



Rule Against Bias

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Introduction

Natural justice is an important element of our society. Natural justice provides a sense of security to people. It is emerged to save people from injustice. Natural justice is based on natural laws. As natural laws are not codified thus it is very difficult to define natural justice. Natural justice is a very subjective term and can't be defined by particular set of words. It differs from case to case and mostly depended on facts and circumstances of a particular case. Basically, it is based on the idea to save individuals from injustice. Or in simpler words we can say that it is based on common sense. Or Natural justice is nothing but the 'Law of Reason'. As there is no specific definition of natural justice has been evolved, thus different Hon'ble jurists have laid down some specific principles of natural law. Among different principles, lots of jurists have relied upon two principles of natural justice. First is '**Nemo Judex in causa sua**' which means judge should be free from every type of biasness and he must not have any kind of interest in a particular case. And the second principle is '**Audi Alteram Partem**' which means a person affected by a decision has a right to be heard. Although we have to keep in mind that natural justice is strictly based upon facts, situation of a particular case. Thus it differs from case to case.

In this assignment, I am specifically dealing with the second limb of Natural Justice which is termed as Rule against Biasness. The Doctrine of Rule against Biasness ensures the fair hearing and provides the justice to common individual. In the administrative process, the Administrative officer must be impartial and neutral while Administrative adjudication and must not be prejudice. If the judgment of Administrative officers will be bias then it would be negation of rule of law and principle of natural justice. Further, there are considerable case law and academic discussion on the appropriate test for establishing bias. The legal Test has now become more settled. The Chapter will examine the controversies surrounding the nature of test for bias and consider how the current test has been interpreted by the courts. The Issue of Rule against Biasness can arise in two main contexts. The decision-maker might have some interest of pecuniary or personal nature in the outcome of the proceedings. There is in addition problem where decision-maker is interested in the result of an inquiry or investigation, not in any personal sense but because the institution that is represented wish to attain a certain objective.

Rule Against Bias: Meaning and Concept

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

- Lord Denning

The term Bias means “**Whether a judge has pre-determined the issue or has pre-conceived the issue**”. It is the pre-determination of the issue that makes the judgment bias. In Administrative system the rule against biasness has also been extended and the administrative officer while administrative adjudication must follow this principle.

Bias means an operative prejudice, whether conscious or unconscious, in relation to party or issue. Such operative prejudice may be the result of a preconceived opinion or a predisposition or a predetermination to decide a case in a particular manner, so much so that it does not leave the mind open. In other words, “bias” may be generally defined as partiality or preference, which is founded on reason and is actuated by self-interest –whether pecuniary or personal.¹

It is in fact, a condition of mind, which sways judgment and renders the judge unable to exercise impartiality in a particular case. **Bias, is a condition of mind and therefore, it may not always be possible to furnish actual proof of bias**². However, courts for this reason cannot say to be in the crippled state. The rule against bias strikes against those factors, which may properly influence a judge in arriving at a decision in any particular case. The requirement of this principle is that the judge must be impartial and must decide the case objectively on the basis of evidence on record. The dictionary meaning of the word ‘bias’ also suggests ‘anything which tends may be regarded as tending to cause such a person to decide a case otherwise on evidence must be held to be biased’. In other words, a pre-disposition to decide for or to against one party without regard to the merit of ‘bias. Therefore, if a person, for whatever reason, cannot take an objective decision on the basis of evidence on record he shall said to be biased. A person cannot take an objective decision on the basis of evidence on record he is said to be biased. A person cannot take an objective decision in a case in which he has no interest, for, as a human psychology tells us, very rarely can people take decisions against their own interests.³

This rule of disqualification is applied not only to avoid the possibility of a partial decision but also to ensure public confidence in the impartiality of the administrative adjudicatory process because not only must “no man be a judge in his own cause” but also justice should not only be done but should manifestly and undoubtedly be seen to be done.”⁴

¹ G.N. Nayak v. Goa University, (2002) 2 SCC 290

² State of West Bengal v. Shivananda Pathak, AIR 1998 SC 2050, para 25

³ U.P.D. Kesari “Lectures on Administrative Law” 15th Edition, 2005

⁴ Eckersely v. Mersy Docks and Harbour Board, (1894) 2 QB 667

The minimal requirement of natural justice is that the authority must be composed of impartial persons acting fairly, without prejudice and bias.⁵

‘Bias’, in this context –“denotes a departure form the standard of even-handed justice which the law requires form those who occupy judicial office, or those who are commonly regarded as holding quasi-judicial office, such as an arbitrator. The reason for this is clearly that, having to adjudicate between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute.”⁶

It is usually stated that “Bias disqualified an individual from acting as a Judge”. This proposition floats from two important principles as given below:

NO MAN SHOULD BE A JUDGE IN HIS OWN CAUSE-

It means that judge should not be motivated either by pecuniary interest or by personal interest. And while deciding the case he should act impartially which would lead to justice in true sense.

JUSTICE MUST NOT ONLY DONE BUT SEEN TO BE DONE-

It means that if the justice is done perfectly on merit of case then it must inspire the confidence of public. The foundation of justice must not only be pure but it must inspire the public confidence and creditability.

