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# RE-EVALUATING THE MANDATORY THREE-YEAR BAR PRACTICE RULE FOR LOWER JUDICIAL SERVICE IN INDIA: A SOCIO-LEGAL AND POLICY ANALYSIS

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## I. ABSTRACT

*In May 2025, a three-judge Bench of the Supreme Court of India in All India Judges Association v. Union of India restored the mandatory requirement of three years of active practice at the Bar (or judicial clerkship) as an essential prerequisite for appearing in the Civil Judge (Junior Division) competitive examinations. This decision overturned the long-standing 2002 precedent (AIJA II) that had permitted fresh law graduates to directly enter the subordinate judiciary. This research paper presents a comprehensive socio-legal and policy analysis of the three-year practice rule, evaluating its constitutional validity, institutional efficiency, and socio-economic ramifications. On one hand, institutional proponents argue that prior trial court practice develops crucial procedural instincts, judicial demeanor, and trial management skills under the Bharatiya Nagarik Suraksha Sanhita (BNSS) and Bharatiya Sakshya Adhiniyam (BSA) that academic education alone cannot impart. On the other hand, the paper demonstrates how the rule acts as a severe structural barrier within India's unorganized and largely uncompensated junior legal profession. Using an intersectional analytical framework, this study highlights the disproportionate burden the mandate places on female candidates threatening to reverse two decades of progress in gender representation by conflicting with societal and biological timelines as well as first-generation lawyers, economically weaker sections, and aspirants from marginalized backgrounds who lack the financial "waiting power" to sustain unremunerated practice. Finally, drawing on comparative international models, such as the German Referendariat system and the Indian Administrative Service (LBSNAA) institutional training framework, the paper proposes alternative policy solutions. It argues for a balanced approach that pairs open-entry examinations with stipend-supported pre-service judicial apprenticeships and paid clerkship*

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*equivalencies, thereby safeguarding judicial competence without compromising demographic diversity and substantive equality under Articles 14 and 16 of the Constitution of India.*

## II. KEYWORDS

Subordinate Judiciary; Civil Judge Examination; Three-Year Practice Rule; Substantive Equality; Gender Inclusivity.

## III. INTRODUCTION AND THEORETICAL FOUNDATIONS

The recruitment mechanism for the lowest tier of the Indian judiciary the Civil Judge (Junior Division) or Judicial Magistrate First Class (JMFC) occupies a pivotal position in the Indian constitutional schema. Subordinate courts represent the primary forum of adjudication for over 90% of litigants in India. The competence, efficiency, and social sensitivity of the trial court judge directly dictate public trust in the rule of law.

At the heart of judicial service recruitment lies a fundamental policy question: *should entry into the lower judiciary be open immediately to law graduates based on competitive academic examinations, or should prior litigation experience at the bar serve as an indispensable prerequisite?*

This question touches upon two competing constitutional imperatives:

- 1. Institutional Efficiency and Competence:** Ensuring that judicial officers possess the procedural instinct, courtroom decorum, and practical maturity necessary to manage trial proceedings and adjudicate matters involving individual liberty and property rights.
- 2. Substantive Equality and Demographic Inclusivity:** Preserving equal opportunity under Articles 14 and 16 of the Constitution of India, ensuring that entry into public service is not restricted by socio-economic barriers, uncompensated apprenticeships, or structural biases.

| THE CORE CONSTITUTIONAL TENSION |                                            |
|---------------------------------|--------------------------------------------|
| Institutional Competence        | Substantive Equality<br>(Articles 14 & 16) |

|                                                                                                                                                                                                               |                                                                                                                                                                                       |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Articles 234 <sup>2</sup> & 235) <sup>3</sup>                                                                                                                                                                |                                                                                                                                                                                       |
| <ul style="list-style-type: none"> <li>• Practical trial familiarity</li> <li>• Courtroom management instinct</li> <li>• Mature assessment of evidence</li> <li>• Decorum and judicial temperament</li> </ul> | <ul style="list-style-type: none"> <li>• Socio-economic mobility</li> <li>• Equal access for first-gen and marginalized aspirants</li> <li>• Gender inclusivity at the Bar</li> </ul> |

### A. Research Objectives

This research paper seeks to achieve the following objectives:

1. To examine the constitutional framework governing recruitment to the lower judiciary in India, particularly under Articles 233, 234, and 235 of the Constitution of India.
2. To evaluate the constitutional validity and institutional justification of the mandatory Bar practice requirement for entry into the Civil Judge (Junior Division) cadre.
3. To assess the socio-economic, gendered, caste-based, regional, and disability-related impact of the practice requirement on judicial aspirants, especially first-generation lawyers and candidates from marginalized backgrounds.
4. To analyze whether prior courtroom practice effectively enhances trial-court readiness, procedural competence, evidentiary appreciation, and judicial temperament.
5. To propose alternative recruitment and training models, including stipend-supported judicial apprenticeships, paid clerkship equivalencies, and structured institutional training, to reconcile judicial competence with substantive equality and demographic inclusivity.

### B. Research Questions

This research paper addresses the following questions:

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<sup>2</sup> INDIA CONST. art. 234.

<sup>3</sup> INDIA CONST. art. 235.

1. Whether entry into the lower judiciary should remain open immediately to law graduates through competitive examinations, or whether prior litigation experience at the Bar should operate as a mandatory eligibility requirement?
2. Whether the Bar practice requirement for Civil Judge (Junior Division) recruitment is constitutionally compatible with Articles 14, 16, 234, and 235 of the Constitution of India?
3. Whether prior courtroom practice meaningfully improves trial-court readiness, procedural competence, evidentiary appreciation, courtroom control, and judicial temperament among entry-level judicial officers?
4. What socio-economic, gendered, caste-based, regional, and disability-related barriers are created by requiring pre-selection Bar practice from judicial aspirants?
5. What alternative recruitment and training models, including judicial apprenticeships, paid clerkships, legal-aid practice equivalencies, and comparative institutional models, can reconcile judicial competence with substantive equality and demographic inclusivity?

### C. Research Methodology

This research paper adopts a doctrinal, socio-legal, and comparative research methodology. The doctrinal component is based on an analysis of constitutional provisions governing judicial appointments, particularly Articles 14, 16, 233, 234, and 235 of the Constitution of India, along with relevant Supreme Court decisions on subordinate judicial recruitment, including the *All-India Judges Association* line of cases.

It also examines statutory materials such as the Code of Civil Procedure, 1908, the Bharatiya Nagarik Suraksha Sanhita, 2023, the Bharatiya Sakshya Adhiniyam, 2023, and the Rights of Persons with Disabilities Act, 2016. The socio-legal component evaluates the practical impact of the Bar practice requirement on judicial aspirants from different social locations, including women, first-generation lawyers, economically weaker candidates, SC/ST/OBC aspirants, rural candidates, and Persons with Disabilities. This analysis draws upon commission reports, institutional

materials, demographic trends, and policy discussions already reflected in the manuscript.

The comparative component examines alternative institutional training models, particularly the German *Referendariat* system and the Indian Administrative Service training framework administered through LBSNAA. These comparators have been selected because they illustrate structured, state-supported models of practical training that seek to develop professional competence without relying exclusively on unregulated and often uncompensated private practice. The methodology is therefore designed to assess whether judicial competence can be secured through more inclusive institutional mechanisms while preserving equality of opportunity in public employment.

#### IV. CONSTITUTIONAL FRAMEWORK GOVERNING JUDICIAL APPOINTMENTS

The recruitment and control of the subordinate judiciary are governed by Chapter VI of Part VI of the Constitution of India, primarily spanning Articles 233 to 235.

##### A. Constitutional Scheme of Appointments

1. **Article 233 (District Judges):** Mandates that appointments, postings, and promotions of District Judges are made by the Governor of the State in consultation with the High Court exercising jurisdiction. Crucially, Clause (2) explicitly provides that a person not already in the service of the Union or the State shall only be eligible to be appointed as a District Judge if he has been for not less than seven years an advocate or a pleader.
2. **Article 234 (Subordinate Judiciary):** Governs appointments of persons other than district judges to the judicial service of a State. Appointments are made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and the High Court exercising jurisdiction over such State. Notably, *Article 234 does not prescribe a mandatory minimum standing at the Bar within the text of the Constitution itself*, leaving eligibility standards to state service rules framed in consultation with High Courts.

