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THE CONCEPT OF OFFICIAL BIAS UNDER ADMINISTRATIVE LAW – AN EFFECTIVE ANALYSIS

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ABSTRACT

This research article focuses on the concept of official bias. It discusses about the official bias all over the country. Right against bias is a fundamental principle for regulating the administrative body of the state. The main aim of this principle is to restrain the partial and arbitrary decision of the administrative functions. This research article is helpful for the better understanding on the concept of official bias.

Keywords: Official bias, Judiciary, Judge, Administrative Action, Authority, Judicial obstinacy.

INTRODUCTION

The traditional English law recognises the principle of natural justice regarding bias in the maxim **"Nemo debet esse judex in propria causa"** that is no man shall be a judge in his own cause; or a man cannot act as judge and at the same time a party or suitor; or the deciding authority must be impartial and without bias.[1] Bias is nothing but is a one side inclination of mind or any special influence that sways the mind of the deciding authority. There are different types of bias[2] such as

1. Pecuniary bias
2. Personal bias
3. Official bias or departmental bias or policy bias or bias as to the subject matter
4. Bias on account of judicial obstinacy

Let us see in detail the third type of bias that is the Official bias as how it has been defined and determined and the ways to test its existence. But there are no specific prescribed principles regarding the testing of its existence but judiciary had applied its notion in many cases while

[1] Administrative law, "C.K. Thakker", 2nd edition 2012
[2] ibid

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determining whether the official bias exists or not.

OFFICIAL BIAS

Official bias is also known as subject matter bias. Subject Matter means "the issues in question" or "the issue or policies being confessed before the judge" or "the issue in controversy" or "the matter in dispute" that is where the deciding officer directly or otherwise is involved in the subject matter of the case. For example, the Minister or the official in charge of the department, formulates general policy of the government. Whenever there is a dispute between a party and the government, the adjudicatory proceedings will be undertaken by the administration or by the Minister. In such cases, it is contented on behalf of the aggrieved person that the minister is disqualified to adjudicate the dispute due to official or policy bias.[3]

ENGLAND

As a general rule in England the policy bias by itself would not disqualify a person from deciding the matter. Only rarely will this bias invalidate the proceedings.[4]

In **Manchester Compulsory Purchase Order**[5] case, the minister was given the power in order of compulsory purchase for acquisition of land for the purpose of airport. It was challenged that he must be disqualified from hearing charges on the ground that he was a member of the Air Council.

The same was held in **Lesson v. General Council of Medical Education & Registration**[6] as it was not disqualified for deciding cases of professional misconduct against doctors.

In leading case **Franklin's case**[7], Under The new Towns Act, 1946 the minister was empowered to determine a new town and decided to make Stevenage as the first town under the Act. Objections were invited and heard but Stevenage was made the first town under the Act. It was contented that the minister has prejudiced the matter. But the House of Lords held that so long as the Minister observed the procedure laid down in the Act, the action could not be termed invalid.

[3] ibid
[4] Griffith & Street, Administrative Law, 4th edition
[5] All ER 510(1935)153
[6] (1889)43 ChD 366
[7] 1948 AC 87 (1947) 2 All ER 289

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But this decision was found unsatisfactory and as the "the low water mark of administrative law" in subsequent cases. In **R. vs. City of London** it was submitted that Franklin's case cannot be approved laid two grounds

1. The deciding authority should be of open mind and not pre decided the case.
2. He must observe the procedure laid down in the Act then his action cannot be held invalid.

U.S.A

In America to minimize the danger arising out of combination of functions of prosecution and adjudication, the Administrative Procedure Act, 1946 has sought to tackle the problem by effecting an internal separation within the agency concerned. The hearing officers are removed only for good cause established and determined by the Civil Service commission which is itself an independent body. The Act provided that unless they submit the Whole record to the agency, they should decide the case and not merely make a recommendation to the agency which gives them a status of greater independence.[8]

TYPES OF OFFICIAL BIAS

The subject matter bias can be discussed under the following heads:

1. Intermingling of functions
2. Partiality or connection with the issues
3. Departmental or administrative bias
4. Prior utterances and pre judgment of issues
5. Acting under dictation
6. Other causes of prejudice

INTERMINGLING OF FUNCTION

In this type the adjudicator naturally disqualifies when he is concerned with the case in some other capacity. For example, Magistrate also being the member of the administrative body, or in the case where the judge had proposed the prosecution.

