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A BLATANT DISREGARD OF THE DEEP-ENTRENCHED SOCIO-ECONOMIC ISSUES, GENDER DYNAMICS, AND CONSTITUTIONAL CONCERNS? – A CRITICAL ANALYSIS OF THE REINSTATEMENT OF THE MINIMUM PRACTICE REQUIREMENT.

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1. Introduction.

The judicial services are a pathway to a lifetime of rigorous study and practice, done with the core intention of: (i) upholding and safeguarding the values and ideals enshrined in the constitution; (ii) ensuring that the idea of ‘justice’ does not fall into oblivion; and (iii) serving as the guardian of civilized life. The entry-level judicial officers in India comprises of individuals eligible to be recruited for the posts Civil Judge (Junior Division)/Munsif Magistrate/Civil Judge-cum-Magistrate First Class/Magistrate (First Class) (collectively, the “**Lower Judiciary**”).

The examinations for the Lower Judiciary, are conducted by the government of a State concerned, in consultation with the High Court of that State. A considerable number of candidates appearing in the Lower Judiciary examinations are fresh law graduates. Consequently, there always have been apprehensions surrounding the quality of the Lower Judiciary, particularly in terms of judicial acumen, ethics, and the overall work product of the judicial officers appointed in the Lower Judiciary. This apprehension stems, *inter alia*, from the fact fresh law graduates do not have real-time exposure to the nitty-gritty of the legal procedures, functioning of the court system, and the decorum of the courtroom. Such factors are admittedly *sine qua non* for ascertaining that highest standard is maintained regarding the work product and professionalism of a judicial officer since such judicial officer typically adjudicates crucial matter concerning life, liberty, property, and reputation of the litigants. Consequently, there exists an age-old and much-heated discussion on whether there should a minimum prescribed period during which the fresh law graduates should be mandated to practice law, before becoming eligible to appear for the Lower Judiciary examinations.

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The Supreme Court of India (the “SC”) *vide* its judgment dated May 20, 2025, in the case of *All India Judges’ Association and Others v. Union of India and Others*², resurrected the requirement of minimum three years’ legal practice as an eligibility criterion for candidates aiming to appear in the Lower Judiciary examinations (the “**Judgment**”). In the Judgment, the SC deliberated on the quality, ethics, and professional competency-related issues reported against the officers of the Lower Judiciary, including reports against judicial officers who are fresh law graduates. However, the SC surprisingly did not deal adequately with the glaring gender, constitutional, and socio-economic issues that may be triggered if the requirement of minimum legal practice is restored. It may be hypothesized that while the Judgment was well-intended, the failure of the SC to assess the age-old gender dynamics, professional discrepancies, constitutional concerns, and the socio-economic impact of the Judgment leads to indirect discrimination against the disadvantaged sections of the society.

2. Background of the Judgment.

2.1. Brief Facts.

The Judgments arose out of numerous applications preferred before the SC addressing *inter alia* the issues pertaining to the qualification, selection, and promotion in the Lower Judiciary and the higher levels of judiciary.

Here, the author deems it fit to indicate that although the Judgment dealt with a multitude of issues such as fast-tracked promotions from the Lower Judiciary, increase of quota of reserved seats for candidates entering the higher judiciary, etc., the author has limited his analysis to the reinstatement of the minimum three-year legal practice requirement for the purpose of this case comment.

While dealing with the question of reinstatement of minimum mandatory period for legal practice for the aspirants of judicial services, the SC had to adjudicate on two issues which are as follows³: -

- a. Whether the requirement of minimum three years’ legal practice prior to appearing in the Lower Judiciary examinations needs to be restored?
- b. If the requirement of minimum three years’ legal practice is restored, should such period of three years be calculated from the date of provisional enrolment of the candidate, or

² [2025] SCC OnLine SC 1184.

³ *Ibid.*

from the date on which such candidate passes the All-India Bar Examination (the “AIBE”)?

2.2. SC’s observations.

2.2.1. Restoration of the requirement of minimum three years’ legal practice.

On the first issue, the SC noted that it had, *vide* Orders dated April 25, 2023, and May 18, 2023 (collectively, the “Orders”), sought affidavits from the High Courts and State Governments across India, seeking their opinion on reinstating the requirement of minimum period of legal practice.

