JUDICIAL RECUSAL: SETTING CANONS OF GOVERNANCE IN JUDICIARY

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I. Introduction

Judges are repeatedly excoriated for not living in the real world. But when, as is desirably and increasingly the case, link between a judge and the world outside the courtroom, problem may arise. Many of them are problems of perception. That does not make them any less real or relevant, but it does make them a lot harder to evaluate. Others are problems of pecuniary or analogous interest, which may be less difficult to identify but can be more intractable in their consequences. All of them reflect the tension between the desirability of having judges with their feet of the ground and the undesirability of letting a case be tried by a judge who may have a private agenda.

Scholars have traditionally analysed judicial impartiality piecemeal, in disconnected debates on discrete topics. As a consequence, current understandings of judicial impartiality are balkanized and muddled. It is not enough for the judiciary, as an institution, to be independent.[1] Individual

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[1] The principle of judicial independence is designed to protect the system of justice and the rule of law, and thus maintain public trust and confidence in the courts. Its existence in any legal system, however, depends on concrete institutional arrangements. Various scholars have identified essential ingredients which ensure judicial independence in a legal system: First; Insularity; second; Impartiality and third; authority. An independent judiciary surrounded by powerful executive forces remains insulated from there destructive elements maintaining its individual, distinct and independent identity. The elements of *'insularity'* for an independent judiciary include: (i) Appointment and removal of judges; (ii) Security of tenure; (iii) Protection of salary; and (iv) Administrative and financial autonomy. Impartiality is another important facet of Judicial independent where judges are supposed to take decision only on the basis of law and fact and without any fear or favour. Finally, *authority* which includes element of public confidence, its relation with the media etc. This paper emphasized on the second essential of the judicial independence i.e. *impartiality* through doctrine or judicial recusal.

judges must be seen to be objective and impartial. In their personal lives, judges must avoid words, actions or situations that might make them appear to be biased or disrespectful of the laws they are sworn to uphold. One of the critical functions of judiciary, as a branch of government responsible for the application and interpretation of law, is to ensure that ***"justice should not only be done, but should be seen to be done".***[2]

Alan Rose, a former President of the Australian Law Reform Commission once observed:[3]

> ***Justice, and the appearance of that justice being delivered, is fundamental to the maintenance of the rule of law. Justice implies - consistency, in process and result — that is, treating like cases alike; a process which is free from coercion or corruption; ensuring that inequality between the parties does not influence the outcome of the process; adherence to the values of procedural fairness, by allowing parties the opportunity to prevent their case and to answer contrary allegations, and unbiased neutral decision making; dignified, careful and serious decision-making and an open and reviewable process.***

Impartiality, thus refers to a state of mind and attitude of the court or tribunal in relation to the issues and the parties in a particular case, while 'independence' refers not only to the state of mind or attitude, but also to a status or relationship to others particularly to the executive branch of government that rests on objective conditions or guarantees.[4] The construct of 'impartiality' suggests that judges will base their decisions on law and facts, and not any predilection or prejudices towards one of the litigants and that the judiciary must be able to make their decisions free from any influences of the executive and legislative branches of government.

The requirement in short is that the judge must be impartial and must decide the case objectively on the basis of the evidence on record. A person cannot take an objective decision in a case in which he has interests, for as human psychology tells us, very rarely can people take decisions against their own interests. This rule of disqualification is applied not only to avoid the possibility of a partial decision but also to ensure public confidence in the

[2] *Lord Hewitt in R* v. *Sussex Justices; Ex Partes McCarthy* [1924] 1 KB 256, 259.

[3] Alan Rose, *'The Model Judiciary - Fitting in with Modern Government',* 4 the jud. REV. 323 at 326 (1999).

