Contempt of Courts Act, 1971 and Decision Making Errors

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SOURCES OF ERROR AND BIAS IN THE JUDGEMENT MAKING PROCESS

Two Systems:

SYSTEM 1: "Operates automatically and quickly with little or no effort".

Examples: (a) "Answer to 2+2"
(b) "Detect hostility in a voice"
(c) "Orient to the source of a sudden sound"
(d) Complete the phrase – "Jack and Jill ……………"

SYSTEM 2: "Allocates attention to effortful mental activities that demand it, including computation".

Responsible for the rational thinking processes of the mind.

Examples: (a) "Focus attention on clowns in a circus".
(b) "Search memory to identify a surprising sound".
(c) "Monitor your behavior in a social situation".
(d) "Check the validity of a complex logical argument".
(e) Understand and respond to queries of a Judge while arguments are in full flow.

Thinking Process: "A general law of 'least effort' applies to cognitive as well as physical exertion".

"Laziness is built deep into our nature".

How Judgments Happen:

Thinking and cognition involve use and interplay of System-1 and System-2

System-1: hyperactive and in constant use.
"Continuously monitor what's going on outside and inside the mind and generates assessment with or without intention or effort".
Example: Ability to sense danger.
System-2: Lazy and has to be consciously introduced in the decision making cycle.

Basic Assessment:(a) **m**ade in the first instance by System-1
(b) often becomes the start point for System-2.

Intensity Matching: "questions having an underlying dimension of intensity or amount, permits use of 'more'".

(i) More popular   Sport Star
(ii) More severe   Punishment
                     Experiment – Sound.
                     Intensity of both sounds has to match the crime.

Answering an easier question:

"**Heuristic** is simple procedure that helps finds adequate, though imperfect answers to difficult questions".

Answering an easier question:

Substitution – "If you cannot solve the problem, then there is an easier problem you can solve: find it"

Answering an easier question:

Affect Heuristic – "People let their likes and dislikes determine their beliefs about the world"

Target Question	Heuristic Question
"How popular will the President be in six months from now?"	"How popular is the President now?"
"How should the financial advisers who prey on the elderly be punished?"	"How much anger do I feel when I think of financial predators?"
"What do I think about it?"	"What do I feel about it?" Caveat: emotions are good in many ways

Availability:
    "Availability heuristic is the process of judging frequency by the ease with which instances come to mind".

Examples: (1) Divorce amongst celebrities – newspaper and media attention – one is likely to exaggerate the frequency of celebrities' divorces.

          (2) A dramatic event temporarily increases the availability of its category:

(i) plane crash in the media
(ii) sight of burning car
(iii) oxygen concentrator demand during Covid-19
        Caveat- not necessarily resulting in judgement errors.

Process of availability bias in decision making:

Ease with which instances come to mind is a System-1 heuristic which is replaced by a focus on contempt when System-2 becomes more engaged.

People more guided by System-1 are strongly susceptible to availability biases than others who are in a state of higher vigilance (System-2).

Examples: Case laws which are having a high profile and publicity may be applied without due appreciation of facts.

REPRESENTATIVENESS

"Many of the probabilistic questions with which people are concerned" belong to one of the following types:

(i) " A belongs to class B?"
(ii) " Event A originates from process B?"
(iii) "What is the probability that process B will generate even A?"

"In answering such questions people typically rely on representativeness heuristic."

Illustrations:

"Steve is very shy and withdrawn, invariably helpful, but with little interest in people, or the world of reality. A meek and tidy soul, he has a need for order and structure, and a passion for detail."

What is the probability that Steve is engaged in a particular occupation from a list of following possibilities:-

(a) Farmer
(b) Salesman
(c) Airline Pilot
(d) Librarian
(e) Physician

Sources of Error:

(1) Judging by probability and by similarity in exactly the same way.
(2) Similarity or representativeness is not influenced by several factors that should affect judgments of probability.

Examples:
        (1) Notices – POCSO
        (2) Relief – Reinstatement + back wages.

FRAMING EFFECT:

(A) "Italy Won". "France Lost"

(B) Receive $50
      Option – (a) Keep $20
      Option - (b) Lose $30

(C) Surgery outcomes
    Option- (a) One month survival rate 90 %
    Option –(b) One month mortality rate 10%

Physicians by majority recommended option
(a)"medical training is no defence against power of framing.
Accept the decision problem as framed and fail to discover the extent to which our preferences are "frame bound" rather than "reality bound".

Solutions –
            Need to reframe – effortful exercise

Example:
(a) Gold Customs case
(b) Bail parity

ANCHORS:

Adjustment and Anchoring

"In many situations people make estimate by starting from an initial value that is adjusted to yield the final answer. The initial value, or starting point, may be suggested by the formulation of the problem, or it may be the result of a partial computation, In either case, adjustments are typically insufficient. That is, starting points yield different estimates, which are biased toward the initial values. We call this phenomena anchoring".

Examples (I):

(a) Property Dealers – with an anchor value incorrectly estimated the value of the property by overlooking the relevant parameters.

(b) Proposal for cap on damages awarded by courts.

Examples(II):

(a) Positive anchor – Motor Vehicles Act.
(b) POCSO Act.

NOISE

Bias: One sided
Noise: Scatter, randomness

Examples of Noise Decisions:

(a) Child custody
(b) Bail decisions
(c) Forensic Science

Optimal Noise
Reducing Noise
Costs of Noise Reduction

"Woodson versus North Carolina – US Supreme Court held that a mandatory death sentence was unconstitutional not because it was too brutal but because it was a rule."

The Court said –

"the belief no longer prevails that every offense in a like legal category calls for an identical punishment without regard to the past life and habits of a particular offender. …… mandatory death sentence treats all persons convicted of a designated offense not as uniquely individual human beings, but as members of a faceless and undifferentiated mass to be subjected to the blind infliction of the death penalties."

EMOTIONAL INTELLIGENCE:

Acquisition of Skills and Conclusions:

(1) Domain Knowledge and Skills helps us reduce possibilities of errors.
" A marker of skill performance is the ability to deal with vast amounts of information strictly and efficiently."

(2) "Acquisition of Skill requires-
    (a) regular environment
    (b) adequate opportunity to practice.
    (c) rapid and unequivocal feedback about the correctness of
        thoughts and actions."

Blocking Errors:

(a) Considerable investment of efforts.

(b) Recognize signs that you are in a cognitive minefield, slow down, and ask for reinforcement from System-2.

(c) More water cooler gossip.

THANK YOU!!!