

Schooling the Judges

The Selection and Training of Civil Judges
and Judicial Magistrates



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Background

In India the public discourse around judicial reforms is focussed mostly on the issues of pendency of cases and shortage of judges. There is rarely ever a debate on the qualifications and quality of judges, especially those who are appointed to the posts of Civil Judge (Junior Division) (CJJD) or Judicial Magistrate First Class (JMFC) who not only deal with the largest number of cases in the country but are also the first point of contact for the millions of Indians seeking justice before the courts.

The qualification criteria for these judges varies from state to state since the Constitution allows each state government to notify its own qualification criteria, in consultation with the High Court, through their respective judicial service rules.¹ Historically, the criteria across most states required a candidate to have a law degree, followed by a minimum practice requirement of three years before courts, in order to write a qualifying examination, which would be followed by an interview of the candidates by judges of the High Court and members of the State Public Service Commission.² In 2002, the practice requirement of three years was abolished by the Supreme Court in an overreaching judgment.³ As a result, most of the persons selected for these crucial posts are unlikely to have any experience of practicing law at the bar.

The rationale behind abolishing the bar practice requirement was that it would be easier to attract bright law graduates as soon as they completed their legal education and that a practice requirement of three years would result in the best of the graduates opting for other services or continuing with the bar.⁴ At the time, it was felt that the knowledge and skills

gained in three years of practice was so “unattractive” to prospective candidates and so insignificant that it would be better to provide the candidates with rigorous training in state judicial academies.⁵ Following the mandate of the Supreme Court and assisted by a generous grant that was recommended by the 13th Finance Commission,⁶ every High Court now has at least one state judicial academy⁷ under its jurisdiction for the purpose of providing induction training to entry level judges as well as refresher training to sitting judges.

In this context, we decided to examine three issues with the objective of understanding the process by which the High Courts select and train Civil Judges and Judicial Magistrates.

The first issue that we focussed on is the role of Civil Judges and Judicial Magistrates in the Indian justice system. We will briefly describe their powers and its impact on the overall justice system. This description of their powers, we hope, will help the reader understand the skills that are required by these judges.

The second issue that we examined is the qualification criteria for these posts, including the quality of the judicial service examination and the debate on the mandatory practice requirement to qualify for these posts. The aim of this discussion is to understand whether the existing qualification criteria, especially the abolition of the practice requirement, will help in selecting the best judges.

¹ The Constitution of India, Subordinate Courts, Chapter VI, Part VI.

² Law Commission of India, *Reforms of the Judicial Administration* (Report No. 14(1), 1958) 164- 166.

³ *All India Judges' Association and Ors. v. Union of India*, (1993), 4 SCC 288 32).

⁴ *ibid*; Law Commission of India, Report No 14 (n 2) 182.

⁵ *All India Judges' Association and Ors. v. Union of India*, (2002), 4 SCC 247 32; Law Commission of India, *Training of Judicial Officers* (Report No. 117, 1986) 12.

⁶ State wise release and utilisation of 13th Commission Grants (2010-2015) <<https://www.uscourts.gov/statistics-reports/appointments-magistrate-judges-judicial-business-2012>> accessed on 10 December 2019.

⁷ Except North East region where the North Eastern Judicial Officers' Training Institute train judicial officers from Assam, Nagaland, Mizoram, Tripura and Arunachal Pradesh and Maharashtra (which also trains judicial officers from Goa) and Tamil Nadu where there are more than one training academy for judicial officers. The High Courts of Andhra Pradesh and Telangana share a judicial academy.

The third issue is the assumption that training at judicial academies is preparing fresh law graduates for discharging their important duties as Civil Judges and Judicial Magistrates. We do so by scrutinizing the workings of the judicial academies on the basis of information that these academies provided to us in response to requests for information filed by us under the Right to Information Act, 2005 as well as extensive telephonic interviews that we conducted with 17 judges who had been trained at 9 different judicial academies.⁸ These judges received their training between 2014-2018. While this is not a representative sample that can help in drawing conclusions about all the judicial academies, the responses given to us by judges trained at different academies were quite similar. The interviews were conducted between August and October, 2019. We assured the participants of anonymity in order to encourage candid responses since many of the judges were reluctant to speak on the record.

We will conclude with our recommendations for ensuring the selection of the best candidates for the most important role played by Civil Judges and Judicial Magistrates in the Indian judicial system.

⁸ Filed by Reshma Sekhar and Vagda Galhotra between 30 March - 5 April 2019, Research Fellow at Vidhi Centre for Legal Policy (Replies on file with the authors).

I The Role of Civil Judges and Judicial Magistrates in the Justice System

The district judiciary in India, which is described as the ‘subordinate judiciary’ in the Constitution, consists of three tiers with the District Judge being in the top tier, followed by the Civil Judge (Senior Division) and finally, the Civil Judge (Junior Division). This terminology for Civil Judge (Junior Division) (hereinafter “Civil Judge”) varies across states, with some states preferring to use the term Munsif or Civil Judge, Class II.⁹ These same judges are also uniformly designated, under the Code of Criminal Procedure as Sessions Judge, Chief Judicial Magistrate and Judicial Magistrate First Class (hereinafter “Judicial Magistrate”) when they hold criminal court.

Although junior most in the judicial hierarchy, the judges designated as Civil Judge and the Judicial Magistrate have an extremely important role to play in the justice system. For instance, Article 22 of the Constitution requires the police to produce all persons whom they arrest, before a Magistrate within a period of twenty-four hours. As per the Code of Criminal Procedure, this Magistrate referred to in Article 22 is a Judicial Magistrate.¹⁰ On production of an accused within twenty-four hours, it is for the Judicial Magistrate to determine whether the police could be given further custody of the accused. Although such remand hearings are often treated as routine in the Indian setting, the Judicial Magistrate can refuse to remand the accused to custody if there is a lack of material on the record to indicate that an offence has been made out against the accused.¹¹ Additionally, the Judicial Magistrate may also decide whether the accused can be released on bail.¹²

Apart from the powers to decide custody of the accused, the Judicial Magistrate also plays an important role in taking cognizance of offences where the police cannot initiate investigation on their own until a court of law has taken cognizance of the offence.¹³ Similarly, the Judicial Magistrate can also hear private criminal complaints filed by private complainants and order a police investigation if a prima facie case has been made out by the complainant.¹⁴

Very often taking cognizance of an offence requires a deep understanding of the law and the manner in which it has been interpreted by the Supreme Court and High Courts. For example, offences such as sedition have been interpreted in a manner to necessarily require some form of incitement towards violence or public disorder.¹⁵ Such an interpretation may not be obvious from a reading of the bare text of the law but is nevertheless the law of the land because the Supreme Court has interpreted the provision in such a manner. It is vital then for the Judicial Magistrate to be well-versed in case laws and initiate criminal proceedings only in cases where a prima facie case is actually made out by the complainant. If not, the rights of citizens could be severely compromised.

In addition to the above, a Judicial Magistrate, can also try persons for a number of offences under the Indian Penal Code and sentence them to prison for a period up to a maximum of three years.¹⁶ This covers a significant number of non-violent criminal offences. In addition, Judicial Magistrates may also exercise significant powers under special legislation such as The Protection

⁹ The Madhya Pradesh Civil Courts Act, 1958 uses the phrase Civil Judge, Class II, while The Tamil Nadu Civil Courts Act, 1873 uses the phrase District Munsif.

¹⁰ Criminal Procedure Code 1973, s 57.

¹¹ Criminal Procedure Code 1973, s 167.

¹² Criminal Procedure Code 1973, s 437.

¹³ Criminal Procedure Code 1973, s 190.

¹⁴ Criminal Procedure Code 1973, s 200.

¹⁵ *Kedar Nath Singh v. State of Bihar* AIR 1962 SC 955.

¹⁶ Criminal Procedure Code 1973, s 29.

of Women from Domestic Violence Act, 2005¹⁷ as well as under environmental legislations such as the Air Act, 1981¹⁸ Water Act, 1974.¹⁹

Similarly, on the civil side, a Civil Judge has significant power to hear all types of civil suits within a certain pecuniary limit unless the legislature has specifically designated a different class of judges to hear such cases.²⁰ These limits differ from state to state and varies between Rs. 3 lakhs to Rs. 5 lakhs.²¹ These cases could be anything from contractual disputes to property disputes to tort law claims. The remedies that a Civil Judge can grant in such cases varies from injunctions restraining certain activities to damages which compensate for losses suffered by the plaintiff. In some limited cases, the Civil Judge can also order specific enforcement of contracts. These are all significant powers in the context of civil disputes and in rural areas, where civil disputes are presumably valued lower than urban areas, it is likely that a Civil Judge will be exercising jurisdiction in a significant number of these disputes.

