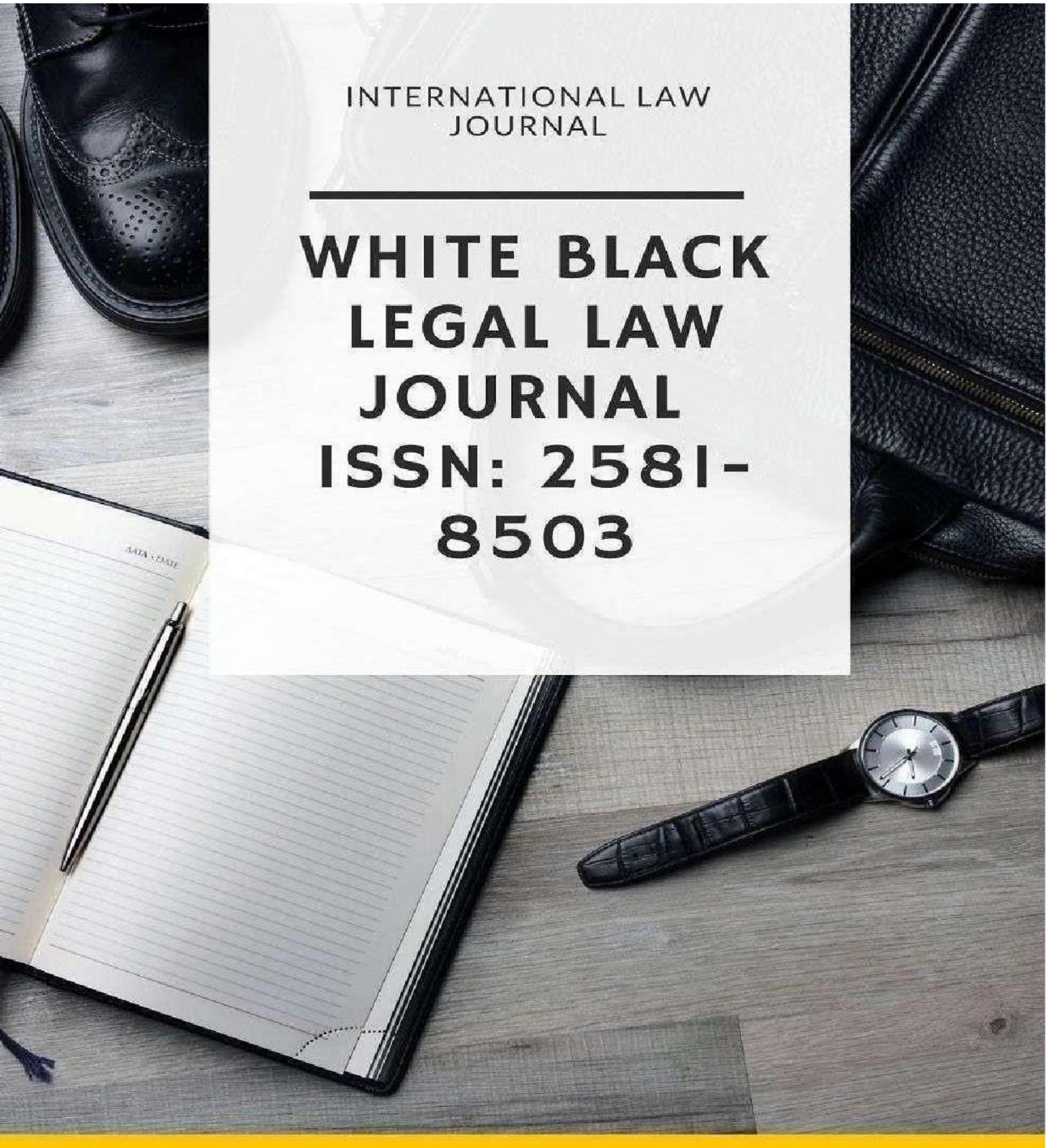

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RECUSAL WITHOUT REASON: JUDICIAL ACCOUNTABILITY, PERCEIVED BIAS AND THE NEED FOR A STATUTORY MODEL IN INDIAN APPELLATE ADJUDICATION.

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Abstract

Judicial recusal constitutes a vital operationalisation of the cardinal maxim nemo judex in causa sua, yet the Indian constitutional landscape remains characterised by a profound statutory and procedural void. In the absence of positive legislative enactments or binding court rules, recusal in the Supreme Court and High Courts operates almost exclusively on a subjective self-assessment model governed by convention and non-binding ethical declarations such as the 1997 Restatement of Values of Judicial Life.

This institutional design generates two critical, structural problems: first, the practice of unreasoned oral recusals and discretionary refusals shields the process from appellate scrutiny, fostering perceptions of judicial opacity; second, the lack of transparent, objective criteria enables strategic "bench hunting" and forum shopping by litigants, while simultaneously creating the "Oath-Bias Paradox"—wherein judges view recusal motions not as standard procedural safeguards, but as personal indictments of their Schedule III constitutional oath.

The primary research objectives are to doctrinally critique the existing Indian recusal framework, analyse the systemic tension between the constitutional oath and objective bias standards, evaluate comparative models in the United States and the United Kingdom, and propose a codified, balanced statutory and administrative reform for India.

Employing a doctrinal and comparative legal research methodology, this paper conducts a qualitative analysis of constitutional provisions, primary statutory codes, and landmark judicial pronouncements across Indian and foreign jurisdictions.

The study concludes by advocating for a structured framework comprising mandatory written

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reasons, codified disqualification thresholds, independent referral mechanisms for recusal motions, and procedural cost sanctions to deter tactical forum manipulation.

Keywords: **Judicial Recusal, Nemo Judex in Causa Sua, Judicial Opacity, Bench Hunting, Oath Bias Paradox, Self – Assessment Model**

1.1 INTRODUCTION

The legal profession is considered to be that temple where justice is served without any kind of favourability or impartiality to the needful. However, this adversarial method of justice delivery is often steered by inconsistency and biasness towards specific individuals due to the judge's preconceived notion or belief which eventually forces them to be partial. To safeguard such an issue, the core institution of "judicial recusal" prevents a judge or a lawyer from adjudicating any matter before the litigant, in an order to prevent themselves from the apprehension of any kind of conflict of interest with an objective to protect the integrity of the judicial process. Such a concept of recusal generally dates back during the rule of the Roman Catholic Churches in which "Catholics who tend to restrict themselves from attending the church as demanded by law" were told to be recusant in nature[4]. However, there are no strict regulations which governs the recusal of the judges in India. Most of the decisions are based on the principles of "Natural Justice, Judicial Ethics and Case Laws" – Harsh K Sharma, Founder & head of Prosell Law[5]. Therefore, there are no strict statutory provisions which governs the execution of recusal in India. The primary regulations can be inferred from the foundational cornerstone in the context of the "Restatement of Values of Judicial Life" adopted by the Supreme Court in 1997[6]. Such a form of removal can occur voluntarily due to competing interests or involuntarily particularly when the parties involved in a lawsuit demands such motion for their disqualification from service temporarily. Therefore, such a determination lays its primary emphasis from the impact of natural justice derived from the legal maxim "nemo judex in causa sua - which can be interpreted that No one can be a Judge in their own cause or to rule against biasness"[7]. This principle generally aims to assert that any kind of judgement

