

Conundrum of Unused Provision of the Constitution- Distinguished Jurist

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Abstract

Despite the fact that it has almost been 72 years since the Constitution of India has been adopted and the Supreme Court of India was established. No Jurist has been assigned as a judge of a supreme Court or High Court. Article 124 (3) (c) of the Indian Constitution says that “An individual who is in the interpretation of the President a distinguished jurist be assigned as a Judge of a Supreme Court”. The practicality of appointing eminent jurists and intellectuals to the Supreme Court of India is examined in this article. The framers of the constitution of the country projected eminent jurists as adjudicators on the bench of the highest court, taking inspiration from foreign states such as the USA, UK and Canada. In spite of possessing such a mission, legal lecturers, the backbone of the legal industry, have no role in the Indian court system. The research from which this article was generated goes into greater detail on countries such as the United Kingdom and the United States of America. This article investigates the same notion, first in its theoretical structure, and then in view of various legal and intellectual events in the country, a study of its acceptability and viability.

Keywords: Distinguished jurist, Article 124(3), law professor, appointment, nomination

INTRODUCTION

Indian Constitution's one of the most important organ of governance is the judiciary. Making and enforcing laws are their separate responsibilities. It is the government's heart because the Judiciary is the sole institution that can control and pronounce judgement when there is a conflict between the between the states, state and the centre or State and the citizens. The Judiciary's decisions are binding on all parties involved, whether they be citizens or the government. In India, the judiciary is the protector of human rights, the defender of the constitution, and the promoter of peace and harmony.

Judges' appointments to the higher courts have been a topic of contention. Judges are required to be of the greatest calibre, with extensive training and the ability to present oneself with poise and manner. A group that appoints judges to the Supreme Court is the Supreme Courts Collegium. Article 124(3) of the Constitution stipulates the necessities that must be met before the judge's appointment.

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Judges are appointed to the Supreme Court of India under Article 124(3) of the Constitution. It postulates the specifications for Indian citizen to be appointed as a Supreme Court Judge [1]:

- If they serve as a High Court Judge for at least five years
- If they work as a High Court advocate for at least ten years
- If they are a prominent jurist in the President's opinion.

The first two requirements for the structure of Article 124(3) are self-evident; in any event, the term "Distinguished Jurist" is not defined anywhere in the Indian Constitution.

RESEARCH QUESTIONS

Q.1: What does it mean to be a "Distinguished Jurist," and why is the phrase so ambiguous?

Q.2: Is Article 124(3)(c) of the Indian Constitution unused?

DISTINGUISHED JURIST

All renowned individuals involved in the teaching, practice and research of law, including lawyers, judges, and renowned researchers engaged in detailed research on issues in context of legal and justice and whose efforts enjoy an imprimatur appeal in the area of legal scholarship and judicial application of the law, are referred to as distinguished jurists. The Original constitution's authors expected such people to be distinguished legal scholars who failed to fulfil one of the first two qualifications for Supreme Court nomination, as laid out in Article 124.

They should not be regular salaried employees, but rather experts in their disciplines who have contributed significantly to the legal field in some form. During the adjudication process, the courts of law should appropriately recognise and acknowledge their contribution. They should create good quality information for the field that is well-recognized in the industry. Even though a person does not practise law in a courtroom, he or she might be recognised as a famous jurist if they have created good quality work and established a prominent position [2].

'Some appointments that have been straight from the High Court earlier include, S. M. Sikri, U. U. Lalit, Kuldeep Singh, Rohinton Nariman, S. Chandra Roy, Santosh Hedge, and Indu Malhotra being one of the members of the court who have been honoured with this award [2].' Interestingly, despite the fact that the Indian Constitution has been in place for 70 years, no judge has been selected from the legal educational institutions. A university professor can contribute to the judicial system in a variety of ways. Law professors' responsibilities should not be limited to educating alone. Their brains, on the other hand, can be conducted to improve various goals in the judicial system. If given the opportunity to participate in the state's judicial process, many renowned law professors do better than a few typical judges.

DEBATES IN THE CONSTITUENT ASSEMBLY

In the provisional Constitution, the classification of "distinguished jurist" was added to the list of "qualified" candidates for nomination to the Supreme Court of India. This was done to prove that the Supreme Court's bench was diverse in terms of professional backgrounds. H.V. Kamath who was a member of the constituent assembly began his statement in favour of bringing "Distinguished Jurists" to the slate of nominees for Supreme Court judges by saying, "The purpose of this small modification of mine is to create a larger scope of options for the President in the issue of Supreme Court judge appointments." The House will notice that the current version of the article limits the appointment of judges to only 2 categories. I am confident that the House will acknowledge that having women or men—with exceptional legal and juristic knowledge is desirable, if not necessary. Recommended "distinguished jurist" category on May 14, 1949 [3]. He even thought his proposal was predicated on the requirements for judges at the International Court of Justice in The Hague.

Shri. M. Ananthasayanam was moved by late H. V. Kamath's famous remark, in which he stated, "A individual may pursue the profession of Law instantly." He might be a Dean of a University's Faculty of Law or a faculty Law College. There are other notable people including numerous writers and renowned jurists. Why shouldn't the President be able to select a distinguished jurist if he or she considers it necessary [4]?

