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MS. INDIRA JAISING

v.

SUPREME COURT OF INDIA THROUGH SECRETARY
GENERAL AND ORS.

B

(Writ Petition (C) No. 454 of 2015)

OCTOBER 12, 2017

**[RANJAN GOGOI, R. F. NARIMAN
AND NAVIN SINHA, JJ.]**

C *Advocates:*

Designation of Senior Advocates – Writ petition seeking declaration that the practice of designation of Senior Advocates arbitrary, violative of Articles 14, 15, 18 and 21, thus, unconstitutional and null and void – Held: Practice of classifying people as senior advocates is constitutional – Exercise of the power vested in the Supreme Court and the High Courts to designate an Advocate as a Senior Advocate is circumscribed by the requirement of due satisfaction that the concerned advocate fulfills the three conditions stipulated u/s. 16, ability; standing at the bar; and/or special knowledge or experience in law that the person seeking designation has acquired – Thus, the practice of classifying advocates as Senior Advocates conferred by s.16 is constitutionally permissible, so long as the basis of the classification is founded on reasonable parameters – Criteria prescribed would go to determine the standing of the Advocate at the bar, is the object behind the classification – Such an object would enhance the value of the legal system that Advocates represent – However, there is a need for more transparency and uniform parameters/guidelines – Process to ensure that there is strict scrutiny of credentials and the most deserving and best is bestowed with the designation – In view thereof, norms/guidelines, which henceforth would govern the exercise of designation of Senior Advocates by the Supreme Court and all High Courts, laid down – Advocates Act, 1961 – s. 16 – Constitution of India – Arts 14, 15 and 21 – Supreme Court Rules, 2013 – Or. IV r. 2.

Appointment /designation as senior advocates – Uniform norms/Guidelines laid down for Supreme Court and all High Courts to designate lawyers as senior advocates – Modification of the

existing guidelines – Held: There should be Permanent Committee for designation of senior advocates, with members specified and a Permanent Secretariat – All applications/proposals by the Hon'ble judges would be submitted to the Secretariat, and the Secretariat would process the same – Proposed names would be put up on website to invite suggestions and views – Thereafter, compiled data base would be put up before Permanent Committee for scrutiny – Permanent Committee would interview the concerned advocate and make its overall assessment on the basis of point based format – Names cleared by Permanent Committee would go to Full Court – Voting by secret ballot would not be resorted to by the Full Court except when unavoidable – Cases not favourably considered by the Full Court may be reviewed/reconsidered after two years – In case any senior advocate not found worthy of his designation, Full Court may review/recall its decision – Said guidelines not exhaustive and Supreme Court can change them when required.

Appointment/designation as senior counsel – Process / criteria for – Prevailing practice in Supreme Court, different High Courts in India as also in various countries – Elucidated.

Advocates Act, 1961:

s. 16 – Procedure for designation as Senior Advocates – Subjective and objective criteria – Held: Both s. 16(2) and Order IV rule 2 of the Supreme Court Rules, 2013 use expression “is of opinion” and “in their opinion” respectively which controls the power of the Full Court to designate an Advocate as a Senior Advocate – It is a subjective exercise to be performed by the Full Court – However, the opinion, though subjective, has to be founded on objective materials – There has to be a full and effective consideration of the criteria prescribed-ability; standing at the Bar, special knowledge or experience in law – Though the Supreme Court and various High Courts have taken steps to bring in some objective parameters, the same must be fair, transparent and reasonable exercise of a statutory dispensation on which touchstone the exercise of designation u/s.16 can be justified.

s. 16 – Designation of Senior Advocates – Amendment of the guidelines framed by the High Court of Meghalaya whereby the requirement of 05 years' practice in any Court within the jurisdiction the High Court of Meghalaya done away with and an Advocate

- A *practicing in any court of the country made eligible; and that any Senior Advocate of any High Court in the country could sponsor any advocate in any court in India to be designated as a Senior Advocate by the High Court of Meghalaya – Held: Power of designating any person as a Senior Advocate is always vested in the Full Court either of the Supreme Court or of any High Court –*
- B *In extraordinary situation the Full Court of a High Court may depart from the usual practice unless the norms expressly prohibit such a course of action – If the power is always there in the Full Court, there is no reason why an express conferment of the same by the Rules/Guidelines is necessary – Instances like these bring the system of designation of Senior Advocates into disrepute – High Court given liberty to reconsider the changes brought in by the amendments.*

- s.16 – Procedure for designation as Senior Advocates – Norms/guidelines prevailing in different High Courts – Varying periods of practice and different slabs of income prescribed as minimum conditions of eligibility – Held: If merit and ability is to be the determining factor, in addition to standing in the Bar and expertise in any specialized field of law, there should be no insistence on any minimum income as a condition of eligibility – As regards age, norm of 10 years practice at the Bar would be appropriate instead of minimum age.*

Disposing of the matters, the Court

- HELD: 1.1** So far as the practice prevailing in the Supreme Court of India for designation of senior advocates is concerned, from the Affidavits filed on behalf of the Registry of the Supreme Court it seems that the essence of the practice in vogue is that 20 years of combined standing as an Advocate or a District and Sessions Judge or a Judicial Member of any Tribunal (qualification for eligibility for appointment in such Tribunal should not be less than what is prescribed for appointment as a District Judge), entitles an Advocate to apply for being designated as a Senior Advocate by the Supreme Court. A relaxation to the said requirement i.e. length of practice was recommended in the year 1996 by an Administrative Committee of three Hon'ble Judges which also appears to have been acted upon in specific cases. All applications received are circulated to the Hon'ble Chief Justice

and all Hon'ble Judges. Only those cases which have been approved by a minimum of five Hon'ble Judges are put up before the Full Court. If the Hon'ble Chief Justice or any Hon'ble Judge of the Supreme Court is of the view that a particular Advocate deserves the distinction of being designated as a Senior Advocate, the Hon'ble Chief Justice or the Hon'ble Judge, as may be, can also recommend the name of such Advocate for being considered for designation. All such names would also be circulated amongst the Judges in the same manner and undergo the same process until the short-listed names reach the Full Court. In the Full Court, decisions are taken on the basis of voting by secret ballot and by the rule of majority. [Para 17] [508-A-E]

1.2 Insofar as the High Courts of the country are concerned, it appears that there is no uniform criteria or yardstick. Age; income; length of practice; requirement of practice in the High Court in which designation is sought or in a court subordinate to such High Court appear to be the broad parameters which different High Courts have adopted either by incorporation of all such parameters or some or few of them. [Para 18] [508-E-F]

1.3 The exercise of the power vested in the Supreme Court and the High Courts to designate an Advocate as a Senior Advocate is circumscribed by the requirement of due satisfaction that the concerned advocate fulfills the three conditions stipulated under Section 16 of the Advocates Act, 1961, i.e., (1) ability; (2) standing at the bar; and/or (3) special knowledge or experience in law that the person seeking designation has acquired. It is not an uncontrolled, unguided, uncanalised power though in a given case its exercise may partake such a character. However, the possibility of misuse cannot be a ground for holding a provision of the Statute to be constitutionally fragile. The consequences spelt out by the intervener, namely, (1) indulgence perceived to be shown by the Courts to Senior Advocates; (2) the effect of designation on the litigant public on account of high fees charged; (3) its baneful effect on the junior members of the bar; and (4) the element of anti-competitiveness, etc. are untoward consequences occasioned by human failures. Possible consequences arising from a wrong/improper exercise of power cannot be a ground to invalidate the provisions of Section 16 of the Act. Recognition of qualities of merit and ability demonstrated

- A by in-depth knowledge of intricate questions of law; fairness in court proceedings consistent with the duties of a counsel as an officer of the Court and contributions in assisting the Court to charter the right course of action in any given case, all of which would go to determine the standing of the Advocate at the bar is the object behind the classification. Such an object would enhance the value of the legal system that Advocates represent. So long as the basis of the classification is founded on reasonable parameters which can be introduced by way of uniform guidelines/norms to be laid down by this Court, it cannot be seen how the power of designation conferred by Section 16 of the Act can be said to be constitutionally impermissible. [Para 23] [521-E-H; 522-A-C]

- 1.4 Similar is the position with regard to the challenge founded on the alleged violation of Article 18 of the Constitution of India. The designation ‘Senior Advocate’ is hardly a title. It is a distinction; a recognition. Use of the said designation (i.e. Senior Advocate), per se, would not be legally impermissible inasmuch as in other vocations also use of similar expressions as in the case of a doctor referred to as a ‘Consultant’ which has its own implications in the medical world. There are doctors who are referred to as ‘Senior Consultants’ or as a ‘Senior Surgeon’. Such expressions are instances of recognition of the talent and special qualities of a person which has been proved and tested over a period of time. In fact, even in bureaucratic circles such suffixes and prefixes are also not uncommon. Therefore, the designation of ‘Advocates’ as ‘Senior Advocates’ as provided for in Section 16 of the Act would pass the test of constitutionality and the endeavour should be to lay down norms/guidelines/parameters to make the exercise conform to the three requirements of the Statute already enumerated namely, (1) ability of the advocate concerned; (2) his/her standing at the bar; and (3) his/her special knowledge or experience in law. [Para 24] [524-D-G]

- 1.5 Both Section 16(2) of the Act and Order IV rule 2 of the Supreme Court Rules, 2013 are significant in use of the expression “is of opinion” and “in their opinion” respectively which controls the power of the Full Court to designate an Advocate as a Senior Advocate. It is a subjective exercise that is to be performed by the Full Court inasmuch as a person affected

by the refusal of such designation is not heard; nor are reasons recorded either for conferring the designation or refusing the same. But the opinion, though subjective, has to be founded on objective materials. There has to be a full and effective consideration of the criteria prescribed, namely, ability; standing at the Bar, special knowledge or experience in law in the light of materials which necessarily has to be ascertainable and verifiable facts. [Para 31] [524-F-G]

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1.6 Though steps have been taken to bring in some objective parameters, the same must be more comprehensively considered by this Court to ensure conformity of the actions/decisions taken under Section 16 of the Act with the requirement of constitutional necessities, particularly, in the domain of a fair, transparent and reasonable exercise of a statutory dispensation on which touchstone alone the exercise of designation under Section 16 of the Act can be justified. Until the enactment of the Advocates Act, 1961 and the Supreme Court Rules, 1966 the option to be designated as a Senior Advocate or not was left to the Advocate concerned, with the Full Court having no role to play in this regard. In other jurisdictions spread across the Globe, where the practice continues to be in vogue in one form or the other, participation in the decision making process of other stakeholders has been introduced in the light of experience gained. Therefore, the framework that would be introduced by the present order to regulate the system of designation of Senior Advocates must provide representation to the community of Advocates though in a limited manner. That apart, time has come when uniform parameters/guidelines should govern the exercise of designation of Senior Advocates by all Courts of the country including the Supreme Court. The sole yardstick by which there is a proposal to introduce a set of guidelines to govern the matter is the need for maximum objectivity in the process so as to ensure that it is only and only the most deserving and the very best who would be bestowed the honour and dignity. The credentials of every advocate who seeks to be designated as a Senior Advocate or whom the Full Court suo motu decides to confer the honour must be subject to an utmost strict process of scrutiny leaving no scope for any doubt or dissatisfaction in the matter. [Para 33] [526-E-G; 527-A-C]

