
CAPACITY, NOT CONTROL: THE 2026 ORDINANCE AND THE LIMITS OF EXECUTIVE POWER OVER THE INDIAN JUDICIARY

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ABSTRACT

Judicial independence is a fundamental pillar of constitutional democracy and one of the most important to safeguard the rule of law, fundamental rights and the balance between the three arms of government. This paper discusses judicial independence in India and the constitutional validity and impact of the Supreme Court (Number of Judges) Amendment Ordinance, 2026. It elucidates the constitutional provisions that ensure judicial independence, the concept of separation of powers, the Basic Structure Doctrine, judicial review and the removal and appointment of judges. It also examines whether the strength of the Supreme Court, when increased by sanctions, has an impact on judicial autonomy or on the weakening of constitutionalism. It concludes that the Ordinance does not change the existing appointment mechanism, the system of collegium and constitutional protection for judges. Instead, it aims to enhance the Court's ability to handle the increasing number of cases and provide justice in a timely manner. The paper also examines the relevant judicial precedent, comparative lessons from the United Kingdom and the United States, as well as the limitations on the efficiency of judges. It concludes that, in the event of filling judicial seats quickly and having the necessary institutional framework, transparency and administrative support to go along with judicial strength, the Ordinance is constitutionally viable.

Keywords: The independence of judges - They are free of outside interference, Ordinance - Making Power - When the President makes laws, The judicial Appointments - process of selecting judges is a major point of discussion, Judicial Efficiency - Speedy and effective justice.

INTRODUCTION

A free and independent judiciary is one of the most crucial characteristics of a democratic constitution¹. It protects judges from fear, favour and outside influence, and from judging cases based on the Constitution and the law². Judicial independence is not specifically mentioned in any one part of the constitution in India but is shown in the constitution all over. Combined, the security of tenure, judicial salaries protection, limited grounds for removal, judicial review and separation of judiciary and executive ensure the impartial role of courts and safeguards the rights of the citizens. The Supreme Court has consistently held that "judicial independence" forms a part of the Basic Structure of the Constitution and therefore cannot be diminished by any constitutional amendment.³

However, in recent years the Indian judiciary has been grappling with several problems like the burgeoning number of pending cases, the increasing volume of constitutional litigations and the growing number of appeals⁴. These concerns have led to questions about the delivery of justice in a timely fashion and the public's trust in the justice system. Therefore, to solve this issue, the President promulgated the Supreme Court (Number of Judges) Amendment Ordinance, 2026 to raise the sanctioned strength of the Supreme Court from 34 to 38 judges⁵. The main goal of this reform is to improve the Court's institutional capacity, minimize the pendency of cases and ensure that justice is accessible to citizens without altering the constitutional framework governing judicial appointments and judicial independence.

This paper examines the issues of validity and constitutionality of the Ordinance and its effect on the independence of the judiciary. It looks at the provisions of the Constitution, the Basic Structure Doctrine and some important judicial precedents which establish the limits of judicial independence in India. It also assesses the Ordinance with a focus on separation of power, influence of executive on judiciary, independence of judiciary, and public trust in the justice delivery system. The paper also contrasts the Indian system with the judicial systems of the United Kingdom and the United States and explores some practical issues that could impact the effectiveness of the reform. This paper aims to investigate by analysing this Ordinance

¹ INDIA CONST. pmbl.; INDIA CONST. arts. 50, 124–147.

² S.P. Gupta v. Union of India, 1981 Supp SCC 87.

³ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225; Supreme Court

⁴ National Judicial Data Grid, Department of Justice, Government of India, Case Pendency Statistics

⁵ The Supreme Court (Number of Judges) Amendment Ordinance, 2026

whether the Supreme Court's institutional efficiency is improved without the compromise of the constitutional principles that give effect to judicial independence.

CONCEPT OF JUDICIAL INDEPENDENCE

Meaning and Definition

Judicial independence is one of the basic principles of constitutional democracy, which guarantees that judges exercise their judicial powers without being influenced by anyone, and only in accordance with the Constitution, the law and their conscience. Shimon Shetreet defines judicial independence as comprising three dimensions: substantive independence, whereby judges decide cases without interference; personal independence, which guarantees security of tenure and protection of service conditions from executive control; and institutional (collective) independence, which grants the judiciary autonomy over its administration, finances, and governance.⁶ This framework is reflected in the International Bar Association's Minimum Standards of Judicial Independence (1982), the UN Basic Principles on the Independence of the Judiciary (1985), the Beijing Statement (1995), and the Bangalore Principles of Judicial Conduct (2002), all of which recognise judicial independence as indispensable to the rule of law and the right to a fair trial⁷. In India, constitutional safeguards such as security of tenure, protection of judicial salaries, limited grounds for removal, contempt powers, and the separation of the judiciary from the executive under Article 50 collectively preserve judicial independence.

