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# Anchor judicial recusal in institutional design


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Arvind Kejriwal's recusal plea before Justice Swarana Kanta Sharma has reignited debate over a key judicial mechanism — the doctrine of recusal. Seeking the judge's withdrawal from the Delhi excise policy case on grounds of apprehensions of bias, Kejriwal was met with a firm refusal. The Court held that vague allegations could not justify recusal and cautioned against allowing litigants to choose their bench. Kejriwal responded by boycotting court proceedings, turning a procedural dispute into a public controversy.

Around the same time, a very different recusal unfolded in *Alchemist Asset Reconstruction Company Pvt. Ltd. v. Raju Chappakal Pappu*, in which Justice KV Viswanathan recused himself after the judgment had been reserved. The two-page order noted that it had come to the judge's attention that he had, during his 35-year career at the Bar, represented a party in connected insolvency proceedings.

What it did not explain was how this conflict surfaced so late — whether through judicial recollection, institutional screening, or party disclosure. This silence points to a persistent "disclosure gap" in how recusals are recorded and reasoned in India. Part of the explanation lies in the nature of judicial careers themselves. Bar-to-bench transitions make latent conflicts inevitable, and we cannot reasonably expect judges to recall every past professional engagement.

In theory, recusal is simple: A judge steps aside where there is a "reasonable apprehension" of bias. The doctrine recognises that even the appearance of bias can be enough. But in practice, the absence of a codified framework has produced a system that is almost entirely self-regulated. Judges decide for themselves whether to recuse, often with minimal or no explanation.

The result is unevenness: One judge may withdraw over a remote connection, while another continues despite far more substantial allegations. The law offers principles, but not an institutional test. This discretion becomes especially fraught in politically sensitive cases. Recusal may be triggered not just by obvious conflicts such as prior professional involvement or personal connections, but also by public perception, fear, or political pressure.

History provides contrasting examples of such tensions. Earlier, Justice UU Lalit recused himself from the Ayodhya bench because he had previously appeared as counsel for Kalyan Singh, former chief minister of Uttar Pradesh. The decision was a textbook application of conventional conflict principles despite a thin connection.

By contrast, former Chief Justice Ranjan Gogoi declined to step aside in matters where his impartiality was publicly questioned, including proceedings linked to the Assam NRC and allegations of sexual harassment brought against him.

The problem is not inconsistency alone; it is the absence of articulated reasoning. In the high-profile chain of recusals involving whistleblower IFS officer Sanjiv Chaturvedi, multiple judges across different forums recused themselves at various stages, often providing no explanation. This silence may protect judicial independence, but a justice system that asks citizens to trust outcomes must also be willing to explain its processes.

The solution, however, is not indiscriminate recusals. The flip side is that if recusal becomes too easily invoked, it can distort the litigation process itself. Instead of focusing on the legal merits of a case, litigants may engage in 'bench hunting,' strategically alleging bias or raising objections in an attempt to disqualify inconvenient judges and secure a more favourable bench.

Courts have repeatedly emphasised that litigants cannot be allowed to "choose their judge," warning that doing so would undermine judicial independence. As Justice Arun Mishra noted in *Indore Development Authority v. Manohar Lal* (2019), acceding to every recusal request would paralyse the court. The doctrine of recusal, designed as a shield for fairness, can then quickly become a sword against the system.

What India needs, therefore, is not more recusal, but better recusal. A codified, transparent framework could strike this balance. Such a framework need not eliminate judicial discretion, but it must discipline it. Ultimately, the recusal doctrine balances the scales between two imperatives — judicial independence and public confidence. Lean too far toward individual discretion, and the system appears uneven. Lean too far toward mandatory withdrawal, and it strains judicial independence.

If justice must not only be done but also be seen to be done, recusal should not rest on intuition and individual conscience alone. It must be anchored in clear institutional design.

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