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A 2.1 The grievance of the petitioner in the writ petitions
(Civil) Nos. 33 and 819 of 2016 (filed by the High Court of
Meghalaya Bar Association, Shillong) is with regard to the
amendment of the guidelines framed by the High Court of
Meghalaya governing the issue of designation of Senior
B Advocates. The grievance specifically is directed against the
amendment dated 31st March, 2015 by which the requirement of
05 years' practice in any Court within the jurisdiction the High
Court of Meghalaya has been done away with and an Advocate
practicing in any court of the country has been made eligible.
C There is a further amendment made on 13th January, 2016 by
which any Senior Advocate of any High Court in the country can
sponsor any advocate in any court in India to be designated as a
Senior Advocate by the High Court of Meghalaya. Even at first
blush, the guidelines have been couched, by the amendments
thereto, in too wide terms for acceptance. [Paras 26, 27] [523-B-
D] D]

D 2.2 The power of designating any person as a Senior
Advocate is always vested in the Full Court either of the Supreme
Court or of any High Court. If an extraordinary situation arises
requiring the Full Court of a High Court to depart from the usual
practice of designating an advocate who has practiced in that High
E Court or in a court subordinate to that High Court, it may always
be open to the Full Court to so act unless the norms expressly
prohibit such a course of action. If the power is always there in
the Full Court, there is no reason why an express conferment of
the same by the Rules/Guidelines is necessary. It is instances
F like these that bring the system of designation of Senior
Advocates into disrepute. Beyond the above, it is not considered
necessary to say anything further as the Counsel appearing for
the High Court of Meghalaya has submitted, on instructions
received, that the High Court would be willing to reconsider the
changes brought in by the amendments and remedy the situation
G by taking appropriate measures. It is left open for the High Court
of Meghalaya to act accordingly and close the writ petitions (Nos.
33 and 819 of 2016) in terms of the said liberty. [Para 28] [523-D-
G] G]

H 3. With regard to the norms and guidelines prevailing in

different High Courts, it is evident that varying periods of practice and different slabs of income have been, inter alia, prescribed as minimum conditions of eligibility for consideration for designation as a Senior Advocate. If merit and ability is to be the determining factor, in addition to standing in the Bar and expertise in any specialized field of law, there should be no insistence on any minimum income as a condition of eligibility. The income generated by a lawyer would depend on the field of his practice and it is possible that a lawyer doing pro bono work or who specializes in a particular field may generate a lower return of income than his counterpart who may be working in another field of law. Insistence on any particular income, therefore, may be a self-defeating exercise. Insofar as age is concerned, instead of having a minimum age with a provision of relaxation in an appropriate case it would be better to go by the norm of 10 years practice at the Bar which is also what is prescribed by Article 217 of the Constitution as a condition of eligibility for being considered for appointment as a Judge of the High Court. [Para 34] [527-D-G]

4.1 The following norms/guidelines are laid down which henceforth would govern the exercise of designation of Senior Advocates by the Supreme Court and all High Courts in the country. The norms/ guidelines, in existence, shall be suitably modified so as to be in accord with the present.

I. All matters relating to designation of Senior Advocates in the Supreme Court of India and in all the High Courts of the country shall be dealt with by a Permanent Committee to be known as "Committee for Designation of Senior Advocates";

II. The Permanent Committee will be headed by the Hon'ble the Chief Justice of India and consist of two senior-most Judges of the Supreme Court of India (or High Court(s), as may be); the learned Attorney General for India (Advocate General of the State in case of a High Court) will be a Member of the Permanent Committee. The above four Members of the Permanent Committee will nominate another Member of the Bar to be the fifth Member of the Permanent Committee;

- A **III. The said Committee shall have a permanent Secretariat the composition of which will be decided by the Chief Justice of India or the Chief Justices of the High Courts, as may be, in consultation with the other Members of the Permanent Committee;**
- B **IV. All applications including written proposals by the Hon'ble Judges will be submitted to the Secretariat. On receipt of such applications or proposals from Hon'ble Judges, the Secretariat will compile the relevant data and information with regard to the reputation, conduct,**
- C **integrity of the Advocate(s) concerned including his/her participation in pro-bono work; reported judgments in which the concerned Advocate(s) had appeared; the number of such judgments for the last five years. The source(s) from which information/data will be sought and collected by the Secretariat will be as decided by the**
- D **Permanent Committee;**
- V. The Secretariat will publish the proposal of designation of a particular Advocate in the official website of the concerned Court inviting the suggestions/views of other stakeholders in the proposed designation;**
- E **VI. After the data-base in terms of the above is compiled and all such information as may be specifically directed by the Permanent Committee to be obtained in respect of any particular candidate is collected, the Secretariat shall put up the case before the Permanent Committee for**
- F **scrutiny;**
- VII. The Permanent Committee will examine each case in the light of the data provided by the Secretariat of the Permanent Committee; interview the concerned Advocate; and make its overall assessment on the basis of a point-based format.**
- G **1. Number of years of practice of the applicant advocate from the date of enrolment. (20 points)**
- 2. Judgments-Reported and unreported. (40 points)**
- H **3. Publications by the applicant advocate. (15 points)**

4. Test of personality and suitability on the basis of interview/interaction.(25 points) A

VIII. All the names that are listed before the Permanent Committee/cleared by the Permanent Committee will go to the Full Court.

IX. Voting by secret ballot will not normally be resorted to by the Full Court except when unavoidable. In the event of resort to secret ballot, decisions will be carried by a majority of the Judges who have chosen to exercise their preference/choice. B

X. All cases that have not been favourably considered by the Full Court may be reviewed/reconsidered after expiry of a period of two years following the manner indicated as if the proposal is being considered afresh. C

XI. In the event a Senior Advocate is guilty of conduct which according to the Full Court disentitles the Senior Advocate concerned to continue to be worthy of the designation the Full Court may review its decision to designate the concerned person and recall the same. [Para 35] [527-G-H; 528-A-H; 529-A-H; 530-A-D] D

4.2 The guidelines enumerated may not be exhaustive of the matter and may require reconsideration by suitable additions/deletions in the light of the experience to be gained over a period of time. This is a course of action that is left open for consideration by this Court at such point of time that the same becomes necessary. [Para 36] [530-E] E

Tata Chemicals Limited vs. Commissioner of Customs (Preventive) (2015) 11 SCC 628 : [2015] 7 SCR 132; *K.K. Parmar vs. High Court of Gujarat* (2006) 5 SCC 789 : [2006] 2 Suppl. SCR 565; *Guman Singh vs. State of Rajasthan* (1971) 2 SCC 452 – referred to F

American Advocacy by Robbin, p.4; 'Origin and Development of Advocacy as a Profession', *Virginia Law Review* Volume 9, No. 1 (November, 1922), p 28; *Essays in Legal Ethics by Warvelle* p 27; 'Origin and Development of Advocacy as a Profession', *Virginia Law* G

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- A *Review Volume 9, No. 1 (November, 1922), p 30; 'Lawyers' by Julian Disney. Paul Redmond, John Basten, Stan Ross; 2nd Edn; The Law Book Company Limited, 1986; Report "An Independent Scrutiny of the Appointments Process of Judges and Queen's Counsel in England and Wales"; "Report on Competition in Professions" by Director General of Fair Trading, United Kingdom, 2001 – referred to..*
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Case Law Reference

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|---|-------------------------|-------------|---------|
| | [2015] 7 SCR 132 | referred to | Para 31 |
| C | [2006] 2 Suppl. SCR 565 | referred to | Para 32 |
| | (1971) 2 SCC 452 | referred to | Para 32 |

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 454 of 2015.

- D Under Article 32 of the Constitution of India.

WITH

W. P. (C) No. 33 of 2016

W. P. (C) No. 819 of 2016

- E T. C. (C) No. 1 of 2017

- K.K. Venugopal, Attorney General Ms. Pinky Anand, ASG, Ms. Indira Jaising, (In-person) Sr. Adv., R. S. Suri, Ajit Kumar Sinha, C. U. Singh, Sr. Advs., Ms. Radhika Saxena, Ms. Ajita, Ms. Kavita Bhardwaj, Ms. Anindita Pujari, Mathews J. Nedumpara, A.C. Philip, F T. R. B. Sivakumar, Ajay Sharma, Sudhir Walia, Rajesh Ranjan, Rajat Singh, Ms. Madhavi Diwan, Hemant Arya, Mukesh Kumar Maroria, Annam D. N. Rao, A. Venkatesh, Rahul Mishra, Ms. Tulika Chikker, Gaurav Bhatia, Yakesh Anand, Merusagar Samantaray, Ms. Lhingneivah, Ms. Viddusshi, Yakesh Anand, Merusagar Samantaray, Ardhendumauli Kumar Prasad, Ms. Taruna Ardhendumauli Prasad, Nirmal Kumar G Ambastha, Nitesh Ranjan, Amritesh Raj, Ashim Pandya, Purvish Jitendra Malkan, V.K. Biju, Himanshu Singh Yadav, Kunal Chatterji, Ms. Maitrayee Banerjee, Sibbo Sankar Mishra, Niranjana Sahu, Anandh Kannan N., Ashok Mathur, Nandini Gore, B. K. Adhikary, Virender Mehta, Arun Monga, Advs. with them for the appearing parties.

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The Judgment of the Court was delivered by

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RANJAN GOGOI, J. 1. The petitioner in Writ Petition (C) No. 454 of 2015 is a Senior Advocate designated by the High Court of Bombay in the year 1986. She has been in practice in the Supreme Court of India for the last several decades and has also served as an Additional Solicitor General for the Union of India. The perception of the petitioner that the present system of designation of Senior Advocates in the Supreme Court of India is flawed and the system needs to be rectified and acceptable parameters laid down has led to the institution of Writ Petition (C) No. 454 of 2015 with the following prayers.

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“(a) Issue writ order, or direction declaring that the system of designation of Senior Advocates by recently introduced method of vote is arbitrary and contrary to the notions of diversity violating Articles 14, 15 and 21 and therefore, it is unconstitutional and null and void; and

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(b) Issue writ order or direction for appointment of a permanent Selection Committee with a secretariat headed by a lay person, which includes the Respondent 4 Attorney General of India, representatives from the Respondent 5 –SCBA and the Respondent 6- AOR Association and academics, for the designation of Senior Advocates on the basis of an assessment made on a point system as suggested in Annexure P8; and

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(c) Issue a writ of mandamus or direction directing the Respondent-1 representing Chief Justice and Judges of the Supreme Court to appoint a Search Committee to identify the Advocates who conduct Public Interest Litigation (PIL) cases and Advocates who practice in the area of their Domain Expertise viz., constitutional law, international arbitration, inter-State water disputes, cyber laws etc. and to designate them as Senior Advocates;

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(d) Issue a writ of mandamus or direction directing the Respondent-1 representing Chief Justice and Judges of the Supreme Court to frame guidelines requiring the preparation of an Assessment Report by the Peers Committee on the Advocates who apply for designation based on an index 100 points as suggested in Annexure P8;

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- A (e) Issue a writ of mandamus or direction directing the
Respondent-1 representing Chief Justice and Judges of the
Supreme Court to reconsider its decision taken in the Full Court
held on 11.02.2014 and 23.04.2015 and designate as Senior
Advocate all those Advocates whose applications seeking
B designation had received recommendation by not less than five
Judges of the Supreme Court (including deferred applicants)
during the process of circulation ordered by the Chief Justice.”

