XI. JUDICIAL RECUSAL AND THE IMPERATIVE OF APPARENT IMPARTIALITY: AN ANALYSIS IN LIGHT OF NATURAL JUSTICE, JUDICIAL ETHICS, AND INDIAN JURISPRUDENCE ON BIAS

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Abstract

The article critiques the possibilities and the limits of transformation by taking key cases from Kesavananda Bharati to Puttaswamy and Navtej Singh Johar and situating them against contemporary crises, including mass surveillance, internet shutdowns, custodial violence, caste and gender hierarchies, and electoral opacity. In the context of India's experienced inequalities, comparative lessons from South Africa, Colombia, and Europe are examined. In conclusion, the article suggests a reevaluated framework of transformative constitutionalism for the twenty-first century, which is founded on democratic dialogue, socio-legal sensitivity, and structured proportionality. The doctrine of recusal occupies a vital place in the administration of justice by safeguarding public confidence in the impartiality and integrity of the judiciary. Rooted in the fundamental principle of natural justice that no person should be a judge in their own cause (nemo judex in causa sua), the law of recusal seeks to eliminate both actual bias and the reasonable apprehension of bias. This article examines the conceptual foundations, jurisprudential evolution, and practical application of recusal through a critical analysis of leading Indian and

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English judicial precedents, including Dimes v Grand Junction Canal, Ranjit Thakur v Union of India, Manak Lal v Dr Prem Chand Singhvi, and Ashok Kumar Yadav v State of Haryana. It argues that recusal is primarily litigant-centric and aimed at preserving the appearance of fairness rather than questioning judicial integrity. The article further explores the doctrine of necessity, the discretionary nature of recusal, and its significance in maintaining judicial legitimacy, institutional credibility, and the rule of law in a constitutional democracy.

***Keywords**:* Judicial Recusal, Natural Justice, Judicial Impartiality, Reasonable Apprehension of Bias, Judicial Ethics and Accountability

I. INTRODUCTION

The essence of law of recusal consists in protecting the image of impartiality of the judge and judiciary the law of recusal is litigant's perception oriented. It does not mean tha the judge who recuses is a person of doubtful integrity. In every case where there is slightest conflict of interest, the judge should recuse; the recusal enhances his image rather than lowering it.

We shall begin to discuss the law of recusal with an old English case. William Dimes v. Proprietors of Grand Junction Canal Company[1], the case was decided by the Lord Vice-Chancellor of Equity jurisdiction, but on appeal it was ratified by the Lord Chancellor Cottenham, which

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[1] 10 E.R. 301, (1852)

was a statutory requirement. Later the Appellant Dimes came to know that Lord Chancellor Cottenham had shares in the Defendant Company. The jurisdiction of the Vice-Chancellor, though, he was subordinate to the Lord Chancellor, was an independent jurisdiction and as such his judgement was not vitiated by the conflicting interest of the Chancellor. The Court was also convinced that the ratification by the Lord Chancellor in appeal was not influenced due to his conflicting financial interest in the respondent company but to preserve the sanctity of the maxim 'no one can be a judge in his own cause', the ratification by the Lord Chancellor was quashed by the House of Lords. The Lord Chancellor was perfectly impartial in ratifying the judgement of the Vice-Chancellor; the Lord Chancellor did not allow his pecuniary interest to adversely affect his discretion, his ratification was quashed to uphold the principle that a judge must not only be impartial but should appear to be impartial. The ratification was quashed but was substituted by the same decision.

II. JURISPRUDENTIAL FOUNDATIONS OF THE LAW OF RECUSSAL

At the relevant time, there were two adjudicatory systems in Britain, law courts consisting of county courts, the High Court, the Court of Appeal and the House of Lords and the courts of chancery. Law courts decided cases according to law and the chancery according to the conscience of the King. The Chancellor was the keeper of Royal

Conscience. Certain principles of law emerge from the case, and are under discussion.

