

TAMIL NADU STATE JUDICIAL SERVICE (CADRE & RECRUITMENT) RULES, 2007 VIS-A-VIS ELIGIBILITY FOR CIVIL JUDGE (JUNIOR DIVISION) EXAMINATION: A COMPARATIVE CRITICAL ANALYSIS IN CONSTITUTIONAL PERSPECTIVE

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Abstract: *The First National Judicial Pay Commission popularly called as “Shetty commission” was constituted by the Central Government to recommend, inter alia a uniform recruitment process in the lower cadre of judiciary, since there was no uniform standard in recruitment to the post of Magistrates’, Munsif or Munsif cum Judicial Magistrate or etc throughout India. The Committee submitted its report and has been after through judicial scrutiny, the Hon’ble Supreme Court of India with slight modification as mentioned in All India Judges Association (3) Vs Union of India, accepted the report. In this paper, the authors intends to analyse as to whether, even after the acceptance of the report by the Apex Court of India, there is a uniform procedure in selection and appointment to the post of Magistrates’, Munsif or Munsif cum Judicial Magistrate now Civil Judge (Junior Division) in the various States in India or are there any dilemma in implementing the report which from part of the land under Article 141 of the Indian Constitution? This paper also tries to comparatively analyse the position in the State of Tamil Nadu with respect to the qualifications and selections to the post of Civil Judge (Junior Division) along with the position prevailing in the other States of India. Finally, this paper would suggest some recommendation as to the nature, position, modification, alternation and amendments needed in the existing Recruitment Rules of the States.*

Key Words: *Civil Judge (Junior Division) – Recruitment Rules of States in India – Qualification – Shetty Commission – Article 141 of the Indian Constitution.*

1. INTRODUCTION:

The Indian Judiciary is having a hierarchical structure of Courts. At the lower rung, there are judges called Munsif-Magistrates {Now Civil Judge (Junior Division)}. The immediate hierarchy is Civil Judge (Senior Division)/ Chief Judicial Magistrates’ and above them Additional District and Session Judge / District and Session Judge. These cadres constitute subordinate judiciary in every State. In this paper since the authors intend to analyse the eligibility conditions for the recruitment of Civil Judge (Junior Division), the authors did not mention or analyse about the Highest Courts in States or the Apex Court.

2. OBJECTIVES OF THE STUDY:

- To know the Constitutional position of the Civil Judge (Junior Division) Cadre in India
- To know the different eligibility conditions prevailing in the various States in India
- To know the recommendations made by the All India Judges Association Cases and the Shetty Commission
- To suggest the uniform remedial measures in the recruitment of Civil Judge (Junior Division) Cadre.

3. ELIGIBILITY CONDITIONS FOR RECRUITMENT AS CIVIL JUDGE (JUNIOR DIVISION): CONSTITUTIONAL PROVISIONS

At the outset, the authors say that the Constitution of India prescribes the eligibility conditions or qualifications for appointment as District Judge, High Court Judge or Supreme Court Judge. According to Article 233 (2) of the Indian Constitution, “a person not already in the service of the Union or of 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 and is recommended by the High Court for appointment.” Under Article 217 (2), “No person shall be qualified to be appointed as a Judge of a High Court unless he is a citizen of India and has for at least ten years held a judicial office in the territory of India or has for at least ten years been an advocate of a High Court”. Similar is the qualification for acquiring eligibility for appointment to the Supreme Court¹. But no such qualification and experience as an advocate or a pleader has been provided in the

¹ See 124 (3) (d) of the Indian Constitution.

Constitution under Article 234, for appointment or recruitment to the post of Civil Judge (Junior Division). Therefore, in view of this omission, the State Governments were free to fix any qualification and to follow any method of procedure for selection to the post².

For reference, the verbatim of Article 234 has been reproduced as follows:

Article 234 read as under **“Recruitment of persons other than district judges to the judicial service:**

Appointment of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with the rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to that State.”

From the above Article, it is crystal clear that the recruitment to the post of Civil Judge shall be made by the Rules framed by the Governor of the State after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to the particular State.

In view of the above provision, some of the States were recruiting fresh law graduates without insisting any experience at the Bar while other States insisted more than 4 to 5 years Bar experience. But, the Hon’ble Apex Court of India in *All India Judges Association Vs Union of India and Others*³ was not in favour of the different qualifications prescribed by different States and instead, suggested “to prescribe uniform qualifications⁴ and to adopt uniform procedure in recruiting the judicial officers at the lowest rung in the hierarchy since there are uniformity in the hierarchy and designations as well as the service conditions at the lower level of the judiciary.”

Pursuant to these directions, the following 21 States including the UTs have prescribed three years Bar experience in addition to a law degree as the minimum qualification⁵. The States and Union Territories are as follows

“Andhra Pradesh, Assam, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Punjab, Rajasthan, Sikkim, Tripura, Uttar Pradesh and West Bengal”

Karnataka and Tamil Nadu States, however, have prescribed four years put into practice as a lawyer in addition to a law degree⁶. Kerala State and U.T. of Lakshadweep have prescribed five years practice as the minimum qualification since the Supreme Court mandated only the minimum qualification⁷.