[4] Chief Justice R. C. Lahoti, *First M. C. Setalvad Memorial Lecture on "Canons of Judicial Ethics "* 45 UNIV. of New Brunswick L. Jour. 81 (1991).

in the impartiality of the adjudicatory process.[5] In this manner Impartiality, objectivity and public confidence provide the foundation on which the superstructure of rule against bias is built. A decision which is a result of bias is void and the trial is ***"coram non-judice".***[6] However, we are all in the era of legal realism now, perfect impartiality—the complete absence of bias or prejudice is at most an ideal, with "impartial enough" the realistic goal.[7]

II. Doctrine of Recusal: The Concept

It is a basic precept that no one should be a judge in his or her own case. Courts must keep the promise of dispensing fair and impartial justice, and must decide controversies without bias. The practice of recusal i.e. when and how an individual Justice should be excluded from participating in a specific case, where he has some interest—has been a regular topic of passionate debate since the founding in the United States of America and United Kingdom.[8] Recusal is ***"removal of oneself as a judge or policy maker in a particular matter, especially because of a conflict of interest.*** "[9] The doctrine of judicial recusal enables, and may require, a judge who has been, appointed to hear and determine a case to stand down from that case and leave the disposition of it to another colleague or colleagues. The judicial oath in England and Wales, widely echoed in the common law world, is to do justice 'without fear or favour, affection or ill-will. Fear and favour are the enemies of independence, which is a state of being.[10] Affection and ill-will undermine impartiality, which is a state of mind. But independence and impartiality are the twin pillars without which justice cannot stand, and the purpose of recusal is to underpin them. That makes the law relating to recusal a serious business.[11]

[5] *R. v. Sussex Justices ex p. McCarthy,* [1923] All ER Rep. 233 (Per Lord Hewart, C.J.).
[6] *Ranji't Thakur v. Union of India,* (1987) 4 SCC 11.
[7] Charles Gardner Geyh, *The Dimensions of Judicial Impartiality,* Research Paper No. 201, *available at:* http://ssrn.com/abstract=2016522 .
[8] Jeffrey W Stempel, *Rehnquist, Recusal, and Reform,* 53 BROOK L. REV. 589 at 621-627 (1987).
[9] Black's Law Dictionary, 1303 (8th ed. 2004).
[10] Grant Hammond, Judicial Recusal: Principles, Process and Problems. Mohan Law House, (2010), p 11.
[11] *Ibid.*

III. Genealogical Study of Recusal

Genealogy[12] is the study of ancestry and family history. According to Oxford dictionary it is ***"a line of descent traced continuously from an ancestor, the study of lines of descent."***[13] We have never seen our ancestors, but because of them we are here. Their lives might have been completely distinct from ours but various studies reveal fundamental similarity in habits and evolving patterns of lifestyle. In fact, we may even wonder why there is a need to study about those who are already buried and forgotten. Studying the genealogy of our family does not only mean giving honour to our ancestors but it is also intriguing. We learn many things including the reasons why our parents grew up at one place or another. Replacing parents with ***"judicial recusal".*** this paper attempts to trace the origin and historical development of practice of recusal in order to discern the reasons as to why the practice of recusal in courts grew and was nurtured.

(a) The Law of Recusal in England

This old practice of disqualification of a judge dates back to Blackstpne and the English common law, which required recusal only in cases where a judge had a pecuniary interest in the outcome of the case.[14] What would today be termed 'bias' which is easily the most-controversial ground for disqualification, was entirely rejected as a ground for recusal of judges, although it was not completely dismissed in relation to jurors.[15] This was in marked contrast to the relatively sophisticated canon law, which provided for recusal if a judge was suspected of partiality because of

[12]The word "genealogy" comes from two Greek words—one meaning "race" or "family", and the other "theory" or "science." Thus is derived "to trace ancestry," the science of studying family history. *See* Enclyopedia Britanica Online, *available at:* http://www.britannica.com/EBchecked/topic/228297/genealogy .

[13] OXFORD DICTIONARY & THESURAS, OXFORD.UNIVERSITY PRESS (2nd ed. 2007) 433.

[14] John P. Frank, *Disqualification of Judges,* 56 yale L. jour. 605 at 611-12 (1947).

