Cognitive biases in evidence sources: effective collaboration and its implications for the Peruvian criminal process

Sesgos cognitivos en las fuentes de prueba: la colaboración eficaz y sus implicancias en el proceso penal peruano

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Abstract

The present study aimed to analyze how cognitive biases impact the sources of evidence within the special process of effective collaboration, generating direct consequences for the Peruvian criminal process. To this end, a qualitative methodology was adopted, supported by a documentary review of the state of the art from a phenomenological perspective. The results show that, as in other legal systems, cognitive biases negatively affect the work of judges, police officers, and experts, primarily due to the distortion they introduce into the assessment of evidence. Given this scenario, reforms to the Peruvian procedural system are proposed, in harmony with comparative law, to address the impact of cognitive biases on the process of effective collaboration. Finally, regulatory and operational measures are proposed to mitigate these biases in the criminal justice system, highlighting the importance of implementing a specialized training plan for judges and prosecutors, amending specific provisions of the Peruvian Code of Criminal Procedure and General Instruction No. 01-2017-JUS, and strengthening the role of forensic experts by incorporating new legal powers that allow for greater jurisdictional oversight in the corroboration phase.

Keywords: effective collaboration, Peruvian criminal process, cognitive biases.

Resumen

El presente estudio tuvo como objetivo analizar cómo los sesgos cognitivos inciden en las fuentes de prueba dentro del proceso especial de colaboración eficaz, generando consecuencias directas en el proceso penal peruano. Para ello, se adoptó una metodología cualitativa, sustentada en una revisión documental del estado de la cuestión desde una perspectiva fenomenológica. Los resultados evidencian que, al igual que en otros sistemas jurídicos, los sesgos cognitivos afectan negativamente la labor de jueces, policías y peritos, principalmente por la distorsión que introducen en la valoración probatoria. Frente a este escenario, se plantean reformas al ordenamiento procesal peruano, en armonía con el derecho comparado, con el fin de enfrentar el impacto de los sesgos cognitivos en el proceso de colaboración eficaz. Finalmente, se proponen medidas normativas y operativas orientadas a mitigar estos sesgos en el ámbito penal, subrayando la importancia de implementar un plan de capacitación especializado para jueces y fiscales, modificar disposiciones específicas del Código Procesal Penal peruano y de la Instrucción General N.°01-2017-JUS, así como fortalecer el rol de los peritos forenses mediante la incorporación de nuevas atribuciones legales que permitan un mayor control jurisdiccional en la fase de corroboración.

Palabras clave: colaboración eficaz, proceso penal peruano, sesgos cognitivos.

Introduction

The Peruvian criminal process is characterized by its accusatory nature, wherein justice operators are required to transparently present both the factual and legal foundations that support their decisions. In this regard, De la Rosa & Sandoval (2016) argue that the judge, within this system, must communicate the rationale for their decisions to the parties involved, thereby highlighting the factual and legal aspects at play. However, underlying this process may be feelings of justice, predispositions, and even instincts, as cognitive biases are an inherent part of human nature. Both authors agree on the influence of these biases on judicial decisions.

On another note, Taruffo (2002) emphasizes, through the theory of evidence, the pursuit of legal truth in accordance with the regulations and principles of the legal system, by analyzing statements and documents that provide relevant data to the process. This approach enables reasoned and substantiated inferences, which are essential for understanding the contemporary evidentiary system. Thus, it ensures that judicial resolutions are coherent, rational, and well-founded, in alignment with the principles of justice.

Complementarily, Ferrer (2007) examines the instruments and procedures used to demonstrate the facts alleged in a judicial process. His goal is for judicial decisions to be based on objective grounds, supported by verifications and principles such as the burden of proof, admissibility, and the evaluation of evidence. This includes testimonies, expert reports, documents, and circumstantial evidence, contributing to ensuring judicial equity and transparency, as well as impartiality in the issued resolutions.

From a philosophical perspective, Martínez (1905) presents the liberal theory, which highlights personal autonomy and the state's obligation to guarantee fundamental rights, allowing individuals to act according to their own will as long as they do not infringe upon the rights of others. In the criminal process, this theory proposes that parties should have the capacity to present evidence autonomously and without arbitrary restrictions, in order to avoid any bias arising from external influences.

Similarly, Ávila & Minor (2023) regard the presumption of innocence as a constitutional guarantee, by which all defendants must be treated equally and have access to a fair trial. In this framework, judges assume the role of guarantors of this principle, ensuring that procedural actions conform to reality and the rights of the parties involved.

