
LEGAL DIAGNOSIS OF THE *SUB SILENTIO* IMPLICATIONS IN THE ALL INDIA JUDGES ASSOCIATION CASE (2025)

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ABSTRACT

The commentary provides a doctrinal critique of the recent landmark judgement of the Supreme Court in *All India Judges Association v. Union of India* (2025).¹ Over twenty years have passed since the Supreme Court permitted the recruitment of fresh law graduates in the Judicial services. Given the advancements in education and technology, the court found it necessary to recruit talented and qualified fresh law graduates. But the outcome proved suboptimal, as such graduates couldn't cope with the practical necessities required to run their roles. The role of a judicial officer is not just limited to legal acumen, but also to encompass familiarity with the court and its administration. This issue was therefore brought up before the bench to assess the necessity of recruiting experienced advocates in the Judiciary. The commentary focuses on the court's finding, mandating a minimum of three years' practice at the bar as an eligibility norm. The Court's opinion to provide certain safeguards to fulfil the eligibility raises critical concerns. Legal practice involves both in-room court practice as well as non-litigant work. The scope of the Judiciary is not confined to customary court practice. They may work as a in-house Counsel, work for Corporate, or before any tribunal in compliance with the law.² But the intent to be eligible for a judicial post neglects their work. The commentary critiques the safeguards provided in the judgment that risk the scope of non-litigants in practice. In turn, the decision would reflect on thousands of judicial aspirants all over the country, undermining capable individuals from taking the post in the judiciary.

Keywords: Judicial service, law graduates, eligibility, three years practice, safeguards.

¹ (2025) 8 SCC 1 (SC)

² The Advocates Act 1961, Act no 25 of 1961 (India)

Case Citation: *All India Judges Association v Union of India* (2025) 8 SCC 1 (SC)

Order Date: 20th May 2025

Bench: Chief Justice B.R. Gavai, Justice Augustine George Masih, Justice Vinod Chandran.

I. PRELUDE

The decision in *All India Judges Association v. Union of India*, (2025),³ hereinafter referred by *AIJA case 2025*, marks its significance by setting standards for eligibility in judicial service. The case was decided by a larger bench, examining various procedural, institutional and eligibility-based questions. This commentary is limited to the scope of issues Nos. 7 and 8 of the case, analysing the eligibility criteria for the post of civil judge (junior division). These issues were earlier considered by the court in the *AIJA case* (2002),⁴ and made its view to recruit fresh law graduates for the judiciary. Various stakeholders raised concerns over the practical difficulties arising in court administration due to the appointment of fresh law graduates in the judiciary. The apex court took the matter under consideration in the *AIJA case* (2025).⁵ This decision of the Apex court, resurrection of the prerequisites of minimum three years practice, answers those practical deficiencies in court administration. The decision involves certain safeguards to calculate the minimum years of practice at the Bar. Those safeguards might undermine the scope of practice as defined under the Advocates Act, 1961.⁶ This narrow interpretation neglects the scope of enrolled advocates who practice non-litigant work. Various judicial precedents state that the term “practice” is not confined to customary courtroom practice.⁷ It also includes non-litigant works of advocates enrolled at the Bar.⁸ This commentary gauges the court’s reasoning on these nuances and provides an overview of the doctrinal scope of legal practice.

II. BACKGROUND

The matter of ‘minimum 3 years of experience’ is being deliberated in the 117th Law

³(2025) 8 SCC 1 (SC)

⁴*All India Judges’ Association v Union of India* (2002) 4 SCC 247 (SC)

⁵*All India Judges’ Association v Union of India* (2025) 8 SCC 1 (SC)

⁶The Advocates Act 1961, Act no 25 of 1961 (India)

⁷*Lawyers Collective v Bar Council of India* AIR 2010 Bom 83

⁸*Bar Council of India v A K Balaji* (2018) 5 SCC 379 (SC)

Commission Report dated 28th November 1986.⁹ The commission opined for the recruitment of fresh law graduates for the appointment of judicial officers in lower ranks. The two-year intensive training provided for the selected candidates would outweigh the advantage gained by the 3-year practice in the Bar. In the *AIJA case* (1993), the Supreme Court, although it considered the recommendations of the commission, ultimately departed from its opinion.¹⁰ The court withheld the practice of recruiting fresh graduates as judicial officers in the lowest rank and suggested a minimum of 3 years of practice in the bar as a qualification. The selection of fresh graduates from law schools does not prove to be successful, as they have failed to gain the first-hand experience of the court procedures and functioning of the system. The officers from first day in court had to deal with the questions concerning life, liberty, property and reputation of the litigants. To discharge his function, the experience gained as a lawyer plays a pivotal role. Later, on consideration of the reports submitted by the Shetty Commission dated 11th November 1999,¹¹ the Supreme Court decided to reconsider the view of this court in the *AIJA case* 1993 on the minimum qualification imposed for the selection of judicial officers of lower rank.¹² The Shetty commission recommended the recruitment of fresh law graduates with no experience in court practice. The Commission recommended providing intensive training to the selected candidates rather than prescribing three years of practice as a qualification. In the *AIJA case* (2002), the Supreme Court supported the recommendations made by the Shetty Commission. In its view, bright young minds are not attracted to the judicial service. Thereby, the court removed three years of practice as an eligibility criterion for the qualification to the judicial services (junior division), allowing fresh law graduates to be eligible. Again, the same question was reagitated in the present case (2025) as whether a minimum eligibility period is needed for the appointment of the civil judge (junior division). The Supreme Court asked for the opinions of various high courts and state governments regarding the requirement of the eligibility period for such recruitment. The senior advocate Mr. Gaurav Agarwal was appointed as amicus curiae to seek the opinions of high courts and state governments. After hearing from the amicus curiae, representative of the Bar Council of India and the learned counsel of various state governments and High Courts, the issues were framed.

