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## **THREE YEARS PRACTICE RULE: EVOLUTION, IMPLICATION AND JUDICIAL ANALYSIS**

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### **ABSTRACT**

This paper describes the three years practice rule mandated recently by the Supreme Court. How this rule has evolved from various reports of Law Commission of India, Shetty's Commission and legal precedence that shaped it in contemporary times. What were the reason behind restoring 3 years practice rule. It explains the reasoning given by Supreme Court and BCI for mandating the practice.

This paper also explores the various concern of different High Court over mandating this practice. Some High Courts were of the opinion to mandate practice for 3 years and some for 2 years. Further, this paper explains the current scenario of this practice rule, from when this 3 years practice rule would be counted and how will the three years practice rule be taken into account.

Also, this paper analyses the implication of this ruling over the judicial aspirants which belongs to rural, underprivileged and economically weaker section of society, it also analyses the impact of ruling over women & first generational lawyers whose doors for opting law as career has been closed initially. It also explains the impact of this ruling over pending vacancy of judges and cases of India.

At last, this paper gives an alternative solution instead of mandating three-year practice, the judicial training should be intensive and period of training should be increased, which results in balancing the need of solution for inexperience civil judge and also safeguarding the interest of judicial aspirants, women and first generational lawyers.

## Historical background

For a long time, there was a conflict about mandating the three-year practice requirement, which has been debated at various point of time. For the very first time, The Law Commission suggested that if we are to improve the personnel of the subordinate judiciary, we must first take measures to extend or widen our field of selection so that we can draw from it really capable person. A proposal of a radical nature was recommended to commission that all judicial appointments be made exclusively through competitive exams. It was suggested that the higher judiciary could be drawn from such competitive tests at the all-India level and the lower judiciary can be recruited by similar tests held at State level. Those eligible for these tests would be graduates who have taken a law degree and the requirement of practice at the Bar should be done away with.<sup>1</sup>

According to Civil Justice Committee 1924–25 report, the rule in various states which requires the candidates to have practiced at the Bar for 3 years doesn't guarantee that the candidate has gained any real experience.<sup>2</sup> The 116<sup>th</sup> Law Commission Report came next. It said that the three-year practice requirement should be dropped since practicing for only two to three years didn't provide them the training, they needed to be a successful judge.<sup>3</sup>

The 118<sup>th</sup> Law Commission report, on the other hand, made other suggestions. It said that the three-year practice requirement might remain even though it wasn't necessary.<sup>4</sup> With this it can be construed that rule of practice was not effective but evidences for the conflict of this debate

This conflicting suggestion were finally resolved in Second All India Judge's Association case (1993) where the Court Considering the fact that from the first day of his assuming office, the Judge has to decide, among others, questions of life, liberty, property and reputation of the litigants, to induct graduates fresh from the Universities to occupy seats of such vital powers is neither prudent nor desirable. Therefore, in order to enter the Judicial Service, an applicant

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<sup>1</sup> 1<sup>st</sup> Law Commission of India, "14<sup>th</sup> Law Commission Report on Reform of Judicial Administration" (1958).

<sup>2</sup> Calcutta Government of India Central Publication Branch, "Civil Justice Committee Report of 1924-1925" (1925).

<sup>3</sup> 4<sup>th</sup> Law Commission of India, "116<sup>th</sup> Law Commission Report on Formation of All India Judicial Service" (1986).

<sup>4</sup> 4<sup>th</sup> Law Commission of India, "118<sup>th</sup> Law Commission Report on Method of appointment to subordinate courts/Judiciary," (1986).

must be an Advocate of at least three year's standing.<sup>5</sup>

With the passage of time, experience has shown that the best talent which is available is not attracted to the Judicial Service. A bright young law graduate after 3 year of practice finds the Judicial Service not attractive enough. It has been recommended by the Shetty Commission after taking into consideration the views expressed before it by various authorities, that the need for an applicant to have been an Advocate for at least 3 years should be done away with.<sup>6</sup>

After taking all the circumstances into consideration, The Supreme Court in Third All India Judge's Association Case (2002) accepted this recommendation of the Shetty Commission and observed that it is no longer mandatory for an applicant desirous of entering the Judicial Service to be an Advocate of at least three years standing.<sup>7</sup>

### **Reasons behind the revival of the three years practice requirement.**

The apex court struck down this rule in 2002, but the issue resurfaced over time as circumstances evolved, High courts and advocates faced difficulties while dealing with freshly appointed Civil Judge (Junior Division) as they lack practical experience of working with Bar & Bench . These were the following reason for restoring 3-year practice rule:

Firstly, according to Bar Council of India, Judicial Officers not having practical experience at the Bar are mostly found to be incapable and inept in handling matters. Most of such officers are found impolite and impractical in their behavior with the Members of the Bar and Litigants.