Furthermore, Fuentes (2008) expands this view by noting that the principle of proportionality entails an appropriate balance between penal reaction and the case's circumstances, considering both individualization and the application of punishment. This principle is fundamental in the Peruvian penal system, as it seeks to harmonize social interest with the protection of basic rights. Burgoa (2022) develops the theory of contradiction, in which, following Kant, he distinguishes between contradiction and contrariety, indicating that contradiction manifests in the affirmation or negation of two antagonistic figures, highlighting the incoherence of accepting or refuting divergent perspectives regarding the same individual.

In the psychological realm, Kahneman & Tversky (1972) introduce the theory of heuristics, understood as cognitive shortcuts that individuals use to make quick decisions in contexts of uncertainty. While these strategies facilitate decision-making, they can also lead to errors or biases.

Regarding cognitive biases, Dror et al. (2013) define them as systematic errors in thinking that affect perception, processing, and recall of information. These biases, which operate unconsciously and stem from the aforementioned mental shortcuts, enable rapid responses but can also distort reality and condition decision-making. In this regard, Rodríguez (2024) notes that, despite the efforts of justice operators to avoid them, it is common to unconsciously engage in inappropriate evaluations derived from these biases, which may lead to the violation of the rights of litigants. In contexts such as the special process of effective collaboration, prosecutors, experts, police officers, and witnesses are often particularly affected by these biases (Martínez, 2020).

Regarding the special process of effective collaboration, San Martín (2015) explains that the aspiring effective collaborator enters a framework of negotiated criminal justice, in which the accused can admit or deny the facts attributed to them and provide relevant information for dismantling criminal organizations or identifying their members.

In the same vein, Camilo & Sosa (2022) emphasize that this procedural figure constitutes a positive action of the state, aimed at obtaining information that would not be possible to acquire through ordinary investigations, thereby contributing to the interests of justice, public safety, and the fight against organized crime. However, Robles (2021) warns that, during the corroboration phase, both the prosecutor and the aspiring collaborator are the only ones required to act, which may foster the emergence of cognitive biases in the prosecutor when evaluating and validating the provided information.

Despite regulatory advances, gaps in regulation persist. The Public Ministry, through General Instruction No. 01-2017-MP-FN (2017), established guidelines to standardize prosecutorial actions; however, this instruction did not specify a particular procedure for expert assessments, leading to reliance on Article 172 of the Criminal Procedure Code, which lacks mechanisms to prevent biases.

Similarly, experts, when exercising their discretion, may evaluate data obtained in the special process without objectively validating it (Dror, 2013), and in the case of witnesses, such as police officers, the reserved nature of the process may favor the emergence of biases or cognitive errors.

Considering all of the above, this study aims to analyze how cognitive biases impact the assessment of sources of evidence in the special process of effective collaboration and how this influence may generate significant repercussions in the development of the Peruvian criminal process.

Methodology

For the development of this study, a basic research type was chosen, as its main purpose lies in generating theoretical knowledge. In this same vein, a qualitative approach was adopted, allowing for an in-depth understanding of the perceptions of the subjects involved in the phenomenon under study (Hernández et al., 2018).

Regarding the methodological design, a phenomenological approach was employed. Concerning the scope of the research, it was descriptive, facilitating not only a detailed characterization of the phenomenon but also its understanding from a broader and more meaningful framework (Ghorbani & Matourypour, 2020).

It is noteworthy that, as part of the methodological strategy, a bibliographic review was initiated, which allowed for the identification of relevant findings and, in turn, the construction of a solid framework of the current state of the issue. This review was complemented by a documentary analysis, a technique that enabled a rigorous examination of pertinent sources to delve into the key aspects of the study.