The rule against bias strikes against those factors which may improperly influence a judge against arriving at a decision in a particular case. This rule is based on the premises that it is against the human psychology to decide a case against his own interest. The basic objective of this rule is to ensure public confidence in the impartiality of the administrative adjudicatory process, for as per **Lord Hewart CJ, in R v. Sussex⁷**, justice should not only be done, but also manifestly and undoubtedly seen to be done.

Rule Against Bias: A Judicial Process

In the case of a judicial body, the independence and impartiality of a judge is an absolute condition. A judge should not hear matter in which she is personally interested. The interest may be either pecuniary or personal. The purpose behind this principle is that public confidence in the impartiality of a judicial body must never weaken because that is its real strength. A single judge gave a decision in favor of petitioner seeking promotion in his service. A Division Bench of High Court overruled that decision. Later, the same Petitioner made a collateral petition seeking

⁵ N. K. Jayakumar, Administrative Law tests and Material, p43, PHL Learning Pvt. Ltd.

⁶ Beatson, Mathews, et.al, Administrative Law Texts & Materials, P 321 ⁷

[1923] All ER Rep 233)

enforcement of the earlier decision of the single Judge, to another Division Bench on which the same judge who had decided the matter as a single Judge Bench sat. The Division Bench held in favor of that petitioner and ordered the payment of arrears. It was held that decision could not be sustained in view of the fact that one of the judges who had decided in his favor earlier as a single judge Bench, sat on the Division Bench. The judge was disqualified on the ground of bias⁷. Where one of the parties to a proceeding before a tribunal is closely related to member of tribunal, such a member is disqualified for continuing as member⁸. Where an advocate was elevated to the Bench, it was held that he should not hear a case and grant interim injunction against the corporation and in favor of an employee whom he had represented in the same matter before his elevation⁹. The plea of bias can also be raised against the appointment of a person as a commission of inquiry under the Commissions of Inquiry Act, 1952¹⁰.

Doctrine of Bias Extended to Administrative Actions

The principle of impartiality of a judge is extended even to administrative authorities that take decisions affecting the rights or interest of persons. The fundamental principle of common law that no person should be a judge in his own cause was laid down by **Lord Coke in Bohman's Case**¹¹. It was further developed with a view to strengthening public confidence in administration of justice and in conformity with the principle that justice should not only be done but also seen to be done. It is important to note here that the disqualification on the ground of bias applies not only to quasi-judicial authorities but also to administrative authorities as it was laid down by Supreme Court in *A K Kraipak v. India*¹³.

It normally does not apply to those performing either legislative or administrative functions. Thus, a governor may validly assent to a Bill indemnifying her against the legal consequences of her own conduct. Similarly it would be impossible to say that the authority invested with the power of delegated legislation is disqualified from legislating on a matter because it is interested in it. Since Legislative Decisions are supposed to act in general and are not pertaining to individuals, person sitting as a legislator are not barred on the ground of bias or prejudice. In fact policy bias is inevitable in a member of the legislature. Similarly, it may not be apply where the exercise of discretion is involved in administrative decision making. Such decisions can be challenged on the ground of unreasonableness, arbitrariness, mala fide exercise of power or use of irrelevant factors or non-use of relevant factors. However, administrative decision, which result in deprivation of

⁷ West Bengal v. Shivanand Pathak, (1998) 5 SCC 513

⁸ Kriti Deshmanker(Dr) V. India (1991) 1 SCC 104

⁹ PK Gosh V. JG Rajput (1995) 6 SCC 744

¹⁰ K. Vijay Bhasker Reddy V. Andhra Pradesh AIR 1996 AP 62

¹¹ (1610) 8 Co Rep 1141. Wade and Philips, Constitutional and Administrative law pp 55 and 64, 1978

¹³ AIR 1970 SC 150

right or which adversely affect an interest, have to be in conformity with the principle of natural justice.¹²

Bias is disqualifying factor in many administrative actions. For example, assessment of answer books in educational examinations is not a quasi-judicial function; usually a person whose near relation is appearing in examination is not allowed to undertake such work. A person who sits on a committee for selection of candidate for jobs or admission to a course must not be candidate herself as was shown in *A K Kraipak* case, or must not be interested in any candidate.

The Rule against Biasness will not apply where the authority has no personal interests the person concerned. Therefore, where cases of malpractice and pilferage by consumers of electricity were decided by the Electricity Board itself, the Supreme Court held that it is not a violation of the rule against bias. In the same manner every kind of preference is not sufficient to vitiate an administrative action. If a preference is rational and unaccompanied by considerations of personal interest, pecuniary or otherwise, it would not vitiate a decision. Therefore, if a senior officer expresses appreciation of the work of junior in the confidential report, it would not amount to bias.¹³

¹² S. P Sathe, Administrative Law. P 193

¹³ JJR Upadhaya "Administrative Law" 7th Edition 2006

Kinds of Bias

In the domain of Administrative adjudication, the concept of Bias can be sub-divided under the following head:

1. Pecuniary Bias
2. Personal Bias
3. Official or Departmental Bias
4. Subject Matter Bias
5. Judicial Obstinacy

1. Pecuniary Bias

Any financial interest howsoever small it may be is bound to vitiate the administrative action. The judicial opinion is unanimous as to it.¹⁴The position on financial interest has been succinctly stated in **Halsbury's Laws of England**: "There is a presumption that any direct financial interest, however small, in the matter in dispute disqualifies a person from adjudicating. Membership of a company, association or organization which is financially interested may operate as a bar to adjudicating, as may be a bare liability to costs where the decision itself will involve no pecuniary loss."¹⁵

In Bonham's Case¹⁶, Dr. Bonham, a Doctor of Cambridge university was fined by the College of physicians for practicing in the city of London without the license of college. The Statute under which College acted provides that the fine should go half to the College. Adjudicating upon the claim, Coke, C.J. disallowed the claim as the College had a financial interest in its own judgment and was judge in its own case.

