

Ever Increasing Pendency Of Cases In The Supreme Court Of India And The Necessity Of A Court Of Appeal

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"Delay In Justice Is Injustice".

- Walter Savage Landor¹

INTRODUCTION

In India, the Supreme Court holds the highest authority and its rulings have obligatory force on all subordinate courts. The institution was established on January 28, 1950, as a substitute for the Federal Court of India. Throughout its 75-year existence, it has played a crucial role in maintaining the supremacy of legal principles and guaranteeing impartial and unbiased dispensation of justice to all individuals. The court has rendered some significant rulings that have had a profound impact on Indian legal and constitutional doctrine. Notwithstanding the rise in the number of sanctioned judges from 7 in 1950 to 34 in 2024, the number of pending cases before the Supreme Court has consistently risen. As of August 2024, the Supreme Court had a backlog of more than 81,000 pending cases². The primary cause of this phenomenon can be attributed to a progressive rise in the frequency of legal disputes, together with widespread misuse of Special Leave Petitions submitted under Article 136 (1) of the Indian Constitution. The objective of this research study is to assess the feasibility of creating a Court of Appeal including the Supreme Court of India and the High Courts.

SCOPE OF THE PROBLEM

The 34 justices of the Supreme Court adjudicate numerous cases. An individual who claims that a lower court or tribunal rendered an erroneous ruling in their case has the option to file a Special Leave Petition (SLP) with the Supreme Court. The Court grants most pleas for

¹Available at: <http://www.picturequotes.com> (Visited on 4 February 2024).

hearing, while dismissing a few others. In 2011, the court's judges adjudicated almost 47,000 admission cases, out of which 9,070 (equivalent to practically 19%) proceeded to regular hearings. It is time-consuming to engage with all those numerical data, so contributing to the accumulation of pending cases. For each of these outstanding cases, the court need a minimum of four years to complete its ruling. The plaintiff is required to undergo the complete process, commencing in the District Court, advancing to the High Court, and culminating in a Supreme Court hearing, which typically spans an approximate duration of 15 years.

Even after the initiation of the Supreme Court's appeals procedure, not all individuals have equitable access to it. There are variation in the grounds for appeal among different states. Given its close proximity and considerable financial resources, the Delhi High Court receives the bulk of appeals, amounting to 12%. The Delhi High Court is located a mere 3 kilometers from the Supreme Court. However, the proportion of appeals originating from Odisha or Jammu & Kashmir is just 1.2%. Moreover, as decided by the Madras High Court, the percentage is a mere 1.1%. Determining the fairness of this appeal pattern is challenging. Since the introduction of electronic filing, the system has facilitated litigants in submitting their claims from any geographical place. However, this does not effectively resolve the fundamental problem. Put simply, a lawyer located in the capital of the country is required to engage an Advocate-On-Record and initiate a legal action before the Supreme Court.

Of the court rulings rendered in the past five years, the bulk of the lower courts' burden consists of cases pertaining to 16% service matters, 13% direct or indirect tax matters, 9% land acquisition matters, and 21% criminal matters. Regarding matters of lesser significance to the nation, plaintiffs have the financial means to engage more costly and specialized attorneys. Tax and service matters are typically adjudicated by tribunals rather than High Courts, indicating the court's caution about the decisions made by these forums. Consequently, the Court is required to allocate a significant amount of time to consider the arguments of wealthier petitioners residing in and within the vicinity of Delhi ⁴.

REPORT OF THE LAW COMMISSION OF INDIA

In its August 2009 publication, the 229th Law Commission of India recommended the creation of distinct panels to handle appeals and constitutional issues. Furthermore, the report proposed the creation of regional Supreme Court panels that would have the responsibility of adjudicating appeals originating from High Courts. Notwithstanding the enactment of a constitutional amendment in 2021 that created four regional benches of the Supreme Court in New Delhi, Mumbai, Kolkata, and Chennai, the Court of Appeal has not yet been formed. In addition to the four regional courts, a Constitution Bench will be installed in New Delhi exclusively to handle cases that are very challenging from a constitutional perspective.

The Report's sixth page asserts that constitutional adjudication, being a distinct discipline, warrants examination on the establishment of a separate Constitutional Court, similar to the situation in around 55 countries worldwide (Austria being the first to establish a separate Constitutional Court in 1920), or at the very least, the inclusion of a Constitutional Division within the Supreme Court. In numerous continental countries, there exist Constitutional Courts, together with final Courts of Appeal known as Courts of Cassation (Cour de Cassation in French). These courts render judgments on subjects other than those directly connected to

the Constitution. The court of cassation is the supreme court in the legal system, possessing the authority to either reverse or invalidate the rulings of lower courts. This ability is denoted by the term "casser" in French ⁵.

