

'Distinguished Jurist' as a Supreme Court Judge

Mains: GS II - Judiciary

Why in News?

Recently, Supreme Court Justice Ujjal Bhuyan described the Eminent Jurist criteria as an "unused mandate" of the Constitution and called for greater attention to the provision.

What is a 'Distinguished Jurist'?

- **Article 124(3) of the Constitution** - It lays down the qualifications for appointment as a Supreme Court judge.
- A person must be an Indian citizen and must satisfy one of three conditions:
 - Have been a High Court judge for at least five years;
 - Have been an advocate of a High Court for at least ten years; or
 - Be, in the opinion of the President, a "distinguished jurist."
- The third category is therefore distinct because it does not require prior experience as a judge or practising advocate.
- A distinguished jurist could broadly include a person with exceptional expertise in legal theory, constitutional law, legal research, teaching or jurisprudence, even without extensive courtroom experience.

Why was the Provision Introduced?

- **Constituent Assembly debates** - The idea emerged during the in May 1949 where H. V. Kamath argued that the pool of potential Supreme Court judges should not necessarily be restricted to judges and practising advocates.
- He wanted the Constitution to accommodate individuals possessing outstanding legal and juristic knowledge, including those who had not practised in courts.
- Supporters of the proposal argued that Supreme Court adjudication frequently involves complex constitutional and public-law questions that require knowledge extending beyond courtroom practice.
- The proposal also drew comparisons with the appointment of legal scholars to the highest courts in other jurisdictions.
- Dr. B. R. Ambedkar did not oppose the principle but expressed some concern regarding the terminology, particularly the word "distinguished." The provision was ultimately incorporated into the Constitution.

Why has no Distinguished Jurist Been Appointed?

- **Traditional Preference for Judges and Advocates** - The Supreme Court has

historically drawn its judges primarily from High Courts and the practising Bar.

- This has created an established professional pathway in which judicial and courtroom experience are regarded as important prerequisites for elevation to the apex court.
- **Limited Exploration of the Provision** - Justice Ujjal Bhuyan identified two possible explanations:
 - There may be a perception that Indian legal academia does not contain enough candidates with the required stature to qualify as “distinguished jurists”, or
 - The government and, subsequently, the collegium may simply not have seriously explored this constitutional route.
- Thus, the provision may have remained unused more because of institutional practice and convention than because of a constitutional prohibition.
- **Ambiguity over the Meaning of ‘Distinguished’** - The Constitution does not define the term “distinguished jurist.”
 - This creates uncertainty regarding:
 - The precise eligibility criteria;
 - The level of academic or scholarly achievement required;
 - Whether legal teaching alone is sufficient;
 - Whether international recognition should be considered, and
 - How legal scholarship should be evaluated against judicial or litigation experience.
- Such ambiguity may discourage the institutional use of the provision.
- **Barriers for Full-Time Legal Academics** - There is also a structural issue.
- Bar Council rules generally restrict full-time law teachers from simultaneously practising as advocates.
- Consequently, a leading academic may possess extensive expertise in constitutional law or jurisprudence but lack the courtroom experience traditionally associated with Supreme Court appointments.
- This creates a disconnect between academic excellence and the conventional criteria for judicial elevation.
- **The Collegium System** - The present appointment process adds another layer of complexity.
- Although Article 124(3) refers to the President's opinion, Supreme Court appointments today operate through the collegium system, under which recommendations originate within the higher judiciary before being sent to the government.
- Therefore, a distinguished jurist would, in practice, need to emerge through the judicial appointment process rather than simply being selected independently by the President.
- This raises a question about how an unconventional candidate—who has not served as a judge or practised at the Bar—would enter the existing selection framework.

Why Could Distinguished Jurists Strengthen the Supreme Court?

