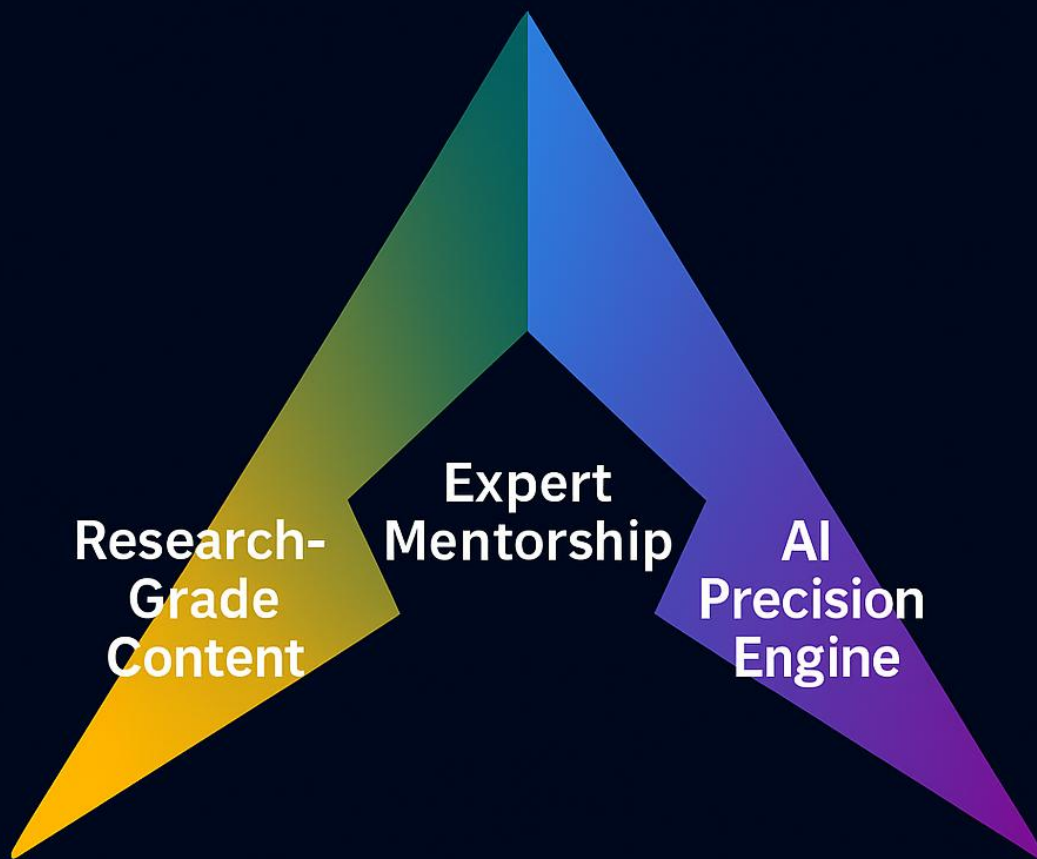


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DAILY CURRENT AFFAIRS DATED 29.05.2026

