



23rd Commonwealth Law Conference 2023

Taking the Silk Route Designation of KCs or Senior Advocates

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First Silk Route or Silk Road

- There are three silk road or routes in history of mankind. Two are lost in oblivion. Lets' see how long the third silk route survives.
- First silk route was a network of Eurasian trade routes active from the second century BCE until the mid-15th century. Spanning over 6,400 kilometers. It was an intricate web of land and sea routes connecting East and Southeast Asia, the Indian subcontinent, Central Asia, the Middle East, East Africa and Europe.
- It played a central role in facilitating economic, cultural, political, and religious interactions between the East and the West. With ships and planes being used as means of trade now, the Silk route has ceased to exist.

Second Silk Route or Silk Road

- First modern darknet market was launched in 2011 by an American founder, as a part of the dark web.
- Silk Road operated as a hidden service on the Tor network, allowing users to buy and sell products and services between each other **anonymously**. All transactions were conducted with Bitcoin, a cryptocurrency which aided in protecting user identities.
- The website was known for its illegal drug marketplace, among other **illegal and legal** product listings.
- In 2013 an enquiry by SEC in USA led to its finally shutting down. Part of history

Third Silk Route – QC, KC, SC or SA

- Silk is soft, smooth and fine cloth, with more feminine character and touch
- I always wondered what is silk gown doing in the Legal Profession.
- I came to have the first feel of silk when my father was appointed a Judge of High Court of Rajasthan, India in 1973.
- All judges of High Court and Supreme Court wear silk in India, apart from designated Senior Advocates

Historicity...1

- To appreciate the history of Lawyers Silk, we need to go back to the beginning of the profession, when it was firmly established in Greek and Roman legal system.
- Emperor Justinian (482-565) had put lawyers at higher pedestal than soldiers engaged in defence of empire.
- Warriors have to protect 2nd or 3rd dimension properties while Advocates have to protect and make submissions to get compensation for violation and breaches of rights, interests and entitlements with respect to 2nd, 3rd, 4th and 5th dimension properties
- Towards the end of Mediaeval period 500 AD to 1500, Roman law made inroads in the rest of Europe

Historicity...2

- In 13th Century professional lawyers emerged in England and came to be known as **Pleaders** and **Attorneys**. Attorneys work were **administrative** and **representative** in characters. Pleaders were the **voice** - drafting pleadings, formulating submissions and making arguments
- By end of 13th century, Pleaders with **considerable status and experience** came to be called **Serjeants - at - law** with privileges, especially being an **exclusive right of the audience** before the Court of Common Pleas and Kings Bench.
- Serjeants had to take a **coif or head-dress** - called as Order of the coif and **from this pool selection of judges was made**. Serjeants arguments were reported in year books
- During the 16th Century came Crown Law Officers - commonly known as **Attorney General** and **Solicitor General**. They were called **Counsels-in-Ordinary**

Historicity... 3

- In 1597 Queen Elizabeth 1 appointed **Francis Bacon** a great statesman and a man of words as '**Learned Counsel Extraordinary**' and bestowed upon him the **right of pre-audience and precedence**, **relegating Serjeants to subordinate position**
- Selection of Francis Bacon could be termed as the beginning of **Silk route** in legal profession. Francis Bacon was an amazing philosopher, the author of *Novam Organum*.
 - He became Solicitor General in 1607
 - Attorney General in 1613 and
 - Lord Chancellor in 1618.
 - In 1619 he was convicted and imprisoned for taking bribes.
 - The most outstanding legal mind and only Lord Chancellor to be ever convicted.
 - Bacon used a **silk route** to get the silk and that continues till date.

