



Recusal of Judges

Why in News

Recently, two [Supreme Court \(SC\)](#) judges have **recused** themselves from hearing cases relating to West Bengal.

Key Points

▪ Recusal:

- 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.**

▪ 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.

▪ Decision & 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.**

▪ 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.

▪ Concerns:

◦ 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.

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