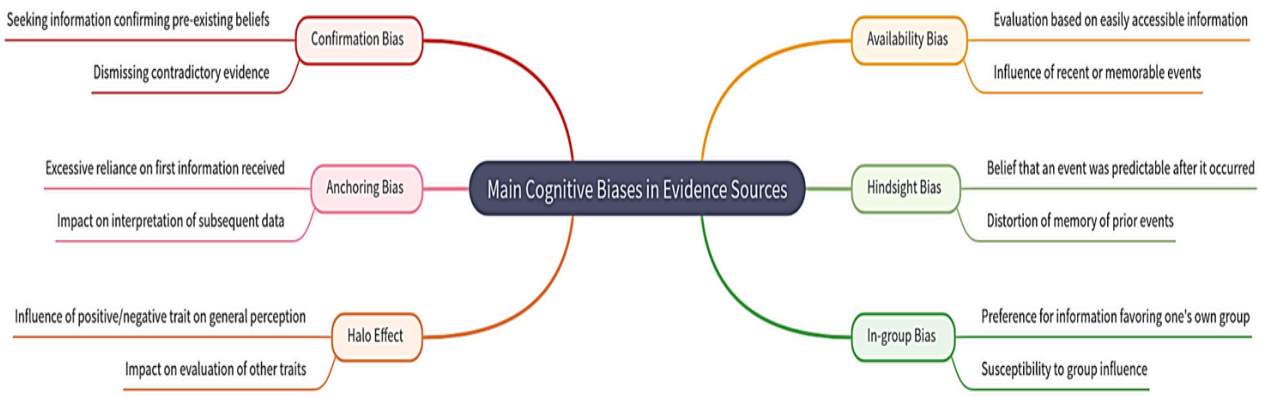
For data analysis, two complementary methods were employed. On one hand, the inductive method, grounded in systematic observation and empirical verification, which allowed for deriving well-founded conclusions. On the other hand, the interpretive method, which facilitated a more comprehensive and holistic understanding of the various social realities addressed.

Finally, to systematically and rigorously code the qualitative information, the software ATLAS.ti was used. This tool facilitated the organization, categorization, and establishment of relationships among the analyzed data, thereby strengthening the interpretative validity of the study.

Results

The analysis conducted using ATLAS.ti identified relevant conceptual patterns that facilitated an understanding of the impact of cognitive biases in the judicial realm. Firstly, as represented in Figure 1, the most recurrent terms among the analyzed codes included: “cognitive biases,” “evidence,” “impartiality,” “experts,” “objectivity,” “evaluation,” and “experience.” This set of terms clearly reflects the prevalence of concerns related to the reliability of evidentiary sources and the influence of subjective factors in their assessment. Thus, it is evident that the core of the study focuses on the main cognitive biases observable in the analysis and use of evidence, as shown in the mentioned figure.

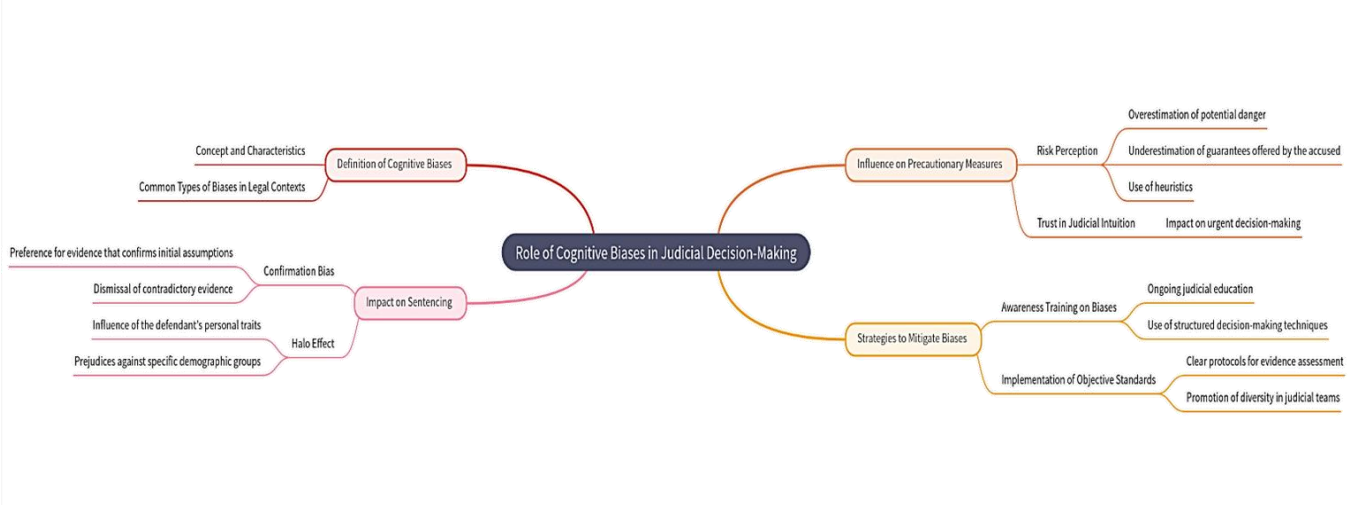
Figure 1
Main cognitive biases in sources of evidence



Source. Zanabria (2025)

Secondly, Figure 2 illustrates how cognitive biases also affect judicial decisions, especially at critical moments such as the application of precautionary measures or the issuance of rulings. It is important to note that these impacts are not limited solely to effective collaboration processes but also occur in ordinary criminal procedures. In other words, biases influence, individually or in combination, the decision-making of various legal operators, including prosecutors, judges, members of the National Police, and forensic experts. This reality undoubtedly generates significant consequences that affect both the quality and legitimacy of the judicial process.

