Designation of Senior Advocates

Mains Syllabus: GS II - Structure, organization and functioning of the Judiciary

Why in the News?

Recently, the Supreme Court of India decided to refix the methodology and the criteria for designating lawyers as senior lawyers.

What is the classification advocates?

- **Classification of Advocates** - Advocates Act, 1961 classifies advocates into two: senior advocates and advocates.
- **Objective** – The desination keeps the advocates motivated towards the legal as they are awarded for their excellence and on the basis of their meritorious record.
- The designated senior advocate is awarded this privilege as a mark of excellence for significant contribution to the legal profession.
- **Criteria** - Based on ability, standing at the Bar or special knowledge or experience in law, a 'deserving' advocate could be designated by the constitutional courts as a senior advocate.
- **Designation Process** - Advocates Act, 1961 provides the power to the High Courts and Supreme Court to designate an advocate as senior advocate with his consent.
- It is truly based on the discretion of the Full Bench Court who decide through vote by secret ballot.

Privileges of Senior Advocate
• **Pre-audience** - Senior Advocates generally have the right of pre-audience in court, meaning their cases are heard before those of other advocates. • **Distinctive Gown** - In a symbolic gesture, their black gowns have a distinctive flap at the back, setting them apart from other counsels. This harkens back to the historical distinction between barristers and solicitors. • **Inner Bar** - They enjoy the privilege of sitting in the 'Inner Bar', the front row of seats in a courtroom, while junior advocates sit in the 'Outer Bar'. • **Cases Called First** - Customarily, their cases can also be called first or whenever they step into court.

What are issues with the classification of advocates?

- **Inequality** – The classification of advocates is an Orwellian notion that makes some are more equal than the others.
- **Uneqaul Treatment** - The very incorporation of this provision is often contended as problematic as it accepted the idea of unequal treatment of those who are otherwise equals.

- **Division in Legal Fraternity** - This led to a sharp division in the legal profession and created a legal oligarchy, which in turn deeply impacted our idea of justice.
- **Creation of Legal Plutocracy** - Jurist F.S. Nariman lamented that the system has established a caste system among lawyers.
- **Sideline of Women and Marginalized** – Most of the designated senior advocates are men from a family legacy of judicial history.
- **Commercialisation of Legal Profession** - The division also had the tendency to accelerate the commercialisation of the legal profession, making it almost resemble the scene in the United States.

What is the situation in the US?

- **Elite Cadre of Lawyers** - A Reuters report titled 'The Echo Chamber' (2014) says that in the U.S, "an elite cadre of lawyers has emerged as first among equals, giving their clients a disproportionate chance to influence the law of the land".
- **Disproportionate Success Rate** - The report added that a survey of cases between 2004 and 2012 showed that "66 of the 17,000 lawyers who petitioned the Supreme Court succeeded at getting their clients' appeals heard at a remarkable rate".
- **Dominance in Appeals** - The report demonstrates that during this period, less than 1% of lawyers were handling 43% of the appeals to the U.S. Supreme Court.
- **Corporatism in Judiciary** – The most influential members of the profession represented the corporate firms and this resulted in "a decided advantage for corporate America, and a growing insularity at the court".

What is the status of cases filed on this issue?

- **Indira Jaising Case 2017** - The question was raised on the power of the Court to designate senior advocates.
- It sought for transparency and objectivity in the designation process and constitution of a permanent Selection Committee for such purpose.
- **The Judgement** - The Supreme Court considering the discrepancy in the process, laid down guidelines for consistency in the designation process and also provided for constitution of the Permanent Committee.

Supreme Court Guidelines on Indira Jaising 2017 Jedgement

• **Permanent Committee** – It provided for the constitution of a five-member Permanent Committee comprising of
  - Chief Justice
  - Two senior-most Judges
  - The Attorney General/Advocate General of the state; and
  - A member from the Bar, nominated by the other four.
• **Point-based Format** - The PC could assess applications based on a point-based format consisting of
  - 10 points for 10-20 years of practice;
  - 20 points for years of practice beyond 20 years;
  - 40 points for Judgements which indicate the legal formulations advanced by the concerned advocate in the course of the proceedings of the case, pro bono work, and domain expertise;
  - 15 points for publications; and
  - 25 points for the interview.

- **Indira Jaising** 1 was effectuated by the Supreme Court Guidelines to Regulate Conferment of Designation of Senior Advocates, 2018.
- **2023 refinements** - In Indira Jaising-II, the Court held that the process of voting by secret ballot (by Judges in the Full Court) was an exception and not the rule.
- **Reversals and changes in 2025** - In Jitender @ Kalla, the Oka-Bench made a decisive departure from the reforms introduced through the Indira Jaising judgments.
- Finally, the judgment held that no new designation processes should be initiated until the Supreme Court and the High Courts formulate a new regime of rules and guidelines.

What are the issues with the 2018 guidelines?

- **Lack of Objectiveness** - The Court found the point-based assessment to be highly subjective and practically unworkable.
- **Voluminous Work** - Permanent Committee (PC) could not assign 50 marks based on voluminous written submissions and judgments.
- **Misalignment with Practical Demands** - The Bench also criticised the provision for awarding 5 points to publications as unjust and misaligned with the practical demands of the legal profession.
- **Inadequate Fairness of Interviews** - Short interviews were insufficient to assess a candidate's suitability and that articulate but less meritorious individuals could receive disproportionate marks.
- **Violation of Dignity of Legal Profession** - Subjecting experienced advocates to a brief interaction, the Court held, was inadequate and violated the dignity of the legal profession.
- **Weightage on Year of Practice** -- The criterion of assigning marks based on years of practice, could unfairly reward mediocrity and that mere longevity at the Bar was not a rational basis for designation.

What needs to be done?

- India needs to guard against the perils of growing inequality in the legal profession.
- The system of designating and classification of senior advocates needs to be evaluated

from the perspective equality, diversity, just and fairness.

- The role, benefits and perks of the designation also should be examined to ensure that it does not create inequality in judicial system.
- The designation process needs to be made transparent, fair, objective and diverse.

References

1. The Hindu | Practising Equality in Constitutional Courts
2. SCO | Turning the clock back on Senior Advocate designation

