

Recusal of SC judge in section 24 of LARR Act

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Manifest pedagogy: Recusal of individual judges from court cases is an important issue for both polity and ethics. The aspects of guidelines of recusal and the history of recusal are important aspects in the polity paper. Whereas the reasons for the recusal of judges and the ethicality of recusal along with the conflict between personal beliefs and professional ethics are important areas for mains. The article attempts to address all these aspects.

In news: The SC recently deprecated the attempts made for recusal of a judge from a Constitution bench hearing challenges to provisions of the **Land Acquisition, Rehabilitation and Resettlement Act (LARR)**.

Placing it in syllabus: Functioning of Judiciary

Dimensions:

- What is the case about?
- What is recusal by a judge and why it is done?
- Previous cases of recusal
- SC guidelines on the issue
- Is there a need to systematize recusal process?

Content:

What is the case about?

- On October 12, 2019, the Supreme Court notified a 5-judge constitution bench, headed by Justice Arun Mishra, would begin hearing five matters related to the LARR from October 15.

Section 24 (2) of LARR Act:

It states that after **initiating land acquisition** for a project under the 1894 law, if the physical possession has not been taken by the developer or the **compensation not paid to the land owners for more than five years, the acquisition process would lapse**. In such cases, the government would have to initiate fresh acquisition under the LARR.

- In the **2014 Pune Municipal Corporation v Harakchand Misirimal Solanki case**, a 3-judge bench had held that mere deposit of compensation in government treasury cannot be regarded as a payment made to the land owner and acquisition proceedings under the 1894 Act will lapse in such cases.
- This decision was declared per incuriam and **overruled by another three judge bench headed by Justice Arun Mishra in the 2018 Indore Development Authority vs Shailendra and others case** and the majority held that deposit of award in treasury should be regarded as payment to the land owner who is refusing to accept compensation.
- Later, a three-Judge bench presided by **Justice Madan B Lokur, stayed the hearing of compensation matters** in the land acquisition cases in all the high courts till the issue was settled.
- Following this, two **two-Judge benches**, one presided by Justice Arun Mishra and another by Justice Adarsh Kumar Goel **made a reference to the CJI for constituting a larger bench**, to settle the controversy.
- However, the **Constitution Bench** of the Supreme Court **reserved orders** on the plea for recusal of Justice Arun Mishra from hearing the matters related to interpretation of Section 24(2) of the LARR Act, 2013.
- Justice Mishra refused to budge and said that the request amounted to bench hunting.
- The top court said if **request of parties demanding that Justice Arun Mishra be recused** from the five-judge

Constitution bench is accepted, it would be the **“blackest chapter in history”**.

What is recusal by a judge and why it is done?

- Recusal is **“removal of oneself as a judge or policymaker in a particular matter, especially because of a conflict of interest”**.
- For a long time, it has been a practice in the Supreme Court that in serious issues like inter-state water disputes, judges from the state concerned do not sit on the bench to decide them.
- The right to recuse is given to the **discretion of the judges**.
- A judge should ideally recuse from a proceeding in which his impartiality might reasonably be questioned due to the possibility of personal bias or prejudice or if he has been a lawyer or judge in the matter at some stage.

Previous cases of recusal:

Central Bureau of Investigation case: Three judges recused themselves from hearing the case challenging the appointment of M. Nageswara Rao as interim director of the Central Bureau of Investigation.

Ayodhya case: Justice U.U. Lalit recused himself from hearing the dispute over land in Ayodhya after being pointed out that the judge had appeared for former UP CM Kalyan Singh in a related contest.

Bhima Koregaon case: The recusal by several Supreme Court judges from hearing the appeal filed by rights activist Gautam Navlakha to quash the FIR against him.

SC guidelines on the recusal of judges issue:

There is **no specific legislation in India to direct a judge's recusal** and it has been a customary practice based on a

probable existing bias, where judges are expected to recuse.

In **Ranjit Thakur v. Union of India**, Justice MN Venkatachaliah affirmatively held that 'the proper approach for the Judge is not to look at his own mind but to look at the mind of the party before him.'

In **PK Ghosh v. JG Rajput**, the SC said that 'if there be a reasonable basis for a litigant to expect that his matter should not be heard by a particular Judge and there is an alternative, it is appropriate that the learned Judge should recuse himself so that people do not doubt the process'.

The **Restatement of Values of Judicial Life adopted by the SC** categorically states, "A Judge shall not hear and decide a matter in a company in which he holds shares is concerned unless he has disclosed his interest and no objection to his hearing and deciding the matter is raised".

In **Ashok Kumar Yadav v. State of Haryana**, SC tried to explain the reasons behind recusal. It held that if there is a reasonable chance for the judge to be biased, the judge is supposed to recuse himself.

Section 479 of The Code of Criminal Procedure, 1973, states that 'no Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself'.

Is there a need to systematize recusal process?

It is absolutely right that the decision of recusal should be made by the judge as per the dictates of his conscience. But ideally, **when a judge recuses himself, he should state the reasons for his decision.** A recusal should not become a convenient method to get rid of a judge.

Bench hunting must not be permitted through recusal requests and such requests should not be used to intimidate a judge. However, the country's judicial system should consider changing the system of hearing recusal requests. Ideally, such a request should not be heard by the bench but only by the judge concerned.

Earlier, former Chief Justice of India Dipak Misra was criticized by four of his senior-most judges for allocating cases of national importance to select judges. In democratic countries like UK, Canada, and Australia, the allocation of work and the selection of benches is a consultative process.

There are many instances of judges refusing to recuse from cases where they are reasonably presumed to have pecuniary interest like the Justice Kapadia issue in the case of Vedanta, where a **conflict of interest allegation** was made against him as he remained on the bench where he should have ideally recused himself.

Some scholars say that reasons for recusal must be hidden based on the **doctrine of independence of the judiciary**. But this doctrine has also been used by the judges to not come under the ambit of RTI or disclose their assets.

Also the recusal causes high amount of uncertainty and judicial backlogs. Hence, it is high time there are some guidelines to direct the judges for recusal as the judgments are not enough and the lack of an objective standard as well as the powers vested as judicial discretion is way too much for transparency.

There has to be a requirement of statutory obligation on the judges to inform the litigants as to why there is a decision to recuse from hearing.