Importance in a Democracy

Judicial independence is essential for constitutional governance and the safeguarding of citizens' rights. It allows courts to be able to exercise judicial review without fear or favour, which is an effective check on legislative and executive excesses⁸. Judicial independence also helps to maintain public confidence in the judiciary, as it ensures that the judiciary is able to resolve disputes in accordance with the law, rather than through political influence.

⁶ Shimon Shetreet, *Judges on Trial: A Study of the Appointment and Accountability of the English Judiciary* 590–603 (2d ed. Cambridge Univ. Press 2011).

⁷ United Nations, *Basic Principles on the Independence of the Judiciary*, G.A. Res. 40/32 & 40/146 (1985)

⁸ *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261.

Principles of Separation of Powers and Rule of Law

Montesquieu's doctrine of separation of powers, which he expressed in *The Spirit of the Laws* (1748), calls for the separation of legislative, executive and judicial powers into distinct institutions to avoid the accumulation of power.⁹ Along with this doctrine is A.V. Dicey's doctrine of the rule of law which involves supremacy of law, equality before law and the enforcement of legal rights by the judiciary. The principles are embodied in Articles 14, 21, 32 and 226 of the Constitution. Separation of powers creates the institutional structure, judicial independence creates impartial adjudication, and the rule of law creates accountability of all public authorities to the Constitution. The Supreme Court has reiterated this constitutional relationship in the NJAC Case, which states that the independence of the judiciary is an integral part of the basic structure of the Constitution.¹⁰

CONSTITUTIONAL FRAMEWORK

Judicial independence is not just embedded in a single clause, but is part of the structure of the Constitution – the way in which courts are structured, the way in which judges are selected and demitted, the sources of judicial funding. The framers put these protections into the document itself, not into normal parliamentary law, which means that no temporary parliamentary majority could overpower them.

Key Constitutional Provisions

The Supreme Court is regulated by Part V, Chapter IV (Articles 124-147)¹¹, the High Courts by Part VI, Chapter V (Articles 214-231), both of which relate to the composition, appointment, tenure, salary and removal of the judges of the respective courts.

There is a clear contrast in Article 216 between the ordinary law and the constitutional text in determining the strength of High Courts, which is different from the situation in Article 124(1) above. As in Article 124(1) above, the Court's actual numerical strength is subject to the discretion of Parliament by ordinary law, but not subject to the constitutional text in Article

⁹ Charles de Secondat, Baron de Montesquieu, *The Spirit of the Laws* bk. XI, ch. 6 (Thomas Nugent trans., Batoche Books 2001) (1748).

¹⁰ Supreme Court Advocates-on-Record Ass'n v. Union of India, (2016) 5 SCC 1 (NJAC Case).

¹¹ Part V, Chapter IV (Articles 124-147)

216.

The Second and Third Judges Cases interpreted Article 124(2) to require the concurrence of a collegium consisting of the Chief Justice of India. There is a parallel provision for the High Courts in Article 217, which requires consultation with the Chief Justice of India, the Governor of the State, and (for judges other than the Chief Justice) the Chief Justice of that High Court.

Judges of the Supreme Court are appointed until they are 65 years old; High Court judges until they are 62. Removal is a more onerous process than appointment. High Court judges are subject to the same procedure as provided in Article 124(4)–(5), and are removable only on the ground of proved misbehaviour or incapacity, as determined by an inquiry under the Judges (Inquiry) Act, 1968, as extended to them by Article 218. The removal process is a parliamentary process and involves a cross-party supermajority and a judicially supervised inquiry (not an executive power) and is separate from the appointment of judges.

Articles 124(7) and 220 of the Constitution of India, respectively, prohibit a former Supreme Court judge and a High Court judge from appearing before any court in India other than the Supreme Court, with the aim of giving an apparent disincentive to practicing before any other court.

