

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

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# **ELIGIBILITY VS. EXCLUSION: INDIA'S 3-YEAR PRACTICE MANDATE AND ITS IMPLICATIONS FOR ACCESS TO THE JUDICIARY.**

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## **ABSTRACT**

This paper critically examines the recent Supreme court judgement mandating a minimum of three year of legal practice as a prerequisite for entry into the subordinate judiciary. While the reform was framed as a means to enhance judicial competence and restore the confidence in lower court proceeding, it risks entrenching existing structural inequalities with the profession. The primary objective of the study is to understand and find out the reason behind the mandate, assess its practical consequences, and situate it within a broader socio-legal and comparative framework.

The reintroduction of rule was largely driven by consistent feedback from high courts, which reported that fresh law graduates appointed directly as judges often lagged essential courtroom experience, practical skills and the ability to manage complex litigation. The mandate, therefore, reflects a judicial attempt to correct what was perceived as a decline in the quality of the trial court adjournment. However, this policy shift has profound implications for aspiring candidates for many, particularly those for low-income background, the initial year of litigation are financially difficult and poorly remunerated, making the mandatory delay in career progression especially burdensome. Women are disproportionately affected, as societal and familial pressures tried to marriage and gander roles often shorten their carrier window. The mandate may therefore increase the already low representation of women in the judiciary. Additionally, the requirement of the certificate by the senior advocates or judicial officers creates opportunities of manipulation, giving undue advantage to candidates coming form influential legal families with high professional networks.

To address these inequities, this paper suggests reform oriented solutions, including the establishment of government-backed stipends or fellowship programs for judicial aspirants during the practice period. Such measure could insure a balance between the judiciary's legitimate concern for competence and the constitutional imperative of inclusivity, diversity and equal opportunity.

*Keyword:-* Judicial service, Three-Year practice Mandate, Access to judiciary, Gender equality, Socio-legal analysis, Policy reform.

## INTRODUCTION

The judiciary is the backbone of India's constitutional democracy which serving both as the protector of fundamental rights and the authority that settles disputes. The quality, competence and accessibility of the judicial system are therefore closely tied to the mechanisms through which judges are recruited and trained. In the context of the subordinate judiciary, which is the first point of contact for common citizens with the justice delivery system, questions of eligibility criteria are of critical importance.

In May 2025, the Supreme Court of India re-instated the requirement that candidates must complete a minimum of three years of legal practice before appearing for judicial service examinations<sup>1</sup>. This decision overturned earlier relaxations that had permitted direct entry of fresh law graduates<sup>2</sup>. According to the Court, the mandate was necessary to ensure that judges possess the required practical experience and are not merely products of classroom, lacking exposure to the realities of courtroom litigation. This development has reignited debates on the tension between eligibility and exclusion in access to the judiciary.

Proponents argue that the measure safeguards the integrity of the judicial process, as candidates with some practices are more likely to have professional maturity, courtroom confidence and skills for better decision making. Indeed, High Courts had repeatedly expressed concerns that direct-entry judges lacked practical knowledge and contributed to inefficiencies in lower courts. Yet, critics argued that the rule disproportionately harms aspirants from marginalized and poor backgrounds, women graduates and first-generation lawyers<sup>3</sup>. They argue that the

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<sup>1</sup> *Livelaw, May 2025.*

<sup>2</sup> *All India judges' association v. union of India, 2002*

<sup>3</sup> *Marc Galanter, Competing Equalities: Law and the Backward Classes in India (Oxford University Press, 1984).*

mandate effectively delays career progression in addition with rigid age restrictions and strengthens the grip of already existing elites within the legal profession.

The central problem addressed in this paper, is whether the three-year practice requirement serves as a justified eligibility criteria aimed at competence, or whether it functions as an exclusionary mechanism that undermines diversity and equitable access to judicial service.

### ***Objectives of the Study:-***

This research pursues the following objectives:

- To examine the judicial reasoning and historical context behind the three-year mandate.
- To analyze its socio-legal consequences, particularly regarding class, gender and generational disadvantages.
- To examine comparative models of judicial recruitment and training processes in other jurisdictions.
- To evaluate whether the mandate satisfies constitutional principles of equality, proportionality, and access to justice.
- To propose policy reforms that balance judicial competence with inclusivity and fairness.