The seventh page contains the following statement: "The issue of whether the Supreme Court should be divided into a Constitutional Division and a Legal Division for appeals, with benches in four regions - North, South, East, and West, is of utmost significance to the juridical framework of the country." The objective of this paper is to examine the needfulness of creating a Constitutional Court or Division within our Supreme Court exclusively dedicated to constitutional law. The present study will explore the feasibility of implementing four Cassation Benches, with one located in each of the four areas. The courts' lenient approach towards considering appeals from lower courts has also played a role in the consistent growth of the backlog. That is to say, the backlog has been consistently growing. In the absence of legal interpretation, those with the necessary financial means have the option to challenge rulings issued by lower courts to the subsequent higher court, and ultimately to the Supreme Court. The protracted duration of the legal procedures can have a negative impact on the reputation of the court system, particularly when the defendants are influential politicians or affluent corporations. By limiting appeals to a small number, such as one or two, depending on the nature of the offense, it is feasible to significantly reduce the duration of a pending prosecution ⁶.

The aforementioned statement can be located on page 18: "Throughout the past 59 years of our nation's legal system, we have systematically tested several of the aforementioned approaches." It is evident that the results are highly unsatisfactory. To achieve the objective of delivering timely justice, it is imperative to undertake a thorough restructuring and modernization of the entire court system. There have been longstanding arguments advocating for the modification of the existing operational procedures of the Supreme Court to attain success in this specific domain ⁷.

The Supreme Court often experiences an excessive workload as a result of its acceptance of appeals based on very insignificant factual issues without any form of prejudicial bias. Indeed, it is imperative that the Supreme Court only review cases that pertain to highly significant matters. Furthermore, the present condition of circumstances renders it unattainable for the overwhelming majority of the nation's populace to seek recourse before the Supreme Court ⁸.

The twentieth page of the document specifies that the mentioned Benches will function as Cassation Benches only for handling appeals from a High Court within the specific region. This proclamation is made specifically regarding the Benches. Consequently, the Supreme Court would have the capacity to address constitutional matters and other cases of national importance on a daily basis, while the accumulated backlog of cases would be directed to the relevant authorities ⁹.

DATA COLLECTION, ANALYSIS, AND INTERPRETATION

For the purpose of this research paper, the authors have collected data through a Questionnaire. The number of respondents for the study is 250, which are divided and categorized as follows:

10 High Court Judges (5 each from 2 High Courts)

100 High Court Advocates (50 each from 2 High Courts)

50 Supreme Court Advocates

30 Law students (LLM & PhD)

30 Law Officers (15 each from 2 High Courts)

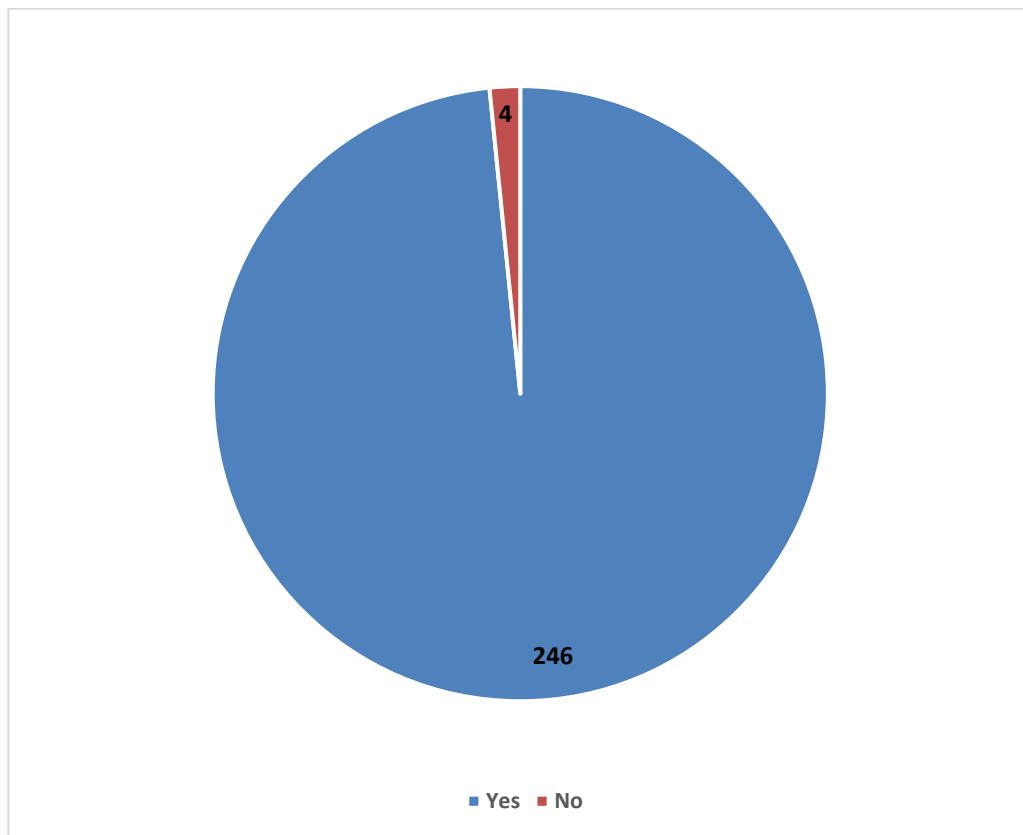
30 Law Professors (with Ph.D.)

