
APPOINTMENT OF HIGH COURT JUDGES: THE INCLUSION OF LAW TEACHERS IN THE INDIAN JUDICIARY

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ABSTRACT

The appointment of judges to the High Courts in India remains one of the most critical aspects of the judiciary, directly impacting its independence, efficiency, and credibility. Traditionally, **Article 217(2) of the Constitution** restricts eligibility for High Court judgeships to practicing advocates with at least ten years of experience and members of the judicial service. This approach, while historically justified, overlooks an equally significant category of legal Professionals **law teachers**. Professors, Associate professors, and Assistant professors of law play a vital role in shaping legal thought, producing scholarly works, and training future members of the Bar and Bench. Their contributions as academics and intellectual leaders qualify them to be regarded as “legal luminaries,” a category already recognized under **Article 124(3)** in the context of Supreme Court appointments. The constitutional framework governing judicial appointments, the historical neglect of academicians in this process, and the potential benefits of broadening the eligibility criteria to include law teachers. It explores landmark cases, including Justice Prabha Sridevan’s case, which highlighted challenges in appointment practices, and considers comparative experiences from jurisdictions such as the United States and the United Kingdom, where distinguished academics have been elevated to the Bench. The analysis also emphasizes the importance of **field elevation** as a means to promote diversity, ensure **speedy justice**, and strengthen the role of the High Court as a **Court of Record** under Article 215. The constitutional and policy reforms to address the existing lacunae in judicial appointments and proposes recognition of law teachers as eligible us appoints as judges of High Courts. By doing so, India can expand its judicial talent pool, enrich judicial reasoning with academic rigor, and align its practices with international standards of judicial appointments.

Keywords: Judicial Appointments, High Courts, Law Teachers, Legal Luminaries, Constitutional Reform

INTRODUCTION

Judicial appointments are a cornerstone of constitutional democracy, ensuring that the higher judiciary remains independent, credible, and capable of upholding the rule of law. In India, the appointment of High Court judges is governed by **Article 217 of the Constitution**¹, which provides eligibility to advocates with at least ten years of practice and members of the judicial service, thereby restricting the scope of potential candidates. While this framework has produced many eminent judges, it has also been criticized for excluding an equally significant category of legal professionals especially law teachers. Professors and scholars of law are central to the development of legal thought, having dedicated their careers to research, writing, and training successive generations of advocates and judges. Their exclusion reflects a lacuna in the constitutional design, especially when compared to **Article 124(3)**², which allows “distinguished jurists” to be appointed to the Supreme Court, though this provision has rarely been invoked in practice. The High Courts, being **courts of record under Article 215**³, not only resolve disputes but also create authoritative precedents, a function for which academic scholarship is indispensable. Comparative perspectives strengthen this argument: in the United States, figures like **Justice Felix Frankfurter** and **Justice Elena Kagan** were elevated directly from academia, while in the United Kingdom, distinguished professors have enriched the judiciary through scholarly depth. In India, debates surrounding judicial appointments, such as in the *Justice Prabha Sridevan* case⁴, have underscored the need for greater inclusivity and transparency in the process. Moreover, the discourse on **field elevation** highlights that law teachers, by virtue of their intellectual independence, full-time engagement with law, and scholarly contributions, can contribute to **speedy justice** and enrich judicial reasoning. The objective of this paper is to critically examine the constitutional provisions on judicial appointments, explore the tension between elevations and promotions, and argue for the recognition of law teachers as eligible appointees to the High Courts. In doing so, the study situates itself within the broader call for reform, emphasizing that judicial appointments must reflect not only professional practice but also academic excellence and constitutional values.