The best illustration is the House of Lords case of **Dimes v. Grand Junction Canal**¹⁷, in which the facts were exceptional:

A public company brought a bill in equity against a land owner in a matter involving the interests of a company which was heard by the vice-chancellor who granted relief to the company.

¹⁴ Avatar Singh, Administrative Law, P 175, Universal Publication.

¹⁵ Timothy Endicott, Administrative Law, P 165.

¹⁶ (1610) 8 Co. Rep. 113 (b)

¹⁷ (1852) 3 HL Cas 759

On appeal, the order was confirmed by the Lord Chancellor, **Lord Cottenham**, who was a shareholder in the company. The decree was impugned before House of Lords after Lord Cottenham had retired and the House, presided over by another Lord Chancellor set aside the decree, with the observation:

“No one can suppose that Lord Cottenham could be, in the remotest degree, influenced by the interest he had in this concern; but it is of the last importance that the maxim that no man is to be a judge in his cause should be held sacred... This they are not influenced by their personal interest but to avoid appearance of labouring under such an influence.” In UK Judicial approach is unanimous and decisive on the point that any financial interest, howsoever small it may be, would vitiate administrative action.

In **‘R v. Hendon Rural District Council’**, the court in England quashed the decision of the planning commission, where one of the members was an estate agent who was acting for the applicant to whom permission was granted¹⁸.

In **‘Jeejeebhoy vs. Astd. Collector, Thana’** the CJ reconstituted the bench, when it was found that one of the members of the bench was the member of the cooperative society for which the land has been acquired¹⁹. In India also, the principle is followed that “any direct pecuniary interest, however small, in the subject-matter of inquiry will disqualify an adjudicator. A direct pecuniary interest, howsoever small or insignificant it may be, will disqualify a person from acting as a judge in a court. It is not necessary to prove that there was actual bias or a real likelihood of bias in the circumstance of the case. A similar principle applies to the adjudicatory proceedings as well. Thus, if a permit is granted by a regional transport authority to one of its members, the court may not have any hesitation in canceling it on account of bias of the authority²⁰.

¹⁸ (1933) 2K.B. 696

¹⁹ AIR 1965 SC 1096

²⁰ Ashish Makhija, “Principles Of Natural Justice”

In Case of **Annamalai v. State of Madras**²¹, where Regional Transport Authority has granted a license in favor of one of its own member. This decision was challenged before high Court on the ground that there was pecuniary bias and the decision of giving license was struck down.

In Case of **J. Mahapatra V. State of Orissa**²⁴, where court held that Every Board of Education in state have text Board selection Committee and some of the member of TBSC were text book writer for 10th and 12th and this committee recommended certain texts book including his own text books. SC struck down this decision on the grounds of pecuniary bias.

2. Personal Bias

A number of circumstances may give rise to personal bias. Here a judge may be a relative, friend or business associate of a party. He may have a personal grudge, enmity or grievance or professional rivalry against such party. In view of these factors there is every likelihood that the judge may be biased towards one party or prejudiced towards the other.²² Personal bias arises from a certain relationship equation between the deciding authority and the parties, which incline him unfavorably or otherwise on the side of one of the parties before him. Such equation may develop out of varied forms of personal or professional hostility or friendship. However, no exhaustive list is possible.

Hon'ble Court's decision in **Mineral Development Corporation Ltd. V. State of Bihar**²³, serves as a good illustration on the point. Here, the petitioners were granted a mining lease for 99 years in 1947. But in 1955, government quashed the license. The petitioners brought an action against the minister passing this order on the behalf of government, on the ground that, the petitioner in 1952 opposed the minister in General election. Therefore, on the account of political rivalry, the minister

²¹ W.P 818 of 1952 ²⁴
1974 AIR 1572

²² Griffith and Street, Principles of Administrative Law(4th Edn.) p.156; de Smith, Judicial review of Administrative Action (1995).

²³ AIR 1960 SC 468

passed such an order, and hence the order was suffered from personal bias. Supreme Court found the allegation to be true and thus quashed the said order.

Similarly, in **Baidyanath Mohapatra v. State of Orissa**²⁴, the Supreme Court quashed the order of the tribunal confirming premature retirement on the ground that the chairperson of the tribunal was also a member of the review committee, which had recommended premature retirement.

Similarly in **S. P. Kapoor v. State of H.P.**²⁵, the Supreme Court quashed the selection list prepared by an officer who himself was a candidate for promotion.