The Questions asked from the respondents along with their response is analyzed below with the help of graphs and pie charts.

1. Is the “Supreme Court of India overburdened with cases”? (check any one)

A. Yes - 246 (98.4 %)

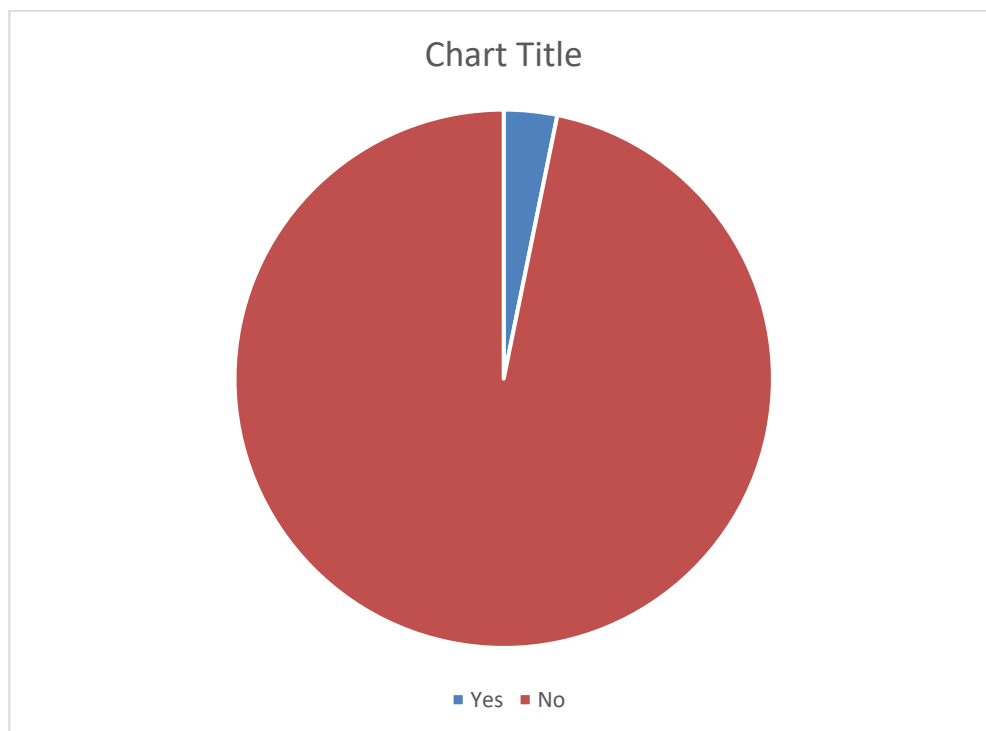
B. No - 4 (1.6 %)



98.4 % are of the opinion that “the Supreme Court of India overburdened with cases”.

2. Is the “Supreme Court of India a regular Court of Appeal”? (check any one)

- A. Yes - 8 (3.2 %)
- B. No - 242 (96.8 %)