Article 50 is a “Directive Principle” in Part IV of the Constitution of India,¹² which mandates that the judiciary should be separated from the executive in the public services, but which is not enforceable independently in itself, but has been repeated by the Court as a basis for the constitutional design

The Basic Structure Doctrine

The NJAC Case (2015) ¹³and the Third Judges Case (1998) have caused the executive to lose the final say on appointments, and the 99th Amendment and the NJAC Act, 2014, have been struck down by the Court. All these have left it clear that judicial independence cannot be diluted, even by a constitutional amendment, a fortiori an ordinary statute, as tested in Part 5 of the Constitution.

¹² Part IV, (Article 50)

¹³ Supreme Court Advocates-on-Record Ass'n v. Union of India, (2016) 5 SCC 1 (NJAC Case).

Safeguards for Judicial Independence

Against executive interference: fixed tenure, no reduction in salaries and service conditions after appointment, and giving primacy to judicial opinion over executive opinion in the appointments process, post-collegium. Prevents interference by Parliament or State Legislatures in the functioning of a sitting judge, on a motion for removal, through Article 121 and 211, which require a judicial investigation in addition to a supermajority in both Houses. Structural safeguards: the contempt power in Article 129 and 215, the control of subordinate judiciary by the High Court in Article 235, the appointment of district judges with the consultation of the High Court in Article 233, financial autonomy, judicial review, were considered to be part of the basic structure and so could not be amended through a simple process of ordinary legislation.

THE SUPREME COURT (NUMBER OF JUDGES) AMENDMENT ORDINANCE, 2026

The President of India promulgated the Supreme Court (Number of Judges) Amendment Ordinance, 2026 on 16 May 2026 by exercising his power to promulgate ordinance under Article 123 of the Constitution of India. The aim of the Ordinance was to raise the strength of the judges in the Supreme Court as per Supreme Court (Number of Judges) Act, 1956. Prior to this amendment, the Court had thirty-three puisne judges with the Chief Justice of India. The Ordinance increased the sanctioned strength of judges as well from thirty-four to thirty-eight judges when the Chief Justice and thirty-seven other judges were allotted to the Court.

The Government said the amendment was driven by the increasing volume of litigations in the Supreme Court. The numbers of pending cases in the Court have come up tremendously in the past few years due to the rise in constitutional controversies, the number of appeals coming from the High Courts, the expanding amount of Public Interest Litigation and the increase in legal and business activities in general. This growing burden led to an overcrowding of the courts with a lack of judicial capacity to ensure timely justice. An increase in the number of judges, therefore, was intended to benefit the disposal rate of cases, to decrease pendency and to ensure more effective access to justice.¹⁴

¹⁴ Statement of Objects and Reasons, The Supreme Court (Number of Judges) Amendment Bill, 2026; INDIA CONST. art. 123.

Importantly, the Ordinance doesn't provide any explanation about the constitutional framework of appointment of judges of the Supreme Court in Article 124 of the Constitution. Nothing has changed in all the existing procedure relating to the appointment, qualification, tenure and conditions of service. The amendment does not substantially change the constitutional framework of judicial appointments, but only expands the number of judges who can be appointed to the Court, thus, in effect, being an institutional measure to enhance the Court's capacity to administer its affairs.

A stronger judiciary would also pave the way for the Government to have more number of Constitution Benches and regular Division Benches of the Supreme Court at the same time, the Government said. Help ensure speedy disposition of constitutional, civil and criminal appeals and cases of important questions of law. The purpose of the amendment in this context is to further advance the administration of justice, while at the same time preserving the constitutional guarantees of the independence of judges.¹⁵

The Ordinance, however, which has the primary concern of the Supreme Court, does have general constitutional implications. If any law is to make an amendment in the composition of Supreme Court, the law should follow the constitutional principles of separation of powers, independence of judiciary and the Basic Structure doctrine. For this reason, the Ordinance needs to be examined in light of the Constitution to see if it is moving toward institutional effectiveness without violating these fundamental principles.