4. CONSTITUTION OF THE FIRST NATIONAL JUDICIAL PAY COMMISSION

The Hon’ble Apex Court of India in the above mentioned All India Judges’ Case directed *inter alia* that *“there should be a separate commission for determining pays scales of the judicial officers”*. As per the above direction, the Ministry of Law, Justice and Company Affairs (Department of Justice), of the Government of India constituted the First National Judicial Pay Commission⁸ (Popularly known as Shetty Commission) on 21st March, 1996, for the subordinate judiciary all over the country with the following task⁹.

- a)
- b)
- c) “To examine and recommend in respect of minimum qualifications, age of recruitment and method of recruitment for judicial officers. In this context, the relevant provisions of the Constitution and the direction of the Supreme Court in the All India Judges’ Association case and other cases may be kept in view”.
- d)

The Commission, after the due deliberation and taking into consideration every aspect, has submitted its report to the Supreme Court.

5. THE SHETTY COMMISSION-Vs-THREE YEARS PRACTICE AT THE BAR AS A PRE CONDITION TO ENTER INTO JUDICIAL SERVICE

The Commission seriously discussed and debated whether there is a need to prescribe three years practice at the Bar to enter into the lower judicial service. The discussion was made among the judicial fraternity and in the Government sides and this Commission after taking note of view of the Punjab and Haryana High Court, Allahabad High Court and

² See Article 234 of the Indian Constitution.

³ AIR 1993 SC 2493.

⁴ The Apex Court directed all States to take immediate steps to prescribe three years practice as a lawyer as one of the essential mandatory qualifications for recruitment of the judicial officer at the lowest rung.”

⁵ Source: Report of the First National Judicial Pay Commission, Point No.8.14 under Chapter: 8, Titled “Recruitment to the Cadre of Civil judges (Jr. Divn.) – Cum - Magistrates First Class.

⁶ Source: Report of the First National Judicial Pay Commission, Point No.8.15 under Chapter: 8, Titled “Recruitment to the Cadre of Civil judges (Jr. Divn.) – Cum - Magistrates First Class.

⁷ Source: Report of the First National Judicial Pay Commission, Point No.8.16 & 8. 18 under Chapter: 8, Titled “Recruitment to the Cadre of Civil judges (Jr. Divn.) – Cum - Magistrates First Class.

⁸ This Commission was headed by Justice Jagannatha Shetty, Former Judge, Supreme Court of India.

⁹ Source: Report of the First National Judicial Pay Commission, Point No.1.8 under Chapter: 1, Titled “Introduction”.

the Calcutta High Court including the Law Commission 116th Report in Chapter IV Para 4.4, and after largely sharing the views against the three years practice, This Commission came to the conclusion that if intensive training is given to young and brilliant law graduates¹⁰, it may be unnecessary to prescribe three years practice at the Bar as a pre condition for entering the lower judicial service¹¹.

6. SHETTY COMMISSION AND THE ALL INDIA JUDGES' ASSOCIATION (3) & ORS VS UNION OF INDIA AND ORS¹²

In this third round of Judges Association case, the Supreme Court of India thoroughly analysed the recommendation made by the Shetty Commission and approved the same with slight modification as mentioned in this judgment¹³. With respect to the prescription of minimum period of three years practice to enter into the judicial service, the Supreme Court of India held as follows:

“In the All India Judges Case MANU/SC/0391/1993: (1993) ILL J776SC, 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 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 years¹⁴.”

So as to implement the judgment, including the deletion of the three years practice the Supreme Court, made it clear that the existing rules to be amended suitably.¹⁵”

From the above, it is crystal clear that to ensure the uniform method of recruitment to the post of Civil Judge (Junior Division), the Shetty Commission was in favour of abolition of three years practice at the Bar.¹⁶” The Commission further considered that “it is proper and necessary to reserve liberty to High Court and State Governments, as the case may be, to select either Advocates with certain standing at the Bar or outstanding law graduates with aptitude for service. It is not correct to deny such discretion to High Authorities like, High Courts and State Governments¹⁷”.

7. TAMIL NADU STATE JUDICIAL SERVICE (CADRE & RECRUITMENT) RULES, 2007: CIVIL JUDGE (JUNIOR DIVISION) ELIGIBILITY CONDITIONS - A GLANCE

Pursuant to these directions and the recommendations, the Tamil Nadu Government amended the Tamil Nadu State Judicial Service (Cadre & Recruitment) Rules, 2007 (Hereafter referred to as Rule 2007) and prescribes the following qualifications under Rule 5 (9) for the post of Civil Judge (Junior Division):

The verbatim of the Rule is reproduced hereunder;

¹⁰ The term “brilliant law graduates” has not been defined by the commission. According to Rule 5 (3) (a) of the Maharashtra Judicial Service Rules, 2008 (*As Amended Up To 13.02.2014*), and The Goa Judicial Service Rule, 2013 (Column 4 to Serial No.3 to the Schedule to the Rule), “Fresh Law Graduate” means “a graduate who, (i) has secured the degree in law by passing all the examinations leading to the degree in the first attempt; (ii) has secured in the final year examination of the degree in Law or in the case of candidates holding Master’s Degree in Law in final year exam, not less than fifty five percent marks.”