Secondly, the inexperience at the Bar is one of the primary and major reasons for delays in the disposal of cases in the sub-ordinate Judiciary. Trained and experienced judicial officers can comprehend and dispose of matters at a much faster pace, thereby leading to efficient administration of justice.<sup>8</sup>

Thirdly, according to Supreme court of India the recruitment of "raw graduates" as Judicial Officers without any training or background of lawyering has not proved to be a successful

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<sup>5</sup> **All India Judge's Association & Ors. v. Union of India & Ors.**, (1993) 4 SCC 288.

<sup>6</sup> Justice K.J. Shetty, "Justice Shetty Commission Report" (11th November, 1999).

<sup>7</sup> **All India Judge's Association and Ors. v. Union of India & Ors.**, (2002) 4 SCC 247.

<sup>8</sup> Lokendra Singh Chouhan & Anuj Shukla, *Three Year of Mandatory Practice for the Judiciary: Should the BCI rethink?*, Bar and Bench (January 17, 2021, 9:00 AM), <https://www.barandbench.com/Law-School/three-years-of-mandatory-practice-for-the-judiciary-should-the-bci-rethink>.

experiment. The Court further added that from the first day of his/her assuming office, a Judge has to decide, among others, questions of life, liberty, property and reputation of the litigants.<sup>9</sup> This Court said that it was not wise nor desirable to appoint recent university graduates to positions involving such crucial authority.

Fourthly, the Court further found that neither knowledge derived from books nor pre-service training could be an adequate substitute for the first-hand experience of the working of the court-system and the administration of justice begotten through legal practice.

### **Views of different High Courts on the three-year practice rule.**

The High Court of Andhra Pradesh has stated that some instances have come to the notice of the High Court that some of the Civil Judges (Junior Division) who did not possess any experience at the Bar, appointed straight away from the college to the court, are not treating the bar members and staff members in good spirits and that the officers are finding it difficult to handle the courts when faced with procedural issues. The High Court of Patna suggested that it would be helpful in appointing experienced lawyers which would benefit the judicial service and improve standards of judicial dispensation. The High Court of Madhya Pradesh opined that experience has shown that even candidates who are brilliant in academics having no experience at the Bar were not able to handle court proceedings properly. The High Court of Orissa stated that inexperienced candidates take time to acquaint themselves to the environment of a court which ultimately enables them to smoothly handle the day-to-day court proceedings. It is further stated that they are often unaware about the court decorum and this causes inconvenience in judicial administration.<sup>10</sup>

The High Court of Kerala, Madhya Pradesh, Manipur, Patna, Orrisa, Madras, Uttarakhand, Chhattisgarh have also recommended that the requirement of minimum 3 years' practice at the Bar needs to be restored. The High Court of Andhra Pradesh, Gauhati, Jammu & Kashmir, Ladakh, Gujrat, Punjab, Haryana have recommended for a minimum 2 years of practice requirement for a candidate being eligible to appear in the examination of Civil Judge (Junior Division). The High Court of Delhi has recommended that the minimum requirement be 1 year of practice at the Bar. The High Court of Allahabad as well as the High Court of Calcutta have

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<sup>9</sup> All India Judge's Association and Ors. v. Union of India & Ors., 2025 INSC 735.

<sup>10</sup> ALL, *supra* note 09, at 3.

also supported the reintroduction of the requirement of some prior practice to appear for such examination. Except the High Courts of Rajasthan and Sikkim, no other High Court has opposed such reintroduction of the pre-requisite of practice at the Bar.

### **Current legal position of three years practice rule**

The three-judge bench of BR Gavai, CJI, AG Masih, and K Vinod Chandran, JJ, while dealing with a series of petitions concerning the qualification, promotion, and selection of candidates who wish to enter the Judicial Services as Civil Judges (Junior Division) or Higher Judicial Service, as well as with regard to the promotions at various levels within the Judicial Service held that all candidates applying for the post of Civil Judge (Junior Division) must have practiced law for a minimum of 3 years.

It is further directed by the court that the said requirement of minimum years of practice shall not be applicable in cases where the concerned High Court has already initiated the selection process for the post of Civil Judge (Junior Division) prior to the date of this judgment and shall be applicable only from the next recruitment process.

- **From when will the mandatory three-year legal experience be counted?**

The majority of High Courts have not expressed a position on the matter, despite the fact that one or two have stated that experience should be counted from the day on which AIBE is passed. The only courts that have suggested that experience be counted from the date a candidate's provisional registration was granted are the State of Orissa, the High Court of Punjab & Haryana, the High Court of Delhi, and the High Court of Jammu & Kashmir and Ladakh.

The candidates' inability to present for AIBE could be due to a number of factors. Due to the fact that different universities may release their results at different times, a candidate may not be able to take the exam in a given year. It is important to remember that a candidate who has been granted provisional registration by the Bar Council is permitted to practice in the state in which the registration was granted. According to that perspective, Court believed that a candidate's experience should begin to be considered on the day they were granted provisional registration.

