

# QUALITIES OF A SENIOR ADVOCATE

Section 16 of the Advocates Act, 1961 states that there shall be two classes of advocates, namely, senior advocates and other advocates. A lawyer, with his consent, may be designated as senior advocate if the Supreme Court or a High Court is of that opinion that by virtue of his ability, [standing at the Bar or special knowledge or experience in law] he is deserving of such distinction.

**Collaboration:** Capability or ability to show case your talent to multi-party work environment and this process shows your talent of working well in a team as well as it sets a collective contribution so as to satisfy the client. The main aim is to settle the ego and positions of each other to reach the maximum outcome.

**Time management:** Law demands hard work and hard work needs time and with that it also needs to prioritise their work, task and also delegate the work.

**Credibility:** Credibility is based on trust. The keystone of your career is built on this level of trust with your colleagues, clients, judges and sometimes even opposing counsel. But this quality or a trait which is not by birth but it is earned with time. The only effective way to build your career is trust and human interaction is a way to maintain it or destroy it. In this profession, one should be a man of words.

**Confidence:** Both personal and professional confidence is needed to become a senior advocate as analysing power of your decision time, advantages and disadvantages should be high. Confidence can be seen within yourself and it define you as you walk and talk. Even your gestures play a major role.

**Attention to detail:** While drafting any paper, misplace of single word can convert the meaning of the sentence. An advocate must have an accurate approach towards their work. Any mistake application can lead to rejection of your application.

**Experience:** Experience speaks. With your practise experience comes. It is one of the traits that a senior advocate has and through this experience an advocate can handle all the cases, circumstances and even all the unwanted situations. His handling power becomes prominent with comparison to others.

**Logical Thinking:** A good lawyer always keeps his personal life separate from professional life and they usually are not emotional. But they need to understand the feelings of the other person and apprehend their issues. This trait is very important your personality. Your ability is tested when you can think in any circumstances or situations without even consulting your associates and then present that case in your favour in a reasonable or logical manner so as to win your case. Never take your opposite counsel personally because it's about your client not about you and always be harmonious even with opposite counsel also.

**Self control:** Whether your case is on a negative track or a positive track control on emotions, expression and thoughts is also essential. You always need to think before you speak. If words are beneficial they can be harmful too. .

**Stability :** A senior lawyer always have a stability in this thoughts as well as in his career. He can tackle every situation in a peaceful manner and have a conversation calmly without any aggression. Stability and maturity in professional or personal life comes with experience.

## Difference between Senior Advocate and Junior Advocate?

1. A senior advocate in general is based and judged on age and experience of a particular legal profession. It is also defined in Advocates Act as stated above. While a junior lawyer lacks experience and does not have much idea of how to tackle things and go around with them.
2. Senior advocate has to follow a separate code of conduct. It is different from other lawyers.
3. General people see an aged lawyer with good practice and experience as a 'senior lawyer' while a fresh lawyer needs to learn so many things from the senior lawyer and had to grasp some skills.
4. Devotion and years of practice is the key behind the success of a senior lawyer while a junior lawyer lacks this skill and quality.
5. Senior advocates are prohibited from doing some kind of legal work like drafting, etc while junior advocates have no such prohibition.

6. The status of senior lawyer is designated to them by the Supreme Court or High Court on the basis of merit and seniority.
  7. The court can give this status to any advocate but with their consent if it is in the opinion because of his ability or special knowledge in law.
  8. A saving provision has been laid down with respect to the advocates who are right now senior advocates and who will continue to enjoy the status of senior
  9. A senior advocate is prohibited or banned from accepting some kind of legal work. For e.g. drafting, draw pleadings or affidavits,
  10. A senior advocate is not permitted to appear without an Advocate-on-record or without any junior.
  11. A senior cannot file any pleading or represent his client neither can draft an application by his own handwriting.
- But this does not mean that it gives special favour or do any discrimination and if it does then it will violate Article 14 that is equality and Article 18 conferment of any title of the constitution

## Conclusion

Senior advocate is recognition of his skills, experience, knowledge and expertise. If one is aspiring to become a senior advocate, then it needs lots of sweat taking hard work and with that special knowledge in the field of law. But only hard work is not the key to success with that you also need to do some smart work. Among that- building your communication skills, advocacy skills, counselling skills and use of your brain in multiple directions.