3. **Article 235 (Control Over Subordinate Courts):** Vests the administrative, disciplinary, and operational control over district courts and courts subordinate thereto in the respective High Court. This plenary control forms the legal basis for High Courts to dictate minimum qualification standards for judicial officers.

#### **B. Interplay Between Article 234 And Judicial Autonomy**

The Supreme Court has consistently held that the administrative control vested in High Courts under Article 235 read with Article 234 empowers High Courts to determine the qualifications, eligibility criteria, and training standards of the lower judiciary. Service rules framed by state executives must conform to the recommendations and guidelines issued by the High Courts and the Supreme Court in exercise of its constitutional powers under Article 142.

### **V. THE HISTORICAL EVOLUTION OF THE PRACTICE RULE**

The eligibility requirements for entering the lower judiciary have undergone several shifts over seven decades of constitutional governance.

1. **1958: 14th Law Commission Report:** Recommended 3–5 years practice due to short 2-year LL.B. curricula.<sup>4</sup>
2. **1993: First AIJA Case [(1993) 4 SCC 288]:** Supreme Court mandated 3-year Bar practice across all States.<sup>5</sup>
3. **1999: Shetty Pay Commission Report:** Advised dropping practice rule; cited 5-year integrated LL.B. courses.<sup>6</sup>
4. **2002: Second AIJA Judgment [(2002) 4 SCC 247]:** Supreme Court abolished 3-year practice rule; permitted fresh graduates.<sup>7</sup>
5. **2025: Reinstatement in AIJA Order [2025 INSC 735]:** Supreme Court restored 3-year practice rule (effective 2025–26 onward).<sup>8</sup>

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<sup>4</sup> Law Commission of India, *Fourteenth Report: Reform of Judicial Administration*, vol. 1 (1958)

<sup>5</sup> *All India Judges' Assn. (I) v. Union of India*, (1993) 4 S.C.C. 288

<sup>6</sup> First National Judicial Pay Commission, *Report on Subordinate Judicial Services* (Ministry of Law and Justice 1999)

<sup>7</sup> *All India Judges' Assn. (II)*, *supra* note 2

<sup>8</sup> *All India Judges' Assn. v. Union of India*, 2025 INSC 735

### **A. The Pre-1993 Era and the 14th Law Commission (1958)**

In its landmark 14th Report on the Reform of Judicial Administration (1958), chaired by M.C. Setalvad, the Law Commission of India recommended that candidates for the subordinate judiciary should possess three to five years of courtroom practice at the Bar.

During this era, law degrees were predominantly two-year or three-year non-integrated graduate programs focusing almost entirely on lecture-based legal theory, with virtually no clinical training, moot courts, or court drafting exercises. Consequently, direct entry from law colleges was deemed risky because graduates lacked exposure to civil and criminal trial procedures.

### **B. The First All India Judges Association Case (1993)**

In *All India Judges Association v. Union of India* [(1993) 4 SCC 288], the Supreme Court issued a series of binding directions to harmonize judicial service conditions nationwide. A key mandate established by the Court was the requirement of a minimum of three years' practice at the Bar as an essential qualification for appearing in the Civil Judge (Junior Division) competitive examination.

The Court reasoned that an officer presiding over a court of law must possess an established legal background and procedural instincts that can only be honed through active advocacy in trial court chambers.

### **C. The Justice Shetty Commission Report (1999)**

In 1996, the Supreme Court constituted the First National Judicial Pay Commission, headed by Justice K. Jagannatha Shetty. The Shetty Commission conducted a comprehensive review of judicial services across India and submitted its report in November 1999. The Shetty Commission recommended the abolition of the three-year practice rule. Its key observations included:

- 1. Institutional Transformation of Legal Education:** The introduction of the 5-year integrated LL.B. degree by the Bar Council of India (starting with National Law School of India University, Bangalore in 1987) introduced moot courts, legal aid clinics, court visits, and mandatory internships into the curriculum.

2. **Loss Of High-Caliber Talent:** The Commission observed that brilliant law graduates were unwilling to spend three uncompensated or low-earning years at the Bar. High-performing students were being siphoned off by corporate law firms, multinational enterprises, and higher studies abroad, leaving the judicial service as an unattractive secondary option.
3. **Alternative Through Induction Training:** The Commission argued that practical courtroom skills could be imparted through one to two years of intensive induction training at State Judicial Academies after selection, rather than relying on unstructured, variable practice at the Bar.

#### **D. The Second Aija Judgment (2002) and Open Entry**

In *All India Judges Association (2) v. Union of India* [(2002) 4 SCC 247]<sup>9</sup>, a three-judge Bench of the Supreme Court accepted the recommendations of the Shetty Commission. The Court formally deleted the three-year standing requirement, allowing fresh law graduates to sit for state judicial service examinations immediately upon graduation. For twenty-three years (2002–2025), direct entry served as the standard across Indian states. This period witnessed a major shift: entry-level ranks saw a significant influx of younger officers, a substantial increase in female judicial officers, and a shift toward candidates clearing exams shortly after graduating from 5-year integrated law programs.

## **VI. THE 2025 RESTORATION AND CURRENT LEGAL POSITION**

### **A. The Judgment in All India Judges Association (2025)**

On May 20, 2025, a three-judge Bench of the Supreme Court in *All India Judges Association v. Union of India* [2025 INSC 735] restored prior legal practice as a condition for entry into the lower judiciary, thereby departing from the 2002 open-entry model. However, this position no longer represents the unqualified current legal framework. On 21 August 2026, in *Bhumika Trust v. Union of India* and connected review proceedings, the Supreme Court modified the May 2025 ruling by reducing the pre-selection practice requirement from three years to one year. The Court simultaneously

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<sup>9</sup> *All India Judges' Assn. (II)*, *supra* note 2

introduced a structured post-selection model requiring selected candidates to undergo one year of intensive Judicial Academy training followed by one year of supervised clerkship.

| SUPREME COURT RULING AT A GLANCE |                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CASE CITATION                    | 2025 INSC 735   <i>All India Judges Association v. UOI</i> <sup>10</sup>                                                                                                                                                                                                                                                                                              |
| BENCH                            | B.R. Gavai CJI, A.G. Masih J, K.V. Chandran J                                                                                                                                                                                                                                                                                                                         |
| DATE OF DECISION                 | May 20, 2025                                                                                                                                                                                                                                                                                                                                                          |
| CORE HOLDING                     | One year of prior legal practice is required for future Civil Judge (Junior Division) recruitment, subject to transitional arrangements. Selected candidates must thereafter complete one year of Judicial Academy training and one year of structured clerkship before regular judicial functioning.                                                                 |
| COMPUTATION DATE                 | For future recruitment notifications issued after the transitional period, the qualifying pre-selection practice requirement stands reduced to one year. The structured post-selection framework consists of one year of Judicial Academy training followed by one year of clerkship, including supervised attachment with the district judiciary and the High Court. |
| CERTIFICATION                    | Experience must be certified by an advocate with minimum 10 years standing at the Bar.                                                                                                                                                                                                                                                                                |

### B. Key Rationale Offered by the Court

The Supreme Court justified the reversal based on feedback from multiple High Courts regarding the operational performance of fresh-graduate judicial officers over the preceding two decades:

<sup>10</sup> *All India Judges' Assn.*, supra note 12.

1. **Deficit in Practical Handling:** The Court noted that despite academic brilliance, young officers entering directly from law schools frequently struggled with trial management, handling uncooperative senior advocates, evaluating oral evidence under pressure, and maintaining courtroom decorum.
2. **Impact on Judicial Outcomes:** Fresh officers were observed making avoidable procedural errors during trial stages such as improper framing of issues/charges, incorrect handling of interlocutory applications, and misapplication of procedural codes which generated backlogs of interlocutory appeals.
3. **Limits of Institutional Training:** The Court held that simulated training in judicial academies could not fully replicate the actual experience of managing an active courtroom, dealing with litigants, and observing cross-examinations first-hand.

### C. Operational Parameters of the Restored Rule

To operationalize the decision, the Supreme Court laid down explicit parameters:

1. **Scope Of Practice:** Practice as an advocate or service as a Law Clerk-cum-Research Assistant in High Courts or the Supreme Court qualifies as valid practice.
2. **Calculation Anchor:** The three-year period is calculated from the date of provisional enrolment with a State Bar Council, rather than the date of clearing the All-India Bar Examination (AIBE).
3. **Verification Mechanism:** Candidates must submit an experience certificate issued and endorsed by a senior or colleague advocate having at least 10 years of standing at the Bar.
4. **Prospective Application:** The rule applies prospectively to upcoming recruitment cycles to protect candidates already enrolled in ongoing exam pipelines.