¹¹ This Commission expressed its view on the Report of the 14 Law Commission recommending the 3 years practice at the Bar. The commission for deleting the three years practice at the Bar observed that the three years practice was evidently based on the then existing system of education. Further, the commission stated that the 14th Law Commission Report was submitted in 1958 when the LL.B degree course was only of two years duration for which the law practice as a subject was not in the curriculum. But in the present legal education system, the law practice is one of the subjects prescribed for the students. It would be, therefore, futile to prescribe three years practice as an advocate – See Point 8.30-32 of Chapter 8 of the First National Judicial Pay Commission

¹² MANU/SC/0251/2002 = AIR 2002 SC 1752.

¹³ See para 36 of the All India Judges Association (3) Case, 2002.

¹⁴ Para 31 of the All India Judges Association (3) Case, 2002.

¹⁵ para 37 of the All India Judges Association (3) Case, 2002.

¹⁶ To Know more reasons about the abolition of three years standing at the Bar, see Report of the First National Judicial Pay Commission, Point no. 8.33 & 8.34, Under Chapter: 8, Titled “Recruitment to the Cadre of Civil judges (Jr. Divn.) – Cum - Magistrates First Class.

¹⁷ See Report of the First National Judicial Pay Commission, Point no. 8.35, Under Chapter: 8, Titled “Recruitment to the Cadre of Civil judges (Jr. Divn.) – Cum - Magistrates First Class.

“(1) **Must possess a degree in Law** and (2) **“Must be practicing as an Advocate or Pleader in any court on the date of Notification for recruitment to the post *and must have so practiced for a period of not less than 3 years on such date*”**; (Or) **“Must be an Assistant Public Prosecutor having not less than 3 years of experience as an Advocate and/or Assistant Public Prosecutor. (and) Must have attained the age of 25 years and must not have attained the age of 35 years in the case of General Category and 40 years in the case of Reserved Categories, as on the 1st July of the year in which the vacancies in the posts are notified”**.

(or)

3) **Must be a fresh Law Graduate Possessing a degree in law from a recognized University**, who is eligible to be enrolled or enrolled as an Advocate and who has secured an overall percentage of 50% marks in acquiring such a law degree in case of open categories and 45% marks in respect of other reserved categories.

Fresh Law Graduates are those who have obtained the degree of law within a period three years prior to the date of notification (and) must have attained the age of 22 years and must not have completed the age of 27 years as on 1st July of the year in which the selection for appointment is made.

Explanation-

(1) **Persons who have enrolled as an Advocate, but do not possess three years of practice at the Bar would be eligible to appear in the recruitment for the post of Civil Judge, under the category of Fresh Law Graduates, provided they satisfy the other requisite eligibility criteria.**

From the above, one may come to the conclusion that the Rule, 2007 prescribes two different types of qualification for the same post. One qualification is that the judicial post aspirants (i) must be a practicing advocate or Pleader in any court on the date of notification *and (ii) must have so practiced for a period of not less than 3 years on such date* (or) he must be an Assistant Public Prosecutor (APP) having not less than 3 years of experience as an Advocate and/or Assistant Public Prosecutor.

The second qualification is that (i) he **must be a fresh Law Graduate**¹⁸ (ii) **must be eligible to be enrolled or enrolled as an Advocate and (iii) must have secured an overall percentage of 50% marks in acquiring such a law degree in case of open categories and 45% marks in respect of other reserved categories and (iv) must have attained the age of 22 years and must not have completed the age of 27 years as on 1st July of the year in which the selection for appointment is made.**

8. ANALYSIS OF RULES, 2007

Whether the prescription of two different types of qualification for the same post is constitutionally valid?

The answer to the question is “not affirmative”. It is constitutionally invalid for the following reasons. The first reason is that the Article 14 of the Indian Constitution permits only the reasonable classification¹⁹. The classification should pass the two tests (i) *intelligible differentia* and (ii) the differential classification should have *nexus to the object sought to be achieved* through that differentiation. If the two tests are satisfied, then the classification would be valid.

Let us now discuss the Rule, 2007. From the above Rule, 2007, it is very clear that the Civil Judge aspirant (i) should be a *practicing advocates as on date of notification and must have so practised for a period of not less than three years*. Or (ii) he must be a fresh law graduates who is eligible to be enrolled as an advocate.

If we give plain meaning to the above Rule, 2007, an advocate who had practiced for three years or more than three years and subsequently accepts any job either in private or in government; he is ineligible for the post even though he is otherwise eligible for the post. But, on the other hand, if he is a fresh law graduate who have obtained the law degree within a period of three years from the date of notification and who is eligible to enrol as an advocate (not even enrolled as an advocate) and have not completed the age of 27 years does not need to be a practicing advocate.

