

Original Article

The Constitutional Concept of a Distinguished Jurist: A Study of a Dead Letter in the Indian Constitution

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Manuscript ID:
RIGJAAR-2026-030507**ISSN:** 2998-4459
Volume 3
Issue 5
Pp. 38-41
May 2026**Submitted:** 07 Apr. 2026**Revised:** 15 Apr. 2026**Accepted:** 17 May. 2026**Published:** 31 May. 2026**Correspondence Address:**Dr. Vinod H Wagh
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Quick Response Code:

Web: <https://rlgjaar.com>

DOI: 10.5281/zenodo.20954576

DOI Link:

<https://doi.org/10.5281/zenodo.20954576>

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**Abstract**

Article 124(3) of the Constitution of India prescribes the qualifications for appointment of judges to the Supreme Court and uniquely permits the appointment of a "distinguished jurist" in the opinion of the President. While appointments from the judiciary and the Bar have been routinely made since the commencement of the Constitution, the category of distinguished jurist under Article 124(3)(c) has remained entirely unutilized. The persistent non-implementation of this provision presents a significant constitutional anomaly, particularly when its inclusion was the result of deliberate consideration by the Constituent Assembly. This article examines the constitutional origins, meaning, and continuing relevance of the distinguished jurist clause. Through an analysis of the Constituent Assembly Debates, constitutional practice, scholarly writings, and comparative constitutional experiences, the article argues that Article 124(3)(c) has effectively become a constitutional dead letter. At the same time, it contends that the provision retains considerable constitutional value and should be revived through a clear definition of the term "distinguished jurist," the establishment of an institutional mechanism for identifying eligible candidates, and a greater recognition of legal academics as potential contributors to constitutional adjudication. Such revival would not only fulfil the original vision of the framers but also strengthen legal education and intellectual diversity within Judiciary.

Keywords: Distinguished Jurist, Article 124(3)(c), Supreme Court of India, Judicial Appointments, Legal Academia, law teachers, Constitutional Interpretation.

Introduction

As the ultimate defender of fundamental rights, the rule of law, and constitutional ideals, the Supreme Court of India holds a pivotal place within the constitutional system. Because of the importance of its duties, Article 124(3) of the Constitution specifies certain requirements for appointment to the Supreme Court. A candidate may be appointed if they have been a High Court judge for at least five years, have been a High Court advocate for at least ten years, or are regarded as a "distinguished jurist" by the President.¹

Among these requirements, the designation of "distinguished jurist" continues to be one of the most fascinating but overlooked clauses in the Constitution. The word "distinguished jurist" is not defined in the Constitution, nor are there any standards for identifying those who would be covered by it. Forming an opinion to designate someone as a distinguished jurist was entirely up to the President. More importantly, no appointment has ever been made under Article 124(3)(c) since the Constitution went into effect in 1950, even though it is plainly included in the language of the document.

There are significant constitutional issues raised by this clause's total lack of appointments. Did the founders intend for the distinguished jurist clause to be used actively as a substitute route to the Supreme Court, or was it only meant to be a symbolic acknowledgement of legal scholarship? When a constitutional provision hasn't been used in over 76 years, can it still have any significance? More significantly, does the persistent disregard for Article 124(3)(c) suggest a discrepancy between the text and practice of the constitution? Examining the Constituent Assembly's discussions makes the importance of these questions clear. It was neither coincidental nor unintentional that the distinguished jurist category was added.

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How to cite this article:

Wagh, V. H. (2026). The Constitutional Concept of a Distinguished Jurist: A Study of a Dead Letter in the Indian Constitution. *Royal International Global Journal of Advance and Applied Research*, 3(5), 38–41. <https://doi.org/10.5281/zenodo.20954576>

Instead, it resulted from a deliberate attempt to increase the number of qualified applicants and guarantee that the Supreme Court would have access to more intellectual contributions than the Bench and the Bar could provide. Law professors whose contributions to the advancement of law would warrant their promotion to the highest constitutional court were specifically mentioned by members of the Constituent Assembly.²

The development of judicial appointment procedures has created a quite different reality in spite of this constitutional objective. Legal scholars and jurists have essentially been left out of consideration by the custom of choosing judges mostly from the upper judiciary and the practicing bar. As a result, throughout independent India's constitutional history, a clause intended to bring intellectual diversity to the Supreme Court has been dormant. This ongoing slumber offers a striking illustration of what constitutional scholars refer to as constitutional desuetude, a phenomenon in which a constitutional provision is nominally preserved in the text but lacks practical meaning due to extended non-use.