### ***Scope of the Study:-***

The study is limited to:

- The subordinate judiciary in India, where the mandate has been applied<sup>4</sup>.
- Case law, judicial pronouncements and policy reports (for example: Law Commission Reports, High Court feedback).
- Socio-legal analysis of gender, class and structural barriers.
- Comparative research from other jurisdictions such as the United Kingdom, United States, France, Germany and Singapore that employ alternative mechanisms such as judicial academies, clerkships and probationary training instead of pre-service practice mandates.

The study seeks to contribute to both academic scholarship as well as to active policy debates on judicial reform in India.

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<sup>4</sup> *All India Judges' Association v. Union of India*, (2002) 4 SCC 247

***Research Questions:-***

1. Does the three-year practice mandate for judicial aspirants satisfy the constitutional tests of equality, proportionality and non arbitrariness under Articles 14, 16, and 21 of the Indian Constitution?
2. How does the mandate affect first-generation law students, women aspirants and students from marginalized socio-economic backgrounds as compared to those from established legal families?
3. What reasoning has been provided by the Supreme Court and High Courts to justify the three-year rule and is it supported by empirical evidence of declining judicial competence?
4. How do other jurisdictions (such as the UK, USA, France, Germany and Singapore) structure judicial entry and what lessons can India draw from these systems?
5. What policy alternatives (stipends, phased training, judicial academies, probationary systems) can ensure both judicial competence and inclusivity without reinforcing systemic privilege?

**Research Methodology**

**I. Research Approach**

The study follows a mixed approach, combining doctrinal, comparative and socio legal methods. This is necessary because the three year practice mandate is not only a question of constitutional interpretation but also a matter of policy design and its real world effects on aspiring judges.

**II. Sources of Data**

*Primary Sources:-*

Constitutional Provisions, judicial Precedents, law Commission Reports.

*Secondary Sources:-*

Books like Mauro Cappelletti & Bryant Garth (Access to Justice), Marc Galanter (Competing Equalities), articles from journals such as JILI, NUJS Law Review, news reports like The Hindu, Indian Express, Times of India, Live Law, Bar & Bench.

*International sources:-*

United Kingdom's Judicial Appointments Commission Reports. France - École Nationale de

la Magistrature framework. Germany - Referendariat judicial training system. Singapore - Singapore Judicial College.

*Empirical Data:-*

A structured questionnaire survey was conducted among law students in multiple institutes and universities. Approximately 200 respondents including both B.A. LL.B. final year and LL.M. students. Survey Questions focused on career aspirations, perceptions of the mandate, family background first-generation vs. legal families and gender. Mode of Collection data is mostly in person verbal interview and Google Forms, ensuring anonymity.

### **III. Research Tools and Techniques**

Case Law Analysis, thematic review to Categorizing existing literature into supportive and critical narratives about the rule, comparative Evaluation comparing India's system with foreign models to test whether the Indian approach is globally consistent or exceptional and survey Analysis to gather student's responses were grouped into categories and tabulated. Particular attention was paid to differences between first-generation lawyers and students from established legal families, and between male and female respondents.

#### **Literature review**

The question of whether judges should be allowed to join the judiciary straight out of law school or only after some time in practice has been debated for decades in India. The debate revolves around the concern that emphasizes practical understanding of the courtroom and another that prioritizes equal access to judicial careers, especially for young graduates who may not have the financial or social resources to wait for 3 additional years.<sup>5</sup>

The Supreme Court's 2025 ruling reintroducing the three-year mandatory practice requirement for civil judges. It is the outcome of continuous concerns of high courts, periodic reforms and recurring dissatisfaction with trial court functioning<sup>6</sup>. To understand the controversy, it is important to understand how this idea developed historically, how courts and commissions have treated it and what scholars and policymakers both in India and abroad have argued.<sup>7</sup>

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<sup>5</sup> Mauro Cappelletti & Bryant Garth, *Access to Justice* (1978).