[4] Raghav Pandey and Neelabh Kumar Bist, 'The Recusal Conundrum: Analyzing the Crisis in the Indian Supreme Court' (2022) 9(2) NLIU Law Review 137.
[5] Bhavini Mishra, 'No Codified Law, Only Conscience: India's Judicial Recusal Doctrine' *Business Standard* (New Delhi, 3 May 2026) https://www.business-standard.com/india-news/no-codified-law-only-conscience-india-s-judicial-recusal-doctrine-126050300533_1.html accessed 21 August 2026.
[6] 'Restatement of Values of Judicial Life' (*Drishti IAS*, 14 September 2024) https://www.drishtiias.com/daily-updates/daily-news-analysis/restatement-of-values-of-judicial-life accessed 22 August 2026.
[7] 'Analysis of the Principle: Nemo Judex In Causa Sua' (*Indian Institute of Legal Studies Blog*, 24 May 2017) https://www.iilsindia.com/blogs/analysis-priniciple-nemo-judex-causa-sua/ accessed 22 August 2026.

which is made should equally contribute to the fairness, equality and rationality of the judicial / quasi – judicial bodies[8], devoid of any kind of fallacy. Thereby, when any judge is found to have any kind of conferred interest over any matter, they are obliged to restrict themselves and the then transfer the matter from their absolute authority to a different judge, thus enforcing the cardinal principle[9].

Moreover, multiple approaches of recusal had questioned their process of communication signifying a lack of inconsistency within the system. In the Indian context, the absence of a stringent approach towards judicial reasoning had led to a rise of unpredictable results and opacity due to the judge's individual conscience since its inception leading to an inconsistent approach in judicial administration. For Eg – in a matter involving liquor policy on July 2024, the Supreme Court had recused itself from adjudicating a bail petition without any concrete reasoning[10]. Similarly, in April 20, 2026, Justice Sharma of the Delhi High Court had refused to accept a plea of recusal involving the same fact alleging a politician's incompetence to decide a judge's judicial competence in executing such a matter[11]. Therefore, such a contradiction due to individual conscience forms the basis of India's recusal policy due to the indulgence of unsupervised work[12].

1.2 RESEARCH OBJECTIVE / QUESTIONS

1. What are the existing legal and ethical framework governing recusal in India and to what extent it creates enforceable standards?
2. Why Judges end up in proving different recusal decisions even if they are entitled to identical facts in issue?
3. Does the public trust of the common man gets eroded when judges recuse without showing any concrete evidence?
4. Does the formation of any new legislation / reform strengthen the recusal process without disturbing the due process of law?

[8] Chinwe C Nestor-Ezeme, Henry C Onah and Amaka J Nwodo, 'When Exception Becomes the Only Way to Serve Justice: An Appraisal of the Exceptions to Nemo Judex in Causa Sua in Judicial, Quasi-Judicial and Administrative Proceedings' (2024) 5(2) African Journal of Current Research 15.
[9] ICLR, 'Nemo Iudex in Causa Sua' (*ICLR Knowledge*) https://www.iclr.co.uk/knowledge/glossary/nemo-iudex-in-causa-sua/ accessed 22 August 2026.
[10] Bhavya Razshree and Aditya Ashok, 'When Should A Judge Step Aside? India Has No Answer!' (*LiveLaw*, 30 April 2026) https://www.livelaw.in/articles/judge-step-aside-532349 accessed 22 August 2026.
[11] Ibid
[12] Bhavya Razshree and Aditya Ashok, 'When Should A Judge Step Aside? India Has No Answer!' (*LiveLaw*, 30 April 2026) https://www.livelaw.in/articles/judge-step-aside-532349 accessed 22 August 2026.

5. What can India learn from the international frameworks in an order to set its own system of reformed Judicial Recusal?

1.3 SCOPE / METHODOLOGY

The research is mainly conducted for an examination of judicial recusal within the Indian legal system. The study will focus on the ambit and authority of the higher judicial bodies such as the Supreme Court and the High Courts in an order to excavate the nuances of recusal disputes. The study also aims to investigate certain high profile cases from where the concept of recusal / non recusal highlights the inconsistencies that arises in the absence of codified standards. It will further explore the potential misuse of such a concept by using it as a strategic tool leading to unfairness within the judicial system and delay in justice delivery. The study will also examine the foundation of recusal which is rooted in the principles of *nemo judex in causa sua* as well as the constitutional provision of impartiality flowing under Section III from the judicial oath of the Constitution. However, the study will not extend to recusal practices before the tribunals, subordinate courts or quasi – judicial authority and does not intake an in depth study of the international framework except those which is necessary to support its recommendations. Doctrinal and non-empirical method shall be undertaken by the researcher in this particular article. This is thereby considered to be the most finest and traditional method in research, especially in the legal field as compared to empirical method since sources are readily available to individuals, assisting them in creating a comprehensive understanding of the researched topic. The researcher had derived his knowledge and help from various sources including legal maxims, statues, landmark case laws and through various articles / blogs. The researcher had also derived its suggestions from various videos which were presented by renowned academicians and experts.

2.1 THE CURRENT INDIAN FRAMEWORK — CONVENTION OVER CODIFICATION

The Indian legal landscape exhibits a striking statutory void regarding judicial recusal. Unlike the legislative architecture governing other aspects of judicial administration—such as appointment, tenure, and removal under Articles 124, 217, and 218 of the Constitution of India[13]—there is no express constitutional or statutory mandate dictating when, why, or how a judge must withdraw from hearing a cause.

[13] Constitution of India 1950, arts 124, 217 and 218, sch III.

Neither the Code of Civil Procedure[14] nor the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)[15]—which replaced the Code of Criminal Procedure, 1973—contains a procedural mechanism for challenging a judge's participation on the ground of personal bias or conflict of interest. Section 522 of the BNSS[16] (corresponding to Section 479 of the CrPC, 1973) merely prohibits a judge or magistrate from trying any case to which he is a party or in which he is personally interested. However, judicial interpretation has traditionally confined personal interest under criminal procedure to direct pecuniary or proprietary stakes in the subject matter, leaving broader forms of bias—such as prior professional engagement, social familiarity, or ideological predisposition—entirely unregulated by statute.

In the absence of parliamentary legislation, the regulation of recusal rests upon soft-law instruments and informal conventions[17]. The primary reference point is the Restatement of Values of Judicial Life, adopted by the Supreme Court of India in 1997. Paragraph 5 of the Restatement broadly asserts:

A Judge should not hear and decide a matter involving a company in which he holds shares unless he has disclosed his interest and no objection has been raised to his hearing and deciding the matter.[18]

Similarly, Paragraph 13 reinforces that a judge must not hear a case where a close relative is an advocate appearing before them. While the Restatement serves as an ethical guidepost, it lacks statutory force, rendering its principles non-enforceable by litigants. It functions purely as an internal code of ethics, leaving the decision to abide by its provisions entirely to individual conscience.

Consequently, Indian jurisprudence on recusal operates on judge-made principles, relying on convention rather than codification.

2.2 THE SELF-ASSESSMENT MODEL

The operational hallmark of the Indian recusal system is its adherence to a purely subjective self-assessment model. Under this framework, the judge whose impartiality is called into question serves as the sole adjudicator of their own fitness to sit on the bench.