¹ Article 217 of the Constitution <https://share.google/6yl09zVi8JlgowyuK>

² Article 124(3) of the Constitution <https://share.google/6yl09zVi8JlgowyuK>

³ Article 215 of the Constitution <https://share.google/6yl09zVi8JlgowyuK>

⁴ *R. Gandhi v. Union of India*, W.P. No. 452 of 2002, decided on 16.04.2004 (Madras High Court)

CONSTITUTIONAL PROVISIONS ON JUDICIAL APPOINTMENTS

Appointment of High Court Judges (Articles 217, 233–234 of the Constitution)⁵

The appointment of High Court judges in India is governed primarily by **Article 217(1)** of the Constitution, which provides that every judge of a High Court shall be appointed by the President after consultation with the Chief Justice of India, the Governor of the state concerned, and, in the case of appointments other than that of the Chief Justice, the Chief Justice of the High Court. Eligibility requires that a person must have been an advocate for at least ten years in a High Court or must have held a judicial office for at least ten years. In addition to this, **Articles 233 and 234** deal with appointments of district judges and recruitment of persons other than district judges to the judicial service of a state, highlighting the role of the Governor and the High Court in recruitment at the subordinate judiciary level. While these provisions ensure a balance between executive and judicial consultation, they also restrict the pool of candidates largely to practicing advocates and judicial officers, leaving out academicians and law teachers who might otherwise enrich the Bench.

Appointment of Supreme Court Judges (Article 124)

The appointment of Supreme Court judges is provided under **Article 124 of the Constitution**. According to Article 124(3), a person is qualified for appointment as a judge of the Supreme Court if they have been a High Court judge for at least five years, an advocate of a High Court for at least ten years, or are, in the opinion of the President, a **distinguished jurist**. This last category has never been effectively utilized, despite offering scope for elevating eminent law teachers and jurists to the apex court. The absence of appointments under this clause reflects a lacuna in India's judicial appointments process, especially when compared to other jurisdictions that frequently elevate academics to their highest courts. The recognition of "distinguished jurists" at the Supreme Court level further strengthens the argument that similar recognition should extend to the High Courts under Article 217.

Role of the Collegium and Consultation Process

The actual process of judicial appointments has evolved significantly through judicial

⁵ Articles 217, 233–234 of the Constitution <https://share.google/6yl09zVi8JlgowyuK>

interpretation. The **Three Judges Cases** (*S.P. Gupta v. Union of India*⁶; *Supreme Court Advocates-on-Record Association v. Union of India*⁷ and *In re Special Reference No. 1 of 1998*⁸) collectively established the **Collegium system**, where the Chief Justice of India and senior-most judges play the decisive role in recommending judicial appointments. While the collegium system was intended to protect judicial independence from executive interference, it has also been criticized for lack of transparency and inclusivity. Importantly, the system continues to confine appointments to advocates and judicial officers, overlooking scholars and law teachers. This rigidity has narrowed the understanding of “merit” in judicial appointments and reinforced traditional hierarchies within the profession. Including academicians would not only diversify the bench but also bring a research-oriented and jurisprudential depth to judicial reasoning.

Justice Prabha Sridevan Case⁹

The debate on inclusivity in judicial appointments is reflected in the *Justice Prabha Sridevan* case, where questions were raised about the limitations of eligibility criteria and recognition of diverse legal expertise. Justice Mrs. Sridevan, before her elevation, was a lawyer with long years of practice, but her case highlighted how narrow interpretations of practice experience could limit entry to the higher judiciary. A writ petition challenging the so-called “ten years of practice” rule was dismissed, reaffirming the existing eligibility under Article 217(2). Although the case did not directly involve law teachers, it underscored the rigidity of the constitutional framework and the absence of space for alternative channels of elevation, such as academic contributions. It also revealed how the judiciary itself has been cautious in widening the scope of eligible candidates, despite constitutional possibilities for innovation.