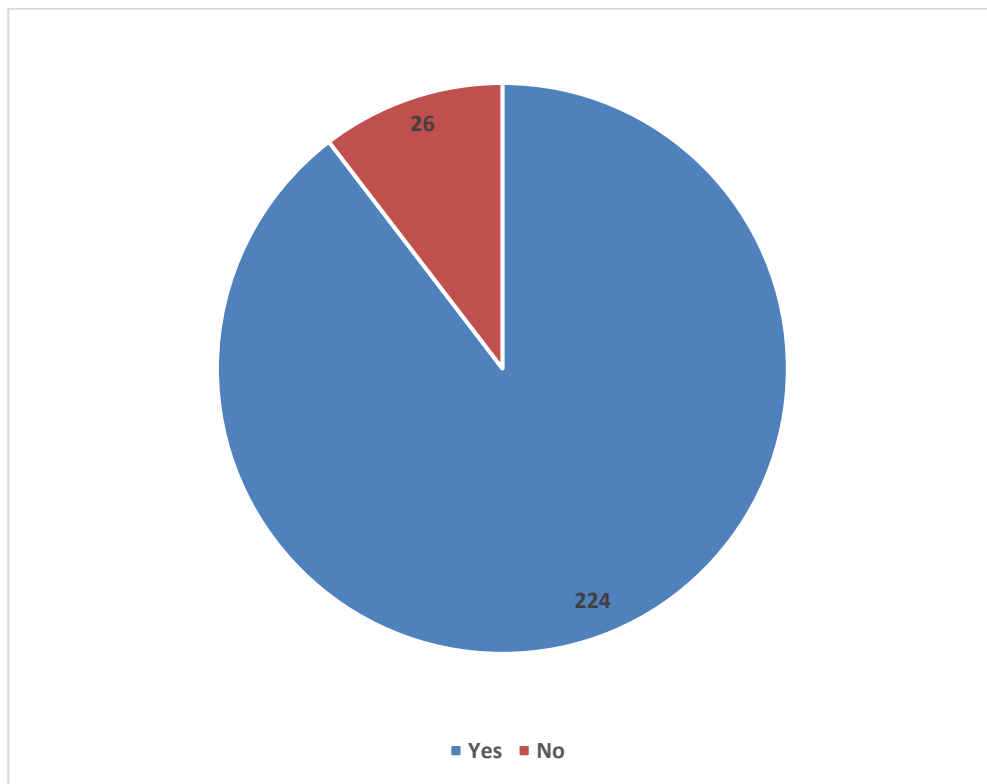


96.8% are of the opinion that “ Supreme Court of India is NOT a regular Court of Appeal”, but in reality “The Supreme Court of India” is flooded with Appeals.

3. Whether the Advocates have abused and misused “Article 136 of the Constitution” for filing frivolous cases in the Supreme Court, thereby overburdening it? (check any one)

A. Yes - 224 (89.6 %)

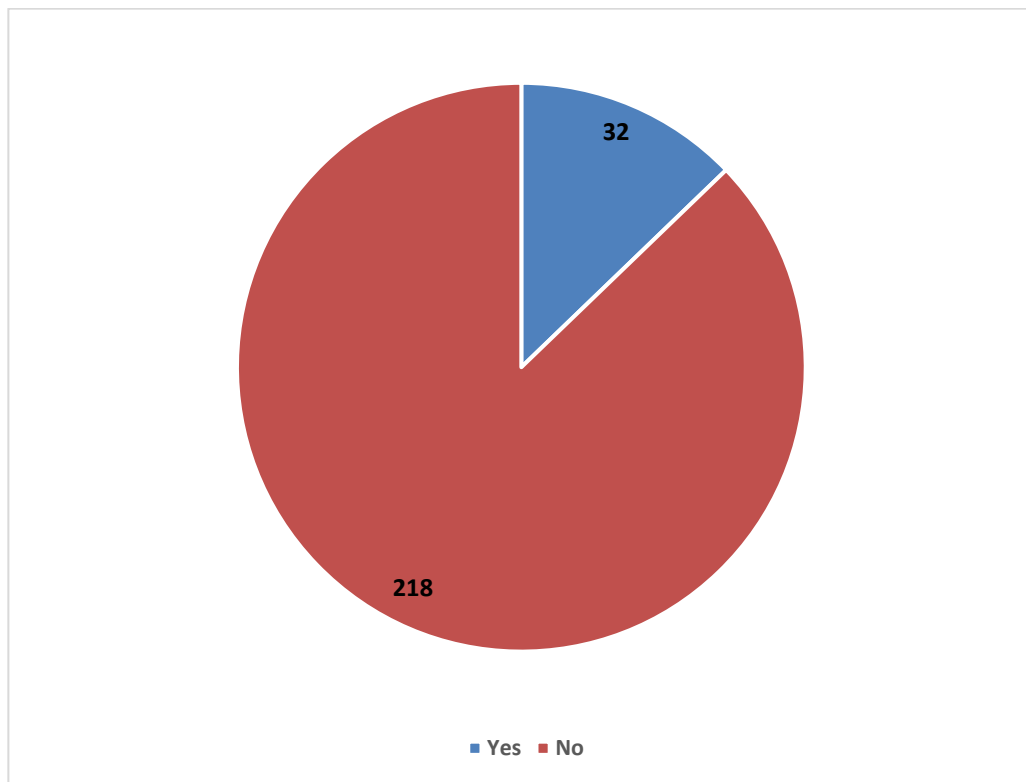
B. No - 26 (10.4 %)



89.6 % are of the opinion that “the Advocates have abused and misused Article 136 of the Constitution and filing frivolous cases in the Supreme Court, thereby overburdening it”