When a party files an application seeking recusal, or when an oral objection is raised in open

[14] Code of Civil Procedure, 1908.
[15] Code of Criminal Procedure 1973, s 479.
[16] Bharatiya Nagarik Suraksha Sanhita, 2023, s 522.
[17] Judicial Life (Adopted on May 7, 1997), Paragraphs 4, 7, & 11.
[18] Supreme Court Full Court Resolution, Adoption of the Restatement of Values of Judicial Life and Asset Declaration (December 15, 1999).

court, the matter is not referred to an independent judge, an administrative tribunal, or a bench panel. Instead, the individual judge evaluates their own state of mind. This procedural design generates two structural defects:

- *Adjudicator in One's Own Cause*: The self-assessment model creates a procedural paradox: in determining whether a judge violates nemo judex in causa sua regarding the main dispute, the court violates nemo judex in causa sua regarding the recusal motion itself. The judge is asked to sit in judgment over their own actual or perceived bias.[19]
- *Absence of Reasoned Orders:* Because recusal is treated as an exercise of personal judicial discretion rather than an administrative or judicial determination subject to standard public law principles, judges rarely issue reasoned written orders when recusing or declining to recuse. A recusal is frequently announced orally with a brief order stating List before another Bench of which one of us is not a member.[20]

The lack of reasoned written decisions deprives the jurisprudence of consistency, preventing the emergence of a predictable body of precedent–stare decisis on recusal standards. It also makes it impossible for higher appellate forums to review the validity of a recusal or a refusal to recuse, shielding the process from external scrutiny and institutional accountability.[21]

2.3 ILLUSTRATIVE INSTANCES

The operational defects of the self-assessment model are evident in high-profile cases before the Supreme Court of India, where recusal requests have yielded divergent practices and contentious outcomes.

P.K. Ghosh v. J.G. Rajput (1995)

The Supreme Court established the core rule that a judge must not adjudicate a matter where a direct conflict of interest exists or where they would effectively sit in judgment over their own prior ruling:

A basic postulate of the rule of law is that justice must not only be done but must also be seen to be done... If there is any proximity between the judge and the litigation, or a party thereto, which may reasonably feed a suspicion of bias, the judge should recuse.

Despite this general principle, later application in complex constitutional cases has remained

[19] Nemo judex in causa sua (First Principle of Natural Justice).
[20] R. v. Sussex Justices, ex parte McCarthy [1924] 1 KB 256 (Lord Hewart's aphorism on justice being seen to be done).
[21] Dimes v. Grand Junction Canal (1852) 3 HLC 759 (Rule on automatic disqualification for direct pecuniary/proprietary interest).

inconsistent.[22]

The NJAC Case (Supreme Court Advocates-on-Record Association v. Union of India, 2016)

During the challenge to the National Judicial Appointments Commission (NJAC), a preliminary objection was raised seeking the recusal of Justice J.S. Khehar. The petitioners argued that as the senior-most associate judge of the Supreme Court, Justice Khehar was a member of the Collegium whose powers were directly affected by the proposed NJAC, creating a structural conflict of interest.

Justice Khehar rejected the recusal request, holding that a judge's constitutional oath obligates them to discharge their duty unless a genuine disqualification exists. He noted that succumbing to recusal requests without strict justification would allow litigants to choose their preferred bench.[23]

The Land Acquisition Dispute (Indore Development Authority v. Shailendra, 2020)

A major controversy arose when a Constitution Bench was constituted under Justice M.R. Shah to interpret provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Litigants requested Justice Shah's recusal because he had authored a previous three-judge bench judgment on the exact legal issue under review.

Justice Shah refused to recuse himself, delivering a detailed order maintaining that having expressed a legal opinion in a prior judgment does not disqualify a judge from hearing a larger-bench reference on the same point of law. He emphasized that:

"A judge is made of dynamic stuff... An impression that a judge has a pre-formed opinion is not a ground for recusal. If recusal is allowed on such grounds, it will lead to bench-hunting".[24]

These instances highlight the central dilemma of Indian recusal practice: in the absence of codification, judges face a choice between enforcing natural justice (nemo judex) and preventing tactical bench-shopping. This reliance on individual discretion leaves the court vulnerable to claims of arbitrariness.

2.4 THE BENCH HUNTING PHENOMENON

The absence of objective standards and written procedural rules has rendered the recusal framework vulnerable to strategic manipulation by litigants and counsel—a practice known as

[22] P.K. Ghosh, I.A.S. v. J.G. Rajput (1995) 6 SCC 744, paras 8–10.

[23] Supreme Court Advocates-on-Record Association and Another v. Union of India (NJAC Recusal Order) (2016) 5 SCC 808.

[24] Indore Development Authority v. Manoharlal and Others (Recusal Order) (2020) 2 SCC 317.

bench hunting or forum shopping.

Bench hunting occurs when a party uses formal recusal applications or informal objections to force a judge off a matter, aiming to have it reassigned to a panel perceived as more favourable. This tactic thrives under the current self-assessment model due to two structural dynamics:

- The Vulnerability of Individual Reputation: Because judges value their reputation for impartiality, many choose to recuse themselves immediately upon the slightest objection, preferring to avoid controversy. Litigants exploit this tendency by raising flimsy or manufactured allegations of bias, knowing the judge may step aside rather than fight the motion.[25]
- The Master of the Roster Dynamic: In the Supreme Court and High Courts, the Chief Justice acts as the sole Master of the Roster, possessing exclusive administrative authority to allocate cases and constitute benches. When a judge recuses—especially through an unreasoned oral order—the case returns to the Chief Justice for reassignment. Without administrative rules governing reassignment after recusal, the process opens avenues for strategic manoeuvres by counsel seeking specific bench alignments.[26]

This dynamic places judges in a difficult position:

- Over-Recusal: Succumbing to unfounded recusal requests compromises the integrity of the judicial roster and encourages tactical litigation.[27]
- Under-Recusal: Refusing a recusal request without issuing a reasoned, objective order creates perceptions of bias and damages public trust in the judiciary.[28]

The current convention-based system lacks the structural mechanisms needed to break this cycle. Without codified grounds for disqualification, mandatory written orders, and financial or procedural sanctions for frivolous recusal applications, the Indian judiciary remains exposed to strategic forum manipulation.

2.5 DOCTRINE OF NECESSITY – EXCEPTION

The Doctrine of Necessity serve as the most vital exception to the rule of recusal/ apprehension of biasness. Under the speculation of this doctrine, a judge or the bench has the right to initiate a matter even if there is a major possibility of conflict and in cases when they is no other

[25] State of Rajasthan v. Prakash Chand and Others (1998) 1 SCC 1.
[26] Campaign for Judicial Accountability and Reforms v. Union of India and another (2018) 5 SCC 341.
[27] Asok Pande v. Union of India and Others (2018) 5 SCC 341.
[28] Dr. D.C. Saxena v. Hon'ble the Chief Justice of India (1996) 5 SCC 216, paras 42–44.

statutory guidelines or an alternative forum where the matter could be transferred, thereby preventing itself from the failure of justice and creating a vacuum within the judicial council. On the other hand, this doctrine is more apt in the context of administrative agencies such as tribunals, competition and trade regulators, licensing bodies, public service boards. This is because in judicial proceedings, alternate judges if available can hear the pendency of any proceeding however in case of such agencies such kind of disputes are impossible to make them transferred to any other tribunal due to their functioning in their own exclusive jurisdictions[29].