The SC, basis the affidavits submitted in response to the Orders, indicated that most of the affidavits supported the restoration of the minimum practice requirement, on grounds that can be broadly enumerated as below: -

- a. Judicial decorum – The High Courts of Andhra Pradesh, Madhya Pradesh, and Uttarakhand, by way of their respective affidavits, highlighted that owing to the negligible experience at the bar, there have been instances where judicial officers of the Lower Judiciary, *albeit* academically brilliant, have struggled to handle court proceedings. The affidavits further indicated that such inexperienced officers lack suitable behavioural etiquette towards the court staff, seniors, advocates, and litigants, which negatively affects the temper and conduct of the court proceedings.
- b. Professional competence – The High Courts of Karnataka, Manipur, Orissa, and Patna, in their respective affidavits, highlighted that the inexperienced members of the Lower Judiciary are oblivious to the practical challenges faced by lawyers and litigants, and naturally take time to acquaint themselves with the courtroom environment. The affidavits concluded that in absence of practical knowledge of the courtroom environment, the standards of justice dispensation in the Lower Judiciary risk getting heavily compromised.

The SC also noted that the Law Commission of India, *vide* its report dated November 28, 1986 (the “1986 Report”) had emphasized on the need for intensively training the fresh law graduates entering the Lower Judiciary for a period of at least two years.⁴ The SC examined the *All India Judges’ Association v. Union of India*⁵ (the “Second AJIA Case”) wherein the SC had stressed on the need for devising uniform procedure for recruiting officers of the Lower

⁴ Law Commission of India, *Training of Judicial Officers* (1986) para 4.6.

⁵ [1993] 4 SCC 288.

Judiciary and had categorically directed all States across India to prescribe three years' practice as a lawyer as one of the essential requirements for recruitment at the Lower Judiciary.

The SC then referred to the report dated November 11, 1999, submitted by the First National Judicial Pay Commission (the "**Shetty Commission Report**") which has indicated that the minimum three years' legal practice requirement may be a futile exercise, considering the present system of five-year or three-year legal education wherein the law students are compulsorily required to attend courts and train themselves in court craft. The Shetty Commission Report, like the 1986 Report, had recommended intensive training for the fresh law graduates who aspire to serve in the Lower Judiciary.⁶ The SC then considered the *All India Judges' Association v. Union of India*⁷ (the "**Third AJIA Case**") whereby the SC had accepted the recommendations enumerated in the Shetty Commission Report. In its judgment in the Third AJIA Case, the SC had directed that the requirement of minimum three years' practice should not be considered to be an essential pre-condition for applying for the Lower Judiciary examinations.

In the Judgment, the three-judge bench of the SC, comprising of the Hon'ble Chief Justice of India B.R. Gavai and Justices A.G. Masih and K.V. Chandran, found itself in agreement with the rationale laid down in the Second AJIA Case. The SC observed that a practical exposure to the court procedures will play a crucial role in acquainting the fresh graduates with practical nuances of the legal practice and the onerous duties of the stakeholders in the judicial system. The SC echoed its observations made in the Second AJIA Case, and indicated that judgeship is more than mere academics; it requires a deep and real-time understanding of the functioning of the judicial system and process of administration of justice. The SC further observed that the experiment of recruiting fresh law graduates in the Lower Judiciary has failed.

In view of the above considerations, the SC reinstated the requirement of minimum three years' legal practice as an essential pre-condition for the candidates aspiring to appear in the Lower Judiciary examinations.

⁶ Aqsa Mehak and Ali Akhlaq Khan, 'The Three-Year Practice Mandate and Its Impact on Judicial Aspirants' (The Companion, 16 June 2025) <<https://thecompanion.in/the-three-year-practice-mandate-and-its-impact-on-judicial-aspirants>> accessed on 10 July 2025.

⁷ [2002] 4 SCC 247.

2.2.2. Calculation of three years.

On the second issue, the SC emphasized that a balance needs to be struck between the three years' practice requirement and the opportunity for the fresh law graduates to appear in the AIBE. The SC was cognizant of the fact that law universities across India often differ in the time-period by which the final results are declared which may affect the year in which a student appears for AIBE.

The SC accordingly ruled that the calculation of three years will begin from the date a candidate receives his/her provisional registration, enabling him/her to practice within the State whose bar council has accorded such provisional registration.

3. An analysis of the inherent fallacies of the Judgment.

3.1. Socio-economic considerations.

The SC, in the Judgment, has not discussed or deliberated on the plight of the socially marginalized and economically weaker sections of the society in case the requirement of minimum three years' legal practice is reinstated.

