

An Analysis on Rule against Bias: A Much-Needed Concept under the Domain of Natural Justice

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Abstract

Under the realm of natural justice, the “rule against bias” has become a significant principle. It is equally necessary for assuring fair administrative proceeding. It seeks to avoid any kind of improper factors from impacting the decision of judge in a given case. The rule declares that judges shall not possess preconceived views or feelings or any kind of financial or personal interest which can influence the decision. Although the biasness rule is important element of contemporary administrative wing, it is an unfortunate fact that the test for bias suffers from uncertainty. Should the control mechanism through the standard of “real likelihood bias” be adopted, as prevailing in India? Or any other test should be incorporated. The present research paper aims to focus on the position prevailing in India with respect to rule against bias and tests applied in the relevant cases. In this research article, the author will describe the concept of “rule against bias” under the purview of “modern jurisprudence of administrative law” in India. The author will further highlight the kinds of bias and tests used as per the changing needs.

Keywords- Bias, Natural Justice, Impartial Judge, Administration.

“Justice must be rooted in confidence; and confidence is destroyed when right minded people go away thinking”

-Lord Denning

Introduction

In any society, natural justice serves as the most significant element as it ensures person with a sense of security. Although there is no universal or specific definition of the expression “Natural justice” but it is grounded on a notion that “a person shall be saved from any kind of injustice”. One such principle shaping natural justice is “Rule against Bias i.e., nemo judex in causa sua”¹ which signifies that the adjudicator shall be free from any kind of biasness and he shall not have interest in a specific matter brought before it. The main aim behind this principle is to eliminate the probability of objective judgment and to assure public confidence. An action or decision so arrived on the basis of biasness is deemed to be null and the proceeding is called as “Coram non-judice”. The biasness can be inferred from the facts of the case. Bias or prejudice manifests in different manner and can influence the judgment or action in several ways.

Concept and Definition of “Rule Against Bias”

The word “Bias” delves into the issue i.e., “Whether a Court or decision-maker has pre-conceived or pre-determined the issue”. The decision is said to be “biased” when the judge pre-determines the issue. The “rule against bias” is the part of administrative adjudication. Bias signifies “an operative prejudice, related to dispute or disputant party”. It can be either conscious or unconscious. This kind of prejudice can be the outcome of predetermination, or a pre-conceived opinion for deciding a case. It can usually be stated as preference or partiality, which is in furtherance of self-interest and is grounded on reason².

In reality, it is a state of mind, wherein the Court is incapable of exercising impartiality in a specific matter. This rule involves 2 major principles which has been mentioned below-

¹ *Ibid.*

² *G.N. Nayak v. Goa University*, (2002) 2 SCC 290.

“No man should be Judge in his own cause”

This rule implies that judge or decision-maker shall not be moved by individual interest or monetary interest. While determining the case, he shall act in impartial or just manner, which will eventually result into securing justice in real sense³.

“Justice shall not merely be done but seen to be done”

According to this rule, confidence among people can be secured only where justice is secured in perfect manner. The idea of justice shall be pure and it shall have credibility and inspire public confidence⁴.

Types of Bias

Under the ambit of administrative adjudication, the idea of Bias can be bifurcated under following types⁵-

Pecuniary Bias

Any kind of monetary interest even for a smallest extent will vitiate the proceeding or hearing or measures undertaken by authorities. The position pertaining to “Financial interest or pecuniary bias” has been outlined by the Halsbury’s Laws of England in following manner- “It is presumed that any direct monetary interest, howsoever small, in a given issue, makes a person disqualified from deciding the case. Being a member of organization, association or corporation who is financially interested may become a ground for barring such person from adjudicating, to the extent where the decision involves financial injury”⁶.