Therefore, In the case of Ashok Kumar Yadav Vs. State of Haryana[30], the Supreme Court had withhold the recusal of a member of a public service commission who were previously involved in the selection process by invoking the principle of the doctrine of necessity since disqualifying them from their position would adversely lead the entire selection policy due to be invalid, thus leaving candidates without any remedy. Similarly in the case of Supreme Court Advocates – on – Record Association vs. Union of India[31], Justice J.S Khehar applied the doctrine of necessity by refusing to recuse in the National Judicial Appointments Commission in an order to prevent mass recusal of judges having similar institutional stake in the appointment procedure. Thereby, by invoking this doctrine, the sitting judges of the Supreme Court were required to hear and decide the matter even after having a institutional interest in the ruling since no alternative method of dispute resolution existed in an order to adjudicate it.

3.1 THE OATH - BIAS TENSION

The Oath of Office under Schedule III

The constitutional benchmark for judicial behaviour in India is codified in the Third Schedule of the Constitution of India. Under Forms IV and VIII,[32] every Judge of the Supreme Court and High Court takes an oath before entering office:

Indian constitutional jurisprudence interprets this constitutional oath as establishing an immediate presumption of impartiality. A judge sworn under Schedule III[33] is presumed to be an independent adjudicator whose professional training and constitutional obligation neutralize personal predispositions, subconscious sympathies, or prior associations.

[29] Thomas McKevitt, 'The Rule of Necessity: Is Judicial Non-Disqualification Really Necessary?' (1996) 24 Hofstra L Rev 693.
[30] Ashok Kumar Yadav v State of Haryana AIR 1987 SC 454.
[31] Supreme Court Advocates-on-Record Association v Union of India (2016) 5 SCC 1.
[32] Constitution of India, 1950, Schedule III (Forms IV and VIII).
[33] Ibid.

3.2 PRESUMPTION OF IMPARTIALITY VS. REAL/APPARENT BIAS

The common law doctrine of natural justice (nemo judex in causa sua) demands a sharp doctrinal distinction between actual, imputed, and apparent bias. The Supreme Court of India has traced and refined the test for apparent bias across seminal decisions:

- In Ranjit Thakur v. Union of India (1987)[34], the Supreme Court moved away from demanding strict proof of actual bias, establishing that the test rests on whether a reasonable apprehension exists in the mind of the litigant:

"The test of real likelihood of bias is whether a reasonable person, in possession of the relevant facts, would have thought that bias was likely and whether the authority concerned was likely to be disposed to decide the matter only in a particular way... The question is not whether the judge is actually biased, but whether there is a real likelihood of bias in the mind of the litigant."

- In Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant (2001)[35], the Court refined the standard, incorporating the modern English approach from Regina v. Gough [1993] and Locabail (UK) Ltd. [2000]. The Court held that the apprehension of bias must be real, reasonable, and evaluated from the viewpoint of a fair-minded and informed observer, rather than the subjective suspicion of a hypersensitive litigant.

This matrix creates a doctrinal friction. Apparent bias is not an accusation of actual bad faith; it evaluates institutional optics under the maxim that justice must not only be done, but must also be seen to be done (R. v. Sussex Justices, ex parte McCarthy, 1924)[36]. However, because Indian courts rely heavily on the presumption of impartiality flowing from the Schedule III oath, claims of apparent bias frequently collide with the judicial assumption of personal integrity.

3.3 THE PARADOX

The interaction between the Schedule III oath and the doctrine of apparent bias creates the Oath-Bias Paradox: Because the oath is treated as a self-sufficient guarantee of impartiality, it paradoxically discourages structured recusal inquiries. Instead of treating recusal motions as ordinary, objective procedural safeguards, judges often view them as personal challenges to their integrity and oath-bound duty.

This dynamic was articulated in the recusal order delivered by Justice Arun Mishra in Indore

[34] Ranjit Thakur v. Union of India and Others (1987) 4 SCC 611, para 17.
[35] Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Others (2001) 1 SCC 182, paras 10, 25–35.
[36] R. v. Sussex Justices, ex parte McCarthy [1924] 1 KB 256, 259.

Development Authority v. Manoharlal (2020)[37]:

"No litigant can choose who should be on the Bench... A judge has a duty to discharge his functions without fear or favour. Recusing on a baseless claim would mean acting under fear of the litigant and abandoning one's constitutional oath."

Under this reasoning, the oath generates a rigid duty to sit. Standing down in the face of an apparent conflict is framed not as a measure to protect public confidence, but as an abdication of judicial duty—a surrender to pressure.

The oath is thus transformed from a mechanism to ensure fairness into an institutional rationale for resisting recusal.

3.4 INSTITUTIONAL CONFLICTS: THE MASTER OF THE ROSTER DYNAMIC

The oath-bias tension is further compounded by institutional and administrative structures within Indian higher courts.

In the Indian constitutional scheme, the Chief Justice of India (and Chief Justices of the High Courts) acts as the exclusive "Master of the Roster" (State of Rajasthan v. Prakash Chand, 1998[38]; Campaign for Judicial Accountability and Reforms v. Union of India, 2018[39]; Asok Pande, 2018[40]). This administrative power gives the Chief Justice sole authority to constitute benches and assign cases.

When recusal claims touch upon the administrative actions of the Chief Justice or high-stakes constitutional matters, this institutional setup creates significant tension:

1. *Self-Allocation in Disputed Causes*: If an application for recusal is directed at the Chief Justice, the self-assessment model requires the Chief Justice to decide the motion. If dismissed, the Chief Justice also retains sole discretion over which bench ultimately hears the matter.
2. *Reallocation Vacuum*: When a judge recuses voluntarily via an unreasoned oral statement ("Not before me"), the matter is returned to the Master of the Roster without statutory guidance or transparent assignment rules. This allows for potential strategic bench-shopping by litigants or arbitrary bench composition.

[37] Indore Development Authority v. Manoharlal and Others (Recusal Order) (2020) 2 SCC 317, paras 22–30, 34.
[38] State of Rajasthan v. Prakash Chand and Others (1998) 1 SCC 1, paras 23–29.
[39] Campaign for Judicial Accountability and Reforms v. Union of India and Another (2018) 5 SCC 341, paras 6–10.
[40] Asok Pande v. Supreme Court of India through its Registrar and Others (2018) 5 SCC 341, paras 9–15.

The reliance on the judicial oath as an unexamined defence against recusal overlooks the reality of unconscious, structural, and institutional bias.
Impartiality is not merely a subjective state of mind maintained by an individual judge taking an oath; it is a measurable structural condition verified through transparent procedural rules, reasoned determinations, and institutional accountability.