⁹Law Commission of India, 117th Report on Training of Judicial Officers (28 November 1986)

¹⁰*All India Judges' Association v Union of India* (1993) 4 SCC 288 (SC)

¹¹First National Judicial Pay Commission (Justice K Jagannatha Shetty Commission), Report (November 1999) (India)

¹²*All India Judges' Association* (2002) 4 SCC 247 (SC)

III. ISSUES

As this case addresses certain procedural and institutional questions, this commentary is confined to the analysis of 7th issue and 8th issue of the case, which are as follows:

- **Issue no.7:** As to whether the requirement of having minimum three years practice for appearing in the examination of Civil Judge (Junior Division), which was done away by this Court in the case of *All India Judges Association & Ors. (Supra)*, needs to be restored? And if so, by how many years?¹³
- **Issue no 8:** Whether the requirement of certain minimum years of practice for appearing in the examination of civil judge (junior division) is restored, should the same be calculated from the date of the provisional enrolment/registration or from the date of passing of the AIBE?¹⁴

IV. COURT'S FINDING

ISSUE NO 7: The court's ruling in the *AIJA case* (2002) for the recruitment of fresh law graduates for the post of civil judge (junior division) does not have to be a successful venture. The Supreme Court in the present case (2025) noted the problems regarding the recruitment of inexperienced law graduates in such vital posts. The candidates' lack of exposure to such court proceedings led to various difficulties in their administration. The Supreme Court on 25th April, 2025, ordered various high courts and State Governments to submit their opinions on this issue. Most of the High Courts and state governments submitted affidavits stating it's time to fix the minimum eligibility experience for the appointment of the Civil Judge (junior division). The Supreme Court, regarding this, observed the *AIJA case* (1993) to bring back the requirement of three years of practice at the bar as a minimum experience for the appointment of a civil judge (junior division). The apex court noted that neither knowledge from the book nor pre-service could be an adequate substitute for the first-hand experience of court proceedings through legal practice.¹⁵ The practice of recruiting inexperienced law graduates proved to be unsuccessful. Thus, the apex court vide order dated 24th August, 1993 prescribed that all the states to prescribe a minimum of three years practice at the bar to be qualified for

¹³*All India Judges' Association v Union of India* (2025) 8 SCC 1 (SC)

¹⁴*ibid*, para 53

¹⁵*All India Judges' Association v Union of India* (1993) 4 SCC 288 (SC)

the appointment of judicial officers of the lowest rank. Later, the same issue was considered by this Court in the *AIJA case* (2002). The Apex court considered the recommendations made by the Shetty Commission to appoint fresh law graduates in the judicial service. The commission submitted that the quality of legal education provided to students, both in terms of academics and practical training, is significantly better than that of the time during the *AIJA case* (1993).¹⁶ Further, the requirement of three years standing at the Bar can be matched by the institutional training provided to the selected candidates. The Apex court accordingly directed all the High court's and state governments to amend their rules to recruit fresh law graduates into the judicial service, and institutional training must be provided for not less than one year. After taking note of these precedents, the Supreme Court in the present matter has been recommended to reconsider the decision of the *AIJA case* (2002) and to restore the requirement of a minimum period of practice as a qualification for the Civil Judge (junior division). From the responses filed by various high courts and state governments, the Supreme Court took two points for consideration,

- Judicial officers appointed without any court practice are found to have difficulties in understanding day-to-day court proceedings. They lack maturity and experience in handling the administration of the court system.
- Various complaints are being reported to the High court's regarding their behavioural attitude towards members of the Bar, litigants, their superiors and staff.

The Supreme Court noted that though the opportunities available to fresh law graduates are minimal, the exposure to the court system will provide onerous duties and responsibilities.¹⁷ It will provide them with clarity in the decision-making process. From the very first day of assuming their office, they must decide issues relating to life, liberty, property and reputation of the litigant. Therefore, the Supreme Court finds it necessary to bring back the minimum three years of practice at the bar as an eligibility criterion for the appointment of the Civil Judge (junior division).