In the Case of *Bonham*⁷, a medical practitioner of Cambridge University named as Dr. Bonham was penalized by the relevant institution (College) for carrying out its practice in London without any licence. The legislation by virtue of which College took cognizance specifies that half of the amount of fine shall be given to college. While deciding the case, the said claim by

³ C.K. TAKWANI, LECTURES ON ADMINISTRATIVE LAW 145 (8th edn., Eastern Book Company 2022).

⁴ *Ibid.*

⁵ Umashankar Dhakar, *Rule Against Bias*, 10(1) IJCRT 665, 669-672 (2022).

⁶ TIMOTHY ENDICOTT, ADMINISTRATIVE LAW, 165 (5th edn., 2021).

⁷ (1610) 8 Co. Rep. 113 (b).

college was disallowed by Chief Justice Coke because monetary interest was involved in the decision and College itself was the decision-maker in its own matter.

Personal Bias

Numerous situations or conditions may lead to personal bias. In this respect, judge can be colleague, friend, family member, or holds any other relation with the party. He or she might have personal grievance, animosity or grudge or professional tussle against the said party. In such a scenario, there is every probability that the adjudicator may be impartial or biased towards one of the parties⁸. So, this kind of biasness is the result of some relation among the adjudicator and parties involved, that render him ineligible or unfavourable.

A leading decision on this point is "*Mineral Development Corporation Ltd. v. State of Bihar*."⁹ According to the factual background, the petitioners were awarded with mining lease in the year 1947 for around 99 years. However, later on, the State revoked the license. Being dissatisfied with this decision, an action was brought by the petitioners against officials rendering such decision on behalf of State, on the basis that, in 1952 petitioner objected the said official in General election. Thus, it was alleged that because of political tussle, the official issued such order and hence decision was quashed by the Court which was the outcome of personal bias.

Departmental or Official Bias

The majority of the issues in administrative decision arises due to problem in interpreting the policy. If an individual abridges the norms, having dispute with officials, then official will attempt to re-affirm the rules of administration as such norms are framed by the same administrative official, which is known as "*departmental or official biasness*".

In UK, it is a significant kind of impersonal biasness and while enacting laws, the Parliament shall consider the principle i.e., "no individual can be adjudicator in a case wherein he has some interest". However, it has to be established that minister or official acted for improper purpose or in bad faith¹⁰.

⁸ GRIFFITH AND STREET, PRINCIPLES OF ADMINISTRATIVE LAW 156 (4th edn., 2020).

⁹ AIR 1960 SC 468.

¹⁰ *Franklin v. Minister of Town and county Planning*, (1948) AC 87.

In Indian context, the issue of departmental biasness is inherently existing in the administrative procedure. Where such kind of biasness is not properly prevented, it can negate the very idea of fair hearing relating to the administrative matters. One of the leading precedents related to this kind of biasness is *Gullapalli Nageswara Rao v. APSRTC*¹¹. In the instant case, the State's decision of road transport nationalization was questioned based on the ground of departmental biasness by the Secretary of transport department. The Court noted that "*the decision suffered from departmental biasness which is inherent under Indian administrative process*"¹².

Biasness related to Subject-matter

It involves the conditions wherein the adjudicating officer is associated with the subject-matter in direct or indirect manner. Until there is real probability of bias, the action or decision undertaken by administrative will not be vitiated. In "*R v. Deal Justices Exparte Curling*"¹³, the judge was not held to be incompetent for dealing a matter of animal cruelty based on the fact that he was associated with royal society for preventing animal brutality since it didn't establish "a real likelihood of bias". In the matter of "*Kandala Rao v. AP Transport Corporation*"¹⁴, it was alleged that there was a policy bias with regards to the nationalization of transport routes. However, it was ruled that "clearing the scheme in a given meeting will not result into making the minister biased".