4.1 COMPARATIVE ANALYSIS WITH USA

The need for an unbiased proceeding is the most important factor in maintaining fairness in the judiciary's administrative mechanism. Therefore, in order to maintain such fairness, it is required that judges follow proper ethical standards by recusing themselves from any matter that they feel may cause a sense of partiality in the system. Indian recusal mechanism which is adversarial in nature, is generally founded on the principles of natural justice and follows uncodified conventions where stricter emphasis is laid on individual judicial mandate unlike the United States which follows a well defined statutory framework. It generally illustrates the applicable grounds under which a judge is capable of getting himself recused from a matter. It is therefore known as the Code of JUDICIARY AND JUDICIAL PROCEDURE CODE. This Code especially under Section 28 U.S.C. § 455[41] and Section 28 U.S.C. § 144[42] generally highlights the federal juridical administration of that country by following the adversarial method of adjudication, under which two opposing present their competing matter before the neutral judge in an order to drive the essence of litigation. However, the judge does not takes part in the investigation himself but merely acts as a moderator by ensuring the compliance of legal rules while actively listening to both the parties and thus finally delivering its verdict[43]. Thereby, by following such a method of adjudication, the judges of the United States under the framework of Section 28 U.S.C. § 455, shall step down from a case whenever their fairness and neutrality is likely to be questioned. It generally tends to provide strict established objectives for a judge to recuse themselves whenever they have any financial, familial interest as well as personal ties with any lawyer in any case. On the other hand, Sec 28 U.S.C § 144 provides the independence and a form of legal tool to litigants to request for a cancellation / disqualification of a federal district judge only after a timely and structured affidavit is properly filed. It is filed whenever there is a depiction or exhibition of a personal favourability or

[41] 28 U.S.C. § 455 (2018)
[42] 28 U.S.C. § 144 (2018)
[43] https://study.com/academy/lesson/video/adversarial-system-of-justice-definition-advantages.html accessed 28 August 2026.

prejudice to any party in a matter, thereby weakening the sanctity of the presented matter. However, litigants can even use this provision in a malafide intent as a tactical manoeuvre in an order to delay judicial proceedings / judge shopping towards a more favourable judge and drop down adverse judicial rulings. Therefore, the case of Berger Vs. United States (1921)[44] had concluded that in an order to accept a matter to be disqualified, there is an ultimate requirement of furnishing a timely and maintained affidavit which may contain all the facts, even though it appears to be fabricated and distorted and thereby is legally barred from investigating the truth of the given allegations by the parties. Thus, in an order to prevent such a malafide intent, the affidavit therefore must be adjoined with counsel of record by stating its good faith. Moreover, such a filing should be duly signed by at least one counsel of record a must include the mail address, electronic mail address and contact number of such a counsel[45]. Therefore, the Supreme Court had also inferred that such a necessity of a certificate of good faith compiled with the official signature of an attorney primarily regulates the against all misrepresented allegations made with a malafide intent.

4.2 The Extra Judicial Source Rule

Though the major objective of both the provisions of Sec 28 U.S.C. 455 and Sec 28 U.S.C 144 is to provide codified regulations in an order to maintain the integrity of the judicial profession, however there are certain instances which marks a question on the way and method in which a judge should disqualify a matter by laying emphasis on the prime rule of recusal. This doctrine / rule is mainly used to prevent the arguing parties from stopping to file frivolous recusal pleas whenever there is a sense of impartiality is found during the trial. This doctrine / rule is generally used to prevent judges in the U.S from initiating adverse judicial rulings, adverse opinions based on the presented courtroom facts do not substantiate as a an eligible ground for disqualifying from a matter. Under this rule, judges are required to disqualify and recuse themselves from situations, when there is an apparent influence of biasness which must arise from any source outside the normal judicial proceedings. This may include any kind of information or a statement including but not limited to any form of affirmation, claim, remarks/ expression along with any news, articles, business records which a judge might obtain from outside the normal course of judicial rulings[46]. Therefore, in an order to regulate this doctrine,

[44] Berger v United States, 255 US 22 (1921)
[45] 12 CFR § 747.7 'Good faith certification' https://www.law.cornell.edu/cfr/text/12/747.7 accessed 29 August 2026
[46] 'Extrajudicial Statement' (*LSD.Law*, last updated July 2026) https://definitions.lsd.law/extrajudicial-statement accessed 30 August 2026

the judge is required to consider certain tests to testify such an extra judicial evidence for making a decision to recuse themselves from any matter.

The Objective Observer Test – In this test, it portrays the general public who would deter the judge to recuse themselves from any case which may apparently appear to be biased and unfair, based on the common assumption of a neutral and thoughtful person rather than emphasizing on the judge's own subjective interpretations and feelings. For example, in the case of R.v. Sussex Justices, ex parte McCarty[47], had laid the foundation of this doctrine, under which it manifested that mere appearance of any form of bias is sufficient in order to bypass a judicial decree. Therefore, it contemplated that justice should not only be accomplished / done but also regardless be seen to be done.

The Impossible Fair Judgement Test – Contrary to the objective standard, this test can be conclusively used by judges, whenever they are directed by the parties in a matter to recuse themselves led by the beliefs formed during a previous judicial proceeding. The U.S Supreme Court in the case of Liteky Vs. United States (1994)[48] had developed a stricter foundation in an order to curb such a practice of recusal. Therefore, it had led that those opinions which were formed during a current or prior proceeding do not quantify as a standard for recusal until there is a presence of a deep driven and uncompromising hostility towards the party[49]. As a result, mere expression of frustration, annoyance, displeasure and dissatisfaction would not preclude the possibility of a fair adjudication[50].

4.3 COMPARITIVE ANALYSIS WITH U.K

The rationale behind the concept of judicial recusal in the United Kingdom had stemmed from the principle of natural justice i.e. *nemo judex in causa sua* (nobody can be a judge in their own cause if he/ she has a pecuniary interest or a party to the subject matter of dispute)[51] and by the practical guidelines enshrined under the Guide to Judicial Conduct[52], issued by the Court and Tribunal Judiciary. This guide generally provides a practical tool of essential ethical rules which are useful in assisting judges the instances and the procedure for stepping down from a

[47] R v Sussex Justices, ex parte McCarthy [1924] 1 KB 256
[48] *Liteky v United States* 510 US 540 (1994)
[49] Ibid
[50] Ibid
[51] Bhuvi Gupta and Netra Karnam, 'Judging the Judge: Re-viewing Judicial Recusal Through an Ethical Lens' (*Kautilya Society*, 29 September 2025) https://kautilyasocietynusrl.in/2025/09/29/judging-the-judgere-viewing-judicial-recusal-through-an-ethical-lens/ accessed 30 August 2026.
[52] Courts and Tribunals Judiciary, *Guide to Judicial Conduct* (July 2023) https://www.judiciary.uk/wp-content/uploads/2023/06/Guide-to-Judicial-Conduct-2023.pdf accessed 30 August 2026.

case whenever there is a presence of partiality or an imminent danger of bias in their verdict. However, in certain instances were the judge is resisting himself to step down, a party also has an equal authority to file such an appeal before the appellate court, thereby making the recusal mandatory to be decided by any other judge of a lower court[53]. Therefore, in the absence of any codified statute in the U.K, the foundation of recusal is generally vested in various common legal principles and landmark case legislations. One of the major landmark case which had initiated the applicability of recusal for financial bias is the matter of Dimes vs. Grand Junction Canal (1852)[54]. This case established the principle of an immediate *automatic disqualification* of a judge without any further investigation or apparent bias, from an ongoing trial if there is any existence of a direct pecuniary interest associated with the matter. In this process of disqualification, the test to determine a real possibility of a bias recorded by an informed person is totally neglected, and real emphasis is paid over stricter enforcement of such method even if a minor financial stake triggers such removal. As a result, in this case Lord Cottenham (the supreme judge) had owned certain portion of shares in the Grand Junction Canal company thereby showing the presence of financial interest in the proceeding[55].