CONSTITUTIONAL VALIDITY OF THE SUPREME COURT (NUMBER OF JUDGES) AMENDMENT ORDINANCE, 2026

Two important constitutional questions need to be addressed to examine the constitutional validity of the Supreme Court (Number of Judges) Amendment Ordinance, 2026. The first is whether the President's exercise of the power to make an ordinance under Article 123 of the Constitution was valid. The second question is whether the Ordinance which is only to increase the number of judges has any negative consequence on the Basic Structure of the Constitution, especially the doctrine of judicial independence. The President may issue an Ordinance only

¹⁵ The Supreme Court (Number of Judges) Amendment Ordinance, No. 1 of 2026, Gazette of India, Extraordinary, Part II, Section 1 (May 16, 2026).

under certain conditions, which are laid down in Article 123¹⁶. The process of judicial appointments is not affected by the issuance of an Ordinance and it does not have any impact on the tenure or powers of the judges. An Ordinance has the same power as an Act of Parliament, but it is a temporary legislative tool, and must then be presented to Parliament for approval.¹⁷ In this case, the Union Government explained that the Ordinance was being issued, because of the ever-increasing number of pending cases before the Supreme Court and its need to improve the adjudicatory powers of the Supreme Court by adding more sanctioned strength to the bench.

There is another constitutional question regarding the Ordinance, over whether it infringes the Basic Structure Doctrine.¹⁸ The present Ordinance is not in the same spirit as the legislation considered in the NJAC case, which altered the essential character of the Constitution by permitting an increased executive role in judicial appointments. It does not change the constitutional provisions of Article 124, doesn't affect the existing collegium system, doesn't change the existing qualifications for judges of the Supreme Court, and doesn't affect the tenure, removal or the jurisdiction of the judges of the Supreme Court. It is aimed at strengthening the sanctioned strength of the Court and enable more Benches to be formed within it, thereby enabling pending matters to be disposed of in a more efficient manner. As such, the Ordinance does not, on its own, weaken the constitutional safeguards for judicial independence.¹⁹ However, there are some constitutional concerns that should be addressed. The mere increase in the sanctioned number of judges is not enough to solve the issue of judicial delay if such positions are still lying vacant or the procedure of appointment the judges is not being conducted in a timely and prompt manner. Likewise, the impact of this enhancement relies on the availability of suitable courts infrastructure, administrative support and institutional resources. These concerns could impact the viability of Ordinance but do not invalidate it on a constitutional basis. Instead, they point to the need for good implementation and for legislation to be improved. From the constitutional perspective, their argument seems more compelling: the Ordinance is valid. It does not abridge the jurisdiction of the judicial or violate the balance of the State organs in the Constitution. Rather, it aims to improve the institutional competence of the Supreme Court, to enable it to deal with the increasing volume

¹⁶ INDIAN CONSTI. Art. 123.

¹⁷ D.C. Wadhwa v. State of Bihar, (1987) 1 SCC 378; Krishna Kumar Singh v. State of Bihar, (2017) 3 SCC 1.

¹⁸ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

¹⁹ Supreme Court Advocates-on-Record Ass'n v. Union of India, (2016) 5 SCC 1.

of litigation efficiently. The constitutional principles adhered to in the Ordinance are upheld provided there is an increase in judicial power with appointments in line with the Constitution. So, in conclusion, it seems that the Supreme Court (Number of Judges) Amendment Ordinance, 2026 is constitutionally sustainable. It is within the scope of the President's power under the ordinance making power, as provided in Article 123 of the Constitution and does not violate the Basic Structure of the Constitution. It does not change the constitutional structure of appointments or judicial independence, simply increasing the number of justices without altering the structure of the Supreme Court, so it stands constitutional test. But whether it will become effective in the long run depends on timely appointments, proper institutional infrastructure and on respect for the constitutional safeguards that maintain the independence and efficiency of the judiciary.

IMPACT OF THE SUPREME COURT (NUMBER OF JUDGES) AMENDMENT ORDINANCE, 2026 ON JUDICIAL INDEPENDENCE

The aim of the Supreme Court (Number of Judges) Amendment Ordinance, 2026 was to improve the institutional strength of the Supreme Court by enhancing its judicial strength. The Ordinance is not meant to alter the provision on the appointment, tenure or removal of judges in the Constitution but it has a strong impact on the working of judiciary. It affects public confidence in the justice delivery system, judicial efficiency, and institutional independence as well as administrative reform.²⁰

Effect on Judicial Autonomy

Judicial independence does not only mean the absence of outside influence, but also that the court has the institutional ability to effectively perform its constitutional duties. This makes it difficult for a judiciary to provide timely justice, especially when it comes to constitutional matters and issues of national importance, when they are overwhelmed with pending cases. The Ordinance provides for declaration of additional number of judges for the Supreme Court to establish additional Division Benches and Constitution Benches, which will enhance the capacity of the Supreme Court to hear and dispose of cases with greater efficiency. In this light, one can see that the Ordinance supports the institutional autonomy of the Court in terms of its