GS Paper II: Polity

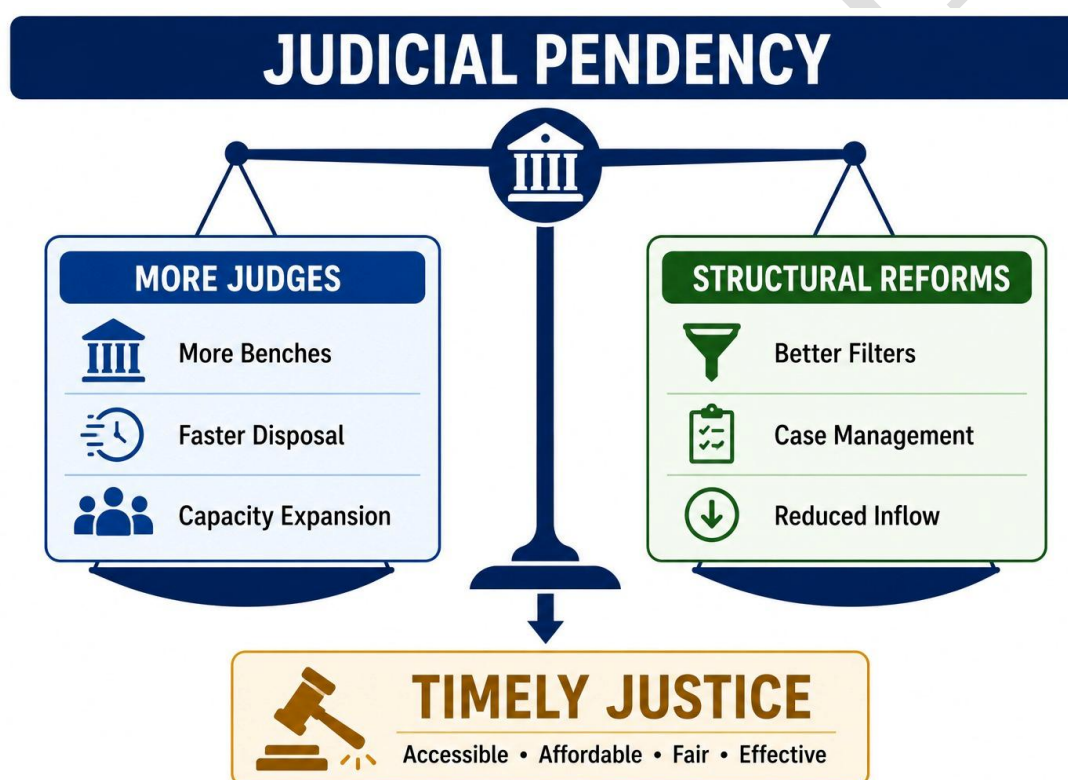
1. Increasing Supreme Court Strength and the Pendency Challenge

a. Introduction

The President has promulgated an ordinance increasing the sanctioned strength of the Supreme Court from 34 to 38 judges. The measure has been justified as a step towards faster justice delivery, especially at a time when nearly 94,000 cases are pending before the Supreme Court.

The development is important because judicial pendency is not merely an administrative concern. It affects access to justice, constitutional governance, rule of law, citizen trust and the credibility of institutions. However, increasing the number of judges, though useful, cannot by itself solve the deeper structural problems that have contributed to the Supreme Court's growing docket.

The central question is whether the pendency crisis can be addressed only by expanding the Court's capacity, or whether India also needs reforms in the nature, flow and management of cases reaching the Supreme Court.



b. Key Features of the Development

- **Increase in Sanctioned Strength:** The sanctioned strength of the Supreme Court has been increased by four judges, from 34 to 38. The stated objective is to improve the Court's ability to deal with its rising workload.
- **Use of Ordinance Route:** However, the use of the ordinance route has attracted criticism because Parliament was expected to meet shortly. Since increasing the strength of the Supreme Court is an important institutional reform but not an emergency measure, ordinary legislative deliberation would have been more appropriate.
- **Article 136 and Case Inflow:** A major reason for pendency before the Supreme Court is the high volume of Special Leave Petitions under Article 136. Over time, the Court has increasingly functioned as a regular appellate court rather than primarily as a constitutional court.

- **Other Institutional Concerns:** Concerns have also been raised about conflicting rulings by coordinate Benches, long oral arguments, frivolous public interest litigation, weak filtering mechanisms, transfer petitions and inadequate gender representation on the Bench.

These features show that the issue is wider than the numerical shortage of judges. It involves the Supreme Court's docket, procedure, institutional role and internal management.

c. Why Increasing Judges Is Useful but Insufficient

- **Short-Term Relief:** Increasing the number of judges can provide some short-term relief. More judges may allow the Court to constitute more Benches, hear more matters and improve disposal rates. In a system where the judge-to-case ratio is under pressure, expansion of judicial capacity has practical value.
- **Structural Nature of Pendency:** However, pendency is not only a problem of inadequate numbers. It is also a problem of excessive inflow, weak filtering and poor case management. If the number of cases entering the Supreme Court continues to rise unchecked, the addition of judges may only temporarily increase disposal without reducing the structural backlog.
- **Need for Dual Reform:** Therefore, judicial reform must address both sides of the problem: the Court's capacity to decide cases and the system that determines which cases should reach the Supreme Court in the first place.

