

# Uncle Judges Practice

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## Abstract

Judiciary is one of the pillars of Democracy. It executes the role of to differentiate between right and wrong. People have faith in Judiciary against the ills of Democracy. Judges are the Justice giver in Judiciary so their roles are very sacred. But for some time, people have been losing their faith in them because of their susceptible actions. A reason behind this an “Uncle Judges Practice” i.e. to give favorable decisions to relative advocates against the merits of the case. Because of this practice, people with their advocates (who have no relation to judges in the court) don’t get the Justice. This paper also contains present rules and regulations to curb this practice. But many flaws, loopholes exist in these rules/regulations so they are not much effective. This paper also contains some effective suggestions to curb this practice. At last authorities should take concerned actions otherwise this will eat up the country.

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## **Introduction**

“The moral arc of the universe is long, but it bends toward justice”- Martin Luther King.

The power of justice and thus, the importance of those who are there on the seats as judges to provide it, are immense. India is the largest democracy of the world, but people of the nation do not have the faith in its leaders neither on the bureaucracy if there is anything that people have faith in is the judiciary but that is also losing its faith.<sup>3</sup> It is a general trend that the son of a businessman takes over the business from his father, or a bureaucrat's son generally takes over the administrative field or an actor's son into acting, the country has been observing the nepotism in politics since the independence. It is a common practice seen in the politics and so on, similarly a son or a daughter of a judge is bound to enter the field of law and they generally practice in courts where their father or relatives do. Mostly in all High Courts and also in the Supreme Court of the country, there are instances of advocates with father-judges, uncle-judges and brother-judges. This is what called as an Uncle Judges practice.

“Let us say there are four judges whose sons are practicing in the same court. The son of A will not appear in his father's court. The son of B will not appear in his court and so on. But they will appear in each other's court and there is a general understanding that if you help my son, I'll help your son.”<sup>4</sup> Such practice is going on and it keeps going on with the new generation coming with old judges retiring, new judges coming with their relatives, so the process keeps recurring.

“Often we hear complaints about uncle judges. As a matter of practice, a person who has worked as a district judge or has practiced as a lawyer in a High Court for many years is appointed as a judge, he is bound to have colleagues and kith-kin there. Even in government services, particularly, Class II and upwards, officers are not given postings in their home districts. In the same way, judges whose kith and kin are practicing in a High Court should not be posted there. This will eliminate uncle judges,”<sup>5</sup> but sadly any concern has been given to this recommendation and therefore nothing has been done in this direction.

## **Present rules and regulations given by various bodies**

In this part of paper, we will discuss the rules and regulations that are given by various bodies such as Bar Council of India, Parliament of India in the Judicial Standard and Accountability

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<sup>3</sup> SC judge expresses concern over inconsistency in judgments, REDIFFNEWS (Nov. 13, 2010, 11:07 PM), [www.rediff.com/news/report/common-man-has-lost-faith-in-judiciary-sc-judge/20101113.htm](http://www.rediff.com/news/report/common-man-has-lost-faith-in-judiciary-sc-judge/20101113.htm).

<sup>4</sup> Brijesh Pandey, *In the Court of the father*, TEHELEKA (Dec. 18, 2010), [http://archive.tehelka.com/story\\_main48.asp?filename=Ne181210COVERSTORY.asp](http://archive.tehelka.com/story_main48.asp?filename=Ne181210COVERSTORY.asp).

<sup>5</sup> 230<sup>th</sup> Law Commission of India Report, *Selection and Appointment of High Court judges* (Dec. 18, 2010), <http://lawcommissionofindia.nic.in/reports/report230.pdf>.

Bill, 2010, Advocates Act, 1961, Resentment of Values of Judicial Life, 1999 adopted by Supreme Court of India etc. These rules and regulations are made to restrict the Practice of Uncle Judges in Indian Courts.

Under the Part VI (Ch. II) (Sec. I) of Bar Council of India Rules, 1975, i.e. enacted under Advocates Act, 1961, it was clearly stated, “An Advocate shall not enter appearance, act, plead or practice in anyway before a Court, Tribunal or Authority mentioned in Section 30 of the Act, if the sole or any member thereof is related to the Advocate as father, grandfather, son, grandson, uncle, brother, nephew, first cousin, husband, wife, mother, daughter, sister, aunt, niece, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter in-law or sister-in-law.”<sup>6</sup> For the purposes of this rule, the Court shall ban an advocate in the Court, Bench or tribunal in which above mentioned relative or relatives of the Advocate are a Judge, Member or the Presiding Officer.