The constitutional provisions relating to judicial appointments in India are rooted in a framework that balances executive consultation with judicial independence. However, while Articles 217 and 124¹⁰ define eligibility, their restrictive interpretation has left out categories like law teachers, despite recognition of “distinguished jurists” at the Supreme Court level. The collegium system has further entrenched this narrow approach, with little space for reform. The case of Justice Prabha Sridevan illustrates both the strength and limitations of the current

⁶ *S.P. Gupta v. Union of India*, AIR 1982 SC 149

⁷ *Advocates-on-Record Association v. Union of India*, (1993) 4 SCC 441

⁸ *In re Special Reference No. 1 of 1998*, (1998) 7 SCC 739

⁹ *R. Gandhi v. Union of India*, W.P. No. 452 of 2002, decided on 16.04.2004 (Madras High Court)

¹⁰ Articles 217 and 124 <https://share.google/6yl09zVi8JlgowyuK>

system, emphasizing the urgent need for constitutional and policy reform to diversify the judiciary by including academicians alongside practicing lawyers and judicial officers.

ELEVATIONS VERSUS PROMOTIONS IN JUDICIAL SERVICE

The Indian judicial system follows two distinct pathways in the appointment of judges to the appointment of judges in High Court: **service promotions** from within the judicial ranks and direct **elevations** directly from the Bar. The distinction lies not only in the source of recruitment but also in the vision and expertise each group brings to the Bench. Promotions generally involve judges from the district judges come under the super time scale, bringing with them administrative acumen and practical knowledge of trial courts. Direct Elevations from the Bar, on the other hand, provide an avenue for seasoned advocates to contribute their advocacy skills, specialized expertise, and fresh perspectives to the higher judiciary. This blend is meant to strike a balance between experience in judicial administration and exposure to diverse legal arguments, which enriches the functioning of constitutional courts.

The Constitution of India under **Article 217(2)** lays down that a person shall be qualified to be appointed as a High Court judge if he or she has held a judicial office in India for ten years or has been an advocate of a High Court for at least ten years. This dual provision reflects the recognition that both career judges and practicing advocates have distinct contributions to make. Service promotions ensure continuity, discipline, and familiarity with court administration, while elevations from the Bar inject external perspectives, broader constitutional vision, and specialized knowledge. Judicial pronouncements like *All India Judges' Association v. Union of India*¹¹ emphasized the importance of service conditions for judicial officers, underlining the complementary role of promotions. At the same time, elevations from the Bar have been crucial in bringing some of India's finest jurists, such as Justice. Ratnavel Pandiyan, Justice H.R. Khanna and Justice V.R. Krishna Iyer, into the higher judiciary.

Relevance of "Legal Luminaries" and Their Recognition in the Judiciary

An important constitutional innovation is found in **Article 124(3)**, which permits the appointment of "distinguished jurists" to the Supreme Court. This reflects an acknowledgment that legal scholarship, research, and academic contributions are as valuable to the judiciary as

¹¹ All India Judges' Association v. Union of India, (1992) 1 SCC 119

years of courtroom practice. Unfortunately, this provision has remained a dead letter, as no legal academic has been elevated under this category in India. Comparative jurisdictions, however, provide numerous examples where law professors have been appointed to the Bench, enriching jurisprudence with theoretical depth and global perspectives. Recognizing law teachers as “legal luminaries” for High Court appointments would bridge this gap, allowing the judiciary to benefit from the scholarship of those who have devoted their lives to legal education. The case of *Subhash Sharma v. Union of India*¹², stressed that appointments must ensure the selection of the best legal minds to safeguard judicial independence. Interpreting “best legal minds” in a broader sense to include academics and writers would mark a progressive shift, harmonizing the judiciary with the evolving needs of constitutional governance.

LAW TEACHERS AS POTENTIAL APPOINTEES

The debate over broadening the pool of eligible candidates for judicial appointments has increasingly highlighted the role of **law teachers** as potential appointees to the High Courts. Traditionally, the eligibility criteria under **Article 217(2) of the Constitution** emphasize judicial officers and advocates with at least ten years of practice. This has excluded full-time academicians, even when their scholarly contributions and expertise in the law surpass that of practicing advocates. Yet, the growing complexities of modern litigation and constitutional adjudication demand judges who are not only practitioners but also jurists with deep academic grounding.