### D. Ongoing Legal Challenges and the Review Landscape (2025–2026)

Following the May 2025 ruling, review petitions and connected proceedings challenged the proportionality of the restored three-year practice requirement. Petitioners argued that the rule imposed an excessive barrier on candidates without financial or familial support in the legal profession, lacked adequate empirical justification, and failed to account for the socio-economic realities of junior advocacy in district courts. In *Bhumika Trust v. Union of India*, decided on 21 August 2026, the Supreme Court declined to abandon the underlying idea that future judges require prior practical exposure, but substantially modified the mechanism for achieving that objective. The Court reduced the pre-selection practice condition to one year and shifted the remaining training burden into a structured post-selection framework consisting of one year of Judicial Academy training and one year of supervised clerkship.

## VII. THE INSTITUTIONAL RATIONALE

### A. Introduction to the Institutional Case

The primary justification for restoring the mandatory three-year practice rule rests on the distinction between theoretical legal education and operational judicial competence. Proponents of the requirement—including judicial administrations across various High Courts and senior members of the trial Bar—contend that while university curricula impart knowledge of substantive law, they cannot replicate the tacit knowledge, procedural instincts, and professional demeanor acquired through active courtroom practice.

Trial courts (The Civil Judge Junior Division and Judicial Magistrate First Class) operate at the grassroots level of the administration of justice. In these courts, judges do not merely adjudicate abstract legal questions; they manage chaotic courtrooms, evaluate oral evidence in real time, control witness examinations, and navigate complex human behaviours. This section examines the core institutional arguments that favour mandatory legal practice prior to judicial appointment.

|                                                   |
|---------------------------------------------------|
| <b>THE FOUR PILLARS OF INSTITUTIONAL MATURITY</b> |
|---------------------------------------------------|

**1. Procedural Instincts & Trial Mechanics**

- Real-time evidentiary evaluation under BNSS & BSA
- Mastery over interlocutory processes and bail dynamics

**2. Judicial Demeanor & Courtroom Control**

- Managing aggressive advocates & uncooperative litigants
- Decorum, dignity, and commanding respect without overbearing

**3. Reduction of Subordinate Court Errors**

- Preventing ungrounded interlocutory injunctions & remands
- Accurate framing of issues (Civil) and charges (Criminal)

**4. Development of Pragmatic Realism & Judicial Temperament**

- Understanding ground-level trial delays & police procedure
- Fostering empathy rooted in socio-economic realities

## **VIII. MASTERY OVER PROCEDURAL MECHANICS AND EVIDENTIARY RULES**

### **A. Evidentiary Real-Time Evaluation**

In a trial court setting, evidentiary objections are rarely raised with the luxury of extensive research time. A presiding judge must rule instantaneously on admissibility, relevance, and lead questions during witness depositions under the Bharatiya Sakshya Adhiniyam (BSA) / Indian Evidence Act.

An officer who has spent three years at the Bar as an advocate has actively participated in:

1. Conducting Chief Examination, where leading questions are restricted.
2. Managing Cross-Examination, detecting evasive testimony, and assessing witness demeanor under pressure.

3. Handling Re-Examination, learning how to rehabilitate a witness without exceeding statutory bounds.

Fresh law graduates, despite high academic standing, often struggle when faced with hostile witnesses or complex objections during live proceedings. Prior advocacy practice transforms theoretical statutory knowledge into an intuitive courtroom response.

### **B. Criminal Trial Dynamics Under the Bharatiya Nagarik Suraksha Sanhita (BNSS)**

The handling of criminal trials requires practical exposure to criminal procedure, police investigation mechanics, and liberty-depriving orders:

1. **Bail and Remand Applications:** Deciding police versus judicial custody under Section 187 of the BNSS requires an appreciation of investigation timelines, rights of the accused, and ground-level police practices. Advocates with trial court experience are less likely to grant mechanical remands or unconsidered bail orders.
2. **Framing of Charges:** Imprecise or defective framing of charges under Section 251/253 of the BNSS can vitiate an entire trial. Prior trial experience enables judicial officers to identify the essential elements of an offense directly from the police chargesheet (*challan*) and witness statements.

### **C. Comparative Trial Readiness**

#### **FRESH GRADUATE JUDGE**

- Heavy reliance on law manuals during hearings.
- Susceptible to procedural filibustering by lawyers
- Hesitation in framing charges & issues.

VS

#### **PRACTICING ADVOCATE JUDGE**

- Instinctive grasp of trial flow and local rules
- Quick, confident rulings on evidentiary objections
- Firm handling of delay tactics & adjournments

## **IX. JUDICIAL Demeanor, Authority, and Courtroom Control**

### A. Managing Courtroom Dynamics and Senior Advocates

One of the most significant challenges reported by High Courts regarding young, direct-entry judges (frequently entering service at age 23–24) is the control of the court hall. Trial court judges routinely interact with senior advocates, local bar leaders, and adversarial litigators who may attempt to exploit a judge's procedural hesitancy.

1. **Preventing Unnecessary Adjournments:** A major contributor to judicial arrears in India is the frequent grant of adjournments (*adjournment culture*). A judge with prior Bar experience understands genuine grounds for adjournment versus delay tactics employed by advocates, enabling firmer courtroom management.
2. **Asserting Judicial Dignity:** Experiencing courtroom interactions from the counsel table provides perspective on how a judge should command respect through impartiality, patience, and firmness, rather than relying on contempt powers or defensive authority.

### B. Understanding the "Bar-Bench Synergy"

A judge who has operated as a member of the Bar understands the operational pressures faced by advocates such as overlapping list commitments across multiple courtrooms, client management difficulties, and administrative delays in obtaining certified copies. This shared perspective fosters professional courtesy while maintaining judicial independence.

### C. Reduction Of Systemic Errors and Appellate Backlogs

When entry-level judges commit procedural errors, the consequences ripple upward through the judicial hierarchy:

1. **Flawed Interlocutory Injunctions:** In civil matters, granting or refusing an *ex-parte* ad-interim injunction under Order XXXIX of the Code of Civil Procedure (CPC) without evaluating the three-pronged test (prima facie case, balance of convenience, and irreparable injury) leads to immediate appeals under Order XLIII CPC.<sup>11</sup>

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<sup>11</sup> The Code of Civil Procedure, 1908, Order XLIII, Rule 1.

2. **Improper Framing of Issues:** Failure to frame clear, concise issues under Order XIV CPC<sup>12</sup> leads to redundant evidence, prolonged trial timelines, and inevitable remands by Appellate Courts.
3. **Appellate Burden:** Procedural oversights at the trial court stage generate an influx of Revision Petitions, Miscellaneous First Appeals, and Article 227 Constitutional Petitions before the High Courts, diverting higher judicial resources to rectify basic procedural defects.

Advocates with three years of trial experience bring familiarity with these common traps, contributing to clearer interlocutory orders and fewer procedural remands.

#### **D. Developing Judicial Temperament and Practical Realism**

##### **1. Exposure to Socio-Economic Realities**

A law school environment provides a controlled, academic exposure to jurisprudence. In contrast, three years spent in a district or mofussil court exposes an advocate to:

- The socio-economic distress of rural litigants, land dispute patterns, and domestic relations dynamics.
- The realities of legal aid defence and the challenges faced by undertrial prisoners who lack quality legal representation.
- The practical gaps between statutory provisions and their implementation by local administration and law enforcement.

This exposure helps bridge the gap between abstract doctrine and practical dispute resolution, encouraging a more empathetic and grounded approach on the bench.

| <b>Institutional Metric</b> | <b>Without Practice Requirement (Direct Entry)</b>                | <b>With 3-Year Practice Requirement</b>                       |
|-----------------------------|-------------------------------------------------------------------|---------------------------------------------------------------|
| <b>Evidentiary Rulings</b>  | Relies on post-hearing statutory research; slower courtroom pace. | Immediate, instinctive rulings during live witness testimony. |

<sup>12</sup> The Code of Civil Procedure, 1908, Order XIV, Rules 1-5.

|                             |                                                                                  |                                                                             |
|-----------------------------|----------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| <b>Courtroom Control</b>    | Higher vulnerability to filibustering and pressure from experienced Bar members. | Confident management of counsel, court decorum, and trial flow.             |
| <b>Interlocutory Orders</b> | Higher risk of procedural defects leading to interlocutory appeals.              | Better adherence to trial standards, reducing unnecessary appeals.          |
| <b>Societal Perspective</b> | Theoretical understanding derived primarily from academic study.                 | Practical understanding of local litigation patterns and litigant behavior. |

While the institutional arguments for mandatory practice are grounded in procedural efficiency and trial quality, they exist alongside serious structural, economic, and socio-cultural barriers within the legal profession.