There were also some controversies regarding the term “court” that, in one High Court there are many judges work, court means only one court in which relative judges presides the proceedings or the entire court where that related judge works. This controversy was also resolved by Justice P.P.Bopanna of Karnataka High Court in the early 1980’s. In one case, S.Pramila, Advocate of the HC, who married to veteran Judge of the same HC, appeared before Justice P.P.Bopanna but he refused to hear her on the basis of the rules laid down by the Bar Council of India.<sup>7</sup>

He said, “The Bar Council prohibits a lawyer from appearing in a Court where a close relative works as a judge. While the term ‘court’ does not specifically refer to all the courts in a particular High Court, we should be strict with respect of a wife. A wife has an intimate relationship with her husband. Many matters discussed among judges would reach her ears. When a woman who has access to confidential matters in respect of a Court is allowed to practice in the same Court as a lawyer, it can spell danger.”<sup>8</sup>

But the merits of this interpretation were not taken to its logical end and this became irrelevant matter.

Judicial Standard and Accountability Bill, 2010, also restrict Advocates to practice before any court in which any of the judges is related to him as a family member or close relative.

“Some sections of this Bill that restrict this practice are followed:

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<sup>6</sup> The Advocates Act, 1961, No. 25, Acts of Parliament, 1961 (India).

<sup>7</sup> Raj Chengappa, *Can a judges wife practise in the same court*, INDIA TODAY (July 16, 2013, 12:25 IST), <http://indiatoday.intoday.in/story/can-a-judges-wife-practise-in-the-same-court/1/371832.html>.

<sup>8</sup> K.Chandru, *father-son-and-the-holy-court*, THE HINDU (Oct. 24, 2014, 02:41 PM), <http://www.thehindu.com/opinion/op-ed/father-son-and-the-holy-court/article6528282.ece>.

Section 3(b)-In particular, and without prejudice to the generality of the foregoing provision, no Judge shall have close association or close social interaction with individual members of the Bar, particularly with those who practice in the same court in which he is a Judge;

Section 3(c)-In particular, and without prejudice to the generality of the foregoing provision, no Judge shall permit any member of his immediate family (including spouse, son, daughter, son-in-law or daughter-in-law or any other close relative), who is a member of the Bar, to appear before him or associated in any manner with a cause to be dealt with by him;

Section 3(e)-In particular, and without prejudice to the generality of the foregoing provision, no Judge shall hear and decide a matter in which a member of his family, or his close relative or a friend is concerned.”

Bill also provided the specific meaning for the word “relative” as the spouse of the Judges, brother or sister of the Judge, brother or sister of the spouse of the Judge, brother or sister of either of the parents of the Judge, any lineal ascendant or descendant of the Judge, any lineal ascendant or descendant of the spouse of the Judge, spouse of the person referred to in clauses (ii) to (VI).

Supreme Court on May 7, 1997, adopted a charter named “Restatement of Values of Judicial Life” as a guide that will be observed by the Judges for better functioning. “Under this Charter, it is given that Judges should not have Close association with individual members of the Bar, particularly those who practice in the same court, and Judges should not permit any member of his immediate family, such as spouse, son, daughter, son-in-law or daughter-in-law or any other close relative, if a member of the Bar, to appear before him or even be associated in any manner with a cause to be dealt with by him.”<sup>9</sup>

### **Uncle judges practice in various courts**

There are several instances where we again and again came to know that such practice exists in various high courts of the nation. It was the Allahabad High Court, which is India’s biggest, with a sanctioned strength of 160 judges, which drew the attention to this practice of uncle judges prevailing in the Indian courts. “We are sorry to say, but a lot of complaints are coming against certain judges of the Allahabad High Court relating to their integrity. Some judges have their kith and kin practicing in the same court, and within a few years of starting practice, the sons or relations of the judge become multimillionaires, have huge bank balances, luxurious cars, huge houses and are enjoying a luxurious life. This is a far cry from

