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CONCEPT OF PRINCIPLES OF NATURAL JUSTICE IN CONSTITUTION OF INDIA: A STUDY IN REFERENCE TO LANDMARK CASES OF HON'BLE SUPREME COURT OF INDIA

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ABSTRACT:

In our Constitution of India, the term *'natural justice'* has not been cited. Nevertheless, the flaxen fiber of natural justice has been introspectively disseminated through the manuscript of the Constitution of India. The Preamble of the Constitution embraces the words: *'JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and opportunity…'* which not only guarantees fairness in social and economic activities of the people but also acts as a shield to individuals' liberty against the arbitrary action, which forms the very basis for principles of natural justice.

Albeit, the Preamble, Article 14 ensures equality before law and equal protection of law to all the citizens of India. Article 14 which wallops the root of arbitrariness and Article 21 guarantees right to life and liberty, which is the fundamental provision to protect liberty and ensure life with self-respect and dignity. Natural justice and provision of fair hearing to the arrested person is promised under Article 14. In the Directive Principles of State Policy, Article 39A, *in personam,* takes care of social, economic and politically backward sections of the people and to realize this intention *i.e.,* this part, which ensures free legal aid to destitute and disabled persons. In the Constitution of India, Article 311 endorses constitutional fortification to civil servants. In addition, Article 32, 226 and 227 provides constitutional remedies in cases of infringement of any fundamental rights including principles of natural justice.

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"NATURAL JUSTICE IS A SYMBOL OR EXPRESSION OF USEFULNESS, TO PREVENT ONE PERSON FROM HARMING OR BEING HARMED BY ANOTHER"

-EPICURUS[3]

INTRODUCTION:

Natural Justice is an expression of English common law, which encompasses a procedural necessity of fairness. The principles of natural justice have prodigious connotation in the study of administrative law. It is also known as **'substantial justice or fundamental justice or universal justice or fair play in action'[4].** The principles of natural justice are not exemplified rules and are not codified. They are judge-made rules and are deemed as peer/parallel of due process.

There is no detailed and scientific definition of natural justice. However, the principles of natural justice are being acceptable and obliged. Several judges, lawyers and scholars define it in many ways. In the case of ***Vionet v/s. Barrett*[5],** Lord Esher M.R has defined it as the *'natural sense of what is right and wrong'*. Later he had chosen to define natural justice as fundamental justice in a subsequent case i.e., ***Hopkins v/s. Smethwick Local Board of Health*[6].**

BASIS OF APPLICATION OF PRINCIPLES OF NATURAL JUSTICE:

The principles of natural justice originated from common law in England and are based on two Latin maxims, which were drawn from ***jus natural:***

1. *Nemo judex in causa sua* or *Nemo debet esse judex in propria causa* which means 'no man shall be a judge in his own cause'.
2. *Audi Alteram Partem* or *audiatar et altera pars* which means 'listen to the other side' or 'let the other side be heard as well'.

[3] Epicurus is an ancient Greek philosopher and a sage who founded Epicureanism (the school rejected determinism and advocated hedonism (pleasure as the highest good), but of a restrained kind: mental pleasure was regarded more highly than physical, and the ultimate pleasure was held to be freedom from anxiety and mental pain, especially that arising from needless fear of death and of the gods).

[4] https://www.legalserviceindia.com/legal/article-14692-the-cornerstones-of-fairness-principles-of-natural-justice.html

[5] (1885) 55 LJ RB 39

[6] (1890) 24 QB 713

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'PRINCIPLES OF NATURAL JUSTICE' – CONSTITUTIONAL PROVISIONS:

a. **Article 14 of the Indian Constitution:** It assures equality before law and equal protection of law. It also forbids discrimination and prohibits both discriminatory laws and administrative action. Article 14 validates an embankment against any arbitrary or bigoted/prejudiced state action. The prospects of equality as personified in Article 14 has been strengthening as a result of the judicial pronouncements. Article 14 has now gained an extremely conservative magnitude. It vociferously lays down the general preposition that all persons in analogous circumstances shall be treated alike both in privileges and liabilities imposed.