2. Legal practice in India, though a booming profession, success
has come to a few select members of the profession, the vast majority
of them being designated Senior Advocates. The issues raised in the
C writ petition, therefore, are highly contentious issues raising question of
considerable magnitude so far as the Indian Bar and in fact the Country’s
legal system is concerned. Intervention applications, as expected, have
been filed by several individuals and associations, including the Bar
Association of India. The Attorney General for India was requested to
D appear in the case and he has very magnanimously responded to the
request of the Court by remaining present throughout the prolonged
hearing that had taken place.

3. By Order of the Court dated 24.04.2017 passed in I.A. No. 5,
notice of this case was directed to be put up on the website of this Court
E to enable the High Courts and the Bar Associations of the different High
Courts to participate in the proceedings. Pursuant thereto many High
Courts have communicated to the Registry of this Court “the Rules –
(Guidelines)” framed by the High Courts in the matter of designation of
Senior Advocates. The Gujarat High Court Advocates’ Association has
filed an intervention application (I.A. No. 53321 of 2017) which goes
F beyond four corners of the writ petition itself inasmuch as the association
has challenged the validity of Section 16 of the Advocates Act, 1961
(hereinafter referred to as “the Act”) which empowers the Supreme
Court or a High Court to designate Senior Advocates. In view of the
importance of the issue, we have permitted the Gujarat High Court
G Advocates’ Association to urge all contentions, as raised, by virtually
treating the Intervention application filed to be a substantive writ petition.
Over and above, there is a writ petition filed before the Delhi High Court
which has been transferred to this Court for being heard along with Writ
Petition (C) No. 454 of 2015. In the said writ petition (Writ Petition (C)
H No. 6331 of 2016 titled “National Lawyers Campaign for Judicial

Transparency and Reforms and Anr. vs. The Bar Council of India & Anr”) Section 16 of the Act as well as Rule 2 of Chapter IV of the Supreme Court Rules 2013 has been challenged as constitutionally impermissible. Alternatively, it has been prayed that the designation of Senior Advocates by the Supreme Court of India as well as the High Courts of the country be rationalized by laying down acceptable parameters to govern the exercise of designation. There is yet another connected writ petition i.e. Writ Petition (C) No. 33 of 2016 filed by The High Court of Meghalaya Bar Association, which was heard by this Court separately on 14.09.2017. In the aforesaid writ petition the validity of the guidelines framed by the High Court of Meghalaya for designation of Senior Advocate(s) on 13.1.2016 is under challenge. By the aforesaid amendment, an Advocate General of any State of the Country so long as he himself is a designated Senior Advocate and any Senior Advocate practicing in any High Court has been authorized to propose the name of an Advocate, practicing in any court of the Country, for designation as a Senior Advocate by the High Court of Meghalaya. In other words, the effect of the amendment, in departure to the prevailing practice, is to enable any Senior Advocate of any High Court to propose the name of any Advocate practicing in any High Court in the country for designation as a Senior Advocate of the Meghalaya High Court. Also challenged is the amendment of the said Guidelines made on 31.03.2015 by which the requirement of practice of 5 years in any Court within the jurisdiction of the High Court of Meghalaya has been deleted and instead 5 years practice in any court, namely, the Supreme Court of India, High Courts or District Courts has been introduced as a condition of eligibility for designation. Writ Petition (C) No. 819 of 2016 also raises the very same questions.

4. We will deal with each of the cases separately and in the order in which, according to us, the cases should receive our consideration.

5. Before embarking upon what has been indicated above, it is necessary to go back into history and trace the origins of what today has come to be recognized as a special class of Advocates, namely, Senior Advocates.

6. The profession of Advocacy was firmly in existence in the Greek and Roman legal systems. Emperor Justinian (circa 482-565) had put lawyers in a high pedestal comparing them with regular soldiers engaged in the defence of the empire, inasmuch as with the gift of advocacy,

- A lawyers protect the hopes, the lives and the children of those who are in serious distress.

7. Towards the end of the Medieval Period (500 A.D. to 1500 A.D.), the Roman Law had made inroads in the rest of Europe influencing it immensely. The reason attributed to this is the discovery of the *Corpus Juris Civilis* (Civil Law) in the 11th century. While in other countries Civil Law prevailed, in England, Common Law emerged. The *Magna Carta* came into being in year 1215.

C It has been said that, "*of the rise of advocacy in England, not a great deal can be said of the ancient origin of the profession in that country, for much of it is hazed in uncertainty. Very early in the history of England, justice was crudely and arbitrarily administered. The village moots, the shire courts, and in feudal times, the barons' courts, administered justice without formality. A lawyer was not a necessity.*"¹ During these times, the practice of advocacy was within the realm of priests, monks (it be reminded, that these are the times when the Church Law/Canon Law prevailed). While the priests/the clergy would be insistent upon the study and application of the Civil Law and Common Law and of the hybrid of both, the nobility/laity (privileged class/aristocracy, but not privileged to undertake priestly responsibilities) would adhere to the Common Law. This led to dissatisfaction amongst both these classes (clergy and nobility). "*The early English lawyers, in the main, seem to have been ecclesiastics, but about the year 1207, priest, and persons in holy orders generally were forbidden to act as advocates in the secular courts, and from thenceforward we find the profession composed entirely of a specially trained class of laymen.*"²

8. It was in the 13th century that, the professional lawyers emerged in England, after a centralised system for courts had been established to exercise the royal prerogative of dispensing justice. While earlier, a litigant could resort to the help of a knowledgeable friend, the litigation soon became complex and opened room for expert assistance. In this backdrop, came into being two classes of lawyers – 'Pleaders' and 'Attorneys'.

¹ Robbins, *American Advocacy*, page 4; 'Origin and Development of Advocacy as a Profession', *Virginia Law Review* Volume 9, No. 1 (November, 1922), page 28.

² Warvelle, *Essays in Legal Ethics*, page 27; 'Origin and Development of Advocacy as a Profession', *Virginia Law Review* Volume 9, No. 1 (November, 1922), page 30

The Attorneys would perform the representative functions for the litigant. Attorney's act would be the act of the litigant. Their functions would comprise administrative activities like serving process, following *lis* progress etc. The Pleaders, on the other hand, would be the voice of the aggrieved. Their functions would include a relatively more complex league of activities – formulating pleadings, arguing questions of law before the courts.

9. By the time 13th century concluded, a distinguished class of senior pleaders with considerable status and experience emerged, and they came to be known as Serjeants-at-Law. These eminent pleaders had some special privileges. These were retained specially by the King, and had exclusive rights of audience before the Court of Common Pleas and other Common Law Courts like King's Bench. It was mandatory for the serjeants to have taken the coif, and as a consequence of this headdress, their corporate society was called as the Order of the Coif. The serjeants were at the pinnacle of the legal profession for a long time and it is from this pool of men that the selection of judges would be made. They were so exclusive and rare, that at a given point of time, there would be only about ten serjeants in the practice of the law. It would be the serjeants' arguments that would get reported in the year books, and since they had the exclusive audience rights in the Common Law Courts, the evolution of Common Law jurisprudence has been attributed to them. Soon, they acquired great eminence and close affinity with the judges as well. It is said, that they had more judicial element than the practicing element. Exclusive audience rights made them most affluent legal practitioners of that era and they remained to be distinguished and most prominent jurists during the 13th to 16th century i.e. during the period when the most of the civil litigation would be carried out at the Court of Common Pleas.

10. After this point of time, these awe-inspiring class of legal practitioners witnessed a decline. The descent in their Order has been referenced to the rise of Crown Law Officers like the Attorney-General, Solicitor General. These Crown Law Officers were retained by the monarch as '*Counsels-in-Ordinary*'; however, the eminent order of serjeants sustained a more perilous dent in the 16th century when the Office of Queen's Counsel came to fore. This was an unprecedented office. In the year 1597, Francis Bacon was appointed by Queen Elizabeth I as "*Learned Counsel Extraordinary*", without patent (i.e. it was not

A a formal order). In 1603, the King designated Francis Bacon as the
 King's Counsel, and bestowed upon him the right of pre-audience and
 precedence, and a few years later, in 1670, it was declared that the
 serjeants shall not take precedence over this new league of officers,
 thus relegating the otherwise eminent serjeants to a somewhat
 B subordinate position, and eventually their decline. The final straw;
 however, was in the year 1846 when the Court of Common Pleas was
 made open to the entire Bar and in the year 1875 when the Judicature
 Act was enacted that removed the requirement for the judges to have
 taken the coif.

C 11. It is not clear as to why the Office of Queen's Counsel was
 really needed, however, they were appointed to assist the other Crown
 Law Officers. Further, bestowing of such designations, as a favour, was
 a common feature of this era. The Queen's Counsels in return for a
 small remuneration held permanent retainers and they were prohibited
 from appearing against the Crown. And, in return, they would be entitled
 D to enjoy the valuable right of pre-audience before the courts. These
 counsels were required to wear silk gowns (till date, Queen's Counsels
 are either referred to as 'silks', or when elevated to this office, they are
 said to have 'taken silk'). Gradually; however, the cleavage between
 the Queen's Counsel/King's Counsel and Law Officers disappeared.
 E The appointments as Queen's Counsel were made to recognize
 professional eminence, or political influence; but soon thereafter, the
 public nature of the office declined. They were no longer required to
 assist the Crown Law Officers. During the 18th century, selection as
 Queen's Counsel became a matter of honour and dignity and a recognition
 of professional eminence. And, in the year 1920, the injunction on a
 F Queen's Counsel to appear against the Crown, was vacated too³.

12. The process of appointment of Queen's Counsel in United
 Kingdom came in for sharp criticism for reasons like anti-competitive
 practices, propagation of coterie etc.. It was felt that the selection process
 was secretive and admission and appointment of a Queen's counsel
 G was virtually like an admission to an exclusive club. Recommendations
 were made by Sir Leonard Peach (appointed by the then Lord Chancellor)
 in a report titled as "An Independent Scrutiny of the Appointments Process
 of Judges and Queen's Counsel in England and Wales". In another report,

³ 'Lawyers' by Julian Disney, Paul Redmond, John Basten, Stan Ross; 2nd Edition;
 The Law Book Company Limited, 1986.

titled as “Report on Competition in Professions” published by Director General of Fair Trading, United Kingdom in the year 2001, the monopolistic nature of the practice that develops after appointment as a Queen’s counsel was highlighted. Some of the observations recorded in the said report would be worthy of notice for the purpose of appreciating the issues that have arisen before us. We would therefore reproduce the relevant extracts of the report hereinafter. A B

“276. The appointments system (despite recent reform following the Peach report) does not appear to operate as a genuine quality mark. The system is secretive and, so far as we can tell, lacks objective standards. It also lacks some of the key features of a recognised accreditation system, such as examinations, peer review, fixed term appointments and quality appraisal to ensure that the quality mark remains justified. We were told that many solicitors and some barristers criticise the lack of objectivity of the system. C

277. xxx D

278. In our view, therefore, the existing Queen’s Counsel system does not operate as a genuine quality accreditation scheme. It thus distorts competition among junior and senior barristers. Our evidence indicates that clients do not generally need the assistance of a quality mark, but if there is to be such a scheme, it should be administered by the profession itself on transparent and objective grounds. Furthermore, there is some evidence that an informal quota is in operation within the current Queen’s Counsel appointment system, and that it appears to have the effect of raising fees charged to litigation clients. E

279. We do not think that a mark of quality or experience is necessarily anticompetitive, so long as the award is governed by transparent and objective criteria, and restrictions are based on qualitative, rather than quantitative, factors. On the evidence available to us, however, the current system does not pass these tests.” F G

13. On account of such and similar highly adverse views in the matter, details of some of which have been noticed above, in the year 2004-2005 the appointment of Queen’s Counsel was suspended temporarily. It was felt that the designation/appointment may be abolished in the light of growing concerns of many. However, a new framework H

- A was brought into existence in the year 2005, the salient features whereof are set out below:

B “The recommendations are made by an independent body called as Queen’s Counsel Selection Panel annually. The final appointments are made by the Queen on the advice of the Lord Chancellor, following consideration by this Panel; the Panel comprises retired judges, senior barristers, solicitors, distinguished lay member (who also chairs the Panel). After an application is made by the aspirant to the Panel, professional conduct checks are performed; thereafter, the list of candidates is sent to members of the Judiciary/Bench including the Lord Chief Justice, the Master of the Rolls, President of the Queen’s Bench Division etc. These distinguished Bench members can raise objections regarding the candidate’s integrity and the Panel will then allow the candidate to show cause. Additionally, the candidates are required to submit written references from judges, fellow practitioners, professional clients to enable the understanding of the candidate’s demonstration of competencies. Interviews are then conducted by Panel members with a view to adducing further evidence as to the candidate’s demonstration of competencies. After the interview, candidates are graded by two Panel members; then the full Selection Panel conducts a review of these initial grades. After collective moderation, scrutiny of borderline cases, the final list is prepared. While inviting applications every year, emphasis is laid on obtaining representation from all quarters — like, women, LGBTQ community, other ethnicities, persons with disabilities.”