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<sup>9</sup> *Law Resource India*, INDIANLAWYERS, <http://indiancorruptjudges.com/Plot4Plot/000%20Up%20Dates/06%20CJI.LahotiFirm/CJI.3Docs.1999%20Restatement%20of%20Judges%20values.htm..>

the days when the sons and other relatives of judges could derive no benefit from their relationship and had to struggle at the Bar like any other lawyer.”<sup>10</sup> These were the words said by former judges of Supreme Court MarkandeyKatju and GyanSudhaMisra. The issue started when Raja Khan, the litigant, went to court to hold a fair, the JethMela, on Wakf land in Bahraich district in Uttar Pradesh which is under the jurisdiction of the Lucknow Bench of the high court to which The Lucknow Bench has not allowed Raja then he went to the Allahabad High Court, where Judge Rakesh Sharma, on a single-judge bench, said he could hold the mela on Wakf land. It wasn’t over though. A Division bench in Allahabad overturned Sharma’s judgment. Finally, Khan went to the Supreme Court, where Katju tore into the Allahabad High Court. “The faith of the common man in the country is shaken to the core by such shocking and outrageous orders as the kind which has been passed by the single judge... Something is rotten in the State of Denmark, said Shakespeare in Hamlet, and it can similarly be said something is rotten in the Allahabad High Court, as this case illustrates.”<sup>11</sup>

“It was found that there were nine judges whose immediate relatives were practicing in the same court. It was also found that half the Allahabad High Court judges have immediate relatives practicing in the same court. While there are no rules barring relatives from practicing in the same court.”<sup>12</sup>

Not only in Allahabad High Court but also in other High Courts too this practice is prevalent such as Madhya Pradesh High Court. “There were nine judges of the high court who have been named in a complaint filed with the Chief Justice of India S.H. Kapadia and Chief Justice of Madhya Pradesh High Court RafatAlam. The issue was first raised at the general meeting of MPHCB and MPSBC where members slammed the trend by passing a resolution, which pointed an accusing finger at section of lawyers who have been either juniors of a high court judge prior to their elevation or "close relatives". "This group is looting the gullible litigants by promising them guaranteed justice from such the judges by charging them a hefty sum.”<sup>13</sup>

Punjab and Haryana High Court is also in the ambit of this practice of Uncle Judges. “In 2014, At least 16 (34%) of the 47 judges in the Punjab and Haryana high court have kith and

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<sup>10</sup> Farzand Ahmed, *Uttar Pradesh: High court laid down*, INDIA TODAY (Dec. 03, 2010), <http://indiatoday.intoday.in/calendar>.

<sup>11</sup> *Everyone knows which judge is corrupt: SC*, TIMES OF INDIA (DEC. 10, 2010, 11:47 AM), <http://timesofindia.indiatimes.com/india/Everyone-knows-which-judge-is-corrupt-SC/articleshow/7075338.cms>.

<sup>12</sup> KunalMajumdar, *Judges hear cases argued by sons. Not good counsel at all*, TEHELKA (Dec. 11, 2010), <http://www.tehelka.com/2010/12/judges-hear-cases-argued-by-sons-not-good-counsel-at-all/>.

<sup>13</sup> *Uncle Practice*, JUDICIAL REFORM IN INDIA (Jul. 6, 2013, 3:15 AM), <http://www.judicialreforms.in/forums/showthread.php?tid=975&pid=1585#pid1585>.

kin practicing law at the same place. Either these relatives have a private practice or the Punjab and Haryana governments have accommodated them in respective advocate general offices.”<sup>14</sup>

There were seven judges with their kith and kin practicing in the same court of Rajasthan High Court as reported, Justice Dinesh Maheshwari’s son MukteshMaheswari, Justice Vineet Kothari’s son Vinay Kothari , Daughter of Justice Gopal Krishna Vyas are practising as lawyers in the same Rajasthan High Court at Jodhpur Bench where all the three are sitting judges.

“In 2003, Bar Council of India forwarded a list of 18 Delhi High Court, 5 Bombay High Court and 7 Rajasthan High Court Judges, whose kith and kin were practicing before the respective High Courts.”<sup>15</sup>

It was also drawn heavily from the 230th report of the Law Commission, which details the phenomenon of local high court judges, or the ones who are posted to the same bench before which they have practiced for decades.

### **Loopholes in the present rules and regulations**

Now, we will discuss about the loopholes that exist in the present rules and regulations given by various bodies and how the Judges and their relatives avail the advantage of them.