Apparent Bias Test – Most recusal standards in the U.K follows an indirect approval from a common informed man leading to the judge's impartiality being questioned. Therefore most recusal standards in the UK follows a hypothetical and reasonable informed procedure to determine a judge's impartiality in doubt. As in the case of Porter vs. Magill (2001)[56], it had laid the foundation of the definitive legal reasoning for apparent bias within the recusal system. This case had thereby helped in the replacement of harder to satisfy legal principles such as the 'real danger of bias' and had regulated a newer standard by somewhat lowering the threshold with an objective to protect the public trust and integrity in the justice system, mostly aligning itself with Article 6 of the European Convention of Human Rights (right to a fair trial)[57]. Therefore, in this kind of test, the common person involved in questioning the judge's partiality should approach with an open mind devoid of any form of suspicion. They generally tend to look into the case as a whole being properly informed about its facts and non-discriminatory

[53] Konark Pratap Gupta and Kartik Sharma, 'Judicial Recusal in India: A Comparative Study With U.K and U.S.A' (2021) 4(6) International Journal of Law Management & Humanities 848
[54] Dimes v Grand Junction Canal Proprietors (1852) 3 HL Cas 759.
[55] KembaraXtra, 'Case Law: Dimes v Grand Junction Canal Proprietors (1852)' (*kembara Xtra*, 29 May 2025) https://www.kembaraxtra.com/law/kembaraxtra-case-law-dimes-v-grand-junction-canal-proprietors-1852 accessed 30 August 2026.
[56] Porter v Magill [2001] UKHL 67, [2002] 2 AC 357
[57] Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221 (ECHR) art 6

rather than being apathetic and oversensitive in nature[58]. Thus in the case of Lawal Vs. Northern Spirit Ltd[59], it had contemplated that a fair minded person in deciphering the biasness of a case should have a balanced approach[60].

4.4 LESSON FOR INDIAN RECUSAL SYSTEM

The primary objective for recusal in India based on the standards laid down in UK and USA is the critical necessity to transform the system from a system of individual judicial independence to a much more structured and codified framework. Thus such a lack of properly framed regulation creates an inconsistent and tactical practice of 'bench hunting' phenomenon by the litigants in an order to steer judges by ensuring that their matter is heard in accordance to the needs and demands of the litigant. More emphasis is laid over following the principles laid in the Restatement of Values of Judicial Life 1997[61], thereby restricting judges to participate in situations which may further arise a question about their independence and perception. Therefore, in an order to maintain the principle laid down in the rule that justice should not be merely done but also be seen to be done and also to prevent doubting the due process of law, it is expected that a codified framework would facilitate to answer why a particular judge would not hear their case without any reason and an alternative, so that a common person would not be sceptical about such an uncertainty[62]. As a result, in an order to prevent such forms of tactical practices and to uphold the integrity and transparency of the judiciary, the Supreme Court of India, in the judgment of the National Judicial Appointments Commission 2015[63], had accentuated the extreme necessity to provide sufficient reason before any recusal (both voluntary and non-voluntary) as a tool for building a sense of responsibility towards the system[64].

Although there exists no established regulation for governing recusal in India, emphasis is often laid on the provisions of Article 14, 21 and the Third Schedule of the Constitution, thereby indicating the need towards a fairer trial by acting impartially within the system. Therefore

[58] Daniel Clark, 'Marking One's Own Homework: A "Fair-Minded Observer's" View of a Recusal Refusal' (*Open Justice Court of Protection Project*, 13 August 2024) https://openjusticecourtofprotection.org/2024/08/13/marking-ones-own-homework-a-fair-minded-observers-view-of-a-recusal-refusal/ accessed 30 August 2026.
[59] Lawal v Northern Spirit Ltd [2003] UKHL 35, [2003] ICR 856, [2004] 1 All ER 187
[60] Ibid
[61] Supreme Court of India, 'Restatement of Values of Judicial Life' (Resolution adopted in Full Court Meeting, 7 May 1997) https://main.sci.gov.in/pdf/Notice/02112020_090821.pdf accessed 23 August 2026.
[62] Udbhav Bhargava, 'Recusal of a Judge' (*Via Mediation Centre*) https://viamediationcentre.org/readnews/Njg=/RECUSAL-OF-A-JUDGE accessed 30 August 2026.
[63] Supreme Court Advocates-on-Record Association v Union of India (2015) 5 SCC 1.
[64] Ibid

judges should follow the essential principle of judicial conduct under the Third Schedule hereby mandating to take proper oath of office with an objective to execute their duties without any fear or favour. Along with that, by reiterating and reassigning the case back to the Master of Roster (Chief Justice of India), it would facilitate a continuous adjudication of the case, thereby limiting the unfair litigants from further dictating and bypassing any case before a favourable bench. Moreover, such an emphasis would eventually prevent the judges from acting on their own accord as well as allow the Chief Justice to review a recusal refusal properly whenever any form of conflict of ideas and interests as reflected in the case of Dr. Jaya Thakur Vs. Union of India[65] in which several chief justices had recused themselves from hearing a matter since it directly altered the panel in which a Chief Justice sat, leading to the rise and importance towards advanced institutional protocols rather than individual conscience. On the other hand, the existence of a basic framework will elevate India from governing under one's individual conscience to more robust, objective, ascertainable standards by specifying strict divisions of disqualification, thereby ensuring the process to be more lucrative and educative leading to the gain of public trust[66].

5.1 Toward a Statutory/Administrative Model for India

The Pendency Constraint as a Design Parameter

To initiate any kind of recusal reform in India, one must keep in mind the persisting problem of pendency of cases and a framework for the proposed reform should be designed to operate within—not abstractly alongside—the existing backlog. As of 31 December 2025, more than 5.39 crore cases are pending across the Supreme Court, High Courts, and district courts[67], with the Supreme Court pendency alone having risen by 11.40% in a single year, reaching 92,101 cases, while the High Courts have collectively carried 63.66 lakh pending matters[68]. These figures not only reflect an administrative concern but also make docket impact a constitutional and institutional constraint: a recusal mechanism that only adds hearings, interlocutory challenges, or repeated appellate review could unintentionally delay adjudication for the very litigants whose right to timely justice it seeks to protect. The relevant question therefore, is not whether India can adopt the most elaborate model of recusal regulation, but whether it can

[65] Dr Jaya Thakur v Union of India 2024 INSC 246.
[66] The Prayas India, 'Judicial Recusal & Ethics in India' (*The Prayas India*, 25 March 2026) https://theprayasindia.com/judicial-recusal-ethics-in-india/ accessed 30 August 2026.
[67] Moneylife, "Court Case Pendency Rises to 5.39 Crore; Supreme Court Sees 11% Jump in One Year: Govt" (2026), citing Ministry of Law and Justice data placed before the Lok Sabha and the National Judicial Data Grid.
[68] *Ibid.*

secure meaningful transparency at the lowest practicable procedural cost. Any viable reform must consequently be expeditious, administratively light, and capable of functioning through the existing judicial structures[69].By March 2026, the Supreme Court's docket had crossed 93,143 pending cases—the highest level in three decades—with institutions continuing to outpace disposals[70]. This trajectory demonstrates that even modest procedural additions could materially impair timely adjudication across an already overburdened system. The strain is compounded by chronic vacancies: as of February 2026, 309 of 1,122 sanctioned High Court posts stood vacant, with Allahabad functioning at 109 judges against a sanctioned strength of 160[71]. Independently, over 71,000 High Court cases have been pending for more than 30 years[72]. Even a modest new procedural layer, a fresh application, a hearing, an appealable order, risks becoming a measurable drag on disposal once multiplied across a system already this strained[73]. It looks for the narrowest model that can still meet the transparency objective, and it picks the leaner alternative whenever a more elaborate design would buy only marginal gains at a materially higher cost[74].