4. Should Article 136 be deleted from the Constitution of India by effecting a Constitutional amendment? (check any one)

- A. Yes - 32 (12.8 %)
- B. No - 218 (87.2 %)

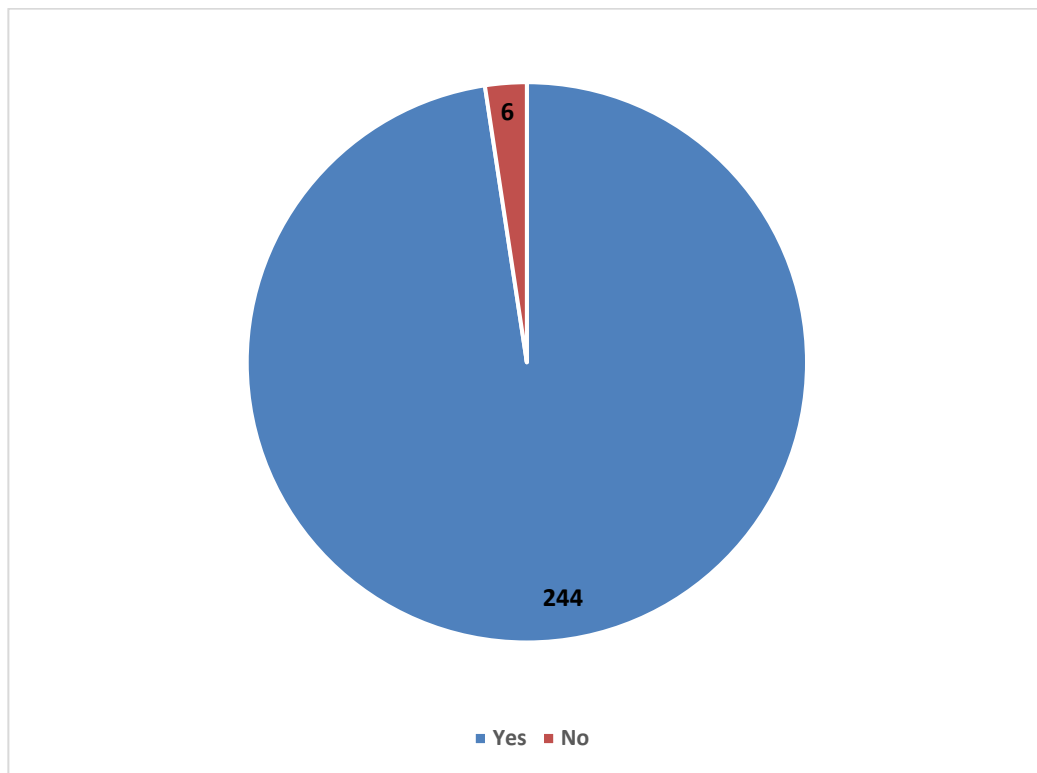


87.2 % are of the opinion that “Article 136 **should not**be deleted from the Constitution of India by effecting a Constitutional amendment”

5. Are you aware of the fact that in some countries, “Courts of Appeal have been established between the subordinate courts and the Supreme Court”? (check any one)

A. Yes - 244 (97.4 %)

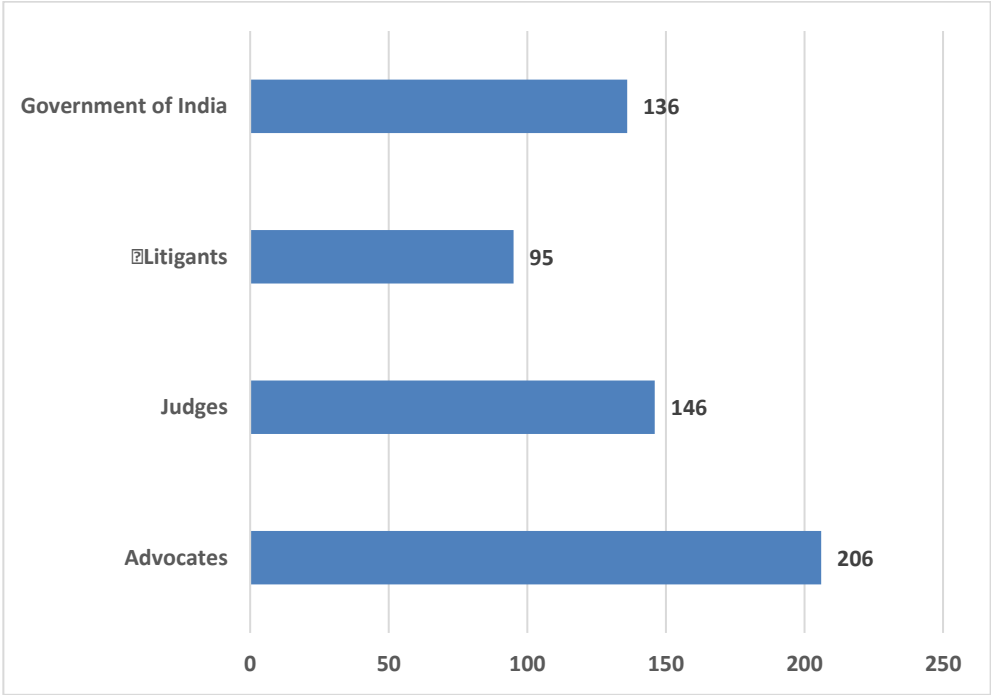
B. No - 6 (2.4 %)