This makes judge-strength expansion necessary but not sufficient for meaningful reform.

d. Article 136 and the Transformation of the Supreme Court

- **Original Purpose of Article 136:** Article 136 gives the Supreme Court wide discretionary power to grant special leave to appeal. The provision was designed as an extraordinary remedy to correct grave injustice or address substantial questions of law. It was not intended to make the Supreme Court a routine appellate forum for ordinary disputes.
- **Growth of Special Leave Petitions:** Over time, however, Special Leave Petitions have come to dominate the Supreme Court's docket. Litigants increasingly approach the Court as the final appellate forum in service matters, property disputes, criminal appeals, commercial cases and many other issues.
- **Change in Institutional Character:** This has changed the institutional character of the Court. Instead of devoting most of its time to constitutional interpretation, federal disputes, civil liberties and nationally significant legal questions, the Court spends a large part of its time deciding whether ordinary appeals deserve admission.
- **Consequences for Constitutional Adjudication:** This has two major consequences. First, constitutional matters and important questions of law may receive less timely attention. Second, the Court's limited institutional energy is consumed by admission hearings and routine appellate matters.

Thus, reforming Article 136 practice is central to restoring the Supreme Court's role as a constitutional court.

e. The Problem of Conflicting Bench Rulings

- **Increase in Small Benches:** Most Supreme Court matters are heard by two-judge Benches. If the number of judges increases, the number of small Benches may also increase. This can improve disposal, but it may also increase the possibility of conflicting judgments by coordinate Benches.
- **Doctrinal Uncertainty:** When different Benches take different views on similar legal questions, doctrinal uncertainty arises. Litigants, High Courts, tribunals and government authorities may then face confusion about the correct legal position. Such conflicts often require reference to larger Benches, which can further delay final settlement of important legal issues.

- **Need for Early Reference:** Therefore, increasing judicial strength must be accompanied by better internal mechanisms to identify recurring legal questions and refer them to larger Benches at an early stage. This will help maintain consistency and predictability in the law.

This shows that increasing the number of judges must go hand in hand with institutional mechanisms for doctrinal coherence.

f. Ordinance Route and Parliamentary Deliberation

- **Nature of Ordinance-Making Power:** The ordinance-making power is meant to address situations where immediate action is necessary when Parliament is not in session. While the Constitution permits ordinances, their frequent use for non-urgent matters can weaken legislative deliberation.
- **Importance of Parliamentary Scrutiny:** Increasing the strength of the Supreme Court is an important institutional decision. It affects judicial functioning, public finance, appointments and the larger architecture of justice delivery. Such a matter deserves discussion in Parliament unless there is an urgent and unavoidable reason.
- **Institutional Reform Through Debate:** Therefore, the use of the ordinance route in this case raises a larger concern. Institutional reforms should ideally be carried out through transparent debate, parliamentary scrutiny and reasoned legislation.

The procedure adopted is important because the legitimacy of reform depends not only on its objective, but also on the process through which it is carried out.

g. Government Litigation as a Major Source of Backlog

- **Government as a Frequent Litigant:** The Union government, State governments and public sector bodies are among the largest litigants in India. Many cases reach the Supreme Court because government departments appeal mechanically, even when the legal position is weak or the matter could have been settled earlier.
- **Burden on Citizens and Courts:** This creates unnecessary burden on courts and imposes costs on citizens. A citizen who has already won before a lower court or High Court may be forced to fight further litigation simply because the government follows a routine practice of appeal.
- **Need for National Litigation Policy:** The absence of a coherent National Litigation Policy contributes to this problem. Without clear rules on when to appeal, when to settle and when to accept adverse judgments, government litigation continues to add avoidable pressure on the judiciary.