Law teachers constitute a diverse cadre that includes **Assistant Professors, Associate Professors, Professors, Senior Professors, and Professors in Emeritus** in law universities and Government law colleges. Their role extends beyond classroom teaching: they are engaged in legal research, publication of books and articles, participation in law reform initiatives, and training of future advocates and judges. For instance, a scholar who has authored at least **four books in a specialized field of law** demonstrates sustained engagement with jurisprudence, reflecting the same depth of knowledge expected from a seasoned legal practitioner. By institutional recognition of such contributions, law teachers can be considered “legal luminaries,” a phrase employed under **Article 124(3)** for Supreme Court appointments.

¹² Subhash Sharma v. Union of India, 1991 Supp (1) SCC 574

The idea of **field elevation** of law teachers to the judiciary is also linked to the constitutional vision of **speedy justice** under Article 21¹³, as interpreted in *Hussainara Khatoon v. State of Bihar*¹⁴. Teachers, trained in analysis, reasoning, and articulation, can bring fresh perspectives to judicial decision-making, thereby enhancing efficiency and reducing delays. Unlike advocates who may divide their time between practice and other commitments, **full-time teachers are engaged in law as a discipline throughout their careers**. Their availability, scholarly discipline, and independence from the adversarial pressures of practice make them particularly suited for High Court judgeships.

Another crucial dimension is the **status of the High Court as a Court of Law and Record** under **Article 215 of the Constitution**¹⁵. This elevates the High Court beyond dispute resolution into the realm of shaping authoritative legal principles. Law teachers, with their expertise in interpreting statutes, analyzing precedents, and contributing to jurisprudence, are well-equipped to strengthen the High Court's record-keeping and precedent-setting functions. Their judgments, influenced by rigorous scholarship, could enrich the body of constitutional and statutory law in ways similar to academic judges in jurisdictions like the UK and the USA.

This approach also finds resonance in **parallels with constitutional offices**. For example, under **Article 58 of the Constitution**¹⁶, eminent jurists and scholars are eligible to become the President of India. If the highest constitutional office in the Republic recognizes the value of intellectual and academic contributions, it follows that law teachers should similarly be recognized for elevation to the judiciary. Their role is not limited to the classroom but extends to shaping the legal consciousness of the nation, which justifies their inclusion in the judiciary's fold.

Comparative perspectives also strengthen this argument. In the United States, several Supreme Court Justices, such as Felix Frankfurter and Elena Kagan, were appointed directly from academia. Similarly, in the United Kingdom, distinguished professors have been elevated to the Bench, enriching judicial reasoning with scholarly depth. By excluding law teachers from eligibility, India deprives itself of this valuable pool of judicial talent. Introducing

¹³ Article 21 <https://share.google/6yl09zVi8JlgowyuK>

¹⁴ *Hussainara Khatoon v. State of Bihar* (1979) AIR 1369

¹⁵ Article 215 of the Constitution <https://share.google/6yl09zVi8JlgowyuK>

¹⁶ Article 58 of the Constitution <https://share.google/6yl09zVi8JlgowyuK>

constitutional amendments or clarificatory policies could correct this lacuna and enable the judiciary to benefit from the expertise of academicians.

In the inclusion of law teachers as potential appointees recognizes their role as **legal luminaries**, addresses the demand for **speedy justice**, strengthens the High Court's identity as a **Court of Record**, and aligns India's system with international best practices. Such reform would not only expand the talent pool for judicial appointments but also bring much-needed diversity of thought.