### **E. Structural & Economic Disincentives**

#### **1. The Socio-Economic Realities of the Indian Bar**

While the theoretical arguments in favour of courtroom practice emphasize professional maturity, they often overlook the practical realities of the legal profession in India. The entry-level legal ecosystem particularly in district and mofussil trial courts remains largely informal, unorganized, and structurally inequitable.

conditioning judicial eligibility on three years of mandatory Bar practice imposes significant economic burdens on candidates. Rather than serving as an objective filter for legal competence, the practice rule can operate as an economic barrier. It privileges candidates with financial security while disproportionately burdening first-generation lawyers, economically weaker aspirants, and those from underrepresented communities.

#### **THE ARCHITECTURE OF BAR PRACTICE BARRIERS**

### 1. The Financial Reality of Junior Advocacy

- Uncompensated labour, absence of statutory minimum stipends
- High operational overheads (Bar fees, travel, database costs)

### 2. The Privilege of "Waiting Power"

- Asymmetry between first-generation and legacy advocates
- Economic compulsion forcing talent into non-litigation roles

### 3. Quality Disparities in Practice Exposure

- Mere enrollment vs. meaningful trial practice
- Relegation of juniors to clerical, filing, and proxy tasks

### 4. Career Trajectory & Promotion Compression

- Delayed entry age (23–25 shifted to 26–28 years)
- Reduced tenure affecting elevation to High Courts & SC

## X. THE FINANCIAL REALITY OF JUNIOR ADVOCACY IN INDIA

### A. The Unpaid Labor Economy and Lack of Stipend Standards

Unlike corporate legal sectors or structured civil services, trial court advocacy operates without formal wage regulation or employment contracts.

1. **Absence of Minimum Stipends:** Despite repeated observations by the judiciary and Bar Councils advocating for mandatory stipends for junior lawyers, enforcement remains minimal. A large proportion of junior advocates in trial courts work for nominal compensation or no pay at all during their initial years.
2. **Operational Costs:** Entering the Bar requires immediate capital outlay, including State Bar Council enrollment fees, All India Bar Examination (AIBE) fees, court attire, transport costs, purchase of legal commentary sets, and subscription to legal databases. For candidates from low-income families, sustaining three years of net-negative or zero income is financially unviable.

## B. Informal Chamber Dynamics and Patronage Networks

Securing a placement in an active trial court chamber often depends on social capital and personal networks rather than transparent, merit-based selection processes.

1. **First-Generation Lawyers:** Candidates without familial connections in the legal fraternity frequently struggle to secure mentorship in active chambers. They are often unable to secure individual briefs or gain meaningful opportunities to argue matters in court during their early years of practice.
2. **Legacy Advantage:** Candidates from established legal families enjoy immediate access to client bases, chamber infrastructure, legal libraries, and direct mentorship, enabling them to navigate the three-year period with minimal financial strain.

### Access To Trial Practice: A Dual Reality

#### First-Generation Advocate

- Zero or nominal stipend.
- Dependent on proxy work.
- Struggles for chamber space
- Forced to take side jobs.
- High risk of exit due to financial stress.

VS

#### Legacy / Affluent Advocate

- Financially cushioned.
- Direct access to clients.
- Active drafting & arguing opportunities from Day 1.
- Seamless compliance with 3-year rule requirement.

## C. The Concept of "Waiting Power" and Socio-Economic Filtering

The central critique of the mandatory practice rule is that it measures a candidate's financial endurance or "waiting power" rather than their actual aptitude for judicial service.

### 1. Distortion of the Meritocratic Pool

When three years of uncompensated practice is made mandatory, the pool of applicants changes significantly:

- **Attrition of High-Performing Talent:** Law graduates carrying educational loans or immediate family financial obligations are often compelled to seek salaried employment—such as in-house corporate

counsel roles, legal publishing, compliance, or banking. Under current rules, this non-court legal experience does not satisfy the "active practice" requirement, excluding this talent pool from judicial service.

- **Socio-Economic Stratification:** The requirement creates an entry barrier that favours candidates who can afford to forgo an income for three years, shifting the demographic composition of judicial aspirants toward socio-economically privileged backgrounds.

#### **D. The Gap Between Enrollment and Meaningful Practice**

A key flaw in relying on Bar standing as an eligibility metric is the assumption that three years of enrollment equates to three years of practical skill development:

1. **Passive Standing:** An advocate can maintain their enrollment with a State Bar Council for three years while making occasional appearances or performing basic administrative filings, thereby satisfying the formal criteria without acquiring actual trial management skills.
2. **Superficial Verification:** While the 2025 *All India Judges Association*<sup>13</sup> framework requires certification by an advocate with ten years of standing, this system remains vulnerable to casual issuance based on personal ties rather than objective assessments of courtroom work.

#### **E. Career Trajectory Compression and Senior Judiciary Elevation**

The long-term institutional impact of delaying entry into the subordinate judiciary affects career progression throughout the judicial hierarchy.

#### **Career Timeline Compression**

##### **Direct Entry Model (Pre-2025)**

##### **3-Year Practice Model (Post-2025)**

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<sup>13</sup> *All India Judges' Assn., supra* note 11

|                                                                                                                                                                                                                                   |    |                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• <b>Entry Age:</b> 23 – 25 years.</li> <li>• <b>Total Service:</b> ~35–37 years.</li> <li>• <b>Peak Ranks:</b> High chances of elevation to High Court and Supreme Court bench</li> </ul> | VS | <ul style="list-style-type: none"> <li>• <b>Entry Age:</b> 26 – 28 years.</li> <li>• <b>Total Service:</b> ~32–34 years.</li> <li>• <b>Peak Ranks:</b> Higher likelihood of retiring at district Judge/ Principal level.</li> </ul> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

### 1. Escalation Of Entry Age

Under the direct-entry framework (2002–2025), law graduates routinely cleared judicial examinations between the ages of 23 and 25. Reinstating the three-year practice rule, combined with exam cycle delays and preparation time, shifts the average age of entry to 26 to 29 years.

### F. Implications For Elevation to High Courts

Pursuant to Article 217(2)(a)<sup>14</sup> of the Constitution of India, judicial officers in the subordinate service are eligible for elevation to the High Court bench after holding judicial office for at least ten years. However, in practice, elevation requires a longer tenure, exemplary service records, and high seniority within the cadre.

1. **Loss of Cadre Seniority:** Delayed entry reduces the total service length of a judicial officer.
2. **Reduced Representation at Higher Tiers:** Officers entering service close to age 30 are more likely to reach the age of superannuation (60 years) at the District Judge level, limiting their opportunity for elevation to High Courts or the Supreme Court. This dynamic reduces the proportion of Supreme Court and High Court judges drawn from the subordinate judicial service cadre relative to direct appointees from the Bar.

| Structural Metric | Direct Entry System (2002–2025) | Mandatory 3-Year Practice System |
|-------------------|---------------------------------|----------------------------------|
|-------------------|---------------------------------|----------------------------------|

<sup>14</sup> NDIA CONST. art. 217, cl. 2, subcl. a (prescribing that a person shall be qualified for appointment as a Judge of a High Court if they have held a judicial office in the territory of India for at least ten years)

|                                   |                                                                     |                                                                              |
|-----------------------------------|---------------------------------------------------------------------|------------------------------------------------------------------------------|
| <b>Financial Entry Barrier</b>    | Low; based on competitive exam performance directly post-degree.    | High; requires sustaining 3 years of low/unpaid Bar practice.                |
| <b>First-Gen Lawyer Equity</b>    | High; academic merit provides an equalizing entry mechanism.        | Low; relies on access to chamber networks and financial support.             |
| <b>Retention of Top Graduates</b> | High; offers an immediate, stable career pathway in public service. | Reduced; pushes financially constrained graduates toward private employment. |
| <b>Cadre Service Longevity</b>    | Long (35+ years); enables career progression to higher courts.      | Compressed (30–32 years); limits opportunities for elevation.                |

## XI. GENDERED IMPACT ANALYSIS (INTERSECTIONALITY & DIVERSITY)

### A. Introduction: The Gendered Realities of Judicial Recruitment

One of the most consequential outcomes of the 2002 *All India Judges Association (AIJA II)*<sup>15</sup> ruling was a dramatic shift in the demographic composition of India's subordinate judiciary. By permitting fresh law graduates to sit for state judicial service examinations immediately upon completing their degrees, the direct-entry system facilitated an unprecedented influx of female judicial officers.