- **What will be the criteria for assessing the three-year practice period?**

In a Mofussil Court there wouldn't be much of a problem because, given the number of lawyers who appear there, the Judicial Officers operating at that station can attest that a candidate has practiced there for the necessary number of years.

At metropolitan cities, it could be provided that a certificate by an advocate having a minimum standing of 10 years duly endorsed by a Principal Judicial Officer of such a District or a Principal Judicial Officer at a station, certifying that such a candidate has actually practiced for the requisite number of years would take care of the said concern. Insofar as the candidates who are practicing before the High Courts or this Court, they shall be certified by an advocate who has a minimum standing of 10 years duly endorsed by an officer designated by that High Court or this Court.

The experience of the candidates which they have gained while working as Law Clerks with any of the Judges or Judicial Officers in the country should also be considered while calculating their total number of years of practice.

### **Implications of the Mandatory Three-Year Practice Period**

One of the major impacts of this ruling would be over the judicial aspirants who belongs to rural, underprivileged and economically weaker section of society, who are under huge pressure of instant source of income as soon as they get their lawyer degree. Prior to this ruling, they had the chance to pursue a career in the judiciary, providing support both for themselves and their families, but now they have to work under senior lawyers who don't even offers the basic stipend to juniors which makes their living even worst. This ruling is worst for those aspirants who had already taken the lawyer degree but haven't registered themselves in any bar association and has been preparing for two- three years. The present scenario demands that they dedicate their next three years to practice, which would ruin their preparation and thereafter they can take the judicial examination.

Another major impact is over the women aspirants. This decision would discourage the female aspirant more as if we acknowledge the societal norms in many parts of India which still expect women to marry early. Women have been joining the judicial service in greater numbers in recent years, mostly due to the opportunity to study at home and pass the tests in a reasonable

amount of time. But after this ruling female have to give additional three year to their academic which most of the Indian family doesn't afford or provide such time to their daughter.

Another Significant impact would be over the first generation who want to choose law as their career option. Earlier most of the first generation choose law as their career by taking judiciary in consideration that after having degree they can give judicial examination, but now the situation is that student of first generation has to give 3 years in graduation, than 3 years over lawyer's degree and thereafter 3 years over practice in order to get eligible for judicial examination. This made the first generation to back out initially, without even giving a single thought of law as career which would take nearly a decade. This ruling is basically closing the gate of first generation's carrier as law.

Another significant impact would be over the pending vacancy of judges at subordinate's court which is required to be filled. It is well known that there is still a severe judge shortage and a growing backlog of cases in the Indian judiciary. Recent statistics show that there are 5,173 open posts in district and subordinate courts nationwide<sup>11</sup>, and that there are an astounding 4.53 crore pending cases in these courts. But with the inclusion of this three-year practice rule, it would escalate the pendency of appointment as well as cases.

### **Substitute Models for the Compulsory Three-Year Legal Experience**

The rationale behind bringing this mandate practice rule was to resolve the problems arising due to lack of experience by freshly appointed judges but is reinstating a three-year practice requirement really the only or best way to address this issue. There are other ways instead of mandating practice, the training of qualified candidate should be intensive and the period of training should be increased.

The Law Commission of India in its 117th Report, recommended the fresh law graduates to enter into the judicial service, it emphasized the need for intensive training for such fresh law graduates entering into the judicial service. The Law Commission is of the opinion that the two years intensive training would outweigh the advantage, if any, of three years practice at the Bar which often enough hardly helps in the matter of equipping oneself.<sup>12</sup> The Shetty Commission, in its Report dated 11th November 1999 If intensive training is given to young and brilliant

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<sup>11</sup> Department of Justice, <https://dashboard.doj.gov.in/vacancy/> (last visited on June 01, 2025)

<sup>12</sup> 4<sup>th</sup> Law Commission of India, "117<sup>th</sup> Law Commission Report on Training of Judicial Officers" 1986.

law graduates, it may be unnecessary to prescribe three years practice in the Bar as a condition for entering the judicial service.<sup>13</sup>

Instead of mandating the practice for a period of three year, it could have been reduced to 2 years which was also supported by many High courts and additional 1 year period of training should be given to selected candidate for judicial service. This approach would help to balance between the need of courts which would solve the problem and also fulfill the desire of aspirants of judiciary.

## **Conclusion**

Supreme Court has taken decision in order to solve the problem of judicial administration but neglected the negative impact of this ruling over judicial aspirants, women, first generational lawyers & pending vacancy of judges in subordinate courts. Apex court is required to review its decision and provide justice to aspirants of economically weaker class, women & first generational lawyers. There is possible substitute model instead of mandating practice, the training of qualified candidate should be intensive and the period of training should be increased, which results in balancing the need of solution for inexperience civil judge and also safeguarding the interest of judicial aspirants, women and first generational lawyers. Ultimately, every problem has alternative solutions, and if such an alternative protects the interests of those affected by the abovementioned ruling, it should be implemented.

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<sup>13</sup> Justice K.J. Shetty, “Justice Shetty Commission Report” (11th November, 1999).