<sup>6</sup> *LiveLaw* (May 2025).

<sup>7</sup> *The Hindu* (June 2025).

## I. Historical Development of the Practice Mandate in India

The idea that judges should not come straight from classrooms into courtrooms is not new. The 14th Law Commission Report in 1958, led by M.C. Setalvad, he was the first to formally recommend that lower court judges should have at least three to five years of practice. The reasoning was simple that the young law graduates may know theory, but they lack the maturity as well as the authority needed to run a courtroom.<sup>8</sup>

This idea was again introduced in later reports. The 77th Report in 1978 pointed out that fresh graduates often struggled with practical aspects like handling evidence, understanding the pace of trial work or managing lawyers in court<sup>9</sup>. The 121st Report in 1987 went even further and emphasised that “a minimum exposure to the profession” was essential if judges were to command respect from lawyers and litigants.<sup>10</sup>

The Supreme Court itself stepped in during the 1993 case of *All India Judges’ Association v. Union of India*. The Court agreed that some amount of practice would improve the quality of judges and directed states to consider such a rule.<sup>4</sup> Soon after, some states amended their recruitment rules<sup>11</sup>.

However, the system struggled. The Justice Shetty Commission (1999) reported that mandatory practice was worsening recruitment shortages, especially in rural areas where vacancies were high. The Commission noted that the practical benefits of the rule were outweighed by its negative impact on filling posts.<sup>5</sup> Based on this, in 2002, the Supreme Court allowed fresh graduates to appear directly for exams without prior practice.

Thus, the practice requirement disappeared for nearly two decades. However, it is only in 2025 that the Supreme Court brought the mandate back.

## II. The 2025 Supreme Court Judgment

In May 2025, the Supreme Court once again made it compulsory for civil judge aspirants to

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<sup>8</sup> *Law Commission of India, 14th Report (1958), Reform of Judicial Administration.*

<sup>9</sup> *Law Commission of India, 77th Report (1978).*

<sup>10</sup> *Law Commission of India, 121st Report (1987).*

<sup>11</sup> *All India Judges’ Association v. Union of India, (1993) 4 SCC 288.*

have a minimum of three years' practice before taking the exam<sup>12</sup>. The bench led by Justice S.K. Kaul explained that the decision came after repeated complaints from High Courts. High Courts had reported that new judges lacked basic skills such as cross-examining witnesses, applying evidence law, writing clear judgments, and managing lawyers in a busy trial court.<sup>13</sup>

The Court justified the mandate as a corrective measure to improve trial courts, which form the backbone of India's judicial system. However, the judgment raised difficult questions:

- Why exactly three years? The Court did not provide research or data to support this number.
- Why immediate enforcement? Thousands of students preparing for judiciary exams for years suddenly found themselves ineligible.
- Why uniformity? Different states face different recruitment challenges, yet the rule was made binding across the country.

Many legal experts criticized the judgment as lacking logical reasoning and failing the test of proportionality under the Constitution. Instead of reforming training systems, the Court simply shifted the burden onto students.<sup>14</sup>

### III. Doctrinal and Theoretical Critiques

The mandate must satisfy constitutional guarantees of equality under Article 14 and equal opportunity under Article 16<sup>15</sup>. By suddenly excluding a large group of aspirants, the rule appears arbitrary. The doctrine of proportionality, reaffirmed in *Modern Dental College v. State of Madhya Pradesh*<sup>16</sup>, requires that restrictions serve a clear and rational purpose. Without data proving that exactly three years of practice improves judicial competence, the restriction looks disproportionate.

Scholars have also criticized the socio-legal impact. Mauro Cappelletti and Bryant Garth in an article named *Access to Justice* in 1978, argue that barriers to entry often reinforce inequality<sup>17</sup>. Marc Galanter, in *Competing Equalities*, shows how "neutral" rules often reproduce privilege in professions<sup>18</sup>. Applied here, the rule favors students from elite legal families who can afford

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<sup>12</sup> *Bar & Bench* (may 2025).

