



Distinguished Jurist Provision: Reviving an Unused Constitutional Route to Diversify India's Supreme Court Bench

Published On: 07-09-2026

Recent Development:

- **Justice Ujjal Bhuyan**, Judge of the Supreme Court of India, recently highlighted the continued non-use of the **"distinguished jurist"** route for appointment to the Supreme Court while addressing the **13th Convocation of National Law University Delhi** on 30 August 2026.
- He observed that although the Constitution has been in force for more than **76 years**, no legal academic or jurist has so far been appointed to the Supreme Court through this constitutional route. He described the provision as an **"unused mandate"** requiring renewed public and academic debate.
- The issue is significant because the Constitution deliberately permits a person with exceptional **legal and juristic scholarship** to enter the Supreme Court even without the conventional background of serving as a High Court judge or practising as a senior advocate.
- Justice Bhuyan argued that distinguished jurists could introduce greater **intellectual diversity, comparative legal scholarship and theoretical depth** into constitutional adjudication.

Constitutional Framework:

Article 124 and Eligibility for Supreme Court Judges:

- **Article 124** deals with the establishment and constitution of the **Supreme Court of India**.
- Under **Article 124(3)**, a person must be a citizen of India and satisfy at least one of the prescribed qualifications for appointment as a Supreme Court judge:
- The person must have been a **High Court judge for at least five years**, including service in two or more High Courts in succession.
- The person must have been an **advocate of a High Court for at least ten years**, including practice in two or more High Courts in succession.
- The person must be, **in the opinion of the President, a distinguished jurist**.
- The first two routes have historically supplied the overwhelming majority of Supreme Court judges, whereas the **distinguished jurist route has never been utilised**. The Department of Justice also confirms these three constitutional eligibility categories.
- The provision is therefore not a constitutional amendment proposal or an alternative created by judicial practice; it is an **existing constitutional eligibility route**.

Appointment Procedure and the Collegium:

- Although Article 124 uses the expression **"in the opinion of the President"**, the contemporary appointment process operates through the **Memorandum of Procedure and the judicially evolved Collegium system**.
- The Department of Justice states that appointments to the Supreme Court and High Courts are governed by Articles **124, 217 and 224**, together with the procedure developed following the **Second Judges Case (1993)**

and **Third Judges Case (1998)**.

- The initiation of proposals for appointment to the Supreme Court rests with the **Chief Justice of India**, acting through the Supreme Court Collegium.
- Consequently, activating the distinguished-jurist route would require the category to be meaningfully considered within the existing **constitutional and Collegium framework** rather than treating the President's role as an independent appointment mechanism.

Who Is a Distinguished Jurist?

Meaning and Constitutional Character:

- The Constitution **does not expressly define** the expression “distinguished jurist”.
- In constitutional discourse, it generally refers to a person possessing exceptional expertise in **jurisprudence, constitutional law, legal theory, legal education or advanced legal scholarship**.
- The provision potentially permits the elevation of an eminent legal academic who may not have accumulated the conventional experience of serving as a judge or practising advocate for the prescribed period.
- The category therefore expands the intellectual pool available for the Supreme Court beyond the traditional **Bench-Bar pipeline**.

Constituent Assembly Background:

- The idea emerged during the **Constituent Assembly debates** when **H. V. Kamath** proposed widening the pool of candidates eligible for appointment to the Supreme Court.
- Kamath argued that outstanding juristic learning was not necessarily confined to judges and practising advocates and referred to the **International Court of Justice** as a comparative example.
- The relevant constitutional provision was adopted by the Constituent Assembly in May 1949.
- **Dr. B. R. Ambedkar** supported the broader principle, demonstrating that the framers contemplated intellectual diversity within the higher judiciary.

Why the Distinguished Jurist Route Matters:

Diversification of the Supreme Court Bench:

- The Supreme Court performs functions extending beyond ordinary dispute resolution because it interprets the **Constitution, Fundamental Rights and major questions of public law**.
- Legal academics can contribute perspectives shaped by **research, comparative constitutionalism and interdisciplinary scholarship**, rather than predominantly courtroom experience.
- A broader recruitment pool can strengthen the intellectual diversity of constitutional adjudication.

Strengthening Constitutional and Public-Law Adjudication:

- Contemporary constitutional litigation increasingly involves questions concerning **privacy, technology, artificial intelligence, federalism, environmental governance, economic regulation and institutional accountability**.
- Distinguished jurists with specialised expertise can contribute deeper theoretical frameworks and comparative jurisprudential analysis to such questions.
- Their academic orientation may help the Court examine the **long-term constitutional consequences** of legal doctrines rather than focusing exclusively on immediate litigation.

International Experience:

- The appointment of academics to constitutional courts is not unprecedented globally.
- Justice Bhuyan referred to jurisdictions including the **United States, United Kingdom, Canada and Kenya**, where distinguished academics have entered constitutional adjudication.

Kamaraj IAS Academy

Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthi Colony, Anna Nagar, Chennai, Tamil Nadu 600040

Phone: **044 4353 9988 / 98403 94477 / Whatsapp : 09710729833**

- The United States has historically provided prominent examples of academics entering the Supreme Court, including **Felix Frankfurter**, a Harvard Law School professor before his appointment in 1939.

Why Has India Not Used the Provision?