- **Greater Diversity of Expertise** - A jurist from academia could bring expertise in Constitutional theory, Comparative constitutional law, Human rights, International law, Jurisprudence and Emerging areas of technology and law.
- This could broaden the intellectual diversity of the Bench.
- **Strengthening Constitutional Adjudication** - The Supreme Court frequently deals

with questions concerning Fundamental rights, Separation of powers, Federalism, Constitutional morality, Administrative law and Institutional accountability.

- A scholar deeply engaged with constitutional theory could contribute a perspective that complements practical judicial and litigation experience.
- **Greater Engagement with Legal Scholarship** - The presence of distinguished academics could strengthen the relationship between legal scholarship and judicial decision-making.
- It could also encourage greater use of comparative research, empirical studies and interdisciplinary approaches in constitutional adjudication.
- **Institutional Diversity** - Judicial diversity should not be understood only in terms of geography, gender or professional background. Intellectual and professional diversity can also strengthen judicial institutions.
- Including jurists from outside the conventional judicial career path could therefore widen the talent pool available to the Supreme Court.

What are the Concerns and Limitations?

- **Practical judicial experience** - Courtroom experience provides familiarity with evidence, procedure, advocacy and the practical consequences of legal rules.
- **Independence and impartiality** - Selection must ensure that academic or professional affiliations do not compromise judicial independence.
- **Defining merit** - A transparent standard is necessary to determine who qualifies as “distinguished.”
- **Integration into the Bench** - Exceptional academic knowledge must be complemented by the ability to decide concrete disputes and manage judicial proceedings.
- **Collegium compatibility** - A clear mechanism would be required for identifying and evaluating candidates outside the conventional judicial pipeline.
- Therefore, the objective should not be to replace experienced judges or advocates with academics, but to expand the pool of exceptional legal talent.

‘Distinguished Jurist’ and the High Courts

- The Constitution has also witnessed a related development concerning High Courts.
- The 42nd Constitutional Amendment during the Emergency introduced a provision permitting distinguished jurists to be appointed as High Court judges.
- However, this provision was subsequently removed by the 44th Constitutional Amendment.
- The continued presence of the category at the Supreme Court level therefore makes it particularly significant as an example of an alternative constitutional pathway that has never been operationalised.

What could be done?

- **Define Objective Criteria** - The judiciary and government could develop broad, transparent criteria for identifying distinguished jurists based on:
 - Major contributions to jurisprudence,
 - Significant legal scholarship,
 - Constitutional expertise,

- International or national recognition,
- Contribution to legal education and reform, and
- Demonstrated integrity and independence.
- **Proactively Identify Talent** - The Supreme Court collegium could actively consider eminent legal scholars rather than waiting for such candidates to emerge through conventional judicial channels.
- **Ensure a Transparent Selection Process** - Any appointment should be based on transparent and constitutionally consistent criteria while preserving judicial independence.
- **Encourage Academic-Judicial Interaction** - Greater interaction between courts, universities, law commissions and legal research institutions can create a stronger ecosystem for identifying outstanding legal minds.
- **Preserve Professional Balance** - The objective should be diversification, not replacement.
- Judges with extensive courtroom and judicial experience and jurists with exceptional academic expertise can complement one another.

What lies ahead?

- Article 124(3) reflects the Constitution-makers' vision that the Supreme Court should have access to the widest possible pool of exceptional legal talent.
- Yet, for more than 76 years, the category of "distinguished jurist" has remained unused.
- The provision need not be viewed as an alternative to the existing judicial career pathway.
- Rather, it can serve as a means of broadening the intellectual and professional diversity of the Supreme Court.
- The real challenge lies in developing credible criteria and an appropriate institutional mechanism for identifying such candidates.
- If implemented carefully, the provision can strengthen constitutional adjudication by bringing together judicial experience, courtroom practice and advanced legal scholarship.
- Thus, the constitutional question is no longer merely whether a distinguished jurist can become a Supreme Court judge, but whether India's judicial appointment system is sufficiently open to recognise and utilise the constitutional possibility that the framers deliberately created.

Reference

[The Indian Express| Eminent Jurist](#)