Article 14 establishes in the form of following intentions:

i. A law bestowing unguided and unhindered power on an authority is bad for being arbitrary and discriminatory;
ii. Article 14 criminalizes discrimination in the actual drill of any discretionary power; and
iii. Article 14 smacks at arbitrariness in administrative action and ensures fairness and equality of treatment.

In a handful number of cases, the superior Courts in India persevered with a view to control arbitrary action on the part of the administration that the person unsympathetically affected by any administrative action be given the right of being heard before any order has been passed by the administrative body against him. It is presumed that such a procedural safeguard may slacken the chance of the administrative authority passing an arbitrary order. Thus, the Hon'ble Supreme Court of India has extracted from Article 14, the principle, that natural justice is an important, integral and fundamental part of any administrative process.

Article 14 of the Constitution of India assures a right of hearing to the person unsympathetically affected by an administrative order and this has been exemplified in the case of ***Delhi Transport Corporation v/s. DTC Mazdoor Union***[7]**,** decided by the Hon'ble Supreme Court of India.

Similarly, in the case of ***Maneka Gandhi v/s. Union of India***[8]**,** the Hon'ble Supreme Court has pronounced that Article 14 is an authority for the proposition that the principles of natural

[7] AIR 1991 SC 101
[8] 1978 SCR (2) 621

justice are an indispensable part of the guarantee of equality ensured by Article 14. Any order dispossessing a person of his civil right passed without extending him an occasion of being heard, go through the vice of violation of natural justice. There are various examples where Article 14 of the Constitution is invoked to protect an individual from violation of principles of natural justice. In the case of ***Central Inland Water Transport Corporation Ltd. v/s. Brojo Nath***[9]***,*** the Hon'ble Supreme Court has held that the Rule 9(i) of the Central Inland Water Transport Corporation Ltd. (A Government of India Undertaking) Service, Discipline and Appeal Rules, 1979 as *ultra vires* or violative of Article 14. The aforesaid Rule confers upon the corporation the power to terminate the service of a permanent employee by merely giving him a three months' notice in writing or in lieu thereof to pay him the equivalent of three months' basic pay and dearness allowance.

In the case of ***Cantonment Board, Dinapore v/s. Taramani Devi***[10]***,*** the Commanding-in-Chief of the Cantonment Board cancelled the Board's resolution after giving it a hearing but not to the Respondent to whom the permission had been given. The Hon'ble Supreme Court has held that the Commanding-in-Chief ought to have given a hearing to the Respondent as well before cancelling the permission given by the Board. The Hon'ble Supreme Court observed as under:

> *"5. …Audi alteram partem is a part of Article 14 of the Constitution… The real affected party in such situation would obviously be the party ultimately affected by the decision or resolution being wiped out. Much water has flown since decision in State of Orissa v. Dr. Ms. Beenapani relied upon by the High Court and now there is a plethora of precedents, which have expanded the ever-expanding scope of Article 14 of the Constitution to assert and maintain that no order shall be passed at the back of a person, prejudicial in nature to him, when it entails civil consequences…".* ***[Emphasis supplied]***

b. **Article 21 of the Indian Constitution:** It lays down that no person shall be deprived of his life or personal liberty except, according to *'procedure established by law'*. The question that arises as to whether *'procedure established by law'* can be read as rules of natural justice i.e., whether *'law'* under Article 21 of the Indian Constitution can be read as principles of natural justice. The Hon'ble Supreme Court in chain of its judgments over the period of time has ruled that the term *'law'* in Article 21 of the Constitution, could not be read as rules of natural justice because these rules i.e., principles of natural justice were

[9] 1986 SCR (2) 278
[10] AIR 1992 SC 61

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vague and indefinite and the Constitution could not be read as laying down a vague standard. Nowhere in the Constitution of India was the term *'law'* used in the sense of abstract law or natural justice.