In **Cottle v. Cottle**²⁶, where the chairman of the Bench was friend of the wife's family, who had instituted matrimonial proceedings against her husband and the wife had told the husband that the chairman would decide the case in her favor, and the divisional court quash the orders.

In the leading case of **AK Kraipak v. Union of India**²⁷, one N was candidate for selection to the Indian Foreign Service and was also the member of the selection board. N did not sit on the board when his own

name was considered. Name of N was recommended by the board and N was selected by the Public Service Commission the candidate who was not selected, filed writ petition for quashing the selection of N on the ground that the principle of natural justice was violated.

In the case of **Jiwan K. Lohia v. Durga Dutt Lohia**²⁸, the apex court observed that with regard to the bias the test to be applied is not whether in fact the bias has affected the judgment, but whether a litigant could reasonably apprehend that a bias attributable might have operated against him in the final decision.

²⁴ AIR 1989 SC 2218

²⁵ (1981) 4 SCC 716

²⁶ (1939) 2 All ER 535:83 SJ 501

²⁷ : AIR 1970 SC 150

²⁸ AIR 1992, SC 188

Therefore the real test for likelihood of bias is whether a reasonable person in possession of relevant information, would have thought that bias was likely and whether the authority concerned was likely to be disposed to decide a matter in a particular manner.

3. Official or Departmental Bias

In administrative Adjudication, most of the dispute arises because of the interpretation of policy. When a person breaks the rules and having dispute with the administrative officer, then the Administrative officer would try to uphold the rules of administration because these rules have been made by the same administrative officer, which is called as Official or Departmental Biasness.

Under English Law

The most important impersonal kind of bias is official bias. The Committee on Minister's Power, 1932 stated in report that while considering the assignment of judicial function to a minister, the parliament should keep clearly in view the maxim that no man is to be judge in a cause in which he has an interest²⁹. The English law is that if an objector seeks to impugn a Minister's action for bias because she has initiated the project under consideration, the courts will not countenance it, unless the objector shows that the minister has acted in bad faith or for an improper purpose. Mere Interest of ministers in a scheme would not disqualify her on the ground of Bias³⁰.

Under American Law

The question of departmental bias is one of the most difficult questions on American Administrative law too. An Administrative Agency is responsible for accomplishment of the policy embodied in a legislative scheme. For example, complaints for unfair trade are brought by the Federal Trade Commission. This Commission, however also afford the opportunity for hearing before a decision is rendered.

It therefore leads to the merger of function of both, the prosecutor and judge in such agency. The Administrative Procedure Act 1946 provides for internal separation of functions. Where an

²⁹ Report on Committee on Minister's Power, 1932

³⁰ Franklin V. Minister of Town and country Planning, (1948) AC 87

administrative agency is required to give a hearing before any final decision is taken, it appoint a panel of hearing examiners who enjoy a fair amount of independence from other wings of agency. Good salaries are offered to them in order to attract person of good caliber for such jobs. These examiners hold hearing and give initial decision³¹.

Indian Approach

The problem of departmental bias is something, which is inherent in the administrative process, and if it is not effectively checked, it may negate the very concept of fairness in the administrative proceeding.

In Gullapalli Nageswara Rao v. APSRTC³⁵, the order of the government, nationalizing road transport was challenged in this case. One of the grounds for challenge was that the Secretary of the Transport Department who gave the hearing was biased, being the person who initiated the scheme and also being the head of the department whose responsibility it was to execute it. The court quashed the order on the ground that, under the circumstances, the Secretary was biased, and hence no fair hearing could be expected. Thereafter, the act was amended and the function of hearing the objection was given over to the minister concerned. The decision of the Government was again challenged by G. Nageswara Rao on the ground of departmental bias because the minister head of the department concerned which initiated the scheme and was also ultimately responsible for its execution. However, on this occasion the Supreme Court the challenge on the ground that the minister was not a part of the department in the same manner as the secretary was. The reasoning of the Court is not very convenient perhaps because, observed earlier departmental bias is something, which is inherent in the administrative process.

In the U.S.A and in England the problem of departmental bias has been solved, the sum extent, with the institution of hearing officers and inspectors. The problem of departmental bias arises in different context-when the functions of judge and prosecutor are combined in the same department.

³¹ Schwartz, Introduction to American Administrative Law, pp 92-93

³⁵ AIR 1959 SC 1376

It is not uncommon to find that the same department which initiates a matter also decides it, therefore, at times, departmental fraternity and loyalty militates against the concept of fair hearing. This problem came up before the Supreme Court in **Hari v. Dy. Commr. Of Police**³², In this case, an internment order was challenged on the ground that since the police department which initiated the proceedings and the department which heard and decided the case were the same, the element of departmental bias vitiated administrative action. The Court rejected the challenge on the ground that so long as the two functions (initiation and decision) were discharged by two separate officers, though they were affiliated to the same department, there was no bias. The decision of the Court may be correct in the idle perspective but it may not always prove wise in practice. It may be suggested that the technique of internal separation which is being followed in America and England can be profitably used in India if a certain amount of confidence is to be developed in the minds of the People in administrative decision making³⁷.

