Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2026 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

The Investigator Who Judges: Structural Bias, Constitutional Fairness, and the Case for a New Test in Indian Administrative Law

Udisha Singh[a]

[a]Jindal Global Law School, Sonipat, India

Received 30 May 2026; *Accepted* 30 June 2026; *Published* 04 July 2026

Indian administrative law permits a structurally irregular practice: the concurrent execution of investigative and adjudicative roles by a single officer. This paper contends that this institutional design constitutes not merely a procedural anomaly but a constitutional deficiency, especially in the aftermath of Maneka Gandhi v Union of India. This paper critically analyses the four judicial propositions that support the practice of the Transfer Pricing Officer under Section 92CA of the Income Tax Act, 1961. These propositions include the rejection of the automatic presumption of bias, the presumption of integrity, statutory empowerment, and appellate cure. It argues that each proposition is constitutionally underinclusive within the post-Maneka Gandhi framework. The Parthasarathi test only looks at personal bias and not structural unfairness. The Withrow v Larkin principle was brought over without the necessary procedural protections. Under Articles 14 and 21, the Constitution says that all procedures must be fair, just, and not arbitrary. Statutory authorisation cannot change this. Finally, appellate review cannot fix a procedure that was structurally flawed in the past. This paper suggests that Parthasarathi should be supplemented by a structural fairness test that assesses institutional design independently of the actions of individual officers.

Keywords: *administrative law, income, tax, constitutional deficiency.*

INTRODUCTION

Principles of natural justice are based on two core pillars: a) Audi alteram partem, that is, the right to a fair hearing, which means that no one is to be condemned unheard; and (ii) Nemo judex in causa sua, that is, no one may be a judge in his own cause or the rule against bias.[1] However, Indian administrative law currently accommodates one significant unresolved contradiction at the heart of the procedural fairness doctrine of 'rule against bias'. The Indian legal system, on an institutional level, tolerates the combined role of investigative and adjudicative functions. Notable examples of this phenomenon include tax authorities and regulatory agencies such as SEBI and CCI.

This paper argues that this deplorable and oft-criticised contradiction is not merely a result of doctrinal untidiness but in fact a constitutional failing. Post Maneka Gandhi v Union of India[2] ruling, procedural fairness should not be treated as only a matter of legal restraint, since the ruling technically anchors all matters of procedural fairness in Article 14 and Article 21. Even a procedure established by a statute must be fair and just. Yet Indian law still operates on pre-Maneka Gandhi ruling frameworks, like the Parasarthi test. The old frameworks are wholly ill-suited to answer objections rooted in structural unfairness, for instance, the dual role of investigator-adjudicator that administrative officers regularly play by virtue of institutional design.

This paper utilises the example of a Transfer Pricing Officer under the Income Tax Act, 1961.[3] The TPO issues coercive notices, compels the production of evidence, develops the factual record, selects comparables, and then determines the arm's length price through a binding written order under Section 92CA(3).[4] The Assessing Officer is then required by Section 92CA(4)[5] to compute total income in conformity with that determination. In other words, there simply exists no internal separation of any kind between investigation and adjudication at the stage where the core pricing determination is made, and no meaningful discretion in the downstream authority to depart from the original assessment.

[1] M P Jain and S N Jain, *Principles of Administrative Law* (8th edn, Lexis Nexis 2023)
[2] *Maneka Gandhi v Union of India* (1978) 1 SCC 248
[3] Income Tax Act 1961
[4] Income Tax Act 196, s 192CA(3)
[5] Income Tax Act 196, s 92CA(4)

PREMISE

Indian jurisprudence has created three principal reasons to sustain and tolerate the combined adjudicative and investigative functions. And supplemented these reasonings with one auxiliary protective reassurance. First, the idea of presumption of bias is outright rejected. There exists an entire line of authority that holds that an automatic presumption of bias cannot be inferred merely because the same officer investigates and later decides.[6] In H.C. Narayanappa[7], the Supreme Court held that when a minister is performing his duty of approving or varying a scheme, he acts judicially and his decision cannot be challenged on a presumption of bias merely because he is a government functionary. The Court stated that unless there is 'reliable evidence' of bias, the decision will be valid. This approach focuses on the subjective intent of the individual rather than the objective fairness of the system. More recently, the Vipan Kumar Jain[8] judgement has added more nuance to this established principle, wherein the Supreme Court held that there is no presumption of bias when an Assessing Officer, acting under statutory authority, searches (investigation) and subsequently performs the assessment (adjudication). The High Court's earlier decision, which quashed assessments because the officer who headed the raid was also the Assessing Officer, was deemed incorrect.

