



## Rule Against Bias-Balancing a Fine Line

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### ABSTRACT

*The rule against bias is one of the basic principles of natural justice. It has strong roots in administrative law, ensuring that decision-making authorities act impartially and without prejudice. The objective of the principle, rooted in the maxim nemo iudex in causa sua (no one should be a judge in their own cause), is to uphold the principles of justice and procedural fairness. It also leads to public confidence in governance. The rule clearly supports the basic principle of administrative law that the 'Justice should not only be done but must also appear to be done'. Bias, whether personal, financial, pertaining to the subject matter or institutional, takes away the appearance of justice and compromises the integrity of administrative decisions. Indian jurisprudence has evolved to address various forms of bias. The courts have evolved the tests for bias, such as the "real / reasonable likelihood" and "reasonable suspicion" standards, while also recognizing exceptions to the rule such as the doctrine of necessity. This article explores the meaning and test of bias, its various kinds, the exceptions and the safeguards needed to ensure transparency and accountability in administrative actions.*

### KEY WORDS

*Bias, Natural Justice, Preconceived Notion.*

### INTRODUCTION

The principles of natural justice are the basic minimum procedural principles which have to be followed in any administrative adjudication. The procedural fairness in any administrative adjudication may be ensured either by having a separate legislation on the procedure to be followed like the Administrative Procedure Act, 1946 in USA or by having specific procedural provisions in the parent Act which provides

for the adjudication. However in cases where there is no separate legislation or there exists legislative silence, the minimum fair procedure as evolved by the judiciary, has to be followed. These higher judicially evolved procedural principals are known as principles of natural justice. These principles find base in justice, equity, fair play and good conscience. One of the basic principles of natural justice is that no man can be a judge in his own cause or the rule against bias. This rule is fundamental to maintaining fairness in administrative processes. It is challenging to prove actual bias. The judicially evolved test of likelihood of bias prevails over actual bias. Bias has some established forms and few new types of bias can be seen as emerging.

## Meaning and Test of Bias

Bias can be elaborated to mean an operative prejudice or a predisposition or predetermination to decide a case in a particular manner, so much so that the mind of the adjudicator is not open to any other view. It may be due to self-interest or actuated with the motive of giving benefit on basis of nearness of relationship or even with a desire to harm someone on the basis of animosity, or on basis of identity with the issue, or financial interest etc. Existence of bias closes the mind of the adjudicator or makes him predisposed on the issue. Bias is a state of mind and it is very difficult to prove its actual existence. The courts have evolved two key tests for identifying bias:

- **Real Likelihood of Bias/Reasonable Likelihood of Bias:** This test focuses on whether a reasonable person apprised of all the circumstances would perceive a likelihood of bias.
- **Reasonable Suspicion of Bias:** This test centers on whether the circumstances give rise to a suspicion of bias or partiality. It is now established that suspicion alone cannot hold a claim of bias, real or reasonable likelihood has to be established.

The test is not whether the adjudicator was actually biased or not but whether there is a reasonable ground, for believing that the deciding officer was likely to have been biased. There must be a real likelihood of bias and not mere suspicion of bias before quashing the proceedings on the basis of disqualification on the grounds of bias<sup>1</sup>. The test is whether a reasonable man in possession of relevant information, would have thought that the bias was likely and whether the person concerned was likely to be disposed to decide the matter only in a particular way<sup>2</sup> The test cannot be rooted in actual bias or mere suspicion of bias, it has to be rooted in the reasonable possibilities of bias. It cannot be argued that there was bias in fact but whether reasonable people think that there is a substantial possibility or likelihood of bias. In a recent case of *Chandrasekhar Agarwal v. State of Chattisgarh*<sup>3</sup> mere apprehension of bias on the ground of prior adverse order by a judge was considered as insufficient to justify a case transfer by Chhattisgarh High Court. So finally it's the test of real or reasonable likelihood of bias which has been established. The claim of bias must be made as soon as the bias is discovered.

## Types of Bias

There are various forms of bias, the main being as follows:

1. **Personal Bias:** Personal bias is one of the most important forms of bias recognized under the administrative law. It arises when an adjudicator actuated with the motive of giving benefit on basis of nearness of relationship or favoritism or with a motive of harming someone on the basis of animosity or grudge. It works in favor or against one of the parties involved in the proceedings. Such bias erodes public trust in administrative processes and compromises the fairness of decisions. Such bias can stem from various factors such as personal relationships, enmity, or conflicts of interest. For example, if a decision-maker has a close friendship or rivalry with one of the parties, their impartiality is likely to be questioned. The Indian judiciary has consistently emphasized the importance of eradicating personal bias to ensure procedural fairness and maintain the integrity of administrative decisions.