The point of discussing the powers of Civil Judges and Judicial Magistrates, under civil and criminal law, was to demonstrate the significant influence that they wield over the lives, liberty and property of Indian citizens.

¹⁷ s 5.

¹⁸ s 22A(1).

¹⁹ s 33.

²⁰ Copyright Act 1957, s 62; Trade Marks Act 1999, s 134; Patent Act 1970, s 104.

²¹ Section 17 of the Karnataka Civil Courts Act, 1964 lays down the pecuniary jurisdiction of Civil Judge (Junior Division) at Rs. 5 lakhs; Section 6(a) of The Madhya Pradesh Civil Courts Act, 1958 lays down the pecuniary jurisdiction of Civil Judge (Junior Division) at Rs. 5 lakhs; Section 12 of the Tamil Nadu Civil Courts Act, 1873 lays down the pecuniary jurisdiction of Civil Judge (Junior Division) at Rs. 5 lakhs; Section 2 of the Uttar Pradesh Civil Laws (Amendment) Act, 2015 lays down the pecuniary jurisdiction of Civil Judge (Junior Division) at Rs. 5 lakhs.

Historically, one of the qualifying criteria for Civil Judges and Judicial Magistrates in India has been a practice requirement of three years before a court of law, after graduation combined with an examination and an interview conducted by the State Public State Commission in consultation with the High Court that has jurisdiction over the state.²² The qualification criteria and the selection process have always been detailed in the Judicial Service Rules that are framed by the Governor of each state in consultation with the respective High Court.²³ The state legislatures play no role in the process.

The one issue that has frequently been debated is the three years practice requirement in order to qualify for writing the judicial service examination. Examining this requirement in 1924, the Rankin Committee had stated the following without offering any explanation as to how it came to this conclusion:

- “The rule in force in certain provinces requiring candidates to have practice at the Bar for a period of three years or more furnishes no guarantee that the candidate has acquired any really useful experience.”²⁴

The Law Commission in its 14th report, which was submitted to the government in 1958, recorded the following submissions made to it, against the practice requirement of three years:

- “It is difficult, if not impossible, under the conditions at present prevailing in the legal profession for a person to have any experience or training worth the name in the period of three to five years which he is supposed to spend in practicing at the Bar. The average practitioners at the Bar cannot in that short period have any worth while

idea of work or practice at the Bar. It is only the exceptional young man, favourably situated and having the advantage of a senior member of the Bar interested in him, who gathers any experience at all at the Bar in so short a period of time. Such an exceptional person would naturally not care to be a competitor for entrance into the subordinate judicial service. Those who do strive to get into the judicial service after three to five years at the Bar are the disappointed persons who have failed to make a living in the profession and have no hopes of prospering in it. The disadvantage of recruiting from persons who had been failures at the Bar was pointed out by the Chairman of the Bihar Public Service Commission: “I have come to the conclusion that during the three to five years of practice at the mofussil Bar the young man deteriorates more or less completely”²⁵

- “In most cases, what is usually described as recruitment from the Bar is really recruitment from among the disappointed members of the bar who have failed to make any headway in the profession. It was pressed upon us that if we are able to attract to the judicial service the really capable young men from the Universities and subject them to a two years training, we could have much more competent judicial officers than the so-called recruits from the Bar”²⁶

The Law Commission also records how many lawyers and judges were satisfied with the quality of munsifs who joined after the three-year practise requirements:

- “...there was a very substantial body of opinion which still favoured the retention of the system of recruitment from the Bar. It was no unnatural that the majority of the practising lawyers who

²² The Constitution of India, Art. 234.

²³ *State of Bihar v. Balmukund Shad*, (2000) 4 SCC 640. (“As in the case of Rules made under Article 234 of the Constitution, it is expected that if any rules are intended to be made by the executive under Article 309 with respect to the judicial service, the High Court shall be consulted and its views given due weight while making such rules.”)

²⁴ Rankin Committee, ‘Civil Justice Committee Report, 1924-25’ (1925) 183.

²⁵ *ibid* at 165.

²⁶ *ibid*.

appeared before as witnesses should express themselves in favour of the retention of this system. But we also had in its favour an expression of views from several members of the High Court judiciary. It was said that in some States, at any rate, the system of recruitment of the munsifs or lower grad subordinate judges from the Bar had worked satisfactorily. It was suggested that it was not so much the field of selection that was at fault...The view was expressed that though a junior at the Bar of three to five years standing may not gather much practice, he would still be familiar with the way in which work is being done in a lawyer's office and the manner in which matters are conducted in the law courts. It was pointed out above all that young man who had spent some years at the Bar would have rubbed shoulders with a variety of men, would have gathered a knowledge of men and affairs and would have lived a free atmosphere quite different from that in which a man who has locked himself up in service after graduation would have lived in".²⁷

In its conclusion, the Law Commission leans in favour of a practice requirement of three to five years at the bar, as a precondition for sitting for the judicial service examination.²⁸

In its 116th report, on the topic of an All India Judicial Service, the Law Commission touched on the issue of abolishing the practice requirement of three years. It records the opposition to the abolishment of the practice requirement and how common law countries always required a practice requirement for appointment to a judicial post but then dismisses this opposition on the grounds that "...experience shows that practice for a very short period say for a period of two to three years at the Bar hardly imparts such training so as to make him a good judge".²⁹ The Commission cites no evidence in support of this conclusion.

In its 117th report on the training of judicial officers, the Law Commission once again touched upon this issue in the following words:

■ "Standing at the Bar for a certain period was considered adequate to equip the entrants to judicial service for effectively handling causes and controversies and resolving them according to law..... this assumption has been found to be wholly unsustainable."³⁰

The only evidence cited by this Law Commission report is the Rankin Committee's report from 1924.

In its 118th report on appointments to the subordinate judiciary, which was submitted to the Government of India in December, 1986 the Law Commission dealt with this issue once again, but in a superficial manner. Following are some of the relevant extracts from the 118th report:

■ "Whether minimum practice at the Bar should be a pre-requisite for entry into judicial service even at the lowest level has become a subject matter of lively debate and strong opinions are expressed one way or the other. This again is not of recent origin. Even about three decades back, the Law Commission took note of a view expressed by the then Chairman of the Bihar Public Service Commission that during the 3-5 years of practice at the mofussil Bar, the young man deteriorates more or less completely. The Law Commission also took note of the opinion of the Civil Justice Committee [Rankin Committee] in this behalf."³¹

■ "Even then, some Judges who responded to the queries of the Commission have expressed preference for retention of minimum practice at the Bar as a prerequisite for entry into judicial service. It is time to disabuse our mind on this point because the Law Commission has reached an affirmative conclusion that this minimum practice at the Bar hardly qualified the person to be a better judge. The Law Commission [in its 117th report] has given cogent reasons for reaching this conclusion and the same need not be repeated here."³²

In its final recommendation, the 118th report notes that a practice requirement of three years could be continued even though it was not really necessary.³³

²⁷ Law Commission of India, Report No. 14(1) (n 2) 166.

²⁸ *ibid* 167.

²⁹ Law Commission of India, *Formation of An All India Judicial Service* (Report No. 116, 1986) 18.

³⁰ Law Commission of India, *Training of Judicial Officers* (Report No. 117, 1986) 12.

³¹ Law Commission of India, *Method of Appointment to Subordinate Court* (Report No. 118, 1986) [5.3].

³² *ibid*.

³³ Law Commission of India, Report No. 118 (n 31) 16.

As is obvious from the above discussion, the debate on the practice requirements of three years has always leaned in favour, albeit reluctantly at times, of retaining the practice requirement.

Thereafter, it was the Supreme Court which took up the issue of the practice requirement of three years in the All India Judges Association (“AIJA”) cases.³⁴ These cases which dealt with the service conditions and training of lower court judges, were an unprecedented exercise of judicial activism where the Supreme Court pushed the government to initiate substantial judicial reform.

