

Senior Advocates and Junior Advocates?

In legal profession and among the general public, we often hear the reference to 'Senior Advocate' and 'Junior Advocate'. While the reference to 'Senior Advocate' is general and based on the age and experience of a particular legal professional, technically, an advocate recognized by the courts based on the rules and the practice is called 'Senior Counsel'. While the 'Senior Counsel' is bound to follow a separate or special code of conduct as enshrined in the rules and as per the practice, there is no substantial difference between the rules governing 'Senior Advocate' and 'Junior Advocate' as such. Irrespective of real time exposure, talent and ability; barring corporate or knowledgeable people, general public sees an aged lawyer with good practice, as a 'Senior Advocate'. While it is absolutely true that experience matters in the legal profession, it is also true that years of experience may not guarantee all the talent and required ability in the profession. Many so-called 'Senior Advocates' are not in a position to draft a pleading properly and are not in a position to present the case properly in court. Examples are plenty. Still, these professionals manage to get brief or clients using their public relations and other talents. It is alleged that some so-called 'Senior Advocates' are favored in courts at-times based on their relations with the presiding officers and other issues rather based on the substance of the issue before the court. On many issues, a judge can exercise a lot of discretion and it is very difficult to find-out as to how a particular court has favored a particular Advocate. While this happens on the one-side, we have very talented young legal graduates or professionals who may not require that much time to understand the profession and to acquire the required abilities in the profession. However, irrespective of the ability of a young lawyer, these young lawyers are humiliated by the judges at times and this happens when a young lawyer appearing against a 'Senior Advocate' or a 'Senior Counsel'. While the young lawyers who are prepared to argue complicated matters and even with the 'Senior Advocates' and 'Senior Counsel' are bullied at times in Courts, young lawyers lacking the required talent are asked to wait in the court, read the papers and forced to argue the matters. This happens very frequently in the courts. Already, young and talented graduates didn't interested in the legal profession due to various issues and these talented youngsters prefer to work in the corporate world which guarantees good life and early settlement in life. This trend is not good for the legal profession and not good for the society. There is a need to attract and retain the young talent in the legal profession. It would be a gigantic task as problems are plenty in our legal system and there are real problems which go beyond the possibility of 'reform'.

If a judge laughs at a young lawyer presenting a case without any reason and logic, then, it's illogical and nothing but humiliating that particular advocate. This comes with the mind-set of some judges who believes that lot of experience is required in the profession and they believe that a young lawyer with little experience can never be right in his point of view. There are youngsters who are capable of addressing all these issues and who can convince any judge, but, those are exceptions. Young judges tend to recognize the talent and even among the senior judges, there are judges who are concerned at the system and degrading standards in the profession. These responsible judges are very fair and tend to encourage and recognize the youngsters in the legal profession. We cannot completely blame the Bench for all the problems

when it comes to giving due recognition to the young lawyers. Standards in legal education have degraded except the standards being maintained by few recognized law schools in this country. Irrespective of not so high standards in a particular law college, those law colleges too can produce brilliant law graduates and it mostly depends upon the interest of that particular student towards his studies and his abilities like command over language, drafting skills, presentation skills, public relations and logical thinking especially. There is also another problem. If a young law graduate joins with an Advocate office initially, then, it is very difficult to get an opportunity to argue the matters. In some cases, there can be justified due to the complex nature of the matter or the importance. There are cases where a Senior Advocate believes that only he can argue the matter and his assistants should continue to assist him in filing papers in Court etc. There are also Senior Advocates or Advocates who are willing to recognize the talent and believe his young colleagues in office, but, these kinds of people are exceptional. It is very unfortunate to note the standards of the Bench and also of the Bar are degraded gradually and it appears that it would be extremely difficult to repair the situation. There are judges who believe in doing what they feel is right irrespective of precedents and legal position. If a particular judge makes-up his mind to pass an order in a particular manner, he can very easily ignore the submissions, twist the law, quote the precedents on interpretation and can neglect the similar precedent simply on the pretext that the precedent submitted is not applicable to the facts of the case. An aggrieved can only prefer an Appeal though he fully believes that the order passed by a particular court is erroneous. For preferring an appeal against the erroneous order, the advocate should convince his client due to the expenses involved and at times, it becomes very costly if it involves preferring an appeal to the Supreme Court or preferring an appeal to the High Court from a

Lower Court

Nothing can change this situation except the Bench believing in certain basic things and imparting good training to the judicial officers in the beginning and also frequently.