The word 'law' was used in the sense of state made law *(lex)* and not natural law *(jus)*. The expression *'procedure established by law'* would therefore mean the procedure as laid down in an enacted law. On the other hand, Justice Fazal Ali, in his dissent in the case of ***A.K. Gopalan v/s. State of Madras***[11]**,** took a markedly different approach. He traced the evolution of common law procedural rights and the principles of natural justice through a series of administrative law decisions in Indian, English and American law and found that the right to an oral hearing before an administrative authority was an essential principle of natural justice. Further, he held that these principles of natural justice were not vague but were well defined and it would wholly defeat the purpose of procedural protections under Article 21 of the Constitution of India to refuse to enforce them.

The Hon'ble Supreme Court calculating the prominence of *'fair trial'* by liberal interpretation of Article 21 made several provisions for the protection of accused and enlarged acceptable safeguards to defend their respective cases. The Hon'ble Supreme Court has also harangued that conducting a fair trial for those who are accused of criminal offences is the cornerstone of democracy and that it is also beneficial both to the accused as well as to the people *in rem*. A conviction stemming from an unfair trial is contrary to the concept of justice. The Hon'ble Supreme Court has taken a gargantuan and trailblazing step forward in humanizing the administration of criminal justice by advocating that free legal aid be provided by the State to prisoners who are economically weak. When an accused has been sentenced by a Court, he is entitled to appeal against the verdict. However, if the accused is indigent and is unable to afford the charges of affluent advocates, the State must provide an advocate to the accused. The Hon'ble Supreme Court has emphasized that the lawyer's services continued to be an ingredient of fair procedure to a prisoner, who is seeking his emancipation through the Court's procedure. In the case of ***Hussainara Khatoon & Ors. v/s. Home Secretary, State of Bihar, Patna***[12] has held as under:

> *"... Now, a procedure which does not make available legal services to an accused person who is too poor to afford a lawyer and who would, therefore, have to go through*

[11] AIR 1950 SC 27
[12] 1979 AIR 1369

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the trial without legal assistance, cannot possibly be regarded as 'reasonable, fair and just'. It is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation through the court's process that he should have legal services available to him." ***[Emphasis supplied]***

Hence, in India, free legal aid to indigent or disabled person is considered to be an essential component of natural justice. In order to ensure free legal aid to our compatriots, Article 39A has been inserted in Part-IV of the Constitution which states:

> ***[39A. Equal justice and free legal aid.***–*The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.]*

c. **Article 22 of the Indian Constitution:** It gives an armor to a person against arrest and detention in certain cases, which within its ambit contains very valuable element of natural justice. Article 22(1) and 22(2) of the Indian Constitution confers four following fundamental rights upon a person who has been arrested, *viz.,*

- *Right to be informed, as soon as may be, of the grounds for such arrest;*
- *Right to consult and to be defended by a legal practitioner of his choice;*
- *Right to be produced before the nearest magistrate within 24 hours of his arrest excluding the time necessary for the journey from the place of arrest to the Court of Magistrate; and*
- *Right not to be detained in custody beyond the period of 24 hours without the authority of the Magistrate.*

The object inherent in this provision is that the ground for arrest should be communicated to the person arrested appears to that on knowing about the grounds of arrest, the *detenu* will be in a position to make an application before the appropriate Court for bail or move the High Court for a writ of *Habeas Corpus*. The Hon'ble Supreme Court has observed that Article 22(1) personifies a rule which has always been regarded as vital and fundamental for defending personal liberty in all legal systems where the Rule of Law prevails. Information as to the grounds of arrest provide reasonable opportunity to prepare a case by *detenu*, such grounds must be accurate, well-defined and unambiguous. In the event if the grounds are not wholly disclosed to the accused, then it would amount to denial of *'fair hearing'* resulting in violation of principles of natural justice.