²⁰ The Supreme Court (Number of Judges) Amendment Ordinance, No. 1 of 2026, Gazette of India, Extraordinary, Part II, Section 1 (May 16, 2026).

functional capacity.²¹

Executive Influence

When the government's control over the judiciary is increased, concerns about judicial independence may arise. The 2026 Ordinance, however, does not change the constitutional structure of the appointment of Supreme Court judges as per Article 124. Nor does it give the Executive any extra powers in judicial appointments. The collegium system, which has been evolved by judicial interpretation, remains unchanged in the process of appointments. The Ordinance, therefore, does not establish any new means for executive control of the operation or membership of the Supreme Court.

Security of Tenure

The Ordinance also preserves the constitutional protections of the independence of individual judges. It does not apply to judges of the Supreme Court, who have their own tenure, salaries, service conditions and removal procedure. They remain constitutionally protected from arbitrary removal by the impeachment process provided for in the Constitution²². These basic protections are not affected by the additional strength of the Court, and the judges are not affected by the increase in their number in terms of their institutional or personal independence.

Public Confidence in the Judiciary

Timely and effective justice is a key factor in public trust in the judiciary. The delay in adjudication and growing pendency of cases can erode public confidence in the administration of justice. The Ordinance aims to enhance the capacity of the Supreme Court to dispose of cases in a timely manner and to ease the burden on the existing judges by increasing the sanctioned strength of the Supreme Court. With timely appointments, proper infrastructure and adequate administrative support, the reform can enhance public trust in the judiciary and contribute to the constitutional goal of accessible and effective justice. In general, the Supreme Court (Number of Judges) Amendment Ordinance 2026 does not affect judicial independence. Instead, it is an administrative step aimed at enhancing the efficiency and institutional workings of the Supreme Court. However, its long-term effectiveness will rely on the timely filling of

²¹ Statement of Objects and Reasons, The Supreme Court (Number of Judges) Amendment Bill, 2026.

²² INDIA CONST. arts. 124(4), 125.

judicial positions, sufficient financial and technological resources, and ongoing respect for the constitutional principles that ensure the independence of the judiciary.

JUDICIAL PRECEDENTS

The concept of judicial independence has been developed over a series of important judgments passed by the Supreme Court of India. The Court has, over the years, interpreted the Constitution in a way that protects the independence of the judiciary and maintains the constitutional balance between the Legislature, the Executive and the Judiciary. The Supreme Court (Number of Judges) Amendment Ordinance, 2026 is limited to adding more judges to the Supreme Court, but its constitutionality should be tested in light of these important judicial pronouncements.

Kesavananda Bharati v. State of Kerala (1973)

The decision in *Kesavananda Bharati v. State of Kerala* laid the foundation of the Basic Structure Doctrine. The Supreme Court ruled that Parliament has wide powers to amend the Constitution under Article 368, but not unlimited and cannot do so in a way that harms or undermines the basic features of the Constitution. The Court did not specify all of those features, but the judgment was the foundation for the recognition of judicial independence as one of the key elements of the constitutional framework. This doctrine remains the main criterion for determining the constitutional legitimacy of legislative action that impacts the judiciary.²³

S.P. Gupta v. Union of India (1981) – First Judges Case

In *S.P. Gupta v. Union of India*, popularly known as the First Judges Case, the Supreme Court ruled that the opinion of the Chief Justice of India was not binding and the Executive had the final say in the appointment of judges. The decision was criticized as giving the executive branch more power in judicial appointments. This was subsequently reconsidered and rejected by a later Constitution Bench, due to these concerns.²⁴

²³ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

²⁴ *S.P. Gupta v. Union of India*, 1981 Supp SCC 87.

