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# COURT RECUSAL IN INDIA: PRINCIPLES, PRACTICE, AND CHALLENGES

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## Introduction

The concept of court recusal is an essential element of judicial ethics and constitutional governance in India. Recusal is when a judge steps down from hearing a case because they might have a conflict of interest, bias, or any other reason that could affect their ability to be impartial. In a democracy where law is considered supreme, the courts should be able to act as an independent and impartial body. So even a small hint of biasness can make people lose faith in the judicial system.

In India there is no law that governs the doctrine of recusal. Instead, it is based on constitutional principles, judicial precedents, and moral standards. Recusal is important not only to make sure that each case is fair but also to keep the judicial system legitimate. This article talks about the idea of court recusal in India, its legal basis, reasons for it, procedures, important cases, and the changing conversation about it.

## Meaning and Concept of Recusal

When a judge withdraws from a case because of a conflict of interest or a legitimate apprehension of bias it is known as judicial recusal. This is done to guarantee that the issue is decided properly and that the judge's personal prejudices have no bearing on the result. "The practice of judicial recusal stems from the cardinal principle of due process of law which requires that all parties to a case be treated fairly and impartially."<sup>1</sup> A different judge is assigned the case if a judge recuses himself. A very crucial component of guaranteeing the impartiality and fairness in the legal system is judicial recusal.

The doctrine is rooted in two fundamental principles of natural justice:

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<sup>1</sup> <https://www.shankariasparliament.com/blogs/pdf/judicial-recusal>

**1. Nemo judex in causa sua** – No person should be a judge in their own cause.

This principle states that while resolving a dispute, decision-makers must be neutral and unbiased. They shouldn't have any preconceived ideas about the parties or the issue at hand nor should they have any financial or personal stake in the outcome. This principle is also referred to as the rule against bias. Any intentional or inadvertent prejudice on the part of the judge against the party or issue is referred to as bias. The Rule against Bias or "Nemo Judex in Causa Sua" centres on the role of a judge during a hearing. It means that while resolving any disagreement, a judge must act impartially and objectively. "In any administrative proceeding this principle plays an essential role. Any administrator exercising adjudicatory powers should not have any personal or proprietary interest in the outcome of the proceedings, nor there should not be any reasonable ground for believing that there was the likelihood of bias in the given decision."<sup>2</sup>

**2. Justice must not only be done but must also be seen to be done.**

According to this maxim justice must be done and perceived to be done. It is a basic legal principle that guarantees the faith and trust of public in the judicial system. This principle has its roots in the 1923 case *R v. Sussex Justices, ex parte McCarthy*, highlights the need for judicial procedures to be transparent and unbiased in addition to having a fair result. It is regarded as the cornerstone of law guaranteeing that even the appearance of prejudice is eradicated to maintain legitimacy.

**Legal Framework in India**

India does not have a codified law like other countries, so here in India the framework of judicial recusal is derived from:

- Articles 14 and 21 of the Constitution which ensures fair trial.
- Judicial precedents set by the superior courts such as the High Court and the Supreme Court.
- Some ethical guidelines, for example the one laid down in *Restatement of Values of*

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<sup>2</sup> Ibid.

*Judicial Life (1999)*

Judges have a lot of discretion when it comes to deciding whether or not to recuse themselves because there are no written and prescribed rules. But, this choice is not available all the time; it has to be made based on reasonable grounds for bias. In India, courts use the “reasonable apprehension of bias” test which means that a judge should recuse himself if a reasonable person would think that the judge was biased or impartial.

### **Grounds for Recusal**

Recusal may arise under several circumstances including:

1. Personal Bias or Prejudice

Recusal is required when a judge harbours personal animosity or favouritism towards a party. Even a perceived bias can be enough for recusal of a judge.

2. Money Interest

If a judge has a financial interest in the outcome of a case they must step down. For example, if you own shares in a company that is involved in a lawsuit, you have a direct conflict of interest and in such a case recusal becomes mandatory.

3. Previous Participation

If a judge has already worked on the same case as a lawyer, advisor, or witness, they should step down as this directly affects the parties.

