



Recusal of Judges

For Prelims: Recusal of Judges, Supreme Court

For Mains: Recusal of Judges and related concerns

Why in News?

Recently, a [Supreme Court \(SC\)](#) judge recused herself from hearing a **writ petition** filed by Bilkis Bano against a Gujarat government decision to prematurely release 11 men sentenced to life imprisonment for gang-raping her during the 2002 riots.

What is Recusal?

▪ About:

- It is the **act of abstaining from participation in an official action** such as a legal proceeding due to a conflict of interest of the presiding court official or administrative officer.

▪ Rule for Recusal:

- There are **no formal rules governing recusals**, although several SC judgments have dealt with the issue.
 - In ***Ranjit Thakur v Union of India (1987)***, the SC held that the test of the likelihood of bias is the reasonableness of the apprehension in the mind of the party.
 - The judge needs to look at the mind of the party before him, and decide that he is biased or not.

▪ Reason for Recusal:

- When there is a **conflict of interest, a judge can withdraw from hearing a case** to prevent creating a perception that he carried a bias while deciding the case.
- The conflict of interest can be in many ways such as:
 - Having a prior or personal association with a party involved in the case.
 - Appeared for one of the parties involved in a case.
 - Ex parte communications with lawyers or non-lawyers.
 - An appeal is filed in the SC against a judgement of a High Court (HC) that may have been delivered by the SC judge when he was in the HC.
 - In a matter of a company in which he holds shares unless he has disclosed his interest and there is no objection to it.
- The practice stems from the cardinal principle of **due process of law** that nobody can be a judge in her own case.
 - Any interest or conflict of interest would be a ground to withdraw from a case since a judge has a duty to act fair.

What is the Process of Recusal?

- The decision to recuse **generally comes from the judge himself** as it rests on the conscience

and discretion of the judge to disclose any potential conflict of interest.

- Some judges orally convey to the lawyers involved in the case their reasons for recusal, many do not. Some explain the reasons in their order.
- In some circumstances, **lawyers or parties in the case bring it up before the judge**. Once a request is made for recusal, the decision to recuse or not rests with the judge.
 - While there are some instances where judges have recused even if they do not see a conflict but only because such an apprehension was cast, there have also been several cases where judges have refused to withdraw from a case.
- If a judge recuses, the **case is listed before the [Chief Justice](#) for allotment to a fresh Bench**.

What are the Concerns related to Recusal?

- **Undermining Judicial Independence:**
 - It **allows litigants to cherry-pick a bench of their choice**, which impairs judicial fairness.
 - Also, the purpose of recusal in these cases undermines both independence and impartiality of the judges.
- **Different Interpretations:**
 - As there are no rules to determine when the judges could recuse themselves in these cases, there are different interpretations of the same situation.
- **Delays the Process:**
 - Some **requests for recusal are made with the intent to intimidate the court or to get better of an 'inconvenient' judge** or to obfuscate the issues or to cause obstruction and delay the proceedings or in any other way frustrate or obstruct the course of justice.

Way Forward

- Recusals should **not be used as a tool to manoeuvre justice**, as a means to pick benches of a party's choice, and as an instrument to evade judicial work.
- Judicial officers must **resist all manner of pressure**, regardless of where it comes from and if they deviate, the independence of the judiciary would be undermined, and in turn, the Constitution itself.
- Therefore, **a rule that determines the procedure for recusal on part of judges** should be made at the earliest.

[Source: TH](#)

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