[15] Grant Hammond, Judicial Recusal: Principles, Process and Problems. Mohan Law House, (2010), p 11.

consanguinity, affinity, friendship or enmity with a party, or because of his subordinate status towards a party or because he was or had been a party's advocate.[16] Canon law principles were applied in English ecclesiastical courts[17] and in the medieval Scottish courts.[18] Bracton seems to have suggested that these canon law principles were actually part of the early common law, presumably by incorporation. The better view is that this was not so. It is true that there were scattered features of the common law which might have supported such a proposition, and it is certainly disingenuous to suggest that the canon law would have had no influence.[19] Further, by early 14l century, common law judges were held to be incompetent to preside over cases in which they were themselves parties. However, a contrary view to Bracton's common law-canon law convergence theory was taken in Brookes v. Rivers, where it was held that favour was not to be presumed in a judge.[20] Blackstone considered this common law rule that judges could not be disqualified for relationships or bias but only for a direct pecuniary interest was absolutely correct.[21] He observed:

> *For the law will not suppose a possibility of bias or favour in a judge, who is already sworn to administer impartial justice, and who authority greatly depends upon that presumption and idea.*

The clear averseness to see judges challenged was tempered by two well established rules, first, that judges in common law are not permitted to determine a matter in which he had a direct pecuniary or proprietary interest. The most authoritative pronouncements for this proposition were

[16] Grant Hammond, Judicial Recusal: Principles, Process and Problems. Mohan Law House, (2010), p 11.

[17] F. W. Maitland, Roman Canon Law in the Church of England: Six Essays (London, Methuen & Co. (1898) 114 .

[18] T. M. Cooper (ed.), Regiam Majestatem and Qubniam Attachiamenta (Edinburgh, Stair Society, 1947) 324-25.

[19] For instance, the grounds of exception to the competency of witnesses for interest and bias had long been extended to jurors of the grand assize.

[20] In this particular case, the Chamberlain of Chester was not disqualified from hearing an action in which his brother-in-law was a party.

[21] W. Blackstone, Commentaries on the Laws of England (1768), Buffalo, William S

perhaps *Sir Nicholas Bacon's Case* [22] and the *Earl of Derby's Case.*[23] The second established proposition was confirmed by Sir Edward Coke in famous *Dr. Bonham's Case* [24] where it was held that one cannot be judge in his own cause.

In recent times, Lord Denning's refusal to hear the Barclay's Bank cases because Lady Denning had-shares in that Bank has been the guiding principle for any judge on these ethical and moral dilemmas.[25] In famous *Pinochet case,*[26] five Law Lords heard the case, affirmed Pinochet's extradition by a majority of 3:2 and declared he had no immunity. Lord Hoffmann was with the majority. After this decision, it was suggested that Lady Hoffmann was connected with Amnesty International. Amnesty had been heard in the case. It was further clarified that Lord Hoffmann was a Director and Chairperson of a sister charity of Amnesty. In the follow up on Hoffmann's recusal House of Lords observed:

> *"However, close these links are, I do not think it would be right to identify Lord Hoffman personally as being a party to the appeal"; and added that cases of automatic disqualification were not limited to cases of proprietary and pecuniary bias."* [27]

(b) Development of Law in United States of America

In contrast to the situation in England, judicial recusal in the United States of America became subject to a federal statutory regime at an early stage. Recognizing the growing threat posed to judicial impartiality and due

[22] (1563) 2 Dyer 220b; 73 ER 487 (KB).
[23] 77 ER 1390 (KB).
[24] 77 ER 638 (CP). See.also S. E. Thorne, Dr. Bohman's case (1938) 54 Law Quarterly Review.543; TFT Plucknett,
Bonham's case and Judicial Review (1926) 40 Harvard Law Review 30.
[25] *Barclays Bank Int'l Ltd.[}97S]* 1 Q.B. 159.
[26] *In Re* Pinochet, [1999] All ER AC 18.
[27] *Id.*

process, scholars in USA have been furiously debating the appropriate relationship between judicial campaign activities and disqualification. The pre-revolution American colonies adopted the English common law practice as at the time of the formation of their court systems. It is difficult to decipher as to why Congress intruded into this area as early as it did, but the first federal judicial disqualification statue in America was enacted as early as 1792. The first law however, reflected more or less the English common law on recusal i.e. a judge may be disqualified when he had a pecuniary interest in a proceedings over which he or she was to preside, had acted in the proceeding, or had been 'of counsel' for a party. However, this original 1792 statute was amended in 1821 to incorporate relationship to a party as an additional ground for judicial disqualification.