To become a senior lawyer and a have a special ability is not so easy task. Experience is one of the major factors which creates your confidence and leads you to the success.

In July 2015, Ms. Indira Jaising, a Senior Advocate filed a petition in public interest in the Supreme Court of India titled Indira Jaising v. Supreme Court of India (through the Secretary General) & Ors. seeking guidelines for the designation of Senior Advocates. We discuss below what motivated the Petition.

Section 16(1) of the Advocates Act, 1961 recognizes two classes of advocates – senior advocates and other advocates. Section 16(2) further provides who may be designated as a senior advocate and reads as under:

*“An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability [standing at the Bar or special knowledge or experience in law] he is deserving of such distinction.”*

This section was amended in 1973 to include the words “*standing at the Bar or special knowledge or experience in law*” and originally stood as “*experience and standing at the Bar*”.

The same criteria can be found in the rules framed by the various High Courts and the Supreme Court of India in this regard.

Order IV Rule 2(a) of the Supreme Court Rules 2013 provides that:

*“The Chief Justice and the Judges may with the consent of the advocate. designate an advocate as senior advocate if in their opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law the said advocate is deserving of such distinction.”*

Thus, the power to designate has been given to the Full Court i.e. the Chief Justice and the Judges. As such, the practice seems to be that after applications are received for designation, they are circulated to all Judges and applications receiving recommendations from at least five judges are put to vote in the Full Court and are generally designated. Thus, the process is entirely opaque and there is no way of knowing whether any of the criteria guiding Order IV Rule 2(a) of the Supreme Court Rules and Section 16(2) of the Advocate Act are taken into account since there exist no minutes of meetings detailing evaluation of applications or discussions on the same, the applicants are not interviewed, reasons for non-designation are not communicated to applicants, moreover, the Court adopted voting by Secret Ballot in 2014 making it impossible to know who voted for whom.

**Arguing** that the outcome of procedure was unequal, Ms. Jaising in her petition suggests that there should be a 100 point index for objectively evaluating the fitness of the person for designation and also taking into consideration factors such as contribution to public life, to legal aid, to academic publications and to expert knowledge in specialized branches of law. She also suggests that voting is not a recommended method for decision-making but rather the candidate should be interviewed and there should be an open discussion in the Full Court on the fitness for designation.

While, the criteria for designation has been stated to be *standing at the Bar, special knowledge or experience in law*, it is unclear how the same are evaluated resulting in arbitrariness, favouritism, nepotism and exclusion of advocates with specialized/domain experience, in the process of designation of senior advocates.

Between 2000-2015, the Supreme Court has only designated one advocate belonging to the Dalit community, none from the disabled category, similarly minority communities and women have been discriminated against, there also exists regional discrimination in as much as no advocates have been designated from backward states such as Chhattisgarh, Jharkhand or Bihar.

Senior designations have become almost a political issue in recent times, and have even given rise to lobbying for the recommendations of judges.

In February 2016, a survey was conducted by Bar and Bench on the issue seeking public opinion on the current system of senior designations. A total of 807 participants took part, of which, 92% were lawyers, 2% were law students/in-house counsels and the remainder 6% were non-lawyers. The respondents were asked thirty questions ranging from the participant's education, place of practice, and opinion on possible bias within the system of designations. 70% of the participants were first generation lawyers from their families.

56% of the respondents stated that the system of senior advocates should be done away with. 75% of participants felt that designations are discriminatory based on political ideology; while 74% felt that discrimination was based on social status, 52% felt that they were discriminatory on the basis of gender, 45% on the caste and 32% on the basis of religion. Further, nearly 87% believe that the chances of being designated are higher if one has a Senior Advocate in their family.