On the specific issue of a practice requirement of three years, the Supreme Court in 1993, in the first All India Judges Association case made the following pertinent observations, while ordering all states to ensure they hired only advocates who had practiced law for three years:

- 20 “In most of the States, the minimum qualifications for being eligible to the post of the Civil Judge-cum-Magistrate First Class/Magistrate First Class/Munsiff Magistrate is minimum three years’ practice as a lawyer in addition to the degree in law. In some States, however, the requirement of practice is altogether dispensed with and judicial Officers are recruited with only a degree in law to their credit. The recruitment of law graduates as judicial officers without any training or background of layering has not proved to be a successful experiment. Considering the fact that from the first day of his assuming office, the judge has to decide, among others, question 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. Neither knowledge derived from books nor pre-service training can 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. The practice involves much more than mere advocacy as lawyers has to interact with several components of the administration of justice. Unless the judicial officer is familiar with the working of the said components, his education and equipment as a judge is likely to remain incomplete. The experience as a lawyer is, therefore, essential to enable the judge to discharge his duties and functions efficiently and with confidence and

circumspection. Many States have hence prescribed a minimum of three years’ practice as a lawyer as an essential qualification for appointment as a judicial officer at the lowest rung. It is, hence, necessary that all the States prescribe the said minimum practice as a lawyer as a necessary qualification for recruitment to the lowest rung in the judiciary. In this connection, it may be pointed out that under Article 233(2) of the Constitution, no person is eligible to be appointed a District Judge unless he has been an advocate or a pleader for no less than seven years while Articles 217(2)(b) and 124(3)(b) require at least ten years’ practice as an advocate of a High Court for the appointment of a person to the posts of the Judge of the High Court and the Judge of the Supreme Court, respectively. We, therefore, direct that all States shall take immediate steps to prescribe three years’ practice as a lawyer as one of the essential qualifications for recruitment as the judicial officer at the lowest rung.”³⁵

The above reasoning provided by the Supreme Court in 1993 is an excellent articulation of why it is necessary for judges to have some prior experience at the Bar before taking on the onerous duty of adjudicating civil and criminal disputes as Civil Judges and Magistrates. The court’s point that neither knowledge from books nor pre-service training, could substitute actual experience of legal practice, was presumably the reason that practice requirements always existed in India for Civil Judges and Judicial Magistrates in State Judicial Service Rules.

Yet in 2002, when the composition of the bench hearing the AIJA cases changed, the Supreme Court rolled back the practice requirement of three years. The following was the reasoning provided by the Supreme Court for abolishing the practice requirement of three years:

- “32. In the All India Judges case, this Court has observed that in order to enter the judicial service, an applicant must be an Advocate of at least three years’ standing. Rules were amended accordingly. 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 years 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

³⁴ *All India Judges’ Association and Ors. v. Union of India*, 1993 (n 3); *All India Judges’ Association and Ors. v. Union of India*, (2002) (n 5).

³⁵ *All India Judges’ Association and Ors. v. Union of India*, 1993 (n 3) 20.

an applicant to have been an Advocate for at least 3 years should be done away with. After taking all the circumstances into consideration, we accept this recommendation of the Shetty Commission and the argument of the learned amicus curiae that it should be no longer mandatory for an applicant desirous of entering the judicial service to be an Advocate of at least three years' standing. We, accordingly, in the light of experience gained after the judgment in All India Judges' case (supra), direct to the High Courts and to the State Governments to amend their rules so as to enable a fresh law graduate who may not even have put in even three years of practice, to be eligible to compete and enter the judicial service. We, however, recommend that a fresh recruit into the judicial service should be imparted with training of not less than one year, preferably two years.³⁶

The above judgment is extremely vague and does not engage with the reasoning provided in the earlier AIJA judgment nor the rationale supposedly provided in the Shetty Commission report to do away with the requirement of practising for three years. The judgment also does not describe the "experience" gained over the previous decade. Nevertheless, most state judicial service rules were amended to comply with these directions and do away with the practise requirement of three years for the post of Civil Judge and Judicial Magistrate. Most recently, the Telangana High Court struck down its own judicial service rules on the grounds that a minimum requirement of three years practice at the bar in order to qualify for the selection process for the post of a civil judge went against the Supreme Court judgment in the AIJA case.³⁷ As a result of the AIJA judgment from 2002, it has become quite common for extremely young law graduates with no experience practising law before the court to join the judicial services after cracking a competitive examination and dispense justice as both Judicial Magistrates and Civil Judges. Most recently, a candidate was selected for Rajasthan Judicial Service at the tender age of 21 years.³⁸ The average age of new

judges who are being appointed as Civil Judges and Judicial Magistrates, as per our calculations, based on one year's data is between 26-27 years except in Kerala where the average age is 33 years.³⁹ Not only are such candidates likely to have little to no experience at the bar, they are also unlikely to have significant life experiences having lived a sheltered experience with their parents or on a university campus. In order to understand just how young Indian judges are, let us examine the average age of Magistrates in the United States (US) and United Kingdom (UK). In the US, the average legal experience (not age) of a Magistrate Judge selected for the federal judiciary was 22 years, despite the law having a minimum experience requirement of only 5 years.⁴⁰ On the other hand, in the UK, anybody over the age of 18 years can become a magistrate, even if they lack a law degree or legal training.⁴¹ However, in reality, the average age of Magistrates in the UK is 58.8 years and only 1% of the approximately 15,003 Magistrates are less than 30 years.⁴² Thus, although they lack formal legal training these Magistrates are likely to have a certain maturity due to their age and lived experiences.

In light of the above discussion, there are two more issues that impact the quality of judges chosen for the posts of Judicial Magistrate and Civil Judge. The first, is the examination process that shortlists candidates for the interview and second, the training given to the selected candidates at the judicial academies. Our focus will be on the latter, since these academies were meant to give the candidates training and skills that they supposedly could not pick up even after three years of practice at the bar.

³⁶ *All India Judges' Association and Ors. v. Union of India*, (2002) (n 5).

³⁷ PTI, '3 yrs experience not needed for junior civil judges' posts', *The New Indian Express*, 6 November 2019 <https://www.newindianexpress.com/states/telangana/2019/nov/06/3-yrs-experience-not-needed-for-junior-civil-judges-posts-2057721.html> accessed on 10 December 2019.

³⁸ TNN, '21 year old Jaipur boy set to be Rajasthan's youngest judge' *Times Of India*, 21 November 2019 <<https://timesofindia.indiatimes.com/city/jaipur/21-year-old-jaipur-boy-set-to-be-rajasthans-youngest-judge/articleshow/72151874.cms>> accessed on 10 December 2019.

³⁹ We conducted this assessment using the appointment lists provided to us by 6 High Courts in response to RTI applications filed with the High Courts at Allahabad, Madhya Pradesh, Odisha, Chhattisgarh, Jharkhand, and Kerala for one year between 2015-2017.

⁴⁰ Appointment of Magistrate Judges- Judicial Business 2012, <<https://www.uscourts.gov/statistics-reports/appointments-magistrate-judges-judicial-business-2012>> accessed on 10 December 2019.

⁴¹ 'Magistrates', Courts and Tribunal Judiciary <<https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/magistrates/>> accessed on 10 December 2019.

⁴² Ministry of Justice, 'Judicial Diversity Statistics 2018', 12 July 2018 <<https://www.judiciary.uk/wp-content/uploads/2018/07/judicial-diversity-statistics-2018-1.pdf>> accessed on 10 December 2019.

III The Judicial Service Examination and Selection Process

The recruitment process for the Civil Judge (Junior Division) is a three-step process which includes preliminary examination, main examination and interview, in most states. In others, it is a two-step process consisting of main examination and interview.⁴³ All states require candidates to have a law degree before they can sit for the examinations. Most states also prescribe an upper age limit of thirty years.

An average candidate will begin her preparations for the judicial services by enrolling in one of the many coaching institutes that offer courses tailored for judicial service examinations.

One of the biggest hubs for judicial service examination coaching is in Delhi. A certain coaching institute in Delhi claims that 410 of its students were successful in cracking the judicial services examinations across the country in 2019 alone. Another one from Delhi claims to have the best success ratio (best result per number of students taught in class). We observed that the same candidates attribute their success to multiple coaching institutes according to their newspaper advertisements. The popular institutes in Delhi charge anything between Rs. 1,50,000 and Rs. 2,17,500 for a full foundation course of about a year in English and Rs. 1,21,500 for the same in Hindi.⁴⁴ They also have weekend batches that run over a period of two years. There are also many web-based coaching setups that provide online lectures and materials including one that caters exclusively to judgment writing for judicial service examinations and charges Rs. 16,000 for it.⁴⁵

The preliminary examination is usually in the form of multiple-choice questions on subjects that differ across states. For example, the Delhi Judicial Services

(hereinafter, “DJS”) tests the candidates on general knowledge and English, in addition to legal knowledge, while Odisha Judicial Services tests the candidates only in law. The examination pattern also differs in terms of number of papers at this stage. In DJS, there is one paper, whereas in Himachal Pradesh Judicial Services there are three papers that constitute the preliminary stage.