- F 14. At this stage, we may take notice of what is the prevailing practice in some other jurisdictions.

NIGERIA

(Nomenclature- Senior Advocate of Nigeria) ”

- G The Legal Practitioners’ Privileges Committee (established under the Legal Practitioners Act, 2004) may, by instrument, confer on a legal practitioner the rank of Senior Advocate of Nigeria.

H The award of the rank of Senior Advocate of Nigeria is a privilege awarded as mark of excellence to members of the legal profession who are in full time legal practice; who have distinguished

themselves as advocates; who have made significant contribution to the development of the legal profession. A

The Committee shall consist of the Chief Justice (as Chairman); the Attorney General; one Justice of the Supreme Court; the President of the Court of Appeal; five Chief Judges of the States; Chief Judge of the Federal High Court; five legal practitioners who are Senior Advocates of Nigeria. B

1. Principles: The award shall be an independent indication of excellence in the legal profession. It is to provide a public identification of advocates whose standing and achievement would justify an expectation on the part of clients, the judiciary and the public that they can provide outstanding services as advocates and advisers in the overall best interest of administration of justice; every effort shall be made to ensure that the conferment of the rank of Senior Advocate of Nigeria on candidates who have met the criteria reflect national character by achieving as much geographical spread and gender representation as is possible C D

2. Role of the Legal Practitioners' Privileges Committee: The Committee shall exercise full control and management of the process of appointing and preserving the dignity of the Rank of Senior Advocate of Nigeria. The primary mode of consultation will be by way of confidential reference from Judges of superior Courts, not as primary means of selection of candidates but more as a final check in the selection procedure. E

3. Methods of Appointment: Call for Applications will be made not later than 7th January (or such other date). Application in the prescribed form must be returned not later than 31st March of the year (or such other date) to the Committee Secretariat at the Supreme Court of Nigeria. Candidate shall pay a non-refundable processing fee in the sum of 400,000 Naira (or such other sum). F G

4. References by Judges and Legal Practitioners & Particulars of Contested Cases: The application form shall require each candidate to provide a list of at least 10 judges of superior courts before whom he had appeared in contested cases of H

A significance. The Committee will select three Judges from the list provided by the candidate from whom it will request a detailed confidential reference. The judges will be selected in such a manner as to ensure that a cross section of Judges from different Courts is represented.

B The application form shall require candidates to identify at least 6 legal practitioners by whom the candidate has been led or that have led or against whom by whom the candidate has been led or that have led or against whom they have appeared, in contested cases of significance. The Committee will select 3 such legal practitioners' from the list from whom it will request a detailed written confidential reference.

C The candidate has to provide particulars of contested cases which s/he considers to be of particular significance to the evaluation of his competence in legal practice and contribution to the development of the law.

D 5. Competence/Yardsticks: A Candidate must – (a) demonstrate high professional and personal integrity; (b) be honest and straightforward in all his professional/personal dealings; (c) be of good character and reputation; (d) be candid with clients and professional colleagues; (e) demonstrate high level of understanding of cultural and social diversity characteristic of the Nigerian society; (f) show observance of the Code of Conduct and Etiquette at the Bar; (g) demonstrate tangible contribution to the development of the Law through case Law or publications in recognized journals at national/international conferences considered by the Committee to be of particular significance; (h) have been involved in the provision of at least 3 pro bono legal services for indigent clients or some form of community services.

G 6. Oral Interview: There will be oral interview at the final stage to enable the Committee to verify the information provided and afford the committee a further opportunity to ascertain the candidates' competence. Before the oral interview, the number of candidates shall be pruned to a

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final list not exceeding three times the number of applicants
to be appointed. A

7. Interview Process: The Committee shall constitute sub-committees which shall comprise of three members. Every candidate that makes the short list shall be interviewed by a sub-committee. B

The evaluation of the candidate's competence shall be based on the following weighted criteria—

- a) Integrity – 20%
- b) Opinion of Justices/Judges and the strength of references received by candidates – 20% C
- c) General knowledge of Law – 25%
- d) Contribution to development of Law – 10%
- e) Leadership qualities in the profession – 10% D
- f) Qualities of Law Office/Library - 15%

AUSTRALIA

In Australia, Senior Counsel is a person who is admitted to practise as a barrister and solicitor of the Supreme Court of the Australian Capital Territory and who practises exclusively or substantially as counsel (Senior Counsel SC, previously described as Queen's Counsel (QC)). E

The Senior Counsel Protocol, states that designation as Senior Counsel is intended to serve the public, whose standing and achievements justify an expectation, on the part of the those who may need their services, as well as on the part of the judiciary and the public, that they can provide outstanding services as independent barristers of the private bar, for the good of the administration of justice. Moreover, Appointment as Senior Counsel should be restricted to Local Practising Barristers, Ordinary Members Class A, with acknowledgment of the importance of the work performed by way of giving advice as well as appearing in or sitting on courts and other tribunals and conducting or appearing in alternative dispute resolution, including arbitrations and mediations. F G

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A Process for appointment:

President of the Australian Capital Territory (“ACT”) Bar calls for applications for appointment as Senior Counsel after which the applicant (junior counsel) submits the application in writing to the President accompanying with an application fee as set.

B Applications for appointment as Senior Counsel may also be accepted from Government Practising Certificate Holders issued by the ACT Bar Association. Applicants must provide in respect of all cases, including contested interlocutory applications (but excluding directions hearings), in which they have appeared in the last 18 months, and if desired, a longer period:

- C (a) the name of the case and, if available, its citation;
- (b) the name of the judicial officer, tribunal or arbitrator before whom they appeared;
- (c) the name of any counsel who led them or whom they led;
- D (d) the name of opposing counsel;
- (e) the name of their instructing solicitor; and
- (f) a brief description of the nature of the proceedings.

E The details required in (a) to (f) may be modified in alternative dispute resolution matters or otherwise when confidentiality required.

The applicants must also identify not more than five members of the profession who are familiar with their recent work and qualities (references).

F Criteria for selection: The following qualities are required to a high degree before the appointment:

- (a) learning: Must be learned in the law so as to provide sound guidance to their clients and to assist in the judicial interpretation and development of the law.
- G (b) Skill: Must be skilled in the presentation and testing of litigants’ cases, so as to enhance the likelihood of just outcomes in adversarial proceedings.
- (c) Integrity and honesty: Must be worthy of confidence and implicit trust by the judiciary and their colleagues at all times,
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so as to advance the open, fair and efficient administration of justice. A

- (d) Independence: Must be committed to the discharge of counsel's duty to the court, especially in cases where that duty may conflict with clients' interests.
- (e) Disinterestedness: Those who are in private practice must honour the cab-rank rules; namely, the duty to accept briefs to appear for which they are competent and available, regardless of any personal opinions of the parties or the causes, and subject only to exceptions related to appropriate fees and conflicting obligations. B
- (f) Diligence: Must have the capacity and willingness to devote themselves to the vigorous advancement of the clients' interests. C
- (g) Experience: Must have the perspective and knowledge of legal practice acquired over a considerable period. D

Also, some or all of the following may be demonstrated by the Advocate's practice:

- i) Experience in arguing cases on appeal;
- ii) A position of leadership in a specialist jurisdiction; E
- iii) Experience in conducting major cases in which the other party is represented by Senior Counsel;
- iv) Experience in conducting cases with a junior;
- v) Considerable practice in giving advice in specialist fields of law; F
- vi) Experience and practice in alternative dispute resolution, including arbitration and mediations; and
- vii) Experience in sitting on courts or tribunals.

Additionally, demonstrated leadership in: G

- i) Developing the diverse community of the Bar; or
- ii) Making a significant contribution to Australian society as a barrister.

A Criteria for Cessation of appointment:

1. Whose name has been removed from the roll of persons admitted as lawyers in any Australian jurisdiction; or
2. Whose practicing certificate has been cancelled or suspended; or

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3. Against whom a finding of professional misconduct has been made by a competent court or tribunal.

4. Who has been convicted of a serious offence as defined in the Legal Profession Act 2006, ceases to hold the appointment and is not permitted to retain or use the title of Senior Counsel.

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5. A finding of unsatisfactory professional conduct has been made against the appointee by a competent court or tribunal; or

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6. The appointee has conditions imposed on his or her practicing certificate.

Determination of Applications:

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The Selection Committee must seek comments on each applicant from the following members of the private bar and the judiciary: (a) All Senior Counsel and Queens Counsel Members; (b) The President of the Court of Appeal; (c) The Chief Justice of the Supreme Court of the ACT; (d) Judges of the Supreme Court of the ACT; (e) Master of the Supreme Court of the ACT; (f) The Chief Magistrate of the ACT Magistrates Court; (g) The Chief Justice of the Federal Court of Australia; (h) The Chief Justice of the Family Court of Australia; (i) Other senior members of any other courts or tribunals in which the Selection Committee considers the applicant to have practiced to a substantial extent; and (j) The President of the ACT Law Society.

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The President may, consult with as many other additional legal practitioners or members of the judiciary or other persons as is considered to be of assistance in consideration of the applications. He may also consult with any of the persons for whom comments have already been received, for the purposes of further

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discussion and clarification in considering the applications. The President and Assisting Counsel shall, after taking into account all comments received, make a final selection of the proposed appointees. He shall then inform the Chief Justice of the Supreme Court of the ACT of his/her final selection and seek the views of the Chief Justice on the proposed appointment as Senior Counsel. He shall not appoint any applicant whose appointment the Chief Justice opposes. He then publishes the name/s of the successful applicants for appointment as Senior Counsel for that year in order of intended seniority. After publication of the list of successful applicants, any unsuccessful applicant may discuss his or her application with the President.