4. Relationships

Close relationship whether professional or through family ties is always considered as a ground that can affect the neutrality of a judge. Thus, it is also considered as a ground of recusal.

5. Institutional Bias

Sometimes the judge’s association with an organization that is part of the case may cause recusal. These reasons are not exhaustive and each case is looked at based on its

own facts.

#### 6. Preconceived Opinions

Public statements or previous decisions that show a firm opinion on the issue can be considered as a valid reason for recusal as it directly affects the partiality of a judge.

### **Procedure of Recusal**

The process of recusal of judges from cases in India- where a judge withdraws from hearing a case due to a possible conflict of interest or bias is not governed by any codified statute. Instead, it has developed through judicial precedents and constitutional principles of natural justice especially the rule against bias (*nemo iudex in causa sua*).

The party seeking recusal may file an application before the concerned court setting out clear and reasonable grounds like personal interest, prior involvement, financial stake or demonstrated prejudice. However, the Supreme Court of India has emphasised that the decision to recuse is ultimately that of the concerned judge. The judge may allow the request and recuse himself or refuse the request if the allegations are baseless or for the purpose of forum shopping. In cases where recusal is refused, the judge generally records reasons to maintain transparency and protect public confidence in the judiciary. Landmark rulings such as *State of West Bengal v. Shivananda Pathak* and *Supreme Court lawyers on Record Association v. Union of India* have shaped the path on judicial bias and recusal. While there is no appeal medium against a judge's turndown to recuse, the issue can occasionally be raised in advanced courts as part of a challenge to the final judgment. Overall, the recusal process in India balances judicial independence with the need for equity and fairness in adjudication.

### **Judicial Approach and Landmark Cases**

The Supreme Court of India has played a crucial role in shaping the doctrine of recusal through various judgments:

#### **Ranjit Thakur v. UOI (1987)**

This a landmark Supreme Court case establishing that “judicial recusal depends on a reasonable apprehension of bias in the mind of the litigant not just actual bias. The test is whether a

reasonable person would suspect the judge is biased, ensuring public confidence in impartial justice.”<sup>3</sup>

### **Key Takeaways from the Case:**

- **The Test of Bias:** The court decided that a judge should consider the perspective of the party in front of them rather than asking themselves, “Am I biased?”
- **Reasonable Fear:** The judge should step down if a party has a legitimate fear that the judge may be biased and such biasness would affect the decision of the case.
- **Public Confidence:** Anyone involved in the administration of justice must not be in a situation where they could be suspected of being prejudiced against one or more parties.

### **Shivananda Pathak v. State of West Bengal (1998)**

This ruling reaffirmed that a judge cannot consistently adhere to their own overturned ruling (obstinacy) and that their impartiality must be above reproach. This decision made it very clear that judges must recuse themselves if they are unwilling to follow the maxim that “justice hurried is justice buried.”

### **Ayodhya Case (2019)**

Because of his prior professional affiliation with one of the parties, Justice U.U. Lalit had recused himself from the Constitution Bench. These cases demonstrate that recusal is not a matter of strict regulations but rather of ethics and the judicial heart.

### **Recent Developments and Contemporary Relevance**

Recent judicial developments have brought the issue of recusal into public debate. Courts have emphasized that recusal should not be misused as a strategy for litigation purpose. Recent rulings of the court focus towards key trends such as:

- Courts have rejected recusal pleas grounded on vague or unwarranted allegations of

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<sup>3</sup> <https://indiankanoon.org/doc/1572927/>

bias.

- Judges have recused themselves to avoid conflicts of interest and maintain judicial propriety
- There is growing concern about “bench hunting,” where petitioners argue to decide which judge hears their case. These developments show that while recusal is essential, its abuse can hang judicial independence.