Judicial Obstinacy

The expression Obstinacy refers to "unwavering and unreasonable persistence on the part of adjudicator". A petition for mandamus was filed in the case of *State of West Bengal v. Shivanand Pathak*¹⁵ seeking issuance of direction to the State for promoting him. Magistrate admitted the claim and ordered the concerned officials to promote the claimant. However, the order was annulled by the Divisional Bench. After 2 years, another petition was registered for seeking benefits which was rejected by the single judge. The order was again questioned before the Divisional bench which was allowed and order for granting relief was passed. The State consequently moved before the Apex Court. While admitting the appeal, the Supreme Court

¹¹ AIR 1959 SC 1376.

¹² *Supra* note at 6.

¹³ (1881) 45 LT 439.

¹⁴ AIR 1959 SC 308.

¹⁵ AIR 1998 SC 2050.

strike down the impugned order and explained about emerging kind of bias i.e., “judicial obstinacy”. It was mentioned by the Court that “*where the decision of inferior court or judge is set aside by the superior court, the inferior judge shall submit to the decision or judgment. He is authorized to re-write the overruled decision in collateral or same hearing. Any kind of biasness on the part of judge is subject to judicial scrutiny by the higher judiciary so as to ensure that the decision is made with a biased mind*”. Thus, it can be inferred that Court emphasized on conducting the trial in open with a view to ensure transparency.

Application of Rule Against Bias to Administrative Actions

The rule of impartiality of adjudicator is applicable even to actions or decisions undertaken by the administrative authorities which affects the interest or rights of an individual. The basic norm of common law i.e., no individual can become judge in one’s own matter was introduced in the *Bohman’s case*¹⁶ by Lord Coke. Moreover, it was evolved even more in order to strengthen the public trust with respect to administration of justice and in consonance with the rule that “justice shall not merely be done but also seen to be done”. It doesn’t get applied to the performance of administrative or legislative function. Likewise, it is not applied in the cases involving using the discretion in administrative decision-making.

Bias is the decisive reason behind disqualification of administrative actions. For instance, examining the answer booklet in any exam is not deemed as quasi-judicial function; generally, an individual whose close relation is taking part in the exam is not permitted to carry out such work. The biasness rule would not be applied in the matters where the official has no personal interest. Further, not every type of preference would be adequate in vitiating the actions undertaken by administrative authorities.

Tests Adopted by Courts for Rule against Bias

Since the “rule of natural justice” falls under the purview of common law therefore the approach of Indian judiciary is similar as that of British Courts. But it is pertinent to note that Courts in India have adopted different pattern as “Real Likelihood test” is followed by them

¹⁶ (1610) 8 Co. Rep 1141.

which is contradictory to the UK's test of biasness- "Reasonable-Suspicion test". The Indian Likelihood test seeks to explore into the case by analysing the factual matrix from the judge's perspective wherein it would be examined by the Court that "whether this will definitely give rise to real likelihood of bias". The judiciary conducts the assessment from its own view rather than from the perception of people. With this aspect, the judiciary has described about "what is the meaning of absence of biasness" by stating that "there shall be lack of unconscious or conscious detriment to one of the parties"¹⁷ On the other hand, the "reasonable suspicion test" takes into account the public perception for determining the biasness in a given case.

Reasonable Suspicion of Bias/ Real Likelihood of Bias

The presence of biasness is an issue of fact and shall be established in every case. The actual standard to be complied shall be the "likelihood of detriment" which has been established where abuse of power or mala fide use of authority is contended. Previously, there has been a divergence of views from UK judges with respect to identification of bias. Few judges formulated and applied real likelihood test and on the other hand, some applied the reasonable suspicion test¹⁸.

Biasness Test in UK

There exists a substantial ambiguity pertaining to the test for determining the bias in matters other than those relating to pecuniary or monetary interest. The judiciary developed 2 tests- "Real Likelihood of Bias" and "Reasonable suspicion of bias". During 19th Century, the Courts in UK explained the former test by mentioning that- "where no pecuniary interest, the Court can adopt the test of real likelihood of bias"¹⁹. However, UK Courts mostly invoked the "reasonable suspicion test".