The difficulties that recusal has caused in the United States are reflected in the fact that, on many occasions after 1821, Congress has progressively enlarged the enumerated grounds for seeking disqualification. There was a significant overhaul of the federal disqualification scheme in 1911. The Supreme Court of United States in *Liteky v. United States*[28] opined that it was not [however until 1911] that a provision [was] enacted requiring district-judge recusal for bias in general.

The American Bar Association (ABA)[29] has revised relevant provisions of its Model Code of Judicial Conduct.[30] *"The topic du jour"* [31] one Ninth Circuit judge observed in a recent speech, "is recusal."[32]

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[29] Established in 1878, American Bar Association is voluntary association of lawyers and law students. The most important functions of ABA is 'preparation of law school activities are the setting of academic standards for law schools, and the formulation of model ethical codes related to the legal profession.

[30] Hereinafter referred as the Model Code.

[31] Which describe something that is enjoying great but probably short-lived popularity or publicity?

[32] James Sample, David Pozen, & Michael Young, *Fair Courts Setting Recusal Standards,* BRENNAN CENTER FOR JUSTICE, *available on: http://www.policyarchive.org/handle/10207/bitstreams/8742.pdf* .

Important Features of Model Code: There are some important features of disqualification law that are common across US jurisdictions. The most widely shared is Rule 2.11(A) of the ABA's 2007 Model Code (formerly Canon 3E (1)): *"A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned."* [33] Similarly most of Rule 2.11(A)'s specific rules on disqualification also apply across US courts. A judge should always by rule recuse herself (be disqualified) when:

a) She is biased against one of the parties;[34]
b) She has previously served as a lawyer in the matter in controversy;[35]
c) She has an economic interest in the subject matter of greater than *de minimis value,*[36]
d) She is related to a party or lawyer in the proceeding within the third degree of kinship,[37]
e) She has personal knowledge of disputed evidentiary facts, or[38]
f) She has made improper ex parte communications during the course of the proceeding.[39]

These rules per se are largely commonsensical and without controversy. In addition to abovementioned code, courts of USA have also given some guidelines.[40] Some principles have been evolved to meet certain exigencies:

[33] R. 2.11(A)(1). ,Canon 2, ABA Model Code of Judicial Conduct, 2011 .
[34] See *Browning v. Foltz* 837 F.2d, 276, 279 (6th Cir. 1989) (In order to justify the recusal prejudice or bias must be personal, or extrajudicial) .
[35] R. 2.11(A)(6)(a), Canon 2, ABA Model Code of Judicial Conduct, 2011.
[36] Rule 2.11(A)(3), Canon 2ABA Model Code of Judicial Conduct, 2011.
[37] R. 2.11(A)(2), Canon 2, ABA Model Code of Judicial Conduct Canon, 2011.
[38] *See* Generally Richard E. Flamm, Judicial Disqualification: Recusal and Disqualification of Judges .§ 6.4.1, at ch.12(1996).
[39] R. 2.9(A), Canon 2, ABA Model Code of Judicial Conduct, 2011.
[40] *See* United States v. Story 716 F.2d, 1088, 1091(6* Cir 1983)(For instance, A Reasonable Man Test: "A judge is required to recuse himself only if a reasonable person with knowledge of all facts and circumstances would conclude that the judge's impartiality might reasonably be questioned).

(a) The Rule of Necessity - when no impartial judge is available, the original judge(s) assigned to the case may take it. The rule of necessity is absolute when it applies, and "can be justified only by strict and imperious necessity."

