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RESEARCH ARTICLE

CONTEMPLATING UNIFORM JUDICIAL CODE IN INDIA VIS-A-VIS JUDICIAL EQUALITY

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ABSTRACT

A petition has been filed in the Supreme Court of India recently to implement a Uniform Judicial Code for High Courts across the country to adopt a uniform set of procedure, especially for virtual courts. Equality is the hallmark of any country recognising the rule of law. Judicial equality is one of the fundamental facets of the Constitution of India. In a multilingual nation like India how far uniform judicial code is justifiable and sustainable vis-a-vis the notion of equality under the Constitution of India needs contemplation. This article is an attempt to contemplate the concept of uniform judicial code through the prism of judicial equality.

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INTRODUCTION

Judicial equality is one of the fundamental facets of the Constitution of India. The principles of equality and fair treatment have always been fundamental to the role and conduct of the judiciary when carrying out their judicial functions.¹ Dr B.R Ambedkar stated that, "equality should be considered as the premier and foremost principle for the development of the nation. When in question, democracy or justice should always be analysed in reference to the concept of equality which is mainly considered as a precursor which is beneficial to the development of the nation."² This Right to Equality is implicit by the Constitution of India under Article 14³ which is contemplated as one of the prime fundamental rights. In a multilingual nation like India how far uniform judicial code is justifiable and sustainable vis-a-vis the notion of equality under the Constitution of India needs contemplation.

A petition has been filed in the Supreme Court of India⁴ recently to implement a Uniform Judicial Code for High Courts across the country to adopt a uniform set of procedure, especially for virtual courts.⁵

What is the Public Interest Litigation about?: The public interest litigation filed by advocate Ashwini Kumar Upadhyay urged the Supreme Court to take appropriate steps to adopt uniform procedure for case registration, common judicial terms, phrases and abbreviations and make the court fee uniform.⁶ The petition also seeks a direction to the Law Commission of India to prepare a report in consultation with the High Courts in this regard.⁷ As per the petition, "all the twenty five High Courts have different usage of the phrases when it comes to identifying different cases."⁸ The plea highlights how varied High Courts follow different procedures in matters pertaining to virtual courts that had started during the pandemic.

⁴ Ashwini Kumar Upadhyay Vs Union of India WP(C) No 001382/2021. Registered on 22-12-2021 in the Supreme Court of India.

⁵ <https://www.thehindu.com/news/national/plea-in-sc-see-ks-uniform-judicial-code-for-high-courts/article38032315.ece>

⁶ Ibid

⁷ Ibid

⁸ Ibid

¹ <https://www.judiciary.uk/diversity/message-from-lcj-judicial-diversity/>

² <https://j.uscnetre.com/2021/06/23/explained-concept-of-equality-in-india/>

³ Article-14: State shall not deny to any person equality before the equality or the equal protection of law within the territory of India.

This also led to the injury caused to citizens due to differences in the court fees in different States for the same type of cases. The petitioner pleaded that, "Judicial equality is a matter of constitutional right; its differentiation based on the jurisdiction of courts violates the right to equality"⁹.

What is Uniform Judicial Code?: The uniform judicial code is a comprehensive term used for a uniform procedure for case registration, using common judicial terms, phrases and abbreviations and making the court fee uniform.¹⁰

Why need Uniform Judicial Code?: There are following probable reasons for need to have a uniform judicial code

Matter of Equality: Judicial equality is a matter of constitutional right. Its differentiation based on the jurisdiction of courts violates the right to equality.¹¹

Different nomenclatures: All the twenty five High Courts have different usage of the phrases when it comes to identifying different cases.¹² The terminology used by different High Courts for different types of cases is not uniform.¹³ Non-uniformity causes inconvenience not just to the general public but, in many cases, to the advocates and the authorities as well.¹⁴ Not just the terms used by courts to refer to the same types of cases are different but even the abbreviations used to refer to these terms are different in case the same term is used.¹⁵

Diverse procedures: The petition highlights how different High Courts follow different procedures in matters pertaining to virtual courts, started during the pandemic.¹⁶ This caused lot of inconvenience to the litigants and delayed their matters.