The main examination stage is of a subjective question and answer format. The number and syllabi of test papers varies across states. Chhattisgarh, for example, has only one test paper in which it tests the framing of issues and writing of judgments in civil and criminal cases, and a working knowledge of Hindi and English. This is striking in comparison to Uttar Pradesh, which has five test papers devoted to general knowledge, Hindi and English language, substantive law, procedural and evidence law, and penal, revenue and local laws.

The most worrying problem with the judicial service examinations conducted in India according to academics working in this area, is that most judicial service examinations are designed to test candidates on their ability to memorise the law instead of testing the ability of candidates to reason and apply the law.⁴⁶

We examined the question papers set for the judicial service examinations, by the states of Assam, Bihar, Delhi, Madhya Pradesh, Maharashtra, Nagaland, Rajasthan, Tamil Nadu and Uttar Pradesh from 2016 to 2018. A simple look at the examination papers reveals questions that award rote learning and memorising capacities of law students. Analytical questions, that tested the critical thinking capabilities of candidates, were very few and far between. Even when such questions feature, the problems were almost exact copies of the illustrations from bare acts. Except for

⁴³ Sikkim, Manipur and Meghalaya are the few states which have only a two-step process.

⁴⁴ Rahul's IAS, Fee Structure <<https://rahulsias.com/fee-structure/>> accessed on 10 December 2019.

⁴⁵ Rostrum Legal, Judgement Writing <<https://www.rostrumlegal.com/judgment-writing/>> accessed on 10 December 2019.

⁴⁶ Geeta Oberoi, 'Concerns on Nature and Duration of Inductions Trainings Offered to Magistrates in India', (2018) 2 International Journal for the Rule of Law, 140.

Delhi, most of the questions in other states required straightforward explanatory answers. Some examples of questions from these papers are listed below:

1. What is private defence? When does the right of private defence of the body extend to cause death?⁴⁷
2. What is the effect of fraud or mistake on the period of limitation prescribed by the Limitation Act, 1963 for any suit or application?⁴⁸
3. Write notes on the following:⁴⁹
 - a. Discovery and inspection (related to documents)
 - b. Inspection by commissions
4. Discuss the provisions under Sections 6 and 7 of the Probation of Offenders Act⁵⁰

Candidates who clear these examinations are then required to sit before an interview panel. An interview, if conducted properly by professionals, can help in choosing competent candidates as judges. As noted in our earlier reports⁵¹ there is little transparency on the composition of these panels. Only Jharkhand had specific rules stating that the interview panel shall consist of two nominees of the Chief Justice of the High Court and one nominee of the Public Service Commission. From conversations with the candidates who appeared before these panels, we learnt that the duration of the interview can vary from five minutes to thirty minutes with the questions varying from knowledge of the law to the family background of the candidates. There does not appear to be any specific format followed by the interview panels. Candidates who were interviewed by our colleagues, for a previous report, complained that the interview process can be arbitrary and nepotistic, although it is difficult to verify these allegations since the interview panels do not maintain any transcripts of their proceedings.⁵² We cannot therefore make any specific observations on the quality of the interview process.

Once a candidate clears the examination and interview process, they are inducted into service and then sent for training. As per the Judicial Service Rules of

various states, their position in the judicial service is not contingent on the outcomes of their training at the state judicial academies. However, all state rules mandate that all new inductees be on probation for about two years.

In this backdrop, where experience at the bar is no longer part of the qualification criteria to become a judge and the examination/interview process tests only knowledge and not skills, it becomes all the more important for judicial academies to provide skills required by fresh law graduates to become effective Civil Judges and Judicial Magistrates. This is not a particularly unique or new insight. The Law Commission made similar observations as far back as 1986, stating, in pertinent part, the following:

■ "...now that a fresh law graduate is being given an opportunity to enter judicial service, the need for pre-service training which was keenly felt since long as pointed out hereinabove, is further accentuated by this radical departure in doing away with the essential qualification for entering service, namely, standing at the Bar. A degree in law, presumably, may equip the holder thereof with the knowledge of rudiments of law. The art of advocacy is acquired in the course of standing at the Bar. Rendering justice is an art in itself and acquiring rudiments of art needs training. The minimum equipment to render justice requires a keen intellect to sift grain from the chaff, to perceive falsehood, to appraise relative claims, to evaluate evidence, a fair and balanced approach, needs of the society, the constitutional goals and above all a keen desire to do justice. None of these aspects are dealt with in the syllabus prescribed at law college...In order therefore to equip a fresh law graduate to be a good judge a pre-service training is indispensable."⁵³

However, in reality, providing practical or clinical training through an institutionalised training mechanism is not easy. In the next section we will deal with the creation of the state judicial academies followed by the challenges of providing practical or clinical training to fresh law graduates who lack any experience practicing at the bar.

⁴⁷ Local Laws, Criminal Laws & Procedure, Mains, M.P. Judicial Service (Civil Judge) Examination, 2016.

⁴⁸ Law Paper I, Mains, Rajasthan Judicial Service Examination, 2016.

⁴⁹ Law of Evidence and Procedure, Mains, Bihar Judicial Service Examination, 2017.

⁵⁰ Paper III, Mains, Kerala Judicial Services Examination, 2016.

⁵¹ Diksha Sanyal and Shriyam Gupta, *Discretion and Delay: Challenges in becoming a District and Civil Judge*, (Vidhi Centre for Legal Policy, December 2018) <<https://vidhilegalpolicy.in/wp-content/uploads/2019/05/DiscretionandDelay.pdf>> accessed on 10 December 2019.

⁵² *ibid.*

⁵³ Law Commission of India, Report no. 117 (n 5) 12.

IV The Creation & Functioning of the State Judicial Academies

In 1986, when the Law Commission first studied the issue of judicial training in India, it describes how only two judicial academies existed in the country for pre-service training to new judges. The first was the North-Eastern Judicial Officers Training Institute at Guwahati which catered to the states in the north-east. The second was the Andhra Pradesh State Judicial Academy of Administration at Secunderabad. These academies reportedly provided short-term, pre-service training in judicial proceedings and court management.⁵⁴ In Uttar Pradesh, the pre-service training for Civil Judges took place at the Administrative Training Institute which was run by the U.P. State Government.⁵⁵ Most other states lacked judicial academies. Their judges were usually trained at the High Court or under District Judges or at government institutes like the Gandhi Labour Institute, Ahmedabad; the Indian Institute of Public Administration, New Delhi and the Institute of Criminology and Forensic Science, New Delhi.⁵⁶

Since the report of the Law Commission in 1986, a lot has changed for the better. As of today, there exists a National Judicial Academy (NJA) in Bhopal which works under the close supervision of the Supreme Court of India and focuses its efforts on providing refresher training to judges across the board. There also exist 24 State Judicial Academies, with some states like Tamil Nadu having multiple State Judicial Academies. These academies are supposed to provide both induction training for new judges as well as refresher training for sitting judges. The construction of these State Judicial Academies was no mean feat and was largely possible because of generous grant that was recommended by the Finance Commission.⁵⁷ From replies provided to us under the RTI Act by some of these State Judicial Academies, it appears that State Governments have been providing them with funding, although we are unable to confirm whether the funding matches the demands of the Academies.

For the purposes of this report, we examined the workings of the State Judicial Academies on three parameters: (i) governance of the academy, faculty strength and quality; (ii) curricula & (iii) clinical or practical training for new candidates. Our focus was only on induction training for new judges who had cleared the judicial service examination and who were to be appointed as the Civil Judge (Junior Division) and Judicial Magistrates. We did not examine the refresher training offered to judges across the board.

In order to collect information for this report, we sourced information through RTI applications filed with State Judicial Academies and High Courts, conducted interviews with judges who were trained at these academies and finally, from publicly available information on the websites of these judicial academies. As is often the case with the judiciary, many of the State Judicial Academies did not reply to our RTI applications or even if they did, the answers were evasive. Only a few state judicial academies provided us with useful information.

Nature of Response	State Judicial Academy
No information given	Bihar, Delhi, Himachal Pradesh, Mizoram
Incomplete responses	Andhra Pradesh, Gujarat, Jharkhand, Kerala, Maharashtra, Manipur, Meghalaya, Rajasthan, Sikkim, Tamil Nadu, Uttar Pradesh
Complete responses	Chandigarh, Chhattisgarh, Odisha, Uttarakhand, West Bengal

⁵⁴ Law Commission of India, Report no. 117 (n 5) 13.