Shri. M. Ananthasayanam went on to say that out of the 7 judges 1 of them should be a well-known jurist." Shri M. Ananthasayanams later recounted how President Franklin D. Roosevelt of the United

States of America selected distinguished jurists such as Philip Frankfurter, a Harvard University professor. This experiment had proven to be quite beneficial. Philip Frankfurter is the most well-known jurists in the USA.

While accepting to the change, Ambedkar expressed concern over the word "distinguished." After careful study, the Constituent Assembly designated this member's discussion as "Distinguished Jurist." Unfortunately, no notable jurists were appointed to the Supreme Court till now. This constitutional clause appears to have been deliberately disregarded by the President and the Parliamentary committee.

CRITICAL ANALYSIS AND 'DISTINGUISHED JURISTS'—IN THE HIGH COURT

Article 217 of the Indian Constitution lays forth the criteria for appointing judges to the High Court. Questioningly, the constitution does not allow for the appointment of "Distinguished Jurists" to the High Court as judges.

This system was stated during the Constituent Assembly debates, when Prof Shibban Lal Saksena offered an alternative to include the nomination of judges in the High Court as 'Distinguished Jurists' with the Governor of that State's recommendation. Subsequently, it was argued whether the Supreme Court Judges should be involved before appointing judges. He opined for it to be inclusive in the HC nomination of the judge, as the mandate had been stretched to the SC. Mr. Ahmad was pleased with the revision and enthusiastically supported the modification. Surprisingly, the change was eventually removed from the High Court justices' selection process.

the amendment did not incorporate a distinguished jurist for the nomination of judge in high court of Article 217(2) (aa) says that [5] "Other term where an individual has held official positions, the office of a member of a tribunal, or any job, under the Union or a State, require expert expertise after he became an advocate should be included in collaring term during which was an advocate of a High Court [6].

The 42nd Constitutional Amendment which was approved in 1975, and it introduced the phrase "Distinguished Jurist" to the list of methods for appointing judges to the High Court. The idea for this constitutional change rose during Constituent Assembly debates. This would contribute to the obtain information by jurists in the High Courts, which would be beneficial to the Supreme Court's jurists-judges.

Nonetheless, the 44th Constitutional Amendment in 1978 limited the life expectancy of such a protected agreement. During that despised crisis time, and its absence remains an unsolved mystery in India's hallowed constitutional history. It has been stated that it was obtained by the 42nd amendment at a time of crisis, and the 44th amendment was heavily considered to correct the progress achieved by the 42nd amendment.

The nomination of Shri K.N. Srivastava, the Secretariat (Justice & Law), Mizoram Government, as a High Court Judge was invalidated by the Supreme Court in **Kumar Padma Prasad v. Union of India** [7] on the grounds that he was ineligible. It's odd that a renowned jurist may be nominated to the Supreme Court but not to the High Court.

The reason offered for the elimination of the "Distinguished Jurists" was a little thin on the ground. Durga Basu, on the other hand, is a real legend. He was the sole lawyer to be appointed to the High Court under the category of "outstanding jurists."

In the provisional Constitution, the classification of "distinguished jurist" was added to the list of "qualified" candidates for nomination to the Supreme Court of India. In the end, this phrase was a hot

topic of discussion and was adopted from the United States of America. Philip Frankfurter, a head of law faculty at Harvard University, was honoured by the Constituent Assembly for his outstanding contributions. Preceding to being elected as judges in the USA, it is rather distinctive for judges to have erstwhile teaching qualifications. Justice Bryer is in an alike state. Even after the requirements were put into the Constitution and precedents from other nations were adopted, the nomination of a "Distinguished Jurist" was not pushed.

Law teachers can aspire to be members of the judiciary in Canada, USA and the UK and are even designated as supreme court justices. In Ontario, Canada, two academics were recently chosen as judges based on their educational achievements. In the late 1980s, the United States took it a step forward by selecting Justice Samuel Miller a doctor, as a judge of the Supreme Court, despite the fact that he lacked a legal degree. As a result of Justice Miller's achievements in his area, the title "Distinguished Jurists" is no longer limited to legal experts in the United States. Professor Burrows, who was just appointed in as a Judge of the Supreme Court in the United Kingdom, was formerly a law professor at the famous Oxford University prior to getting into Judiciary.

"For 50 years, the constitutional clause that allows the nomination of a jurist to the Supreme Court of India has been persistently ignored," said Professor Upendra Baxi, a famous legal expert, in one of his writings. As a result, India has lost its greatest chance of converting a law professor into a Justice. The opportunity to have our own Felix Frankfurter has been wasted on purpose [8]." However, if the Indian President and the judiciary work together, they will be able to select credible individuals from the legal community who would be able to support the Court and take a more proactive stance for the pursuit of justice.

