

BY EMAIL

16 March 2022

To,

1. **Honourable Prime Minister,**
Government of India,
7-9, Lok Kalyan Marg,
New Delhi – 110011
2. **Honourable Cabinet Minister for Law and Justice,**
Government of India,
4th Floor, 'A' Wing, Shastri Bhawan,
Rajendra Prasad Road,
New Delhi – 110001

**Subject : Open Letter About Need for Amendment of Section 16 of
The Advocates Act, 1961 Regarding Senior Advocates**

Respected Sir,

We, Advocate Anil Chawla and Advocate Yogita Pant, most humbly and respectfully draw your kind attention to the fact that urgent intervention is needed by your government and the Parliament to amend the present system of designation of Senior Advocates. The present system has been intentionally distorted by the esteemed members of judiciary over past many decades to reduce supply of competent professionals, increase prices and make justice

expensive and unaffordable for the common man. The present system is hurting the common man as well as governments and is acting as a hindrance to the growth of India as an international arbitration centre and is harming the interests of the country in international forums.

We most humbly and respectfully submit as follows:

1. Section 16(2) of the Advocates Act, 1961 (hereinafter referred to as "**the Act**") states that, "*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*".
2. The Act does not state the number of advocates to be designated as Senior Advocates by the Supreme Court or by the High Court. This lacuna in the Act has been exploited by the Supreme Court and the High Courts to create an artificial shortage of Senior Advocates in the country.
3. As on 11th December 2021, Honourable Supreme Court of India had designated 436 advocates as Senior Advocates. Some of these 436 Senior Advocates may well have retired or may have expired. Hence, the actual number of living and practicing Senior Advocates of Supreme Court of India is likely to be less than the above number.
4. Honourable High Court of Madhya Pradesh has up to the date of this letter designated 135 Senior Advocates. Again, many of these 135 have already either retired or have passed away.
5. It is estimated that the total number of living and practicing Senior Advocates designated by Supreme Court and all High Courts in the country is less than 5000. This needs to be viewed in the perspective that

- India has about 20,00,000 (Twenty Lakhs or Two million) advocates and India has a population of 1.4 billion (One Hundred and Forty Crores).
6. It is worthwhile to compare the above figures with the corresponding statistics from United Kingdom of Great Britain and Northern Ireland, the country from where India has inherited her legal and judicial system. England and Wales (population about 60 million or Six Crores) had, in 2017, about 17,000 barristers of which about 10% were Queen's Counsels (equivalent to Senior Advocate of India). In England and Wales, there were 28 Queen's Counsels for one million population while India has less than 3.5 Senior Advocates per million population.
 7. Law Commission of India in its Supplementary to Report No. 246 (2015) writes "*the UK government has announced that the legal services sector contributed 20.9 billion GBP to the economy in 2011, a majority of which would have come from arbitration given that London is the leading preferred centre for arbitration. At today's prices this is equivalent to **Rupees 2.9 lakh crores** in a year.*"
 8. India cannot hope to emerge as a preferred centre for international arbitration when it has a shortage of certified qualified and experienced competent legal professionals (Senior Advocates). One cannot expect advocates who are not respected and recognized in their own country to be treated respectfully outside India or by companies and governments of foreign countries.
 9. The shortage of Senior Advocates in India is a result of intentional (and one may even add malicious) actions by the senior members of judiciary over the past decades. The purpose of keeping numbers low is to inflate fees to astronomical levels. Some of the Senior Advocates are rumoured to charge as high as Rs. 25 Lakhs for a single appearance. Not surprisingly, Senior Advocates in India often charge more than legal

- professionals in any part of the world. It is a classic case of institutionalized private profiteering by keeping supplies low.
10. We beg your responsive and active government to please investigate the backgrounds of Senior Advocates designated by various courts over the past three decades. It will emerge that the community of designated Senior Advocates is a closed elite club consisting mostly of retired judges, children / relatives of judges, relatives of existing senior advocates, juniors of senior advocates and politically connected advocates.
 11. Essentially, the closed club of Senior Advocates is an institution of upper caste men with hardly any entry for women or for any of the oppressed classes. Needless to say, this is against the letter and spirit of the Constitution of India.
 12. While the judiciary would have us believe that the system of selection of Senior Advocates is based on meritocracy, nothing can be farther from truth. As an example, we draw your kind attention to the recent Order dated 11th March 2022 whereby Honourable High Court of Madhya Pradesh has designated fifteen (15) advocates as Senior Advocates. While the Honourable High Court had followed the rituals of a selection procedure by inviting applications and even holding interviews, the process was completely opaque. The Order passed by the Honourable High Court is not a speaking order and gives no reasons for selection of 15 persons and for rejection of about 72 advocates. It seems that the Honourable High Court only went through the motions to rubber stamp its list of favourites. This is certainly not meritocracy and is surely not in conformity with the rule of law and natural justice in a democracy governed by the Constitution. We have given the example of Honourable High Court of Madhya Pradesh since we were closely involved with the process. We understand that the situation is the same in every other state of the country.

13. In a democracy when any institution of the state acts in violation of the Constitution, the judiciary has the responsibility to act to protect the Constitutional values. In the present matter since the fault lies with the Honourable Supreme Court and the Honourable High Court, it stands to reason that the Executive and the Parliament act to reform the law with the long-term objectives of making justice cheap and accessible for all and creating a large pool of certified experienced competent legal professionals who can defend the country in international forums as well as for developing the image of the country in the comity of nations as a modern country with well-developed and efficient legal system.