In the matter of Madhu Limaye and Ors v/s. Unknown[13], the facts of this case are as follows:

- ✓ Shri Madhu Limaye, Member of Lok Sabha and several other persons were arrested on 6th November 1968, at Lakhisarai Railway Station near Monghyr, Bihar. On the same date Shri Madhu Limaye addressed a petition in the form of a letter before the Hon'ble Supreme Court under Article 32 of the Constitution mentioning that he along with his companions had been arrested but had not been communicated the reasons or the grounds for arrest. It was stated that the arrested persons had been merely told that the arrests had been made *"under sections which were bailable"*. It was prayed that a writ of *Habeas Corpus* be issued for restoring liberty as the arrest and detention were illegal.
- ✓ On November 8, 1968, a similar petition was sent from Monghyr jail. The additional fact given was that the arrested persons had been produced before the Sub-Divisional Magistrate who had offered to release them on bail but they had refused to furnish bail. The Magistrate had, thereupon, remanded them to custody up to 20th November 1968. The Hon'ble Supreme Court issued a rule *nisi*[14] to the Government of Bihar and Superintendent of District Jail, Monghyr to produce Shri Madhu Limaye and others whose names were given in the order, dated 12th November 1968.

The Hon'ble Supreme Court held as under:

"The two requirements of clause (1) of Article 22 are meant to afford the earliest opportunity to the arrested person to remove any mistake, misapprehension or misunderstanding in the minds of the arresting authority and, also, to know exactly what the accusation against him is so that he can exercise the second right, namely, of consulting a legal practitioner of his choice and to be defended by him. Clause (2) of Article 22 provides that next and most material safeguard that the arrested person must be produced before a Magistrate within 24 hours of such arrest so that an independent authority exercising judicial powers may without delay apply his mind to his case. The Criminal Procedure Code contains analogous provisions in Section 60 and 340 but our Constitution-makers were anxious to make these safeguards an integral part of fundamental rights. This is what Dr. B.R. Ambedkar said while moving for insertion of Article 15-A (as numbered in the Draft Bill of the Constitution) which corresponded to present Article 22:

[13] [1969] 3 SCR 154
[14] A court's decree that will become absolute unless the adversely affected party shows the court, within a specified time, why it should be set aside.

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> *"Article 15-A merely lifts from the provisions of the Criminal Procedure Code two of the most fundamental principles which every civilised country follows as principles of international justice. It is quite true that these two provisions contained in clause (1) and clause (2) are already to be found in the Criminal Procedure Code and thereby probably it might be said that we are really not making any very fundamental change. But we are, as I contend, making a fundamental change because what we are doing by the introduction of Article 15-A is to put a limitation upon the authority both of Parliament as well as of the Provincial Legislature not to abrogate the two provisions, because they are now introduced in our Constitution itself."*

In the case of ***Joginder Kumar v/s. State of Uttar Pradesh***[15]**,** the Hon'ble Supreme Court has held as under:

> *"21. Then, there is the right to have someone informed. That right of the arrested person, upon request, to have someone informed and to consult privately with a lawyer was recognised by Section 56(1) of the Police and Criminal Evidence Act, 1984 in England (Civil Actions Against the Police Richard Clayton and Hugh Tomlinson; p. 313). That section provides:*
>
> > *"Where a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this section, that he has been arrested and is being detained there."*
>
> *These rights are inherent in Articles 21 and 22(1) of the Constitution and require to be recognised and scrupulously protected. For effective enforcement of these fundamental rights, we issue the following requirements:*
>
> > *1. An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where he is being detained.*
> >
> > *2. The police officer shall inform the arrested person when he is brought to the police station of this right.*

[15] 1994 AIR 1349

3. An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.

22. The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf. These requirements shall be in addition to the rights of the arrested persons found in the various police manuals.

23. These requirements are not exhaustive. The Directors General of Police of all the States in India shall issue necessary instructions requiring due observance of these requirements. In addition, departmental instruction shall also be issued that a police officer making an arrest should also record in the case diary, the reasons for making the arrest."