In **Krishna Bus Service v. State of Haryana**³³, the Supreme Court quashed the notification of the government, which had conferred powers of a Deputy Superintendent of Police on the General Manager, Haryana Roadways in matters of inspection of vehicles on the ground of departmental bias. The facts of this case were that some private bus operators had alleged that the General Manager of Haryana Roadways who was the rival in business in the State could not be expected to discharge his duties in a fair and reasonable manner and would be too lenient in inspecting the vehicles belonging to his own department. The reason for quashing the notification according to the Supreme Court was the conflict between the duty and the interest of the department and the consequential erosion of public confidence in administrative justice.

³² AIR 1956 SC 559

³⁷ Supra note 5 pg.

³³ (1985) 3 SCC 711

4. Subject Matter Bias

It includes situations where the deciding officer is directly or indirectly in the subject matter of the case. Here again mere involvement would not vitiate the administrative action unless there is a real likelihood of bias. In **R v. Deal Justices Exparte Curling**³⁴ the magistrate was not declared disqualified to try a case of cruelty to an animal on the ground that he was a member of the royal society for the prevention of cruelty to animals as this did not prove a real likelihood of bias³⁵.

In the domain of Administrative Adjudication, Policy Consideration plays very important role. The Adjudicator decides the matter by taking consideration of policy and he would have become bias regarding policy because he himself has created the policy. Policy Bias in Administration cannot be absolutely wiped out rather it can only be minimized.

In Case of **Kandala Rao V. Andra Pradesh Transport Corporation**³⁶, In this case the policy bias reflected that in this case the Transport Ministry conveyed a meeting on the Nationalization of certain routes and meeting passed a resolution to clear the scheme. Once the scheme was cleared, the ministry of transport invited objections against the scheme and objection was to be made heard by the very minister. The petitioner agreed before court that Minister foreclosed his mind as the feasibility of the policy before inviting the objections. The court negated the contention of petitioner on the ground that mere clearing of the scheme in the meeting would not lead to an influence that the minister concerned had foreclosed his mind, the court characterized this meeting as a departmental routine. Moreover A minister does not identify himself with the scheme or policy to such an extent as would not lead to an inference that his decision is motivated by Policy Bias.

If Administer Adjudicator decides matter but before pronouncing the decision, he takes **advice/consultation** with other officer and if that person gives some different opinion and he relied on his opinion. It means that the administrative adjudicator acts under dictation and it can be termed as policy bias.

³⁴ (1881) 45 LT 439

³⁵ Supra note 5 pg

³⁶ AIR 1959 SC 308

In the Case of Mahadayal Premchandra v. CTO³⁷, In this case the CTO has assessed the petitioner for tax liability and came to conclusion that he is not subject to tax. Before issuing this order, he consulted with Asst. Commissioner of Tax and the Asst. Commissioner advised him that this particular assesses is subject to tax. On the basis of his opinion, The Commercial Tax Officer ruled that assesses was liable to tax.

Supreme Court struck down the order of the Commercial Tax Officer on the ground that he acted under dictation.

T. Govindaraja Mudaliar V. State of T.N³⁸, the government decided in principle to nationalize road transport and appointed a committee to frame the scheme. The Home Secretary was made a member of this committee. Later on, the scheme of nationalization was finalized, published and objections were heard by the Home Secretary. It was contended that the hearing was vitiated by the rule against bias because the Secretary had already made up his mind on the question of nationalization, as he was a member of the committee, which took this policy decision. The court rejected the challenge on the ground that the Secretary as a member of the committee did not finally determine any issue as to foreclose his mind. He simply helped the government in framing the scheme.

³⁷ AIR 1958 SC 667

³⁸ AIR 1973 SC 974

5. Judicial Obstinacy

The word Obstinacy implies unreasonable and unwavering persistence and the deciding officer would not take 'no' for an answer. This new category of bias was discovered in a situation where a judge of the Calcutta High Court upheld his own judgment while sitting in appeal against his own judgment. Of course a direct violation of the rule that no judge can sit in appeal against his own judgment is not possible, therefore, this rule can only be violated indirectly. In this case in a fresh writ petition the judge validated his own order in an earlier writ petition which had been overruled by the Division Bench. What applies to judicial process can be applied to administrative process as well.³⁹

In **State of W. B. v. Shivanand Pathak⁴⁰**, a writ of mandamus was sought by the petitioner directing the Government to promote him. A single judge allowed the petition ordering the authorities to promote the petitioner 'forthwith'. But the order was set aside by the Division Bench. After two years, a fresh petition was filed for payment of salary and other benefits in the terms of the judgment of the single judge. It was dismissed by the single judge. The order was challenged in appeal which was heard by a Division Bench to which one member was a Judge who had allowed the earlier petition. The appeal was allowed and certain reliefs were granted. The state approached the Supreme Court.

Allowing the appeal and setting aside the order the Apex court described the case of a new form of bias (judicial obstinacy). It said that if judgment of a judge is set aside by the superior court, the judge must submit to the judgment. He cannot rewrite overruled judgment in the same or in collateral proceedings. The judgment of the higher court binds not only to the parties to the proceedings but also to the judge who

rendered it and All judicial functionaries have necessarily to have an unflinching character to decide a case with an unbiased mind.

Judicial proceedings are held in open court to ensure transparency.

