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# Doctrine of Non Application of Mind

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## ABSTRACT

*For ensuring that the hearing is fair, attention needs to be paid to application of the mind. Due consideration should be given to pleadings, contentions, proof and material reports that are difficult to give, yet that is what is generally anticipated of an individual apportioning equity. The dispute between the litigating parties might be satisfactory, contentions comprehensive, and proof significant; yet, without active application for the most part present by the individual concerned, a hearing would be unjustifiable and useless. Not using your mind is, consequently, deadly to a fair hearing. It not only makes the decision ultra vires, as well as the choice but also becomes "malafide".<sup>2</sup>*

*Under this classification, courts practice judicial command over discretion given to the administration, assuming the administrative authority has either given up its power or has placed restrictions on its exercise. When power is provided to an administrative authority, the concerned authority should practice that power by applying its psyche to the case. Where the authority relinquishes its power, e.g., Abdicating its capabilities, acting under the advice of another agency, and does not exercise due care, there is an inability to practice discretion.<sup>3</sup>*

## I. LITERATURE REVIEW

Discretionary authority is an important aspect of the rule of law and not an exception (Hill & Lynn, 2016). Many factors have been analyzed which helped to change the perception of discretion into the behavior of the authority. Gibran (2013) showed how the administration communicating with the public could make an impact on changing the beliefs about the authority who implement the policy decisions, moving them towards active representation from a passive role. Gibran (2013) has asserted the fact that public authorities are responsible for keeping a check on the integrity of democratic processes, which take place under institutions that are governed by the Constitution and are held accountable to representatives that have been elected by the people. The administrative authorities must serve the needs of the public and

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<sup>2</sup> Abhishek Raja Ram, WHEN AN ORDER COULD BE SAID TO BE 'NON-APPLICATION OF MIND' TAXGURU (2021), <https://taxguru.in/goods-and-service-tax/order-non-application-mind.html> (last visited Aug 2, 2022).

<sup>3</sup> Lakshyender Kumar India, ABUSE OF ADMINISTRATIVE DISCRETION LEGAL SERVICES INDIA, <http://www.legalservicesindia.com/article/756/Abuse-of-Administrative-Discretion.html> (last visited Aug 2, 2022).

ensure their interests (Gibran, 2013). Our founding fathers wanted to ensure liberty and freedom for the poor, yet our policies are framed around the wealthy, corporate interests, and big government (Kettl, 2015). It is of key importance to understand the role played by politics, which not only influences policy making but also how administrative authorities behave (Soss, 2014)

To implement the decision of the executive in a way that follows the law is not sufficient for the enforcement of the law to be considered good. Rather, the intent of the administrative authority to ensure the interest of the public, the essence of the law, and the rules laid under the constitution need to be paid attention to for the best enforcement (Sohoni, 2017).<sup>4</sup>

## II. RESEARCH QUESTION

Q1. What is the doctrine of non-application of mind and its judicial interpretation?

## III. ANALYSIS

### Meaning of Non-Application of mind

- The definition has not been given however, it has been used in diverse situations where an authority has been vested with discretionary powers and that the power is to be exercised by applying facts and circumstances to every case.
- If the administrative body acts in an arbitrary manner to the case before it, then, at that point, then the choice made by it will not have any jurisdiction as it has not exercised its power as per the statute.<sup>5</sup>

### What is non-application of the mind?

- **Acting under Dictation:** Where the authority practices its discretionary power by the instructions given by the superior authority, it is taken as a non-exercise of power, and its choice or activity is terrible. In such a condition, the given authority purports to act under its power however in substance, the power isn't practiced by it yet by the other authority. The authority endowed with the powers doesn't follow up on its own judgment and doesn't apply its own psyche. For instance, in **Commissioner of Police v. Gordhandas the Police Commissioner** engaged to concede a license for development

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<sup>4</sup> Lina Safa, DISCRETIONARY AUTHORITY: PROSECUTORIAL DISCRETION, POWER ABUSE, AND IMMIGRATION SCHOLARWORKS (2019), <https://scholarworks.calstate.edu/downloads/d217qs816?locale=en> (last visited Aug 21, 2022).