The current legal education system of India comprises of either five-year or three-year courses. While the overall costs incurred for legal education in India are generally on the higher side, not all law students come from an affluent background. There is no dearth of law students who avail education loans to cover their education costs. Most law students effectively start earning only after graduating from law school.

In an ideal situation, law graduates who are judicial aspirants aim to appear for and clear the judicial examinations shortly after their graduation so that the guaranteed monthly income and other allowances gives them some respite from their financial liabilities. Here, it should be noted that judicial examinations, like any other competitive examination, requires dedicated and strategic preparation. Many law graduates, in need of guidance, flock to coaching institutions, where such institutions charge substantial amount of money as tuition fees. These exorbitant costs exacerbates the already-existing financial hardship of law graduates, especially those who hail from economically disadvantaged strata of the society.

Because of the Judgment, the fresh law graduates will be required to mandatorily practice for a minimum of three years during which there is no guarantee of financial security, and only

then will they become eligible to appear for the judicial examinations. Such scenario inherently creates a financial insecurity which is *prima facie* not feasible for the fresh law graduates, especially those hailing from economically weak and / or socially marginalized section of the society.

3.2. Gender dynamics.

In recent times, the SC and quite a few other High Courts across India have deliberated frequently regarding the inadequate representation of women in the legal profession, both within the bar and the bench. The author opines that it is quite surprising that despite such deliberations, the SC, in the Judgment, has not considered the impact of reinstating the minimum practice requirement on female judicial aspirants.

The author opines that in recent times although the ideals of feminism have been progressively adopted, there still exist age-old societal norms and expectations that surround a woman's life, especially in the tier-two regions of the country. Most families from such regions, irrespective of their religion, caste, etc., remain steadfast in their belief that upon reaching a certain age, a woman should be married off expeditiously since in the root of such beliefs, a woman is still viewed as a responsibility that is to be done away with. In India, instances of child marriages are reported till date despite its express abolition. Hence, the author deems it fit to reasonably assume that age-appropriateness of a woman *qua* her marriage begins as soon as she approaches twenty years of age.

In usual course and in view of the current legal studies curriculum, a law student graduates at twenty-three years of age. Now because of the Judgement, the female graduate who are judicial aspirants need to practice for at least three years, by which time they will have attained twenty-six years of age. At such an age, most such female judicial aspirants, especially those hailing from socially regressive regions of the country, not only need to strategically plan the course of their preparations but also face and hopefully overcome the seemingly insurmountable pressure of marriage that comes from their respective families and the society.

The author opines that the abovementioned scenario is not feasible for female judicial aspirants, at least insofar as their mental well-being is concerned. Hence, the author argues that the reinstatement of the minimum practice requirement may lead to an exponential increase in instances where female judicial aspirants forego their plans to appear in the Lower Judiciary

examinations. The author states that this will not serve the issue of disproportionate representation of women in the legal industry, in general, and the judicial services, in particular.

3.3. Professional discrepancies and ethical concerns.

As seen earlier in this comment, the affidavits tendered in response to the Orders have dealt with the fresh law graduates' lack of understanding regarding the procedures and practical nuances that govern the judicial system's functioning. The instances of breach of basic ethical practices and non-observance of judicial decorum by inexperienced law graduates who are serving as officers in the Lower Judiciary have served as one of main grounds for support towards the reinstatement of the minimum practice requirement.

The author concedes that the concerns regarding the need to develop procedural understanding, and to uphold ethical practices, courtroom discipline, and overall judicial decorum are valid *in essentia*. However, the author does propose the following counterarguments: -

- a. The understanding of procedural nuances is usually depends on a practitioner's specialization and the judicial forum before which such practitioner carries out a majority of his practice. For instance, a practitioner specializing in insolvency laws and practising before the National Company Law Tribunal may not be well-versed with the practical nuances that govern criminal proceedings in the criminal law courts such as the Sessions court. Hence, the generalist reasoning of SC that reinstating the minimum practice requirement will improve the practical understanding of the judicial aspirants is not well-founded.
- b. In recent times, there have been several reported instances wherein some senior judges of the High Courts and even the SC have been found to be involved in unethical practices which compromises the sanctity of the judicial institutions. The judges of High Courts and the SC are usually seasoned practitioners, having a minimum of ten years of legal practice before they are appointed to the Bench. If such well-versed professionals can violate the ethics and courtroom discipline, then there is no guarantee that reinstating the minimum practice requirement will generally do away with instances of ethical malpractices and decorum-related issues alleged against the judicial officers of the Lower Judiciary.