In **State of Uttar Pradesh v. Nooh**[9], Deputy Superintendent of Police conducted an enquiry on the constable and dismissed him by himself giving the evidence and deciding the case.

[8] Wade & Forsyth, supra note 61, 992
[9] AIR 1958 SC 86

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Holding the three was a real likelihood of bias since the presiding officer has also become the witness SC quashed the order of dismissal of the constable.

In **Andhra Scientific Co. v. Seshagiri Rao**,[10] the proceedings were quashed as the Managing Director of the factory took over the enquiry, was from the beginning in charge of the prosecution and was active in securing evidence to establish the charges against the workmen.

In **Murlidhar v. Kadam Singh**[11], the court refused to quash the decision of the Election Tribunal on the found that the wife of the chairman was a member of the Congress Party whose candidate the petitioner defeated.

In **K. Chelliah v. Chairman, Industrial Finance Corporation,** [12] it was held that there was a real likelihood of bias when the chairman to the Board of Directors made his presence in the meeting of the Board in which the appeal of the member who was ordered dismissal by the Chairman was considered.

In **Financial Commissioner (Taxation), Punjab v. Harbhajan Singh**[13] the Court held that the Settlement Officer had no jurisdiction to sit over the order passed by him as an Appellate Authority. This was reiterated by SC in **Nath Chowdury v. Braithwaite & Co**,[14] that such dual function was not permissible on account of established rule against bias stating that when an authority earlier had taken a decision, he is disqualified to sit in appeal against his own decision, as he already pre – judged the matter.

DEPARTMENTAL OR ADMINISTRATIVE BIAS

This is when the Administration itself is found to be one of the parties in adjudicatory proceedings before the administrative authorities. This is also known as Policy bias. It occurs when the adjudicator is found to be interests in projecting and pursuing policies of the department. The courts have held departmental policy cannot be regarded as disqualifying bias or that were the official or policy bias does not disable an official from acting as an adjudicator unless

[10] AIR 1967 SC 408
[11] AIR 959 SC 308
[12] AIR 1973 Mad 122
[13] AIR 1996 SC 3287
[14] AIR 2002 SC 678

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i. He has shown an abnormal desire to uphold the policy or

ii. He is found to be too much personally involved with the formulation and implementation of the policy.[15]So, in cases where the authority has completely closed his mind regarding the issue before him or taken improper attitude to uphold the policy of the department then policy bias would operate as a disqualification.

In **Gullapalli Nageshwara Rao v. A.P.S.R.T.C (Gullapalli I),[16]** Nationalisation of motor transport scheme in the State was published by the AP State Transport Undertaking. Objection was heard by the Secretary of the department and scheme was approved by the Chief Minister. On Contention the court upheld the violation of natural justice. But in **Gullapalli II**[17]the Supreme Court held the proceedings were valid as the Secretary was part of the department but the Minister was only the primarily responsible for the disposal of the business pertaining to that department.

In **Krishna Bus Service v. State of Haryana,**[18] 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 opponent 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 reversing 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.

In **South Indian Cashew Factories Workers' Union v. Kerala State Cashew Department,**[19] the court held that presumption of institutional bias could not be sustained since the findings of the enquiry officer were based on evidence and were not perverse and the mere fact that the enquiry was conducted by an officer of the management would not vitiate the enquiry.

[15]
[16] AIR 1959 SC308
[17] ibid
[18] (1985) 3 SCC 711
[19] (2006) 5 SCC 201

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PRIOR UTTERANCES AND PRE - JUDGEMNT OF ISSUES

Pre judging invalidates the proceeding. It is where the judicial or quasi-judicial office has pre decided the case and acts with a close mind.

Prior utterance may involve the prior statement of the general policy which the Minister or the official concerned intends to follow. On one hand it creates certainty in an uncertain situation and may enable the individual to regulate their conduct accordingly, On the other hand, it may be that the official has already made up his mind regarding the issues involved and the very purpose of hearing may be frustrated.

Pre- judging may be distinguished from pre- conception or pre- dispositions about general questions of law or policy while the former may disqualify the adjudicator, in the latter case strict proof of prejudice is needed.

