

1. Judicial Recusal – Polity

Recent recusals in higher courts send mixed signals on upholding transparency. The lack of formal rules for judicial recusal in India allows judges to withdraw from cases without giving reasons, creating a transparency deficit. This practice raises concerns about potential misuse and eroding public trust, fuelling calls for clear, codified guidelines to ensure accountability.

Introduction – The Issue of Judicial Recusal

The topic of judicial recusal has recently come into focus after a Supreme Court judge withdrew from a bail case following numerous adjournments, without offering any public explanation. This highlights the ongoing debate surrounding the lack of formal rules and transparency in the process of recusal in the Indian judicial system.

Understanding Recusal

Definition and Purpose

Recusal is the act of a judge voluntarily withdrawing or disqualifying themselves from hearing a legal case. This is done when there is a potential for a conflict of interest or a likelihood of bias, which could compromise the judge's impartiality.

Core Objectives – The practice of recusal is founded on two fundamental goals –

1. To ensure that judges remain independent and impartial in their decision-making.
2. To maintain and reinforce the public's confidence in the fairness and integrity of the justice delivery system.

Guiding Principle – Recusal is rooted in the cardinal principle of natural justice – “Justice must not only be done, but must also be seen to be done.” This means that the appearance of fairness is as important as fairness itself.

Status in India

In India, there are no formal, codified rules or statutes that govern the process of recusal. The decision is left to the individual judge's discretion. Judges who choose to recuse themselves from a case are not obligated to provide any reason for their withdrawal.

Legal Position and Procedure in India

Standard for Recusal – Indian courts have adopted the standard of “reasonable likelihood of bias.” This means that if a reasonable person would believe that a judge might be biased, recusal may be warranted.

Types of Recusal – The process can be initiated in two ways –

1. **Automatic Recusal –** A judge withdraws from a case on their own initiative (**suo motu**) after recognizing a potential conflict of interest.
2. **Party-Initiated Plea –** A party involved in the case files an application requesting the judge's recusal, highlighting specific grounds that suggest a possibility of bias or personal interest.

Final Authority – The decision to recuse rests solely on the conscience and discretion of the judge presiding over the case. No party can force or compel a judge to withdraw.

Post-Recusal Procedure – If a judge recuses, the case is referred back to the **Chief Justice**, who then reassigns it to an alternate Bench for hearing.

Key Supreme Court Interpretations

While India lacks codified rules, several landmark Supreme Court judgments have provided crucial guidance on the matter –

Ranjit Thakur v. Union of India (1987) – The Court established that even a “reasonable apprehension of bias” in the mind of a party is a sufficient ground for a judge to recuse. The focus is on the perception of the litigant, not just the judge's own belief in their impartiality.

State of West Bengal v. Shivananda Pathak (1998) – The judgment emphasized that bias

fundamentally destroys the concept of fairness. If bias is present, justice becomes meaningless, and the entire judicial process is vitiated.

Supreme Court Advocates-on-Record Association v. Union of India (2015) (NJAC Case) – The Court articulated a more definite rule, observing that where a judge has a pecuniary (financial) interest in the outcome of a case, recusal is automatic. In such situations, no further inquiry is needed to determine if there was a 'real danger' or 'reasonable suspicion' of bias.

Recusal Practices in Global Jurisdictions

The United States – The U.S. has a **well-defined federal law on recusals** (Title 28 of the U.S. Code). This law specifies clear grounds for the disqualification of a judge, including –

1. Having a financial or corporate interest in a party.
2. Having previously served as a material witness or a lawyer in the same case.
3. Having a close relationship with a party or lawyer involved in the case.

The United Kingdom – The U.K.'s law on judicial recusal has primarily evolved through judicial pronouncements and case law. The landmark case of R v. Gough established the 'real danger' test. This test requires that recusal be based on substantive and tangible evidence that conclusively demonstrates the presence of judicial bias, rather than mere suspicion.

Issues with the Current System in India

The absence of a formal framework has led to several significant problems –

No Formal Rules – The lack of codified rules creates ambiguity and allows judges to recuse without giving any explanation, undermining transparency.

Potential for Misuse –

1. **"Bench Hunting"** – Litigants or lawyers may try to pressure a judge to recuse, hoping to have the case assigned to a different, potentially more "favourable," bench.
2. **Delay Tactic** – Recusal can be used as a strategic tool to delay proceedings and obstruct justice.

Erosion of Public Trust – When reasons for recusal are not disclosed, it can fuel public suspicion about hidden biases, external pressures, or the integrity of the judiciary.

Delays in Justice Administration – Sudden recusals, especially after a case has undergone many adjournments and hearings, waste the court's valuable time and cause immense hardship and financial loss to the litigants.

Recommendations for Reform

To strengthen the integrity of the judicial process, the following reforms are recommended –

Frame Codified Rules – India should develop a clear, written law or a comprehensive set of guidelines that governs the procedure and grounds for judicial recusal.

Mandate Recording of Reasons – Judges should be required to record, at least briefly, their reasons for recusing. This would significantly enhance transparency and build public confidence.

Establish Uniform Standards – The rules should lay down clear and objective criteria for recusal, such as direct financial conflicts, close family ties to litigants/lawyers, prior professional involvement in the case, or proven political pressure.

Adopt a Committee Approach – The rules should be formulated by a balanced committee comprising senior judges, jurists, and lawyers to ensure they are practical, fair, and uphold the principles of natural justice.

Conclusion

Recusal is a cornerstone of judicial ethics, essential for maintaining the fairness and credibility of the judiciary. However, in India, the uncoded nature of the rules, combined with a lack of transparency and frequent unexplained recusals, has weakened its purpose. Establishing clear written rules that strike a fine balance between judicial independence and accountability is necessary to preserve the sanctity of the judicial process and maintain public faith in justice.

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