The scholar had filed an RTI asking if any 'Distinguished Jurists' had been elected as judges under Article 124(3) (c) of the Indian Constitution. The government responded quickly and succinctly, noting that no Distinguished Jurists had been nominated as a result of the Article. When asked why no Distinguished Jurists were selected in the same RTI, the answer was a very conciliatory, asserting it was beyond their authority of undersigned Central Public Information Officer under the Right to Information Act, 2005, to enforce laws, to give reasons, pontificate, reply or recommend on matters, etc. and that the plea was not co-ordinated as this request isn't covered under section 2f of Right to Information Act, 2005.

Anshu Kumar v. Ministry of Law [9] and Justice, in this case was the appellant went to court because he was unhappy with the RTI. The court said "this clause of the Constitution has been invoked extremely seldom-only four occasions so far."

WHY 'DISTINGUISHED JURISTS' SHOULD BE APPOINTED AS JUDGES?

As previously stated, there were no procedures in the Draft Constitution for the appointment of "Distinguished Jurists". During the discussion arguments H. V Kamath emphasised the need for a group of "Distinguished Jurists." The primary motivation for enacting this rule was to increase the number of skilled jurists on the court. A Distinguished Jurist, it was suggested, may be in a better equipped to negotiate with public law concerns because of their level of understanding and autonomy from the restricted and academic perspective of the law. "The introduction of an expert jurist of the proper kind into the supreme court may contribute to its enhancement," [10] D.D Basu said.

Law academics in India form a vast network of experts who educate and analyse law at various institutions and schools, producing a large number of legal counsellors and judges over time. A great percentage of them are highly competent, far more so than their equivalents, judges and attorneys, yet their role in the legal profession is underappreciated. By constitutional interpretation and its legislation, the Supreme Court regularly develops new legal concepts and jurisprudence.

The relevance and advantages of having legal scholars on the bench should be recognised by India's highest courts. It is the Supreme Court's constitutional accountability to regulate foremost legal issues and outline legal principles. A successful judge has a proclivity to hypothesize and interpret the law to this purpose. Long years of examination and instruction have helped a conscientious law professor gain headway on this preparation. A Distinguished Jurist's well-developed sophisticated hypothesising and interpreting skills have the potential to raise the level of legal reasoning in a variety of ways.

Today, there are more than thousands of law colleges in India. On a countrywide basis, just a few of them have been really fruitful. The primary objective of these law schools is to promote legal education and establish a national centre of excellence for legal teaching and research. It is past time for the Bar Council of India Rule 49th, which prohibits professors from attending in court proceedings, to be modified. Regrettably, the constitution was enacted 70 years ago, and both the administration and judiciary have ignored this fundamental mandate ever then.

For example, in the case of *A. K. Gopalan v. the State of Madras [11]*,¹¹ the literature was used as a secondary source of law and the decision was based on the reasoning of eminent scholars (professors).

CONCLUSION

It is undeniable that Article 124(3)(c) of the Constitution has been repealed. Judicial judgments on the nomination of Supreme Court judges have been consistently ignored. The fact that this constitutional duty is still unknown shows an underlying constitutional pain. When such a provision is ignored by groups of individuals with the highest power in the legal system, a tradition or custom develops that undermines the provision's usage. After a period of time, the directive loses its legality and becomes obsolete. Government in 2015 said the lack of recognition of 'Distinguished Jurists' in the Court was determined to be unethical and incorrect, when submitting its suggestions for reinforcing the Collegium System. The Supreme Court's impending retirement of Justice Deepak Gupta provided an opportunity. Regardless, it's unlikely, if not impossible, for a law professor to be named a "Distinguished Jurist". The Constituent Assembly evidently felt it important to have academics, professors, and other legal professionals on the Supreme Court. It is unfortunate, however, that this legislation is one of our Constitution's underutilised requirements. Researchers and educators have been among the finest judges ever encountered by the legal fraternity, according to history in other countries.

SUGGESTIONS

- It is an opportunity to put Article 124(3)(c) to work by nominating a Distinguished Jurist as a judge in the court.
- Same approach should be combined for the High Court's ruling under Article 217(2) of the Indian constitution "requiring specific understanding of law after they become a lawyer."
- Law educators should be designated as "amicus curiae" and be eligible to serve in P.I.L Case processes, as well as be assisted in A.D.R interviews and mediation in family disputes, among other things; the BCI Provision should be amended accordingly.
- It is past time for the Bar Council of India Rule 49th to be relaxed, allowing educators to appear in court for the benefit of the hearings.
- Article 233 of the Indian Constitution should be amended to allow subordinated academicians and judicial officers to contend for the position of district judge.
- A request was made to the Tamil Nadu State Government to include Associate teachers in Law in the qualifying requirements of the Tamil Nadu State Judicial Service (Cadre & Recruitment) Rule, 2007, so that they can sit for the Civil Judge Exam.
- The Moot Court competition should be transformed into a proper court competition. Final year students should be permitted to participate in modest cases such as parole hearings under the supervision of law professors and veteran lawyers.

The Constitution (Forty-fourth Amendment) Act of 1978 knocked down the legislation for appointing Distinguished Jurists as High Court justices, and it must be examined and reinstated. Article 124 (3) (c) of the Indian Constitution states that the number of Judges in the Supreme Court should be upgraded [12].

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