Issues with Judges' recusal

What is the issue?

Judges must give their reasons in writing for recusing themselves from specific cases.

What are the recent cases of recusal?

- Recusal is the process of a judge stepping down from presiding over a particular case in which the judge may have a conflict of interest.
- In a recent case, challenging the appointment of M. Nageswara Rao as interim director of the CBI, three judges have recused themselves. Click here to know more on the issue.
- First Chief Justice Ranjan Gogoi disqualified himself, purportedly because he was set to be a part of the selection committee tasked with choosing a new CBI Director.
- He then assigned a bench presided by Justice A.K. Sikri to hear the case.
- But Justice Sikri too recused, on grounds that he was part of a panel that removed the previous CBI Director Alok Verma from his post.
- Next, Justice N.V. Ramana recused himself for apparently personal reasons.
- However, none of these orders of recusals was made in writing.
- Apart from the CBI case, recently Justice U.U. Lalit recused himself from hearing the dispute over land in Ayodhya.
- This is because the judge had appeared for former Uttar Pradesh Chief Minister Kalyan Singh in a related contest.
- Hence, the judge expressed his disinclination to participate in the hearing any further.
- Even in this case, there is no written order specifically justifying the recusal.
- Hence, it's difficult to tell whether the disqualification was really required.

What are the concerns?

- **Undermining judicial independence** - In taking oath of office, judges of both the Supreme Court and the high courts, promise to perform their duties, to deliver justice, "without fear or favour, affection or ill-will".
- However, there are many cases where the litigants suggest that the judge should recuse himself from the particular case.
- But this will allow 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.

- **Difference interpretations** - There is a rule that no person should be a judge in her own cause.
- But there are cases where somebody else's cause becomes the judge's own as case proceeds.

- Also, there are some cases where judge has appeared for one of the litigants at some stage in the same dispute.
- Even then, as there are no rules to determine when the judges could recuse himself in these cases, different interpretations remain.

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- **Absence of rules** - In disputes where a judge has a financial interest in the litigation, where a judge owns shares in a company which is party to the case, the fact of owning shares is considered a disqualification.
- However, when a judge owns shares in one of the litigants, he should be allowed to disclose the fact before the litigants.
- If neither party objects, the judge should be allowed to hear the case.
- But in the absence of a well-defined rule that helps establish a basic standard, a decision of this kind can prove troubling somewhere down the line.
- Also, when judges choose without a rational motive, without expressing their decisions in writing, they hurt the very idea of judicial rectitude.
- Along with that, a judge refusing the recusal in a case, despite the existence of bias in his/her judgement, is equally destructive.

What should be done?

- Recusals should not be used as a tool to manoeuvre justice, as a means to picking 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.
- This is the constitutional duty common to all judicial officers.
- If they deviate, the independence of the judiciary would be undermined, and in turn, the Constitution itself.
- Hence, a rule that determines the procedure for recusal on part of judges should be made at the earliest.

Source: The Hindu