Figure 2
Role of cognitive biases in judicial decisions



Source. Zanabria (2025)

On another note, Figure 3 highlights how forensic experts may also be affected by cognitive biases during the performance of their duties. In this context, it is important to emphasize that these experts are not exempt from experiencing biases such as confirmation bias, authority bias, or information bias, which can lead to arbitrary

decisions. Instead of relying solely on objective evidence, they may be influenced by subjective criteria or personal preferences, compromising the expected impartiality of their evaluations. This phenomenon results in judgments marked by emotional, ideological, or even personal interests, jeopardizing objectivity and justice in the process.

Figure 3
Cognitive biases in forensic experts during the corroboration phase



Source. Zanabria (2025)

Particularly, confirmation bias in prosecutors or judges manifests when they tend to seek, prioritize, or preferentially assess evidence that supports their initial hypothesis while dismissing or minimizing evidence that could contradict it. This behavior has been identified not only among witnesses and police members but also, with particular emphasis, among forensic experts. Moreover, various scientific articles and studies from comparative law have shown that this distortion intensifies when combined with other biases, such as the halo effect, anchoring bias, and availability bias, which affect the judicial process from its early stages to its conclusion.

Discussion

The analysis indicates that in the special process of effective collaboration, cognitive biases exert a significant influence on the assessment of sources of evidence. Indeed, biases such as confirmation bias or availability bias can distort the interpretation of information provided by effective collaborators. This situation severely compromises the objectivity of the process, especially in the corroboration phase, where the responsibility of verifying the statements of the aspiring collaborator rests almost exclusively on the prosecutor. Thus, in the absence of judicial oversight beyond the discretionary judgment of this actor, a conducive space is created for decisions to be conditioned by subjective perceptions.

In this regard, Duce (2018) examines how expert evidence can contribute to errors in the judicial system and argues that implementing stricter regulations, constant monitoring of such evidence, and training for experts would help reduce these errors, thereby strengthening a more equitable judicial system. Biases affect not only prosecutors or judges but also experts and forensic specialists. Dror (2013) warns that when exercising discretion without objective controls, experts may incur errors. Likewise, Edmond et al. (2014) and Dror et al. (2013) point out that exposure to irrelevant information, such as details about the suspect, can bias their judgments.

In this same vein, it is pertinent to highlight the presence of group bias, which manifests in this special process due to the prominence that judges and prosecutors give to expert reports. This situation can distort the logical thinking required, as reliance on expert opinions—whether due to their foundation, rigor, comprehensiveness, or the prestige of the author—should not be a determining factor in judicial decisions. It is essential that, prior to this, all other considerations in the criminal process be thoroughly analyzed to reach rational conclusions.

A relevant contribution comes from Dror & Kukucka (2021), who mention that minimal changes in the informational sequence can lead to different conclusions. Therefore, their methodology, Linear Sequential Unmasking–Expanded (LSU-E), seeks to improve the quality of forensic decisions by optimizing the processing and presentation of information.

Additionally, Mattijssen et al. (2016) and Davidson et al. (2021) underscore the need to minimize unnecessary information and prioritize what is essential for the examiner. Consequently, they developed a Contextual Information Management System (CIM) for firearms examination. In cases where biases are present, they propose incorporating a third observer to ensure impartiality. Although this measure does not completely

eliminate the subjectivity of analysis, it helps mitigate the effects of biases with minimal resources and time, thereby strengthening the consistency and accuracy of forensic results.

On the other hand, the absence of mechanisms in Peruvian procedural law that regulate the evaluation of evidence from the perspective of cognitive biases creates uncertainty regarding the reliability and relevance of testimonies and statements. This reality highlights the urgent need for a regulatory review that includes tools to identify and correct such biases, ensuring equitable justice based on rational and solid criteria.

In this context, Mote et al. (2018) suggest that primary confessions from accused individuals influence the identification of suspects, significantly strengthening the witness's perception even when visual evidence is limited. This bias increases the witness's confidence in their decision-making. Similarly, this reasoning applies to secondary evidence, such as statements from informants in penitentiary environments, which can corroborate or challenge the original identification.