When it comes to the recognition being conferred on a particular advocate as 'Senior Counsel', this exercise is also being criticized very often now-a-days. The conferment in the past appeared to be good and only deserved used to be recognized as 'Senior Counsel'. If we look at the earlier generation of Senior Advocates, anyone tend to agree that they are deserved to be recognized as 'Senior Counsel'. We have seen wonderful lawyers serving in the legal profession and also serving the society through their participation in public life. A Senior Counsel or a Senior Advocate or a good advocate should be good at understanding the case quickly, understanding the mind-set of the judge well and should be in a position to sum-up the case correctly assisting the Court. Anyone possesses this quality should be seen as a good advocate whether he is 'Senior Counsel', 'Senior Advocate' or a 'Junior Advocate'. As I believe, years of experience are not the sole criteria for conferring recognition upon a particular advocate as 'Senior Counsel'. Irrespective of the age and years of experience of a particular advocate, if an advocate possesses the required qualities and abilities in profession, he should be seen as 'Senior Advocate' or 'good advocate'.

It is also to be noted that, still, many old generation judges or the senior judges adhere to some basic standards and they believe in reforming the system, believe in encouraging young lawyers and they don't humiliate young people. There are still wonderful judges. I have seen very

prominent judges or senior judges exercising great patience while listening to the young lawyers and even when they are not presenting the case properly, these great judges exercises patience and never humiliate or bullies the young lawyers. Sometimes, the judges may have to guide the young lawyers properly and there is a need to give proper and good advice without discouraging him or humiliating him. In view of their engagements, there is nothing wrong in giving preference to the busy lawyers or the 'Senior Counsels', but, undue preference should never be given during the course of the proceeding. Normally, when a party engages a 'Senior Counsel', even other tend to do the same and this is the normal practice and there can be exceptions. A 'Senior Counsel' may have good relations with many judges and in fact many of the juniors of a 'Senior Counsel' should have been appointed as judges also. In view of these relations, it is alleged that some judges favour some particular 'Senior Counsel'. A judge or a Court should never give this kind of impression that he will consider the case positively if a particular advocate or a 'Senior Counsel' is appointed. This is not good for the profession and the perception of the judicial system in this country. Despite a lot of efforts to reform the legal system or the judicial system, we could not effectively bring the reforms addressing the issues of delay, technicalities, transparency and easy filing procedure. But, it is the collective responsibility of the legal professionals, society and the Government look into these issues. A strong and efficient judiciary represents a strong 'democracy'.

Earlier it is known that only rich prefers to enter into the legal profession and one needs legacy also to stand in the profession. It's true even today. But, with technological advancements and all-round growth in the society, there is a possibility for the professionals to come-up in legal profession even without any background. It takes a lot of time to establish a good practice in the profession and it requires lots of hard-work, patience and continuous curiosity. To get appointed as Government pleaders one requires the political back-up and to get appointed as a panel advocate of even Public Sector Undertakings (PSUs), one needs to know the route and should be in a position to manage the officials concerned. Ability takes back-seat in the society. There are so many problems in the legal profession or the system and I strongly believe that a collective effort will bring the required change in the system. It is very important to attract and retain the young talent in the legal profession. These young law graduates and lawyers should be constantly encouraged in every possible way and so that, they will stay in the profession and it brings glory to the profession and also to the legal system. Many of the noted 'Senior Lawyers' today must have also been suffering in their initial days of career. There must have been lots of hard-work and they must have waited for years to reach a particular position in the profession and to be considered as privileged. But, when they reach a particular position, it is their responsibility to look at the profession and they should try to do their level best to correct the system. Its their moral responsibility towards the legal profession and also towards the society.

It's not the business of any judge to humiliate or discourage a young lawyer just because he is appearing against a so-called 'Senior Advocate' or 'Senior Counsel'. A judge should never have a biased view and he should be concerned in the case before him, pleadings, submissions and the law and nothing more. I have never faced this problem in profession, but, I know as to what happens normally and I have seen many instances where the judge simply laughs at a young lawyer just to humiliate him and there may not be any reason whatsoever for that laugh. A judge, howsoever senior he is, should never think that he knows everything and there is no need for him to listen to a young lawyer and that's not the quality of a good judge. A judge should never

discriminate between a young lawyer and a senior lawyer and he should only be concerned at the pleadings before him, submissions, the law and nothing more. It may not be possible for every young lawyer to oppose the judge even if he is wrong.

I hope that both the Bench and the Bar wakes-up and look at the real issues challenging very respect of the profession and the system.

Author:

ASHISH RANJAN SAMAL, Advocate,

ROURKELA

Email: advocate2010@india.com

Note:

1. The views expressed are my personal.
2. Have no intention to insult the 'Senior Advocates', 'Courts' or the 'Judges'.
3. Views are expressed with my limited knowledge and with the concern at the legal profession and judiciary.