Historicity ... 4

- In 1875 when Judicature Act was enacted , the requirement for judges to have taken coif was removed
- In 1920 the injunction on the Queens's counsel to appear against Crown was vacated
- In the beginning of 21st century the process of appointment of QC and KC in UK came under sharp criticism because of anti – competitive practices, propagation of coterie etc.
- Selection process was **secretive** and virtually like admission to an **exclusive club**
- In 2001 Leonard Peach in his report '*Independent Scrutiny of Appointments Process of Judges and Queens Counsel in England and Wales*' and in another '*Report on Competition in Professions*' published by Director General Fair Trading the **monopolistic nature** of Queens Counsels was Highlighted
- In 2004-2005 appointment of Queens Counsels was suspended temporarily and came into existence again with a new framework in 2005

Sec.16 of Advocates Act, 1961

- Prior to 1961, India had Barristers, Attorneys, Solicitors, Advocates, Vakeel, Mukhtar. Silk was a **matter of choice** for any Advocate, who had completed 10 years as practicing advocates and certain conditions
- Under the 1961 Act
 - There shall be **two classes of advocates**, namely, senior advocates and other advocates.
 - 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.
 - 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.
 - 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

Rule 2, Order IV SCR, 2013

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. 15
SpotLaw

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

Indira Jaising vs. Supreme Court

2017 INSC 828

- Validity of Sec. 16 was upheld, and guidelines were laid down -
- 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**
- 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 – **40**
- Disputes, Criminal law, Arbitration law, Corporate law, Family law, Human Rights, Public Interest Litigation, International law, law relating to women, etc 3. Publications by the Applicant Advocate - **15**
- Test of Personality & Suitability on the basis of interview/ interaction - **25**

Indira Jaising vs. Supreme Court-2

Submissions

- **Professional - 100**

- Number of years of practice - 20
- Vakalatnama filed for Plaintiff/ Petitioner/ Appellant and Defendant/ Respondent with Subject and Issues - 20
- Judgments and Awards – Number - 10
- Judgments and Awards – Subjects and Issues - 10
- Domain Knowledge to be determined on the basis of subjects and issues in judgments and Award - 10
- Legal formulations advanced - 10
- Additional Advocate General for State - 10
- On Panel of Union or State Government - 7
- Panel of Statutory Bodies and Public Sector Undertaking - 3

Indira Jaising vs. Supreme Court-2

- **Academic - 20**

- Book Publications 5
- Articles Published, Addresses and Presentations made at State Level 3
- Articles Published, Addresses and Presentations made at National Level 5
- Articles Published, Addresses and Presentations made at International Level 7

- **Leadership - 30**

- Member Bar Council of State - 10
- President Bar Association – 7
- Secretary Bar Association – 5
- Member of Executive Committee of Bar Association – 3
- Asst. Secretary or Treasurer 3
- Member of Executive Committee of Bar Association – Asst. Treasurer -2

Indira Jaising vs. Supreme Court - 3

- **Social Contribution - 20**
- **Pro bono work done - 20**
- **Others - 20**
 - Income Tax Return – number of years - 10
 - Income Tax Return - Quantum - 10
- **Personality and Presentation - 10**
- **Interview/ Interactive session - 10**
- **Total - 200**

Silk Bearers – QC, KC, SA, SC...

- Getting silk is a legal recognition of being learned and experienced. It carries with it the privilege of audience and potentiality to charge higher fees.
- The real issue has always been that **many who deserved were denied when it was due and those who did not deserve were granted.**
- Moment a Judge sees two advocates appearing before him, one with a silk and other without a silk and a **thought of respect** for the silk senior comes into the mind of the judge, **injustice is done, justice and rule of law is dead**
- Any policy which has the **potentiality of creating divisiveness** in a noble profession and cannot be based on the objective selection process has no reasons to exist in a reasonable, just, proper and civilized world.
- Any justification to **divide** Advocates in two classes, Senior and Others, which gives advantage to Seniors over and above others is abhorrent, inequitable and violation of fundamental rights

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Taking the Silk Route Designation of KCs or Senior Advocates

Lets all lay the foundation of
Global Judiciary 2048

Thank You

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Senior Advocate

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