Second, courts operate on the principle of the presumption of honesty and integrity for administrative adjudicators. This principle has been drawn from Withrow v Larkin.[9] In Withrow v Larkin, the court held that those serving as adjudicators are presumed to be 'men of conscience and intellectual discipline,' capable of judging a controversy fairly based on its specific circumstances. To challenge this, a plaintiff carries a heavy burden of persuasion; they must prove that, under a realistic appraisal of human weakness, the combination of roles poses such a risk of actual bias or prejudgment that the practice must be forbidden. The Withrow v Larkin principle was formally imported by Indian Jurisprudence in the Vipan Kumar Jain[10] judgement, wherein the court, citing the Withrow judgement, noted that a party claiming bias due to a combination of functions carries a 'difficult burden of persuasion'.

[6] Jain (n 1)
[7] *H C Narayanappa & Ors v State of Mysore & Ors* (1960) 3 SCR 742
[8] *Union of India & Ors v Vipan Kumar Jain & Ors* (2003) 9 SCC 579
[9] *Withrow v Larkin* [1975] 421 U S 35
[10] *Union of India & Ors v Vipan Kumar Jain & Ors* (2003) 9 SCC 579

Third, courts have treated express statutory authorisation as a strong justification for the issue of 'bias'. In ITC Ltd. v Union of India[11], the court reasoned that if an authority is expressly empowered by statute to play both an inquisitorial as well as adjudicative role, then this does not automatically qualify for an objection on the grounds of rules against bias. It was concluded that in a procedure wherein an official initiates an inquiry via a show-cause notice and later adjudicates upon it is a standard administrative technique and there is nothing 'intrinsically offensive' or 'abnormal' about it.

Alongside these three principles stands a fourth pseudo pillar, which is more of a reassurance or protective measure courts have leaned towards when having to justify the structural unfairness created by the dualistic role of adjudicator and investigator. In the Vipan Kumar Jain[12] ruling, the Court reasoned that even if an Assessing Officer's judgment is influenced by materials they witnessed during a raid, their decision is not the final word in the matter. The Court emphasised that the assessment order is appealable and even open to judicial review. In essence, the Court argued that the legal framework provides sufficient remedial stages (appeals and judicial review) to 'cure' or address any potential unfairness, making it unnecessary to read in a presumption of bias that would disable an officer from discharging their statutory functions. Other rulings have followed Vipan Kumar's stead in arguing that the appellate structure offers extra protection against bias caused by structural unfairness, which justifies not objecting to bias because any biases are curable at the appellate stage.

This paper argues that each of these four pillars is constitutionally underinclusive after Maneka Gandhi.[13] The first principle is the fruit of the Parthasarthi[14] test and, therefore, capable of only addressing personal bias rather than structural unfairness. The second principle has adopted the permissive language of Withrow v Larkin without importing the internal safeguards that were instrumental in the court's pronouncement of the honesty and integrity principle. The third principle of statutory empowerment is ignorant of a challenge under Articles 14 and 21 post – Maneka Gandhi.[15] The fourth principle of appellate cure directly collides with the logic of Krishnadatt Awasthy.[16]

[11] *ITC Ltd v Union of India* (1991) 53 ELT 234
[12] *Union of India & Ors v Vipan Kumar Jain & Ors* (2003) 9 SCC 579
[13] *Maneka Gandhi v Union of India* (1978) 1 SCC 248
[14] *S Parthasarathi v State of Andhra Pradesh* (1974) 3 SCC 459
[15] *Maneka Gandhi v Union of India* (1978) 1 SCC 248
[16] *Krishnadatt Awasthy v State of M P* (2025) INSC 126

ANALYSIS

The principle of 'no automatic presumption of bias' as pronounced in the H.C. Narayanappa[17] judgement is a predecessor of the Parthasarthi test.[18] The court created an artificial distinction between 'official capacity' and 'personal capacity'. Strongly signalling that personal bias based on 'real evidence' is the threshold to prove bias. Parthasarathi later provides for the 'real likelihood' test to prove personal bias, thus cementing the approach of looking at the subjective state of the officer concerned rather than the objective fairness of the procedure itself. Both these rulings are dismissive of the actual realities of structural bias. Any officer who is conducting an investigation cannot come to the adjudication stage with an open mind. Naturally, the investigating officer will have substantial direct and personal commitment towards an investigation initiated and framed by him. This phenomenon is well studied and well researched; Nickerson[19], in a psychological study, identified this as a problem of 'conditional reference frame'; once a focal hypothesis develops in an investigator's mind, considering alternative hypotheses at a later stage becomes difficult.