(b) Blanket Disqualification (is disfavoured): An example of a blanket disqualification although disfavoured by scholars would be an attorney's request that a judge be disqualified from hearing all cases brought by her firm or a public defender's request that a judge be disqualified from hearing all capital cases.

© Class-based disqualification (is also disfavoured): An example of a class-based challenge would be a motion to remove a judge for her racism.[41] It is more convoluted to debar a judge for bias against an attorney than for bias against a party.[42] To be disqualifying, the actual or apparent bias of the judge must be directly relevant to the proceeding at issue, and the bias must be personal, as opposed to judicial, in nature.[43] The latter distinction is often analysed under the "extrajudicial source rule," which holds that unless it is as pervasive or egregious as to "display a deep-seated favouritism or antagonism that would make fair judgment impossible," bias that stems directly from the case proceedings will not be disqualifying.[44]

Avery v. *State Farm Mutual Insurance Company,*[45] decided on the heels of the most notorious judicial election in recent U.S. history. In this particular case, the plaintiffs sought recusal of a judge who received substantial financial support from individuals and organizations closely associated with the defendant. To appreciate the import of the refusal to recuse, and the Supreme Court's refusal to review that decision, requires some understanding of the underlying facts.[46] The St. Louis Post Dispatch summarized the consequences of Mr. Karmeier-Maag recusal in following words:

The juxtaposition of gigantic campaign contributions and favourable judgments for contributors creates a haze of suspicion over the highest court in Illinois.

[41] Richard e. Flamm, Judicial Disqualification: Recusal and Disqualification of Judges § 6.4. l, ch. 12, 114-126 (1996).

[42] *Id* at 132.

[43] *See Liteky* v. *United States,* 510 U.S. 540, 555 (1994); *See also United States* v. *Grinnell Corp.* 384 U.S. 563, 5$3 . (1966).

[44] *Id.*

[45] *Avery* v. *State Farm Mutual Insurance Company,,* 5-99-0830 Rel.

[46] *Supra* note 204.

> *Although Mr. Karmeier is an intelligent and no doubt honest man, the manner of his election will cast doubt over every vote he casts in a business case. This shakes public trust for the courts and the rule of law - which is a foundation of our democracy.*[47]

The United States Supreme Court, in the opinion of distinguished scholars could have intervened in the matter to restore public confidence. It was requested to review Karmeier's decision to sit on the case and to re-evaluate whether due process required recusal under such extreme circumstances, but the Court declined review. The Court's decision to deny review was consistent, most notably, with its 1988 denial of review in *Texaco, Inc. v. Penrizoil* Co.[48], in which the courts had declined to order the recusal of a trial judge who had received a $10,000 campaign contribution from Pennzoil just two days after the company filed its answer.[49]

The vital point which arose after this case was that Avery not only highlights the urgency of the problem, it also leaves the primary responsibility for preserving the reality and appearance of impartial justice in elective state courts squarely in the hands of those courts themselves. A report submitted by Brennan Centre for Justice, the Campaign Legal Centre and ten other organizations[50] argued that Avery Brief "provided an important occasion for the Court to frame guidelines as to the circumstances in which the Due Process Clause of the Fourteenth Amendment requires recusal." [51] Centre also proposed some reformative measures for the

[47] Editorial, *Illinois Judges: Buying Justice?,* ST. LOUIS POST-DISPATCH (Dec. 20, 2005).
[48] *Texaco, Inc. v. Pennzoil Co,* 729 S.W.2d 768 (Tex. App. 1987).
[49] *Texaco, Inc.* v. *Pennzoil, Co.* 729 S.W.2d 768, 844-45 (Tex. App. 1987).
[50] In support of certiorari in *Avery* v. *State Farm Mutual Insurance Company,* 321 111. App. 3d269.
[51] *Supra n.* 204.

strengthening of people's confidence in the courts and due process.[52]

The Supreme Court of United States recently in *Caperton v. A. T. Massey Coal Co.*[53] sends a clear signal that that the time is right for states to shore up the foundations of the impartial judiciary. Justice Kennedy in his concurring opinion made clear that states can require recusal even in situations that do not give rise to questions of constitutional significance. Justice Kennedy noted that *"States may choose to 'adopt recusal standards more rigorous than due process requires."*[54]

