

Appointment Of Advocates In Supreme Court - A Critical Study

S. Sozhiya

1st Year, BA.LLB (Hons), Saveetha School of Law, Saveetha University

Ms. Purnima

Assistant Professor, Saveetha School of Law, Saveetha University, BA.BL.LLM.

Abstract: *The Advocates Act of 1961 prescribes that there shall be in India two classes of advocates, advocates and senior advocates. The senior advocates shall be those advocates who have been designated by the high court or the Supreme Court if they are of the opinion that by virtue of ability virtue ability, standing at the Bar or special knowledge or experience in law, they are deserving of such distinction. In practice, the process of appointments is governed by the rules of the high court and the rules of the Supreme Court. Usually, the procedure across the country is that for an advocate to be designated, there is a requirement that the full court (i.e all the judges in that court) be in favour of it via a vote. This leads to an interesting problem though, the rank of seniority is one that is held nation wide if the designated senior advocate continues to hold their rank before other high courts and the Supreme Court. This has over the years led to the rather distasteful practice of some advocates seeking to be designated by courts that are smaller in size and then ceasing to practice in that court altogether. Thus, this research paper deals with the issues relating to the appointment of advocates in Supreme Court and the discrimination among the advocates in the appointment.*

Keywords: *Amicus curiea, seniors, appointment, panel, Attorney General.*

I. INTRODUCTION

The Advocates Act of 1961 prescribes that there shall be in India two classes of advocates, advocates and senior advocates. The candidates are not interviewed and the old English practice of secret soundings continues informally controlling these designations resulting in a system that is not as meritocratic as one would hope and one that doesn't reflect the broad range of diverse interests at the Bar. Usually, the procedure across the country is that for an advocate to be designated, there is a requirement that the full court (i.e all the judges in that court) be in favour of it via a vote. At the Bombay High Court, there is a requirement that the designation is approved by at least two-thirds of the judges who are voting other high courts have similar rules that regulate their own procedure. This leads to an interesting problem though, the rank of seniority is one that is held nation wide if the designated senior advocate continues to hold their rank before other high courts and the Supreme Court. Thus, this research paper deals with the various issues that is found in the appointment of advocates in Supreme Court.

II. REVIEW OF LITERATURE

Senior Advocate and prominent politician, Mr. Salman Khurshid was inquired about his views on the academic community being ignored in the matter of appointments under the 'jurists' category, Mr. Khurshid had said, "It is high time that we give our outstanding academics their due." I think most of us duly concur. Academic law is a distinct branch of common law and it requires due recognition. Academic lawyers produce judges. They produce non state law, the natural law on which ultimately much of the state positive law is built or rests. Professional competence of those being considered for appointment as judges can best be determined by the members of the higher judiciary and not by the Intelligence Bureau, the Supreme Court collegium has said.

ELIGIBILITY: A citizen of India not exceeding 65 years age per Article 124 of the constitution who has been,

- ✓ Judge of one high court or more (continuously), for at least five years, or
- ✓ An advocate there, for at least ten years, or

- ✓ A distinguished jurist, in the opinion of the president, is eligible to be recommended for appointment, a judge of the supreme court.

III. APPOINTMENTS AND THE COLLEGIUM

According to the Constitution, as held by the court in the Three Judges Cases – (1982, 1993, 1998), a judge is designated to the Supreme Court by the President of India on the suggestion of the collegium — a shut gathering of the Chief Justice of India, the four most senior judges of the court and the senior-most judge hailing from the high court of an imminent appointee. This has brought about a Memorandum of Procedure being taken after, for the arrangements.

Judges used to be delegated by the President on the exhortation of the Union Cabinet. Following 1993 (the Second Judges' Case), no clergyman, or even the official on the whole, can propose any names to the President, who at last chooses selecting them from a rundown of names suggested just by the collegium of the legal. All the while, as held in that judgment, the official was enabled to dismiss a suggested name. Nonetheless, as indicated by a few, the official has not been persistent in utilizing this energy to dismiss the names of awful competitors prescribed by the judiciary.