³⁹ <http://www.legalserviceindia.com/article/I25-Nemo-in-propria-causa-judex,-esse-debet-THE-RULE-AGAINSTBIAS.html>, Visited on 2/12/2017.

⁴⁰ (1998) 5 SCC 513: AIR 1995 SC 2050.

Tests of Bias

“Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice”

-Lord Hewart C.J

Real Likelihood of Bias/ Reasonable Suspicion of Bias

Bias may arise due to pecuniary interest or personal interest. Pecuniary Interest, however small, must disqualify a judge from being a member of a tribunal. Personal bias may arise out of blood relations or marital relations, or friendship or hostility⁴¹. The existence of bias is a question of fact and is to be proved in each case. The standard of proof is not detriment but mere likelihood of detriment. Actual detriment may be required to be proved where mala fides or abuse of power is alleged.

There was, in the past, divergence of opinion among judges in England, on test for disqualifying bias. Some Judges laid down and applied tests of real likelihood of bias while other judges employed the test of reasonable suspicion of bias, the former imposing a heavier burden of proof on the person making the allegation. The real likelihood of bias explained that the test for disqualifying is whether the facts, as assessed by the Court, give rise to real likelihood of bias. Likelihood was given the meaning of possibility rather than probability. The test thus means **“at least substantial possibility of bias”**. Until recently, it was for the Court to decide by their own evolution whether such likelihood existed in the circumstances of the case. The test was given somewhat broader content and it was held, that whether there was real likelihood of bias depended not upon what actually was done but upon what might appear to be done. It was said that the court would judge the matter as reasonable man would judge any matter in the conduct of his own business⁴².

⁴¹ R V. Rand (1886) LR 1 QB 230

⁴² Nagendra Kumar, Administrative Law, 2004

According to de Smith, the test of real likelihood of bias, which has been employed in a number of leading cases in magisterial and liquor licensing law, is based on the reasonable apprehension of the reasonable man fully apprised of the facts, that justice must be rooted in confidence and the confidence is destroyed when right-minded people go away thinking that judge was biased. Distinguishing from reasonable suspicion test, he explains that real likelihood test focuses on the court's own evaluation of the probabilities. It is because of the maxim that "justice should not only to be done but should be seen to be done". The test thus boils down to the reasonable suspicion test. The reasonable suspicion test explains that justice must be seen to be done, and that "no person should adjudicate in anyway if it might reasonably be thought that he ought not to act because of some personal interest"⁴³.

However, in order to challenge administrative action successfully on the ground of personal bias, it is essential to prove that there is a "reasonable suspicion of bias". ***The reasonable suspicion of bias" test looses mainly to outward appearance, and "the real likelihood" test focus on the court's own evaluation of possibilities; but in practice the tests have much in common with one another*** and in the vast majority of cases they will lead to some result. In this area of bias, the real question is not whether a person was biased. It is difficult to prove the state of mind of a person. Therefore, what the courts see is whether there is reasonable ground for believing that the deciding officer was likely to have been biased. **Wade and Forsyth** say that in many cases, both tests lead to the same result, "since 'likelihood' is given the 'meaning of possibility rather than probability. For, "if there was no real possibility of bias, no reasonable person would suspect it".

Test of Biasness under English Law

There has been considerable confusion concerning the test for determining bias in cases other than those concerning pecuniary interest. Two tests were espoused by the court, that of "**Real likelihood of Bias**" and that of "**Reasonable suspicion of bias**"⁴⁴.

⁴³ Judicial Review of Administrative Action, 1995 pp 525-27

⁴⁴ H Rawlings, "The test for the Nemo Judex Rule, (1980) P.L. 122

In 19th century cases the former test held sway: if there was no pecuniary interest the court inquired whether there was a real likelihood of Bias⁴⁵. However in **McCarthy**⁴⁶, **Lord Hewart C.J** said that a reasonable suspicion of bias was sufficient to quash the determination. The tide appeared to be shifting back to the higher test for in two prominent cases the court expressly adopted that criteria and disapproved of Lord Hewart C.J's formulation⁴⁷. Certainly was not however to last for in **Lannon Case Lord Denning M.R.**, rescued Lord Hewart's reasonable suspicion test⁴⁸. The root of confusion was that Lord Denning

M.R. began by approving Lord Hewart test and ended by talking of real likelihood and contented that “In this test the court itself upon appraising the facts and circumstances of the case. If the court comes into conclusion that there is real likelihood of bias then the decision would be struck down by the court”.

In India, from the very beginning, the emphasis remained on the dictum that, “justice not only be done but appear to be done”. The test is not whether, in fact, bias has affected the judgment, but whether litigant could reasonably apprehend that bias attributed to a member of the tribunal. Bias manifests itself variously and may effect a decision in a variety of ways. No uniform cut and dried formula can be laid down to determine real likelihood of bias. Each is to be determined on the basis of its facts and circumstances.

In Charanjit Singh v. Harinder Sharma⁵⁴, the court held that there is a real likelihood of bias when in a small place there is relationship between selectees and member of the selection committee. A few cases in this connection may be noted by way of illustration.