In *Mineral Development Corporation Ltd. v. State of Bihar*<sup>4</sup>, the Supreme Court quashed a Government order on the grounds of personal bias. The minister responsible for the decision of cancelling

a license had a known political rivalry with the owner of the Mineral Development Corporation. This animosity raised a “real likelihood of bias,” leading the court to invalidate the decision. The case till date remains a classic illustration of how personal animosities can vitiate administrative actions. Another landmark case of *A.K. Kraipak v. Union of India*<sup>5</sup> almost blurred the line between administrative and quasi-judicial functions by emphasizing the need for fairness in all decision-making processes. One of the selection committee members was a candidate for the position being filled, which created a clear conflict of interest. The court held that such participation violated the rule against personal bias, as it compromised impartiality. This case expanded the scope of natural justice in administrative law. In *Baidyanath Mohapatra v. State of Orissa*<sup>6</sup>, the chairman of a review committee was also part of the tribunal deciding on premature retirement. This dual role created a scenario of personal bias, as the chairman’s involvement in both recommending and deciding the matter raised legitimate concerns about impartiality. The court quashed the tribunal’s order, reinforcing that administrative actions must be free from bias.

However it’s not all connections or familiarity with the beneficiary which will make it a case of invalidation on grounds of personal Bias. There must be reasonable likelihood of bias. In a case of *G.N. Nayak v. Goa University*<sup>7</sup>, the senior officer who expressed appreciation of the work of a subordinate was also the member of the Departmental promotion committee to consider the subordinate along with others for promotion .The committee ruled favorably for the promotion which was challenged . The court held that unless the preference is unreasonable and is based on self-interest it will not be vitiated.

2. **Pecuniary or Financial Bias:** This form of bias is reflective of some financial interest in the subject matter which influences the decision. The law is well established that pecuniary interest howsoever small it may be shall invalidate the decision. The landmark case of *Dimes v. Grand Junction Canal*<sup>8</sup> set the precedent that even minimal financial stakes could disqualify a decision-maker. In *Jeejeebhoy v. Asstt. Collector, Thane*<sup>9</sup> on finding out that one of the members of the bench was also the member of the cooperative society, land acquisition of which was in question, the bench was reconstituted by the chief justice. In another well-known case of *J.Mohapatra v. State of Orissa*<sup>10</sup> the Apex court invalidated the decision of the textbook selection committee as some of the members of the committee were also the authors of the books which were under consideration for the purpose of selection. The fact that the member walked out when his book was being deliberated upon was not considered enough to rule out personal and financial bias. In a 2024 Supreme Court Judgment of *Haliburton company v. Chubb*<sup>11</sup> which dealt with a question of bias in arbitration, the court observed that though the non-financial bias is complex, financial interest can lead to easy disqualification.
3. **Subject-Matter Bias:** This bias relates to the situations where the adjudicating officer is directly or otherwise involved in the subject matter or the policy in question. It relates to the situation when the authority has a vested interest in the case’s subject. For instance, in first *Gullapalli Nageswara Rao v. A.P.S.R.T.C*<sup>12</sup>., the court invalidated a decision related to the nationalization of road transport, taken by the Andhra Pradesh Government on the ground that the secretary of the road transport who had initiated the scheme and was also the head of the department whose responsibility was to execute it , was also made responsible for hearing the objections raised in the matter. The initiation and hearing functions were vested in the same person thus leading to the o the decision-maker’s direct involvement in the subject matter.

It’s not every kind of involvement in the subject matter which will lead to disqualification. Involvement has to be such as to prove reasonable likelihood of the bias. In *Murlidhar v. Kadam Singh*<sup>13</sup> the court did not interfere with the decision of the Election Tribunal merely on the ground that wife of the chairman of the tribunal was the member of the congress party whose candidate was defeated by the petitioner.