Limited Institutional Exploration:

- One possible explanation is that successive governments and, later, the **Collegium system** have not seriously developed a mechanism for identifying and evaluating distinguished jurists.
- The absence of an established selection pathway can itself discourage consideration of candidates outside the traditional judicial and practising-Bar communities.
- Justice Bhuyan suggested that either Indian legal academia has not been sufficiently considered for such appointments or the constitutional possibility has simply not been adequately explored.

Absence of a Parallel High Court Route:

- **Article 217**, which governs High Court judges, does not currently contain a corresponding “distinguished jurist” category.
- A provision permitting such appointments to High Courts was inserted through the **42nd Constitutional Amendment Act, 1976**, but was subsequently removed by the **44th Constitutional Amendment Act, 1978**. The amendment text confirms that the 42nd Amendment had inserted the distinguished-jurist qualification into Article 217.
- This creates an unusual institutional situation in which a legal academic may theoretically qualify for direct consideration by the Supreme Court but has no equivalent constitutional pathway into the High Courts.

Practical Experience Debate:

- A conventional objection is that academics may lack sufficient **courtroom and litigation experience**.
- Justice Bhuyan rejected this as an inadequate justification, arguing that the value of a distinguished jurist lies precisely in the intellectual and scholarly contribution that differs from conventional judicial experience.
- However, practical concerns remain relevant because Supreme Court judges routinely deal with complex procedural, evidentiary and institutional questions in addition to constitutional theory.

Bar and Academic Career Structure:

- The professional structure of legal education and legal practice can also create separation between **full-time academic careers and active courtroom practice**.
- Bar regulations and professional restrictions may make it difficult for a full-time academic to maintain the same level of litigation exposure as a practising advocate.
- This institutional separation can reduce the number of candidates who simultaneously possess **exceptional scholarship and substantial courtroom experience**.

Judicial Seniority and Succession:

- The Supreme Court has traditionally developed a strong convention of judicial seniority in the elevation of the **Chief Justice of India**.
- A younger academic entering directly through the distinguished-jurist route could raise questions about seniority, future succession and integration with the existing judicial hierarchy.
- Such considerations do not invalidate Article 124(3), but they represent an institutional challenge that would require a clearly articulated appointment framework.

Alternative Use of Academic Expertise:

Kamaraj IAS Academy

Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthi Colony, Anna Nagar, Chennai, Tamil Nadu 600040

Phone: **044 4353 9988 / 98403 94477** / Whatsapp : **09710729833**

- The judiciary already draws upon specialised academic expertise through mechanisms such as appointment of **amicus curiae**, particularly in technically complex or constitutionally significant cases.
- This provides the Court with expert assistance without requiring academics to become judges.
- However, an amicus participates in a **supportive capacity**, whereas a judge directly participates in constitutional decision-making and formulation of binding judicial doctrine.

Way Forward:

Institutionalising a Transparent Selection Framework:

- The Supreme Court Collegium and the executive could develop transparent criteria for identifying potential **distinguished jurists**, including standards relating to scholarship, constitutional expertise, teaching, publications, public-law contribution and professional integrity.
- A structured database of eminent legal scholars could help prevent the provision from remaining merely theoretical.

Expanding the Talent Pool:

- Candidate identification should extend beyond conventional senior advocates and sitting judges to include **constitutional scholars, legal academics, comparative-law experts and interdisciplinary legal researchers**.
- Diversity should be understood not merely in demographic terms but also in terms of **professional background, intellectual orientation and areas of expertise**.

Strengthening Academic-Judicial Linkages:

- Greater interaction between universities, constitutional courts and legal institutions can create a stronger ecosystem for identifying scholars capable of contributing to judicial decision-making.
- Academic experts can also participate through research, law commissions, expert committees and judicial assistance mechanisms before being considered for direct elevation.

Balancing Scholarship with Judicial Competence:

- Academic distinction alone should not become an automatic qualification for judicial appointment.
- Selection should examine whether a candidate possesses **constitutional judgment, independence, integrity, practical legal understanding and the ability to decide contentious disputes**.
- The objective should therefore be to complement, rather than replace, the existing Bench-Bar route.

Constitutional and Governance Significance:

For Indian Polity:

- The debate demonstrates that constitutional provisions may remain **operationally dormant without being constitutionally redundant**.
- Article 124(3)(c) represents an example of the Constitution preserving institutional flexibility for circumstances that may arise in the future.
- Its non-use raises broader questions about the relationship between **constitutional text, judicial conventions and institutional practice**.

For Judicial Diversity:

- The debate provides an opportunity to reconsider whether the composition of the Supreme Court adequately reflects the diversity of India's legal knowledge ecosystem.

- Greater participation of legal scholars could strengthen **constitutional reasoning, doctrinal development and evidence-based adjudication**.

Value Addition for UPSC:

- **Constitutional Provision:** Article 124(3)(c) permits a distinguished jurist to qualify for appointment as a Supreme Court judge.
- **Current Issue:** Justice Ujjal Bhuyan highlighted the non-use of this route after more than 76 years of constitutional operation.
- **Constituent Assembly:** H. V. Kamath advocated widening the eligibility pool beyond judges and practising advocates.
- **High Court Contrast:** The distinguished-jurist provision inserted into Article 217 by the 42nd Amendment was removed by the 44th Amendment.
- **Institutional Context:** Supreme Court appointments currently operate through the **Collegium-based Memorandum of Procedure** developed after the Second and Third Judges Cases.
- **Core Analytical Question:** The non-use of Article 124(3)(c) raises an important debate between **constitutional flexibility and institutional convention** in the appointment of higher-judicial authorities.