. This may be predicated on the ground that suspension is not ultimately a closed case against the individual.

Exclusion In Case Of Contractual Arrangement

If some parties mutually agreed to terminate some provisions of natural justice, then the court cannot intervene in that matter. In the case of the State of *Gujarat V. M.P. Shah Charitable Trust* 1994**,** the court held that the principles of natural justice will not be attracted in case of any arrangement in the contractual field. The termination of an agreement is not a quasi-judicial function and it can't be subject to the scrutiny of the judiciary.

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