14. It may be worthwhile to mention here that various High Courts have formulated their rules regarding designation of Senior Advocates. Many of these rules are ultra vires of the Act and of the Constitution of India. We had moved a writ petition (No. WP-6827-2020 disposed of on 9th April 2021) before Honourable High Court of Madhya Pradesh. The Court directed us to withdraw the petition and instead submit a representation which we dutifully submitted. Based on our representation dated 23rd April 2021 the High Court amended the Rules. Earlier it needed fifteen (15) years of practice before one could be considered for designation as Senior Advocate. This was changed to ten (10) years. We are of the opinion that the limit of ten years runs counter to the letter and spirit of The Advocates (Amendment) Act, 1973 (No. 60 of 1973) which substituted the words “*experience and standing at the Bar*” with the words “*standing at the Bar or special knowledge or experience in law*”. Amendment notification issued by the High Court also introduced some other parameters which run counter to the spirit of the Act and the Constitution. Our Writ Petition (No. WP-15734-2021) is pending before Honourable High Court of Madhya Pradesh and a transfer petition (No. TP-1763-2021) in respect of the same is also pending before Honourable Supreme Court. It seems that the judiciary has been acting as a law unto itself with no regard for

- either the law passed by the Parliament or the Constitution as far as designation of Senior Advocates is concerned. This is a serious matter in a democracy and needs urgent action by the Parliament.
15. We are strongly of the opinion that the Parliament must act to break the unholy nexus that has created a closed elite club which fleeces the common citizens and businesses (as well as the governments) of this country with exorbitant legal fees.
 16. There can be no doubt that the judiciary has been looking at the legal provision of designation of Senior Advocates with a narrow perspective which treats the legal system of the country merely as supplier of officers for the courts. It needs to be appreciated that the legal practitioners (advocates) serve the country in many ways besides appearing before the bench. The judiciary has failed to act as custodians and patrons of the broader legal system of the country which includes international lawyers, drafters of law, legal researchers, jurists, arbitrators, legal advisors, solicitors, arbitration counsels etc. To the best of our knowledge, not a single person from any one of these important categories of learned and highly competent legal professions has ever been designated as a Senior Advocate.
 17. The narrow approach of the judiciary has hurt the interests of the country at international forums. India lacks a credible team of international lawyers and jurists who can represent the country at such forums. No wonder that India often loses at international arbitration. This has high relevance and importance when one looks at the major losses suffered by the country in some high-profile cases involving international investment arbitration disputes. It may be mentioned here that India was forced to cancel investment protection treaties with 83 countries since it was felt that the treaties put India at a disadvantage. What is not appreciated is that the fault was not as much with the treaties as it was with the members of legal

fraternity defending the country's position. The judiciary must share a portion of the blame for inadequate development of legal professionals of India in the context of globalizing economy.

18. There is no denial that judges cannot be in the business of development of legal professionals. They are concerned with their day-to-day load of cases and cannot be expected to take a broader perspective in national interest and shoulder the responsibility that must lie with universities and academicians.
19. Keeping in view the failure of the judiciary in managing the Senior Advocate system in the country and also in light of their basic function of justice dispensation, we most humbly propose that the power to designate Senior Advocates should be taken away from the Supreme Court and the High Courts.
20. We most humbly propose and suggest that section 16 of the Act should be amended by the Parliament (after recommendation of the Cabinet of Ministers) to incorporate the following changes:
 - a) Law should statutorily fix the minimum and maximum percentage of Senior Advocates in a state. Following the example of England and Wales, minimum number of Senior Advocates in a state should be fixed at 8% of practicing advocates and maximum number of Senior Advocates should be fixed at 10% of the number of practicing advocates in the state.
 - b) An independent body (on the lines of Union Public Service Commission), tentatively called here as **National Legal Services Commission** (NLSC) should be set up with branch offices in each state. NLSC should draw from reputed professors of law, jurists, legal authors and other such experts (not judges and practicing advocates since they are most often too busy with their day-to-

day case load and have a day-to-day working relationship which can lead to bias).

- c) NLSC should be a nodal agency responsible for designation of Senior Advocates in each state within the lower and upper limits mentioned above.
- d) In designation of Senior Advocates, NLSC should follow systems and procedures that ensure transparency with strong emphasis on ability, talent, competence and specialization with no scope for nepotism and favouritism.
- e) NLSC should take special care to ensure that advocates working in fields that do not require day-to-day appearance before courts in India are not put to a disadvantage. In particular, advocates working in international relations, international commercial arbitration, international investment arbitration, social welfare, upliftment of oppressed classes and such other fields should be encouraged.
- f) Elevation as judge of High Court (or Supreme Court) must be done only from Senior Advocates designated by NLSC.
- g) NLSC should be given the statutory responsibility of maintaining a National Register of Senior Advocates (to be made available online) which should be updated regularly removing all those who either get elevated to the bench or retire or die.

21. We shall like to reemphasise that the reform of law proposed above is not for any personal interest or objective but is solely to reform and improve the system and practice of law in the country and make a wide range of certified knowledgeable, competent, experienced legal practitioners available to common people, businesses and governments. We are

confident that this will put some brakes on the skyrocketing fees charged by a handful of Senior Advocates who are presently seen as favourite blue-eyed boys of the Lords.

22. As interim measure we most humbly propose and suggest that an immediate stop be put on any further designation of Senior Advocates and the existing Senior Advocates be suspended till they obtain fresh registration with the NLSC.

We are hopeful and confident that your government which has been proactive on many issues of national importance will give due consideration to our suggestions and proposals given above in the interest of our great country's progress and development.

With best regards,

Sd./-
Anil Chawla
Advocate
Former Member, Government of
India Committee for Debate on
Judicial Reforms

Sd./-
Yogita Pant,
Advocate

Copy to:

1. All Newspapers and various websites – for publication and wide circulation to encourage national debate on the subject.