

2. Judicial Recusal – Polity

The recent recusal of Chief Justice of India Surya Kant from petitions challenging the Chief Election Commissioner and Other Election Commissioners Act, 2023, following a similar recusal by Justice Sanjiv Khanna, has brought the legal discourse on judicial propriety to the forefront. These events highlight the delicate balance between a judge's duty to hear a case and the necessity of maintaining public confidence in an impartial judiciary.

1. Core Definitions and Foundations

Doctrine of Recusal

Judicial recusal is the act of a judge withdrawing from a legal proceeding because of a conflict of interest or a lack of impartiality.

The Maxim- It is rooted in the principle of *Nemo judex in causa sua*—"No one should be a judge in their own cause."

The Objective- To ensure that justice is not only done but is manifestly seen to be done.

Doctrine of Necessity

This doctrine acts as an exception to the rule of bias. It mandates that a judge must hear a case, despite a potential conflict, if their withdrawal would lead to a "failure of justice" because no other competent forum or judge is available to hear the matter.

2. Evolution of Recusal Jurisprudence in India

The standards for recusal have shifted from a strict "actual bias" test to a more nuanced "perception of bias" test.

Period/Case	Legal Standard Established
Manak Lal v. Dr. Prem Chand (1957)	Established the Strict Rule. Held that even a tiny pecuniary (financial) interest is enough to disqualify a judge automatically.
Ranjit Thakur v. Union of India (1987)	Shifted to the Reasonable Apprehension test. The question is not whether the judge is <i>actually</i> biased, but whether a reasonable person would <i>perceive</i> a risk of bias.
NJAC Case (2015)	Invoked the Doctrine of Necessity. The Court ruled that if a conflict is "institutional" (affecting the entire judiciary), judges cannot recuse themselves as it would paralyze the system.

3. The NJAC Case (2015)– A Study in "Institutional Stake"

In the challenge to the National Judicial Appointments Commission (NJAC), a plea was made for Justice J.S. Khehar to recuse himself. His refusal provided landmark reasoning for institutional cases–

Collective Conflict- He argued that the conflict was not personal but shared by the entire Bench. Every judge had a stake in how judges are appointed (Collegium vs. NJAC).

In utility of Recusal- Since the concern applied to all judges, one judge stepping down would not "cure" the perceived bias; it would merely shift the responsibility to another judge with the same institutional interest.

Constitutional Duty- The Court held that judges have a "duty to sit" and cannot be driven out of a case by litigants through strategic recusal pleas.

4. Key Challenges and Concerns in the Indian Context

The absence of a formal code for recusal in India leads to several systemic vulnerabilities–

Lack of Codified Guidelines

Unlike the United States (28 U.S. Code § 455), India has no statute defining when a judge *must* step down. Decisions are left to the individual judge's "conscience," leading to–

Inconsistency– One judge might recuse over a minor association, while another might stay on a high-stakes case despite closer ties.

Subjectivity– The "Master of the Roster" (the CJI) faces unique pressure when recusing, as they are also responsible for forming the replacement bench.

The Menace of "Bench Hunting"

Litigants sometimes use recusal as a tool for "forum shopping." By raising frivolous bias claims against a "tough" judge, they hope to have the matter transferred to a bench they perceive as more favourable.

Transparency Gaps

Judges often do not provide detailed, written reasons for recusing. While this is sometimes done to protect the dignity of the office, the lack of transparency can lead to public suspicion regarding the *true* reason for the withdrawal.

5. Comparative Analysis– India vs. USA

Feature	Indian Framework	United States Framework
Source of Law	Convention and Judicial Precedents.	Codified Law (Title 28, Section 455).
Standard	Judge's individual conscience/discretion.	Mandatory if impartiality might "reasonably be questioned."
Reasoning	Often oral or undisclosed.	Generally documented as part of the legal record.
Appellate Review	Rarely challenged as a separate issue.	Recusal decisions can be appealed.

6. The Way Forward

To institutionalize judicial propriety and move away from ad-hoc decisions, the following reforms are suggested–

Statutory Codification– Parliament or the Supreme Court (through its rule-making power) should draft objective standards for recusal to minimize subjectivity.

Mandatory Disclosure of Reasons– Establishing a convention where judges provide a brief, written explanation for recusal to ensure the public understands the conflict.

Formal Code of Conduct– Strengthening the "Restatement of Values of Judicial Life" (1999) to include specific protocols for conflict of interest in high-profile constitutional matters.

Master of the Roster Protocols– Creating a neutral mechanism for bench reconstitution when the Chief Justice recuses, ensuring that the replacement bench is seen as independently appointed.

7. Conclusion

The recusal of top judges like CJI Surya Kant underscores the judiciary's commitment to avoiding the appearance of bias. However, the recurring nature of these episodes suggests that "conscience" alone is an insufficient safeguard. A transition toward codified transparency is essential to protect the judiciary from allegations of bench hunting and to uphold the sanctity of the "Master of the Roster" system.

Source– <https://www.thehindu.com/news/national/when-the-chief-justice-steps-away/article70781217.ece>