The collegium framework has gone under a considerable lot of criticism. In 2015, the Parliament passed a law to supplant the collegium with a National Judicial Appointments Commission (NJAC). This was struck down as unlawful by the Supreme Court, in the Fourth Judges' Case, as the new framework would undermine the autonomy of the judiciary. Putting the old arrangement of the collegium back, the court welcomed recommendations, even from the overall population, on the most proficient method to enhance the collegium framework, comprehensively along the lines of – setting up a qualification criteria for arrangements, a lasting secretariat to help the collegium filter through material on potential hopefuls, imbuing more straightforwardness into the choice procedure, grievance redressal and some other proposal not in these four classifications, similar to exchange of judges. This brought about the court asking the administration and the collegium to settle the Memorandum of Procedure fusing the above.

Once, in 2009, the suggestion for the arrangement of a judge of a high court made by the collegium of that court, had come to be tested in the preeminent court. The court held that who could turn into a judge involved truth, and any individual had a privilege to address it. Be that as it may, who ought to wind up a judge involved sentiment and couldn't be addressed. For whatever length of time that a powerful interview occurred inside a collegium in touching base at that conclusion, the substance or material put before it to shape the feeling couldn't be called for examination in court.

IV. HISTORY

In a memorable choice, the Supreme Court Collegium drove by Chief Justice of India Dipak Misra consistently prescribed the name of senior backer Indu Malhotra for

arrangement as a judge of the Supreme Court. Sources said that the Collegium has likewise prescribed the name of Chief Justice of Uttarakhand High Court, Justice K.M. Joseph, who had suppressed the President's administer in Uttarakhand, as Supreme Court judge. The proposals were made in a Collegium meeting hung on January 10. Presently, the Union Law Ministry needs to accept a call. This is the first run through in history that a lady legal counselor has been suggested for guide height from the Bar to a Supreme Court judgeship. The choice, specialists say, is an uncommon acknowledgment of the expert ability and commitment of Ms. Malhotra, a presumed senior backer honing in the summit court. In the event that delegated, Ms. Malhotra would be just the seventh lady judge in the Supreme Court's 68-year-old history. Equity M. Fathima Beevi was the principal lady Supreme Court judge, delegated 39 years after the summit court was set up in 1950. The second lady judge was Justice Sujata V. Manohar, who was selected in 1994 for a five-year residency in the Supreme Court. The other five ladies judges are Justices Ruma Pal, Gyan Sudha Misra, Ranjana Prakash Desai, who was a piece of the Bench which affirmed capital punishment of the solitary 26/11 Mumbai assaults convict Ajmal Kasab, and R. Banumathi, who was one of the judges who affirmed capital punishment for four convicts in the Nirbhaya gangrape claims. Equity Banumathi is the sole lady among the 25-in number Supreme Court legal. The court has been confronting feedback for not bringing more ladies judges into its overlap even as more sexual orientation touchy and ladies driven cases achieve the Supreme Court for arbitration. As of late, all the immediate heights from the Supreme Court Bar have been men. Judges Rohinton Nariman, U.U. Lalit and L. Nageswara Rao were late enlistments to the Supreme Court from the Supreme Court Bar. Prior, Justices S.M. Sikri, who turned into the thirteenth Chief Justice of India, S.C. Roy, Kuldip Singh and N. Santosh Hegde were named to the Supreme Court Bench straightforwardly from the Bar. On the off chance that cleared, Ms. Malhotra would be the eighth attorney to be specifically named to the Supreme Court Bench. Equity K.M. Joseph, who suppressed the statement of crisis in Uttarakhand in 2016, was once portrayed as a remarkable judge by Supreme Court judge and SC Collegium part Justice J. Chelameswar, who had asked the Collegium to raise Justice Joseph to the summit court. Strangely, the choice to lift Justice Joseph to the Supreme Court comes even as a May 2016 Collegium suggestion to exchange him from Uttarakhand to the High Court of Andhra Pradesh and Telangana is as yet pending with the administration. The summit court right now has six legal opportunities even as seven more judges, including Chief Justice Dipak Misra, are planned to resign over the span of 2018. In the interim, the Supreme Court Collegium has additionally prescribed the arrangement of Justice J. Bhattacharya as the Chief Justice of Calcutta High Court. Equity Bhattacharya is the present Acting Chief Justice of the High Court. The Collegium has suggested the exchange of Justice Thottathil B. Radhakrishnan, the present CJ of the Chhattisgarh High Court, to the HC of Andhra and Telangana as Chief Justice. The Collegium has suggested the arrangement of Justice Antony Dominic as the Chief Justice of Kerala High Court. He is directly the Acting Chief Justice of the High Court. Equity Surya Kant, a judge with the Punjab