97.4 % are aware of the fact that in some countries, “Courts of Appeal have been established between the subordinate courts and the Supreme Court”.

6. In your opinion, who is responsible for the mounting pendency of cases in the “Supreme Court of India”? (Multiple options can be selected)

- | | | |
|----|---------------------|------------------|
| A. | Advocates | - 206 (82.4 %) |
| B. | Judges | - 146 (58.4 %) |
| C. | Litigants | - 95 (38 %) |
| D. | Government of India | - 136 (54.4 %) |

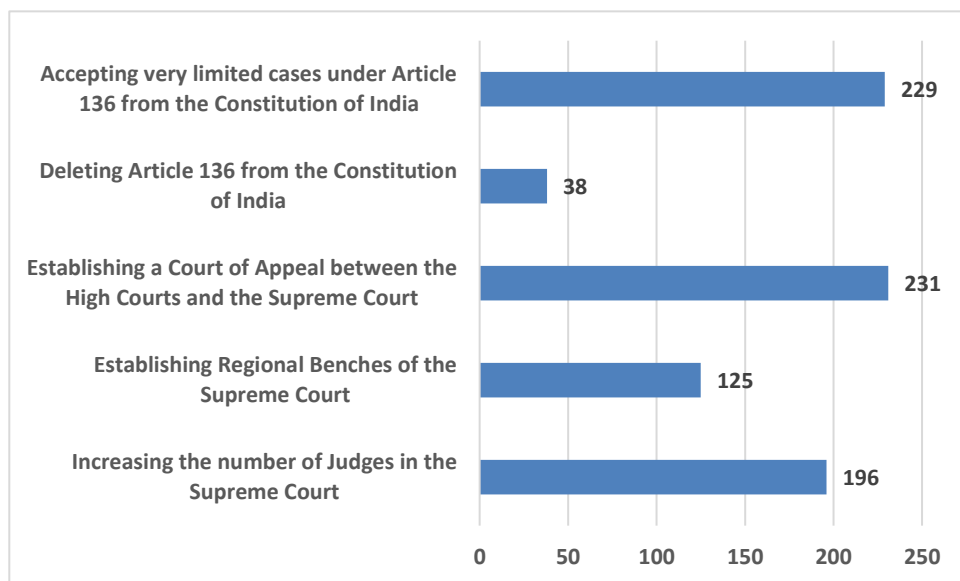


For mounting pendency of cases in the “Supreme Court of India”,

- 82.4 % are of the opinion that Advocates are responsible
- 58.4% are of the opinion that Judges are responsible
- 54.4 % are of the opinion that Government of India is responsible
- 89.6 % are of the opinion that Litigants are responsible

7. In your opinion, what is the best solution for reducing the pendency of cases in the “Supreme Court of India”? (Multiple options can be selected)

- A. Increasing the number of Judges in the “Supreme Court”
- 196 (78.4 %)
- B. Establishing Regional Benches of the “Supreme Court”
- 125 (50 %)
- C. Establishing a “Court of Appeal between the High Courts and the Supreme Court”
- 231 (92.4 %)
- D. Deleting “Article 136 from the Constitution of India”
- 38 (15.2 %)
- E. Accepting very limited cases under “Article 136 of the Constitution of India”
- 229 (91.6 %)