Supreme Court Advocates-on-Record Association v. Union of India (1993) – Second Judges Case

The Second Judges Case was a landmark case in judicial appointments law. In the case of S.P. Gupta, the Supreme Court overruled the previous order and adopted the Collegium System, which gave the Chief Justice of India, along with the senior-most judges of the Supreme Court, the primacy in recommending appointments to the higher judiciary. The judgment highlighted the importance of meaningful judicial involvement in the appointment process to ensure judicial independence and avoid excessive executive interference.²⁵

In re Presidential Reference (1998) – Third Judges Case

The Third Judges Case also gave more clarity on the process of judicial appointments by adding the Chief Justice of India and the four senior-most judges of the Supreme Court to the Collegium. The Court noted that appointments to the higher judiciary should be made based on a collective institutional decision and not the opinion of one constitutional functionary. This reading reinforced the protections that were meant to ensure the independence and credibility of the appointment process.²⁶

Supreme Court Advocates-on-Record Association v. Union of India (2015) – NJAC Case

One of the most important constitutional decisions on judicial independence is the one regarding the National Judicial Appointments Commission (NJAC). The Supreme Court ruled the Constitution (Ninety-Ninth Amendment) Act, 2014 and the National Judicial Appointments Commission Act, 2014 unconstitutional on the ground that they reduced the primacy of the judges in appointments and thus infringed upon the Basic Structure of the Constitution. The Court reiterated that judicial independence is an essential element of constitutional governance and cannot be undermined by constitutional amendments or by ordinary legislation.

These decisions collectively illustrate that while Parliament can make laws about the administration and operation of the judiciary, it cannot affect the independence of the judiciary. The Supreme Court (Number of Judges) Amendment Ordinance, 2026 does not change the

²⁵ Supreme Court Advocates-on-Record Ass'n v. Union of India, (1993) 4 SCC 441.

²⁶ In re Special Reference No. 1 of 1998, (1998) 7 SCC 739

constitutional structure of judicial appointments or the institutional safeguards for judicial independence, but only increases the sanctioned strength of the Court. It therefore does not clash with the constitutional principles laid down in these historic decisions.²⁷

COMPARATIVE ANALYSIS: JUDICIAL INDEPENDENCE IN INDIA, THE UNITED KINGDOM, AND THE UNITED STATES

The Ordinance 2026 that has increased sanctioned strength of Supreme Court from 34 to 38 has raised questions about the constitutional implications on judicial independence to expand the capacity of the Supreme Court by executive order. The process and timing of the institutional expansion, which is an exercise of executive, and not legislative, powers, is not addressed by the Ordinance, and begs the questions of how far "executive-driven" institutional change can extend without compromising the functional autonomy and public perception of the judiciary's independence.

It is a constant principle of law that the independence of the judiciary is an essential feature of the 'Basic Structure' of the Constitution and cannot be eroded by any other law or action by the Executive.²⁸ The introduction of a change to the composition of the Court, at a time when no change was proposed by the judiciary or a considered parliamentary process, but rather by the Executive, has raised the question of whether such an expansion can in principle be used to change the composition of the Court in other cases, even if not this one.

The United Kingdom, in contrast, has had a more institutional approach to safeguarding judicial independence, one that is not ordinance-based. With limited executive involvement, the Judicial Appointments Commission (JAC) facilitates an independent, transparent and merit based judicial appointments system as set out in the Constitutional Reform Act 2005²⁹. The UK is not changing its judicial numbers or structure in any typical manner without first passing a statute through Parliament, where the UK's judiciary's own administration body (the Judicial Office) plays a close role.

In the United States, the path is quite different. Federal judgeships are established by ordinary statute of Congress, not executive order, and an increase in the number of federal judges would

²⁷ Supreme Court Advocates-on-Record Ass'n v. Union of India, (2016) 5 SCC 1.

²⁸ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

²⁹ Constitutional Reform Act 2005, c. 4, §§ 61–65 (UK)

have to go through full legislative debate³⁰. Senior Status judges retain their judicial duties (not executive ones) and are subject to judicial (not executive) supervision, protecting the process from the taint of executive overreach.

A comparative reading reveals that although judicial independence is considered a cornerstone of the rule of law in all three jurisdictions, they vary significantly in their approach to structural changes to the judiciary. The changes in the UK and US are both made through a process of deliberation, involving the judiciary, rather than by unilateral executive action, as the ordinance-route arguably does not do in India even if, like in this case, the substance of the change doesn't affect appointments or tenure. India can promote public confidence in judicial growth in the future by avoiding the ordinance system for judicial growth, limiting the use of Article 123 for emergencies only, and incorporating judiciary consultation before the finalisation of any such changes.