In one High Court, there are many judges. Present rules and regulations only restrict relatives, family members of a particular Judge to appear before him/her, but not restrict them to appear before other colleagues of that Judge. And Judges and their relatives avail the advantage of this loophole. Let us explain in this way, there are some Judges in the High Court and relatives or family members of every Judges are practicing in the same court. Then, according to the rules and regulations, they can’t appear before their relative Judge, but every Judge makes some understanding with other Judges and then the relatives of the first Judge can appear before the second Judge and the relatives of second Judge can appear before the first Judge.

Also a former Union Law Minister Mr. Shanti Bhushan supports this theory. According to him, “let us say there are four Judges whose sons are practicing in the same court. The son of A will not appear in his father’s court, and the son of B will not appear in his father’s court

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<sup>14</sup> *Every third HC judge is a ‘uncle’*, HINDUSTANTIMES(May 3, 2014, 9:31 IST), <http://www.hindustantimes.com/punjab/every-third-hc-judge-is-uncle/story-emvLdM8SlnknyCQ4A7uLM.html>.

<sup>15</sup> *7‘Uncle Judges’ in Rajasthan high court*, BHADAS MEDIA (Sept. 14, 2010, 17:04 PM), <http://old.bhadas4media.com/vividh/6545-uncle-judges.html>.

and so on. But they will appear in each other's court and there is general understanding that if you help my son, I will help your son. And this is happening in many cases."<sup>16</sup>

In fact, there is no strict implementation of present rules and regulations and that's why lawyer can practice before his/her relative Judges. There are many example of defying the present rules and regulations such as Mr. Fali S. Nariman, Senior Advocate of Supreme Court, has been often appearing before his son Rohinton F. Nariman in Supreme Court since he became the Judge in 2014.

So because of these types of practices, present rules and regulations are not effective and the practice of 'Uncle Judges' is going on in almost every court in India.

### **Effects on the society**

Nepotism is not a very new thing, it is common in many professions such as politics, but when it comes to Indian judiciary it affects the very soul of the constitution. The importance of judiciary is not needed to be told. The Judiciary is a part of the democratic process. Judiciary is the one which keeps check on other pillars of the country and view all with one eye and treat everyone equally.

It not only affects the new lawyers who comes in this field of practicing law as those lawyers who practice in the courts of their relative have an influence and take the decision in their favors as the person sitting on the seat of the judge is their father, uncle or brother and the other lawyer who does not have any relation stand still and although having skills and doing hard work he or she does not get what they deserve to get. On one hand, these lawyers who do hard work remains at that same level and a lawyer who comes later than them goes above them and in a very short period of time such lawyers are able to earn a good amount of money, buy new luxury cars and get a good number of clients to them just because the one who is sitting in the courtroom to decide their case are their uncle. This practice of Uncle Judges certainly gives a disappointment to that very lawyer who works hard and then also not able to achieve what he deserves to achieve. This also causes heart burning to litigants and defendants who cannot get what they actually deserve because the one who is administering justice is not his relative. People see the courts as their last option where they can get justice and have faith that this is the place which will be totally fair in deciding any issue, but it is very much disappointing on the part of that individual when he comes to know that the decision is not in his favor although he may be right, just because his lawyer or he does not have any relative sitting in the court.

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<sup>16</sup> KrishanarajRao, *Uncle Judges of Indian Judiciary*, SADDHAHQ(June 14, 2015, 22:42 PM), <https://www.saddahaq.com/uncle-judges-of-indian-judiciary>.

There are many judges who support the relatives of brother judges as explained by former Union law minister Shanti Bhushan. This practice of uncle judges to this level affects the society very badly. Presently there is no such system which keeps a check on judges and if there is any it is not implemented as a result it closes the door for justice to common people.

“This favoritism also murders the confidence of the common Indian citizenry in the judiciary, and it distorts the entire judicial machinery by creating wrong case laws. It does great injustice to litigants and defendants who cannot afford to engage a judge’s relative.”<sup>17</sup>

### **Solution for this practice**

In this part, we will discuss about some effective measures to curb this practice. Present rules and regulations are not competent enough to tackle this problem, that’s why there is a need for some effective rules and regulations that can tackle this practice.