© Practice of Recusal in India

In India there is no statute laying down the minimum procedure which judges must follow in order to ensure the impartiality. However, courts have always insisted that judges and other adjudicatory authorities must ensure that they have to ensure principles of impartiality. The principles of Natural Justice have developed with the growth of civilization and the content thereof is often considered as a proper measure of the level of civilization and Rule of Law prevailing in the community.[55] In order to protect himself against the excesses of organized power man has always appealed to someone beyond his own creation. Such someone could only be God and His laws could only be divine law or natural law to which all temporal laws and actions must conform. This was the origin of the concept of natural justice. It implies fairness, reasonableness, equity and equality.[56] Though the Indian constitution does not use this expression, the concept divested of all its metaphysical and theological trappings pervades the whole scheme of

[52] *Peremptory disqualification (2). Enhanced disclosure (3). Per Se Rules for campaign contributors (4). Independent adjudication of disqualification motions (5). Transparent and reasoned decision-making (6). De Novo review of interlocutory appeal (7). Mechanisms for replacing disqualified appellate judges; (8). Expanded commentary in the canons; and (9). Judicial education.* In addition to these nine internal reformative measures center also suggested an external solution in the fo.rm setting of Recusal Advisory Bodies which could identify best practices and encourage judges to set high standards for themselves. Judges could be encouraged to seek guidance from the advisory body when faced with difficult issues of recusal.).

[53] *Caperton v. A. T. Massey Coal Co.* 129 S. Ct. 2252 (2009), 556 U.S.(2009).

[54] *Supra n.* 223 at 2267

[55] See K. I. Shephard v. Union of India, (1987) 4 SCC 431, 488 per R. N. Mishra J

[56] I. P. Massey, Administrative Law. (2005). Eastern Book Company, Lucknow, 161.

the Constitution.[57] Duty to act fairly and impartially is ingrained in articles 14 and 21 of the constitution. Indian courts have nourished these values with reference to administrative decision making and emphasized on the test of *'real likelihood of bias.'* What is relevant according to Supreme Court is the reasonableness of the apprehension in that regard in the mind of the party.[58] Hence the proper approach in case of bias for the Court is not to look into his own mind and ask "am I biased?" but to look into the mind of the party before it. The reason was plain enough, writes Lord Denning, "Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: the judge was biased."[59] However, when it comes to applying these standards on judges of the constitutional courts, law is not very clear. The Cases of recusal have come in the recent past; however there is no set principle as to when and how this principle should be followed. In India two methods are normally being practiced, first; automatic recusal and second; If no one objects, a judge may proceed with the matter.

Automatic Recusal: Justice S. B. Sinha, raising his concerns on decline of judicial ethics advocated for an automatic recusal process in the judicial system. He was surprised when two senior judges of the Supreme Court decided a case, which they had probed in their administrative capacity as judge of the Punjab High Court. His reaction was:

" We also fail to see as to why two senior Judges who had headed the Committee should have been made part of the Bench that decided the case ".

Justice Markandey Katju, followed the practice of automatic recusal when he withdrew his name from the Novartis case by saying that it would not be proper for him to deal with the appeal filed by Novartis. His withdrawal from the case was apparently meant to preclude fears of bias in the MNC camp on account of an article [60] he had written five years earlier against

[57] Ibid
[58] Ranjit Thakur v. Union of India, (1987) 4 SCC 611.
[59] Lord Denning, The Discipline of Law, (1982), 87.
[60] Lamenting that *"many of the medical drugs available in the market are too costly for the poor people in India",*
Katju said in his article that *"ways and means should therefore be thought out for making these drugs available to the masses at affordable prices".*

liberal grant of pharma patents.[61] Justice Vikramjit Sen and Justice A. R. Dave decided to recuse themselves from the proceedings of a dispute between Bharti Airtel, Department of Telecom and Reliance Communications relating to adding of new customers by Airtel in circles where it had failed to get 3G spectrum licenses.[62] These two judges withdrew from the bench without assigning any reasons therefor.[63]