<sup>13</sup> *Commission of India, 121<sup>st</sup> Report* (1987).

<sup>14</sup> *The Hindu*, "Judicial service exams: New barriers to entry" (2025).

<sup>15</sup> *E.P. Royappa v.s State of Tamil Nadu, 1974 4 SSC3*

<sup>16</sup> *Modern Dental College v.s State of Madhya Pradesh* (2016) 7 SSC 353

<sup>17</sup> *Mauro Cappelletti & Bryant Garth, Access to Justice: A World Survey* (1978)

<sup>18</sup> *Marc Galanter, Competing Equalities: Law and the Backward Classes in India* (Oxford University Press, 1984).

to wait and practice without financial worries.<sup>28</sup>

## VI. Research Gaps

Despite the debate, important questions remain unanswered:

- There are no empirical studies in India proving that three years' practice makes judges better<sup>19</sup>.
- The gender impact of the rule is poorly studied, even though reports suggest women are disproportionately affected.<sup>20</sup>
- Alternatives such as stipends, judicial fellowships, or specialized training academies are missing from policy debates.
- Comparative lessons from civil law countries like France and Germany have not been fully considered.

This paper seeks to fill these gaps by offering both critique and reform oriented suggestions.

## Analysis and Discussion

### I. Arguments Supporting the Mandate

- **Practical Skill Development:** Classroom teaching cannot replicate the on ground reality of trial practice. High Courts across India had consistently complained that directly recruited civil judges lacked basic procedural skills<sup>21</sup>. This was one of the main reasons for the decline in the quality of trial court proceedings. Law graduates who have worked in litigation are more familiar with pleadings, evidence, and procedural codes. This makes them better prepared to preside over cases.
- **Maturity and Authority:** The Court also relied on professional feedback specially from senior advocates and judicial officers of courts who felt that judges who had direct entry struggled to earn the respect of practicing lawyers thereby undermining the authority of the bench<sup>22</sup>. Judges are considered as thought of more respect from senior lawyers when they have courtroom experience. Their decisions are now more self-assured and autonomous.
- **Ethical Perspective:** Practice exposes lawyers to professional dilemmas like client pressure, procedural tactics, ethical conflicts which eventually helps future judges

<sup>19</sup> Law Commission of India, 245th Report (2014), *Arrears and Backlog of Cases*.

<sup>20</sup> Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (OUP 1999).

<sup>21</sup> Law Commission of India, 121st Report (1987).

<sup>22</sup> *Bar & Bench*, (May 2025).

understand the challenges faced by advocates<sup>23</sup>. The practical exposure helps judges to handle complex litigation especially in criminal and civil trials where factual appreciation is critical.

- International Parallels: The rule is often compared to systems like the Advocate-on-Record examination in the Supreme Court, which requires prior practice, or to the United Kingdom and United States, where many judges come from senior legal practice backgrounds.<sup>24</sup>
- Public Confidence in Judiciary: Judges who appear more experienced are more likely to inspire confidence among litigants<sup>25</sup>. Since trial courts are where most citizens experience the justice system, this is particularly important.

## II. Arguments Opposing the Mandate

- Arbitrary Duration: The Court chose “three years” without explaining why it is better than one, two, or five. Moreover are those three years are enough to gain the required experience. Without evidence, the number looks arbitrary.<sup>26</sup>
- Career Disruption: Thousands of aspirants who had spent years preparing for one single exams suddenly found themselves excluded. Those students who had a goal or a path to follow suddenly they found themselves clueless and aimless. This goes against principles of fairness and legitimate expectation.<sup>27</sup>
- Financial Burden: The first three years of litigation are notoriously underpaid. Many young lawyers earn less than ₹10,000 per month, often with no steady income and they have to work for whole day. For students from lower-income families, surviving those years is almost impossible.<sup>28</sup>
- Gender Inequality: Women face additional challenges. Many families expect women to marry soon after finishing their degrees. If they must wait three more years before even attempting the judicial exam, many are forced to abandon their ambitions. The societal pressure and the burden of practice forces them to leave their dream behind.<sup>29</sup>
- Age Restrictions: In several states, the maximum age limit for judicial service exams

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<sup>23</sup> *The Hindu*, (June 2025).