CHALLENGES AND RECOMMENDATIONS

While the Constitution provides several safeguards to ensure judicial independence, the Indian judiciary is still beset by a number of institutional, structural and administrative issues which impact its effectiveness. One of the most serious issues addressed by the Supreme Court (Number of Judges) Amendment Ordinance, 2026 is the sanctioned strength of the judges. But the issue of whether a numerical increase is sufficient to address the more fundamental problems facing the judiciary remains to be answered.³¹

A number of issues remain that have impeded the effective administration of justice. How can the aim of minimizing pendency be fulfilled if the judicial posts are not filled up for long periods? Will merely increasing the number of judges be sufficient when delays in appointments continue to persist? Another pressing problem is the ever-increasing case backlog that not only extends the litigation time but also erodes public faith in the justice delivery system. Likewise, how can judges be efficient if the court infrastructure is inadequate, the supporting staff is not trained, and there is no modern digital facilities? The growing sophistication of commercial, constitutional and technology conflicts also presents concerns about the need for specialised judicial expertise. In addition, there are ongoing concerns about transparency and accountability of the Collegium System. Judicial primacy in appointments is

³⁰ 28 U.S.C. §§ 44, 133 (2018).

³¹ Malik Mazhar Sultan v. Uttar Pradesh Public Service Commission, (2006) 9 SCC 507.

a recognised aspect of judicial independence, but the lack of a clear framework for selection and lack of public disclosure, can lead to criticism³². The uneven distribution of workload among judges is another challenge, where some judges are burdened with more than others. The slow pace of procedural reforms, poor research support to judges and lack of a comprehensive judicial performance rating system also impact institutional efficiency.

Judicial reforms must go beyond strengthening the judiciary to overcome these concerns. Judicial vacancies must be filled in accordance with a stipulated and enforceable time-limit, with improved institutional coordination between judiciary and executive. The appointment system should be scheduled on a regular time schedule to minimise any unnecessary delay.

There is a need to allocate sufficient budget to build judicial infrastructure, set up technologically advanced courtrooms, enhance the e-cases management system and recruit trained judicial staff. To promote greater transparency in the appointment process, objective criteria for eligibility should be published, structured feedback from stakeholders sought when suitable and general rather than specific reasons for recommendations made public while preserving the independence of judges. The normal empirical evaluation of the sanctioned judicial strength must be made depending on the numbers of cases received, the numbers of cases disposed, and the growth of the population, instead of merely on the basis of individual legislative acts. Some institutional reforms that could strengthen the Supreme Court include hiring competent research assistants, leveraging AI in case management and legal research, promoting alternative dispute resolution (ADR) to curb excessive litigation, and conducting thorough judicial impact studies prior to the implementation of sweeping changes.

The Supreme Court (Number of Judges) Amendment Ordinance, 2026 is one of the major steps for improving the institutional capacity of the Supreme Court. However, its success will not only be contingent on the timely appointment of judges, administrative effectiveness, technological modernization, transparency of institutional mechanisms, and the rule of law and separation of powers as constitutional principles, but also on the increase in the sanctioned strength of judges. The implementation of all these measures is a comprehensive reform strategy³³ that needs to be integrated to ensure capacity of the judiciary to provide prompt, efficient and accessible justice services.

³² Supreme Court Advocates-on-Record Ass'n v. Union of India, (2016) 5 SCC 1.

³³ All India Judges' Ass'n v. Union of India, (2002) 4 SCC 247.

CONCLUSION

Judicial Independence is the cornerstone of India's Constitution-based democratic form of government and is crucial to uphold the rule of law, safeguard fundamental rights and act as a check on the excesses of the Legislature and Executive. Supreme Court (Number of Judges) Amendment Ordinance, 2026 is an institutional change to boost the capacity of the Supreme Court with additional judges. The judicial system of judicial appointments, tenure and removal of judges, and the constitutional protections of judicial independence have not been changed by this Ordinance as a result of the constitutional framework and judicial precedents discussed in this study. But it is not designed to increase the number of cases heard, it is meant to optimize the use of the justice delivery system so that the Court can hear more cases and avoid the escalating case backlog.

But, it's not sufficient to simply add judges to the bench to solve judicial problems. Appointing judges in time, providing infrastructure, having trained administrative personnel, technological development, transparency in institutional procedures, and respect for constitutional principles are all crucial factors in achieving the success of this reform. The Ordinance can make a meaningful contribution to making justice more accessible, while ensuring judicial independence if these supporting measures are properly put into practice. Thus, the reform cannot be considered as an attack on the values of the Constitution, but rather as a key step in strengthening, improving and making judicial institutions more accessible.