Lecture. Thamairai Selvi -as a 1st Judge of Family Court in Tamil Nadu

Lecture. Thamairai Selvi stands as a significant example of how academic excellence can pave the way to judicial distinction. Before her appointment, she was well-regarded for her role as a teacher of law, shaping the intellectual foundations of numerous students and future advocates. Her transition from academia to the Bench reflected the judiciary's recognition of the value that teaching bring to judicial office. As a judge, she combined her academic insights with judicial reasoning, producing balanced decisions that emphasized clarity, fairness, and constitutional values. Her career trajectory reinforces the argument that law teachers, when appointment, can excel in judicial roles, ensuring not only the delivery of justice but also the deepening of jurisprudential thought. Before her appointment she plays a vital role in Coimbatore Bomb blast case as a additional public Prosecutor.

Best Teachers Elevated to High Courts

Several instances within India highlight how accomplished law teachers have transitioned successfully into judicial roles, reinforcing the argument for their inclusion in the eligibility framework. Notable examples include Justice M.N. Venkatachaliah, Justice Dhanapalan, Justice P. Sanmugam, and Justice Jeyachandran, all of whom had strong academic or teaching backgrounds before assuming High Court Judges. Their careers demonstrate that pedagogical experience and scholarly contributions can translate effectively into judicial reasoning and decision-making. Such elevations establish that some of the finest judges were once teachers, and their performance on the Bench has validated the view that academic excellence is a valuable judicial asset. These precedents strengthen the argument that law teachers should be systematically recognized as part of the pool of eligible candidates for High Court judgeships.

Kerala: Law Teachers as Additional Charge of Principal District court Sessions judges

In the state of Kerala provides a unique example of the judiciary's reliance on legal academics. In several instances, law teachers have been entrusted with the role of **additional charge Principal District Court Sessions Judges**, thereby performing both administrative and adjudicatory functions. This practice underscores the confidence reposed in law teachers to handle judicial responsibilities effectively, even without traditional practice at the Bar. It demonstrates that legal academics are not only capable of scholarly contributions but also adept at managing the judicial process, balancing fairness, and ensuring accountability. If temporary arrangements already recognize their competence, extending this recognition through permanent elevation to the High Court is both logical and necessary. Notably subordinate judiciary recruitment law teachers are also allowed as separate reservation.

CONSTITUTIONAL AND INSTITUTIONAL GAPS

The Indian Constitution, while providing a broad framework for judicial appointments, leaves certain lacunae that directly impact inclusivity and the recognition of diverse legal expertise. **Articles 124 and 217¹⁷** set out the qualifications for judges of the Supreme Court and High Courts, but their application has largely confined eligibility to practicing advocates and judicial officers. The clause in Article 124(3), which explicitly allows for the appointment of "distinguished jurists" to the Supreme Court, has remained underutilized and has never been invoked in practice. Similarly, Article 217 restricts High Court appointments to lawyers and judicial officers, ignoring other forms of expertise, particularly legal academics, who play a critical role in shaping jurisprudence through scholarship, teaching, and policy research. This gap between constitutional text and constitutional practice underscores a structural rigidity that prevents the judiciary from benefitting from a wider pool of intellectual resources.

Judicial interpretation has, over the years, attempted to balance independence and accountability in appointments, but without addressing these omissions. For instance, in *Supreme Court Advocates-on-Record Association v. Union of India*¹⁸, while striking down the NJAC, the Court reiterated the primacy of the collegium system, emphasizing judicial independence as part of the Constitution's basic structure. However, this decision also

¹⁷ Articles 124 and 217 <https://share.google/6yl09zVi8JlgowyuK>

¹⁸ Supreme Court Advocates-on-Record Association v. Union of India, (2016) 5 SCC 1

reaffirmed the narrow pipeline of appointments, sidestepping the potential of Article 124(3)¹⁹ and showing judicial hesitation to broaden eligibility criteria. Similarly, in *Mahesh Chandra Gupta v. Union of India*²⁰, the Supreme Court clarified that the scope of judicial review in appointments is limited to eligibility and consultation, not suitability. This again demonstrated how constitutional silences continue to exclude categories such as law teachers, who, despite meeting the intellectual rigor of judicial office, remain constitutionally invisible.