In several state judicial service selections between 2015 and 2024 (e.g., Rajasthan, Delhi, Kerala, Uttar Pradesh, and Punjab), female candidates routinely constituted 50% to over 65% of successful recruits.

The reintroduction of the mandatory three-year Bar practice requirement threatens to alter this trajectory. While framed in gender-neutral language, the requirement operates within a deeply gendered legal and social structure. This chapter examines

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<sup>15</sup> *All India Judges' Assn. (II)*, *supra* note 2

the intersectional impact of the practice mandate on female judicial aspirants, analyzing socio-cultural expectations, district court environments, and systemic gender disparities within the legal profession.

### **GENDERED IMPACT: AT A GLANCE**

#### **1. The Post-2002 Demographic Shift**

- Female recruitment reached 50%–65% in multiple state selections
- Merit-based competitive exams served as an egalitarian entry route

#### **2. Socio-Cultural & Familial Timelines**

- Conflict between the 23–28 age window and marriage/family pressures
- Prolonged financial dependence on family during unremunerated practice

#### **3. Structural Barriers in District Court Practice**

- Infrastructural deficits (sanitation, dedicated spaces, safety)
- Gender bias in brief allocation and patronizing chamber cultures

#### **4. Reversal of Gender Equity Progress**

- Risk of declining female representation in the subordinate bench
- Long-term reduction of female judges eligible for High Courts

### **B. The Post-2002 Phenomenon: The Subordinate Judiciary as a Path to Gender Parity**

#### **1. Academic Merit as a Neutral Equalizer**

Unlike the litigation sector which relies heavily on networking, informal chamber connections, and client retention the judicial service recruitment process relies on standardized competitive examinations (Preliminary, Mains, and Interview).

In this structure, female law graduates, who consistently perform at high academic levels across National Law Universities (NLUs) and traditional state universities, competed on an equal footing. Direct entry permitted young women to translate

academic performance into immediate economic independence and judicial authority at the age of 23 or 24.

## 2. The Demographic Transformation Across States

Data from state public service commissions and High Court recruitment registries between 2018 and 2024 illustrates the impact of the direct-entry model:

- **Rajasthan Judicial Service (2021/2023):** Women secured over 60% of the total selected seats in the Civil Judge (Junior Division) cadre.
- **Delhi Judicial Service (2022/2023):** Over 55% of the selected candidates in the entry-level judicial cadre were women.
- **Uttar Pradesh & Bihar Subordinate Judiciary:** Female representation in final merit lists consistently matched or exceeded male representation in general and reserved categories.

This trend was celebrated as a structural success story, creating a pipeline of female judicial talent capable of eventually rising to the senior judiciary (District Courts and High Courts).

### C. Socio-Cultural Conflicts: The 23–28 Age Window

The reintroduction of the three-year practice rule shifts the average age of eligibility for judicial exams from 23–24 years to 26–28 years. Within the Indian socio-cultural context, this age shift presents disproportionate hurdles for female candidates.

#### Socio-Cultural Timeline Conflict

##### Direct Entry Model

- Immediate exam entry post-LL.B.
- Economic independence achieved prior to marital and familial pressures.
- High candidate retention among female graduates

VS

##### Mandatory Practice Model

- Forced 3-year practice period
- Prolonged financial dependence on family.
- Escalating marriage pressure.
- Higher drop-out rates among bright female aspirants

### D. Familial Pressure and Marital Timelines

In many parts of Indian society, the age bracket between 24 and 27 coincides with heightened familial expectations regarding marriage.

1. Under the direct-entry framework, female candidates could prepare for and clear the judicial service exam immediately after graduating. Securing a tenure-track, salaried government position as a judicial officer provided them with professional standing and leverage over personal life decisions.
2. Under the mandatory three-year practice rule, female law graduates must spend three years in low-paying or unpaid junior advocacy. During this period of financial dependence, many face pressure from families to prioritize marriage over an uncertain litigation career, leading to higher dropout rates among female aspirants.

#### **E. The Compounding Burden of Unpaid Care Work**

According to time-use surveys conducted by the Ministry of Statistics and Programme Implementation (MoSPI), Indian women undertake a disproportionate's share of unpaid domestic and caregiving work. Extending the pre-service waiting period by three years increases the likelihood that female aspirants will assume uncompensated household responsibilities, leaving less time for trial court practice and rigorous exam preparation.

## **XII. STRUCTURAL BARRIERS FOR WOMEN IN DISTRICT COURT PRACTICE**

The argument that three years of trial court practice builds judicial maturity assumes that the trial Bar offers a safe, equitable, and supportive environment for all legal practitioners. However, trial courts across India present significant structural challenges for women advocates.

| DISTRICT COURT ENVIRONMENT FOR WOMEN ADVOCATES |                            |
|------------------------------------------------|----------------------------|
| Infrastructural Deficits                       | Chamber & Culture Dynamics |

|                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Lack of clean, functional, separate sanitation facilities</li> <li>• Absent or poorly maintained Ladies' Bar Rooms</li> <li>• Inadequate security/creche facilities in mofussil courts</li> </ul> | <ul style="list-style-type: none"> <li>• Systemic gender bias in brief distribution (perceived preference for male advocates in trials)</li> <li>• Lack of formal maternity coverage</li> <li>• Patronizing attitudes &amp; lack of structured mentorship</li> </ul> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

#### A. Infrastructural Deficits in Lower Courts

Reports by the Centre for Research and Planning (CRP) of the Supreme Court of India have repeatedly highlighted the infrastructural shortcomings of trial court complexes:

1. **Sanitation Facilities:** A significant percentage of district court complexes lack clean, functional, and separate toilets for women advocates.
2. **Childcare and Security:** Facilities such as court crèches, well-lit parking areas, and secure waiting spaces remain rare in mofussil and sub-divisional courts, making daily practice physically difficult for female practitioners.

#### B. Gender Bias In Trial Advocacy and Client Retention

The trial Bar remains heavily male-dominated, particularly in criminal law, land disputes, and motor accident claims.

1. **Stereotyping in Brief Distribution:** Litigants and senior chamber heads often harbour implicit biases, assuming male advocates are better suited for intense cross-examinations, bail arguments, or late-hour police station visits. As a result, female junior advocates are frequently assigned legal research, office drafting, or administrative tasks, limiting their exposure to active trial work.
2. **Safety Concerns:** Participating in late-evening client meetings, visiting crime sites for inspection, or handling aggressive courtroom situations in remote sub-divisional courts poses safety and logistical challenges for young female lawyers.

### XIII. LONG-TERM IMPACT ON JUDICIAL DIVERSITY

Reinstating the practice requirement threatens to reduce female representation not only in entry-level courts, but throughout the judicial system over time.

1. **Shrinking the Recruitment Pool:** Pushing judicial eligibility into a socio-culturally sensitive age bracket will likely reduce the number of female applicants sitting for Civil Judge examinations.
2. **Depleting the Pipeline for Senior Elevation:** High Court judges elevated from the subordinate judicial service are selected from senior District Judges. If the entry pool of female civil judges declines, the cadre of women judicial officers eligible for elevation to High Courts under Article 217(2)(a) will diminish in the coming decades, undermining efforts to improve gender diversity on the higher bench.

| DIMENSION                    | DIRECT ENTRY SYSTEM<br>(2002–2025)                                     | MANDATORY 3-YEAR<br>PRACTICE SYSTEM                                         |
|------------------------------|------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| <b>Female Representation</b> | High (50%–65% in many state judicial selections).                      | Anticipated drop due to structural and cultural dropouts.                   |
| <b>Economic Independence</b> | Achieved early (age 23–24) via meritocratic competitive exam.          | Delayed (age 26–28+); requires financial support during practice.           |
| <b>Systemic Exposure</b>     | Equal academic competition; bypasses trial court gender bias.          | Subject to trial court infrastructure gaps and gendered brief distribution. |
| <b>Diversity Pipeline</b>    | Built a strong cadre of female officers eligible for future elevation. | Risks depleting the long-term pool of female judges for High Courts.        |

#### A. Socio-Economic, Caste, and Regional Dimensions

##### 1. Introduction: The Intersectionality of Judicial Eligibility

In evaluating judicial recruitment standards, eligibility criteria cannot be viewed in isolation from the broader social structure. While the debate over the mandatory three-year practice rule often focuses on legal competency, its operational impact intersects with existing socio-economic hierarchies.