4. **Departmental Bias**- this form of bias is inherent in administrative process. It cannot be totally weeded out but has to be effectively checked otherwise it may negate the core concept of fairness in administrative adjudication. The first *Gullapalli* case as discussed in the previous paragraph was also an example of departmental or institutional bias. After this case the function of hearing was taken away from the Secretary and was vested in the Minister concerned. The decision of the Government was again challenged by *Gullapalli Rao*, on the basis that the minister was the head of the department of transport which initiated the scheme. However in the second case the Apex court refused to intervene on the ground that the minister was not part of the department in the same way as the secretary was, the court said that as long as initiation and hearing function is separated there is no real likelihood of bias.

The *Gullapalli* case is a perfect example of the limit on judicial review in such kinds of cases. If the initiation and hearing function is combined in an authority than it becomes a case for invalidation however if these two functions are separately vested in different authorities, even though the authorities belong to the same department, the courts are generally not ready to interfere on the basis of bias. In *Hari v. Deputy Commissioner of Police*<sup>14</sup> the initiation and prosecution functions were both vested in the police department but not in the same individual, the court didn't interfere.

Such kind of bias can be minimized by inducting a system of separate hearing officers, which is not well developed in India. Some amount of departmental bias has to be considered as part of the whole administrative set up. So till the time real likelihood of bias does not exist, courts do not interfere.

5. **Preconceived Notion Bias**: One of the very difficult forms of bias which has been struggling to establish roots is preconceived notion bias. It refers to a situation where the adjudicator has identified himself with a particular notion or has formed opinions or beliefs about a subject, case, issue, or party so much so that he is pre decided. The pre conception forecloses him from taking a fair judgment. It doesn't always mean the decision-maker is intentionally unfair—it could stem from previous involvement in the matter, strong convictions about policy, or even unconscious predispositions. Some predisposition or preconception is natural. No adjudicator can be considered to be a blank slate. Each person has some opinions or thinking about issues or situations but such normal human pre conceptions cannot be categorized as pre conceived notion bias. It is those cases where pre conception is strongly established that such bias may be argued. When such bias exists, it risks undermining the fairness and transparency of administrative decisions, which are foundational to natural justice.

In administrative law, preconceived notion bias may have to be considered as an intrinsic limitation. It becomes complicated because decision-makers often deal with matters related to the policies framed by the Government. For example, a minister or officer responsible for implementing a specific policy might be predisposed in favour of the results sought to be aligned with that policy. Such predisposition can create a preconceived notion bias, especially if the decision-maker appears unwilling to consider alternative viewpoints or evidence. No clear case law is available where a decision has been quashed due to existence of such bias though this form has been discussed in few cases.

In *Franklin v. Minister of Town and Country Planning*<sup>15</sup> also known as *Stevenage case*, one Stevenage New Town Designation Order, 1946 was challenged on the ground that the minister who had given a hearing suffered from a pre conceived notion bias. In fact it was on record that the minister at his speech at Stevenage had stated that the daring exercise in town planning will be carried out and amongst jeering by people, he stated "It is no good your jeering! It is going to be done."

Though the case offered a wonderful opportunity to establish and expound the concept of pre conceived notion bias, the court fell short and did not accept the challenge on the technical ground that minister while confirming the report was not performing any quasi-judicial function. The minister had advocated for the scheme publicly before deciding on objections. Such predisposition was not considered to be amounting to legal bias, as the minister's role inherently involved promoting Government policy.

In *Kondala v. APSRTC*<sup>16</sup>, the Minister passed a road transport nationalization order after hearing objections of the private operators. The order was challenged on the ground that few days back the same minister presided over a meeting in which nationalization was favoured. The Apex court refused to intervene on the ground that presiding over such a meeting is not enough to lead to the conclusion of pre conceived notion bias.

In the first Gullapalli case, the Court dealt with departmental bias which may also be considered as a form of preconceived notion bias. The Transport Secretary, who had framed the nationalization scheme, later heard objections related to the same scheme. The court ruled that this created a reasonable likelihood of bias, as the same individual was entrusted with the initiation and hearing function. This decision reinforced the principle that circumstances must not be such as to create a real likelihood of the decision-makers prejudging issues tied to their own policies.

Merely holding a policy-related opinion doesn't always amount to bias, it has to be shown that the opinion actively foreclosed the decision-maker's mind from considering other facts or options.