Reducing government litigation is therefore one of the most important steps for lowering pendency and improving access to justice.

h. Frivolous PILs and Weak Filtering Mechanisms

- **Value of Public Interest Litigation:** Public interest litigation has played a major role in expanding access to justice and protecting rights. However, frivolous or publicity-oriented public interest litigation can consume valuable judicial time.
- **Misuse of PIL Jurisdiction:** The challenge is to distinguish genuine public interest litigation from petitions filed for personal, political or media attention. Courts must protect the institution of public interest litigation while discouraging its misuse.
- **Need for Stronger Filters:** Similarly, repetitive appeals, transfer petitions, poorly drafted matters and cases without substantial legal merit add to the Court's workload. Stronger filtering mechanisms are needed so that the Supreme Court's time is reserved for matters of constitutional importance, substantial legal questions or serious injustice.

This would allow the Court to protect genuine rights-based litigation while discouraging unnecessary docket pressure.

i. Need for Better Case Management

- **Procedural Sources of Delay:** The Supreme Court also needs stronger internal case-management reforms. Long oral arguments, frequent adjournments, poor listing practices and inadequate use of written submissions contribute to delay.
- **Tools for Efficiency:** Time limits on oral arguments, structured written briefs, early identification of legal questions and better categorisation of cases can improve efficiency. Technology can also be used to track case flow, identify repetitive issues and prioritise older matters.
- **Link with Justice Delivery:** Case management is not a minor administrative reform. It is central to justice delivery because delay weakens the value of rights and remedies.

Therefore, reducing pendency requires procedural discipline as much as it requires more judges.

j. Representation and Institutional Legitimacy

- **Opportunity Created by Expansion:** The expansion of Supreme Court strength also provides an opportunity to improve representation on the Bench. Concerns have been raised about inadequate gender representation, and more broadly about the need for diversity in the higher judiciary.
- **Importance of Diversity:** Judicial diversity matters because courts derive legitimacy not only from legal expertise but also from public confidence. A Bench that reflects broader social diversity can strengthen trust in the judiciary and enrich judicial reasoning.
- **Use of New Appointments:** Therefore, new appointments should be used not only to increase numbers but also to improve institutional balance, representation and legitimacy.

This makes judicial expansion an opportunity for both efficiency and inclusiveness.

k. Way Forward

- **Reform Article 136 Filters:** The Supreme Court should develop stricter filters for Special Leave Petitions under Article 136. Intervention should be reserved for substantial questions of law, grave injustice or matters of national significance.
- **Strengthen Case Management:** Case management should be strengthened through written submissions, time limits on oral arguments, better listing practices and early identification of recurring legal issues.
- **Frame a National Litigation Policy:** A coherent National Litigation Policy should be framed to reduce routine government appeals. Government departments should be encouraged to settle matters where appropriate and avoid mechanically approaching higher courts.
- **Refer Important Questions to Larger Benches:** Important legal questions should be referred to larger Benches early. This will reduce conflicting coordinate Bench rulings and improve doctrinal consistency.
- **Scrutinise Frivolous PILs:** Frivolous public interest litigation should face strict scrutiny, but genuine public interest litigation must remain protected as a tool of constitutional justice.
- **Improve Judicial Diversity:** New appointments should be used to improve gender and social diversity on the Supreme Court Bench.
- **Strengthen High Courts:** High Courts should be allowed to conclusively decide issues before matters are transferred prematurely to the Supreme Court. Strengthening High Courts is essential because they are the primary constitutional courts for most citizens.

A meaningful reform agenda must therefore address inflow, procedure, representation and institutional role, not only judge strength.

Conclusion

Increasing the sanctioned strength of the Supreme Court may help manage workload in the short term, but pendency is fundamentally a structural problem. The deeper causes lie in the large inflow of

Special Leave Petitions, excessive government litigation, weak filtering mechanisms, long arguments, inconsistent Bench rulings and inadequate case management.

Judicial reform must therefore focus not merely on increasing the number of judges, but on improving the quality of judicial functioning. A strong Supreme Court should primarily serve as a constitutional court, a guardian of rights and a final interpreter of law, not as a routine appellate forum for every dispute.

The real test of reform will be whether India can reduce unnecessary litigation, preserve constitutional adjudication and ensure timely justice without compromising institutional deliberation and judicial consistency.

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