The TPO, who has exercised an investigatory function by issuing coercive notices and carefully selecting comparables for the purpose of building a case to increase the assessed income, cannot be considered to have approached the adjudicative process at the time of the "hearing" under Section 92CA(3) with an open mind. By the time the TPO "hears" the assessee, the investigatory evidence, the very evidence collected by the TPO, has already pointed to a determinative conclusion in the TPO's mind. The Parthasarathi[20] test looks at the wrong aspect of bias when it searches for a personal connection to constitute 'real likelihood' of bias, all the while, the actual source of bias is encapsulated in the arbitrary design of the statute itself. E.P. Royappa[21] introduced the non-arbitrariness doctrine of Article 14; as Khaitan[22] observes, the arbitrariness doctrine 'can be invoked for any

[17] *H C Narayanappa & Ors v State of Mysore & Ors* (1960) SCR 3 742
[18] *S Parthasarathi v State of Andhra Pradesh* (1974) 3 SCC 459
[19] Raymond S Nickerson, 'Confirmation Bias: A Ubiquitous Phenomenon in Many Guises' (1998) 2(2) Review of General Psychology <https://pages.ucsd.edu/~mckenzie/nickersonConfirmationBias.pdf> accessed 27 May 2026
[20] *S Parthasarathi v State of Andhra Pradesh* (1974) 3 SCC 459
[21] *E P Royappa v State of Tamil Nadu & Anr* (1974) 4 SCC 3
[22] Tarunabh Khaitan, 'Equality: Legislative Review under Article 14' in Sujit Choudhry et al. (eds), *The Oxford Handbook of the Indian Constitution* (Oxford University Press UK 2016); Farrah Ahmed & Tarunabh Khaitan, 'Constitutional Avoidance in Social Rights Adjudication' (2015) 35(3) Oxford Journal of Legal Studies <https://www.jstor.org/stable/24562980> accessed 27 May 2026

sufficiently serious failure to base an action on good reasons,' and what the Court has consistently treated as arbitrariness is in substance a form of unreasonableness, i.e. the absence of constitutionally acceptable justification for State action. Thus, the logical extension of the doctrine should be that any institutional designs that create a systemic inability to allow for the open-minded adjudication of a case are to be considered as unconstitutional, regardless of whether or not the officer acted in good faith.

The adoption of the decision in Withrow v Larkin[23] is an instance of how reasoning of foreign judgements is selectively adopted while missing the contextual scaffolding. In the instant case, there was a very real but thin distinction between the stage at which probable cause was determined and the later stage of ultimate adjudication. The court noted both these stages had "different bases and purposes": the first was a threshold screening decision, while the second was a merits decision after an adversarial process. The reasoning that a mere combination of duties does not constitute a denial of due process was predicated upon the reorganisation by the Board to mitigate risks. Furthermore, the US legal system is guided by the Administrative Procedure Act (APA), which imposes an extremely strict separation of investigation and adjudication internally.

On the other hand, these safeguards are not available for the functioning of TPO. Once the TPO serves notice and calls for the assessee's material, he may consider further material gathered by him, and then, 'by order in writing,' determines the arm's length price. The AO must then compute total income in conformity with the ALP so determined by the TPO. In other words, the same officer who gathers and tests the material also issues the decisive written ALP determination, and that determination is binding on the AO.

The 'presumption of integrity' principle from Withrow v Larkin offers assurance only against personal corruption, yet Indian law, while borrowing the principle to justify the combined role of investigator and adjudicator, failed to take cognisance that the US Supreme Court had comprehensively evaluated the objected procedure on the grounds of due process, too.

The third justification, that of 'statutory empowerment', is often cited as the determinative argument against institutional unfairness, especially in revenue law cases, as evidenced by Vipan Kumar. In Vipan Kumar, the court clarified that principles of natural justice are not

[23] *Withrow v Larkin* [1975] 421 U S 35

grounds for the court to 'read in limitation' on powers conferred by a statute. A large body of judgments[24] follows a similar logic of statutory empowerment.