⁴⁵ R v. Suderland JJ (1901) 2 K.B. 357 CA

⁴⁶ (1924) 1 KB 256 KBD at 259

⁴⁷ R V. Cambrone JJ (1995) 1 QB 41 QBD

⁴⁸ Metropolitan Properties Ltd. V. Lannon (1969) 1 QB 577 CA

⁵⁴ AIR 2002 SC 2397

In the Case of **Manak lal v. Prem Chand** ⁴⁹, In order to decide a complaint for professional misconduct filled by Dr. Prem Chand against Manak Lal, an advocate of Rajasthan High Court, the High Court appointed a tribunal consisting of a senior advocate, once Advocate-General of Rajasthan, as Chairman. The decision of tribunal was challenged on the ground of personal bias arising from the fact that the Chairman had represented Dr. Prem Chand in an earlier case. The Supreme Court has to quash the action holding that the chairman had no personal contact with his client and did not remember that he appeared on his behalf, and that, therefore, there seemed to be no ‘real likelihood of bias’. However, the high professional standards led the court to quash the action in the final analysis on the ground that the justice should not only be done but must appear to have been done.

In Case of **State of U.P. v. Mohd Nooh**⁵⁰, In this case, a Dy. S.P. was appointed to conduct a departmental enquiry against a police constable. In order to contradict the testimony of a witness, the presiding officer offer himself as witness. The Supreme Court quashed the administrative on the ground that when presiding officer himself becomes a witness, there is certainly a ‘real likelihood of bias’ against the constable.

A.K. Kraipak v. Union of India⁵¹

The reasonable likelihood test was applied by Supreme Court. The fact of this case and main objection taken by the court to the selection made by the selection committee for promotions of state officers to All India Cadre for forest services have been dealt with elaborately in Ch 4. Naquishbund who was the acting chief conservator of forest, was an ex-officio member of the selection committee and was himself selected for All India Services. The court conceded that he didn't participate in the deliberation the committee when his name was considered. However, the courts view the very fact that he was a member of the selection committee must have had its impact on decision of the selection board.

⁴⁹ AIR 1957 SC 425

⁵⁰ AIR 1958 SC 86

⁵¹ AIR 1970 SC 150

The Court observed that “*The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore, what we have to see whether there is reasonable ground for believing that he was likely to have been biased... a mere suspicion of bias is not sufficient. There must be reasonable likelihood of bias.*” The court held that there was in this case reasonable likelihood that Naquishbund's presence would influence the Selection Board in his favor and against his rivals. Therefore, the selections were quashed. SC also made the following observations: -

1. The dividing line between an administrative power and quasi-judicial power is quite thin and is being gradually obliterated. Whether a power is Administrative or quasi-judicial, one has to look into –
 - the nature of power conferred
 - the person on whom it is conferred
 - the framework of the law conferring that power
 - The manner in which that power is expected to be exercised.
2. The principles of natural justice also apply to administrative proceedings.
3. The concept of natural justice is to prevent miscarriage of justice and it entails – (i) No one shall be a judge of his own cause.
 - (ii) No decision shall be given against a party without affording him a reasonable hearing.
 - (iii) The quasi-judicial enquiries should be held in good faith and not arbitrarily or unreasonably.

J. Mohapatra and Co. v. State of Orissa⁵² In this case, the State of Orissa has constituted an Assessment Committee in order to recommend and select books of various Authors and publishers for various school subjects. Some of the persons whose books were in the selection list were members of Assessment Committee.

⁵² AIR 1984 SC 1572

The meeting of the Committee was held. In this meeting when the books were being assessed an individual member would withdraw when his book was taken for consideration.

However, that member participated in deliberations when books of other member were considered. The result was that the books of other members were considered. The result was that the books of members of Assessment Committee were accorded approval. The action of the Government was challenged on the ground of bias. Quashing the action, the Supreme Court held that when some members whose books were in the list for selection were members of Assessment Committee, there were every likelihood of bias, Actual bias is not material, but the possibility of such bias in all such cases. Therefore, the Court concluded that withdrawal of persons is not sufficient because the element of quid pro quo with other members cannot be eliminated. It may be pointed out that the doctrine of necessity does not apply in this case⁵³.

Real Danger test

The test of real danger was evolved by House of Lords in the case of **R v. Gough**⁵⁴ where it has been held that the same test should be applied in all cases of apparent bias, whether concerned with justices, tribunals, jurors, arbitrators and coroners. In term of the degree of bias the test should be whether there was a real danger of bias on the part of the relevant member of the tribunal, etc. in the sense that he might unfairly regard with favor or disfavor the case of party under consideration by him. In terms of the perspective from which bias should be viewed, it was not necessary, said Lord Goff, to formulate the test in terms of reasonable man, because the court personified the reasonable man, and because the court had to ascertain the relevant circumstances evidence that might not available to the ordinary observer. This test was criticized by the courts in other common law jurisdiction, because it emphasized the court's view of the facts and gave inadequate attention to the public perception of the incident being challenged⁵⁵.

⁵³ Supra note 3 pg

⁵⁴ (1993) A.C. 646 HL

⁵⁵ Web v. R (1994) 181 CLR 41

The House of Lords indicated that it might review the test in Gough. The court of Appeal undertook such a view and its approach with some modification, was confirmed in **Porter Case**⁵⁶. This view was precipitated by continuing uncertainty over the correctness of test and its compatibility with the criterion used by the court which considered whether there was an objective risk of bias in the light of circumstances identified by the court⁵⁷.

