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Supreme Court (Number of Judges) Amendment Bill, 2026: Why 38 Judges May Not Clear the Backlog

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Supreme Court (Number of Judges) Amendment Bill, 2026: Why 38 Judges May Not Clear the Backlog

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The Lok Sabha took up the Supreme Court (Number of Judges) Amendment Bill, 2026 for consideration and passing on July 27, 2026, moved by Union Minister of Law and Justice Arjun Ram Meghwal. The Bill raises the sanctioned strength of the Supreme Court from 33 to 37 judges excluding the Chief Justice of India (CJI), and replaces an ordinance promulgated on May 16, 2026.

WHAT THE BILL DOES

The Supreme Court (Number of Judges) Amendment Bill, 2026, introduced in the Lok Sabha as Bill No. 128 of 2026 on July 20, 2026, amends Section 2 of the Supreme Court (Number of Judges) Act, 1956. The operative change is a single-word substitution: “thirty-three” becomes “thirty-seven”. Because the statute counts judges *excluding* the CJI, sanctioned bench strength moves from 34 to 38 when the CJI is included. This is the eighth expansion since 1950 and the first since 2019.

From ordinance to statute

The Union Cabinet approved the proposal on May 5, 2026. With Parliament not in session, President Droupadi Murmu promulgated the Supreme Court (Number of Judges) Amendment Ordinance, 2026 on May 16, 2026, under **Article 123**. An ordinance carries the force of an Act, but must be laid before both Houses on reassembly and ceases to operate six weeks from that date unless replaced by legislation. This Bill performs that replacement.

The route drew objection. Opposition members Sougata Ray, N.K. Premachandran and Dean Kuriakose moved **statutory** resolutions disapproving the ordinance, arguing that a change in the composition of the highest court did not meet the threshold of urgency Article 123 contemplates.

THE CONSTITUTIONAL BASIS

Article 124(1) provides that there shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, not more than seven other judges. That clause is the enabling hook: Parliament can expand the court by an **ordinary law passed by simple majority**, with no amendment under Article 368 required. It is a favourite Prelims distinction, since most structural changes to constitutional bodies do need an amendment.

Eight expansions in seventy-six years

YEAR	INSTRUMENT	JUDGES EXCLUDING CJI	TOTAL INCLUDING CJI
1950	Constitution, Article 124(1)	7	8
1956	Supreme Court (Number of Judges) Act, 1956	10	11
1960	Amendment Act	13	14
1978	Amendment Act	17	18
1986	Amendment Act	25	26
2009	Amendment Act	30	31
2019	Amendment Act	33	34
2026	Ordinance, now this Bill	37	38

SANCTION IS NOT THE BINDING CONSTRAINT

Here lies the analytical heart of the debate. When the Union Cabinet cleared the proposal on May 5, 2026, the Supreme Court's **working strength was 32 judges against a sanctioned 34**, that is, two seats were already vacant and no recommendations had been sent to fill them.

If the court could not fill the seats it already had, raising the ceiling to 38 creates six notional vacancies rather than four sitting judges. The statutory ceiling was never the operative limit. The limit is the **pace at which the Collegium recommends names and the Union Government clears them**. Every previous expansion, in 1986, 2009 and 2019, was followed by a period in which vacancies persisted.

The docket picture

The pendency numbers explain the political urgency even if they do not validate the remedy.

INDICATOR	FIGURE	AS ON
Supreme Court pendency	92,823	April 30, 2026
Supreme Court, three-decade record	93,143	March 2026
High Courts	About 60.6 lakh	Law Ministry, 2024
District and subordinate courts	About 4.41 crore	Law Ministry, 2024
All courts combined	Over 5.02 crore	Law Ministry, 2024

Yet strength alone does not dictate pendency trends, because the docket expands with the court's ever-widening jurisdiction and the steady inflow of Special Leave Petitions (SLPs) under Article 136.

THE APPOINTMENTS BOTTLENECK

Higher judicial appointments are governed by the **Collegium system**, a judicial construct rather than a constitutional text, built through the Second Judges Case (1993) and clarified by the Third Judges Case (1998). The CJI and the four senior-most judges recommend appointments, and the President appoints on that advice.

Parliament attempted to displace this through the 99th Constitutional Amendment Act, 2014 and the National Judicial Appointments Commission (NJAC) Act, 2014. In **Supreme Court Advocates-on-Record Association v. Union of India (October 16, 2015)**, the Fourth Judges Case, a five-judge Constitution Bench struck both down by 4:1, holding that the NJAC compromised judicial independence, a basic-structure feature.