<sup>24</sup> *Judicial Appointments Commission (UK), Annual Report 2023; Supreme Court of India, Advocate-on-Record Examination Rules.*

<sup>25</sup> *Mauro Cappelletti & Bryant Garth, Access to Justice (1978).*

<sup>26</sup> *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3; *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

<sup>27</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, *Union of India v. Hindustan Development Corp.*, (1993) 3 SCC 499.

<sup>28</sup> *Jayanth Krishnan, “Scholarly Discourse on the Indian Legal Profession” (2007).*

<sup>29</sup> *State Judicial Service Recruitment Rules, All India Judges’ Association v. Union of India*, (2002) 4 SCC 247.

is 35. Adding three years of practice reduces the number of attempts available, especially for those who start late. It gives major setback to those how are not very sharp is academics but giving there best to achieve there dreams.

- Manipulation of Certificates: The requirement of a certificate from a senior advocate or judge creates opportunities for favoritism and corruption<sup>30</sup>. Students with family connections in the legal profession can secure these certificates easily, while first-generation lawyers struggle.
- Vacancy Crisis: India already has over 5,000 vacancies in the lower judiciary. By shrinking the pool of eligible candidates, the rule risks worsening the backlog of cases rather than solving problems.<sup>31</sup>

### III. Comparative aspect

- United Kingdom: Judicial appointments in UK are based on merit system however, there is no rigid requirement for years of practice<sup>32</sup>. Selection focuses on ability and temperament of the candidate.
- United States: Federal judges are usually experienced lawyers, but their constitution does not require any minimum practice period<sup>33</sup>. Some state systems recruit younger judges directly.
- France: Judges are recruited directly from law schools into the École Nationale de la Magistrature (National School for the Judiciary, is the French institution responsible for the initial training and continuous professional development of judges and public prosecutors in France). They undergo years of intensive training instead of litigation experience.<sup>34</sup>
- Germany: A structured two-exam system combined with clerkships ensures that all judges are trained, but without requiring practice at the Bar.<sup>35</sup>
- Singapore: The Judicial College provides specialized training for judges. Some judges enter directly from law school after structured preparation.<sup>36</sup>

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<sup>30</sup> *V. Sudheer v. Bar Council of India*, (1999) 3 SCC 176.

<sup>31</sup> *India Today*, (2025).

<sup>32</sup> *Judicial Appointments Commission (UK), Annual Report 2023*.

<sup>33</sup> *Brennan Center for Justice, Judicial Selection in the States (2022)*.

<sup>34</sup> *École Nationale de la Magistrature, Training Framework*,

<sup>35</sup> *Federal Ministry of Justice (Germany), Referendariat Judicial Training Structure*.

<sup>36</sup> *Singapore Judicial College, Annual Report 2023*.

These examples show that competence does not only depend on years of practice but also other factors taken into consideration. Other countries invest in training systems rather than shifting the cost of preparation onto young graduates.

#### **IV. Empirical Input: Student Perspectives**

To move beyond purely doctrinal debates, I conducted a small-scale questionnaire survey among law students (both B.A. LL.B. and LL.M. candidates) in my institution. The goal was to understand how the three year mandate is perceived by those directly affected. Their responses reveal a stark divide between first generation litigants and those from established legal families.

##### **1. Category One: First-Generation Law Students**

- About 95% of first-generation students expressed strong opposition to the mandate.
- Their primary reason was that they had set a goal of entering the judiciary directly after graduation. Many had been preparing for competitive exams since their 2nd or 3rd year of law school. The mandate suddenly makes their preparation feel futile.
- They highlighted that studying while simultaneously managing early-stage litigation is nearly impossible, given the time and financial pressure.
- Among female respondents, nearly 80% reported reconsidering their judicial career ambitions. Many felt that after already completing a five-year law degree, an additional three-year delay worsens family and societal pressure to marry. This makes continuing toward a judicial career socially unsustainable for them.
- Many indicated they are now opting for an LL.M. as a “backup plan”, or considering entirely different careers, which could eventually reduce the diversity of candidates entering the judiciary.