When recruitment of bright & effective law graduates to the post of Civil Judge being the common objective for the post of Civil Judge in the TN Judicial Service, the classification sought to be introduced between Practicing Advocate/Pleaders and Assistant Public Prosecutors and Fresh Law Graduates is neither reasonable nor does it carry any nexus towards any object sought to be achieved and hence it is highly arbitrary and not sustainable and liable to struck down as null and void being violative of Articles 14, 15, 16 and 21 of the Indian Constitution.

Further, the Rule, 2007 permitting Fresh Law Graduates who have obtained Bachelor’s Degree of Law within a period of three years prior to the notification and who are eligible to be enrolled as an Advocate (who are not even enrolled and practiced law in any courts) to apply to the post of Civil Judge and denying the same to persons who have practiced and subsequently opted any service which is suitable to his qualification after putting in sufficient practice in courts under the category ‘Practicing Advocate / Pleaders and Assistant Public Prosecutors invokes an element of discrimination among them for the purpose of entry into Judicial Service and the same is violative of Articles 14, 15 & 16 of the Constitution of India.

¹⁸ Fresh Law Graduate is a person who have obtained the law degree within a period three years prior to the date of notification

¹⁹ By ‘reasonable’, it is meant that the classification must not be arbitrary but must be rational.

To fortify the above view, the authors wish to state that the views of the Hon'ble Gujarat High Court. The Division Bench of the Gujarat High Court in the case of *Hardik Bharatbhai Trivedi Vs State of Gujarat*²⁰, held as under:

“If a bright young law graduate is made eligible for the post of Civil Judge immediately after his entry into the practice in the court, equally, there is no reason to require a bright young law graduate who opts for service, to have 5 years of experience so as to become eligible to seek entry into the Judicial Service. All the law graduates, after their completing degree in law constitute single class for the purpose of recruitment to the post of Civil Judge. There cannot be any discrimination among them who constitute a single class for the purpose of entry into Judicial Service. As we are of the view that all fresh law graduates constitute a single class for the purpose of entry into Judicial Service, the impugned rule to the extent of requiring 5 years of experience for candidates who are seeking entry into Judicial Service, while serving in the courts or allied departments, is discriminatory and arbitrary and such rule is in violation of the rights guaranteed under Article 14 of the Constitution of India.”

In yet another point of view, if we put it differently, the interpretation to the Rule, 2007 to the sentence that “the Civil Judge aspirant should be a practicing advocate as on date of notification and (ii) must have so practised for a period of not less than three years.”

The word “must have” denotes the ‘present perfect tense’. That means, the civil judge aspirant need not to be a practicing advocate but on the other hand, he must have practiced for a minimum period of not less than three years to enter into a lower judicial service, since it is well settled rule of construction “that where the language of a statutory provision is susceptible of two interpretations, the one which promotes the object of the provision, comports best with its purpose and preserves its smooth working, should be chosen in preference to the other which introduces inconvenience and uncertainty in the working of the system²¹”.

Therefore, according to our view and analysis, the Rules and the words “practicing advocate” should be interpreted to mean that “one who had practiced for a period of not less than 3 years are a practicing advocate and he need not to be continuing practicing advocate”.

9. WHETHER THE “LAW TEACHERS” ARE ELIGIBLE TO APPLY FOR THE CIVIL JUDGE POST UNDER THE RULE, 2007?

The answer to the above question is very blank, since the Rule 9 (5) (2) of Rules, 2007 mentions only the “practicing Advocate” or “Pleader” in any court on the date of Notification or Assistant Public Prosecutor (APP). There is no mentioning about the law teachers and there is no prohibition, according to the authors view to be mentioned herein after, for the law teachers to apply for the post of Civil Judge (Junior Division).

The reasons are as follows:

1. The teachers in law are better placed in the legal acumen when comparing the law students who have no experience or who are made eligible even when they are novice. The law teacher is a teacher who has a high caliber, talent, ability, competency, proficiency, qualifications and deals with the legal principles in their class room teaching to the learners. The learners (students) are taught by the teacher. When the learners are eligible, is it justifiable to deny the same right to apply to the teachers who teach the learners?

“No doubt, what should be the qualification prescribed for a post is within the realm of the rule making authority. But, if the qualification prescribed has absolutely no rationale with the object sought to be achieved and such a qualification results in discrimination or the classification prescribed is unreasonable or arbitrary, certainly the Court is entitled to examine the validity of such a rule with reference to examine the validity of such a rule with reference to the parameter laid down under Article 14 and 16 (1) of the Constitution of India²²”.

As per Rule, 2007 “the object of selection is to pick up the candidates who are more suitable to the Civil Judge post. Under these circumstances, it will be highly unreasonable and discriminatory in nature to prevent the persons, who have acquired higher qualification and who have academically attained higher achievements and are superior to their counter parts²³”.