SINGAPORE

In Singapore, under Part IV: Privileges of Advocates and Solicitors in the Legal Profession Act, the process for Appointment of Senior Counsel is prescribed. Under Section 30, the following process is laid down:

1. A Selection Committee comprising the Chief Justice, the Attorney-General and the Judges of Appeal may appoint an advocate and solicitor or a Legal Service Officer as Senior Counsel if the Selection Committee is of the opinion that, by virtue of the person's ability, standing at the Bar or special knowledge or experience in law, he is deserving of such distinction.
2. At every meeting of the Selection Committee, 3 members shall constitute a quorum, and no business shall be transacted unless a quorum is present.
3. Subject to this section, the Selection Committee may establish its own practice and regulate its own procedure:
4. The appointment of a Senior Counsel shall be deemed to be revoked if the Senior Counsel
 - a) Deleted.
 - b) being a Legal Service Officer, is dismissed from the Singapore Legal Service;

- A c) being a member of the Faculty of Law of the National University of Singapore or the School of Law of the Singapore Management University, is dismissed from the Faculty or School, as the case may be;
- B d) is convicted of an offence by a court of law in Singapore or elsewhere and sentenced to imprisonment for a term of not less than 12 months or to a fine of not less than \$2,000 and has not received a free pardon;
- e) becomes mentally disordered and incapable of managing himself or his affairs;
- C f) is an undischarged bankrupt; or
- g) enters into a composition with his creditors or a deed of arrangement with his creditors.
- D 5. The appointment of a Senior Counsel shall be deemed to be revoked if, upon an application under section 82A(10) or 98(1) —
- a) the Senior Counsel is suspended from practice or struck off the roll; or
- b) a court of 3 Judges of the Supreme Court recommends that the appointment of the Senior Counsel be revoked.
- E 6. No person shall be appointed as a Senior Counsel unless he has for an aggregate period of not less than 10 years been an advocate and solicitor or a Legal Service Officer or both.
- F 7. On 21st April 1989, those persons who, on the date immediately preceding that date, are holding office as the Attorney-General and the Solicitor-General shall be deemed to have been appointed as Senior Counsel under this section.
- G 8. Any person who, on or after 1st June 2007, holds office as the Attorney-General, a Deputy Attorney-General or the Solicitor-General shall, if he is not a Senior Counsel, be deemed to have been appointed as Senior Counsel under this section on that date or the date on which he is appointed Attorney-General, Deputy Attorney-General or Solicitor-General, whichever is the later.
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IRELAND

A

(Nomenclature – Senior Counsel)

The Legal Services Regulation Act, 2015's Part 12 (Patents of Precedence) provides for the process of designating the title 'Senior Counsel'.

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A Patent of Precedence, if granted upon a barrister/solicitor entitles him to use the title of Senior Counsel. The Advisory Committee on the grant of Patent of Precedence shall consist of – (a) the Chief Justice (as Chairman); (b) the President of the High Court; (c) the Attorney General; (d) Bar Council's Chairperson; (e) Law Society's President; (f) a lay member.

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The criteria for grant of Patent of Precedence is as follows- (i) legal practitioner must have displayed a degree of competence and a degree of probity appropriate to and consistent with the grant to him or her of a Patent; (ii) s/he must have professional independence; (iii) s/he must have a proven capacity for excellence in the practice of advocacy; (iv) s/he must have a proven capacity for excellence in the practice of specialist litigation; (v) s/he must have specialist knowledge of an area of law; (vi) s/he must be suitable on grounds of character and temperament.

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The Advisory Committee, if it finds that, the candidate meets the criteria, it will recommend the shortlisted names to the government to be granted the Patent of Precedence.

15. So far as India is concerned, it appears that the legal profession acquired roots in the years of British rule. The first British Court was established in Bombay in the year 1672. In the year 1726, the Mayor Courts were established in Madras, Bombay and Calcutta. By the Charter of 1774, the Supreme Court of Judicature was established at Calcutta and, thereafter, in Bombay and Madras. The Charter allowed only English and Irish barristers to practice in these courts and no Indian had the right to appear in the Court. In 1862, High Courts were established at Calcutta, Bombay and Madras. Vakils could now practice before the High Courts ending the monopoly of barristers. There was Indian participation in the courts along with the presence of English lawyers. In 1879, the Legal Practitioners Act was enacted which defined 'Legal Practitioner' to

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- A mean an Advocate, a Vakil, an attorney of any High Court, a pleader, a Mukhtar, a revenue-agent. The Indian Bar Councils Act, 1926 was then passed to unify the various grades of legal practice and to provide autonomy to the Bar. Prior to the coming into force of the Advocates Act, 1961, so far as the Supreme Court of India is concerned, designation as a senior Advocate was a matter of choice for any Advocate, who had
- B completed 10 years of practice and who was otherwise willing to abide by certain conditions, e.g., not to directly deal with clients or file papers and documents in the courts etc. Designations which were exclusively dealt with by the Bar came to be vested in the Supreme Court with the enactment of the Supreme Court Rules of the year 1966. Similar was
- C the earlier position in the Bombay High Court. The change in the scenario could be attributed to the enactment of the Advocates Act, 1961 whereunder the task of designating Senior Advocate was, for the first time, statutorily entrusted to the Supreme Court/High Courts. Section 16 of the Act which deals with the matter and has led to the present debate, is in the following terms.
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“16. Senior and other advocates.—

- (1) There shall be two classes of advocates, namely, senior advocates and other advocates.
- (2) 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.
- (3) Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.
- (4) An advocate of the Supreme Court who was a senior advocate of that Court immediately before the appointed day shall, for the purposes of this section, be deemed to be a senior advocate:
- Provided that where any such senior advocate makes an application before the 31st December, 1965 to the Bar Council maintaining the roll in which his name has been entered that he does not desire to continue as a senior advocate, the Bar Council may grant the application and the roll shall be altered accordingly.”

16. Rule 2 of Order IV of the Supreme Court Rules 2013 and its sub-rules may also be seen at this stage: A

“2(a) 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. B

(b) A senior advocate shall not-

(i) file a vakalatnama or act in any Court or Tribunal in India;
(ii) appear without an advocate-on-record in the Court or without a junior in any other Court or Tribunal in India; C

(iii) accept instructions to draw pleadings or affidavit, advise on evidence or do any drafting work of an analogous kind in any Court or Tribunal in India or undertake conveyancing work of any kind whatsoever but this prohibition shall not extend to settling any such matter as aforesaid in consultation with a junior; D

(iv) accept directly from a client any brief or instructions to appear in any Court or Tribunal in India.

Explanation.-

In this order- E

(i) ‘acting’ means filing an appearance or any pleadings or applications in any Court or Tribunal in India, or any act (other than pleading) required or authorized by law to be done by a party in such Court or Tribunal either in person or by his recognized agent or by an advocate or attorney on his behalf. F

(ii) ‘tribunal’ includes any authority or person legally authorized to take evidence and before whom advocates are, by or under any law for the time being in force, entitled to practice.

(iii) ‘junior’ means an advocate other than a senior advocate. G

(c) Upon an advocate being designated as a senior advocate, the Registrar shall communicate to all the High Courts and the Secretary to the Bar Council of India and the Secretary of the State Bar Council concerned the name of the said Advocate and the date on which he was so designated.” H

- A 17. So far as the practice prevailing in the Supreme Court of India for designation of senior advocates is concerned, from the Affidavits filed on behalf of the Registry of the Supreme Court it seems that the essence of the practice in vogue is that 20 years of combined standing as an Advocate or a District and Sessions Judge or a Judicial Member of any Tribunal (qualification for eligibility for appointment in such Tribunal
- B should not be less than what is prescribed for appointment as a District Judge), entitles an Advocate to apply for being designated as a Senior Advocate by the Supreme Court. A relaxation to the aforesaid requirement i.e. length of practice was recommended in the year 1996 by an Administrative Committee of three Hon'ble Judges which also appears
- C to have been acted upon in specific cases. All applications received are circulated to the Hon'ble Chief Justice and all Hon'ble Judges. Only those cases which have been approved by a minimum of five Hon'ble Judges are put up before the Full Court. If the Hon'ble Chief Justice or any Hon'ble Judge of the Supreme Court is of the view that a particular
- D Advocate deserves the distinction of being designated as a Senior Advocate, the Hon'ble Chief Justice or the Hon'ble Judge, as may be, can also recommend the name of such Advocate for being considered for designation. All such names would also be circulated amongst the Judges in the same manner and undergo the same process until the short-listed names reach the Full Court. In the Full Court, decisions are
- E taken on the basis of voting by secret ballot and by the rule of majority.

18. Insofar as the High Courts of the country are concerned, it appears that there is no uniform criteria or yardstick. Age; income; length of practice; requirement of practice in the High Court in which designation is sought or in a court subordinate to such High Court appear to be the
- F broad parameters which different High Courts have adopted either by incorporation of all such parameters or some or few of them. The position would be clear from the following resume which indicates the practice prevailing in different High Courts of the country.

(1) HIGH COURT OF CALCUTTA

- G The High Court of Calcutta has published a Notification on the 29th of September, 2014, and has crystallized the procedure in order to designate advocates as a Senior Advocate:

(I) The advocate must not be less than 40 years of age at the time of moving an application, and he must have an experience of not less than

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15 years at the Bar. The experience of an advocate at the State Judicial Services is counted towards the overall experience; however, such advocate must have practiced at the Bar for not less than 07 years after the cessation of services at the State Judicial Services. A

(II) Any former Judge of a High Court entitled to practice before the High Court of Calcutta may move an application in writing before the Chief Justice and seek the designation of a Senior Advocate. B

(III) Any Judge of the High Court may recommend to the Chief Justice the name of an advocate who is worthy to receive this designation.

(IV) The Chief Justice shall constitute a standing committee of seven Judges in order to consider the applications moved by the interested candidates. C

(V) The standing committee shall scrutinize the applications and recommend the candidates who are worthy to be considered by the Full-Court.

(VI) The Full-Court shall deliberate upon the applications recommended by the standing committee and the Full-Court shall vote upon such applications by casting secret ballots. D

(VII) Any applicant who gets the votes of 2/3rd of the Judges, or more, is conferred the designation of a Senior Advocate. If a particular application is rejected by the High Court, then such advocate will not be considered for a subsequent period of two years. E

(2). HIGH COURT OF TRIPURA

The High Court of Tripura has published a Notification on the 17th of July, 2013, and has crystallized the procedure in order to designate advocates as a Senior Advocate: F

(I) The advocate seeking designation shall not be less than 45 years of age at the time of moving an application and he must have practiced at the Bar for not less than 15 years. The advocate must be enrolled with the Bar Council of Tripura and he must be primarily practicing before the High Court of Tripura or the courts subordinate to the High Court. G

(II) The application for consideration in reference to an advocate may be moved either by the advocate himself or by a Judge of the High Court.

- A (III) The advocate shall have a net annual taxable income which is not less than three lakh rupees, accruing from the legal profession, in reference to the preceding three years;

Provided that this clause will not apply to the Law Officers of the Government.

- B (IV) The applications are deliberated upon by the Full-Court and the votes will be cast by secret ballots.

(V) An advocate is required to get 3/4th of the votes of the Full-Court in order to be designated as a Senior Advocate. If an applicant is rejected by the High Court, then his designation will not be considered for a

- C subsequent period of two years.

(3). HIGH COURT OF JHARKHAND

The High Court of Jharkhand employs this procedure in order to designate advocates as a Senior Advocate:

- D (I) The advocate seeking designation, while moving an application, must have an experience which is not less than 15 years at the Bar. The advocate is also required to be an ordinary resident of Jharkhand and is required to be practicing before the High Court.

- E (II) The application for consideration in reference to an advocate may be moved either by the advocate himself or by a Judge of the High Court.

- F (III) The Full-Court shall deliberate upon the applications so received and may designate an advocate as a Senior Advocate if he is worthy of such designation. If an applicant is rejected by the Full-Court, then his designation will not be considered for a subsequent period of two years.