Test for Determining Biasness in India

From the inception, Indian legal setup emphasized on the principle of "justice not merely be done but appears to be done". In such a scenario, proper test would be "whether parties

¹⁷ Gullapalli Nageswara Rao v. AP State Road Transport Corp. & Ors, AIR 1959 SC 308.

¹⁸ Rahul Kanna R.N., *Nature and Evolution of Rule against Bias under Indian Administrative Law Jurisprudence*, 1(7) Juscholars Journal 26, 29-30 (2020).

¹⁹ R v. Suderland JJ, (1901) 2 K.B. 357 CA.

involved can reasonably believe that tribunal or adjudicator was attributed with biased approach". The judiciary in India invoked the "real likelihood test". The Indian approach of likelihood cannot be determined through dried and uniform formula. It means that judiciary had to bring clarification as to the application of "real-likelihood test."

In a leading decision of *Chiranjit Singh v. Harinder Sharma*²⁰, it was outlined by the Court that "there existed real likelihood of bias wherein there was relation between members of appointment committee and selectees".

Further, in *Manak Lal v. Prem Chand*²¹ case, for adjudicating a matter for professional misconduct brought by Dr. Prem Chand against a High Court lawyer (Manak Lal), a tribunal was constituted by the High Court which comprised of chairman possessing the qualification of senior advocate. The order passed by tribunal was questioned based on personal bias by virtue of the facts that Prem Chand was being represented by chairperson in a previous matter. The Apex Court denied to quash the chairman's action on the ground that there was no connection between him and client and thus, there was no "real likelihood of bias". But the Court later on, quashed the action based on principle i.e., "the justice shall not only merely be done but shall appear to have been done".

In another case of *State of UP v. Mohd. Nooh*²², a superintendent of police was nominated for carrying out departmental enquiry against constable. The administrative action was annulled by the Apex Court based on the fact that where adjudicator assuming himself as a witness, there is definitely a "real likelihood of bias" against the accused (constable).

The Apex Court applied the "reasonable likelihood test" in the landmark case of *A.K. Kraipak v. Union of India*²³. According to factual matrix of the case, the issue related to appointment made by the committee for the purpose of promoting the officials to All India Cadre was dealt by the adjudicator, who was also a former ex-officio member of committee and was also nominated for civil services at national level. Although he was not engaged in discussion of committee in selecting the name, still the court opined that his membership was sufficient in bringing impact upon the final decision of committee.

²⁰ AIR 2002 SC 2397.

²¹ AIR 1957 SC 425.

²² AIR 1958 SC 86.

²³ AIR 1970 SC 150.

It was remarked by the Court that- *“the actual issue is not whether the decision-maker was biased. The state of mind of an individual cannot be easily proved. Thus, what we shall see is whether there existed reasonable basis for believing that there was likelihood for getting biased. Merely suspicion of bias is inadequate. There shall be a reasonable likelihood of bias.”*²⁴

It was ruled by the Court that the existence of members will lead to likelihood of influencing the decision of selection board and thus such kind of decision was liable to be quashed. The Apex Court stated that-

The “doctrine of natural justice” is applicable over administrative proceeding which seeks to aim prevention of miscarriage of justice including the principle that “no one shall adjudicate his own case” and “enquiries conducted by quasi-judicial authority shall be made in good faith and not unreasonably or arbitrarily.”

There is a thin line difference between “quasi-judicial power and administrative power” and it getting slowly obliterated. For determining the kind of power, following consideration shall be kept into mind-

The scheme of provisions/law vesting that power or authority.

The power vested and its nature.

Individual upon whom such authority is vested.

Lastly, in *J. Mohapatra v. State of Orissa*²⁵, an Assessment committee was established by the Orissa government with a view to receive suggestions regarding selection of books for different school subjects. Few books which have been recommended by committee was authored by the members of committee. While quashing the decision taken by the committee, the Apex Court decided that there existed the “real likelihood of bias”.