2. The word “practice” has not been defined either in the Rule, 2007 or in the Civil Judge Notification. What is meant by “practice”? Whether mere appearance in Courts or coming to Court premises amounts to court practice? Or Are Assisting the senior in carrying the case bundle and stand before the Court for asking the adjournment amounts to practice? Or put it differently, if an advocate who is actually practicing in Court and if he becomes bedridden and not able to appear before the court continuously for a period one month i.e., at the time of notification for the post of Civil Judge, is he not a practicing advocate?

²⁰ Manu/GJ/0379/2017.

²¹ State of Gujarat Vs. Chaturbhuj Maganlal, AIR 1976 SC 1697.

²² K.Narasimha Murthy & Others Vs. Karnataka Public Service Commission, W.P.NOS. 9425, 10625, 11006, 11746 & 12651/1999, D.D. 23.2.2000.

²³ K.Narasimha Murthy & Others Vs. Karnataka Public Service Commission, W.P.NOS. 9425, 10625, 11006, 11746 & 12651/1999, D.D. 23.2.2000.

What is the correct meaning of the term “practice”? In the absence of any clear cut definition, we the authors refer to some of the leading cases to know the true meaning of the term “practice”.

The Hon’ble Supreme Court of India in *Bar Council of India Vs A.K Balaji*²⁴ referring to ‘*Pravin C. Shah Vs. K.A. Mohd. Ali*²⁵, observed that “the right to practice is genus of which the right to appear and conduct cases is specie”. It was further observed that: “*The right of the advocate to practice envelops a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in Courts, he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments pleadings, affidavits or any other documents, he can participate in any conference involving legal discussion etc*”. Further, the Hon’ble Apex Court held that “*the practice of law includes not only appearance in courts but also giving of opinion, drafting of instruments, participation in conferences involving legal discussion. These are parts of non-litigation practice which is part of practice of law*²⁶.”

The Hon’ble High Court of Judicature, Madras in the case of *A.K. Balaji Vs Government of India and others* has held that “the term ‘practice’ would include both litigation as well as non litigation work, which is better known as chamber practice”. Therefore, rendering advice to a client would also be encompassed in the term ‘practice’.

In *M. Sivasakthi and Ors. Vs. The Secretary. Tamil Nadu Public Service Commission and Ors*²⁷, the Hon’ble Division Bench of the Madras High Court held that “Practice does not mean appearing in Courts only. One can even practice by making himself available for consultation and by giving legal opinion so long as he/she remains on the rolls as an Advocate.”

From the above analysis, we the authors, submit that the teaching field requires special knowledge of law to teach the young talented law students²⁸ and while teaching law, the law faculties are involved in legal discussion, debates, giving interpretation, re-interpretation to laws, analyzing the legal concepts and also discussing the contemporary legal issues, attending Workshops, Seminars and Conferences in which they are discussing legal issues, explore the lacunae in the laws and suggest solutions. Therefore, there is no iota of doubt that the law teacher is also practicing the law. But, the practical thing is that the law teachers are not allowed to apply for the post of Civil Judge (Junior Division) in the State of Tamil Nadu Judicial Service.

For information, the authors aspire to state that in The Kerala Judicial Service Rules, 1991, out of every four vacancies, one vacant are reserved under the feeder category for the full time law lecturers in Government law colleges²⁹. Further, an officer in service shall also be eligible for appointment under the direct recruitment category.

10. THE RULES WHERE “NO EXPERIENCE” HAVE BEEN PRESCRIBED AND “IN-SERVICE CANDIDATES” ARE ALLOWED: AN ANALYSIS

According to The Kerala Judicial Service Rules, 1991 the recruitment is made from two sources (i) By Direct Recruitment, (ii) Feeder category /By Transfer. To qualify for the civil judge (Junior Division) direct recruitment, “a candidate must be a holder of a degree in law recognized by the Bar Council of India for the purpose of enrollment as an advocate and he must not have completed the age of 35 years³⁰”. Further, the Kerala Rule says that “an officer in service shall be eligible for appointment to category (2) only if he is a holder of a degree in law recognized by the Bar Council of India for the purpose of enrollment as an advocate”.

From the above it is vividly apparent that to compete with the Civil Judge Examination the mere possession of a law degree is suffice. No experience or no question of enrollment or fresh candidates arose. All persons holding a law degree are eligible to take up the civil judge examination.

The same qualification has, with slight variation, been prescribed by the Karnataka Judicial Service (Recruitment) Rules, 2004 and amended Rules, 2011, 2015 and 2016. Under this Rules, the Civil Judge aspirant must have enrolled as an advocate and under the In-service candidates category, the staffs working in Courts are made eligible provided they are having a degree in law. The Rule is sub-silentio as to whether candidates who have enrolled and subsequently accepted any other government job other than ministerial job are eligible to compete with the said examination.

²⁴ MANU/SC/0239/2018.

²⁵ MANU/SC/0622/2001.

²⁶ Lawyers Collective Vs Bar Council of India & Others, MANU/MH/0846/1995.

²⁷ MANU/TN/3836/2009.

²⁸ As per the Shetty Commission Report as accepted by the Supreme Court of India, In all India Judges Association case (3), if intensive training is given to the young and brilliant law graduates with brilliant academic career to opt for the service, why not the same training should not be given to the law teachers?