and Haryana High Court, has been suggested for arrangement as the Chief Justice of the Himachal Pradesh High Court. By and by, there are nine High Courts with Acting Chief Justices, some of them have not seen a normal Chief Justice for over a year or more. The developing opening in the Supreme Court, specialists say, might be inferable from the diminishing pool of Chief Justices in different High Courts. Equity Aniruddha Bose, a Calcutta High Court judge, has been prescribed for arrangement as Delhi High Court Chief Justice. Equity Abhilasha Kumari, a Gujarat High Court judge, has been prescribed for arrangement as Manipur High Court Chief Justice.

V. CLARIFICATION OF APPOINTMENT OF ADVOCATES AT HIGH COURTS

As per law; Every Judge of a High Court should be named by the President by warrant under his hand and seal after conference with the Chief Justice of India, the Governor of the State, and, on account of arrangement of a Judge other than the central Justice, the main Justice of the High court, and might hold office, on account of an extra or acting Judge, as gave in Article 224, and in some other case, until the point when he accomplishes the age of sixty-two years.

Given that- (an) a Judge may, by composing under his hand routed to the President, leave his office; (b) a Judge might be expelled from his office by the President in the way gave in statement (4) of Article 124 for the expulsion of a Judge of the Supreme Court; (c) the workplace of a Judge should be emptied by his being selected by the President to be a Judge of the Supreme Court or by his being exchanged by the President to some other High Court inside the region of India. (2) A man might not be fit the bill for arrangement as a Judge of a High Court unless he is a subject of India and- (a) has for no less than ten years held a legal office in the region of India; or (b) has for no less than ten years been a backer of a High Court or of at least two such Courts in progression; Clarification.- For the reasons for this provision (an) in processing the period amid which a man has held legal office in the region of India, there should be incorporated any period, after he has held any legal office, amid which the individual has been an Advocate of a High Court or has held the workplace of an individual from a council or any post, under the Union or a State, requiring uncommon information of law; (aa) in figuring the period amid which a man has been a supporter of a High Court, there should be incorporated any period amid which the individual has held legal office or the workplace of an individual from a council or any post, under the Union or a State, requiring unique information of law after he turned into a backer; (b) in processing the period amid which a man has held legal office in the domain of India or been a supporter of High Court, there might be incorporated any period before the beginning of this Constitution amid which he has held legal office in any zone which was involved before the fifteenth day of August, 1947, inside India as characterized by the Government of India Act, 1935, or has been a backer of any High Court in any such region, all things considered. (3) If any inquiry emerges with regards to the age of a Judge of a High Court, the inquiry might be chosen by the

President after interview with the Chief Justice of India and the choice of the President should be last.

VI. JUDICIAL REVIEW OF SUPREME COURT GUIDELINES

The Government thus additionally all open bodies are trustees of the power vested in them. (ii) Discharge of the trust rested in them in the most ideal way is their essential obligation. (iii) The ability to connect with, utilize or select workers, operators, counsels and delegates must like some other power be practiced in a reasonable, sensible, non-oppressive and target way. (iv) The obligation to act in a reasonable, sensible, non-prejudicial and target way is an aspect of the Rule of Law in a sacred majority rules system like our own. (v) An activity that is self-assertive has no place in a commonwealth represented by Rule of Law separated from being hostile to the fairness proviso ensured by Article 14 of the Constitution of India. (vi) Appointment of Government advise at the locale level and similarly so at the High Court level, isn't only an expert engagement, however such arrangements have an "open component" appended to them. (vii) Appointment of Government Counsel must like the release of some other capacity by the Government and open bodies, be just in broad daylight intrigue unaffected by any political or different unessential contemplations.