⁵⁵ Law Commission of India, Report no. 117 (n 5) 6.

⁵⁶ *ibid.*

⁵⁷ PIB, 'Review of Utilisation of 13th Finance Commission Grants', GOI, Ministry of Law and Justice, May 2011 <<https://pib.gov.in/newsite/PrintRelease.aspx?relid=72070> > accessed on 10 December 2019.

a) Governance and Faculty at the State Judicial Academies

The governance structure and recruitment rules for most State Judicial Academies are created through rules notified by the parent High Court. It is no surprise then, that the governing structure and faculty appointments are firmly ensconced in the hands of the judiciary. Every State Judicial Academy will usually have a governing council or advisory board, usually staffed by High Court judges and in some instances, bureaucrats of the State Government. The daily running of the State Judicial Academies is usually vested with a Director and Deputy Director, who is usually a District Judge, except for the academies at Chandigarh, Delhi and Jharkhand which are headed by academicians. This model of governance appears to be based on a model proposed by the Chief Justice of India in 1986.⁵⁸

This takes us to one of the larger criticisms of the State Judicial Academies by Professor Geeta Oberoi of the National Judicial Academy who is one of the few academics to have written on the functioning of the State Judicial Academies. In one of her articles, she points out how the State Judicial Academies are overwhelmingly controlled by judges of the High Courts and are not provided the independence that they require to flourish as academic institutions. In pertinent part, Professor Oberoi states the following:

- "... SJAs need to cut their umbilical cord from their parent high court as this uncut chord is turning the SJA just into an extension of the court itself. Of course, the SJAs being staffed with subordinate judiciary, are in no position to cut this umbilical cord. This chord has to be cut by the parent high court if the SJAs are to grow into a vibrant educational institution where mind is free from fear, new intellectual rays rush in and education takes primacy. The mind set of present high court justices proves that high courts are not yet ready to cut this umbilical cord."⁵⁹

In remarkably blunt terms, Professor Oberoi explains why this is a problematic approach, stating in pertinent part the following:

- "The problem lies in the fact that most of district judges and high court judges in India have educated under poor model of legal education and therefore

there is a danger of repeating their own inferior educational experience at the SJA. Their ignorance on educational theories around training of adult professionals makes them reluctant to accept teaching innovations and new experiments for learning. Till this date, none of the SJAs ventured to develop new methods for the delivery of induction course curriculum."⁶⁰

As outsiders to the judiciary, with little to no access to the State Judicial Academies, we are unable to corroborate Professor Oberoi's observations but from a theoretical perspective, her criticism appears to be valid. It is also unlikely that a sitting judge who is deputed to the state judicial academy for a few years as a Director, will have the capacity or incentive to create paradigm altering judicial curricula that will help train a new generation of Civil Judges and Judicial Magistrates who are able to improve the standards of adjudication.

Apart from leadership at these State Judicial Academies, there is also the question of the faculty. We were surprised to discover, from RTI replies and the websites of the State Judicial Academies, that the academies at Chhattisgarh, Gujarat, Karnataka, Maharashtra, Manipur, Meghalaya, Sikkim, Tamil Nadu, Tripura and West Bengal lacked permanent faculty. We presume that the training is provided by the Director and Assistant Directors who are usually District Judges or guest faculty, who once again tend to be judges. While it may be acceptable, even desirable, to use guest faculty for refresher trainings for sitting judges, it is not be advisable to use guest faculty for the mandatory induction training for newly selected Civil Judges and Judicial Magistrates which extends to almost one year. Induction training, unlike refresher training, requires some amount of standardisation as well as skill on part of the faculty. Such teaching skills are honed by faculty through repetition and this can be achieved only by the presence of permanent faculty. Having rotational faculty or guest faculty is likely to compromise the quality of induction training given at these academies.

We were unable to determine the reasons for the lack of permanent faculty at these judicial academies and it may be worthwhile for the Law Ministry or the Supreme Court to conduct a deeper inquiry into this issue.

⁵⁸ Law Commission of India, Report no 117 (n 5) Appendix II.

⁵⁹ Geeta Oberoi, 'Limitation of Induction Trainings Offered to Magistrates by State Judicial Actors in India' (2018), 4 Athens Journal of Law, 302.

⁶⁰ Ibid at 310.

b) The curricula, for induction training at the State Judicial Academies

When the Law Commission first made the recommendation to abolish the practice requirement of three years, it was based on the assumption that new graduates could be imparted the same skills through training at judicial academies.⁶¹

In the same report, the Law Commission reproduced a barebones curriculum prepared by the Chief Justice of India, which has been reproduced in the Annexure I to this report. This curriculum prescribed courses on court management, system managements, law and legal principles, substantive law developments, sentencing discretion, related matters of judicial policy, general orientation. Apart from these theoretical courses, practical training was also prescribed, wherein new judges were expected to sit in court with experienced judges to be trained on civil and criminal procedure.⁶² But as can be seen from the Annexure I, not much thought has been given to structuring such training to impart skills to newly inducted judges who have no experience practicing at the bar.

This is a particularly important discussion to have in India, given the number of fresh law graduates entering the judicial service without any practical skills since clinical legal education which is supposed to provide such exposure and skills to law students, has largely failed, even in the National Law Universities. This is because clinical legal education is difficult to execute in reality, even in advanced jurisdictions like the United States where there has been a clamour for such education to be delivered since the mid-fifties.⁶³

Contrary to common perception, clinical legal education does not mean sending students to courtrooms to act as mere observers or glorified peons or clerks.⁶⁴ Rather it requires students to be given practical experience of the law through a structured learning environment.⁶⁵ As noted by one commentator:

■ “The challenge here is to provide sufficient guidance without undermining the students’ sense of independence, professionalism and personal commitment created by their clinical work, which goes to the heart of the clinical methodology.”⁶⁶

This would necessarily require practitioners with experience of law to constantly provide feedback. Executing such a training regimen in law schools is difficult because of the lack of availability of faculty with practice experience. As a result, there are some commentators who have argued against clinical legal education in law school, arguing that such training is best given through an apprenticeship program or on the job as a lawyer.⁶⁷

Due to the failure or non-existence of clinical legal education, most India law graduates end up learning practical skills only after they enter practice while under the supervision of a more experienced lawyer. It would however be a disaster for a judge to be learning on the job with no prior experience in the courtroom, while being practically unsupervised and sentencing people to imprisonment. The question thus is how should judicial academies go about imparting the kind of clinical training required by these judges who have no experience at the Bar.

Historically, from documents such as the Rankin Committee reports, the Law Commissions reports of 1958 and 1986, it appears that the favoured mode of practical, or as we call it ‘clinical’ training is to depute trainee judges to sit with Civil Judges, Judicial Magistrates and District Judges in court and record depositions, make summaries of pleadings and evidence, take notes on arguments and case laws and submit the same to the presiding judge for comments and feedback which would then form part of the decision to confirm the appointment of the trainee judge.⁶⁸ The second mode of clinical or rather field training, is when trainee judges are sent to the revenue department, the police department, forensic

⁶¹ Law Commission of India, Report no. 117 (n 2) 12.

⁶² Law Commission of India, Report no. 117 (n 2) Appendix II.

⁶³ William T. Vukowich, ‘Comment: The Lack of Practical Training in Law Schools: Criticisms, Causes and Programs for Change’, (1971) 23 Case W.Res. L. Rev. 142; American Bar Association Section of Legal Education and Admissions to the Bar, ‘Legal Education and Professional Development- An Educational Continuum’, July 1992.

⁶⁴ N.R Madhava Menon, *Clinical Legal Education*, (Eastern Book Co., 1998) 13.

⁶⁵ *ibid* 30.

⁶⁶ *ibid*.

⁶⁷ William T. Vukowich (n 63) 148-149.

⁶⁸ Rankin Committee, (n 24) 185.

laboratories and hospitals to observe and learn how these departments work and the practices that they follow in relation to judicial proceedings.⁶⁹

More recently, in 2007-08 there appears to have been a more comprehensive document called the Model National Judicial Education Curriculum that was prepared by the National Judicial Academy, after consultation with the judges of the High Courts and Supreme Court for both induction training given to new judges and refresher training, for sitting judges.⁷⁰ We were however unable to access a copy of this document despite filing repeated applications under the RTI Act with the National Judicial Academy. Please see Annexure II for details. In its last response, the NJA stated the following in response:

- “The sixth column refers to the information regarding Model National Judicial Curriculum, this term is vague and hence no reply could be issued”.