<sup>5</sup> Absence of jurisdictional fact of application of mind in the reference, PARICHAY (2021), <https://parichayblog.org/2021/02/22/absence-of-jurisdictional-fact-of-application-of-mind-in-the-reference/> (last visited Aug 21, 2022).

of film theaters however later dropped it on the discretion of the Government. The undoing of the request was proclaimed as bad as the Police Commissioner didn't apply his psyche and acted under the dictation of the Government.<sup>6</sup>

- **Imposing fetters on the activity of discretionary powers:** If the authority imposes restrictions on its discretion by announcing the policy rules to be applied to all cases strictly, its choices or decisions will be terrible. The authority which has been entrusted with such power is expected to practice it after considering each and every case.
- **Irrelevant considerations:** The authority must focus on relevant considerations. In ‘**Ram Manohar Lohia v. State of Bihar**’, the prisoner was detained under the “Defense of India Rules, 1962” to prevent him from acting contrary to "the rule of law", though the standards allowed detention in order to maintain "public order". It was struck down by the Court, as it opined that the two concepts were not similar, "the rule of law and order" being more extensive than "public order".

#### **What facets demonstrate use of application of mind?**

- **The key facts of the case need to be kept in mind**

On account of “**Satpal v. State of Haryana AIR 2000 SC 1702**”, the Supreme Court with account to the pardoning powers granted to the Governor held that the executive authority must be aware of the substantial facts to exhibit legitimate use of psyche.

- **The administrative authority must be satisfied:**

The concerned authority should be fulfilled concerning the grounds on which the choice is taken. For instance, on account of the suit in “**Jaganath v. Province of Orissa AIR 1966 SC 1140**”, a detainment order was challenged as the government was not satisfied. The Apex Court saw that the detainment order comprised of six grounds even though the Minister stated that he was "actually satisfied" with only two grounds mentioned. The court of law held that the Minister had not applied his mind and the order of detainment was rejected.

- **Application of mind should be evident from the actual order:**

With regards to the issuance of summons on a confidential complaint, the Supreme Court in “**Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others(1998) 5 SCC 749**”, has held that there must be fulfillment of mind when applying psyche. There should be sufficient cause in the request with respect to the utilization of the brain.

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<sup>6</sup> Taruna Reni Singh, ADMINISTRATIVE LAW RAMA UNIVERSITY, [https://www.ramauniversity.ac.in/academics-online\\_study\\_material-3-173](https://www.ramauniversity.ac.in/academics-online_study_material-3-173) (last visited Aug 3, 2022).

- **Application of mind must be made through the reasons recorded on the face of it:**

In “**Joint Commissioner of Income-Tax v. George Williamson (Assam) Ltd. (2002) 258 ITR 126**”, the Division Bench of the Court of law held that without relevant material and an independent enquiry, no link was there between the facts and the fulfillment by the evaluating authority. A person’s income tax returns can be re-evaluated by fulfillment of the authority.

- **Non-application of mind is a jurisdictional error and would bring about vitiation of the procedures:**

In **Anirudhsinhji Karansinhji Jadeja v. State of Gujarat (1995) 5 SCC 302**, the Supreme Court quashed procedures as it showcased that the State Government only heeded to the Deputy Superintendent of Police without any independent application of mind to current realities.

Similarly in the case of **State of U.P. v. Anil Kumar (2018) 9 SCC 492**, the respondents were prosecuted and tried for commission of offenses including conspiracy and kidnapping. The Additional Sessions Judge, on evaluating the evidence presented by the prosecution, acquitted the respondents of the charges. The applicant filed an application for leave under Section 378(3) before the High Court which was rejected with respect to the order passed. The matter was appealed.<sup>7</sup>

The case of **State of Maharashtra v. Sujay Mangesh Poyarekar** had been referred to by the Supreme Court for looking at the factors which must be considered by the High Court before deciding an application for leave to appeal. The Court felt that the High Court grossly erred in passing the order as no reason had been mentioned. There was no mention of the facts, nor the submissions made by the parties nor the findings or reasons with respect to which leave to appeal had been rejected. The earlier order was set aside and was sent back to the High Court for starting the application fresh.

#### **IV. CONCLUSION**

The authorities need to be fulfilled when applying their mind. The power vested must be applied by satisfying the requirements of law, by considering the public interest, by keeping in mind the statutory requirements and checking the relevant evidence, considering vital issues concerning the rights of the parties and not passing any order in haste and opinion must be formed by looking at the facts and circumstances of every suit. The reasons must be recorded

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<sup>7</sup> Devika Sharma et al., IT IS IMPERATIVE ON THE HIGH COURT TO RECORD REASONS WHILE DECIDING APPLICATION UNDER SECTION 378(3) CRPC-REITERATED: SC SCC BLOG (2018), <https://www.sconline.com/blog/post/2018/08/30/it-is-imperative-on-the-high-court-to-record-reasons-while-deciding-application-under-section-3783-crpc-reiterated-sc/> (last visited Aug 21, 2022).

for passing the relevant order.

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