1. Law of recusal is a rule of natural justice; it is derived from the rule that 'no one can be a judge in his own cause'.
2. The law of recusal is not judges' integrity centric but litigant's perception centric. The case makes it clear that that the integrity of neither the Vice-Chancellor was questioned nor that of the Chancellor.
3. The House of Lords quashed the decision of the Chancellor not because he (the Chancellor) was biased but because he must appear to the litigant impartial. Had the Lord Chancellor been partial it would have been a case of misconduct. The Judge, should not to do anything which casts a doubt in the perception of ordinary people that the judge is not impartial. The crown, the judge figuratively wears, is not made of diamonds and gold but of thorns. It imposes a heavy responsibility to maintain his image. Responsibility is far more important than the power the judge wields over the parties to the dispute. Every judge should always keep a copy of Munshi Premchand's short story 'Panch Parmeshwar' to continuously remind him of his duties of impartiality. An ideal judge is not a very social person, he selectively relates himself with others. He avoids, relating himself to politically, ideologically loaded institutions and persons and hesitates to relate with business interests. Not

because he can be corrupted but because he does not want to compromise his image of impartiality.

III. GROUNDS FOR JUDICIAL RECUSAL

There are many grounds, in the presence of which a litigant may have reasonable apprehension on the impartiality of the judge, notwithstanding the fact that the judge may actually be not adversely influenced by the factors, which created suspicion in the mind of the party to the dispute. However, unfounded suspicion will not require the judge to recuse. Law of recusal does not allow a litigant to do Bench shopping. But it is to be emphasised again and again that in most of the cases, the factors which create reasonable apprehension in the mind of the litigant may not influence the judge not to be impartial. The law of recusal is litigant centric; the law operates from the reasonable point of view of the litigant. It satisfies the litigant without casting an adverse influence over the judge and casting doubt over his integrity.

There are many grounds for recusal by a judge, such as interest in the subject matter of the dispute, pecuniary or otherwise, personal relations, friendly or adverse with one of the parties, legal representation of the interest of one of the parties in earlier legal dispute, judging the parties in an earlier case (the ground becomes stronger if in a number of earlier cases the judge has always decided against the party, specially where the earlier case did not require decision on merit, opinion on merit has been expressed against the

party), fiduciary relationship between the party and the judge, or where the party was in a position to influence the judgement of the judge on moral or any other ground. However, the enumerated grounds are not and cannot be exhaustive.

There is an interesting and illuminating real life example of recusal by a judge. The case relates to the Admission Officer, a Professor of Law of the faculty of law of an Indian University. As the High Court has its seat in the city where the University had its office, it was relatively easier for admission seeking students to have access to the High Court, if they have any grievance. Every year, a number of students moved the High Court for one reason or the other, and in some cases the Court would order the University to admit the students. it was routine, no personal interest of the Admission Officer was involved. In a particular case, the judge recused, though, the recusal was not asked by any of the parties. It was later found that the daughter of the judge was a student of 3rd year LL.B. but why did he recused voluntarily without such a request by any of the parties?

1. No request for recusal was demanded by the parties.
2. The University Officer knew that even if an adverse decision is given it would not have any impact on the daughter of the judge
3. The judge knew that his judgement would not be biased because of his daughter and her academic prospect shall remain unaffected

Then, why did the judge recuse? To avoid a remote possibility that in the event his decision goes against the admission seeker, he might think he lost the case because of judge's interest in his daughter. Such a belief would have lowered the prestige of judiciary. The judge recused to negate any doubt in the mind of the admission seeker that the judge is not fair because of conflicting interest of his daughter.

IV. THE INDIAN APPROACH TO RECUSAL

There is no specific statutory law regulates the law of recusal. It is discretionary with the court. But the discretion is not unfettered. The governing rider is to maintain the impartial and honest and blameless image of the judicial system, even if it is a self-regulatory rule. There are a limited number of precedents that explain and elaborate the law of recusal.

Ranjit Thakur v. Union of India[2], is a case on law of recusal. The Appellant was serving the signals regiment. He was awarded 28 days imprisonment under the Army Act for giving a representation without following the prescribed procedure, through his Commanding Officer, the Respondent no. 4. While he was serving the sentence, he refused to have his food in disobedience of the orders of his superiors. Therefore, under the Army Act. He was in a summary trial by the court martial, consisting of the Respondent No. 4 and others, sentenced to one-year

[2] 1987 INSC 285; AIR 1987 SC 2683

imprisonment in civil jail, which he served out. His representation to the confirming authority was rejected. His writ petition was rejected by the High. His appeal to the Supreme Court was heard under Article 136 of the Constitution. The Supreme Court held that the Respondent no. 4 was 'corum non judice' (before one who is not a judge) on several grounds. The sentence of one-year imprisonment was held to be disproportionate, as it was merely an case expression of resentment. The Commanding officer should not have been a part of the Summary Court Martial, because he awarded 28 days imprisonment in earlier disciplinary case as in the mind of the Appellant an impression of bias was created. The disproportionate award of one-year imprisonment actually was a proof of bias. The Court quashed the order of Summary Court Martial and ordered that the Appellant be reinstated with all monetary benefits. The ratio of the case is law of recusal is not judge oriented but litigant centric. It is the mind of the litigant. Likelihood of perception of bias, even without actual bias, in the mind of the litigant is the ratio of the case.