Apart from scanning the websites of judicial academies for their curricula, we also filed RTI applications with all State Judicial Academies requesting for copies of their curricula for induction training of Civil Judges. However only five states provided their curricula in response to our requests for information.⁷¹ While some academies, like the Chandigarh Judicial Academy are clearly giving a lot of thought to their curricula, the remaining (who provided us with copies of their curricula) are focussed on re-teaching legal subjects, which are anyway learnt by candidates during their time at law school and on which knowledge they are tested by the judicial service examinations.

c) Clinical or practical training for new candidates

On the most important issue of clinical or practical training for inductee judges, we discovered that most academies do have a system of placing trainee judges with Civil Judges (Junior Division) who hold court every day. However, it was also clear from the interviews we conducted, that most candidates are not very satisfied with the experience.

Three significant observations in this regard are as follows.

First, trainer judges (i.e. the presiding judge of the court with whom the trainee judge is placed) are not instructed how to train or provide feedback to the trainee judges. As a result, every trainer judge provides what she thinks may qualify as appropriate training. Sometimes, the trainer judges expect trainee judges to assist them with case summaries, etc. It appeared from accounts narrated to us that the system appears to be working more like a clerkship rather than a training clinic for prospective judges.

Second, we were informed that these trainer judges lack the time to provide the kind of training since case-loads are high in most courts. Having to train a person while also holding court, makes severe demands on the time of judges designated as trainers. Owing to this, the trainer judges are themselves not forthcoming about teaching the trainees. The trainee judges are expected to maintain a diary for keeping track of the activities undertaken during the training which in most cases is not reviewed due to time constraints.

Third, while we were informed that some states do have a return stint for the trainees at the academy in the form of a feedback session where all doubts from the court room training may be clarified, this is absent in most states and the trainee judges are posted with immediate effect. Even where there is a second round of training at the academy post the court room training, the faculty at academy are ill-equipped to clarify some of the practical doubts that would have arisen because many of these queries may be specific to a particular district or a court.

Apart from the court room training, the field training with revenue authorities, forensic science laboratories and the police do not appear to be well planned. In its 14th report the Law Commission had explained that back in the fifties, a new judge would be given revenue training for a period of three months. During this period, he would be attached to a village headman, revenue inspector and minor irrigation overseer to get a good understanding of how revenue records are maintained, how surveys are conducted and how government accounts are maintained. This training was apparently followed by a short training of about two weeks with a circle inspector of police.

⁶⁹ Law Commission of India, Report No. 14(1) (n 2) 179.

⁷⁰ ‘National Judicial Education Strategy’, National Judicial Academy, <http://www.nja.nic.in/nje.html> accessed on 10 December 2019.

⁷¹ These five state judicial academies were Chandigarh, Chhattisgarh, Odisha, Uttarakhand and West Bengal.

From our interviews, it appears that such intensive field training is no longer provided to most candidates. We were informed that most field training sessions were one day outings to the government departments or police stations or forensic laboratories. One commentator has referred to them as “picnics”.⁷² Only in some states like Karnataka, were candidates offered some prior briefings about the departments they were visiting, which apparently made their experience more fruitful.

From our interviews of judges who were trained at Judicial Academies, it is quite clear that providing practical skills trainings for judges through a Judicial Academy is not an easy as was presumed.

On the question of whether the State Judicial Academies carry out any evaluations, the replies that we received in response to our RTI applications revealed that 9 of these State Judicial Academies do conduct some form of evaluation while the remaining 7 do not have any process of evaluation in place.

Academies that carry out evaluation	Academies that have no evaluation process
Andhra Pradesh & Telangana	Chandigarh
Gujarat	Chhattisgarh
Jharkhand	Delhi
Karnataka	Meghalaya
Kerala	Sikkim
Manipur	Tamil Nadu
Odisha	West Bengal
Tripura	

Only seven state academies - Andhra Pradesh, Jharkhand, Karnataka, Kerala, Manipur, Tripura and Uttarakhand have a mechanism for institutional measures to mitigate the poor performance by trainee officers and ensure that they are given more attention and focus. Such mechanisms include grading recruits into scales based on the marks obtained in the internal examination and extending the probation of those officers with poor marks, individual counselling, additional examinations, special attention and intensive training, extended probation, etc. The details provided by each state is as follows:

State	Measures Taken Towards Poor Performing Trainee Officers as per RTI application
Andhra Pradesh (includes Telangana)	Faculty to determine the deficiencies and such judges would be given further lessons in the deficient areas separately.
Jharkhand	In 2016-17, 22 trainees were detained for three months extended training after failing to secure qualifying marks in the final exam.
Karnataka	Focus on personal attention by requesting retired District Judges to tutor the officer on substantive and procedural law.
Kerala	Special attention and intensive training are given to the poorly performing officers.
Manipur	Training module is designed to include evaluation and correctional training, performance assessment and correction training to assess the improvement of trainee civil judges on probation. Further the officers are to appear for a departmental examination during the period of probation. In case any officer fails to clear the exam, he is to appear for it again. In case of not clearing the training successfully, the period of training may also be extended.
Tripura	Poor performing trainees are individually counselled.
Uttarakhand	The recruits are graded in their exams in the following scales - 'A', 'B', 'C' and 'D'. D will denote less than 40% in each paper (fail and unsatisfactory). C = 40% to 60% (fair), B = 60% to 80% (very good), A = more than 80% (outstanding) Recruits getting a D would have to reappear for the exam when the same is conducted for the next batch. Till such time, the duration of the recruit's probation will be extended.

⁷² Geeta Oberoi, (n 59) 313.

The last issue we sought to examine is whether states had in place a mechanism to evaluate trainee judges after completion of the training at the Academy and the probationary period to assess their suitability to be appointed as active judges.

We began this enquiry by examining the Judicial Service Rules of all the states. Some states in their judicial rules mandatorily require trainee judges to clear departmental examinations that are conducted by the High Courts.⁷³ In the case of Delhi, the High Court did provide us with copies of the departmental examination which covered both questions on law as well as questions on administration of government accounts etc. Interviewees from some states informed us of instances where two weeks before the departmental examination judicial officers were sent on mandatory study leave to prepare. We were informed that these examinations turn out to be a replica of the judicial service examination with questions on legal provisions and sections. These examinations appear to be more of a formality and are not a serious test of ability. It is not clear if the failure to clear the departmental examination has any implications for the trainee judge's future.

The language, in the judicial service rules, relating to conditions for dismissal from service during the probationary period is vague and merely stated that the probationer can be dismissed from service if found unsuitable. In response to our RTI applications asking for reasons for which a probationer can be found unsuitable to continue in the judicial service, most High Courts directed us back to the respective rules,

which as we explained are vague on the issue. We also discovered that it is rare for anyone to be dismissed during this probationary period. Numbers provided in reply to our RTI applications reveal that almost no trainee is found unsuitable during the probationary period. In Himachal Pradesh, only three probationers have ever been discharged.⁷⁴ The figure is six in Chhattisgarh and two in Assam.⁷⁵ It is possible that these High Courts take feedback from the persons who have conducted the training of these judges before they make their decision to confirm the appointment of a judge. The High Courts of West Bengal, Sikkim and Manipur maintained that nobody was ever discharged for being found unsuitable and the Delhi High Court stated that they do not maintain this data.⁷⁶ The remaining High Courts did not provide information on this issue.

Simply put, it appears that candidates who clear the judicial service examination are virtually guaranteed to gain life-time appointments in the judicial services unless the High Courts invoke their rather opaque discretionary powers to dismiss the officer from service.

⁷³ Based on the latest judicial service rules these are the states whose High Courts conduct departmental examinations as a mandatory exercise before confirmation of judicial officers after probation - West Bengal, Himachal Pradesh, Punjab, Jharkhand and Haryana. For the states of Assam, Gujarat, Mizoram, Tripura, Manipur, Meghalaya and Odisha if the need arises the High Courts may conduct an examination to test the suitability of the judicial officers. Judicial service rules of remaining states were silent about

⁷⁴ Filed by Reshma Sekhar on 30 March 2019, Research Fellow at Vidhi Centre for Legal Policy, No. HHC/RTI/SPIO-321-2018-19 (Replies on file with the authors).

⁷⁵ Filed by Vagda Galhotra on 20 March 2019, Associate Fellow at Vidhi Centre for Legal Policy, No. HC.XXXIV-2/2019/109/RTI VG, 12-04-2019 (Replies on file with the authors).