Due to its total non-implementation and the lack of an institutional system for recognizing and nominating distinguished jurists, Article 124(3)(c) has become a constitutional dead letter. Nonetheless, there is still cause to believe that the clause is still valuable from a constitutional and normative standpoint. The article aims to show that the implementation of Article 124(3)(c) would not only respect the original constitutional design but also strengthen legal education, enhance constitutional adjudication, and expand the notion of judicial merit in India by revisiting the framers' intent, analyzing the definition of the term "distinguished jurist," analyzing the reasons for its dormancy, and examining comparative constitutional experiences.

The Constituent Assembly deliberately expanded the intellectual underpinnings of the Indian judiciary in order to accommodate the aspirations of distinguished jurists. The purpose of adding Article 124(3)(c) was to make sure that only members of the judiciary and the practicing bar may be eligible for the highest constitutional court. The framers recognized that profound legal knowledge, constitutional insight, and contributions to jurisprudence may be found outside of ordinary legal practice by establishing a distinct category for distinguished jurists. H. V. Kamath's amendment during the debates is when the provision originated. Mr. Kamath suggested adding a third category of eligibility for Supreme Court appointments, stating that an individual may also be appointed if they were "a distinguished jurist." He claimed that there were many people in the legal profession with outstanding legal knowledge and scholarship who did not necessarily fall into either category. He underlined that the presence of people with exceptional legal and juristic expertise would be beneficial to the administration of justice and said that justices of the International Court of Justice were similarly qualified.

M. Ananthasayanam Ayyangar seconded Kamath's suggestion. Ayyangar noted that complicated theoretical and constitutional issues that might not come up in the

regular practice of law are often involved in constitutional adjudication. He maintained that rather than working in courtrooms, many eminent figures in legal philosophy dedicate their professional lives to academic scholarship, universities, and legal research centers. He argued that the Constitution should allow the nomination of professors, deans of law faculties, legal authors, and distinguished jurists whenever the interests of justice so demanded. He cited Felix Frankfurter's appointment to the US Supreme Court and relied on comparative constitutional expertise.³ Dr. B. R. Ambedkar, the Chairman of the Drafting Committee, provided the amendment with decisive support. He acknowledged the substance of Kamath's proposal and stated that he was willing to include the category of jurist among the requirements for appointment to the Supreme Court. While he was unsure whether the word "distinguished" should be kept or substituted with another term, like "eminent," he categorically accepted the fundamental idea that eminent legal thinkers could be appointed as Supreme Court judges.⁴

In contrast to judges and advocates, the Constituent Assembly purposefully created the category of "distinguished jurist" as a prerequisite for appointment to the Supreme Court. According to the debates, this category was intended for legal experts, law professors, researchers, and distinguished juristic writers. The framers thought that in addition to judicial experience, scholastic and intellectual knowledge may be useful in constitutional adjudication. However, neither the Constitution nor any statute define the word "distinguished jurist," nor has any appointment ever been made under Article 124(3)(c). As a result, the clause continues to rank among the Indian constitution's most important dead letters.

The appointment of a distinguished jurist as a Supreme Court judge is permitted by Article 124(3)(c), however neither the Constitution nor any regulation defines the word or establishes standards for selecting such individuals. Its scope and application are ambiguous due to the lack of objective criteria. The provision's ongoing non-utilization has been largely caused by this ambiguity.

When the term "distinguished jurist" is separated from a judge or an advocate, the ambiguity around it becomes clear. Jurists mainly contribute through legal literature, research, teaching, and the development of jurisprudence, while judges decide cases and advocates defend clients. Their impact is derived from their scholarly and intellectual contributions to the law rather than from their judicial position or legal practice. The Speaker of the Lok Sabha or the Chairman of the Rajya Sabha may designate a famous jurist as a member of the committee established to look into accusations against a judge under the Judges (Inquiry) Act, 1968. However, neither the definition of "distinguished jurist" nor any standards for identifying those who fall into this category are specified in the Act. Previous cases show that prominent lawyers, not legal experts or academics, have always been placed in the role of distinguished jurists. As stated in Article 124(3) of the Indian Constitution, it is crucial to distinguish between judges, attorneys, and distinguished jurists.