Real Danger Test

This test was developed in the case of *“R v. Gough”*²⁶, by House of Lords whereby it was remarked that- “in every case of apparent bias, same test shall be applied, whether it relates to arbitrators, jurors, tribunals and justices. With regards to the degree of bias, the main

²⁴ *Ibid.*

²⁵ AIR 1984 SC 1572

²⁶ (1993) A.C. 646 HL.

standard shall be whether there was a real or an actual danger on the part of concerned adjudicator, in the sense that he can unjustly disfavour or favour the case of party dealt by him". As per the statement of Lord Goff, it is not essential to frame the test from the angle of reasonable man, due to the fact that court personified the reasonable person and as the court has to decide the relevant circumstantial evidence which would not have been available to normal observer. This principle was highly criticised by the judiciary in various common law nations, as it stressed that the court's opinion of the facts and gave insufficient attention to public perception.²⁷

Development of "Necessity Doctrine" in Indian Context: Exception to "Rule against Bias"

The "Rule against bias" is not universally applicable and is subjected to exceptional circumstances. The bias rule will not vitiate the action undertaken by official where no other individual is capable enough to act in his place. The principle of necessity imposes a mandate upon the adjudicator to address the issue. It is applied in unavoidable circumstances and if not applied in such cases, then it would impede or obstruct the course of justice and the party at fault would gain wrongful benefit from the same. Wade stated that "Departmental and Ministerial policy should not be considered as disqualifying bias"²⁸.

In the case of *ICA v. L.K. Ratna*²⁹, it was enunciated by the Court that- "the rule against bias will cease to apply wherein there is lack of statutory pre-requisite or explicit compulsion for application of necessity principle".

Moreover, in the case of "*Ashok Kumar v. State of Haryana*³⁰," personal bias by a member of public service commission selection committee of Haryana was proved, but the Court opined that "reasonable likelihood test would be applied to establish the presence of official bias only and since the authority of committee has been derived from Article 316 of the Indian Constitution³¹, the decision is deemed to be valid and principle of necessity would stand the test of rule against bias". The principle of necessity was described in the present case. It was

²⁷ *Web v. R*, (1994) 181 CLR 41.

²⁸ *Ibid*.

²⁹ Civil Appeal Nos. 1911-12 of 1980.

³⁰ AIR 2010 SC 2839.

³¹ INDIA CONST. art. 316.

ruled that “a member of civil services cannot wholly disconnect himself from the selection procedure merely because some of the candidates were associated with him. He shall separate himself from selecting the individuals who are biased in favouring his relatives. The main reason behind such exceptional condition is that public service commission is a constitutional authority and the officers involved could not be wholly excluded from their working.”

The necessity principle can be applied to address the infirmity or problem caused by bias. For invoking the said doctrine, it has to be established that despite the presence of biasness, no other authority was competent to adjudicate the given matter³². Further, in *Vinay Chandra Mishra, In re*³³, it was concluded by the Court that “the rule against bias is not applicable in the cases involving prima facie contempt and the adjudicator is empowered to penalize a contemnor who has committed contempt before it.”.

Conclusion

It can be concluded that “rule against bias” has been emerged as an important principle under the ambit of administrative law. This rule serves as a protection guard against the abuse by actions or decisions of adjudicator. There are many kinds of bias such as Personal bias, pecuniary bias, bias related to subject-matter, etc. Two test is majorly invoked by the Court i.e., “reasonable likelihood of bias”, and reasonable suspicion test”. In India context, it is more preferable to adopt the “probability” test rather than “possibility” because this would assure that entire efficiency and process of administration is enhanced and improved. The very purpose of such principle is to avoid any kind of miscarriage of justice. Where doctrine is not applied, the necessity doctrine is adopted by the judiciary in periodic manner.

³² *Indian Institute of Chartered Accountants v. DL Ratna*, AIR 1987 SC 71.

³³ (1995) 2 SCC 584.