ISSUE NO.8: The Supreme Court noted that it is necessary to decide whether the said period of practice is calculated from provisional registration to the bar or only after attaining permanent registration by passing the AIBE. Concerning the submission of Shri Marlapalle,

¹⁶*All India Judges' Association* (2002) 4 SCC 247 (SC)

¹⁷*All India Judges' Association v Union of India* (2025) 8 SCC 1 (SC)

learned senior counsel, the court made an order dated 18th May 2025, directing all high courts and state governments to submit their response on this matter. The Supreme Court noted that different universities publish final results at different times. This may lead certain candidates to not appear in a particular AIBE. The Court concluded that the said period of practice should be counted from the date of provisional registration by the candidate at the concerned State Bar Council. But the Supreme Court raised a concern that certain candidates may just keep provisional registration to entitle eligibility for the judicial examination. In this way, the purpose of this condition may be defeated. Thus, the court provided certain safeguards to ensure eligibility,

- Any candidate appearing before Mofussil courts to carry on practice must be certified by the judicial officer of such station that the candidate has appeared before him to practice for the past three years.¹⁸
- In case of metropolitan cities, it must be certified by an advocate having 10 years of minimum standing and endorsed by the Principal Judicial Officer of that district or the Principal Judicial Officer of that station.¹⁹
- If it is before the High Court or the Supreme Court, then it must be certified by an advocate having a minimum of 10 years standing, which must be endorsed by the officer designating the High Court or the Supreme Court.²⁰
- Experience gained by law clerks working with any of the judges or judicial officers in the country will be calculated for the required three years of practice.²¹

V. COMMENTS

The judicial officers decide the questions of life, liberty, property and the reputation of the litigants.²² There must be a clear qualification criterion to determine eligibility for judicial service. A law graduate practicing for a minimum of three years will gain valuable exposure to court proceedings, developing interaction with seniors and court staff. An understanding of

¹⁸*ibid*, para 88

¹⁹*All India Judges' Association v Union of India* (2025) 8 SCC 1 (SC)

²⁰*ibid*, para 88

²¹*ibid*, para 88

²²*All India Judges' Association v Union of India* (1993) 4 SCC 288 (SC)

court administration is essential for the better functioning of the judges. Lack of experience and maturity of Judges may affect the efficiency of the system. The decision of this court to reintroduce the minimum qualification in legal practice to appear for judicial service is a key step in addressing this practical ambiguity. But on the other hand, this judgment provides safeguards that narrow the interpretation of the scope of legal practice. While the safeguards extend their scope to all litigation-related works, it raises uncertainty on the non-litigant role of enrolled advocates. The role of Advocacy is not just limited to customary courtroom practices.²³ The term “to practice the profession of law” under section 29 of the Advocates Act, 1961 includes persons who engage in litigious as well as non-litigious matters.²⁴ An advocate’s right to practice includes a broader interpretation. He can consult clients, give legal opinions, draft legal instruments and affidavits and also participate in conferences.²⁵ He can file Vakalat on behalf of his client without making court appearances.²⁶ This interpretation affirms that legal practice is not restricted to court practice alone but covers a broader scope of legal engagement. The profession of law has expanded its facets.²⁷ A person is considered to be in practice unless they are not entitled to be enrolled as an advocate or are temporarily suspended under the Advocates Act, 1961.²⁸ The Hon’ble Supreme Court’s judgement in this instance regrettably overlooked the intricate complexities and contextual specialities of the legal practice undertaken by advocates engaged in specialized tribunals such as the DRT,²⁹ NGT³⁰ and NCLT,³¹ as well as those representing banking sectors, law firms, and corporate entities. Further, the court’s ruling failed to adequately consider the legitimacy and validity of established practices, including the relevance of postgraduate legal education, in informing and enhancing the professional competencies of advocates operating within these diverse forums. Moreover, the safeguards enshrined in the judgement appear to be disproportionately tailored to benefit advocates practising in subordinate courts, district courts, and High Courts, thereby inadvertently marginalizing the interests of advocates who carved out specialized niches in tribunals, corporate law, and other emerging areas of legal practice, including arbitration. While the reintroduction of minimum experience requirements to appear for judicial service seems inevitable, the safeguards provided in this judgement and their practical execution leave

²³*Lawyers Collective v Bar Council of India* AIR 2010 Bom 83

²⁴The Advocates Act 1961 (India), s 29

²⁵*Ex-Capt Harish Uppal v Union of India* (2003) 2 SCC 45 (SC)

²⁶*ibid*, para 26

²⁷*Karan Antil v High Court of Delhi* W.P. (C) 3367/2023, 13 (Del HC)

²⁸*V Sudheer v Bar Council of India* (1999) 3 SCC 176 (SC)

²⁹The Recovery of Debts and Bankruptcy Act 1993 (India), s 3

³⁰The National Green Tribunal Act 2010 (India), s 4

³¹The Companies Act 2013 (India), s 408

questions to be addressed. A more inclusive interpretation could have fostered fair competitions while addressing professional realities.

VI. CONCLUSION:

This judgement holds its significance in the field of judiciary, aimed at maintaining quality and composure. The person who occupies such a position must be competent enough to handle the court. The Court's view to fix a minimum of three years of practice as an eligibility criterion serves its purpose. However, the narrow interpretation given to the safeguards will prevent many talented and competent persons from being eligible for judicial service. A broader interpretation would better serve the intent and ensure fair access to judicial services.