Manak Lal v. Dr. Prem Chand Singhvi[3]. Dr. premchand made a complaint of misconduct against Manak Lal, an advocate in the High Court. The Chief Justice appointed a tribunal, headed by C, a senior advocate. The tribunal gave a verdict against Manak Lal for removal of his name from the rolls. Manak Lal contended that the constitution of

[3] AIR 1957 SC 425

the tribunal was improper as earlier C appeared for Prem Chand in a trial, out of which this complaint of professional misconduct arose. It was held that the tribunal suffered from serious infirmity as for acting judicially or quasi-judicially, the judge should act impartially, without any bias. He must not appear to be biased. It is not sufficient to say that actually the judge acted impartially. To the litigant he must not appear to be biased, even if he is not biased. As Manak Chand, an advocate knew that C had earlier represented him, he remained silent. He disclosed the fact only when the case was decided against him. Objection to the constitution of the tribunal is waived. The name of Manak Chand shall be removed from the rolls.

P.K.Ghosh v. J.G. Rajput[4]. (1995) 6 SCC 744. The Respondent J.G. Rajput, an employee of the Municipal Corporation, was dismissed by the Municipal corporation. He in a case was represented by the advocate, B.J.Sethna, who was later appointed a judge of High Court of Gujrat. J.B.Sthna J., was a part of the Bench, which heard the case of the Respondent. Despite the objection of the Municipal Corporation, he did not recuse. The Supreme Court did not approve the conduct of Justice Sethna on the principle that even if a judge is impartial he must recuse if there appear to be a conflict of interest to the litigant.

[4] (1995) 6 SCC 744

State of U.P. v. Mohd. Nooh[5] AIR 1958 SC 86. In a departmental inquiry, headed by a superintendent of police against the Respondent, a head constable, the S.P., himself became a witness, recorded his evidence before a deputy superintendent, and then conducted inquiry and found the Respondent guilty on the basis of his own evidence. The Supreme Court, held that the S.P. who became a witness and judge has become disqualified to act as head of the inquiry. The ratio of the case is simple. The inquiry officer should not only be impartial but also appear to be impartial. That is also the guiding principle of the law of recusal. If to a litigant, the judge appears to be impartial on reasonable ground, he should not decide.

Ashok Kumar Yadav v. state of Haryana[6], AIR 1987 SC 454, is a case on doctrine of necessity and recusal. In a civil service examination, for viva voce, three members of the public service commission constituted the selection committee. Three of the candidates were related to two of the members of the selection committee. In the viva voce, the member, who was related to the candidate did not participate in the viva voce of his related candidate but for the viva of all other candidates. The Supreme Court held that as a prudent practice the member, whose relative is a candidate for vice voce should decline to be a member of the selection committee, but an exception is be created in this case as

[5] 1958 AIR SC 86

[6] 1987 AIR SC 454

the substitute of the two members, holding the constitutional position could not be found. Therefore, it was sufficient to withdraw from the selection committee at the time of interview of the related candidates. There was also no evidence of actual partiality on the part of two members of the selection committee. The Court also observed that the law of recusal is not based on actual bias or lack of impartiality on the part of officer performing quasi-judicial or judicial functions but recusal is necessary to dispel the reasonable apprehension of lack of impartiality to the litigant or the candidates in the viva voce.

V. CONCLUSION

It must be emphasised the recusal sought by the litigant or the recusal is self-sought by the judge is not a reflection on the integrity of the judge. It is rather a safeguard to protect the reputation of the judge and the judiciary. A judge must immediately recuse whenever, the litigant reasonably perceives conflict of interest. Or when the judge thinks that the litigant may perceive conflict of interest. A judge should avoid proving that he/she is not influenced by the reasons which appear to the litigant as ground of biased decision by the judge. A situation of conflict between the judge and the litigant as to whether the judge should recuse, more often than not adversely affect the reputation of the judiciary.