- Judicial obstinacy-** This is a rather new form of bias. The Cambridge dictionary defines obstinacy as “*the quality of being unreasonably determined*, especially to act in a particular way and not to change at all, despite what anyone else says”. When this quality is manifested by a judge it takes form of judicial obstinacy. There is only one significant judgment over this issue. In *State of West Bengal v. Shivanand Pathak*<sup>17</sup>, a judge whose order was overruled in an earlier writ petition by a division bench validated his own order in a fresh writ petition. So what could not have been done directly i.e. no judge can sit in appeal against his own order was done indirectly by way of validating the order in a fresh writ petition. The Apex court quashed the decision and observed that in keeping with the high tradition of the institution the judge should have disassociated himself from the bench so as to give effect to the rule that justice must not only be done it should manifestly seem to have been done. The court further observed that the judge may have a chance to reiterate his dogmatic views on some other occasion but not in the same case, if it will be allowed it would be exhibitivive of his bias in his own favour to satisfy his own egoistic judicial obstinacy.

### **Doctrine of necessity –An exception**

If no other person is competent to act in the place or can be allowed to fill in the shoes of the adjudicator, a situation of necessity arises. In such cases Bias would not disqualify an officer. If the doctrine of necessity would not be allowed it would impede the course of justice itself. Disqualification is not applicable as it's the adjudicator only who is competent or authorized to decide that matter e.g. if a particular authority has been vested with the power of adjudication through a legislation, it is that authority alone which can exercise it. Necessity has to be real.

One of the landmark cases dealing with doctrine of necessity is *Charan Lal Sahu v. Union of India*<sup>18</sup> also known as Bhopal Gas leak disaster case. In this case the constitutional validity of Bhopal Gas Disaster (Processing of Claims) Act, 1985 was in question. The Act has authorized the central Government to represent the victims for the claim of compensation. It was challenged on the ground that the Government itself owned 22% share in the union Carbide Company and resultantly it was a joint *tort feaser*. There existed a direct conflict between the interests of the Government and the victims. Negating the contention and pressing the doctrine of necessity in the case, the court observed that there was no sovereign body other than the Government, to represent the whole class of gas victims and thus the principles of natural justice were not considered to be attracted in this case.

Similarly where the, Judges Enquiry Act, gave the statutory authority to the speaker of the Lok Sabha to decide on disqualification, the Apex court did not allow the contention of mala fide against the speaker on the basis of his affiliation to a particular political party<sup>19</sup>

Similarly in *Tata Cellular v. Union of India*<sup>20</sup> The Telegraph Act, 1885 necessitated the involvement of the Director General of the Telecommunications and Telecom Authority as part of tender evaluation committee. The court held that involvement of the father as part of the evaluation committee did not vitiate the selection of the son on the ground of bias. Though in the case court held that the committee was only a recommendatory body hence there was no reasonable likelihood of bias, however the doctrine of necessity was well explained in the case.

Doctrine of necessity though a problematic doctrine is required to be pressed in those cases where no alternative exists. When the choice is between having a judge who may be biased and having no judge at all, the balance of scale tilts in favour of the former.

## CONCLUSION

It is impossible to totally do away with bias in an administrative set up. The efforts have to be directed to consciously subdue it. Occurrence of some sort of predetermination, opinion, judgment in the adjudicators mind is but natural. It is the level of pre determination and attending circumstances which that decides whether an administrative decision must be invalidated on grounds of bias or not. The test is that of reasonable likelihood of bias. Out of all forms of bias, Departmental and Preconceived notion bias pose complicated issues in administrative law. There is a delicate balance which has to be maintained by the courts they have to balancing the fine line. Following specific suggestions may be applied to minimize the allegations and occurrence of bias-

- 1. Separation of Policy initiation and adjudication Functions:** Authorities should avoid both initiation of some policy and adjudication in the same matter including that of hearing objections from the stake holders. This also applies to initiation of a prosecution and hearing by the same officer. A system of separate hearing officers in administrative proceedings may be developed on lines of U.S.A.
- 2. Training and sensitization modules:** Regular training and sensitization of administrators about unconscious bias must be carried out and the importance of impartiality must be stressed in such programs.
- 3. Maintaining Transparency:** a system of clear disclosure of association or prior involvement in particular policies can help build trust and accountability. It is important to enhance the institutional safeguards for the purpose of ensuring administrative fairness

The above measures will ensure that the justice is not only done but also seen to have been done thus fostering public trust in the governance. Indian judiciary has steadily worked to balance the realities of governance with the principles of fairness. By strengthening safeguards, administrative systems can better ensure justice while remaining aligned with policy goals.

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