##### **2. Category Two: Students from Legal Families**

- Students from families with legal backgrounds were generally more supportive of the mandate.
- They perceived the three-year practice as not a burden but an opportunity to gain experience under family guidance.
- Financial concerns were not a major issue for this group, since they often had established chambers or firms to support them during the initial litigation years.
- For them, the mandate seemed like a natural continuation of their legal journey, rather than an additional barrier.

The survey shows that the mandate disproportionately disadvantages first generation and

female students, while being more easily manageable for elite, legally-networked students. This confirms what socio-legal scholars like Galanter predicted: that “neutral” rules often preserve existing hierarchies rather than leveling the field.

### Findings

- Does the three year practice mandate for judicial aspirants satisfy the constitutional tests of equality, proportionality and non arbitrariness under articles 14, 16, and 21 of the Indian constitution?

The constitutional validity of the three year mandate must be examined under articles 14 16 and 21 of the Indian constitution. Article 14 enshrines the principle that arbitrariness is antithetical to equality as articulated in *E.P. Royappa v.s. State of Tamil Nadu* and reaffirmed in *Shayara Bano v.s. Union of India*<sup>37</sup>. The imposition of a rigid three year practice requirement without any empirical evidence to support why three years is the appropriate threshold and raises questions of arbitrariness. A rule that excludes thousands of aspirants without reasoned justification risks falling afoul of Article 14.

Equally significant is the doctrine of proportionality. The doctrine requires that any restriction on rights must serve a legitimate aim which suitable for achieving that aim and adopt the least restrictive means available. Enhancing judicial competence is undoubtedly a legitimate goal. But it is difficult to argue that forcing three years of litigation is the least restrictive option when other mechanisms such as intensive judicial academies, clerkships or probationary judicial service could achieve similar outcomes without imposing undue burdens.

Article 16 which guarantees equal opportunity in public employment which further complicates matters. As held in *Indra Sawhney v. Union of India* substantive equality demands recognition of structural disadvantages<sup>38</sup>. The mandate disproportionately disadvantages women, first-generation lawyers and aspirants from economically weaker backgrounds while privileging those from established legal families. By doing this it undermines the principle of substantive equality. Finally, the broad interpretation of article 21 in *Maneka Gandhi v. Union of India* underscores that the right to dignity includes the right to pursue a chosen career free from arbitrary barriers. A restriction that is both arbitrary and exclusionary cannot be said to satisfy this standard.

<sup>37</sup> *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3; *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

<sup>38</sup> *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217.

In sum, when tested against constitutional guarantees, the three year mandate appears arbitrary, disproportionate and exclusionary which thereby raising serious concerns about its validity.

- How does the mandate affect first-generation law students, women aspirants and students from marginalized socio economic backgrounds as compared to those from established legal families?

The socio legal consequences of the mandate are stark. Data from the survey conducted among law students demonstrates a clear divide in its reception. Among first-generation law students, approximately 95 percent opposed the mandate. These students often lack the financial stability and professional networks necessary to sustain themselves during the first years of litigation which are notoriously underpaid. Many of them had been preparing for judicial service examinations since their second or third year of law school only to find their career trajectory disrupted by the sudden imposition of this requirement. For such students, the mandate translates into frustration, financial hectic and in many cases the abandonment of judicial aspirations altogether.

The gendered impact is even more troubling. Nearly 80 percent of female students surveyed reported that the additional three year delay would compel them to reconsider pursuing a judicial career. After a five year degree, this waiting period overlaps with societal and familial pressures regarding marriage eventually making it difficult for women to remain in the judicial career pipeline. As a result, the mandate risks reducing the already low representation of women in the Indian judiciary which thereby weakening its inclusivity and representativeness. By contrast, students from legal families largely supported the mandate. For them litigation is not a burden but a continuation of family tradition. With access to family chambers, financial backing and mentors who can easily certify their practice the requirement does not pose the same obstacles. This contrast validates Marc Galanter's thesis in *Competing Equalities*<sup>39</sup>, which argues that rules that appear neutral often reinforce privilege by benefiting repeat players while disadvantaging newcomers.