Different fees: Unequal court fees in different states discriminate among citizens based on their place of birth and residence which is against the rule of law and the right to justice.¹⁷ Moreover, it promotes regionalism; hence it is a clear violation of Articles 14-15.¹⁸

Analysis and suggestions: Equality reflects equal treatment of everyone before the law. It implies that there cannot be any discrimination on the premises of religion, race, caste, gender, place of birth, etc. Laws apply in the same manner to all irrespective of a one's status, widely known as the principle of rule of law which is the bedrock of any democracy. It indicates that no one can be above the law. There cannot be any distinction between a prime minister and an ordinary citizen as everyone is subjected to the same laws. Hence, none can claim any special treatment. Article 14 incorporates two expressions; equality before law and equal protection of laws.

⁹ <https://www.thehindu.com/news/national/plea-in-sc-seeks-uniform-judicial-code-for-high-courts/article38032315.ece>

¹⁰ <https://www.civildaily.com/news/plea-in-supreme-court-seeks-uniform-judicial-code-for-hcs/>

¹¹ <https://www.dtnext.in/News/National/2021/12/26004543/1335763/Petition-in-SC-seeks-uniform-judicial-code-for-HCs-.vpf>

¹² Ibid

¹³ Ibid

¹⁴ <https://www.civildaily.com/news/plea-in-supreme-court-seeks-uniform-judicial-code-for-hcs/>

¹⁵ <https://www.dtnext.in/News/National/2021/12/26004543/1335763/Petition-in-SC-seeks-uniform-judicial-code-for-HCs-.vpf>

¹⁶ Ibid

¹⁷ Ibid

¹⁸ <https://www.newindianexpress.com/nation/2021/dec/25/plea-in-supreme-court-seeks-uniform-judicial-code-across-country-2399623.html>

The phrase equality before law reflects that all are equal before the law and are entitled without any discrimination to equal protection of the law. The expression equal protection of the law reflects that no state should deny to any person the equal protection of the laws. Equality before law employs the absence of any special privilege in favour of individuals and the equal subjection of all classes to the ordinary law. Equal protection of the law implies the equality of treatment in equal circumstances. The court in *Chiranjit Lal Choudhury Vs Union of India*¹⁹ it was held that equal protection means equal protection under equal circumstances and the State can make reasonable classification for purposes of legislation. Presumption of reasonableness is in favour of legislation and the burden of proof is on those who challenge the legislation. In *E.P Royappa Vs State of Tamil Nadu*²⁰, the Supreme Court challenged the traditional concept of equality which was based on reasonable classification and held that equality is a dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined and confined within traditional doctrinaire limits.

Although concept of equality demands equality of treatment, there are certain exceptions to it such as the following:

- The President and the Governors enjoy certain immunities.²¹ They are neither answerable to any court for the exercise and performance of the powers and duties of their offices nor any criminal proceeding can be instituted against them in any court during their term of office. They cannot be arrested or imprisoned during their tenure. No civil proceedings can be instituted against them during their tenure in respect of any act done by them in their personal capacities whether before or after they entered upon their office, until the expiration of two months next after notice has been delivered to them.
- No person shall be liable to any civil or criminal proceedings in any court in respect of the publication in a newspaper or radio or television of a substantially true report of any proceedings of either house of Parliament or state legislature.²²
- No member of the legislature of a state shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the legislature or any committee thereof.²³
- The foreign sovereigns, ambassadors and diplomats enjoy immunities from criminal and civil proceedings.
- No member of the Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof.²⁴
- Under Article 31-C laws made by the state for implementing Article 39 (b) and (c) of the Directive Principles of State Policy cannot be challenged on the ground of being violative of Article 14.

In *State of Kerala v. N.M. Thomas*²⁵ the court held that Articles 14, 15 and 16 are all equality rights, and that the scheme of equality sought to achieve real equality.