Access to the legal profession in India remains structured by social capital, regional disparities, economic status, and physical accessibility. This section examines how the three-year Bar practice mandate affects candidates from Scheduled Castes (SC), Scheduled Tribes (ST), Other Backward Classes (OBC), economically disadvantaged groups, rural areas, and Persons with Disabilities (PwD).

#### INTERSECTIONAL BARRIERS IN TRIAL ADVOCACY

1. Marginalized Communities (SC / ST / OBC)
  - Limited social capital and chamber networks in trial courts
  - Economic compounding: Sustaining 3 years of low/unpaid practice
2. The Rural-Urban & Geographic Divide
  - Mofussil court practice vs. High Court / Tier-1 litigation
  - Disparities in exposure to complex statutory matters and tech
3. Persons with Disabilities (PwD)
  - Severe physical infrastructure deficits in District Courts
  - Lack of assistive technology and accessible court halls

#### B. Impact On SC, ST, and Economically Disadvantaged Candidates

##### 1. Social Capital and Chamber Networks

In India's litigation landscape, securing a position in an active trial court chamber often depends on personal networks, familial connections, and community ties.

- **The "Chamber Barrier":** Candidates from historically marginalized backgrounds (SC/ST/OBC) often lack generational representation in the legal fraternity. As first-generation advocates, they may face difficulties securing entry into established chambers, obtaining regular briefs, or gaining opportunities to argue matters in open court.

- **Deprivation of Meaningful Practice:** When a candidate is relegated to administrative tasks, filing, or routine proxy work due to marginalization within local Bar chambers, the three-year period yields minimal practical skill development while consuming critical career years.

### C. Economic Vulnerability and the Compounding Barrier

Statutory reservations under Article 16(4) of the Constitution seek to ensure adequate representation of backward classes in public services. However, mandatory uncompensated practice can create an economic bottleneck prior to the examination stage:

1. Candidates from economically vulnerable backgrounds often carry family financial obligations or educational debts.
2. Requiring three years of low-earning practice before a candidate can sit for a competitive examination can force financially constrained aspirants out of the judicial service pipeline entirely, diverting them toward immediate wage-earning occupations.

### D. The Rural-Urban Divide and Regional Disparities

The quality and nature of legal practice vary significantly across different tiers of the Indian judicial system. The mandatory practice rule treats all Bar enrollments identically, yet practice environments differ vastly between metro/High Court centers and rural mofussil courts.

| GEOGRAPHIC DISPARITIES IN PRACTICE                                                                                                                                                 |                                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| TIER-1 / HIGH COURT LITIGATION                                                                                                                                                     | MOFUSSIL / SUB-DIVISIONAL COURTS                                                                                                                                     |
| <ul style="list-style-type: none"> <li>• Exposure to constitutional, commercial, &amp; appellate law</li> <li>• Access to digital legal databases &amp; modern research</li> </ul> | <ul style="list-style-type: none"> <li>• High volume of routine, procedural litigation</li> <li>• Limited access to updated commentaries &amp; technology</li> </ul> |

|                                              |                                                            |
|----------------------------------------------|------------------------------------------------------------|
| • Structured chamber stipends more prevalent | • Unremunerated junior work; informal chamber arrangements |
|----------------------------------------------|------------------------------------------------------------|

### E. Disparities in Quality of Exposure

1. **Metropolitan & High Court Centers:** Advocates practicing in State Capitals or High Court benches gain exposure to complex constitutional, commercial, and appellate matters, supported by digital research databases and legal libraries.
2. **Sub-Divisional & Mofussil Courts:** Advocates in remote district courts primarily handle high-volume, routine civil land disputes or minor criminal trials. They frequently operate without access to electronic legal databases, updated statutory commentaries, or structured mentorship.

### F. The Regional Mobility Trap

Rural law graduates who practice in local district courts to satisfy the three-year requirement often face economic and logistical barriers if they wish to access coaching, comprehensive legal research tools, or competitive examination preparation materials available in major educational hubs. Consequently, the practice mandate can widen the gap between urban-educated law graduates and rural aspirants.

## XIV. ACCESSIBILITY BARRIERS FOR PERSONS WITH DISABILITIES (PWD)

The Rights of Persons with Disabilities Act, 2016 mandates equal opportunity and accessible infrastructure in public employment. However, trial court complexes across India frequently fail to meet basic accessibility standards, making physical practice at the Bar particularly difficult for candidates with disabilities. This concern acquired direct judicial significance in *Bhumika Trust v. Union of India*, W.P.(C) No. 1110/2025, where the petitioner, representing several hundred persons with disabilities, challenged the three-year Bar practice requirement and sought dispensation from it on the ground that inaccessible court infrastructure and the physical demands of trial-court practice would disproportionately burden disabled judicial aspirants.

| INFRASTRUCTURAL HURDLES FOR PwD ADVOCATES                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Physical Infrastructure                                                                                                                                                                                                                                     | Procedural & Digital Gaps                                                                                                                                                                                                                                                           |
| <ul style="list-style-type: none"> <li>• Multi-story court buildings without functional elevators</li> <li>• Inaccessible podiums, witness boxes, and judge's chambers</li> <li>• Absence of tactile paving and accessible sanitation facilities</li> </ul> | <ul style="list-style-type: none"> <li>• Non-screen-reader-friendly court cause lists and case documents</li> <li>• Lack of sign language interpreters or adaptive courtroom technology</li> <li>• Restrictive rules regarding assistance during daily court proceedings</li> </ul> |

### A. Physical Courtroom Impediments

Physical trial court environments present daily operational hurdles for advocates with mobility impairments:

1. Lack of ramps, elevators, and accessible restrooms in older district court complexes.
2. Overcrowded court halls, elevated podiums, and narrow corridors that restrict mobility.

### B. Contrast Between Study and Physical Litigation

While a candidate with a disability can successfully undertake academic study, legal research, and competitive written examinations using assistive technologies such as screen readers or voice-to-text software, daily physical litigation in inaccessible district courts remains a major barrier. Conditioning judicial eligibility on physical courtroom attendance can therefore inadvertently penalize candidates with disabilities and restrict their access to judicial service.

The August 2026 order in *Bhumika Trust* partly vindicates this critique: while the Supreme Court did not entirely abandon the requirement of prior practical exposure, it reduced the pre-selection Bar practice condition from three years to one year and shifted the remaining competence-building component into a structured post-selection framework of Judicial Academy training and supervised clerkship. This modification supports the paper's central argument that judicial readiness should be

secured through accessible, institutional, and supervised mechanisms rather than by relying predominantly on unregulated physical practice in inaccessible district courts.

### C. Summary

| Dimension                               | Direct Entry Model (2002–2025)                                       | Mandatory 3-Year Practice Model                                              |
|-----------------------------------------|----------------------------------------------------------------------|------------------------------------------------------------------------------|
| <b>First-Gen / SC / ST / OBC Equity</b> | High; meritocratic written exam bypasses chamber patronage networks. | Low; relies on informal chamber placement and financial "waiting power."     |
| <b>Rural vs. Urban Access</b>           | Neutral; candidates prepare for exams on a standardized syllabus.    | Disproportionate; urban candidates gain higher-quality practice & resources. |
| <b>Accessibility for PwD</b>            | High; exams accommodate scribes and adaptive technologies.           | Low; requires navigating physically inaccessible trial court infrastructure. |

## XV. GLOBAL COMPARATIVE MODELS & ALTERNATIVE FRAMEWORKS

### A. Introduction: Reimagining the Judicial Entry Pathway

The debate surrounding the mandatory three-year practice rule in India often presents a false dichotomy: choosing between inexperienced direct-entry candidates or financially barrier-laden private Bar practice. However, international jurisdictions and parallel domestic cadre services demonstrate that practical courtroom competency can be cultivated through institutionalized, state-funded frameworks without restricting access. This section examines comparative models—specifically the German *Referendariat* system, the Indian Administrative Service (LBSNAA) institutional training model, and judicial clerkships / legal aid defense schemes—to illustrate alternative entry models that reconcile professional competency with socio-economic inclusivity.