⁷⁶ Filed by Reshma Sekhar on April 24 2019, Research Fellow at Vidhi Centre for Legal Policy, No. 1140/HCS/RTI (Sikkim); Filed by Vagda Galhotra on 24 May 2019, Associate Fellow at Vidhi Centre for Legal Policy (West Bengal); Filed by Reshma Sekhar on 18 May 2019, Research Fellow at Vidhi Centre for Legal Policy, HCM/I-12-2006(Estt) 4/10730 (Manipur); Filed by Vagda Galhotra on 28 May 2019, Associate Fellow at Vidhi Centre for Legal Policy 1130/RTI/DHC/362/2019 (Delhi) (Replies on file with the authors).

Conclusion

The issue of qualifications and training of Civil Judges (Junior Division) and Judicial Magistrates has not received the attention that it deserves in the debate on judicial reforms. The Judicial Magistrate is literally, the first line of defence for civil liberties. Yet very little thought has gone into the manner in which the qualification criteria for these judges has changed over the last few decades. Even presuming that the qualification criteria of three years practice is restored in the near future, India must debate whether it wants young candidates in their twenties being appointed to this crucial office at a time when the average years of practice (not age) of Federal Magistrate Judges in the US is 22 years and the average age of UK Magistrates is 58.8 years. Legal and real-life experiences are essential to mould thoughtful and compassionate judges.

On the issue of doing away with bar experience on the pretext that it could be compensated through rigorous training at the judicial academy, it would appear that the Law Commission and Supreme Court seriously overestimated the ability of the Indian state to impart such skills to young inexperienced advocates through a structured training system. Even though all the High Courts have managed to ensure the construction of State Judicial Academies, actually providing meaningful induction training to new trainees has proved to be a challenge. As is evident from our report, many of these State Judicial Academies lack the faculty required to deliver a structured induction training program for new judges.

Similarly, most State Judicial Academies do not appear to have given much thought to the curriculum for training inductee judges since the ones that we could study, appear to be repeating the same subjects taught to candidates in law schools. The practical or clinical training component, in our opinion appears to have been poorly planned and executed by most State Judicial Academies because most of the sitting judges who are supposed to be training and evaluating new judges in their courtrooms are not given any instructions on how to guide and assess these judges.

In our opinion, if the State Judicial Academies are to mature into respectable institutions of learning, it is necessary for them to develop independent of the High Courts. Judicial education is a serious issue that requires full-time professional attention rather than

the rotational leadership by sitting judges who are rotated through the Director positions of most the State Judicial Academies.

It would also be advisable for all State Judicial Academies to be a lot more transparent about their functioning. There is very little information available on their websites and many of these academies did not respond to our RTI applications. Such opacity is worrying and the Chief Justices of the High Courts, who are patrons of these academies, must urge them to be more transparent in their functioning.

If the government and judiciary are serious about improving the status of these judicial academies, they must commission evaluation studies of these academies. The Parliamentary Standing Committee on Law and Justice in its 96th report recommended to the Department of Justice to conduct such a study of the National Judicial Academy. In pertinent part, it stated the following:

“6.53 The Committee observes that the Academy has been in existence for more than two decades now and substantial amount of public fund has already been spent on it. It would, therefore, be useful for the Department to get a third party evaluation made of the quality of training being imparted at the Academy and the extent to which training at the Academy has resulted in strengthening the judicial system, so that shortcomings, if any, could be removed.”

To the best of our knowledge, no such study has been commissioned.

Lastly, it would be advisable for State Governments and High Courts to consider overhauling their respective Judicial Service Rules in order to ensure that candidates are evaluated thoroughly on the basis of their performance at the Judicial Academy, as well as their clinical or practical training, before they are allowed to hold court. Merely clearing the judicial service examination and a departmental examination should not be sufficient to become a judge.

Annexures

PROPOSAL FOR SETTING UP AN ACADEMY FOR TRAINING OF JUDICIAL OFFICERS

I. INTRODUCTION

It is absolutely Imperative for improving the quality and efficiency of the Judiciary to set up an Academy for training of Judicial Officers at an All India level. The need for such an Academy was recognised at the Joint Conference of Chief Justices, Chief Ministers and Law Ministers held on 31st August — 1st September, 1985 in New Delhi and a resolution almost to the same effect was passed. The resolution provided that the Academy should be set up by the Central Government with the Chief Justice of India as the Visitor and that the Academy should be under the supervision of a Governing body to be appointed in consultation with the Chief Justice of India. It is therefore proposed to set up such an Academy to be called 'National Academy for Training of Judicial Officers'.

II. OBJECTIVES

Training for the entrants and in-service training of officials for state and union services is now an accepted national priority. The need for such training for Judicial Officers has been nationally neglected so far, with the rather disastrous consequences to development and justice. Any investment made in the training of Judicial Officers is an investment in democracy and national development.

The entrants to judicial services need foundational training in the administration of justice. They must be equipped with skills and competence in their daily tasks; they must, at the same time, stand informed by a wider perspective of national development (including science and technology policy planning); nation-building and national integration.

The in-service training will also be oriented to the development of the wider perspective, along with endowment in competence for justice-system management.

The Academy will also design advanced seminars/colloquia for senior appellate justices. On many issues—especially the role of law in science and technology—advances symposia will be designed for senior appellate justices to impart to them necessary cognitive competence.

III. VENUE

The National Academy may be set up in Bangalore where fortunately space is available.

IV. GOVERNING BODY

The Governing Body of the National Academy shall consist of the following :

1. Chief Justice of India	Visitor	
2. Retired Chief Justice of India or retired Judge of the Supreme Court nominated by the President of India in consultation with the Visitor.	Chairman	
3. Two Judges of the Supreme Court of India to be nominated by the Chairman in consultation with the Visitor.	Members	2
4. Four Chief Justices of High Courts to be nominated by the Chairman in consultation with the Visitor.	Members	4
5. Minister for Law and Justice of the Government of India.	Member	1
6. Minister Incharge of Department of Personnel and Administration	Member	1
7. Minister of State for Law and Justice of the Government of India	Member	1
8. Chairman of the Law Commission of India.	Member	1
9. Two Ministers of Law from the States to be nominated by the Govt. of India in consultation with the Visitor.	Members	2
10. Law Secretary of the Government of India.	Member	1
11. Attorney General of India	Member	1
12. Director, The Indian Law Institute	Member	1
13. Director, The National Law School of India.	Member	1
14. Three Law Academics to be nominated by the Chairman in Consultation with the visitor	Members	3
15. The Director	Member	1
	TOTAL	20

V. FINANCES

The National Academy will be financed by the Government of India but the costs of lodging and boarding of the Judicial Officers who come from the States will have to be borne by the respective State Governments and the Government of India may, if possible, arrive at a mutually acceptable arrangement by which the State Governments* may be persuaded to bear some part of the cost of running of the National Academy since the Judicial Officers of the States will be getting the benefit.

VI. FACULTY

The National Academy will have broadly the following staff:—

1. **Director** who may be a retired High Court Judge taken on tenure basis or a senior Judicial Officer, to be nominated by the Chairman in consultation with the Visitor.
2. **Additional Director** who shall be a Law Academic to be nominated by the Chairman in consultation with the Visitor.
3. **Five Members of the Faculty** to be selected by a Selection Committee to be appointed by the Governing Council.
4. **Administrative Officer** to be appointed by the Governing Council and the supportive staff.

The proposal in regard to the staff is not comprehensive or exhaustive and it may become necessary to have additional staff as the Academy progresses.

VII CONTENT AND DURATION

The Courses will be of three types :

- (a) Foundation Courses for new entrants ;
- (b) In-service refresher courses ;
- (c) Seminars and symposia for appellate judges.

DURATION

Course (a) :	For direct recruits to District Judges and other Judges 12 weeks for District Judges; 18 weeks for other Judges.
Course (b) :	10 Weeks.
Course (c) :	3-4 Weeks.

CONTENTS FOR THE THREE TYPES OF COURSES (TO BE SUITABLY ADOPTED).

A. Court Management

- A. 1 Docket Management (Arrears)
- A. 2 Record Systems.
- A. 3 Discipline over staff.
- A. 4 Computerized Management and Information Retrieval to the extent applicable.
- A. 5 Management of Ex-parte Stay, Interim Orders.
- A. 6 Management of Adjournment Motions.
- A. 7 Library Management.
- A. 8 Monitoring Judicial Performance.
- A. 9 Patterns of Feedback to High Courts.
- A.10 Management of Legal Aid including Lok Adalats.