The socio legal analysis thus confirms that the mandate widens existing divides in the legal profession and burdening disadvantaged groups while entrenching privilege among elites.

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<sup>39</sup> Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (OUP 1984).

➤ What reasoning has been provided by the Supreme Court and High Courts to justify the three-year rule and is it supported by empirical evidence of declining judicial competence? The judiciary's justification for the reintroduction of the rule rests primarily on three arguments: that High Courts had reported poor performance of directly recruited judges, that prior practice ensures competence in handling litigation, and that judges with litigation experience command greater respect from lawyers and litigants. While these justifications may have surface appeal, they lack empirical support. No systematic studies were presented to demonstrate that judges with three years of practice perform better than those without it.

The choice of three years as the threshold appears particularly arbitrary. If the concern is competence, why not one year, two years, or even structured training in judicial academies? The absence of reasoning on this point undermines the legitimacy of the rule. Moreover, the Court itself had previously removed the practice requirement in *All India Judges' Association v. Union of India* (2002)<sup>40</sup>, on the ground that it created recruitment shortages and did not meaningfully improve the quality of judges. The 2025 reversal, without any fresh evidence, creates inconsistency in judicial policy.

Equally problematic is the absence of transitional arrangements. Thousands of students who had been preparing under the old framework suddenly found themselves excluded. This violates the principle of legal certainty which is a component of the rule of law<sup>41</sup>. Policies that disrupt settled expectations without reasonable notice create uncertainty and undermine trust in the system.

Thus, while the judiciary's concerns about competence are understandable but the reasoning behind the mandate is weak, anecdotal and lacking in empirical foundation.

➤ How do other jurisdictions (such as the UK, USA, France, Germany and Singapore) structure judicial entry and what lessons can India draw from these systems?

A comparative survey of other jurisdictions reveals that India's approach is both unusual and regressive. In the United Kingdom, judges are usually drawn from experienced practitioners but the judicial appointments commission ensures transparency in recruitment and places

<sup>40</sup> *All India Judges' Association v. Union of India*, (2002) 4 SCC 247.

<sup>41</sup> *K.T. Plantation v. State of Karnataka*, (2011) 9 SCC 1.

significant emphasis on diversity and training<sup>42</sup>. In France, judges are recruited directly after competitive exams and trained rigorously at the *École Nationale de la Magistrature*, with no requirement of prior litigation. Germany adopts a hybrid model: aspiring judges complete a two year *Referendariat* or clerkship but they receive stipends during this period which ensuring inclusivity. Singapore relies on a merit-based system which emphasizing structured training at the *Singapore Judicial College* instead of rigid practice requirements.

The lesson for India is clear. While competence and experience are valued in other jurisdictions, these systems ensure inclusivity by providing either institutional training or financial support. By contrast, India requires unpaid practice for three years, without stipends, training, or institutional safeguards. This not only excludes disadvantaged students but also does not guarantee judicial competence. India's model is therefore an outlier in comparative perspective — both exclusionary and ineffective.

- What policy alternatives (stipends, phased training, judicial academies, probationary systems) can ensure both judicial competence and inclusivity without reinforcing systemic privilege?

If the goal is to enhance judicial competence then several alternatives are available that would avoid the exclusionary effects of the current rule. One option is to introduce a judicial apprenticeship model in which recruits spend one or two years under the supervision of judges, supported by judicial academies. Such a system would provide practical exposure without requiring years of litigation. Another option is to retain the practice requirement but accompany it with stipends or fellowships similar to Germany's *Referendariat*, so that financial constraints do not determine access to judicial careers.