(4). HIGH COURT OF UTTARAKHAND

The High Court of Uttarakhand has published a Notification on the 04th of August, 2009, and has crystallized the procedure in order to designate advocates as a Senior Advocate:

- G (I) An advocate seeking designation must have an experience which is not less than 20 years at the Bar, he must be enrolled with the State Bar Council of Uttarakhand and he must be an ordinary resident of Nainital.

- H (II) The application for consideration shall be moved by a Judge of the High Court, along with the consent of the advocate in question.

(III) The Full-Court shall deliberate upon the recommendations and the designation is conferred upon the advocate with the attainment of a simple majority of votes. A

(IV) The Full-Court has the power to strip off the designation conferred unto an advocate, through a simple majority of votes, if the High Court is of the opinion that such advocate is not worthy of the designation any more. B

(5): HIGH COURT OF GUWAHATI

The High Court of Guwahati has published a Notification on the 09th of September, 2011, and has crystallized the procedure in order to designate advocates as a Senior Advocate: C

(I) The application seeking consideration shall be moved either by the Advocate-General for a State, two senior advocates practicing before the High Court of Guwahati or suo motu by the High Court.

(II) The advocate shall not be less than 35 years of age at the time of moving an application and he must have an experience which is not less than 10 years either at the Bar or at the State Judicial Services. The advocate is also required to have practiced before a court under the jurisdiction of the High Court of Guwahati for a term which is not less than 05 years. D

(III) The advocate must have a net annual taxable income which is not less than two lakh rupees and he must be a permanent resident of a State falling under the jurisdiction of the High Court of Guwahati. The advocate is also required to be enrolled with the State Bar Council of Assam, Arunachal Pradesh, Manipur, Mizoram, Meghalaya, Nagaland, Tripura or Sikkim. E F

(IV) The Chief Justice may constitute a committee consisting of not less than three Judges of the High Court in order to consider the applications. The committee so constituted shall place its recommendations before the Full-Court.

(V) The applications shall be deliberated upon by the Full-Court and the designation is conferred unto the advocate if he secures the votes of 2/3rd of the Judges. If the proposal in reference to a particular advocate is rejected, then his designation will not be considered for a subsequent period of two years. G H

A (6). HIGH COURT OF ORISSA

The High Court of Orissa has published a Notification on the 23rd of June, 2011, and has crystallized the procedure in order to designate advocates as a Senior Advocate:

B (I) The advocate seeking consideration shall not be less than 35 years of age at the time of moving an application and he must have an experience which is not less than 10 years at the Bar. The services rendered by the advocate at the State Judicial Services will also be considered.

(II) The advocate must have a net annual taxable income which is not less than three lakh rupees.

C (III) The Full-Court shall consider the applications and designation is conferred upon advocates who secure a simple majority of votes. The advocates rejected by the High Court will not be considered for a subsequent period of one year.

D (7). HIGH COURT of CHHATTISGARH

The High Court of Chhattisgarh has published a Notification on the 21st of March, 2014, and has crystallized the procedure in order to designate advocates as a Senior Advocate:

E (I) The application seeking designation may be moved either by the advocate himself or by a Judge of the High Court. The advocate seeking designation must not be less than 45 years of age and he must have an experience at the Bar which is not less than 20 years. The experience accrued through the State Judicial Services will be considered and the advocate must have practiced before the High Court for a term which is not less than 10 years.

F (II) The advocate must have a net annual taxable income which is not less than five lakh rupees for the preceding three years.

G (III) The Chief Justice may constitute a committee in order to consider the applications moved by the advocates. The recommendations of the committee are placed before the Full-Court for consideration. The advocate must secure votes of at least 2/3rd of the Judges of the Full-Court in order to be designated as a Senior Advocate. The advocates rejected by the High Court will not be considered for a subsequent term of two years.

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(8). HIGH COURT OF MEGHALAYA

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The High Court of Meghalaya has the following procedure in order to designate advocates as a Senior Advocate:

(I) The application seeking designation may be moved by a Judge of the High Court, the Advocate-General for Meghalaya or by three senior advocates practicing before the High Court.

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(II) The advocate shall not be less than 35 years of age and he shall have an experience which is not less than 10 years at the Bar. The experience accrued by the advocate at the State Judicial Services is considered towards the overall experience.

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(III) The advocate must secure votes of at least 2/3rd of the Judges of the Full-Court in order to be designated as a Senior Advocate. The advocates rejected by the High Court will not be considered for a subsequent term of two years.

(9). HIGH COURT AT HYDERABAD

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The High Court at Hyderabad has published a Notification on the 16th of March, 2016, and has crystallized the procedure in order to designate advocates as a Senior Advocate:

(I) The application seeking designation shall be moved by at least three senior advocates practicing before the High Court. The advocate seeking designation must not be less than 45 years of age and he must have an experience which is not less than 15 years. The experience accrued by the advocate as a State Judicial Officer will be counted towards the overall experience.

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(II) The advocate must have a net annual taxable income which is not less than ten lakh rupees over the preceding three years.

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(III) The Full-Court shall deliberate upon the applications and an advocate securing over 2/3rd of the votes will be designated as a Senior Advocate. The method of voting is by the casting of secret ballots. An advocate rejected by the High Court shall not be considered for a subsequent period of two years.

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(10). HIGH COURT OF DELHI

The High Court of Delhi has published a Notification on the 14th of December, 2012, and has crystallized the procedure in order to designate advocates as a Senior Advocate:

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- A (I) The application for designation is considered suo motu by the High Court or moved by five senior advocates of the High Court, along with the consent of the advocate concerned. The advocate must have an experience which is not less than 10 years at the Bar and he must be enrolled with the Bar Council of Delhi.
- B (II) The applications are considered by the Full-Court and an advocate must secure not less than 2/3rd of the ballots cast by the Judges. A Judge is allowed to abstain from the voting procedure and such votes shall not be counted towards the final number of ballots cast.
- (III) An advocate rejected by the High Court will not be considered for a subsequent period of one year.
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(11). HIGH COURT OF KARNATAKA

The High Court of Karnataka employs this procedure in order to designate advocates as a Senior Advocate:

- D (I) The application seeking designation may be moved by a Judge of the High Court, two senior advocates practicing before the High Court or by the advocate himself.
- (II) The advocate must have an experience which is not less than 15 years at the Bar and must have a net annual taxable income which is not less than three lakh rupees over the preceding five years.
- E (III) An advocate must secure a simple majority of votes cast at the meeting of the Full-Court in order to secure the designation of a Senior Advocate. The advocates rejected by the High Court will not be considered for a subsequent period of two years.

F (12). HIGH COURT OF PUNJAB AND HARYANA

The High Court of Punjab and Haryana has published a Notification on the 31st of January, 2007, and has crystallized the procedure in order to designate advocates as a Senior Advocate:

- G (I) The advocate seeking designation must have an experience which is not less than 15 years at the Bar.
- (II) The advocate must have a net annual taxable income which is not less than 15 lakh rupees for the preceding two years and a net annual taxable income which is not less than 10 lakh rupees over the preceding three years. The application for consideration must be moved on behalf

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of the advocate by two senior advocates practicing before the High Court. A

(III) The Full-Court may designate an applicant as a Senior Advocate through a simple majority. The Judges are allowed to abstain from the voting procedure. The advocates rejected by the High Court will not be considered for a subsequent term of two years. B

(13). HIGH COURT OF HIMACHAL PRADESH

The High Court of Himachal Pradesh has published a Notification on the 19th of July, 2009, and has crystallized the procedure in order to designate advocates as a Senior Advocate:

(I) The applications for consideration will be considered by the High Court suo motu. The advocates will have to be enrolled with the Bar Council of Himachal Pradesh for consideration. C

(II) The advocate must not be less than 45 years of age and must have an experience which is not less than 15 years at the time of consideration. The advocate must have a net annual taxable income which is not less than three lakh rupees over the preceding three years. D

(III) The Full-Court will cast secret ballots and an advocate must secure at least 3/4th of the votes for a designation. The advocates rejected by the High Court will not be considered for a subsequent term of two years. E

(14). HIGH COURT OF MADHYA PRADESH

The High Court of Madhya Pradesh has published a Notification on the 11th of April, 2012, and has crystallized the procedure in order to designate advocates as a Senior Advocate: F

(I) The applications seeking designation may be moved by the advocate himself or may be considered suo motu by the High Court.

(II) The advocate must have an experience which is not less than 15 years at the Bar and must have a net annual taxable income which is not less than ten lakh rupees over the preceding three years. The applications will be placed before a committee of Judges constituted by the Chief Justice and the recommendations of this committee will be placed before the Full-Court. G

- A (III) The Full-Court will vote by casting secret ballots and an advocate will have to secure a simple majority of votes in order to receive the designation. The advocates rejected by the High Court will not be considered for a subsequent period of two years.

(15). HIGH COURT OF PATNA

- B The High Court of Patna has crystallized this procedure in order to designate advocates as a Senior Advocate:

(I) The applications seeking designation may be moved by the advocate or may be considered suo motu by the High Court.

- C (II) The advocate must not be less than 38 years of age and must have an experience which is not less than 10 years at the Bar.

(III) The Full-Court will vote by casting secret ballots and the advocate must secure a simple majority of votes for designation.

(16). HIGH COURT OF KERALA

- D The High Court of Kerala has published a Notification on the 18th of January, 2000, and has crystallized the procedure in order to designate advocates as a Senior Advocate:

(I) The application seeking designation may be moved by the advocate himself, by two senior advocates practicing before the High Court or may be considered by the High Court suo motu.

- E (II) An advocate must not be less than 45 years of age and must have an experience which is not less than 15 years at the time of consideration. The advocate must also have a net annual taxable income which is not less than two lakh rupees over the preceding three years.

- F (III) The Full-Court will cast votes through secret ballots and the advocate must secure at least 2/3rd of the votes for designation. The advocates rejected by the High Court will not be considered for a subsequent term of two years.

(17). HIGH COURT OF BOMBAY

- G The High Court of Bombay has published a Notification on the 28th of August, 2013, and has crystallized the procedure in order to designate advocates as a Senior Advocate:

- H (I) The application for consideration may be moved on behalf of the advocate by a senior advocate of the Bar.

(II) The advocate must have an experience which is not less than 15 years at the Bar and must have a net annual taxable income which is not less than seven lakh rupees.

(III) The applications will be considered by a committee of Judges constituted by the Chief Justice and the recommendations of this committee will be placed before the Full-Court. The Judges of the Full-Court are allowed to abstain from the proceedings and the advocate must secure at least 2/3rd of the votes for a designation.

(18). HIGH COURT OF GUJARAT

The High Court of Gujarat has published a Notification on the 09th of August, 2012, and has crystallized the procedure in order to designate advocates as a Senior Advocate:

(I) The applications seeking designation may be moved by the advocate or may be considered suo motu by the High Court.

(II) The advocate must not be less than 40 years of age and must have an experience which is not less than 15 years at the time of consideration. The advocate must have a net annual taxable income not less than 15 lakh rupees over the preceding three years.

(III) The Full-Court will deliberate upon the applications and the advocate must secure at least 2/3rd of the votes for a designation. The voting is through the casting of secret ballots and the Judges are allowed to abstain from voting. The advocates rejected by the High Court will not be considered for a subsequent term of two years.