As to the method/process of designation, 81% of the participants felt that candidates should be interviewed before designation is made. Some of the participants also made their own suggestions:

- The courts should record its reasons in writing for approval or disapproval. This would put a lid on the speculative practices associated with senior designation.
- Make a point system based on
  - (i) Number of years of practice;
  - (ii) Range of cases handled;
  - (iii) Number of juniors mentored;
  - (iv) Make it compulsory for Seniors to devote at least 5 hours a week teaching;
- Designation should be based on objective criteria, similar to the one adopted in England & Wales, where the criteria on the basis of which counsel are designated is known.

T.S. Thakur as he then was, issued notice on the petition and made an oral order to the effect that no designations would be made by the Supreme Court till the petition is finally decided.

In October 2016, the petition was finally heard and judgment was reserved. Ms. Indira Jaising made detailed submissions. Dissatisfaction amongst members of the Bar on the issue of designations was recorded by then Chief Justice of India, J. T.S. Thakur, in his order-dated 02.01.2017 where he wrote:

*“... issues touching designation of lawyers as per the prevalent procedure appears to be causing considerable dissatisfaction among a section of the bar which fact is evident from the large number of interventions made in these proceedings and an equally large number of solutions proposed at the bar for improvement of the system.”*

The matter was then directed to be re-heard taking into account the views of the members of the Bar along with a writ petition filed in the High Court of Delhi challenging the very recognition of two classes of Advocates.

Professor Marc Galanter and Nick Robinson have referred to senior advocates as “Grand Advocates” in their paper titled *India’s Grand Advocates: A Legal Elit Flourishing in the Era of Globalization*. Hinting at the monopolistic nature of the system of designations, they state that,

*“The pre-eminence of the Grand Advocates is a contemporary expression of a long-standing and pervasive pattern of steep hierarchy at the bar. At every level, the provision of legal services was (and is) dominated by a small number of lawyers with outsized reputations, who have the lion’s share of clients, income, prestige, standing and influence.”*

They have even stated that there is no close parallel to Grand Advocates in other countries!

The matter has since been referred to a larger bench by a bench comprising of J. Gogoi and J. Navin Sinha on 22.03.2017. The Bench however left designation in the interim up to the discretion of the Full Court.

The Secretary General through the Registrar has filed an affidavit opposing the petition contending that the petition is not maintainable and that the existing procedure is just and fair. The affidavit nowhere discloses that it has the approval of the Full Court, the authority in charge of designation. Ms. Jaisingh has filed an interim application for an order directing the Secretary General to obtain the views on the Full Court and place them before the Court and to stay all designations until then. Notice returnable in two weeks has been issued on the application and the matter is likely to come up thereafter.

The system of senior designations is akin to the Queen’s Counsel (QC) in the United Kingdom. Over time, the QC system was criticized for being too secretive, prone to the allegation that it was simply a means of perpetuating an Old Boys’ Network of very well-paid barristers.

In 2001, the Director General of Fair Trading in his report *Competition in Professions* questioned the value of QC to consumers, the way it operates as a quality mark and the extent to which the rank acts to distort competition, whether is it appropriate for the Crown to give a title to selected practitioners, which enhanced their earning power and competitive position relative to others. Concerns were also raised as to the selection process and it was noted that there is inadequate peer review and no professional examinations in order to become a QC and the transparency, objectiveness and nondiscrimination of the process were questioned. The report led to reform in the QC system and assessors are now required to assess the applicants by giving comments about their assessment under various heads such as Understanding and Using the Law, Written and Oral Advocacy, Working with other, Diversity, and Integrity.

While the QC system has been reformed, the Indian system of Senior Advocates plagued by the same issues has a long way to go. One hopes to see change for the better and for the process to be fair and objective.