A phased implementation approach could also mitigate the harshness of sudden changes. By allowing a transitional period of five years where students already preparing for the judiciary would not be unfairly penalized. Similarly, a probationary judicial service system introduced where new recruits undergo one or two years of training before full appointment which could balance competence with access, as demonstrated in France and Singapore. Finally, competence could be tested directly in judicial service examinations by incorporating practical components such as judgment writing, evidence appreciation and trial management rather than

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<sup>42</sup> *Judicial Appointments Commission (UK), Annual Report 2023.*

relying on arbitrary time based requirements.

Taken together these alternatives demonstrate that it is possible to strengthen judicial competence without entrenching privilege or excluding disadvantaged aspirants. What is required is a policy design that balances inclusivity with quality.

The study finds that alternative approaches are available that could balance competence and inclusivity. These include judicial apprenticeships, stipend-supported practice, probationary judicial service, and enhanced examination structures that test practical skills directly. The absence of such measures in the present policy design points to a serious gap in reform thinking. In sum, the findings reveal that the three year mandate is not only constitutionally vulnerable but also socio-legally regressive and globally out of step. Rather than strengthening the judiciary it risks narrowing the pool of aspirants particularly women and first-generation lawyers which eventually weakening the democratic promise of a diverse and representative bench.

### **Conclusion and suggestions**

The three-year practice mandate for judicial aspirants represents a well intentioned but poorly executed policy intervention. While the judiciary sought to strengthen the competence and credibility of newly appointed judges but the rule in its current form disproportionately burdens those who lack privilege who are particularly first generation lawyers, women and students from economically weaker sections. The result is a system that prioritizes experience in theory but entrenches exclusion in practice.

The analysis shows that the rule struggles to pass constitutional tests of equality and proportionality and creates systemic socio-economic barriers which undermines diversity in the judicial pipeline. It is not backed by empirical studies and it overlooks the fact that other jurisdictions have achieved judicial competence through structured training along with transparent appointments and financial safeguards rather than rigid and arbitrary practice requirements. Unless addressed these shortcomings risk weakening rather than strengthening the judiciary.

## Policy Recommendations

1. Introduce judicial apprenticeship programs  
A structured one or two year apprenticeship under sitting judges directly supported by judicial academies would provide practical exposure without the exclusionary costs of mandatory litigation practice.
2. Provide Financial Support During Practice  
A government-backed stipend, fellowship or loan-support system for aspirants during the practice period would ensure that financial constraints do not determine access to judicial careers. This model has proven effective in countries like Germany.
3. Implement Transitional Safeguards  
A phased introduction of the mandate with a clear timeline which would protect students already preparing for judicial service. Sudden changes undermine legal certainty and penalize aspirants unfairly.
4. Reform judicial service examinations  
Instead of relying solely on years of practice introduce examinations which should directly test practical skills such as judgment writing, trial management and evidence appreciation. This would ensure competence is measured substantively rather than symbolically.
5. Adopt gender sensitive measures  
Recognizing the disproportionate impact on women. The judiciary should adopt enabling measures such as flexible timelines along with targeted fellowships and mentorship programs that support women in litigation and judicial careers.<sup>43</sup>
6. Enhance transparency and data driven policymaking  
Any reform of judicial recruitment should be supported by empirical data which including performance studies, stakeholder consultations and pilot programs. Policies based on anecdotal feedback risk perpetuating myths rather than solving structural challenges.

At its core, the three year mandate reveals a paradox which is a policy crafted in the name of eligibility ends up institutionalizing exclusion. By demanding practice without offering support it eventually rewards privilege and punishes vulnerability. The future of the Indian judiciary cannot be built on barriers that silence first generation lawyers, drive women away from the bench and narrow the pathways to public service.

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<sup>43</sup> Flavia Agnes, *Law and Gender Inequality* (1999).

True eligibility must mean more than years in court it must reflect competence, inclusivity and fairness. When eligibility and exclusion collides the judiciary risks losing both diversity and legitimacy. The real challenge is not choosing between eligibility and inclusion but redesigning the system so that the two reinforce one another. Only then can India ensure a judiciary that is both skilled and socially representative which embodying the constitutional promise of justice for all.

***“Eligibility that breeds exclusion is no eligibility at all, a judiciary must be both competent and accessible to truly deliver justice***