Justice Dal veer Bhandari's recusal from a bench was in response to a letter from the activists' regarding his participation in at least two international conferences forjudges[64] organized by the US-based Intellectual Property Owners Association (IPOA), whose members include Novartis, among a host of pharmaceutical and IT giants. In their letter to the government, the activists alleged that "several statements in the paper could be held to be in conflict with the intent and letter of the Indian Patent Act". They requested the government to take up the matter of recusal with Justice Bhandari "to avoid any room for questions to be raised once the judgment is given in light of the already expressed opinions on Intellectual Property in IPOA". Without waiting for the government to react, Justice Bhandari withdrew from the case immediately after the letter of the activists had been reported in Times of India.

[61] Manoj Mitra, *Novartis case: How two SC judges had recused themselves from the case,* TOI (Apr 2, 2013).*available at:* http://articles.timesofindia.indiatimes.com/2013-04-02/india/3821751 Olimatinib-european-patent-'patent-application.

[62] *2G scam: Two SC judges recuse from hearing Mittal & Ruia pleas,TOl* (Apr 19, 2013). *available at:* http://articles.timesofindia.indiatimes.com/2013-04-19/india/38673894_1_ravi-ruia-iustice-sen-bench .

[63] The Chief Justice of India Justice Altamas Kabir has to constitute another bench to hear this case.

[64] The avowed purpose of those conferences attended by Bhandari was to help "intellectual property (IP) law attorneys and other interested parties" get an opportunity to. interact with judges from around the world, In. the conference held in 2009, Justice Bhandari presented a paper arguing that pharma MNCs should *"educate people regarding the importance of the protection of IP rights"* and they should *"make all efforts to ensure (hat all countries are persuaded to enact proper laws".*

If no one objects, judge may proceed: If there is no objection raised by any side, judge will decide the case. Few cases of this type came before the court. Two senior Judges of the Supreme Court, who had headed the Committee and decided the service matter in the capacity of the judge of the Punjab High Court, heard the case on the judicial side.[65] The Punjab judges, with an appealing candour, asked lawyers appearing in the case if they had any objections. There were none. The judges heard the case. Justice S. H. Kapadia immaculately followed this practice. Disclosing the fact that he owns some shares in Vedanta, he frankly asked the lawyers appearing in the case whether he should recuse himself from hearing the case if the lawyers had any objections.[66] Notable lawyers replied with all humility that that he may proceed to hear the matter.

Without casting any aspersion on the judge, the fundamental question which arises here is: was this the right thing to do? Is it fair for a judge to ask lawyers whether he should recuse himself from a case? No lawyer can truthfully answer such a question either on his own behalf or on behalf of a client. It is a question that the judge himself alone can answer. If he says the judge should recuse himself, there would be a mild accusation of bias? If he says the judge should continue to hear the matter, justice may not appear to be done even if there is no bias. Equally, no lawyer wants to lose favour with the judge.

V. Conclusion

In the contemporary judicial landscape, we cannot start from Blcakstone's proposition that wrongdoing by judges will not be presumed. Yet it does not necessarily follow that we should turn our backs on the considerable value of judicial self-regulation. There must surely be a practical and publically palatable balance between absolute autonomy for the judges and what Professor Downing has rightly termed 'annihilative accountability.'

[65] *Punjab Civil Service, (2006) Case.*

[66] He was a member of Forest Bench which allowed the mining of bauxite in Orissa in an eco-sensitive tribal area subject to various concessions and conditions.

Judiciary is not yet beyond self-redemption—is thought to have respectable weight, then the argument runs that reform had better come from within, rather than being imposed from out. But it does not work in all the cases and all the times. Weighing the situation of Indian justice delivery system with United Kingdom and United States of America, the paper respectfully submits that justice should not be left at the mercy of individual who so ever it may be. We are also in need of a model code of conduct on the pattern of United States, which will ensure the impartiality of judges and in turn will improve the confidence of people in the institution.