Guiding Principles

Indian recusal practice rests on judicial self-assessment, unwritten convention, and the loose ethical exhortations of the Restatement of Values of Judicial Life (1997)[75], producing an accountability vacuum: because a recusal or refusal is announced without a speaking order, litigants cannot test the judge's reasoning and appellate courts have nothing to review. In Ranjit Thakur v. Union of India[76], the Supreme Court articulated the now-canonical test: a judge must ask not "Am I biased?" but whether a reasonable person, standing in the litigant's shoes, would apprehend bias. This objective, litigant-centred standard sits uneasily with a procedure that gives litigants no reasoned basis for testing whether it was applied. Five guiding principles

[69]N. Balaji and V. Nagaraja, 'Challenges to the Indian Judiciary in Disposing of Cases: Structural Constraints, Procedural Inefficiencies, and Reform Imperatives', 2025 6(6) Advanced International Journal of Research.
[70]Agarwal, S., & Behera, S. R., 'Mammoth backlog of court cases pending in India: A spatial visualisation', 2024 11(1) Regional Studies, Regional Science 757–760.
[71]Roshni Sinha, 2018. "Pendency of Cases in the Judiciary,"RePEc.
[72]Yashomati Ghosh, 'Indian Judiciary: An Analysis of the Cyclic Syndrome of Delay, Arrears and Pendency', 2017 5(1) Asian Journal of Legal Education.
[73]Saket Dev Pandey, 'India's Legal System has Failed to Learn From Institutional Memory', 2018 2(5) International Journal of Trend in Scientific Research and Development 921-925.
[74]G. Appleby & S. McDonald, 'Pride and prejudice: a case for reform of judicial recusal procedure,' 2017 20(1) Legal Ethics 89–114.
[75] Restatement of Values of Judicial Life (1997), adopted by the Supreme Court of India.
[76] (1987) 4 SCC 611.

follow from this:

a) ***Transparency***: Ensuring that the operative facts and legal test must appear on record, so the decision is falsifiable rather than merely declarative[77].

b) ***Accountability without personalisation****:* The review must interrogate the sufficiency of stated grounds, not function as a referendum on the judge's integrity

c) ***Preservation of judicial independence*** should not become a vehicle for bench-hunting or intimidation. This echoes the Delhi High Court's recent caution against recusal demands aimed at influencing bench composition or encouraging "forum shopping"[78].

d) ***Minimal disruption to docket management***: No mandatory oral hearing or automatic stay, and disposal timelines to be measured in days rather than months, given that over 71,000 High Court and 100,000 subordinate-court cases have already been pending for more than 30 years[79].

e) ***Leverage existing infrastructure***: With 309 vacant High Court judgeships and 4,867 vacancies in the subordinate judiciary, safeguards should route through mechanisms the system already has, the Chief Justice's roster power, registry case-management systems, and the National Judicial Data Grid, rather than a freestanding tribunal[80]. These principles are in evident tension, and the model below resolves that tension in favour of the minimum viable transparency mechanism.

Proposed Elements of the Model

i. **Mandatory written (even if brief) reasons:** At the centre of the model is a simple requirement: every recusal decision, whether a withdrawal or a refusal, must carry a short written record of the ground urged, the test applied, and the conclusion reached, dictated from the Bench at the same sitting[81]. This needs no new institution, post, or hearing, and it can be uploaded to the already-digitised National Judicial Data Grid at negligible cost. Comparative practice supports keeping it this minimal[82]. Under the U.S.

[77] Nousheer, 'Judicial Intuition and the Subconscious Judge: A Neurolaw Perspective on Indian Judicial Reasoning,' 2025 International Journal For Multidisciplinary Research.

[78] Adnan Siddique, 'The Duty To Step Aside: India's Recusal Jurisprudence Under The Microscope', 2026 Mondaq (India).

[79] See Deccan Herald citing Ministry of Law and Justice, Lok Sabha reply (2026).

[80] Sinha (n 71)

[81]Hellman, 'The Regulation of Judicial Ethics in the Federal System: A Peek Behind Closed Doors', University of Pittsburgh Law Review, 2007

[82] Hughes & Bryden, 'From Principles to Rules: The Case for Statutory Rules Governing Aspects of Judicial Disqualification,' 2016 Osgoode Hall law journal.

judicial disqualification statute, a federal judge must step aside wherever a reasonable person would question their impartiality, and several U.S. Circuits require only a minimal statement of reasons, precisely so that appellate review is possible without generating substantial additional judicial labour[83].

ii. **A defined, non-exhaustive list of disqualifying circumstances:** Indian recusal law currently lacks a codified, general statute for higher courts; instead, it develops through case law and judicial self-regulation[84]. Existing precedent supplies ready-made categories for consolidation: *financial interest*, tracing to Manak Lal v. Dr. Prem Chand[85], where even a small financial stake disqualifies a judge, an automatic-disqualification principle with a close statutory analogue in the American provision that financial interests in the outcome compel disqualification and cannot be waived by the parties absent divestiture[86] *kinship*, mirroring the American rule disqualifying a judge with family ties to a party or lawyer[87], given sharp contemporary relevance by a pending Indian controversy in which RTI disclosures reportedly revealed that a judge's children were engaged as counsel for a government litigant before that judge[88]; *prior professional relationship*; and *prior expressed opinion on the matter (prejudgment)*, grounded in State of West Bengal v. Shivananda Pathak[89] and reinforced by the "real likelihood of bias" formulation in State of Punjab v. Davinder Pal Singh Bhullar[90]. The list must remain non-exhaustive, preserving the residual obligation recognised in Ranjit Thakur[91] and echoed in R.C. Chandel v. High Court of Madhya Pradesh[92] both to avoid formalistic evasion and to let registries resolve objectively verifiable conflicts at the roster-assignment stage, before court time is consumed.

iii. **A limited administrative/procedural review mechanism, built on the existing**

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[83] *Ibid.*
[84] Siddique (n 78); Stempel, Jeffrey W., 'In Praise of Procedurally Centered Judicial Disqualification - and a Stronger Conception of the Appearance Standard: Better Acknowledging and Adjusting to Cognitive Bias, Spoliation and Perceptual Realities' (2011) Scholarly Works 748.
[85] AIR 1957 SC 425.
[86] Geyh, Charles G., Judicial Disqualification: An Analysis of Federal Law, (Second Edition 2010)
[87] Thomas R. White III, 'To Have or Not to Have—Conflicts of Interest and Financial Planning for Judges', 1970 35 Law and Contemporary Problems 202-228.
[88] Okpaluba & Maloka, 'The Fundamental Principles Of Recusal Of A Judge At Common Law: Recent Developments', 2022 43(2) Obiter ; Abramson, 'The Judge's Relative is Affiliated With Counsel of Record: The Ethical Dilemma,' 2004 eYLS.
[89] AIR 1998 SC 2050.
[90] 2011 (14) SCC 770.
[91] Ranjit Thakur (n 76)
[92] AIR 2012 SC 2962.