What survives is the **Memorandum of Procedure (MoP)**, the administrative document governing the mechanics of appointment. A revised MoP has been under negotiation since 2015 without finalisation, and it sets no outer time limit within which the government must act on a reiterated Collegium recommendation. That silence is where recommendations stall.

WILL A BIGGER BENCH DELIVER BETTER JUSTICE?

A second line of criticism is about judicial architecture rather than arithmetic.

- **Fragmentation of precedent.** With 38 judges the court will sit in more, smaller benches, and most matters are already heard by two-judge benches. Multiplying them raises the risk of conflicting rulings on the same question of law and dilutes the precedential coherence a final court is supposed to supply.

- **Constitutional court versus court of appeal.** The Supreme Court today functions largely as an appellate court of last resort, with SLPs dominating the docket, so constitutional adjudication competes for time with routine appeals.
- **The structural alternative.** The Law Commission of India, in its **229th Report submitted on August 5, 2009**, recommended dividing the court into a Constitution Bench at Delhi and four Cassation Benches at Delhi, Chennai or Hyderabad, Kolkata and Mumbai. In **V. Vasanthakumar v. H.C. Bhatia (July 13, 2016)**, a three-judge bench referred to a Constitution Bench the question of whether a **National Court of Appeal** or regional benches should be established. That reference remains undecided.

WAY FORWARD

- ① **Time-bound Memorandum of Procedure.** Fix outer limits for each stage, particularly for executive action on a reiterated Collegium recommendation, so a raised ceiling translates into filled seats.
- ② **Structural reform of the docket.** Revive the Constitution Bench plus Cassation Bench model of the 229th Report, or decide the pending Vasanthakumar reference.
- ③ **All India Judicial Service (AIJS).** Article 312 permits Parliament to create an AIJS for posts not below the rank of district judge, where the bulk of the backlog sits.
- ④ **Case-flow management.** Scale up e-Courts Phase III, pre-litigation mediation, adjournment control, and judicial impact assessment for every new law that generates litigation.

UPSC RELEVANCE

GS Paper 2: Structure, organisation and functioning of the Judiciary; Separation of Powers; Appointment to constitutional posts; **Ordinance-making power** of the Executive; conduct of business in Parliament.

Prelims pointers:

- The Bill is Bill No. 128 of 2026, introduced in the Lok Sabha on July 20, 2026.
- It raises strength from 33 to 37 excluding the CJI, that is, 34 to 38 including the CJI.
- It amends the Supreme Court (Number of Judges) Act, 1956, and replaces the ordinance of May 16, 2026 promulgated under Article 123.
- Article 124(1) fixes the original strength at a CJI plus not more than seven other judges, subject to Parliament prescribing a larger number by law.
- No constitutional amendment is needed; a simple majority ordinary law suffices.
- Sanctioned strength including the CJI: 8 in 1950, 11 in 1956, 14 in 1960, 18 in 1978, 26 in 1986, 31 in 2009, 34 in 2019, 38 in 2026.

- An ordinance ceases to operate six weeks from the reassembly of Parliament unless replaced by an Act.
- The NJAC and the 99th Constitutional Amendment were struck down 4:1 on October 16, 2015 in the Fourth Judges Case.

★ FACTS CORNER, KNOWLEDGE PEDIA

SUPREME COURT, KEY NUMBERS:

Sanctioned strength after the 2026 Bill: 38 including the CJI

Working strength when the Cabinet cleared the proposal on May 5, 2026: 32

Pendency: 92,823 as on April 30, 2026

Constitution Bench under Article 145(3): minimum five judges

Retirement age under Article 124(2): 65 years

JUDICIAL APPOINTMENTS LANDMARKS:

First Judges Case, S.P. Gupta v. Union of India, 1981

Second Judges Case, 1993, created the Collegium

Third Judges Case, Presidential Reference, 1998, expanded it to CJI plus four senior-most judges

Fourth Judges Case, October 16, 2015, struck down the NJAC by 4:1

KEY CONCEPTS:

Sanctioned strength: the maximum number of judges a court may have in law

Working strength: the number of judges actually in office at a given time

Ordinance: temporary law made by the President under Article 123 when Parliament is not in session

Cassation bench: a bench hearing final appeals on questions of law, leaving constitutional questions to a separate bench

Special Leave Petition: discretionary appeal to the Supreme Court under Article 136

Sources: PRS Legislative Research, PIB, The Hindu, Supreme Court Observer

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