

[Back](#)

[Opinion](#) - Editorials

Enforcing the rule strictly

It is a well-settled principle of law that the presence of a conflict of interest — actual or potential — is sufficient to disqualify judges from participating in legal proceedings. The rule against bias emerges from the maxim '*Nemo iudex in causa sua*', which means no man should be a judge in his own cause. The withdrawal of two Supreme Court judges on a single day is a reminder of the principles of judicial recusal and the importance of satisfying a fundamental tenet in the administration of justice — that justice should not only be done but also be manifestly seen to be done. The recusal of Justice R.V. Raveendran in a high profile gas dispute case involving the Ambani brothers on learning that his daughter was associated with a solicitor's firm advising one of the two parties underlines a basic point about the applicability of the rule of bias. It is nobody's case that Justice Raveendran's judgment would have been influenced or impaired by his daughter's link with the firm; conflicts of interest in the judicial realm are rarely about real bias. Rather, they relate to what is described as apparent or unconscious bias, concepts founded on the principle that there should not be even a smidgeon of doubt about external factors interfering in the course of justice.

Justice Raveendran, who had offered to pull out of the case earlier on the ground that he had shares in companies promoted by both the Ambani brothers, was persuaded to stay by the opposing lawyers. Strictly, the principles governing pecuniary bias demand that any financial interest, however small, disqualify a person from adjudicating. Justice Markandeya Katju was right in informing the two sides that he could not participate in another case involving Reliance Industries since his wife owned shares in the company. That even the slightest appearance of bias is enough to ruin a case is reflected in one relating to Chile's General Augusto Pinochet, who challenged an adverse order by Britain's House of Lords on the ground that one of the law lords, Lord Hoffman, was a Director of a registered charity connected with Amnesty International, a party to the case. Pinochet's lawyers did not allege actual bias, but a challenge on appearance of bias was sufficient to have the order set aside (see www.parliament.the-stationery-office.co.uk/pa/

ld199899/ldjudgmt/jd990115/pino01.htm). It is not uncommon for judges to withdraw from cases in India. The present system of a judge merely declaring his interest and leaving it to the lawyers to object to, or accept, his hearing a case is clearly unsatisfactory. The rule against bias needs to be applied strictly and the recusal of a judge who has any kind of interest should be automatic and be done at the earliest.

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