

To Judge or Not to Judge: Why India Needs a Codified and Unambiguous Framework For Recusal

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The Kejriwal recusal episode should serve as a call for the Indian judiciary to abandon the 'monologue of conscience,' in favour of a codified, objective standard of impartiality.



AAP National Convener Arvind Kejriwal arrives at the Delhi High Court to appear in connection with the liquor scam case, in New Delhi, Monday, April 6, 2026. Photo: PTI /Atul Yadav

Indian Judiciary's conduct appears to be in grey waters once again over a recent case involving an ex-chief minister.

Every court of law is bestowed with the power and responsibility to uphold the constitutional values of a nation. It is not always an easy task for courts to adjudicate on any matter of law; there are limitations, substantive, procedural and moral.

One such self-limiting boundary is recusal. Judicial recusal is the voluntary withdrawal of a judge from a case to ensure fairness devoid of any personal bias.

The recent recusal episode involving former Delhi chief minister Arvind Kejriwal and Justice Swarna Kanta Sharma exposes this incongruity by bringing to the fore a flaw in institutional design that demands attention and greater scrutiny.

The case concerned a revision petition against the trial court's judgment rejecting CBI's allegations of bribery, conspiracy, and destruction of evidence against Arvind Kejriwal and others.

Justice Swarana Kanta Sharma of the Delhi high court **denied** Kejriwal's request for disqualification because she found his "reasonable apprehensions" baseless, terming them mere "illusions."

Justice Sharma's assertion that her allegiance to the Constitution serves as an immunity from pressure from litigants shows that the Indian Bench has maintained its traditional defense system, which emphasises the role of judges' consciences as the only criterion of their neutrality.

However, this case highlights a growing dilemma. While the judge categorised the request as a '**theatre of perception,**' the very fact that such a plea emerged from high-stakes political litigation underscores a fragile reality.

In an era of perceived executive dominance, the judiciary's 'Internal Conscience' approach is under unprecedented strain. Because India lacks a codified statute governing recusal, the act of stepping down remains a voluntary monologue rather than a transparent adherence to rule-based due process.

We can argue that the current legal vacuum, where the judiciary remains the sole judge of its own bias, is an institutional flaw that risks eroding public legitimacy. By examining the 'duty to sit' against the 'appearance of justice,' it can be contended that the Kejriwal-Sharma episode is an urgent call for reform.

The court must transition from the opaque dictates of individual stoicism to a codified, objective standard of impartiality to reclaim its standing as a truly independent umpire.

The battle for the narrative

At its core, recusal is the procedural embodiment of the maxim *nemo judex in causa sua*. Recusal ensures that the independent adjudicator becomes the cornerstone of the rule of law. Generally, the reasons for recusal are objective: pecuniary interest, relationship, or previous representation.

But the case of Arvind Kejriwal and Justice Sharma highlights the contemporary phenomenon of the "battle for the narrative" in legal proceedings.

The petitioner's recusal appeal based on the professional appointments of the **judge's children** and her prior factual findings in related bail orders was less of an assertion of a conflict of interest and more a question of "appearance" of bias.

Judicial legitimacy has ceased to be a fixed attribute in today's politically charged atmosphere, where the judiciary is often accused of having **leanings toward the executive**.

While **legal standards** dictate that bias must be measured through the eyes of a reasonable, objective individual, the court's logic in this instance turned inward. Further, the Apex Court has made it clear that the **rule against bias** is an integral part of the principles of natural justice.

The applicant's only job is to discharge the prima facie burden of showing a plausible reason for concern; the burden of proof then shifts upon the court to prove its neutrality to the public and not the other way around.

In the instant case, however, by showing that the judge had already accepted the prosecution's story in previous rulings, the accused met his burden. It was at this point that the 'duty to sit' should have given way to the 'duty to appear impartial.'

By **dismissing these concerns** as 'illusions,' the court did not just reject a petition; it ignored a constitutional shift that requires the judiciary to proactively earn the trust of the **fair-minded observer**.

Comparative analysis of foreign legal frameworks

A look around the globe provides some perspectives. There exist settled principles of recusal in the U.S and the U.K.

The **Due Process clause**, which provides that *"no state may deprive any person of life, liberty, or property, without due process of law"*, is the cornerstone of the U.S judicial process. Consequently, dedicated legislation listing the grounds on which a judge must recuse themselves directs adjudication.

For instance, triggers for **withdrawal include** a judge's personal bias or knowledge towards a party or issue, prior involvement as a lawyer or witness, government service connection, financial interest, and the existence of familial or close relationships.

Often, a '**self-enforcing scheme**' is witnessed, in which a judge steps aside even without a party's claim to do so. If a judge does not recuse themselves autonomously, a party has the right to file a motion seeking the ineligibility of the presiding judge.

In the U.K, jurisprudence on the concept of recusal has been evolving since even before the 19th century. This string of case laws and judicial opinions is embodied in the Code created by U.K Supreme Court in 2019, which lays concrete criteria and procedures for the judge's non-participation. In both jurisdictions, the matter of recusal rests in the hands of the person with the most significant stake in the decision of the issue of recusal: the challenged judge.

However, to counter this apparent violation of natural justice, both systems have adopted checks and balances to counter the necessity of the judge adjudicating on their own jurisdiction.

Institutional restraints are prevalent in the form of statutory regimes framed by the legislature or Supreme Court, an option to appeal from the recusal decision, and the power of appellate courts to overturn the decision of lower courts.

This paradigm of consistent principles and procedures to guide judges in their assessment of the likelihood of bias has not developed in Indian Jurisprudence. This void can lead to claims of violations of the Principles of Natural Justice against the very institution entrusted to guard against such infringements.

Possible reformations to India's recusal law

Many Indian legal scholars have provided suggestions for possible integrations that can be introduced to solidify India's position on recusal. For instance, specific legislation to regulate a judge's abstention from the matter assigned.

The Parliament has enacted laws dealing with the notion of recusal in the field of arbitration. Schedules providing for specific scenarios that can give rise to justifiable doubts as to the impartiality of the arbitrator have been implemented to ensure the neutrality of the arbitration process. Similar legislation can also be enacted to address situations of possible prejudice in the judicial matrix.

Additionally, to foster the natural justice principle of 'no man should be a judge in their own case', a system can be developed where a judge other than the one challenged adjudicates on the question of recusal. A model of appeal, similar to the U.S and U.K, can also be adopted to ensure justice and its public perception remain intact.

Necessary amendments ensuring that the procedure of recusal is not over-complicated and lengthy can also be prioritised, to ensure the Right to a Speedy Trial is not compromised with. Provisions penalising frivolous requests for recusal may also be capable of reducing the probabilities of bench hunting and strategic delays.

Therefore, in the Indian context, the absence of a codified and unambiguous framework abandons recusal in the realm of individual judicial conscience. It must be remembered that in instances where the impartiality of the judicial system is doubted, justice must not only be done, it ought to be demonstrably insulated from even a speck of doubt.

The Kejriwal recusal episode should serve as a call for the Indian judiciary to abandon the 'monologue of conscience,' in favour of a codified, objective standard of impartiality. Only by anchoring its neutrality in written law can the court insulate itself from the charge of executive-leaning and claim its legitimacy in the public eye.

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