[Emphasis supplied]

Article 22(4) to 22(7) deals with preventive detention, Article 22(5) provides same safeguards to person detained under Preventive Detention Laws like Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, National Security Act, 1980 etc. In the case of ***Nandlal Bajaj v/s. State of Punjab[16],*** the Hon'ble Supreme Court has held as under:

"In Smt. Kavita v. The State of Maharashtra the Court recently had an occasion to deal with Section 8 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, which is in pari materia with sub-section (4) of Section 11 of Act. The Court speaking through Chinnappa Reddy, J. Observed: (SCC p. 564, para 6)

It is true that while Section 8(e) disentitles a detenu from claiming as of right to be represented by a lawyer, it does not disentitle him from making a request for the services of a lawyer.

The learned Judge emphasised that (SCC p/ 564 (para 6)

as often than not adequate legal assistance may be essential for the protection of the Fundamental to Right to life and personal liberty guaranteed by Article 21 of the Constitution and the right to be heard given to a detenu by Section 8(e), COFEPOSA Act,

and observed that this valuable right may be jeopardized and reduced to mere nothing

[16] 1981 AIR 2041

with adequate legal assistance, in the light of the intricacies of the problems involved and other relevant factors. He then went on to say whether or not legal assistance should be afforded by the Advisory Board must necessarily depend on the facts and circumstances of each individual case and observed: (SCC pp. 564-65, para 6)

> *Therefore, where a detenu makes a request for legal assistance, his request would have to be considered on its own merit in each individual case. In the present case, the Government merely informed the detenu that he had no statutory right to be represented by a lawyer before the Advisory Board. Since it was for the Advisory Board and not for the Government to afford legal assistance to the detenu the latter, when he was produced before the Advisory Board, could have, if he was so minded, made a request to the Advisory Board for permission to be represented by a lawyer.*

*In that case, there was no denial of procedural fairness which is a part of the fundamental right guaranteed under Article 21 of the Constitution, since no such request was made by the detenu before the Advisory Board. The decision in Kavita case is, however, an authority for the proposition that while there is no right under Section 8(e) of the COFEPOSA Act to legal assistance to a detenu in the proceedings before the Advisory Board, he is entitled to make such a request to the Board and the Board is bound to consider such a request when so made. In the present case, the detenu made such a request, but in the absence of the record of the Advisory Board, it is not possible to infer whether the request was considered. Even if it was denied, as the petitioner himself alleges, there was no rational basis for a differential treatment. There is no denial of the fact that while the detenu was not afforded legal assistance, the detaining authority was allowed to be represented by counsel. It is quite clear upon the terms of sub-s. (4) of Section 11of the Act that the detenu had no right to legal assistance in the proceedings before the Advisory Board, but it did not preclude the Board to allow such assistance to detenu, when it allowed the State to be represented by an array of lawyers." **[Emphasis supplied]***

d. **Article 32, 226 and 227 of the Constitution of India:** It provides for constitutional remedies for violation of fundamental rights and other legal rights respectively. Remedies in the aforesaid Articles can be exercised by issuing appropriate Writ, Direction or Orders. Writs in the nature of *Habeas Corpus*, *Mandamus*, *Prohibition*, *Quo-Warranto* and *Certiorari*. A writ of *Habeas Corpus* is invoked to prevent unlawful detention. A writ of *Mandamus* is invoked to compel public official to perform his legal duties. A writ of

Prohibition and *Certiorari* are used/invoked to prevent judicial and quasi-judicial bodies from acting without jurisdiction or in excess of jurisdiction or where error of law apparent on face of record violation of fundamental right or on the ground of violation of principles of natural justice. However, and off-late, it is a new development that a writ of *Certiorari* can also be invoked against an administrative authority exercising adjudicatory function.