roster system*:* Rather than build a new tribunal, the model extends the roster-and-Chief-Justice framework Indian courts already use. Where a judge recuses, the case is typically listed before the Chief Justice, who assigns it to an alternate bench[93]. The proposal simply extends this channel: a party dissatisfied with a *refusal* to recuse may place a short note before the Chief Justice (or a designated senior judge), who may refer the sufficiency of stated reasons, on the papers, to a differently constituted two-judge bench. Review is confined to the sufficiency of the written record, not a fresh inquiry into facts or a rehearing, and is bound by strict, non-extendable timelines (for instance, seven days to file, 14 to dispose), given that matters can otherwise remain pending for over 10 years in some courts[94]. The mechanism is available only on a party's application, not suo motu, and draws loosely on U.S. federal practice, where an appellate court can effectively disqualify a district judge by remanding to a different judge, a mechanism that likewise operates through the existing appellate hierarchy rather than a purpose-built body[95].

iv. **Safeguards against misuse:** To deter bench-hunting without adding to systemic delay, the model combines several safeguards: cost sanctions for frivolous applications, against the party and, where appropriate, counsel; a single-review limit per judge per matter; *no automatic stay* of the principal proceeding; a presumption of regularity favouring the original judge's stated reasons; and registry-level triage to screen out incomplete, out-of-time, or repetitive applications before any judge's time is engaged. Of these, the absence of an automatic stay probably matters most: it is the stay, not the application itself that usually turns a procedural right into a docket-clogging device.

5.3 INSTITUTIONAL PLACEMENT

Three vehicles are available, each with a different lead time and pilot capacity. A *Supreme Court practice direction* is the fastest route, requiring no legislative process or new posts, though it binds only through the Court's own authority. Self-regulatory instruments of this kind, notably the *Restatement* itself, have already been tried without resolving the problem[96]. A *parliamentary statute*, modelled loosely on the American precedent — enacted by Congress in 1792, expanded in 1821 to require disqualification where relatives of the judge appeared as

[93] Siddique (n 78)
[94] Sinha (n 71)
[95] Prerana Bhaskar, Growth Of Administrative Law In India: Recusal Of Judges, 2023 Law Jurist.
[96] Pandey (n 73)

parties, and further codified in 1891, carries the strongest legal force but also the greatest implementation lead time and separation-of-powers risk. *Amending the Restatement* is least disruptive but inherits its central weakness: no enforcement mechanism attaches to breach. The dissertation recommends a two-stage, pilot-first sequencing: introduce the written-reasons requirement and codified list immediately, nationally, and at negligible cost by practice direction or expanded *Restatement*, which matters given that disposal rates stood at only 46.20% in 2025[97]; then pilot the review mechanism in the Supreme Court and two or three High Courts with comparatively lower vacancy rates (avoiding acutely under-resourced courts such as Allahabad, where 51 of 160 sanctioned posts are presently vacant)[98], with a mandatory review of operational data after 12 to 18 months before any decision to place it on a statutory footing.

6.1 CONCLUSION AND RECOMMENDATION

Summary of Findings

The judicial oath's promise to act "without fear or favour, affection or ill-will" is tested case-by-case through recusal, yet India provides almost no institutional scaffolding for that test. Since Ranjit Thakur v. Union of India,[99] the standard has been settled and objective: whether an average litigant would reasonably apprehend an unfair hearing, not the judge's own conscience. Later decisions — *Manak Lal*[100]*, Shivananda Pathak*[101]*, Davinder Pal Singh Bhullar*[102]*, R.C. Chandel*[103] — enriched the standard with specific categories without ever converting it into codified, enforceable procedure. Because India lacks codified recusal rules, and a recusing judge's case is simply reassigned by the Chief Justice with no further explanation required[104], the entire process can occur without a single written record testable against *Ranjit Thakur*[105]. The consequences follow from that gap. A litigant facing a wrongful refusal to recuse has no remedy short of public controversy, as illustrated by the still-pending dispute

[97] Moneylife (n 67)
[98] Mark V.,Tushnet, 'New Forms of Judicial Review and the Persistence of Rights - And Democracy-Based Worries' (2003) 38 Wake Forest L. Rev. 813-838.
[99] Ranjit Thakur (n 76)
[100] Manak Lal (n 85)
[101] Shivananda Pathak (n 89)
[102] Davinder Pal Singh Bhullar (n 90)
[103] R.C. Chandel (n 92)
[104] Siddique (n 78)
[105] Ranjit Thakur (n 76)

over undisclosed familial ties[106]. An unexplained recusal or refusal invites inference of strategic motive and the absence of any documented standard entangles recusal with the very docket-manipulation concerns courts are anxious to avoid.

A very specific finding to the Indian setting is the absence of procedure and the crisis of pendency which are not sequential problems but a single design constraint. With 5.39 crore cases pending nationally, an 11.40% year-on-year rise in Supreme Court pendency, a disposal rate of only 46.20%, 309 vacant High Court judgeships, and over 71,000 High Court matters pending for more than 30 years[107], a reform ignoring this reality risks being either doctrinally satisfying but practically inert (as the *Restatement* has proved) or procedurally robust but delay-adding; it would thus be prudent to treat administrative feasibility as a first-order filter on every element of the proposed model from the outset.

6.2 Actionable Recommendations

i. **Mandatory written reasons, at zero additional hearing cost.**

   Every recusal decision should carry a brief on-record statement of ground, test, and conclusion, dictated at the same sitting, uploadable to the National Judicial Data Grid at marginal cost indistinguishable from zero, which leaves little room for a feasibility objection.

ii. **Codified, non-exhaustive grounds, consolidating rather than creating law.**

   The Supreme Court should adopt an illustrative list — financial interest, kinship, prior professional relationship, and prejudgment — consolidating principles already scattered across *Manak Lal*, *Shivananda Pathak*, and allied case law, with minimal implementation lead-time and the ancillary benefit of registry-level pre-screening..

iii. **Limited Review Mechanism**

   A strictly time-boxed, paper-based procedure, routed through the Chief Justice's existing bench-allocation authority, should allow review of the sufficiency of stated recusal reasons — the most institutionally cautious version of a review mechanism consistent with the dissertation's objectives, chosen because a system carrying over 5 crore pending matters cannot responsibly fund a new adjudicatory body.

iv. **Strict Safeguards against Strategic Misuse**

   Stringent protections are recommended to be in place, requiring recusal applications to

[106]Indore Development Authority v. Manoharlal & Ors., (2020) 8 SCC 129.

[107] PRS Legislative Research, "Vital Stats on Pendency of Cases in the Judiciary.

be filed at the earliest possible stage following the discovery of grounds, thereby preventing last-minute delays. Further, strict financial costs and penalties should be imposed for frivolous, repetitive or malafide recusal applications intended to manipulate bench composition. Such a phased implementation strategy, wherein reform is initiated immediately via Supreme Court practice directions and amendments to the Restatement of Values of Judicial Life, followed by targeted parliamentary legislation to codify non-binding ethics into enforceable statutory rules as well as ensuring that all recusal determinations operate within strict, day counted timelines to avoid compounding India's severe judicial case pendency will ultimately fortify the rule of law by aligning procedural mechanisms with the democratic requirement for visible, accountable justice[108]

[108] S. Chauhan, 'Judicial Reforms In India Strengthening The Rule Of Law For A Just And Equitable Society' (2025) 4(2) Vidya - A Journal Of Gujarat University 250.