(19). HIGH COURT OF RAJASTHAN

The High Court of Rajasthan has published a Notification on the 30th of April, 2010, and has crystallized the procedure in order to designate advocates as a Senior Advocate:

(I) The applications seeking designation may be moved by the advocate or may be considered suo motu by the High Court.

(II) The advocate must not be less than 40 years of age and must have an experience which is not less than 20 years at the time of consideration.

(III) The Full-Court will deliberate upon the applications and the advocate must secure at least 2/3rd of the votes for a designation. The advocates rejected by the High Court will not be considered for a subsequent term of five years.

A (20). HIGH COURT OF ALLAHABAD

The High Court of Allahabad has published a Notification on the 10th of December, 2010, and has crystallized the procedure in order to designate advocates as a Senior Advocate:

- B (I) The applications seeking designation must be moved with the consent of the advocate by seven senior advocates practicing before the High Court.
- (II) The advocate so recommended must have an experience which is not less than 20 years at the Bar.
- C (III) The Full-Court will vote by casting secret ballots and the advocate must secure a simple majority for the designation. The advocates rejected by the High Court will not be considered for a subsequent term of two years.

(21). HIGH COURT OF SIKKIM

- D The High Court of Sikkim has published a Notification on the 05th of June, 2009, and has crystallized the procedure in order to designate advocates as a Senior Advocate:
- (I) The applications seeking designation may be moved by a Judge of the High Court, Advocate-General for Sikkim or two senior advocates practicing before the High Court.
- E (II) The advocate must not be less than 35 years of age and he must have an experience which is not less than 10 years at the Bar. The advocate is also required to have a net annual taxable income which is not less than two lakh rupees.
- F (III) The Full-Court will deliberate upon the applications and the advocate must secure at least 2/3rd of the votes for a designation. The advocates rejected by the High Court will not be considered for a subsequent term of two years.

(22). HIGH COURT OF MADRAS

- G The High Court of Madras has crystallized this procedure in order to designate advocates as a Senior Advocate:
- (I) The applicant must have an experience which is not less than 15 years at the Bar. The services rendered by the applicant as a Judicial

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Officer is included while calculating the years of service.

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(II) The applicant must have an annual gross income, accruing from the profession of law, which is not less than seven lakh rupees for the preceding three years, and the applicant must be an income-tax assessee for the preceding ten years from the date of consideration;

Provided that this condition will not apply to Government counsel who are serving as Law-Officers at the relevant time.

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(III) The applicant must furnish at least 15 judgments, over the preceding three years, wherein he has contributed towards the growth of law.

(IV) The primary criteria for designation is the caliber, merit, ability and academic distinction of the applicant; including his character, conduct and behavior towards the court and brother/sister members of the Bar.

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(V) The applicant must be primarily practicing before the High Court of Madras, or the courts or tribunals subordinate to the High Court.

The High Court in its report submitted through the Registrar General states that additionally it is following the following procedure for conferring/removing a designation upon an Advocate:

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(I) A Selection Committee is put in place and it consists of ten Hon'ble Judges of the High Court.

(II) The Advocates, who fulfill the norms as mentioned herein, shall move an application in the prescribed format before the Selection Committee.

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(III) The Selection Committee verifies the credentials of applicants and recommends the names for designation before the Chief Justice of the High Court. The opinion of the Chief Justice will prevail if there is no consensus among the Selection Committee in this regard.

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(IV) The credentials of the recommended applicants will be placed before the Full-Court and the opinion of the majority will prevail.

(V) The Full-Court, through a simple majority, is also empowered to strip an Advocate off this designation if the High Court is of the opinion that such advocate is not worthy to hold the distinction any more.

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19. We may now proceed to take up the cases in such seriatim as would be required.

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A I.A. NO.53321 OF 2017 IN WRIT PETITION (CIVIL) NO.454 OF
2015 [FILED BY GUJARAT HIGH COURT ADVOCATE'S
ASSOCIATION]

&

B TRANSFERRED CASE NO.1 OF 2017 [I.E. WRIT PETITION
(CIVIL) NO.6331 OF 2016 FILED BY THE NATIONAL LAWYERS
CAMPAIGN FOR JUDICIAL TRANSPARENCY AND REFORMS]

C 20. We have heard Shri Ashim Anand, learned counsel appearing for the applicant (Gujarat High Court Advocate's Association), Shri Mathews J. Nedumpara, learned counsel for the petitioner in Transferred Case No.1 of 2017, Shri R.S. Suri, learned Senior Counsel, who is also the President, Supreme Court Bar Association, Shri Annam D.N. Rao, learned counsel for the Supreme Court of India through Secretary General and the learned counsels for the interveners.

D 21. The challenge to Section 16 of the Act and Order IV rule 2 of the Supreme Court Rules, 2013 is primarily founded on the basis that the classification made resulting in two classes of Advocates i.e. 'Senior Advocates' and 'Advocates' is not based on any reasonable and acceptable basis; even if there be one, the same has no connection with the object sought to be achieved by such classification. It is argued that

E not only the practice of designation of Senior Advocates is a relic of the feudal past but it negates the concept of equality inasmuch as the professional qualifications of a "Senior Advocate" and an "Advocate" are the same and so also the competence and ability in most cases; yet, a Senior Advocate, by virtue of his designation, stands out as a class apart not only because of the special dress code prescribed but also

F because of the right of pre-audience conferred by Section 23 of the Act. A Senior Advocate steals an undeserving head start in the profession. It is further contended that the designation of Senior Advocate being a conferment made by the Judges, the same gives the impression of recognition of an Advocate by the Judges which professionally has an

G adverse impact on others who have not been so designated, besides giving an unfair advantage to the person so designated. It is argued that because designation is conferred by the Judges there is a public perception that it is only the Senior Advocates who have been recognized by the Judges to be persons of competence, ability and merit. It is the perception of the petitioner – Association that undue indulgence is shown

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to Senior Advocates by the Courts. The litigant, in the circumstances, is left with no choice but to engage a Senior Advocate who in turn charges high fees for his/her services to the prejudice of the litigants. It is further contended that the entire exercise of designation is a subjective process disclosing no basis for the particular conclusion reached. There being nothing to differentiate a person designated and a person who has not been so designated, the equality clause enshrined in Article 14 of the Constitution of India is violated. It is also contended that even if an objective criteria is laid down and is followed, the distinction between the two classes of Advocates has no nexus with the object sought to be achieved i.e. advancement of the legal system which in any case is also and, in fact, effectively serviced by Advocates who are not designated as Senior Advocates. The practice of designation of Senior Advocates has also been challenged on the ground that the same violates Article 18 of the Constitution of India which imposes an embargo on conferment of title by the State. Though state honours like 'Bharat Ratna', Padma Vibhushan' etc. are still being conferred, the said honours are not prefixed or suffixed to the names of the recipients unlike that of a 'Senior Advocate'. The conferment of designation being an instance of exercise of the administrative power of the Supreme Court and the High Courts the same is contrary to the mandate of Article 18 of the Constitution of India, it is argued.

22. We have considered the matter.

23. The exercise of the power vested in the Supreme Court and the High Courts to designate an Advocate as a Senior Advocate is circumscribed by the requirement of due satisfaction that the concerned advocate fulfills the three conditions stipulated under Section 16 of the Advocates Act, 1961, i.e., (1) ability; (2) standing at the bar; and/or (3) special knowledge or experience in law that the person seeking designation has acquired. It is not an uncontrolled, unguided, uncanalised power though in a given case its exercise may partake such a character. However, the possibility of misuse cannot be a ground for holding a provision of the Statute to be constitutionally fragile. The consequences spelt out by the intervener, namely, (1) indulgence perceived to be shown by the Courts to Senior Advocates; (2) the effect of designation on the litigant public on account of high fees charged; (3) its baneful effect on the junior members of the bar; and (4) the element of anti-competitiveness, etc. are untoward consequences occasioned by human failures. Possible

- A consequences arising from a wrong/improper exercise of power cannot be a ground to invalidate the provisions of Section 16 of the Act. Recognition of qualities of merit and ability demonstrated by in-depth knowledge of intricate questions of law; fairness in court proceedings consistent with the duties of a counsel as an officer of the Court and contributions in assisting the Court to charter the right course of action
- B in any given case, all of which would go to determine the standing of the Advocate at the bar is the object behind the classification. Such an object would enhance the value of the legal system that Advocates represent. So long as the basis of the classification is founded on reasonable parameters which can be introduced by way of uniform
- C guidelines/norms to be laid down by this Court, we do not see how the power of designation conferred by Section 16 of the Act can be said to be constitutionally impermissible.

24. Similar is the position with regard to the challenge founded on the alleged violation of Article 18 of the Constitution of India. The designation 'Senior Advocate' is hardly a title. It is a distinction; a recognition. Use of the said designation (i.e. Senior Advocate), per se, would not be legally impermissible inasmuch as in other vocations also we find use of similar expressions as in the case of a doctor referred to as a 'Consultant' which has its own implications in the medical world. There are doctors who are referred to as 'Senior Consultants' or as a
- E 'Senior Surgeon'. Such expressions are instances of recognition of the talent and special qualities of a person which has been proved and tested over a period of time. In fact, even in bureaucratic circles such suffixes and prefixes are also not uncommon. We, therefore, take the view that the designation of 'Advocates' as 'Senior Advocates' as provided for in
- F Section 16 of the Act would pass the test of constitutionality and the endeavour should be to lay down norms/guidelines/parameters to make the exercise conform to the three requirements of the Statute already enumerated herein above, namely, (1) ability of the advocate concerned; (2) his/her standing at the bar; and (3) his/her special knowledge or experience in law.

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25. I.A. NO.53321 of 2017 in Writ Petition (Civil) No.454 of 2015 filed by the Gujarat High Court Advocates' Association is accordingly disposed of in the above terms. So is the Transferred Case No.1 of 2017 [i.e. Writ Petition (Civil) No.6331 of 2016 filed by the National Lawyers Campaign for Judicial Transparency and Reforms in the Delhi
- H High Court].

WRIT PETITION (CIVIL) NOS.33 AND 819 OF 2016 [FILED BY
THE HIGH COURT OF MEGHALAYA BAR ASSOCIATION,
SHILLONG]

26. As already indicated, the grievance of the petitioner in these writ petitions is with regard to the amendment of the guidelines framed by the High Court of Meghalaya governing the issue of designation of Senior Advocates. The grievance specifically is directed against the amendment dated 31st March, 2015 by which the requirement of 05 years' practice in any Court within the jurisdiction the High Court of Meghalaya has been done away with and an Advocate practicing in any court of the country has been made eligible.

27. There is a further amendment made on 13th January, 2016 by which any Senior Advocate of any High Court in the country can sponsor any advocate in any court in India to be designated as a Senior Advocate by the High Court of Meghalaya. Even at first blush, the guidelines have been couched, by the amendments thereto, in too wide terms for acceptance.

28. The power of designating any person as a Senior Advocate is always vested in the Full Court either of the Supreme Court or of any High Court. If an extraordinary situation arises requiring the Full Court of a High Court to depart from the usual practice of designating an advocate who has practiced in that High Court or in a court subordinate to that High Court, it may always be open to the Full Court to so act unless the norms expressly prohibit such a course of action. If the power is always there in the Full Court, we do not see why an express conferment of the same by the Rules/Guidelines is necessary. It is instances like these that bring the system of designation of Senior Advocates into disrepute. Beyond the above, we do not consider it necessary to say anything further as Shri P.S. Patwalia, learned Senior Counsel appearing for the High Court of Meghalaya has submitted, on instructions received, that the High Court would be willing to reconsider the changes brought in by the amendments and remedy the situation by taking appropriate measures. We leave it open for the High Court of Meghalaya to act accordingly and close the writ petitions (Nos. 33 and 819 of 2016) in terms of the aforesaid liberty.