²⁹ See Rule 5 (3) (vii) and also the explanation to it. According to this explanation “any person who is otherwise qualified for appointment but is not holding any of the post enumerated in item (ii) to (viii) of this sub-rule at the time of his application, shall be eligible for appointment, if he has held any one or more of such post at any time for the prescribed number of years and is holding a post in a higher scale of pay in any of the offices from which appointment is to be made”.

³⁰ Rule 10: Qualifications (substituted by S.R.O 660/2006), The Kerala Judicial Service Rules, 1991.

The Chhattisgarh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 2006 says the candidates should possess a degree in law of any recognized University³¹. Interestingly, in this Rule, for the Government servant whether permanent or temporary, the age relaxation has further, been given upto 3 years in addition to the Relaxations available under the Rules, 2006³². Under this Rules also, mere possession of a law degree is enough like the Kerala Judicial Service Rules, 1991.

11. THE RULES WHERE EXPERIENCE HAVE BEEN PRESCRIBED: AN ANALYSIS

When we analyse the Bihar Civil Service (Judicial Branch) Recruitment Rules, 1955, it comes to know that it is mandatory for the Civil Judge aspirant to be a practitioner at Bar of at least one year's continuous standing on the date of the advertisement³³. Further, the Rules says that “persons who hold posts in Government service in a temporary or officiating capacity or on probation including temporary or officiating Munsifs are eligible to offer themselves for examination³⁴”.

According to The Delhi Judicial Service Rules, 1970 (As amended upto 4.1.2010), “A person practicing as an Advocate in India or a person qualified to be admitted as an Advocate under the Advocates Act, 1961 shall be eligible for the examination³⁵”.

Under this Rules, it is not clear as to whether a person who have enrolled as an advocate and not practicing presently, but practiced earlier or who have enrolled but never ever practiced as an advocate is eligible for the examination or not? Because, the plain reading of the Rules makes it crystal clear that “to compete with the examination either he should be a “practicing Advocate or a person qualified to be admitted as an Advocate under the Advocates Act, 1961”. The term “qualified to be admitted as an advocate” according to the Advocates Act, 1961, means “a person who has not enrolled as an advocate or who is eligible to make an application for enrollment as an advocate³⁶”.

The Gujarat State Judicial Service Rules, 2005 as amended in 2017 stipulates that “the aspirant must be practicing as an advocate in Courts of Civil and /OR Criminal Jurisdiction on the last date fixed for the receipt of the application”; or “must be working in the Courts or in other allied departments on the last date fixed for the receipt of the application”.

As per this Rule, no minimum years of practice have been prescribed. The Rule simply says that the candidate who wishes to apply for the post must be either (i) practicing advocate or (ii) must be working in the Courts or other allied departments on the last date fixed for the receipt of the application. The Rule is also mere spectator as to whether the candidates working, after having a law degree, in other departments (including the legal education department as a teacher of law) other than the Courts or other allied departments, in the State Government service are eligible for the post?

12. THE RULES WHERE “FRESH LAW GRADUATES” AND “ADVOCATES WITH CERTAIN EXPERIENCE” AND THE “MINISTERIAL STAFF” ARE ELIGIBLE

According to The Goa Judicial Service Rule, 2013, the Civil Judge aspirants either “must have practiced as an Advocate in the High Court or Courts subordinate thereto for a period of three years or he must be a fresh Law Graduate who has secured the degree in law by passing all the examinations leading to the degree in the first attempt and has secured in the final year examination of the degree in Law or in the case of candidates holding Master’s Degree in Law at final LL.M. Examination not less than fifty five percent marks”.

Under this Rule, a candidate who have obtained a law degree without any arrears in all the examination and secured 55% marks in final year examination would be considered as a fresh law graduates. No cut off dates (age) has been prescribed as prescribed in the Tamil Nadu State Judicial Service Rules, 2007.

Further, this Rule allows the In-service candidates who are member of Ministerial staff of (i) the High Court or of Courts subordinate thereto; OR (ii) the Offices of the Government Pleaders attached to those Courts; OR who is working as Superintendent in the High Court of Bombay at Panaji or in Courts subordinate thereto in Goa and holding a Degree in Law or Sub Registrar or District Registrar in Goa and holding a Degree in Law or Legal Assistant in the Law Department of the Government of Goa or Superintendent (Legal/Drafting) in the Law Department of the Government of Goa, for not less than 5 years in the post or posts are also made eligible for the civil judge post. The

³¹ Rule 7 (c) of the Chhattisgarh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 2006

³² See third proviso to Rule 7, Chhattisgarh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 2006.

³³ See Part II Direct Recruitment- Rule 6

³⁴ See Part II Direct Recruitment, Note clause to - Rule 6.

³⁵ See Rule 14 (b) under Part – IV Recruitment as amended vide Govt. of NCT Delhi’s Notification No.6/15/85-Judl. Vol.I, Dated 17.5.2002.