Another relevant perspective is offered by Nieva (2018), who emphasizes that the justice system faces a significant challenge in assigning judges the responsibility of evaluating expert evidence without the necessary technical training to correctly interpret scientific evidence. This situation creates a dependency on experts, whose impartiality and competence are not always guaranteed. Van-Straalen et al. (2023) studied whether experts outperformed their students in evaluating evidentiary means in forensic inferences, identifying differences in their conclusions and how biases affected each group. They also noted that professional experience may moderate or facilitate the identification of appropriate interpretations of forensic evidence.

Furthermore, comparing the regulations of countries such as Spain and the United States with Peruvian regulations regarding the special process of effective collaboration reveals significant differences derived from technical and legal factors in the development of their regulatory frameworks.

Indeed, the lack of a regulatory framework addressing the influence of cognitive biases on the evaluation of evidentiary means raises concern, as it affects the impartiality of judicial decisions and compromises the pro homine guarantee during the negotiation and corroboration stages of information. These biases tend to affect the objectivity of the process.

In this regard, Del Águila (2022) analyzed cognitive biases in Peruvian criminal evidence from a gender perspective, observing that these biases are present in the evaluation of evidentiary means and, consequently, in judicial decisions, subtly affecting the impartiality required in all rulings.

For his part, Bustamante (2024) examined the impact of cognitive biases in the Peruvian procedural context, recognizing their presence and the importance of proposing solutions that, in some cases, could be modified for greater impact. Among these solutions, the implementation of standardized protocols and periodic audits, as practiced in Anglo-Saxon and European systems, is highlighted to significantly reduce biases and errors in judicial decisions.

In summary, the Peruvian legal system still lacks clear guidelines for recognizing, managing, and avoiding cognitive biases, particularly in the effective collaboration process and ordinary criminal procedures. This deficiency generates inconsistencies and uncertainty in the treatment of evidentiary means and affects equity in addressing the parties within the judicial process.

Conclusions

In conclusion, cognitive biases exert a significant influence on the decisions of justice operators, affecting everything from the evaluation of evidence to other key circumstances for the logical development of the special process of effective collaboration. In this sense, it is pertinent to note that, according to Article 473 of the Peruvian Criminal Procedure Code, the relevance of the information provided during the interaction with the prosecutor is left to the aspiring collaborator; however, it would be more appropriate for the justice operator to evaluate that relevance for the case's development.

Moreover, it is observed that cognitive biases also impact the performance of forensic experts, with confirmation and anchoring biases being particularly notable. This situation represents a serious problem, as the technical exercise that experts must perform with impartiality becomes distorted, negatively affecting the evaluation of evidentiary means. Consequently, these biased decisions may compromise the reliability and credibility of the criminal justice system.

On the other hand, police actions are also affected by these biases, particularly during the corroboration phase, when the collection of evidence becomes a critical point. In this context, biases such as confirmation, anchoring, power, and hindsight are identified, which hinder an adequate evaluation of evidentiary means. Therefore, it is essential to consider these factors to establish mechanisms that limit indiscriminate access to the effective collaboration file, in order to prevent and reduce the incidence of biases during this phase.

Likewise, it is evident that cognitive biases compromise both the impartiality of judges and the objectivity of prosecutors. For example, confirmation bias may lead the Public Ministry to seek only those pieces of evidence that reinforce its hypothesis of guilt, while anchoring bias distorts perception based on the initial information available. Additionally, the halo effect may divert the interpretation of the judge or prosecutor based on certain personal characteristics of the accused. In light of this scenario, it is imperative to incorporate judicial oversight at the end of the corroboration phase, so that deficiencies in corroborative elements are mitigated and their defective incorporation into the connected or derived criminal process is avoided.

Furthermore, our legal reality does not significantly differ from comparative law regarding the incidence of cognitive biases. Therefore, it is concluded that these biases affect both the effective collaboration process and the criminal process in general in Peru. In this line, a viable and necessary proposal is the implementation of a training plan directed at judges, specifically aimed at identifying and mitigating cognitive biases, thus ensuring a neutral evaluation of the evidence.

Similarly, it is proposed to amend numeral 5 of Article 473 of the Criminal Procedure Code to emphasize the prosecutor's role in evaluating the information provided by the aspiring collaborator. Additionally, the incorporation of a new numeral 3 in Article 174 of the same code is suggested, explicitly empowering the expert to request further clarification regarding the object of the entrusted expertise.

Finally, it is deemed necessary to amend the first paragraph of Article 8.1.3 b.2) of General Instruction No. 01-2017-JUS, as well as the inclusion of a new numeral in Article 473-B of the Criminal Procedure Code. The latter aims to establish judicial oversight at the end of the corroboration phase, also granting greater powers to the intervening expert, among other essential reforms to strengthen the process.

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