The idea that the category of distinguished jurists was meant to be separate from judges and advocates is further supported by a contextual reading of Article 124(3). Clauses (a) and (b) of Article 124(3) already recognize individuals who have served as judges of High Courts and those who have practiced as advocates for the prescribed period; if judges and advocates were also meant to fall under the category of distinguished jurists, the separate inclusion of clause (c) would become essentially unnecessary.

A well-established constitutional interpretation premise that each clause of the Constitution must have its own meaning and effect would be violated by such an interpretation. Constitutional provisions are not added for no reason, and it is usually best to avoid an interpretation that makes one provision unnecessary. Therefore, rather than simply restating requirements already acknowledged elsewhere in the same provision, Article 124(3)(c) should be interpreted as establishing a separate category of eligibility. According to the Constituent Assembly Debates, the term "distinguished jurist" was meant to encompass people with excellent legal knowledge and juristic learning in addition to judges and advocates. In particular, legal experts, law professors, authors, and distinguished jurists whose contributions to law resulted from teaching, research, and study were taken into consideration throughout the debates. Therefore, the purpose of Article 124(3)(c) was to integrate scholarly and intellectual knowledge into constitutional decision-making.

The Indian Constitution indirectly refer the law teachers to be accommodated in judiciary but many countries constitution accommodate the law teachers in their apex judiciary. Comparative constitutional practice reinforces this interpretation. Several constitutional systems expressly recognize law professors and distinguished scholars as eligible candidates for constitutional courts and supreme courts. These countries are Algeria⁵, Albania⁶, Bolivia⁷, Dominican Republic⁸, Ecuador⁹, Italy¹⁰, Jordan¹¹, Kenya¹², Mozambique¹³, Panama¹⁴, Spain¹⁵, Thailand¹⁶, Turkey¹⁷, Venezuela.¹⁸

The framers intended for the Supreme Court to include distinguished legal experts in addition to judges and lawyers, as evidenced by the insertion of Article 124(3)(c). Nevertheless, the clause has never been used even though it has been a part of the Constitution since 1950. This Article is one of the few constitutional clauses that has never been fully executed, as no appointment has ever been made under it. Important queries concerning the discrepancy between constitutional vision and constitutional practice are raised by its ongoing dormancy.

One of the principal reasons for the dormancy of Article 124(3)(c) is the absence of any constitutional, statutory, or institutional framework for identifying distinguished jurists. The Constitution does not specify the requirements for achieving that status, even though it permits the appointment of such people to the Supreme Court. The judiciary and Parliament have not made an effort to create objective norms. As a result, there hasn't been a clear foundation for constitutional authorities to decide who is a distinguished jurist. What was supposed to be a constitutional channel for appointment has become a

provision whose actual application is still debatable and unclear due to the lack of objective standards. Surprisingly, the word "distinguished jurist" was used in numerous enactments after 1950, but none of them provided a definition, leaving it up to the judgment of the relevant constitutional authority.¹⁹

The increasing establishment of appointment practices that have limited the scope of judicial selection is another significant reason for the non-utilization of Article 124(3)(c). Although Article 124(3) envisions juristic differentiation as a distinct method, constitutional practice has limited Supreme Court appointments to judges and attorneys over time. There is an unwritten precedent that elevation to the Supreme Court requires judicial or courtroom experience because appointments have always come from the Bar and higher judiciary. Notably, legal academics and juristic scholars are completely excluded from the appointment process because neither the executive nor the collegium have ever seriously evaluated or suggested a candidate under Article 124(3)(c). The emergence of the collegium system further marginalized Article 124(3)(c). In practice, the collegium has confined its consideration to candidates from the higher judiciary and the Bar, evaluating them primarily on the basis of judicial experience, seniority, and litigation practice. As a result, legal academics and juristic scholars have rarely entered the zone of consideration, rendering the distinguished jurist clause largely irrelevant to the contemporary appointment process.

The claim that law professors are ineligible to be appointed as "distinguished jurists" under Article 124(3)(c) due to their lack of extensive practice is often overstated. While practical legal experience is still valuable, modern constitutional adjudication increasingly involves theoretical, comparative, and interdisciplinary issues where academics possess significant expertise. Jurisdictions like the United States and Canada allow law professors to participate meaningfully in courtrooms, indicating confidence in their legal abilities. Furthermore, any assumption that academics would perform poorly as judges is speculative because no law professors have ever been appointed in accordance of this constitution. Consequently, excluding legal scholars solely on presumed deficiencies lacks justification, and judicial competence cannot be regarded as the exclusive domain of judges or practicing advocates.

