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EDITORIAL ANALYSIS

Will Increasing SC Strength Solve the Pendency Problem? The Case for Structural, Not Numerical, Reform

THE HINDU

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Will Increasing SC Strength Solve the Pendency Problem? The Case for Structural, Not Numerical, Reform

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INTERVIEW ANGLE

"If the Supreme Court's ~80,000-case backlog has persisted despite multiple expansions of judge strength, is the problem fundamentally about court capacity — or about the design of admissions, government litigation behaviour, and the absence of a National Court of Appeal?"

THE HINDU

| Op-Ed | May 29, 2026

Following the SC COLLEGIUM'S RECOMMENDATION (MAY 27, 2026)

of **5 elevations** to the Supreme Court — moving toward the **sanctioned strength of 34** — the editorial questions whether **numerical expansion** will dent the **~80,000-case backlog**. The argument: the real drivers of pendency are **admission-stage discretion, government litigation, and the SC's expanding original/constitutional docket** — not insufficient judges. The op-ed recommends **structural fixes** — **National Court of Appeal, admission filtering mechanisms, and a separate constitutional bench** — over numerical expansion.

THE ARGUMENT IN ONE LINE

The Supreme Court's pendency problem is not a **bottleneck-of-judges** problem; it is a **filtering-and-design** problem — and adding judges without fixing the admission funnel, government litigation behaviour, and docket architecture will simply produce more pendency at higher cost.

THE NUMBERS

INDICATOR	VALUE
SC sanctioned strength	34 (1 CJI + 33 judges) under SC (Number of Judges) Act, 1956
Current strength (post-May 2026 elevations, if approved)	~33 (with vacancies still likely)
Pending cases (May 2026)	~ 80,000
Annual fresh filings	~55,000-60,000
Annual disposal rate	~50,000-55,000
Net pendency growth	5,000-10,000 cases/year
Special Leave Petitions (SLP) share of pendency	~ 60-65% – the largest category
Constitution Bench (5+ judges) matters	Several hundred pending
Government as litigant	~ 50% of all SC cases

THE REAL DRIVERS OF PENDENCY

1. Admission-Stage Free-for-All

- Under Article 136, the SC accepts **Special Leave Petitions (SLPs)** with **wide discretion**.
- ~70-80% of SLPs filed are **dismissed at admission** – but each consumes hearing time.
- The Court has not adopted a **certiorari-style filtering** mechanism like the US Supreme Court (which hears <100 cases/year out of ~7,000 petitions).
- **Solution:** A tighter pre-admission screening (Justice K.K. Mathew Committee 1970s, Law Commission Reports).

2. Government as Largest Litigant

- The **Government of India** is involved in ~**50%** of SC cases.
- Many of these are **routine appeals** in tax, service, land acquisition matters.
- The **National Litigation Policy** (UPA 2010, revised 2015) sought to limit government litigation but had limited effect.
- **Solution:** A statutory threshold for government appeals (e.g., minimum monetary value, principle clarification).

3. SLP Inflation

- Article 136's wide discretion has produced an **SLP industry** — lawyers routinely advise SLP filing as a procedural step.
- **75%+ of SC filings** are SLPs.
- Most are **routine challenges**, not constitutional questions.
- **Solution:** Stricter SLP gatekeeping; mandatory pre-mention review.

4. Constitutional Docket Expansion

- The SC's **Constitution Bench (5+ judges)** docket has grown — Aadhaar, GST, demonetisation, electoral bonds, hijab, marital rape — all consuming weeks of judge time per case.
- This is intrinsically valuable but **crowds out routine appellate work**.
- **Solution: Separate Constitution Bench** with dedicated judges (Justice Krishna Iyer's proposal).

5. Hierarchy Inefficiency

- High Court appeals reach SC; SC's own decisions reach review benches; review reaches curative petition.
- Multiple layers but **no intermediate stage** between HC and SC for routine matters.

THE PROPOSED STRUCTURAL REFORMS

Reform 1: National Court of Appeal (NCA)

ELEMENT	DETAIL
Proposal	Multi-bench appellate court between HCs and SC for routine appellate work
Origin	Bihar Legal Support Society Commission (1990s); Law Commission 229th Report (2009)
Earlier advocacy	Justice V.R. Krishna Iyer's published advocacy for NCA across speeches and articles
Function	Hear appeals on non-constitutional matters
SC retained role	Constitution Bench matters + select appeals
Branches	Regional benches (Delhi, Mumbai, Chennai, Kolkata) for access
Status	Not implemented — political and legal questions on Article 136 dilution

Reform 2: Admission Filtering

ELEMENT	DETAIL
US model	Certiorari — SC chooses to hear only ~1% of petitions
Indian challenge	Article 136's wide discretion is integral to the SC's identity
Compromise	Tighter procedural filters — case-type bands, mandatory caveat process, pre-mention review
Outcome	Reduces SLP-stage backlog

Reform 3: Separate Constitution Bench

ELEMENT	DETAIL
Proposal	3-4 senior judges rotated as a dedicated Constitution Bench
Volume	All Article 145(3) matters (Constitution Bench-mandated)
Benefit	Decouples constitutional from appellate workload
Risk	Two-track court could create perception of dual-class justice