In the case of ***Manak Lal v/s. Dr. Premchand***[17]**,** the Hon'ble Supreme Court has held as under:

> *"It is in this sense that it, is often said that justice must not only be done but must also appear to be done. As Viscount Cave L.C. has observed in Frome United Breweries Co. v. Bath Justices "This rule has been asserted not only in the case of Courts of Justice and other judicial Tribunals, but in the case of authorities which, though in no sense to be called Courts, have to act as judges of the rights of others". In dealing with cases of bias attributed to members constituting Tribunals, it is necessary to make a distinction between pecuniary interest and prejudice so attributed. It is obvious that pecuniary interest, however small it may be in a subject-matter of the proceedings, would wholly disqualify a member from acting as a judge. But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. "The principle" says Halsbury, "nemo debet esse judex in causa proprta sua" precludes a justice, who is interested in the subject matter of a dispute, from acting as a justice therein". In our opinion, there is and can be no doubt about the validity of this principle and we are prepared to assume that this principle applies not only to the justices as mentioned by Halsbury but to all Tribunals and bodies which are given jurisdiction to determine judicially the rights of parties."*
> ***[Emphasis supplied]***

In the case of ***Parry & Co. Ltd. v/s. P.C.Pal & Ors.,***[18] the Hon'ble Supreme Court held as under:

> *"11. The grounds on which interference by the High Court is available in such writ petitions have by now been well-established. In Basappa v/s. Nagappa*[19] *it was observed that a writ of certiorari is generally granted when a court has acted without or in excess*

[17] 1957 AIR 425
[18] 1970 AIR 1334
[19] (1955) SCR 250

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of its jurisdiction. It is available in those cases where a tribunal, though competent to enter upon an enquiry, acts in flagrant disregard of the rules of procedure or violates the principles of natural justice where no particular procedure is prescribed. But a mere wrong decision cannot be corrected by a writ of certiorari as that would be using it as the cloak of an appeal in disguise but a manifest error apparent on the face of the proceedings based on a clear ignorance or disregard of the provisions of law or absence of or excess of jurisdiction, when shown, can be so corrected. In Dharangadhara Chemical Works Ltd. v/s. State of Saurashtra[20] this Court once again observed that where the Tribunal having jurisdiction to decide a question comes to a finding of fact, such a finding is not open to question under Article 226 unless it could be shown to be wholly unwarranted by the evidence. Likewise, in the State of Andhra Pradesh & Ors. v/s. S. Sree Ram Rao[21] this Court observed that where the Tribunal has disabled itself from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or where its conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person can ever have arrived at that conclusion interference under Article 226 would be justified." ***[Emphasis supplied]***

Apart from Article 32 and 226, it is Article 227 which can be used by High Courts as another extraordinary weapon to prevent violation of principles of natural justice in any of the lower Courts or tribunals as the case may be.

e. **Article 311 of the Constitution of India:** It deals with dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. Though Article 310 of the Constitution adapts *'Doctrine of Pleasure'*, Article 311 of the Constitution provides sufficient safeguards against the misuse of such power.

CONCLUSION

In a welfare state like India, the role and jurisdiction of administrative organizations is mounting at a brisk pace and with precipitous expansion of state liability and civic needs of the people bestowment of administrative judgement became need of an hour. With expansion in orbit of discretionary power of administrative authority, the regulatory measures are to be fortified with adequate power to thwart abuse of discretion. In this regard, a country like India, which is constitutionalized rule of law country, component of natural law, must be found and

[20] (1957) SCR 152
[21] AIR 1963 SC 1723

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reproclaimed by judiciary to keep intact the supremacy of rule of law in India.

In this regard, the authors herein propose that if the law that establishes discretion is tacit on the procedures to be followed by the concerned authorities/bodies, the principles of natural justice shall apply. If the concerned authorities/bodies do not follow procedural law when issuing a decision, the only legal remedy available to the concerned party is to knock the doors of the Hon'ble Courts. The principles of natural justice, given their tractability in application, are contemplated to be a focal instrument for governing the discretion of the administration.

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