## COMPARATIVE PATHWAYS TO JUDICIAL BENCH

### 1. The German "Referendariat" System<sup>16</sup>

2-year mandatory, state-funded rotation through civil, criminal, administrative courts and law firms before Second State Exam.

### 2. The Indian Civil Services Model (LBSNAA)<sup>17</sup>

Direct competitive entry followed by 2 years of stipend-backed district attachment and institutional training.

### 3. Paid Clerkships & Legal Aid Equivalencies (LADCS)<sup>18</sup>

Integrating Judicial Clerkships and Legal Aid Defense Counsel Scheme experience as recognized active trial practice.

## B. The German Referendariat System: A State-Funded Practical Apprenticeship

Germany offers a structural model for legal education and judicial qualification under the German Judiciary Act (*Deutsches Richtergesetz - DRiG*). Germany does not rely on unregulated private Bar practice to train potential judges; instead, it employs a state-administered, two-tier examination system paired with a mandatory practical rotation.

|                                                                           |   |
|---------------------------------------------------------------------------|---|
| [4-5 Years Law University Degree]                                         | ↓ |
| [First State Examination (Erste Juristische Staatsprüfung)]               | ↓ |
| [2-Year Legal Clerkship (Rechtsreferendariat)] —► State-Salaried Trainees | ↓ |

<sup>16</sup> Deutsches Richtergesetz [DRiG] [German Judiciary Act], Sept. 8, 1961, BGBl I at 1665, as amended, §§ 5, 5a, 5b (Ger.).

<sup>17</sup> Indian Administrative Service (Probationers' Training) Regulations, 1954, framed under Section 3 of the All-India Services Act, 1951, No. 61, Acts of Parliament, 1951 (India).

<sup>18</sup> National Legal Services Authority (NALSA), *Legal Aid Defense Counsel System (Modified Scheme)* (2022)

|                                                           |                                            |                                   |                              |
|-----------------------------------------------------------|--------------------------------------------|-----------------------------------|------------------------------|
| Civil Court Bench<br>(5 mo)                               | Criminal Court/<br>Prosecution (3.5<br>mo) | Administrative<br>Agency (4.5 mo) | Private Law Firm<br>(4.5 mo) |
| [Second State Examination (Zweite Staatsprüfung)]         |                                            |                                   |                              |
| [Direct Appointment as Probationary Judge (Proberichter)] |                                            |                                   |                              |

### C. Key Structural Features

- 1. The First State Examination (Erste Staatsprüfung):** Law graduates complete 4 to 5 years of university education focusing on legal doctrine and pass the First State Exam.
- 2. The *Rechtsreferendariat* (Preparatory Service):** All graduates undergo a mandatory 24-month practical rotation managed by the State Higher Regional Courts (*Oberlandesgerichte*). Trainees (*Referendare*) rotate through:
  - Civil court benches under the supervision of sitting judges (*Zivilstation*).
  - Criminal courts or public prosecutor offices (*Strafstation*).
  - Administrative government agencies (*Verwaltungsstation*).
  - Private law firms or legal advocacy chambers (*Rechtsanwaltsstation*).
- 3. State Salaried Status:** During this two-year rotation, trainees are temporary state employees who receive a monthly maintenance allowance/salary (*Unterhaltsbeihilfe*) from the state treasury.
- 4. The Second State Examination (Zweite Staatsprüfung):** At the end of the rotation, candidates sit for the Second State Exam, assessing practical skills such as drafting judgments, preparing indictments, and framing administrative orders. High-scoring candidates are directly recruited as probationary judges (*Proberichter*).

### D. Relevance for the Indian Context

The German model demonstrates that practical courtroom competency can be developed after degree completion through structured state supervision, rather than

relying on uncompensated, variable private Bar practice. By providing a state salary during the training phase, the system neutralizes socio-economic disparities while ensuring uniform exposure to trial procedure.

## **XVI. THE INDIAN ADMINISTRATIVE SERVICE (IAS) MODEL: DIRECT ENTRY WITH PAID FIELD MENTORSHIP**

Within India's public administration, the recruitment and training of District Magistrates and civil servants through the Union Public Service Commission (UPSC) provides a relevant national comparison.

| <b>LBSNAA CADRE TRAINING VS. SUBORDINATE JUDICIARY</b>                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>IAS Cadet Framework (UPSC)</b>                                                                                                                                                                                                                                                                                 | <b>Proposed Subordinate Judicial Model</b>                                                                                                                                                                                                                                                                                              |
| <ul style="list-style-type: none"> <li>• Direct entry exam immediately upon obtaining university degree.</li> <li>• 2-year institutional training (LBSNAA) with a full salary</li> <li>• Hands-on District attached to senior officers</li> <li>• Paid probation period; unremunerated entry barriers.</li> </ul> | <ul style="list-style-type: none"> <li>• Direct entry exam post-LL.B. for academic and analytical testing.</li> <li>• 18–24-month state-funded Judicial Academy residency + attachment</li> <li>• Mandatory bench attachment to senior District Judges &amp; Bar</li> <li>• Replaces 3-year private Bar practice requirement</li> </ul> |

### **A. Mechanics of the LBSNAA Training Structure**

Candidates selected for the Indian Administrative Service (IAS) are recruited directly from universities through a competitive examination. The state does not require candidates to serve three years as junior administrative clerks prior to taking the exam. Instead, institutional training is structured as follows:

- 1. Foundation & Professional Phase (LBSNAA, Mussoorie):** Classroom instruction in statutory laws, public administration, and economics.
- 2. District Training Phase (10–12 Months):** Officer Trainees are posted directly to districts, attached to experienced District Magistrates, Sub-

Divisional Magistrates, and land revenue courts to observe administrative proceedings and field operations.

3. **Stipendiary Support:** Trainees receive a full starting salary and allowances throughout the probation period, making the service accessible across socio-economic backgrounds.

### **B. Application to the Subordinate Judiciary**

If administrative officers handling land revenue, law and order, and executive magistracy can be prepared through direct selection followed by a 2-year stipend-supported probation, the lower judiciary can adopt a similar structure. Candidates could clear the judicial service exam post-graduation and undergo a 2-year paid judicial probation managed by State Judicial Academies before receiving independent courtroom postings.

### **C. Expanding the Scope of Practice: Paid Clerkships and Legal Aid Integration**

If a practice requirement is maintained, the definition of "active Bar practice" can be broadened beyond traditional trial court chamber practice to include alternative legal roles that offer procedural exposure and financial stability.

#### **EXPANDED PRACTICE EQUIVALENCY FRAMEWORK**

1. Law Clerk-cum-Research Assistants
  - Serving in the Supreme Court or High Courts offers structured exposure to judgment writing, case analysis, and procedure.
2. Legal Aid Defense Counsel Scheme (LADCS)
  - Working under NALSA / SALSA schemes provides paid criminal trial experience representing indigent litigants in district courts.
3. Government Legal Officers & Public Prosecutor Assistants
  - Institutional litigation roles within state departments or statutory bodies providing regular stipends and trial exposure.

1. **High Court and Supreme Court Judicial Clerkships:** In its May 2025 *All India Judges Association* order, the Supreme Court recognized service as a

Law Clerk-cum-Research Assistant in High Courts or the Supreme Court as valid practice. Expanding this framework to include clerkships with District and Sessions Judges would provide entry-level law graduates with a paid, structured avenue to gain procedural insight and observe bench dynamics directly.

**2. The Legal Aid Defense Counsel Scheme (LADCS):** Introduced by the National Legal Services Authority (NALSA), the LADCS model replaces ad-hoc legal aid panels with a dedicated, salaried cadre of defense lawyers in district courts.