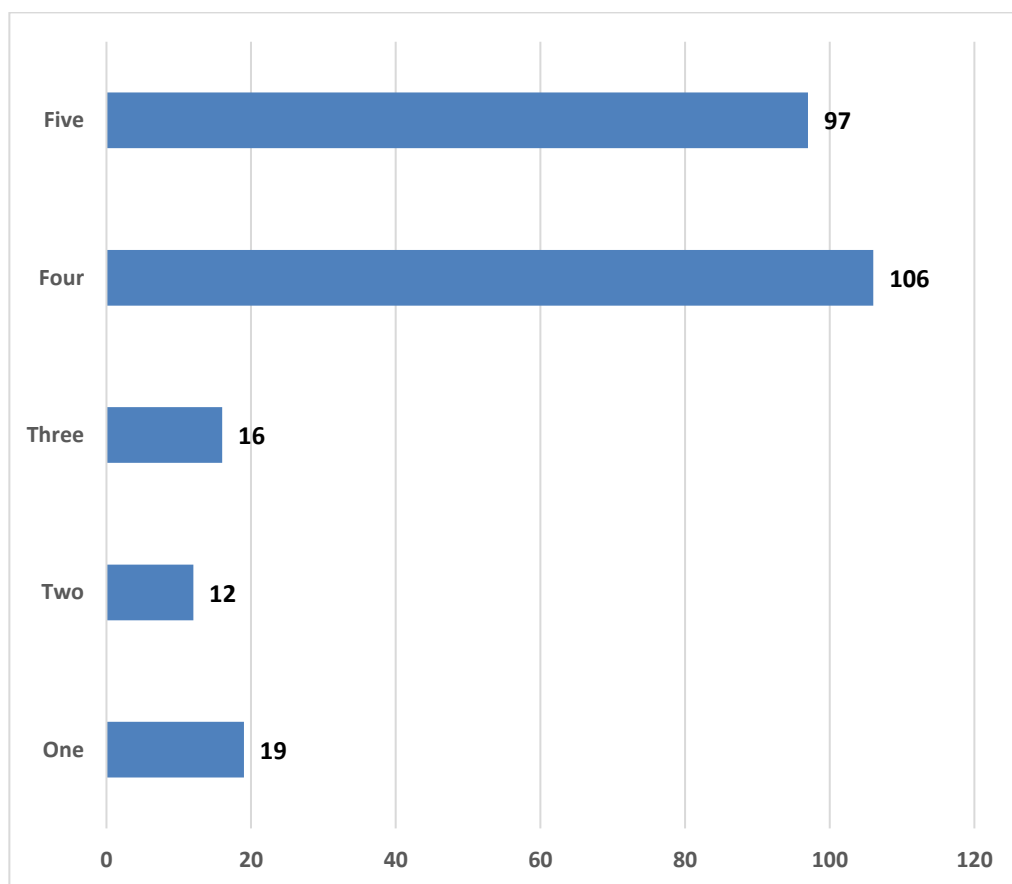


For reducing the pendency of cases in the “Supreme Court of India”,

- 92.4 % are of the opinion of establishing “a Court of Appeal between the High Courts and the Supreme Court”.
- 91.6 % are of the opinion that Court should accept limited cases under Article 136.
- 84.8 % are of the opinion that NOT to Delete Article 136.
- 78.4 % are of the opinion to “Increase the number of Judges in the Supreme Court”.
- 50 % are of the opinion “NOT to Establish Regional Benches of the Supreme Court”.

8. If a “Court of Appeal” is established in India, how many Benches should it have? (check any one)

- A. One - 19 (7.6 %)
- B. Two - 12 (4.8 %)
- C. Three - 16 (6.4 %)
- D. Four - 106 (42.4 %)
- E. Five - 97 (38.8 %)

