

CONCEPT OF BIAS

Decision making is subject to errors that are intrinsic to human behaviour. ***Bounded rationality*** or ***cognitive bias*** is a source of such errors.

Bias is a *state of mind*; therefore, actual bias is virtually impossible to establish. Thus, the quest to ensure a fair decision-making process – whether judicial, quasi-judicial or administrative – is to *eliminate the possibility of any bias*.

*Factors affecting Bias and
how to overcome them to
enhance decision making*

Cognitive Limitations

CONFIRMATION BIAS:

Judges should be able to understand that intuitive thinking might lead them to form an initial belief in relation to the case and then seek evidence to confirm the position.

HINDSIGHT BIAS:

Judges, sometimes, avoid considering that an *ex ante* inevitable event wrongly appears evitable *ex post* just because it has occurred.

AVAILABILITY HEURISTIC:

Decision makers suffer from availability heuristic in order to avoid miscalculating disproportionate odds of events because of previous experiences.

Cognitive Limitations

EXTREMENESS AVERSION:

Judges should be conscious that they might have extremeness aversion in order to avoid a possible unconscious tendency.

SOCIAL INFLUENCES AND NETWORKS:

Awareness of an affiliation bias, on account of several factors, that could possibly give rise to an unconscious tendency to favour a certain party.

The level of experience of a Judge might induce them to make decisions intuitively.

Experience, often, leads to over-confidence, which could possibly *reduce* a judge's attention to *limitations of rationality* rendering them even more *exposed*.

The *study* of how the *brain processes information* is an evolving one, the information now available can help judges to make better decisions.

REFLEXIVE PROCESSING

Much of the processing for simple tasks—called **reflexive processing**—are automatic, rapid, and unconscious.
Example: blinking in sunlight etc.

REFLECTIVE PROCESSING

Deliberative, slow, and conscious processes are taken through **reflective processing**.
Example: solving a riddle etc.

Adoption of reflexive processing is predominantly prevalent in decision making as judges are either very busy or need to make quick decisions or are familiar with the legal issues raised in a dispute and are thus, not adapted to reflective processing.

***How to mitigate the influence
of cognitive bias?***

***De-biasing Techniques* to certify better legal reasoning.**

Behavioural Economics:

An understanding of *human psychology* to account for *why people deviate from rational action when they are making decisions.*

A valuable reference can be made to *Behavioural Economics* for the purposes of understanding judicial decision making process.

Behavioral economics explains *why individuals make irrational choices* by demonstrating how their decision making is influenced by:-

- | | |
|---------------------------------------|-----------------------|
| • Biases (such as future discounting) | • Heightened emotions |
| • Faulty heuristics | • Mental fatigue |
| • Loss aversion | • Choice overload |
| • Perceived social norms | • Situational framing |

Examples of Bias in Behavioural Economics

Knee Jerk Bias

It involves making fast, instinctive decisions instead of taking time to deliberate.

Silo Effect

A Silo Effect takes a too narrow approach to making decisions.

Inertia Bias

Individuals may succumb to inertia bias by thinking and acting in ways that are familiar and predictable.

Occam's Razor Bias:

A person assumes that the most obvious solution is the best.

Confirmation Bias

A confirmation bias focusses on information that affirms a given set of beliefs and assumptions.

Myopia Bias

Individuals interpret the world through the narrow lens of their personal history and emotional baggage.