These omissions point to the urgent **need for constitutional amendments or policy reforms**. An amendment to Article 217²¹ to include “distinguished jurists and law teachers” on par with advocates and judicial officers would be a progressive step. In addition, the word “practice” should be interpreted in a broader sense to include the professional engagement of law teachers, who continuously practice law through teaching, research, writing, and interpreting legal principles, even if not in the conventional sense of courtroom advocacy. Such reforms would not undermine judicial independence; rather, they would enhance it by diversifying the sources of appointment and reducing over-reliance on the Bar and executive consultation. Comparative constitutional practices reinforce this argument. In the **United Kingdom**, scholars like **Baroness Hale**, with extensive academic backgrounds, have been elevated to the House of Lords and later to the Supreme Court. In the **United States**, several Justices, including **Felix Frankfurter** and **Elena Kagan**, had strong academic and policy experience before their appointments. These jurisdictions demonstrate that the inclusion of academics not only enriches judicial reasoning but also strengthens the connection between law, policy, and society.

Institutionally, India has also lacked mechanisms to recognize academic contributions in judicial appointments. While bodies such as the Law Commission have repeatedly highlighted the importance of legal research in policymaking, there is no structured method to channel this expertise into the judiciary. The absence of transparent criteria for identifying and elevating legal luminaries further perpetuates this exclusion. Case law such as *Indira Jaising v. Supreme Court of India*²², where the Court addressed the issue of transparency in designating senior advocates, reflects the judiciary’s cautious movement towards more open processes. Similar reforms in judicial appointments could provide legitimacy to the inclusion of law

¹⁹ Article 124(3) <https://share.google/6yl09zVi8JlgowyuK>

²⁰ *Mahesh Chandra Gupta v. Union of India*, (2009) 8 SCC 273

²¹ Article 217 <https://share.google/6yl09zVi8JlgowyuK>

²² *Indira Jaising v. Supreme Court of India*, (2017) 9 SCC 766

teachers, ensuring their elevation is based on merit and scholarly contribution rather than executive patronage. Recently the BNS, BSA and BNSS drafted by National Law university Delhi under the chairmanship of **Professor Bajpai**.

Thus, the constitutional and institutional gaps in India's appointment process reveal a paradox: while the constitutional text provides openings for innovation, practice has remained conservative. Bridging this gap through amendments and policy changes, while drawing lessons from global experiences, is necessary to ensure that the higher judiciary reflects not only advocacy skills and service experience but also the intellectual and pedagogical strengths of the legal academy.

CONCLUSION

The debate on the appointment of High Court judges brings to light the need for a more inclusive and progressive interpretation of constitutional provisions. While the framers of the Constitution under Articles 124 and 217²³ envisaged a balance between judicial officers and advocates, the exclusion of law teachers and distinguished jurists has created a significant gap in the system. Judicial appointments through promotions and elevations have undoubtedly sustained the judiciary, but they have also limited the scope of intellectual diversity. Eminent law teachers, researchers, and legal scholars remain outside the fold, despite their capacity to enrich judicial reasoning with academic depth and policy insight.

Comparative experiences from jurisdictions such as the United States and the United Kingdom demonstrate the immense value of academic voices in shaping judicial philosophy. For India, recognizing law teachers as potential High Court judges is not only a matter of fairness but also a step toward strengthening the judiciary's intellectual capital. Institutional reforms, constitutional amendments, and policy innovations are therefore essential to expand eligibility and ensure inclusivity. Ultimately, broadening the pool of judicial talent will reinforce the independence, credibility, and dynamism of the judiciary, aligning it with the evolving demands of constitutional governance.

²³ Articles 124 and 217 <https://share.google/6yl09zVi8JlgowyuK>

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