Recusal of Judges in Judiciary

Mains: *GS-II – Judiciary*

Why in News?

Recently, the CJI Surya Kant stepped away from hearing a batch of petitions challenging the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023, marks the second CJI to recuse from hearing the case.

What does recusal mean?

- **Recusal** – It is the *voluntary withdrawal* of a judge, prosecutor, or juror from a case.
- 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.
- **Principle of Fairness** – The practice of judicial recusal arises from the *principle of due process of law*, which requires fairness and impartiality in every case.
- Recusal safeguards the integrity of the justice system by maintaining public confidence in its fairness and impartiality.
- **Process of Recusal** – When a judge recuses themselves, the case is reassigned to another judge to ensure neutrality.
- **Judicial Discretion** – The decision to recuse rests *entirely on the judge's conscience*, no party can compel a judge to step aside.
- **Reasons** – It usually takes place when a judge has,
    - A possible conflict of interest like holding shares in a company that is a litigant;
    - A prior association with the parties involved in the case which may lead to lack of impartiality.
    - When an appeal is filed in the SC against a judgement of a HC that may have been delivered by the SC judge when the judge was in the HC.

What about its origin and what rules govern it?

- **Origin in Natural Justice** – Recusal flows from one of the oldest maxims of natural justice - *nemo judex in causa sua* — no one shall be a judge in their own cause.
- **No Codified Law** – India does not have a statutory framework that defines recusal standards.
- **Reliance on Judicial Practice** – The issue has been shaped *through Supreme Court judgments*, which emphasize that recusal is guided by the judge's own conscience.
- **Governing Principle** – India relies on *judicial conscience and case law*, rather than legislation, to determine when a judge should step aside.
- **Evolution in Indian Law**
- **Manak Lal v. Dr. Prem Chand, 1957** – Judges were automatically disqualified if they had any pecuniary interest, it toward a standard of real likelihood of bias.
- **Ranjit Thakur v. Union of India, 1987** – Refined further, the test became whether there is a reasonable apprehension of bias, not just a remote possibility, justifies withdrawal.
- **State of West Bengal v. Shivananda Pathak (1998)** – The Court defined bias as a condition of mind that makes a judge incapable of impartiality in a particular case.
- This case clarified that recusal is necessary when a judge's mindset prevents fair adjudication.
- **Supreme Court Advocates-on-Record Association v. Union of India (2015) –** The Court held that if a judge has a pecuniary interest, no further inquiry is required, it emphasizes automatic disqualification in pecuniary interest situations.
- **Global Practice**
- **United States** – Section 455 of Title 28 of the U.S. Code requires federal judges to disqualify themselves whenever their impartiality might reasonably be questioned.
- **United Kingdom** – The Judicial Conduct and Investigations Office (JCIO) has issued guidelines on judicial recusal, outlining the principles judges should follow when deciding whether to step aside from a case.
- **Canada** – The Canadian Judicial Council (CJC) has issued a judicial code of conduct, which specifically includes provisions on judicial recusal, guiding judges on when they should step aside to ensure impartiality.

What is the relevant NJAC precedent & the present case?

- **Background** – In Supreme Court Advocates-on-Record Association v. Union of India (2015), the validity of the National Judicial Appointments Commission Act, 2014 was challenged before a five-judge Constitution Bench.
- **Recusal Request** – A plea was made for Justice J.S. Khehar to recuse, since he would eventually become Chief Justice and thus had an institutional stake in whether the Collegium or NJAC governed future appointments.
- **Justice Khehar's Reasoning**
  - **Conflict affects all judges** – Every judge faced the same institutional stake, either under the Collegium or NJAC.
  - **Doctrine of Necessity** – When all judges are equally conflicted, the court must still hear the case, as no alternative forum exists.
  - **Precedent Concern** – He refused recusal, stating that stepping aside would set a wrong precedent.
- **Justice Kurian Joseph's View** – In his concurring opinion, Justice Kurian Joseph emphasized that a judge who recuses has a constitutional duty of transparency, that indicating *reasons for withdrawal is itself part of the oath* under the Third Schedule of the Constitution.
- **The Present Case (CEC Law Challenge)**
- **Collective Conflict** – CJI Surya Kant's recusal differs from NJAC logic, since every judge is a potential future CJI under the seniority convention.
- Thus, the conflict of interest that led Chief Justice Surya Kant to recuse affects all judges simultaneously.
- **Necessity Principle** – Under the doctrine of necessity, the Supreme Court must still hear the case, since no other court of equal jurisdiction exists.
- **Concerns raised** – His direction to exclude judges in line of succession raises concerns -
  - Recusal is a *matter of individual conscience*, not be mandated in advance by a predecessor.
  - Judicial succession is uncertain (due to resignation, health, or death), making such exclusions problematic.

What is the need for codification?

- **Absence of Codified Rules** – India has no statute governing judicial recusal, no binding code of conduct enforceable against Supreme Court judges, and no mechanism to review a recusal decision once made.

- **Lessons from the U.S.** – The American experience illustrates both the value of clear rules and their limits without an external review mechanism; at the apex level it remains entirely self-enforced.
- **The CEC law dispute** – Two successive Chief Justices have now recused from the same case, underscores the urgency, as benches are currently constituted by informal direction rather than principled rule, the deficit is institutional as much as it is individual.

What lies ahead?

- India's constitutional framework is well-served by judges who exercise their discretion with care.
- It would be better served by a formal framework that transforms discretion into binding obligation, ensuring consistency, transparency, and institutional integrity.

Reference

The Hindu | When the Chief Justice steps away?