29. Shri K.K. Venugopal, learned Attorney General for India, Shri R.S. Suri, learned Senior Counsel and President, SCBA, Shri C.U. Singh, learned Senior Counsel appearing for the Bar Association of India, Shri

- A Annam D.N. Rao, learned counsel for the Supreme Court of India through the Secretary General and Shri V.K. Biju, the intervener have all urged that existing practice of designation of Senior Advocates should continue though there is room to add to the existing guidelines/parameters governing the exercise. The arguments advanced by Shri K.K. Venugopal, the learned Attorney General for India and Shri R.S. Suri, learned Senior
- B Counsel would seem to suggest that in the process of designation some amount of say of the Bar by including participation of the representatives of the Bar should be provided. The representatives of the Bar can provide valuable inputs to the Hon'ble Judges who may not be, at all times, familiar with the credentials of a person seeking designation as a Senior
- C Advocate. It is urged that this is particularly true in the case of the Supreme Court of India where the Hon'ble Judges hold office for short tenures and may not have had the opportunity to experience the conduct of cases by a particular advocate seeking designation.

30. Ms. Indira Jaising, who has spearheaded the entire exercise
- D before the Court, at no stage, pressed for declaration of Section 16 of the Act or the provisions of the Supreme Court Rules, 2013 as unconstitutional. Her endeavour, particularly in the rejoinder arguments, has been to make the exercise of designation more objective, fair and transparent so as to give full effect to consideration of merit and ability, standing at the bar and specialized knowledge or exposure in any field of
- E law.

31. Both Section 16(2) of the Act and Order IV rule 2 of the Supreme Court Rules, 2013 are significant in use of the expression "is of opinion" and "in their opinion" respectively which controls the power of the Full Court to designate an Advocate as a Senior Advocate. It is a
- F subjective exercise that is to be performed by the Full Court inasmuch as a person affected by the refusal of such designation is not heard; nor are reasons recorded either for conferring the designation or refusing the same. But the opinion, though subjective, has to be founded on objective materials. There has to be a full and effective consideration of the criteria prescribed, namely, ability; standing at the Bar, special
- G knowledge or experience in law in the light of materials which necessarily has to be ascertainable and verifiable facts. In this regard we would like to reiterate the view expressed by this Court in its report in *Tata Chemicals Limited vs. Commissioner of Customs (Preventive)*⁴ which may provide a valuable insight in the matter:

H ⁴ (2015) 11 SCC 628

"14. In our opinion, the expression "deems it necessary" obviously means that the proper officer must have good reason to subject imported goods to a chemical or other tests. And, on the facts of the present case, it is clear that where the importer has furnished all the necessary documents to support the fact that the ash content in the coking coal imported is less than 12%, the proper officer must, when questioned, state that, at the very least, the documents produced do not inspire confidence for some good prima facie reason. In the present case, as has been noted above, the Revenue has never stated that CASCO's certificate of quality ought to be rejected or is defective in any manner. This being the case, it is clear that the entire chemical analysis of the imported goods done by the Department was ultra vires Section 18(1)(b) of the Customs Act.

15. Statutes often use expressions such as "deems it necessary", "reason to believe", etc. Suffice it to say that these expressions have been held not to mean the subjective satisfaction of the officer concerned. Such power given to the officer concerned is not an arbitrary power and has to be exercised in accordance with the restraints imposed by law. That this is a well-settled position of law is clear from the following judgments. [See *Rohtas Industries Ltd. v. S.D. Agarwal*, SCC at p. 341, para 11 : SCR at p. 129.] To similar effect is the judgment in *Sheo Nath Singh v. CIT*, SCR at p. 182. In that case it was held as under: (SCC p. 239, para 10)

'10. ... There can be no manner of doubt that the words 'reason to believe' suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income Tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The Court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the Court.'

32. What is merit? Is it the academic qualification or brilliance or is it something more? The matter has been considered earlier by this

A Court in *K.K. Parmar vs. High Court of Gujarat*⁵. Placing reliance on an earlier view in *Guman Singh vs. State of Rajasthan*⁶ it has been held that:

B “27. Merit of a candidate is not his academic qualification. It is sum total of various qualities. It reflects the attributes of an employee. It may be his academic qualification. He might have achieved certain distinction in the university. It may involve the character, integrity and devotion to duty of the employee. The manner in which he discharges his final duties would also be a relevant factor. (See *Guman Singh v. State of Rajasthan*.)

C 28. For the purpose of judging the merit, thus, past performance was a relevant factor. There was no reason as to why the same had been kept out of consideration by the Selection Committee. If a selection is based on the merit and suitability, seniority may have to be given due weightage but it would only be one of the several factors affecting assessment of merit as comparative experience in service should be.”

D 33. The guidelines governing the exercise of designation by the Supreme Court have already been noticed so also the guidelines in force in the various High Courts. Though steps have been taken to bring in some objective parameters, we are of the view that the same must be more comprehensively considered by this Court to ensure conformity of the actions/decisions taken under Section 16 of the Act with the requirement of constitutional necessities, particularly, in the domain of a fair, transparent and reasonable exercise of a statutory dispensation on which touchstone alone the exercise of designation under Section 16 of the Act can be justified. We have also noticed the fact that until the enactment of the Advocates Act, 1961 and the Supreme Court Rules, 1966 the option to be designated as a Senior Advocate or not was left to the Advocate concerned, with the Full Court having no role to play in this regard. We have also noticed that in other jurisdictions spread across the Globe, where the practice continues to be in vogue in one form or the other, participation in the decision making process of other stakeholders has been introduced in the light of experience gained. We are, therefore, of the view that the framework that we would be introducing by the present order to regulate the system of designation of

⁵ (2006) 5 SCC 789

H ⁶ (1971) 2 SCC 452

Senior Advocates must provide representation to the community of Advocates though in a limited manner. That apart, we are also of the view that time has come when uniform parameters/guidelines should govern the exercise of designation of Senior Advocates by all Courts of the country including the Supreme Court. The sole yardstick by which we propose to introduce a set of guidelines to govern the matter is the need for maximum objectivity in the process so as to ensure that it is only and only the most deserving and the very best who would be bestowed the honour and dignity. The credentials of every advocate who seeks to be designated as a Senior Advocate or whom the Full Court suo motu decides to confer the honour must be subject to an utmost strict process of scrutiny leaving no scope for any doubt or dissatisfaction in the matter.

34. A word with regard to minimum age and income as conditions of eligibility would be appropriate at this stage. From the narration contained hereinabove with regard to the norms and guidelines prevailing in different High Courts, it is evident that varying periods of practice and different slabs of income have been, inter alia, prescribed as minimum conditions of eligibility for consideration for designation as a Senior Advocate. If merit and ability is to be the determining factor, in addition to standing in the Bar and expertise in any specialized field of law, we do not see why we should insist on any minimum income as a condition of eligibility. The income generated by a lawyer would depend on the field of his practice and it is possible that a lawyer doing *pro bono* work or who specializes in a particular field may generate a lower return of income than his counterpart who may be working in another field of law. Insistence on any particular income, therefore, may be a self-defeating exercise. Insofar as age is concerned, we are inclined to take the view that instead of having a minimum age with a provision of relaxation in an appropriate case it would be better to go by the norm of 10 years practice at the Bar which is also what is prescribed by Article 217 of the Constitution as a condition of eligibility for being considered for appointment as a Judge of the High Court.

35. It is in the above backdrop that we proceed to venture into the exercise and lay down the following norms/guidelines which henceforth would govern the exercise of designation of Senior Advocates by the Supreme Court and all High Courts in the country. The norms/ guidelines, in existence, shall be suitably modified so as to be in accord with the present.

- A I. All matters relating to designation of Senior Advocates in the Supreme Court of India and in all the High Courts of the country shall be dealt with by a Permanent Committee to be known as “Committee for Designation of Senior Advocates”;
- B II. The Permanent Committee will be headed by the Hon’ble the Chief Justice of India and consist of two senior-most Judges of the Supreme Court of India (or High Court(s), as may be); the learned Attorney General for India (Advocate General of the State in case of a High Court) will be a Member of the Permanent Committee. The above four
- C Members of the Permanent Committee will nominate another Member of the Bar to be the fifth Member of the Permanent Committee;
- D III. The said Committee shall have a permanent Secretariat the composition of which will be decided by the Chief Justice of India or the Chief Justices of the High Courts, as may be, in consultation with the other Members of the Permanent Committee;
- E IV. All applications including written proposals by the Hon’ble Judges will be submitted to the Secretariat. On receipt of such applications or proposals from Hon’ble Judges, the Secretariat will compile the relevant data and information with regard to the reputation, conduct, integrity of the Advocate(s) concerned including his/her participation in pro-bono work; reported judgments in which the concerned
- F Advocate(s) had appeared; the number of such judgments for the last five years. The source(s) from which information/data will be sought and collected by the Secretariat will be as decided by the Permanent Committee;
- G V. The Secretariat will publish the proposal of designation of a particular Advocate in the official website of the concerned Court inviting the suggestions/views of other stakeholders in the proposed designation;
- H VI. After the data-base in terms of the above is compiled and all such information as may be specifically directed by the Permanent Committee to be obtained in respect of any

particular candidate is collected, the Secretariat shall put up the case before the Permanent Committee for scrutiny;

VII. The Permanent Committee will examine each case in the light of the data provided by the Secretariat of the Permanent Committee; interview the concerned Advocate; and make its overall assessment on the basis of a point-based format indicated below:

S. NO.	Matter	Points
1.	Number of years of practice of the Applicant Advocate from the date of enrolment. [10 points for 10-20 years of practice; 20 points for practice beyond 20 years]	20 points
2.	Judgments (Reported and unreported) which indicate the legal formulations advanced by the concerned Advocate in the course of the proceedings of the case; pro bono work done by the concerned Advocate; domain Expertise of the Applicant Advocate in various branches of law, such as Constitutional law, Inter-State Water Disputes, Criminal law, Arbitration law, Corporate law, Family law, Human Rights, Public Interest Litigation, International law, law relating to women, etc.	40 points
3.	Publications by the Applicant Advocate	15 points
4.	Test of Personality & Suitability on the basis of interview/interaction	25 points

- A VIII. All the names that are listed before the Permanent Committee/cleared by the Permanent Committee will go to the Full Court.
- B IX. Voting by secret ballot will not normally be resorted to by the Full Court except when unavoidable. In the event of resort to secret ballot decisions will be carried by a majority of the Judges who have chosen to exercise their preference/choice.
- C X. All cases that have not been favourably considered by the Full Court may be reviewed/reconsidered after expiry of a period of two years following the manner indicated above as if the proposal is being considered afresh;
- D XI. In the event a Senior Advocate is guilty of conduct which according to the Full Court disentitles the Senior Advocate concerned to continue to be worthy of the designation the Full Court may review its decision to designate the concerned person and recall the same;

E 36. We are not oblivious of the fact that the guidelines enumerated above may not be exhaustive of the matter and may require reconsideration by suitable additions/deletions in the light of the experience to be gained over a period of time. This is a course of action that we leave open for consideration by this Court at such point of time that the same becomes necessary.

F 37. With the aforesaid observations and directions and the guidelines framed we dispose of the Writ Petition (Civil) No.454 of 2015.

Nidhi Jain

Matters disposed of.