Despite being a part of the Constitution, Article 124(3)(c) has never been used to judicial appointments, therefore it has practically become a dead letter. There is now a gap between institutional practice and the constitutional text as a result of this extended non-application. However, the clause still reflects the framers' desire to include distinguished legal experts in addition to the Bar and Bench in order to increase the Supreme Court's eligibility. Therefore, just because it has lain dormant does not mean that its relevance should be discounted. Rather, the main question is whether the clause should be reinstated in order to fulfil its original constitutional intent. The definition of "distinguished jurist" must be defined using objective standards, such as contributions to legal scholarship, teaching, jurisprudence, law reform, research,

and significant publications. Ultimately, revival would enrich both the judiciary and legal academia while restoring the framers' constitutional design.

In order for Article 124(3)(c) to function properly, it must continue to be a separate constitutional category and not be combined with requirements that apply to judges or advocates. The framers intended for distinguished scholars and legal scholars to be part of the higher judiciary, according to constitutional disputes. Transparency and consistency in appointments could be ensured by institutional reforms, such as the creation of an impartial agency to find and assess distinguished jurists. Reviving the clause will also improve legal education by acknowledging intellectual achievement as a valid route to the Supreme Court, which would promote more in-depth study and scholarship. Academics can offer insightful viewpoints in a time when constitutional adjudication increasingly incorporates technology, governance, and comparative legal challenges.

Instead of being combined with requirements that apply to judges or lawyers, Article 124(3)(c) shall continue to function as a separate constitutional category. According to constitutional debates, the framers intended for the upper judiciary to include distinguished scholars and legal scholars. Transparency and consistency in appointments could be ensured through institutional reforms, such as the creation of an impartial agency to find and assess distinguished jurists. By acknowledging academic achievement as a valid route to the Supreme Court, reviving the clause would also improve legal education and promote more in-depth study and scholarship. Academics can offer insightful viewpoints in a time when technology, governance, and comparative legal issues are becoming more and more important in constitutional adjudication. Ultimately, revival would enrich both the judiciary and legal academia while restoring the framers' constitutional design.

Conclusion

Article 124(3)(c), along with similar provisions once introduced for High Courts (in Article 217)²⁰ but later removed through constitutional amendment²¹, reflects a clear constitutional intent to include distinguished jurists as a separate source of judicial appointments, yet it has remained unimplemented in practice, effectively becoming a constitutional dead letter due to the absence of defined criteria, evolving appointment conventions favouring judges and advocates, and the exclusion of legal academics from the selection process. However, this dormancy should not be equated with irrelevance, as comparative constitutional practice shows that legal scholars can make meaningful contributions to judicial decision-making, particularly in light of the increasing complexity of constitutional adjudication. A meaningful revival would therefore require clear criteria for identifying distinguished jurists, an institutional mechanism for evaluation, and recognition of their distinct identity separate from judges and advocates, thereby restoring coherence to the constitutional design and aligning practice with the framers' original vision.

Ultimately, Article 124(3)(c) is not a theoretical or experimental constitutional idea, but a deliberately crafted

provision that has remained unimplemented despite being firmly embedded within the constitutional framework. The inclusion of distinguished jurists in judicial appointments is neither novel nor externally imposed; it is an existing constitutional mandate that has merely not been operationalised in practice. The comparative experience of similar provisions and the feasibility of establishing evaluative mechanisms such as a commission further demonstrate that this framework is not impractical, but only dormant due to institutional inaction. What is therefore required is not constitutional redesign, but faithful implementation through clear criteria and workable institutional structures to give effect to an already existing constitutional design. Ultimately, the time has come to transform this provision from a constitutional dead letter into a living and vibrant instrument of judicial governance, thereby realising the framers' intent in its true spirit.

Acknowledgment

The author expresses sincere gratitude to all those who directly and indirectly contributed to the completion of this research paper titled "The Constitutional Concept of a Distinguished Jurist: A Study of a Dead Letter in the Indian Constitution." Special thanks are extended to colleagues, legal scholars, and academic peers whose valuable discussions, insights, and suggestions enriched the study.

Financial support and sponsorship

Nil.

Conflicts of interest

The authors declare that there are no conflicts of interest regarding the publication of this paper.

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