Judicial Recusal

Why in news?

The Supreme Court judge Justice MR Shah refused to recuse himself from hearing a plea by former Indian Police Service (IPS) officer Sanjiv Bhatt.

What is Judicial Recusal?

- Judicial recusal is when a judge withdraws from a case due to a conflict of interest or a reasonable apprehension of bias.
- This is done to ensure that the case is decided fairly and that the outcome is not influenced by the personal biases of the judge.
- 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***.
- If a judge recuses themselves, the case is assigned to a different judge.
- Judicial recusal is an important part of ensuring that the justice system is fair and impartial.

Types of judicial recusal	
Automatic recusal	**Discretionary recusal**
This occurs when a judge is required to recuse themselves by law.	This occurs when a judge has the discretion to recuse themselves.
Example - A judge must recuse themselves if they have a financial interest in the outcome of the case.	**Example -** A judge may recuse themselves if they have a close personal relationship with one of the parties.

> *In legal terms, bench fixing, bench hunting or forum shopping refers to petitioners managing to get their cases heard by a particular judge or court to ensure a favorable order.*

Why do judges recuse themselves?

- Financial or personal interest in the outcome of the case
- Prior involvement in the case, such as having served as a lawyer or judge in the case
- A close personal relationship with one of the parties
- A belief that they cannot be impartial in the case

What are the rules governing judicial recusal in India?

- **No codified rules governing recusals** - In India but several Supreme Court judgments have dealt with the issue.
- **Supreme Court** - Has over time outlined various factors to be taken into

consideration for deciding the impartiality of a judge.

- **Ranjit Thakur v. Union of India (1987)** - SC held that it is important for the judge to be honest in the eyes of the concerned party rather than himself.
- **State of West Bengal v. Shivananda Pathak (1998)** - Defined that it is a condition of mind which renders the judge incapable of impartiality in a particular case, the Court explained.
- **Supreme Court Advocates-on-Record Association v. Union of India (2015**) - Court observed that where a judge has a pecuniary interest, no further inquiry is needed as to whether there was a 'real danger' or 'reasonable suspicion' of bias.
- **Indore Development Authority v. Manoharlal and Ors (2019)** - Court held that held that a judge who had rendered any decision in a smaller combination is not disqualified from being part of a larger Bench to which a reference is made.

What is the judicial recuse practice in foreign nations?

- **United States** - The Code of Conduct for United States Judges sets out the rules governing judicial recusal.
- The Code of Conduct provides that a judge must recuse themselves if they have a financial interest in the outcome of the case, or if they have a close personal relationship with one of the parties.
- The Code of Conduct also provides that a judge must recuse themselves if there is a reasonable apprehension of bias.
- **United Kingdom** - The Judicial Conduct and Investigations Office (JCIO) is responsible for investigating allegations of judicial misconduct.
- JCIO has published guidance on judicial recusal, which sets out the principles that judges should follow when considering whether or not to recuse themselves.
- **Canada** - Canadian Judicial Council (CJC) is responsible for overseeing the conduct of judges.
- CJC has published a code of conduct for judges, which sets out the rules governing judicial recusal.

What is the way forward?

- Need for clarity and transparency in recusal procedures
- Need of Balancing the impartiality with the discretion of judges
- Need of maintaining public confidence in the justice system through fair and transparent recusal practices

Reference

1. The Hindu | Judicial Recuse

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