However, Raeesa Vakil[25] contends that the Maneka Gandhi[26] shift has resulted in the 'constitutionalisation' of administrative law, thereby eroding the traditional dichotomous understanding of legality and constitutional validity. Under the substantive due process as established by the court, it is not enough that a procedure is statutorily sanctioned, and is still subject to judicial review. The procedure will still have to independently conform with the 'Golden Triangle' of Articles 14, 19 and 21. Similarly, even if a statute authorises a combined investigative/adjudicatory officer performing a quasi-judicial function to determine the legality of an action, that action is still subject to judicial scrutiny for capriciousness and/or unfairness in execution. Consequently, when the Court in Maneka Gandhi transplanted the uncodified principles of natural justice into it, it ensured that 'procedure established by law' must be 'fair, just, and reasonable'. Vakil further argues that an inconsistent application of Maneka Gandhi standards leads to an 'erratic' judicial landscape. Thus, the principle of 'statutory empowerment' becomes weaker in the post-Maneka jurisprudence.

Finally, the protection of 'appellate cure' is the weakest argument for bolstering a systematic bias by tolerating the combined functions of investigator-adjudicator on an institutional level. The biggest pushback against this argument can be traced to Krishnadatt Awasthy.[27] In Krishnadatt, the court held that an appeal cannot cure the initial breach of natural justice if the appellate power itself is restricted; in this case, the revision powers were strictly circumscribed to points of law and did not allow for a full-fledged merits review. From an inferential reading, it is conspicuous that 'appellate cure' as a protective reassurance is not a panacea to the issue of structural unfairness but a context-specific claim that depends entirely on whether the appellate mechanism is capable of addressing the specific nature of the original defect.

---

[24] *B K Mehra v Life Insurance Corporation of India & Ors* (1991) 95 CAL WN 394; *M Madhavan Pillai v K A Balan & Ors* (1979) KER LT 220

[25] Raeesa Vakil, 'Constitutionalizing administrative law in the Indian Supreme Court: Natural justice and fundamental rights' (2018) 16(2) International Journal of Constitutional Law <https://doi.org/10.1093/icon/moy027> accessed 27 May 2026

[26] *Maneka Gandhi v Union of India* (1978) 1 SCC 248

[27] *Krishnadatt Awasthy v State of M P* (2025) INSC 126

If considered from the standpoint of the assessment of the taxpayer's determination conducted by the transfer pricing officer (TPO), the grounds for introducing the remedy of appeal become much less convincing on account of the legal regime applicable to this issue. In terms of legal regulations, the duty of the Assessing Officer (AO) is to assess the taxpayer's income in accordance with the arm's length price (ALP) established by the TPO. The DRP can confirm, modify, enhance, or cancel variations in the draft assessment order, but Section 144C(8) explicitly prohibits the DRP from setting aside any proposed variation or ordering further enquiry. The DRP, therefore, operates only within the four corners of the TPO's existing determination. After DRP directions, the final assessment order is not appealable before CIT(A); the assessee appeals directly to ITAT under Section 253(1)(d), with further recourse to the High Court and Supreme Court on questions of law only.

CONCLUSION

The arguments presented in this paper contend that the judicial acceptance of combining investigative and adjudicative functions in Indian administrative law is based on four constitutional propositions that are insufficient after the Maneka Gandhi[28] judgment. First, the no-bias presumption and the framework of Parthasarathi relate to personal bias, while the objection to cases such as TPO is one of structural unfairness. Second, the answer provided by the presumption of integrity relates to the wrong concern; integrity and institutional independence are not equivalents, and the Withrow decision was adopted without the standards that made its acceptance of combined functions reasonable. Third, the statutory authorisation does not end the inquiry since Articles 14 and 21 of the Constitution require that all procedures are to be fair, just and non-arbitrary. Fourth, while appellate review of an erroneous decision can produce a correct outcome, it cannot retrospectively fix the structural deficiencies of an unfair procedure.

The TPO in the context of Section 92CA should be seen not as an isolated instance of a taxing issue, but rather as a stark example of a serious defect in the field of Indian constitutional law. There is no need to abandon the existing theory of bias with respect to an individual; rather, it simply needs to be completed; that is, Parthasarathi should apply to personal bias,

[28] *Maneka Gandhi v Union of India* (1978) 1 SCC 248

while there must be an additional test of structural fairness that will apply to institutional combinations of investigator and decision-maker.