The test adopted in Porter was whether having regard to the relevant circumstances as ascertained by the court, the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. Courts have applied this test in the **Davidson Case**⁵⁸ it was held that risk of apparent bias arose where a judge was called upon to rule judicially on the effect of legislation that he has drafted or promoted during the parliamentary process.

⁵⁶ Porter v. Magill (1982) 5 E.H.R.R. 169 at 179-180

⁵⁷ Pullar v. U.K (1996) 22 EHRR 391 at 402-403

⁵⁸ Davidson v. Scottish Minister(No.2) (2004) HRLR 34 HL

Rule Against Bias: Exceptions

Doctrine of Necessity

Bias would not disqualify an officer from taking an action if no other person is competent to act in his place. This exception is based on the doctrine which it would otherwise not countenance on the touchstone of judicial propriety. The doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. It can be invoked in cases of bias where there is no authority to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit from it. If the choice is between either to allow a biased person to act or to stifle the action altogether, the choice must fall in favor of the former as it is the only way to promote decision-making. Therefore, the Court held that bias would not vitiate the action of the Speaker in impeachment proceedings and the action of the Chief Election Commissioner in election matters. In the USA, the disqualification arising out of bias arises from the due process clause of the American Constitution. Therefore, an administrative action can be challenged in India and England. Recent trends in the judicial behavior of the American Supreme Court also indicate that where the administrative authority prejudged the issue, the action will be vitiated. However, the term 'bias' must be confined to its proper place. If bias arising out of preconceived notions means the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial, and no one ever will. Therefore, unless the strength of the preconceived notions is such that it has the capacity of foreclosing the mind of the judge, administrative action would not be vitiated. Where bias is apparent but the same person who is likely to be biased has to decide, because of the statutory requirement or the exclusiveness of a competent authority to decide, the courts allow such person to decide. In **Ashok Kumar Yadav v. Haryana**⁵⁹, which has been discussed above, the court held that a member of public service commission could not entirely disassociate himself from the process of selection just because a few candidates were related to him. He should disassociate himself with the selection of the persons who are

related to him, but need not disassociate with the selection of other candidates. Though his being on a selection committee could create a likelihood

⁵⁹ AIR 1987 SC 454

of bias in favor of his relation yet, since the public service commission is a constitutional authority, such a member cannot be entirely excluded from its work.

In **Institute of Chartered Accountants v. DL Ratna**⁶⁰, the court did conclude that the president and vice-president of Institute need not be required to sit on a disciplinary committee as well as the governing council. The Court therefore, asks the government to get the law amended so that they were not obliged to sit on both the bodies. Here, the Doctrine of Necessity could have been invoked to save the infirmity caused by bias. In order to successfully invoke the doctrine of Necessity, it's essential to show that despite of bias, the person objected to has to decide that matter because no one else could decide it.

The element of bias causes a serious problem in the contempt of court cases. In **Vinay Chandra Mishra, In re**⁶¹, the Court held that in case of facie curiae contempt (contempt in the face of the Court) the rule against bias does not apply and the judge before whom contempt is committed can punish the contemner on the spot. However, in order to bring an element of fairness in contempt cases the Allahabad High Court has made a rule that the judge will place the matter before the Chief Justice who will allot it to any judge for hearing because it is contempt not of the judge but of the Court.

Statute

Parliament has made statutory exceptions to the rule against bias, allowing justices to sit who have some interest in the subject matter of the actions. In **Shaw Case**⁶², section 258 of the Public Health Act 1872, which enabled a justice of peace to sit even though a member of a local authority, was held not to protect him where he acted in a prosecutorial and Adjudicatory Capacity.

⁶⁰ AIR 1987 SC 71

⁶¹ (1995) 2 SCC 584

⁶² Shaw (1882) 9 QBD 394

Conclusion

Justice should be delivered by person divesting bias. The decision given by an authority should not be influenced by any external factors which favors the decision maker. A should always remember that he has a bigger role to play in upholding the belief of common man towards justice. Bias will divest the faith of common from the justice mechanism of a country. Reasonable apprehension in the mind of reasonable man is necessary. Such reasonable apprehension should be based on cogent material. Moreover normally a court will not uphold an allegation of bias against a person holding high constitutional status, such as election commissioner. Again there must be reasonable evidence to satisfy that there was real likelihood of bias. Vague suspicion of whimsical, capricious and unreasonable people should not be made the standard to regulate normal human conduct.

While deriving the conclusion I would like to sum up my topic with further mention judgment. In **Rt. J. P. Linhan Inc.**, a very illuminating Judgment was given by **J. Jerom Frank**, a brief excerpt from which reads: ***“Democracy must, reads: “Democracy must, indeed, fail unless our Courts try cases fairly, and there can be no fair trial before a Judge lacking in impartiality and disinterestedness. If, however, ‘bias’ and ‘partiality’ be define to mean the total absence of preconceptions in the mind of Judge, then no one has ever had a fair trial and no one ever will.’***

So, it is important that there should be no bias or encouragement to bias by any judicial, quasijudicial and administrative body but certain PRECONCEPTIONS in the mind of judge are essential.

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