### **Exception to Recusal: Doctrine of Necessity**

“An important exception to recusal is the doctrine of necessity. This doctrine applies when no alternative judge is available to hear a case. In such situations, even a judge with a potential conflict may hear the case to prevent a failure of justice. For example, if all judges of a court have a similar conflict, recusal by all would lead to a judicial vacuum. Therefore, necessity overrides the rule against bias.”<sup>4</sup> The legal authorities might act in the following ways according to the concept of necessity:

- To perform certain measures that are required at a certain time even though those actions would not normally be considered within the scope of the law in a general legal situation.
- This concept be applied and utilised in situations when a determining authority is not available to make a decision in a particular issue. Even though the decision may be influenced by the deciding authority’s bias, when given the choice to either allow someone to act in a biased manner on a subject or to quash the matter itself, the preference will be given to acting in a biased manner.

In cases similar to the aforementioned situation the rule against bias is defeated by the rule of necessity. The only condition here is that such deciding authority must mandatorily conclude the matter at hand.

### **Challenges in the Indian System**

Despite its significance, the doctrine of recusal faces several challenges

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<sup>4</sup> <https://blog.ipleaders.in/all-about-the-doctrine-of-necessity/>

### 1. Lack of Codified Rules

The absence of clear statutory guidelines leads to inconsistency and unpredictability and also leaves a big scope for judicial discretion. Basically, there is no specified system that deals with this concept.

### 2. Judicial Discretion

Since the decision to recuse or not solely depends on the judge and there is no one to question that decision nor to challenge him, thus there is no transparency and that can lead to many problems.

### 3. No Appellate Remedy

There is no direct medium to challenge a judge's turndown to recuse which leaves no scope for keeping a check on the power of a judge to recuse or not. It is one of the most debated challenges of judicial recusal in India.

### 4. Possibility of Misuse

Petitioners may use recusal operations to delay proceedings or avoid unfavourable judges from hearing and deciding their cases which automatically leads to delay in justice to the other party.

### 5. Impact on Judicial effectiveness

Frequent recusals can delay cases and burden the judicial system as it makes the process even more time taking. It can also impact the trust and faith of public in the judiciary.

## **Suggestions for Reform**

To strengthen the recusal framework in India, the following measures can be considered:

#### 1. Codification of rules

Establish precise and clear statutory framework that would deal exclusively with recusal and its procedure and also setup a system or body that would govern the rules.

#### 2. Transparency

Judges should disclose potential conflicts of interest and the whole process of recusal shall

be made transparent so as to ensure that public's trust and confidence in the judiciary always remain intact.

### 3. Reasoning for Orders

The judges opting for recusal shall compulsorily state specific reasons behind opting out of the case. Meanwhile, a higher body should be setup by the government that would look into these matters and the reasonableness of the rationale put forward by the judges.

### 4. Awareness and Training

The whole judicial system shall be trained periodically regarding judicial ethics and moral practises so as to ensure that they never think or do anything unethical which would lead to a failure in the judicial system and justice.

## **Conclusion**

Court recusal is a vital safeguard for ensuring fairness, equity, and public confidence in the judicial system. In India, the doctrine is embedded in principles of natural justice and shaped by judicial precedents rather than codified law. While this flexible approach allows judges to exercise discretion it also creates challenges related to transparency and abuse. Recent developments lead towards a growing awareness about both the significance and misuse of the discretionary powers related to recusal. Courts have emphasized that recusal should not become a tool for petitioners to impact judicial proceedings. At the same time, judges must remain watchful in upholding the standards of impartiality.

Eventually, the effectiveness of the recusal doctrine depends on the integrity and heart of the judicial system. As India's legal system evolves, there is a pressing need to develop a more structured guidelines for recusal while conserving judicial independence. By striking the right balance the judiciary can continue to uphold its part as the guardian of justice and the rule of law.

**REFERENCES:**

<https://www.epw.in/journal/2019/45/commentary/recusal-refusals.html>

<https://www.shankariasparliament.com/blogs/pdf/judicial-recusal>

<https://www.sanskritiias.com/current-affairs/judicial-recusal-in-india-rules-issues-and-need-for-reform>

<https://blog.ipleaders.in/all-about-the-doctrine-of-necessity/>

<https://indiankanoon.org/doc/1572927/>