B. Training in systems Management

- B. 1 Understanding of the law as a mutually intrincating cultural, institutional, normative behavioural system
- B. 2 Systemic interrelations :
 - (a) Jail
 - (b) Police
 - (c) Bar
 - (d) Legal/social activists.
 - (e) Law colleges/departments.
 - (f) High Court.

C. Law and Legal Principles

- C. 1 Fundamental principles of procedural jurisprudence.
- C. 2 Constitutional Law, Administrative Law and other important All India legislation.
- C. 3 Forensic science and criminology.
- C. 4 Broad principles of law of evidence, evidenciary problems in trial courts, etc.
- C. 5 Procedural laws : proper use of procedural laws and preventing their misuse or abuse.
- C. 6 Principles governing exercise of judicial discretion.
- C. 7 Eliminating causes of delay.
- C. 8 Art of judgement writing-civil and criminal.
- C. 9 Maintenance of decency and decorum in courts including certain aspects of work of Judicial Officers, court-craft, code of conduct and ethics.
- C.10 Accounts and financial matters.

D. Substantive Law developments

- D.1 Methods of keeping abreast with the decisional law of High Courts and the Supreme Court.
- D.2 Orientation to the nature of Judicial process.
- D.3 Problems of the Scheduled Castes/Tribes, Women, Children and Weaker Sections of Society, problems of rural poverty, exploitation and injustice.
- D.4 Awareness of legislative developments.
- D.5 Awareness of plans and policies designed to fulfil the Directive Principles of State Policy.

E. Sentencing Discretion.

- E.1 Patterns of Sentencing Discretion.
- E.2 Probations of Offenders.
- E.3 Socio-economic Offences.
- E.4 Crimes against weaker sections of society—problems of sentencing discretion.
- E.5 Crimes against the State—sentencing policies and patterns.
- E.6 Constitutionality of sentencing discretion.
- E.7 Feedback from the Supreme Court and High Courts on sentencing discretion.

F. Related Matters of Judicial Policy.

- F.1 Awarding of costs.
- F.2 Compensating for violation of fundamental rights.
- F.3 Human rights in the administration of civil and criminal justice.
- F.4 Science and technology developments in relation to the law.
- F.5 National development and Integration through the law.
- F.6 Interaction between legislative policies and the judicial process.
- F.7 Interaction between executive policies and the judicial process.

G. General Orientation

- G.1 Cultural and socio-economic conditions and their impact on legal and judicial administration.
- G.2 Creating awareness of new judicial thinking and using law as an instrument of socio-economic change and a vehicle for delivery of social justice : combating exploitation and injustice through the process of law
- G.3 Visit to rural areas : discussions with interested groups, pressure groups and victim groups.
- G.4 Legal Aid in all its aspects and dimensions.
- G.5 Lok Adalats.

The subjects mentioned above at Items A to G shall form part of the courses for both types of courses at (a) and (b) but so far as seminars and symposiums mentioned in (c) are concerned, the subjects at items D, F and G shall form the subject-matter of such seminars and symposiums.

Practical Training

The trainee Judges who are new entrants and who are doing foundation course mentioned in (a) shall also be given practical training as part of the foundation courses. The practical training will include sitting with

senior presiding officers of the civil, criminal and revenue courts and they will also be instructed in regard to procedural matters such as—

I CIVIL

- (a) Daily cause list.
- (b) Calling out of cases, and the situation arising on the lawyers or the party not attending ; control of court proceedings.
- (c) Issue of notices and scrutiny of service reports and the orders and procedure for ex parte proceedings
- (d) Court decorum and ethics.
- (e) Examination of parties before issues under Order X CPC.
- (f) Framing of issues.
- (g) Maintenance of diary and fixing dates for evidence.
- (h) Recording of evidence and problems arising therein.
- (i) Questions of relevancy and admissibility and dealing with objections re : want of stamp and registration of document.
- (j) Closing of evidence.
- (k) Arguments.
- (l) Cutting down of delays : preventing abuse or misuse of procedural laws.
- (m) Delivery of judgements.
- (n) Court registers—their maintenance and scrutiny.
- (o) Functioning of revenue department, police department and other government department.

II. CRIMINAL

- (a) Putting in of challans/filing of private complaints and their registration.
- (b) Bail/Remand work.
- (c) Procedure of issuing notices, summons and warrants, their services on the accused/respondent and the agency responsible for service.
- (d) Framing of charge, essentials therefor and the necessity for hearing both the sides for the purpose.
- (e) Recording of plea of guilty/non-guilty.
- (f) Maintenance of diary and finding cases for evidence.
- (g) Prosecution/complainant's evidence.
- (h) Examination of the accused under section 313 of the Cr. P.C. its significance and mode.
- (i) Defence List, its scrutiny and recording of defence.
- (j) The need/necessity of summoning and the procedure for recording evidence of court witnesses where necessary in particular cases.
- (k) Avoidance of avoidable adjournments in hearing of cases and arguments and the practical method for securing attendance of witnesses.
- (l) Cutting down of delays and preventing misuse or abuse of procedural laws.
- (m) Hearing arguments.
- (n) Judgement.
- (o) Court Registers—their maintenance and scrutiny.

Regional Academy.

The foundation course outlined above must be followed by a course of training at the State level for a period of at least two to three months so that the trainee Judge should acquire sufficient familiarity with local laws and legal practices as also with the local socio-economic conditions and local problems and difficulties. This can be done best by setting up in the first instance regional academies and subsequently State academies, but since the setting up of regional academies and State academies may take some time and moreover it would require a large outlay of expenditure, it is suggested that there should be a core visiting faculty provided by National Academy which can visit every State capital for giving legal training to the trainee Judges after the foundation course. This faculty can be assisted by local faculty provided by the State Government. This may require additional teaching staff at the National Academy but it would be worthwhile to have more staff at the National Academy for providing the visiting faculty than to immediately set up regional and State academies. The ultimate goal should however be that every State should set up a State-level academy for providing training to trainee Judges following upon the foundation course. It would be useful for the trainee Judges who are entrants to watch the conduct of cases in the concerned High Court for about a week after the completion of the foundation course consisting of theoretical and practical training, mentioned above, so that they may imbibe the judicial culture, broaden the horizon of their knowledge and acquire familiarity with the judicial process.

MGIPCBE—S2—5 M of LJ/87—30-11-87—1010.

■ Annexure II

APPLICATION UNDER SECTION 6 OF THE RIGHT TO INFORMATION ACT, 2005

To
Public Information Officer,
National Judicial Academy, Bhopal

Date of Application	16.10.2019
Name of Applicant	Reshma S
Postal Address	D-359, Lower Ground Floor, Defence Colony, New Delhi-110024
Contact phone no.	9745271600/011-43102767
Email ID	reshma.sekhar@vidhilegalpolicy.in
Specific subject matter of document	Information regarding Model National Judicial Education Curriculum
Further details of queries	Please provide us with a copy of the Model National Judicial Education Curriculum
Period to which this document relates to	Till date
Preferred format of receipt of information.	Soft/digital copy preferred in English language.
Preferred mode of receipt of copy of documents	By speed post/email, if soft/ digital copy is not convenient.
Mode of payment of application fee	Via Post

I am herewith paying the application fee (Rs 10) by way of post. If you are of the view that the above requested information does not pertain to your department, then please follow the provisions of Section 6 (3) of the RTI Act 2005 and direct the query to the concerned authority. Also, as per the provisions of the RTI Act, 2005, kindly provide the details (including name and designation) of the first appellate authority before which I may, if required, file my first appeal.

Regards,

Reshma Sekhar



NATIONAL JUDICIAL ACADEMY

Bhadbhada Road, Suraj Nagar P.O. Bhopal - 462044 (M.P.)
Tel.: EPABX 0755 - 2432500, Fax : 0755 - 2696904

4863

November 28, 2019
To, Reshma Sekhar
D-359, Lower Ground Floor
Defence Colony
New Delhi - 110024

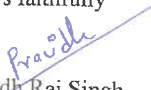
Sub: Information sought under RTI Act, 2005
Ref: Your Application received by us on 30.10.2019

Respected Ma'am,

The sixth column refers to the information regarding Model National Judicial Curriculum, this term is vague and hence no reply could be issued.

Appeal, if any, against the above decision of the PIO may be preferred, within thirty days of the receipt of this letter to Registrar (Administration), Appellate Authority NJA, Bhopal

Yours faithfully


Prasadh Raj Singh
Public Information officer (PIO)

VIDHI | Centre for
Legal Policy

D-359, Defence Colony, New Delhi -110024
011 - 43102767 / 011- 43831699

jaldi@vidhilegalpolicy.in