- Serving as an Assistant Legal Aid Defense Counsel exposes young advocates to criminal trial practice, bail hearings, and evidence examination.
- Because LADCS positions provide a fixed monthly stipend, incorporating LADCS service as qualifying practice allows candidates from economically weaker backgrounds to fulfill eligibility requirements while earning a livelihood.

| Model / Pathway                      | Entry Mechanism                      | Financial Support                            | Procedural Exposure Quality                                   |
|--------------------------------------|--------------------------------------|----------------------------------------------|---------------------------------------------------------------|
| <b>Current Indian 3-Year Mandate</b> | Unregulated private Bar practice.    | Unpaid or nominal stipend; market-dependent. | Variable; dependent on chamber placement and personal ties.   |
| <b>German <i>Referendariat</i></b>   | Direct exam - 2-year state rotation. | Full state-funded maintenance allowance.     | Uniform across civil, criminal, and administrative courts.    |
| <b>Indian Civil Services (IAS)</b>   | Direct UPSC exam- 2-year probation.  | Full starting salary during training.        | Standardized district field attachment under senior officers. |

|                                |                                              |                                 |                                                                |
|--------------------------------|----------------------------------------------|---------------------------------|----------------------------------------------------------------|
| <b>Paid Clerkships / LADCS</b> | Direct recruitment into institutional roles. | Fixed monthly stipend / salary. | Structured legal research, drafting, and trial representation. |
|--------------------------------|----------------------------------------------|---------------------------------|----------------------------------------------------------------|

## **XVII. SUGGESTIONS AND RECOMMENDATIONS RECONCILING CONSTITUTIONAL IMPERATIVES**

The debate surrounding the mandatory three-year practice rule reflects a broader structural challenge within the Indian legal system: how to ensure procedural competency and trial-court readiness among entry-level judges without compromising social mobility, gender equity, and demographic diversity.

| <b>BALANCING COMPETENCY AND EQUAL ACCESS</b>                                                                                                                                                                              |                                                                                                                                                                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Institutional Competence (Art. 234, 235)<sup>19</sup></b>                                                                                                                                                              | <b>Demographic Inclusivity (Art. 14, 16)<sup>20</sup></b>                                                                                                                                                                    |
| <ul style="list-style-type: none"> <li>• Ground-level trial familiarity</li> <li>• Firm courtroom management</li> <li>• Accurate evidentiary analysis</li> <li>• Reduction of interlocutory procedural appeals</li> </ul> | <ul style="list-style-type: none"> <li>• Socio-economic mobility for first-generation lawyers</li> <li>• Gender representation on the bench</li> <li>• Equal opportunity across regional and economic backgrounds</li> </ul> |

A policy framework that prioritizes courtroom experience at the expense of equal access risks turning the lower judiciary into an exclusive career path. Conversely, a system that appoints fresh graduates without structured trial preparation can lead to procedural inefficiencies in subordinate courts. The 2026 modification indicates that the Supreme Court has itself adopted a version of the institutional-training model that this paper advocates. The policy inquiry must therefore be reframed: the central question is no longer whether the three-year practice rule should be replaced in principle, but whether the revised hybrid model of one-year practice, one-year Judicial

<sup>19</sup> INDIA CONST. arts. 234, 235, *supra* notes 6, 7

<sup>20</sup> INDIA CONST. arts. 14, 16, *supra* notes 5

Academy training, and one-year clerkship is sufficient to address the gender, socio-economic, caste, regional, and disability-based concerns identified in this paper.

### A. Strategic Policy Recommendations

To harmonize Article 234 with Articles 14 and 16 after *Bhumika Trust*, reforms should focus on implementing the revised framework in an equitable and verifiable manner:

#### FOUR-PILLAR POLICY REFORM ROADMAP

1. **Effective Implementation of the Hybrid Model:** The one-year practice requirement, one-year Judicial Academy training, and one-year structured clerkship must be uniformly implemented across States to avoid uneven recruitment
2. **Financial Safeguards During Practice and Training:** The one-year practice period and post-selection training structure should be supported by stipends, salary protection, or state-backed financial assistance so that economically weaker and first-generation candidates are not excluded.
3. **Transparent Certification and Assessment:** Practice certificates, Judicial Academy evaluations, and clerkship reports should be governed by objective standards to prevent patronage-based certification.
4. **Inclusive Equivalency Pathways:** Judicial clerkships, legal aid defence work, government litigation roles, and structured public-law assignments should be recognized wherever they provide meaningful procedural exposure.
5. **Targeted Equality Measures:** Relaxations, age adjustments, accessibility accommodations, and gender-sensitive safeguards should be considered for women, SC/ST/OBC candidates, rural aspirants, first-generation lawyers, and Persons with Disabilities.”

#### 1. Pillar 1: Adoption of a Pre-Commissioning Judicial Apprenticeship Model

Instead of requiring candidates to complete three years of uncompensated private Bar practice prior to application, state judicial services should implement a Pre-Commissioning Judicial Apprenticeship Model:

- **Direct Examination Post-Graduation:** Law graduates can sit for the Civil Judge (Junior Division) examination immediately upon completing their law degree.
- **Paid Judicial Residency (18–24 Months):** Selected candidates are appointed as Judicial Officer Trainees and undergo a two-year paid probation program managed by State Judicial Academies.
- **Field Attachments:** Training should include six months of classroom instruction, twelve months of rotation attached to senior District Judges and Magistrates, and six months of rotation with public prosecutors, legal aid defense offices, and police investigation departments.
- **Final Qualification Exam:** Trainees take a comprehensive practical exam assessing judgment writing and trial management before receiving independent court postings.

## 2. Pillar 2: Statutory Minimum Stipend Mandates for Junior Advocates

If a prior practice requirement is maintained, the Bar Council of India and State Bar Councils must enforce structured compensation standards for junior lawyers:

- **Mandatory Monthly Stipends:** Senior advocates and trial chambers should be required to pay junior advocates a minimum monthly stipend calibrated to regional living costs.
- **Legal Profession Welfare Fund:** State governments and Bar Councils should establish a joint welfare fund to subsidize stipends for first-generation advocates practicing in district and sub-divisional courts.

## 3. Pillar 3: Expanding Recognized Practice Equivalencies

To prevent the practice requirement from functioning as an exclusive filter, the definition of "active practice" under State Judicial Service Rules should be broadened to include:

- **Judicial Clerkships:** Service as a Law Clerk-cum-Research Assistant at the Supreme Court, High Courts, or District Courts.

- **Legal Aid Defense Roles:** Full-time employment under the National Legal Services Authority (NALSA) Legal Aid Defense Counsel Scheme (LADCS).
- **Government and Public Sector Legal Roles:** Service as an in-house legal officer or research assistant with statutory commissions, government departments, or public sector undertakings.

#### 4. Pillar 4: Targeted Relaxations for Underrepresented Groups

To protect gender diversity and socio-economic equity within the judicial pipeline:

- **Gender and Category Adjustments:** Introduce a relaxed practice mandate (e.g., one year of practice or clerkship instead of three) or age-limit adjustments for female candidates, SC/ST/OBC applicants, first-generation lawyers, and Persons with Disabilities (PwD).
- **Infrastructural Modernization:** Accelerate court infrastructure upgrades in district courts under the Centrally Sponsored Scheme (CSS) to ensure safe, accessible working environments for female and disabled practitioners.

## XVIII. CONCLUSION

The debates over the Bar practice requirement ultimately centers on how India chooses to prepare its entry-level judicial officers. While *All India Judges Association* (2025) restored a rigid three-year practice rule to address concerns of trial-court readiness, *Bhumika Trust v. Union of India* (2026) materially altered that framework by reducing the pre-selection practice requirement to one year and supplementing it with one year of Judicial Academy training and one year of structured clerkship. The legal position has therefore shifted from an exclusive reliance on private Bar practice to a hybrid model of limited prior practice and institutional training.

This modification responds to several concerns raised against the earlier three-year mandate, particularly the risk that prolonged uncompensated practice would exclude first-generation lawyers, low-income candidates, and female aspirants during critical career and family-pressure years. However, the revised framework does not entirely

resolve the equality concerns. Even a one-year pre-selection practice condition may remain burdensome in an unregulated junior Bar unless accompanied by minimum stipends, transparent chamber certification, gender-sensitive safeguards, and accessible court infrastructure.

A modern and inclusive judicial recruitment system need not choose between procedural competence and demographic diversity. After *Bhumika Trust*, the paper's contribution lies in evaluating whether the Court's hybrid framework can be implemented in a manner that genuinely advances both goals. The reduced practice requirement is a significant correction, but its success will depend on paid and structured training, meaningful clerkship supervision, broadened qualifying legal experience, and targeted equality safeguards. Only then can India build a subordinate judiciary that is both procedurally skilled and socially representative.

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