This type is one which is contended in **Franklins' case** which we saw earlier where the pre-decision of determining a new town by the minister was held not as a bias and water downed in subsequent cases.

ACTING UNDER DICTATION

When cases are disposed under dictation from a superior authority it may be lacking in observing that impartiality or objectivity and open to certain objections. This includes partiality towards the issues in controversy or it may be argued that the there is no hearing at all by the said authority, it may be said to be vitiated on the ground of administrative or departmental bias.[20] The dictation from the superior authority can be of two forms:[21]

i. It may be a direction, in a particular case, requiring how the case is to be decided by the authority; or
ii. It may be in the form of general direction laying down the general principles to be observed by the authority in disposing of certain types of cases.

The former may not be justified as the impartiality of the authority may be violated; the latter may desirable as to lay down general norms to regulate discretion of quasi – judicial bodies.

[20] Mahadayal Prem Chandra v C.T.O AIR 1958 SC 667; 1959 SCR 551
[21] Jain & Jain supra note 6, 163.

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In **Mahandayal Premchandra v. CTO**[22] the Commercial tax officer's decision on imposing tax on the delinquent was vitiated as he did not act independently and referred the matter to his superior officer and acted as per his dictation.

In **Rajgopala Naidu v. S.T.A Tribunal**,[23] the SC declared void a G.O issued under the Motor Vehicle Act, 1939, that it infringed the concept of rule of law. It objected the issue of compulsive, obligatory instructions which the STA Tribunal followed as a matter of course, without feeling free to disregard them in its discretion. The Court stated that if the compulsive force from the instructions were removed and the Tribunal concerned were to regard the instructions as a relevant factor, then there may not be much of the objection.

OTHER CAUSES OF PREJUDICE

Other than the above discussed cases, objectionable bias may be found in a wide variety of situations and relationships. In **G. Sarana v. Lucknow University**[24] observed that In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration. In some situations, mere membership without participation may invalidate the adjudicate, for the members of a body, might be thought to have a built-in tendency to support their colleagues and ought not therefore to sit in judgment on their decisions.[25] It however, raises question of degree and there may be a situation, where a member who was inactive in the matter, is not disqualified.[26]

EFFECT OF THE OFFICIAL BIAS

The mere involvement of the deciding authority in the subject matter does not vitiate the administrative action unless there is a real likelihood of bias. It rarely invalidates the action. An office does not necessarily disqualify a person from acting as an adjudicator unless

- there is total non- application of mind on his part;
- or he has acted as per dictation of the superior authority instead of deciding the matter independently or has pre judge the issue;

[22] AIR 1958 SC 667; 1959 SCR 551
[23] AIR 1964 SC 1573
[24] AIR 1976 SC 2428D
[25] R. v. Pwllheli Justices exp Soane, (1948) 2 All ER 815
[26] R. v. Camborne Justices exp Pearce, (1995) 1QB 41

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- or has taken improper attitude to uphold the policy of the department with closed mind so as to constitute a legal bias.[27]

Justice who was merely present in a meeting of local authority which resolved to institute proceedings, would not be so disqualified provided that he took no active part.[28]

PROBLEMS OF THE OFFICIAL BIAS

The problem of departmental bias is something which is inherent in the administrative process, and if it is not effectively checked, it may nullify the very concept of fairness in the administrative proceeding.[29] The problem of departmental bias arises in different circumstances when the functions of judge and prosecutor are joined in the same department. It is common 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 Khemu v. Dy. Commr. of Police[30]**. In this case an 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 depraved 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. However, the decisions of the court may be correct in ideal perspective but may not always prove wise in practice.

JUDICIAL PRONOUNCEMENTS

In **J.Y. Kondala Rao v A.P.S.R.T.C**[31] the same was held in Nationalisation scheme of bus services as the Minister was not disqualified to decide the proposed scheme on the ground that the decision of the committee was not final and merely a policy decision and hence there was no bias.

In **Joseph Kuruvilla Vellukunnel v. RBI,**[32] the Sec. 38 of Banking Companies' Act, 1949

[27] Administrative law, "C.K. Thakker", 2nd edition 2012
[28] (1948) 2 All ER 815
[29] Administrative law; I P Massey; 9th edition; 2017
[30] 1956 AIR 559, 1956 SCR 506
[31] AIR 1961 SC 82 (1961) I SCR 642
[32] AIR 1962 SC 1371: 1962 SCR 632

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was held intra vires as it made Reserve Bank as the sole judge to decide the affairs of banking company in a prejudicial manner in the interest of the depositors. It was held it cannot be a judge in its own cause.