3.4. Constitutional concerns.

Indirect discrimination rises out of a seemingly benign policy or practice which, regardless of

its core intent, ends up disproportionately disadvantaging specific group(s) of the society. The concept of indirect discrimination was categorically explored by the SC in the case of *Lt. Col. Nitisha and Others v. Union of India and Others*⁸ wherein the issue was regarding the appointment of women army officers as permanent commissioned officers. The then Chief Justice of India Dr. D.Y. Chandrachud differentiated between formal and substantive equality and observed that if a law classifies a group without any objective and justifiable reason, then such law may be deemed as discriminatory. The SC then promulgated five principles for applying indirect discrimination that, *in principio*, are as follows: -

- a. The unconscious biases and existing societal structures that perpetrate *status quo*, if not addressed adequately by a law / ruling / policy / practice, may lead to discrimination.
- b. Notwithstanding the intent behind a law / ruling / policy / practice, indirect discrimination may occur when such law / ruling / policy / practice results in unfair treatment towards specific group(s).
- c. The evidence of such alleged indirect discrimination need not necessarily cross a statistical threshold for determining the existence of such discrimination.
- d. The courts should not only examine the disproportionate effect of the alleged discriminatory law / ruling / policy / practice but also should check whether such law / ruling / policy / practice reinforces, exacerbates, or perpetuates a disadvantage which cannot be objectively justified.
- e. The courts should check whether such law / ruling / policy / practice is necessary considering the existing scenario, and whether such law / ruling / policy / practice has an alternative which is not discriminatory.

The author states that the SC's intention behind Judgment was noble and was driven by quality-related concerns regarding the officers appointed in the Lower Judiciary. The author however opines that the ignorance of the SC regarding the socio-economic, professional, gender dynamics, and constitutional concerns creates a structural barrier, affecting the access to judicial services for the marginalized sections of the society, thus making the Judgment a case study of indirect discrimination.

4. Conclusion.

The author, in view of the analysis above, makes the following suggestions for potentially achieving a win-win situation for all stakeholders affected by the Judgment: -

⁸ [2023] SCC OnLine SC 1446.

Firstly, the SC may give appropriate directions to improve the quality of training imparted in the judicial training academies / institutions. The SC may prescribe a rigorous training period of two years for candidates who clear the judicial examinations. Such training period may include periodic checks on such candidates on the parameters of ethics, ability to handle and control the temper of the courtroom, ability to understand and apply practical aspects of the law, and ability to understand the courtroom procedures. The author notes that the SC, in the Judgment, has ignored the recommendations related to intensive training of law graduates as set forth in the Shetty Commission Report without any due explanation for such disregard. Here, the author deems it fit to draw a parallel to the civil services examination. A civil services aspirant, upon clearing the civil services examination, undergoes a training period of about two years at the Lal Bahadur Shastri National Academy of Administration (LBSNAA). Upon completion of training, such individual is entrusted with responsibilities of a district, irrespective of whether he / she has had any prior experience of working in such district. The author opines that there is no reason as to why a law graduate, even after undergoing a good-quality and rigorous training period, should be deemed unfit to undertake judicial responsibilities just because such graduate has no prior exposure to the working of the judicial system.

Secondly, the SC, in consultation with the Bar Council of India, may suitably make internships at the Lower Judiciary mandatory for the law students. A fruitful internship at the Lower Judiciary has the potential to expose the students to the procedural nitty gritty of the Lower Judiciary.

A review petition challenging the Judgment has been filed and is currently pending before the SC.⁹ The author expects that the SC would: (i) reconsider the Judgment from the angles of gender dynamics, and socio-economic and constitutional concerns; and (ii) make necessary amendments to its ruling. The author concludes that the SC must aim to ensure that a balance is struck between the interests of marginalized / disadvantaged strata of the society to access the judicial services alongside the SC's interest in achieving and safeguarding the high standards of the justice dispensation in the Lower Judiciary.

⁹ Bar & Bench, 'Review petition in Supreme Court challenges verdict on 3-year practice rule for judicial service', (Bar and Bench, 16 June 2025) <<https://www.barandbench.com/news/litigation/review-petition-in-supreme-court-challenges-verdict-on-3-year-practice-rule-for-judicial-service>> accessed on 11 July 2025.