Reform 4: Government Litigation Reform

ELEMENT	DETAIL
National Litigation Policy	Revise with hard limits
In-house screening	Government can challenge in HC only if a case meets criteria
Threshold for SC	Monetary value + principle requirement
Department of Justice	Empowered to refuse to file appeals

Reform 5: Time-Bound Hearing

ELEMENT	DETAIL
CJI's tenure	Average ~2 years — limits long-term planning
Case-management	Justice U.U. Lalit (2022) introduced lists-of-the-week; partial success
Hearing day limits	Cap on hearing days per case (with exceptions)

COMPARATIVE — OTHER APEX COURTS

COURT	COMPOSITION	ANNUAL DISPOSAL	FILTER MECHANISM
US Supreme Court	9 judges	~70-80 hearings/year out of 7,000+ filings	Certiorari (1% admission rate)
UK Supreme Court	12 justices	~70-90 cases/year	Permission required
Australian High Court	7 justices	~75-100 cases/year	Special leave required
Indian Supreme Court	34 judges	~50,000 disposals; ~80,000 backlog	Wide Article 136 discretion

India has **~3x the judges** but **~100x the cases** of comparable apex courts — a structural mismatch.

THE RISKS OF NUMERICAL-ONLY EXPANSION

RISK	SUBSTANCE
More judges = more SLPs — capacity expansion can increase filing as lawyers feel SC access is easier	
Coordination cost — 34-bench court has 8+ benches simultaneously; CJI coordination strained	
Consistency risk — different benches produce inconsistent rulings on similar matters	
Specialisation absence — every judge hears every type of case; no specialisation	
Constitution Bench formation friction — pulling 5 judges off appellate work disrupts schedules	
Quality dilution — risk of weak appointments to fill numbers	

WHAT THE HINDU EDITORIAL DEMANDS

DEMAND	SUBSTANCE
NCA establishment	Via constitutional amendment if needed
Article 136 reform	Statutory + judicial constraints on SLP scope
Government litigation cap	Hard threshold on appeals
Constitution Bench specialisation	Dedicated bench with rotation
Case management technology	AI-assisted hearing scheduling, case categorisation
Appointment quality	Don't sacrifice rigour for numerical fill
CJI term reform	Longer tenures (Justice Khanna recommended structural CJI reform)

THE MEMORANDUM OF PROCEDURE (MOP) BACKDROP

The MoP governing appointments has been **unfinalised since 2015**. Issues:

- National security veto.
- Reasons for rejection.
- Time limits for executive action.

The SC Collegium's May 27, 2026 recommendations of 5 elevations is part of this unresolved appointment framework.

WIDER SIGNIFICANCE

- **Justice delayed = justice denied** — pendency erodes trust in the judicial system.
- **Constitutional governance** depends on a functional apex court.
- **Federalism** — HCs' authority is diminished if SC routinely accepts SLPs.
- **Access to justice** — pendency disproportionately hurts indigent litigants.
- **Rule of law signal** — international investors track court efficiency.

COUNTER-ARGUMENTS

COUNTER	SUBSTANCE
NCA fragments the court	Constitutional unity of the SC matters
Article 136 is foundational	Restricting it requires constitutional amendment
More judges = more disposal	Numerical capacity does help marginally
Specialisation = bench-shopping	Risk of strategic case-filing in particular benches
CJI's discretion preserves flexibility	Allows the court to respond to constitutional emergencies

WAY FORWARD

- **Phased NCA pilot** – start with a single regional bench.
- **Article 136 procedural reform** – pre-mention review, time limits.
- **National Litigation Policy hard floor** – government appeals only above ₹X.
- **Specialisation of HC benches** – relieve SC of routine matters.
- **CJI-coordinated case management** – AI-assisted scheduling.
- **Constitutional Bench reform** – dedicated bench, rotated panel.

UPSC RELEVANCE

GS Paper 2 – Polity & Governance:

- Structure, organization and functioning of the Executive and the Judiciary.
- Appointment to various Constitutional posts.

Analytical hooks for Mains:

- Article 136 – SLP architecture and apex court burden.
- National Court of Appeal – constitutional and administrative considerations.
- Government as the largest litigant – accountability and reform.

FACTS CORNER

SC sanctioned strength: 34 (1 CJI + 33 judges) under SC (Number of Judges) Act, 1956 (amended 2008, 2019).

SC pendency (May 2026): ~80,000 cases.

SLPs as % of pending: ~60-65%.

Government as litigant: ~50% of SC cases.

Constitution Bench: Article 145(3) – substantial questions of constitutional law.

Article 136: Special Leave Petition – wide SC discretion.

CJI Surya Kant sworn in November 24, 2025.

NCA proposal: Law Commission 125th Report (1988) and 229th Report (2009); Justice V.R. Krishna Iyer's published advocacy in speeches and articles.

National Litigation Policy: UPA 2010; revised 2015.

MoP (Memorandum of Procedure): unfinalised since 2015.

US SC: ~9 judges; ~70-80 hearings/year; certiorari-driven.

Justice U.U. Lalit (CJI 2022): Introduced morning-mention system to reduce backlog.

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