³⁶ See section 24 of the Advocates Act, 1961.

same conditions are also prescribed both by the Maharashtra Judicial Service Rules, 2008 (As Amended Up To 13.02.2014)³⁷ and The Bombay Judicial Service Recruitment Rule, 1956 (as amended from time to time)³⁸.

The above three Rules, according to the authors' analysis, does not pave a way for the other government servants who have not come within the purview of ministerial staff working in Courts and other allied departments including the law teachers who are working in the law colleges or in the National Law Schools/Universities.

As per The Jammu and Kashmir Civil Services (Judicial) Recruitment Rule, 1967, A candidate for recruitment to the service must have put atleast three years actual practice at the Bar by the date on which he submit his application for such recruitment and must produce a certificate to this effect from the district Judge within the local limits of whose jurisdiction he has practiced at the bar³⁹.

Even under this Rule, only three years Bar experience has been prescribed and there is no question of fresh law graduates arise and as such this Rule is free from any ambiguity or carries no discrimination.

13. THE RULES WHERE "MERE POSSESSION OF LAW DEGREE" IS SUFFICE FOR DIRECT RECRUITMENT

Apart from the Kerala Judicial Service Rule, 1991 and The Chhattisgarh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 2006, The Uttar Pradesh Judicial Service Rules, 2001, The Meghalaya Judicial Service Rules, 2006, Madhya Pradesh Judicial Service [Recruitment And Conditions Of Service] Rules, 1994 (As Amended Till Date), The Sikkim Judicial Service Rules, Rajasthan Judicial Service Rule, 2010 as amended upto 27.12.2018⁴⁰, The Manipur Judicial Service Rule, 2005⁴¹, Himachal Pradesh Judicial Service Rules, 2004 as amended in 2016⁴², The Assam Judicial Service Rules, 2003⁴³, The Arunachal Pradesh Judicial Service Rules, 2006⁴⁴, and the Punjab Civil Service (Judicial Branch) Rules, 1951 (Up-dated upto 10.10.2017)⁴⁵, are also Prescribe only one qualification namely, Must be holder of a degree in law granted by a recognized University AND no experience has been prescribed by these Rules to compete with the Civil Judge (Junior Division) examination. Mere law degree is enough.

From above it is categorically clear that some State Governments allow persons who have the law degree irrespective of whether they are in-service or not or allows persons who had practiced for a minimum period of three years in any courts in India. One or two States allow the fresh law graduates who had passed the degree in law *sans* arrears and secured 55% marks in U.G or P.G Degree. The only dilemma exists in the Tamil Nadu State judicial Service (Cadre & Recruitment) Rules, 2007 where the Rules are made without any logic or *sans* application of legal mind.

The Rules, 2007 on the one hand, insist that the advocate must be a practicing advocate on the date of notification and must have so practiced for a period of not less than 3 years. There is no full stop for the practice. Till he gets the civil judge post, the civil judge aspirant should not deviate from his practice. If he deviates from practice even after he had practiced for a period of three years or more than three years, he will not be considered under the practicing advocates and as such he will become as ineligible to apply for the post.

Per contra, the other part of the Rules says that the Civil Judge aspirant (i) must be a fresh law graduate and (ii) the law graduate must be within 27 years of age and (iii) must have obtained the law degree within a period of three years from the date of notification.

More interestingly, the Rule says, if a candidate gets the law degree *i.e* fresh law degree after 27 years, he will not be considered as a fresh law graduates, even though he gets the degree within the period of three years from the date of notification as stipulated in the Rules, 2007.

The authors does not think that when the Report of the Shetty Commission as accepted by the Hon'ble Apex Court of India fixes the maximum age limit for the post of Civil Judge (Junior Division) as 35 years, does the Tamil Nadu Government thinks that after the age 27 years the minds of the civil judge aspirants cannot be moulded? No doubt, the fixation of age limit is well within the domain of the executive authority and the court should not ordinarily be interfere with the fixation of the cut-off date. But at the same time if the cut-off date is blatantly discriminatory and arbitrary, then it may struck down by the Courts⁴⁶. It is to be borne in mind that even after 27 years of age, since they are having talent and aptitude; they are passing the degree in law without any arrears.

³⁷ Rule 5 (3) (a) of the Maharashtra Judicial Service Rules, 2008 (As Amended Up To 13.02.2014)

³⁸ See, Method of recruitment to the junior branch: Rule 4 (i) of The Bombay Judicial Service Recruitment Rule, 1956 (as amended from time to time).

³⁹ See Part – III : Qualifications, Rule 8 & 9.

⁴⁰ Rule 17 Rajasthan Judicial Service Rule, 2010 as amended upto 27.12.2018.

⁴¹ Rule 7 (3), The Manipur Judicial Service Rule, 2005.

⁴² Rule 5 (3), Himachal Pradesh Judicial Service Rules, 2004 as amended in 2016.

⁴³ Rule 7 (3) (1), The Assam Judicial Service Rules, 2003

⁴⁴ Rule 7 (3) (1), The Arunachal Pradesh Judicial Service Rules, 2006

⁴⁵ See Part – A – Qualifications: Rule 2 & 3.