VII. ADVOCATES OF SUPREME COURT IN BANGLADESH

By doing the certified lawyer's exam Council Exam, advocates are qualified to rehearse in the Supreme Court of Bangladesh and different courts. A permit is gotten after effective fruition of two year's training in the lower courts by candidate, which is evaluated by a body of the applicable commonplace Bar Council. Most applications after effective fruition of the prerequisite, are acknowledged.

VIII. THE NATIONAL JUDICIAL APPOINTMENT COMMISSION

The Appointment of Judges of the Supreme Court and the High Court and the exchange of judges starting with one High Court then onto the next must be made as per Articles 124, 217 and 222 of the Constitution of India. Before the NJAC, the arrangement of judges was made by the President in meeting with the Chief Justice and different judges. Additionally, the exchanges were made by the President in counsel with the Chief Justice. Although it was not particularly accommodated anyplace, the inferred standard of status has dependably been followed in the arrangement and rise of Judges. In August, 1969, be that as it may, the dubious height of Justice A.N. Beam to the post of Chief Justice of India was done, wherein he was selected as the Chief Justice of India superseding three senior judges. Soon a while later, the arrangements of the Constitution managing arrangement and exchange of judges were translated in S.P. Gupta Vs.

Association of India² (First Judges Case). In the said case, it was held by the Apex Court that the sentiment of the Chief Justice does not have power and the Union Government will undoubtedly act as per the supposition of the established functionaries as the Executive is responsible and the Judiciary has no responsibility.

IX. CONCLUSION

Thus, there exists many debates and controversies questions in the appointment of the advocates of the Supreme Court, there is always a view that the appointment of the senior advocates is mostly biased and influenced. Hence, this research paper brings the various issues relating to the appointment of advocates in Supreme Court with the view point of various judges of the Supreme Court with the orders issued, regarding the appointment of advocates in Supreme Court.

REFERENCES

- [1] The bar council of India- search engine.
- [2] Right to Information.
- [3] Supreme Court of India- legal advice
- [4] Indian express article.
- [5] Advocates Act, 1961.
- [6] Appointment of judges-publication edition-2016
- [7] Latest orders on appointment of advocates.
- [8] Collegium recommendations.
- [9] Law of India, articles publication.
- [10] Guidance for judicial review.
- [11] Lawyers specialisation- The Hindu article.
- [12] <http://www.thehindu.com/news/national/collegium-recommends-two-for-sc-judge-including-woman-lawyer/article22420387.ece>
- [13] <http://www.livelaw.in/arbitrary-appointments-govt-law-officers-subjected-judicial-review-sc-issues-guidelines/>
- [14] <http://www.advocatekhaj.com/library/bareacts/constitutionofindia/217.php?Title=Constitution%20of%20India,%201949&STitle=Appointment%20and%20conditions%20of%20the%20office%20of%20a%20Judge%20of%20a%20High%20Court>
- [15] <http://lawmin.nic.in/la/webreport.htm>
- [16] <https://www.thebetterindia.com/127700/fathima-beevi-kerala-indias-first-female-supreme-court-judge/>
- [17] <http://www.livemint.com/Politics/7S76mIgUSBG3dvJP6m7zHL/The-senior-counsel-appointments-row.html>
- [18] www.indiankanoon.nic.in
- [19] <https://www.gnlu.ac.in/bc/JUDICIAL%20APPOINTMENTS%20IN%20INDIA-%20JUDICIAL%20APPROACH.pdf>
- [20] [http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/93eb987ebadd283dca256e92000e4069/A560C105CB485F74CA257EBD002137F6/\\$FILE/15-103sra%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/93eb987ebadd283dca256e92000e4069/A560C105CB485F74CA257EBD002137F6/$FILE/15-103sra%20authorised.pdf)