Supreme Court Strength from 34 to 38: From Ordinance to Act

Constitution, Judiciary and Governance | News context: 2 June 2026 | Published: 17 October 2026

On 16 May 2026, an ordinance raised the Supreme Court's sanctioned strength from 33 to 37 (38 including the Chief Justice); on 2 June, five new judges took oath and the working strength became 37. In the monsoon session, Parliament turned the ordinance into an act — which was deemed effective from 16 May itself.

Why in the News

The Supreme Court (Number of Judges) Amendment Ordinance 2026 (Ordinance no. 1/2026) was issued by the President on 16 May 2026 under Article 123(1) — in Section 2 of the 1956 act, 'thirty-three' was substituted with 'thirty-seven', with immediate effect (gazette text). On 2 June 2026, five new judges took oath before Chief Justice Surya Kant — the working strength became 37, one post vacant. The proposed purpose of the increase was said to be tied to more than 93,000 pending cases and more sittings of Constitution Benches. Later, in the monsoon session: the bill was passed in the Lok Sabha on 3 August 2026 (without debate amid opposition protest) and in the Rajya Sabha on 5 August; the President's assent came on 11 August — Act no. 14/2026, deemed effective from 16 May 2026 (the Department of Justice's authentic text).

Article 124(1) and Ordinance Power: How the Number Changes

Article 124(1) says the Supreme Court shall consist of a Chief Justice and such number of other judges as Parliament may by law determine — that is, fixing the number is Parliament's domain. From the 1956 act, the sequence is (sci.gov.in): 8 in 1950, 11 in 1956, 14 in 1960, 18 in 1978, 26 in 1986, 31 in 2009, 34 in 2019 — and 38 in 2026. Article 123 gives the President the power to issue an ordinance when a session is not running, but an ordinance must necessarily be laid before both houses after Parliament reassembles and it ceases after six weeks (Article 123(2)) — so the ordinance route is regarded as extraordinary; the increases of 2009 and 2019 had happened through ordinary bills.

Key Facts

The ordinance's text: the gazette notification (16 May 2026) has only one amendment: in Section 2 of the 1956 act, 'thirty-seven' in place of 'thirty-three' — that is, a maximum of 37 judges excluding the Chief Justice, 38 in total; the ordinance took effect immediately.

The appointments: on 2 June 2026, five new judges took oath and sat; the working strength became 37, one post remaining vacant; with the appointments, an expectation of

improvement in regional representation and gender diversity was also expressed (2 June 2026).

From ordinance to act: the Supreme Court (Number of Judges) Amendment Bill 2026 was passed in the Lok Sabha on 3 August (according to reports, without debate amid opposition protest) and in the Rajya Sabha on 5 August; presidential assent on 11 August; Act 14/2026 was deemed effective from 16 May 2026 — a complete replacement of the ordinance (Department of Justice, act text).

The scale of pendency: the increase's rationale was tied to more than 93,000 pending cases and the fewer sittings of Constitution Benches — benches of five and more judges can be constituted only when an adequate number is available.

What is special about 2026 in history: for the first time, a strength increase began with an ordinance; all six increases from 1956 to 2019 happened through ordinary parliamentary bills (sci.gov.in) — that is why the 2026 process becomes a case for process analysis.

What Is the Debate Beyond the Number Increase?

Pendency and Constitution Benches: more judges = more benches = more disposal; and regular sittings of Constitution Benches for big constitutional questions become possible — in whose absence important questions get postponed for years. This argument remained in the increases of 2009 (31) and 2019 (34) too.

The process concern of the ordinance route: earlier increases happened through bills; in 2026, beginning with an ordinance and then passing in the Lok Sabha without debate raises the question of the quality of legislative deliberation — in the Mains, connect this with the debate over the 'urgent' versus 'convenient' use of ordinance power.

Number versus productivity: studies and experience show that backlog does not fall with numbers alone: the pace of appointments (the collegium-government tension), High Court vacancies, procedural reform, technology and case management are equally decisive. One post remained vacant even after the appointments — there is a difference between a number being sanctioned and actual filling.

The dimension of representation: with the increase, an expectation of regional and gender diversity is tied — the number of women judges in the Supreme Court has historically been extremely low; watching this aspect in the new appointments is part of the judicial-diversity debate.

Analysis and Way Forward

This three-stage process (ordinance on 16 May → appointments on 2 June → act in August) is a case for the study of both judicial administration and legislative process. Worth watching ahead: (1) the vacant 38th post and the pace of future appointments — tied to the transparency debate of the collegium system; (2) the actual sitting of Constitution Benches — only then will the promise of the strength increase be fulfilled; (3) the position

of the High Courts' sanctioned strength and vacancies — until then the benefit of the Supreme Court's increase will remain partial. From a policy view, this sequence is an example of 'institutional capacity expansion', but the process (ordinance, passing without debate) also shows how legislative deliberation gets limited in capacity decisions.

Difference in Concepts

'Sanctioned strength' is the maximum posts in law — 37+CJI = 38 in 2026; 'working strength' is the judges actually in office — 37 on 2 June 2026, one vacancy. The difference between the two is an indicator of the pace of appointments. Likewise, an 'ordinance' is the President's interim legislative power (Article 123), issued when a session is not running and on immediate necessity, while an 'act' is made through Parliament's ordinary legislative process — the ordinance's maximum life is limited, the act's permanent.

Mains Perspective

GS-II: the Constitution (Articles 123, 124), the structure and working of the judiciary, the legislative process. In the answer, connect the sequence of the strength increase (8→38), the ordinance-versus-act route, the pendency figures (93,000+) and the collegium-transparency debate; the distinction of 'sanctioned versus working strength' adds accuracy.

UPSC CSE Mains Style: Original Practice Question

Increasing the number of judges is a necessary, but insufficient, solution to judicial pendency. Discuss this statement with reference to the 2026 increase in the Supreme Court's sanctioned strength and its ordinance-route process.

(Answer in 150 words) | 10 marks

Answer Outline

Introduction: 93,000+ pendency and the 2026 increase.

Main Body: Arguments of necessity: benches, Constitution Benches, disposal; insufficiency: pace of appointments, procedure, High Courts, case management; process analysis: ordinance of 16 May, passing without debate, Act 14/2026; suggestions.

Conclusion: Link the increase in numbers with appointments, case management and the capacity of High Courts. Judge results by real improvement in the holding and disposal of Constitution Benches; do not treat sanctioned posts as sitting judges. Insist on both a valid process from ordinance to Act and meaningful parliamentary deliberation.

Sources

- Ordinance gazette: the Supreme Court (Number of Judges) Amendment Ordinance 2026, 16 May 2026
- The Hindu: five new judges took oath, 2 June 2026
- Department of Justice: the Amendment Act 2026 (Act 14/2026) — LS 3 August, RS 5 August, assent 11 August
- History of the Supreme Court (the sequence of sanctioned strength): sci.gov.in
- The Hindu: the bill passed without debate in the Lok Sabha, 3 August 2026

Check note: the ordinance's gazette text and the authentic text of Act 14/2026 (Department of Justice) were both read from the originals; the historical sequence of the sanctioned strength was verified from sci.gov.in. The appointment details and the pendency figure (93,000+) are from The Hindu's reports.

Remember: the number has become 38, but the promise will be fulfilled only when Constitution Benches actually sit and vacancies are filled regularly. The process is also a message: an increase that began with an ordinance was completed in Parliament without debate — deliberation is expected even in capacity decisions.