The process of appointment of Judges of High Court/Supreme Court is laid under the Art.217 of the Indian Constitution. According to Art.217(2)(b)<sup>18</sup>, “A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and has for at least ten years been an advocate of a High Court or of two or more such Courts in succession; Explanation For the purposes of this clause.” So, according to this provision, CJ can give the name of Advocates from the Bar to be appointed as the Judges of the High Court, so in this case appointed Judges have the relatives and family members that practicing in the High Court.

To tackle the problem arising from the appointment of Judges, the first solution is that some Judges of the High Court should be from outside of the state, then they do not have the relatives or family members that are practicing in that High Court and also they will not allow relatives of colleagues to appear before them because there is no such understanding between them and other Judges as said by Mr.ShantiBhudhan.

Supporters of this view also express their views. Eightieth Report of the Law Commission agreed with the recommendation made by the earlier Law Commission in its Fourteenth Report that one third of the Judges of the High Court should be from other states. Law Commission also gave the reasoning behind this recommendation, “Evolving such a convention would in our opinion, not only help in the process of national integration but would also improve the functioning of various High Courts. It would secure on the Bench of each High Court the presence of a number of Judges who would not be swayed by local

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<sup>17</sup> *Open Secret: Uncle Judges of Indian Judiciary*, SADDHAHQ (June 14, 2015, 22:42 PM), <https://www.saddahaq.com/uncle-judges-of-indian-judiciary>.

<sup>18</sup>INDIA CONST. art.217, cl. 2.

considerations or affected by issues which may rouse local passions and emotions. As observed by us in one of our earlier Reports, one of the essential things for the due administration of justice is not only the capacity of the Judges to bring a dispassionate approach to cases handled by them, but also to inspire a feeling in all concerned that dispassionate approach would underlie their decision, quite often, cases which arouse strong emotional sentiments and regional feelings come up before the courts of law. To handle such cases, we need Judges who not only remain unaffected by local sentiments and regional feelings, but also appear to be so. None would be better suited for this purpose than Judges hailing from other States.”<sup>19</sup>

“Mr. S.V. Gupte, former Attorney General of India and who is known for bold and courageous expression, of his views, stated that he was wholly in favour; of having one-third of the number of Judges in each High Court from outside the State because that alone may perhaps secure some kind of freedom from bias on grounds of caste and class consideration or any close association with local people.”<sup>20</sup>

Other supporters of this view are Report of the Study Team of the Administrative Reforms Commission, 1967, meetings of the Consultative Committee of Parliament for the Law Ministry held on 7th June, 1980, 24th July 1980 and 17th December, 1980, The National Seminar on Judicial Appointments and Transfers convened by the Bar Council of India from 17th to 19th October, 1980, etc.

The Second solution of this problem may be that all the Judges of High Court of one state should be from other states. This idea can curb the practice of Uncle Judges very effectively. The reasoning behind this idea is according to the Law of Avoidance. In China this principle was prevalent. According to this principle, “no one is appointed to high positions in his native province and no two members of the same family be allowed to work in the same locality or service, so as to prevent nepotism and the forming of cliques.”<sup>21</sup>

Also, there should be made stricter laws regarding this practice their strict implementation should be insured. The rules that are given under the Bar Council of India Rules, 1975 is very effective if strict and proper implementation of them is insured, but in the lack of proper and strict implementation nothing happened and this practice is going on.

## **Conclusion**

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<sup>19</sup>S.P.Gupta v Union of India, A.I.R. 1982 S.C. 149.

<sup>20</sup>*Ibid.*

<sup>21</sup>*Ibid.*

It is high time that we have to look in this matter and the authorities should take the concerned actions otherwise this will eat up the country as judiciary is one of the pillars of the nation and any disturbance with this pillar will lead the whole nation to suffer. The practice hurts the sole purpose of the constitution of check and balance. The practice of uncle judges directly or indirectly affects every citizen of the country as we all are linked with a chain where sometimes we are lawyers appearing on someone's behalf , sometimes we are petitioner, and we become victim of this practice which has very adverse effect on the society. So, there is a need of some actions to be taken and also there should be strict implementation of the same. We have suggested some solutions after analyzing the problem and also the loopholes in the present solutions, which can be taken to eradicate this problem and keeping the heart and soul of our judiciary remain pure where there is equality and justice for all.