In **Institute of charted Accountants case,**[33] a member of the Institute was removed on the ground of misconduct and the inquiry and decision was held vitiated as the members of the Disciplinary Committee who heard it were the ex-officio President and Vice President of the Council.

In **Cantonment Executive Officer v. Vijay D. Wani**,[34] the inquiry committee members were also the members of the board in imposing penalty on the delinquent which furnished a real apprehension in the mind of the delinquent that he would not get fair justice. The bias was very much real and substantial.

In **Hindustan Petroleum Corp. Ltd v. Yashwant,**[35] Sec.10 of Petroleum and Minerals Pipelines Act. 1962 was contented as it gave the power to the Competent authority under the act to determine the Compensation to the employee. But the petitioner contented it can be as so in a quasi-judicial act and not in an administrative act. The High Court upheld it but Supreme Court reversed it stating a person cannot be merely disqualified from deciding the act for the reason he is the member of the department and it be too board to extend the theory of bias to exclude persons only because such person draws the salary from the bodies like public corporation.

In **St. of Karnataka v. Shree Rameshwara Rice Mills**[36], The contractor had committed breach and was liable to pay damages as assed by the government according to the terms of contract. The action was challenged by the contractor contenting the party of the contract itself cannot be the authority to decide whether the other party had committed breach. The court held that the Interests of justice and equity require that where an adjudication should be by an independent person or body and not by the other party to the contract. If done so, it amounts to official breach.

[33] (1986) 4 SCC 537: AIR 1987 SC 71
[34] (2008) 12 SCC 230
[35] 1991 SCC 592, AIR 1991 SC 933
[36] (1987) 2 SCC 160, AIR 1987 SC 1359

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In **Hyderabad Vanaspathi Ltd v. A.P. SEB**[37], Rule 38 of the terms and conditions of Supply of Electricity was challenged as it gave the power to the officers of the Board to disconnect electricity supply on mere suspicion of malpractice and the consumer had to ay provisional assessment amount for restoration of electricity. It was held there is no violation of natural justice and nothing wrong in adjudication the matter and fix provisional assessment.

In **Union of India v Vipin Kumar Jain**[38], Both the officer conducting search and the assessing officer(AO) under the Income Tax Act, 1931. It was held that in absence of challenge to the provision of law, it cannot be contended that there was a bias on the part of the officer.

In **sub-committee on Judicial Accountability v UOI**[39], the court did not allow the challenge of bias against the speaker for his actions under the Judges inquiry Act, 1968 on the basis that he was affiliated to a particular political party. The court also sustained its decision on the ground of necessity as no other person could take a decision under the Act and there is no existence of bias.

TESTING THE EXISTENCE OF OFFICIAL BIAS

The test of likelihood of bias which has been applied in a number of cases is based on the reasonable apprehension of a reasonable man fully aware of the facts. The tests of "real likelihood" and "reasonable suspicion" are really at variance with each other. The reviewing authority must take a conclusion on the basis of the whole evidence before it whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that "justice must not only be done but seem to be done". If right-minded persons would think that there is real likelihood of bias on the part of an enquiry officer and he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias and may approach the court. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent.

[37] (1998) 4 SCC 470; AIR 1998 SC 1715
[38])2005) 9 SCC 579
[39] (1991) 4 SCC 699

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CONCLUSION

If the rule against bias is applied blindly, then it will be of no surprise that almost all adjudicating officers will be disqualified on that account and the decisions will be disproved consequently. So, a greater priority is not the disqualification of a judge per se but the identification of such a bias in decision-making. The most often asked question is that how can the general public recognize bias in the mind of the judges, despite the various scrutiny for identification of bias. The public is entitled to have confidence in the judiciary and is also entitled to impartial adjudication and can approach it the court if delinquent has a reasonable suspicion that he would not get a fair and just decision. However, the decisions of the court may be correct in ideal perspective but may not always prove wise in practice. It may be suggested that the technique of internal separation which is being followed in the US and England can be profitably used and inherited in India if a certain amount of confidence is to be developed in the minds of the people in administrative decision making.