⁴⁶ State of Punjab Vs Amar Nath Goyal, (2005) 6 SCC 0754.

Therefore, the Judgment passed in *M. Nandini Vs State of Tamil Nadu and Others*⁴⁷ by the Hon'ble High Court of Judicature, Madras in view of recommendation made by the Hon'ble Shetty Commission⁴⁸ requires re-consideration. Further, the authors contend that the fixation of two maximum age limits (one is 27 years for fresh law graduates and the other is 35 years for the advocates) for the same post is violative of Article 14, 15,16 and 21 of the Indian Constitution.

14. SUGGESTIONS AND CONCLUSION:

We, the author respectfully conclude that the law is practically considered as a profession that is heavily requires intellectual. Law is certainly also an onerous profession. India's lawyers and Judges, for decades, have shown great skill as well as extra ordinary intellectual flair. The Courts certainly deserves the best knowledge and understanding of the law. The law faculties who are having sufficient experience in the bar and becoming a law faculty are in a brilliant situation to facilitate that. The law teacher are always involving in legal discussion, debates, conducting moots courts, giving legal advice to the general public by running legal aid clinic in Institutions and also attending and participating in legal seminars and conferences. Therefore considering the law faculties capabilities and qualifications and other in-service candidates past experience at the Bar, the authors suggest the following uniform measures in Judicial Service Rules:

- Entry 2 to Column 4 to S. No. 9 of Rule 5 of the Schedule to the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rule, 2007 and the age limit for the respective categories (advocate and fresh law graduate categories) may be suitably amended to fix as 35 years so as to include all the candidates who have law degree, since intensive training is given as recommended by the Hon'ble Shetty Commission as accepted by the Hon'ble Apex Court of India, for the judicial service aspirants. No prejudice will be caused in inducting the law graduates who are not practicing at the time of notification for any reasons what so ever.
- The term "Fresh Law Graduates" may be defined in the Rule, 2007 in consonance with the Maharashtra Judicial Service Rules, 2008 and The Goa Judicial Service Rule, 2013 or the "Fresh Law Graduates" category may be deleted for the reasons stated by the Bar Council of India in its press release dated: 22.11.2019⁴⁹.
- In-service candidates and the law teacher who had minimum period of three years Bar experience shall be allowed to compete with the Civil Judge (Junior Division) Examination. To this effect, the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rule, 2007 may be suitably amended.
- The Second National Judicial Pay Commission (*though the Commission was entrusted with the task of examining the subordinate judicial service working conditions*) may consult with the law teachers and other law graduates who works in any post under the Union or State to imbibe them into the Lower and the Higher Judicial Service {Civil Judge (Junior Division) & District Judge (Entry level)} in near future.
- All the State Governments, High Courts and the Second National Judicial Pay Commission may consider the law teachers to make them eligible to compete with the Higher Judicial Service Examination (District Judge – Direct Entry) in view of the absence of the term "practice" in Article 233 (2) of the Indian Constitution and in view of explanation (aa) to Article 217 of the Constitution.

⁴⁷ WP.No. 11770 of 2018 and WP (MD) No: 8640, 8657, 9352, 9764,10343, & 10529 of 2018, Paras 29 and 30.

⁴⁸ The recommendation of the Shetty Commission with respect to age limit, Under Chapter 8 are as follows: 8.40 While recommending the maximum age for recruitment of Civil Judges (Jr. Divn.), it is necessary to bear in mind the maximum age suggested by the Commission for direct recruitment of District Judges. There, we have indicated that the candidates should be between 35 and 45 years. Therefore, it is not proper to prescribe any age beyond 35 for selection to Civil Judges (Jr. Divn.).

8.41 Generally, persons with uninterrupted education would be able to graduate themselves at 21 years and complete the three years law degree course by 24 years. If we insist three more years of practice as a pre-condition for recruitment, then, they would be completing that period by 27 years. But this may be possible only for urban students. The rural students will have their own inherent disadvantage. We have, therefore, to give some more margin while fixing the maximum age.

8.42 Secondly, every year, there is no recruitment to the Civil Judge (Jr. Divn.) cadre. Advocates may have to wait for the advertisement for a couple of years after completing the three years Bar practice.

8.43 Having regard to all these facts and circumstances, it seems to us that the candidate for recruitment in terms of age must be below 35 years. He will then have reasonable period of twenty five years of service.

8.44 We accordingly suggest to all States and High Courts to fix 35 years as the maximum age for eligibility for selection to the cadre of Civil Judges (Jr. Divn.) with relaxation by 3 years for SC/ST candidates.

8.45 It is not necessary to prescribe any minimum age in this regard.

⁴⁹ The BCI is proposing to make an application for review of the judgment of the Supreme Court if it is approved by the joint meeting. In its press release it is stated that "The Bar and the litigants are facing a lot of problems due to lack of experience of the newly appointed Judicial Officers/Munsifs and Magistrate. The training in Judicial Academies is insufficient, unless they get experience at the Bar, the press release further asserts.