¹⁹ AIR 1951 SC 41

²⁰ AIR 1978 SC 597

²¹ Article-361

²² Article-361A

²³ Article 194

²⁴ Article 105

²⁵ (1976) 2 SCC 310

Equality is when each person is seen as equal in the eyes of the law.²⁶ However, when it comes to the judicial functioning, it becomes all the more imperative to conform to the principle of equality. Although the notion of equality contains certain exceptions but the present petition that is pending before the judiciary raises the question that whether the question in dispute falls within the exception or not? Meaning thereby that to what extent judicial equality can be exercised in the court rooms? Article 348 of the Constitution of India provides that official language of High Courts and Supreme Court shall be English.²⁷ The question arises if the language is to be common then why the usage of the language is different? Whether the interpretation of the statutory laws (central/State) becomes different due to differences of the places? If yes, then how Article 141²⁸ of the Constitution would keep its relevance under which any decision of the Supreme Court binds the subordinate judiciary? Non-uniformity in the usage of terminology in the courts would be a valid ground for the subordinate courts to alter or modify the decisions of the superior courts. This would also lead to chaos and multiple litigations. Similarly, a uniform fee structure should be available. The reason is that it will strengthen the centre-state relations. The Constitution of India recognises strong central tendencies over the State despite it being a quasi federal structure. Uniformity in the procedure will make it convenient for the parties as well as the judges whose jobs are transferable throughout the country. There will be fewer chances of misinterpretations and misconceptions if uniformity in the procedure and terminologies is recognised. Litigating parties will also feel financially secured and convenient due to uniformity in the fees.

It is the right of every individual to seek justice but if the very notion of justice includes a varied procedure this will not only cause inconvenience to the parties but will also deny them their right to seek justice in an appropriate manner. A uniform judicial code will act as a mode to channelize the arbitrary exercise of the administrative functioning of the courts/legislature. If the laws are common they why the procedures are differently applicable? The judiciary needs to develop a well-defined framework supported by an accessible platform and direct e-court system in India.²⁹ It also needs to harp on advanced infrastructure to run an e-court system that eradicates the digital divide, simultaneously upping judicial functioning.³⁰ While the digitized judicial systems give some semblance of convenience for the people who interact with the court, digitization also brings threats of intrusion etc.³¹

CONCLUSION

Equality hypothesises not just legal equality but also real equality. State is under an obligation to undertake initiatives to make it real and effective. Article-14 is the fon juris of our Constitution and therefore does not allow any kind of arbitrariness and ensures fairness and equality of treatment thereby imbibing rule of law. Differences in the treatment do not per se amount to violation of Article-14 but when there is absence of reasonable basis. There are diverse tests to decide whether a classification is reasonable or not and conforms to rule of law or not. Uniformity in any procedure would strengthen the unity and integrity of India. A uniform judicial code is the demand of the day and must be catered to before it is too late.

²⁶ <https://www.bbc.co.uk/bitesize/topics/znbrpg8/articles/z42khhk>

²⁷ Article 348: (1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides-

(a) all proceedings in the Supreme Court and in every High Court

(b) the authoritative texts-

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor of a State, and

(iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State, shall be in the English language.

(2) Notwithstanding anything in sub-clause (a) of clause (1), the Governor of a State may, with the previous consent of the President, authorise the use of the Hindi language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal seat in that State: Provided that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court.

(3) Notwithstanding anything in sub-clause (b) of clause (1), where the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor of the State or in any order, rule, regulation or bye-law referred to in paragraph (iii) of that sub-clause, a translation of the same in the English language published under the authority of the Governor of the State in the Official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this article.

²⁸ Article 141: Law declared by Supreme Court to be binding on all courts- The law declared by the Supreme Court shall be binding on all courts within the territory of India.

²⁹ <https://www.civildaily.com/news/plea-in-supreme-court-seeks-uniform-judicial-code-for-hcs/>

³⁰ Ibid

³¹ Ibid