Judge's Recusal

Why in News?

A Supreme Court (SC) judge recused from hearing a petition against the government's move under the Public Safety Act.

What is the story so far?

- The petition was against the government's move to charge former Jammu and Kashmir CM Omar Abdullah under the Public Safety Act.
- The petition was filed for issuance of habeas corpus writ for authorities to produce Mr. Omar Abdullah before the SC and set him at liberty.
- After the SC judge recused, the case was finally heard by another bench.

What is Recusal?

- Recusal is the withdrawal of a judge, prosecutor, or juror from a case.
- It usually takes place when a judge has,
    1. A possible conflict of interest or
    2. A prior association with the parties in the case which may lead to lack of impartiality.

What are the rules on recusals?

- There are **no written rules** on the recusal of judges from hearing cases listed before them in constitutional courts.
- It is left to the **discretion of a judge**.
- The reasons for recusal are not disclosed in an order of the court.
- The decision to convey the reasons rests on the conscience of the judge.
- At times, parties involved raise apprehensions about a possible conflict of interest.
- A recusal inevitably leads to delay. The **case goes back to the Chief Justice**, who has to constitute a fresh Bench.

Should the reasons be put on record?

- Justice (now retd.) Kurian Joseph talked about this in his opinion in the National Judicial Appointments Commission judgment, 2015.
- He highlighted the need for judges to give reasons for recusal as a measure

to build transparency.
- He wrote that it is the constitutional duty of a Judge, as reflected in one's oath, to be transparent and accountable.
- Another judge, Justice (retd) Madan B. Lokur agreed that specific rules require to be framed on recusal.

What happened in recent cases?

- **Judge Loya case** - In 2018, petitioners in the Judge Loya case sought the recusal of SC judges from the Bench.
- The court refused the request and observed that recusal would mean abdication of duty.
- **Assam's detention centres case** - In 2019, the then-Chief Justice Ranjan Gogoi was asked to recuse himself in the middle of a hearing of a PIL filed about the plight of inmates in Assam's detention centres.
- Justice Gogoi said that a litigant cannot seek recusal of the judge.
- The court observed that the judicial functions may involve performance of unpleasant and difficult tasks, which require asking questions and soliciting answers to arrive at a just and fair decision.
- If the assertions of bias as stated are to be accepted, it would become impossible for a judge to seek clarifications and answers.

Why did Justice Arun Mishra argue against recusal?

- He refused to recuse himself from the Constitution Bench hearing a question of law on the Indore Development Authority v. Manohar Lal.
- The issues involved in the case were related to a reading of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
- The petitioners had objected to Justice Mishra leading the Constitution Bench which was hearing a question of law challenging his own earlier judgment in the case.
- Justice Mishra said accepting reluctantly the wishes of parties to recuse himself would sound the death-knell for judicial independence.

Source: The Hindu

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