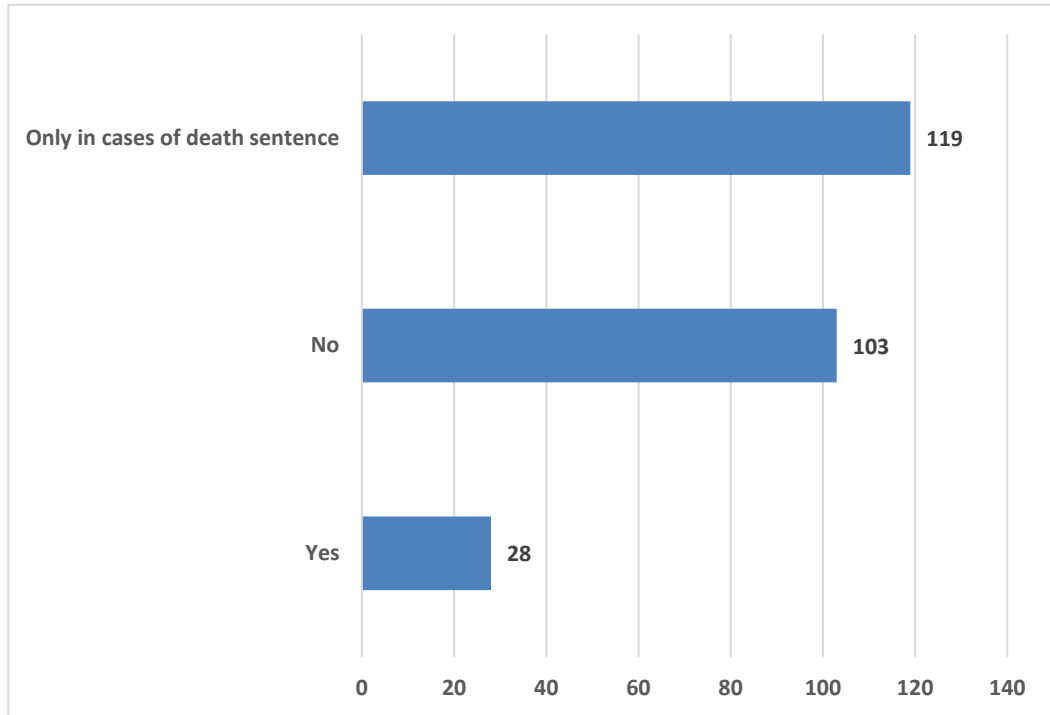


For number of benches, If a Court of Appeal is established in India,

- 42.4 % are of opinion for 4 benches
- 38.8 % are of opinion for 5 benches
- 7.6 % are of opinion for 1 benches
- 6.4 % are of opinion for 3 benches
- 4.8 % are of opinion for 2 benches

9. If a “Court of Appeal is established in India, should there be a provision for filing an appeal from the Court of Appeal to the Supreme Court of India”? (check any one)

- A. Yes - 28 (11.2 %)
- B. No - 103 (41.2 %)
- C. Only in cases of death sentence - 119 (47.6 %)

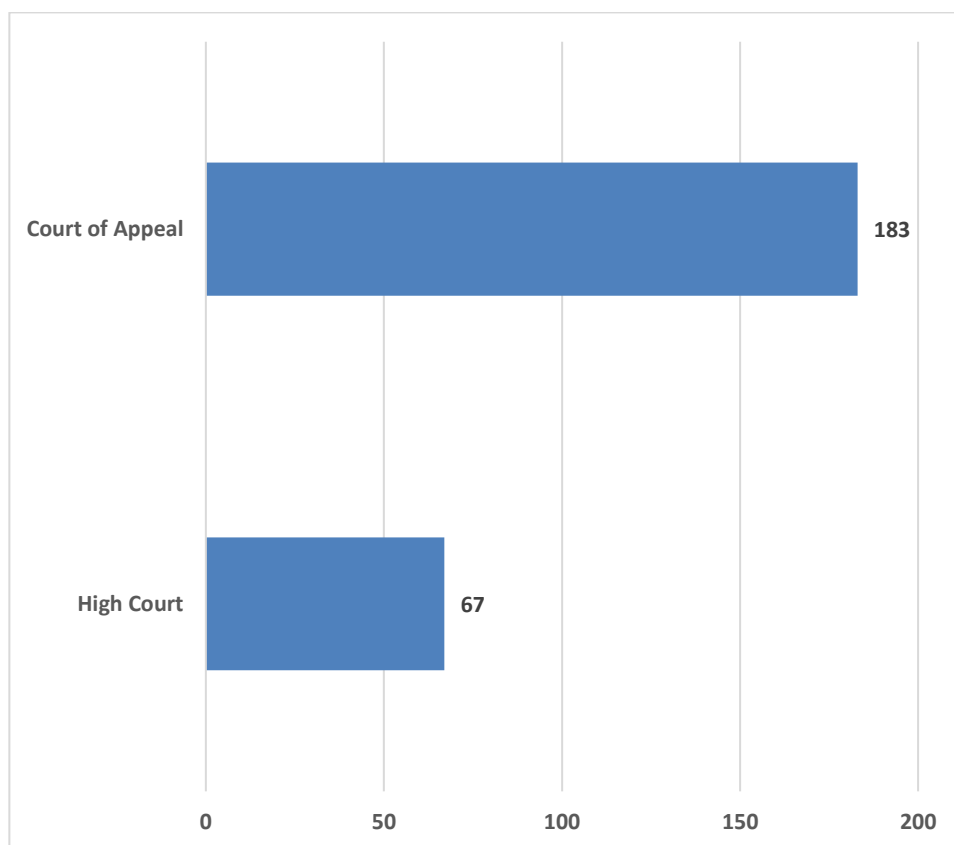


After the establishment of “Court of Appeal in India, regarding the provision of filing an appeal from the Court of Appeal to the Supreme Court of India”,

- 47.6 are of the opinion, “Only in cases of death sentence”
- 41.2 % are of opinion of “Not to have the provision”
- 28 % are of opinion of “to have the provision”

10. If a “Court of Appeal is established in India, which of the following should be the final Court for deciding Civil Cases”? (check any one)

- A. High Court - 67 (26.8 %)
- B. Court of Appeal- 183 (73.2 %)

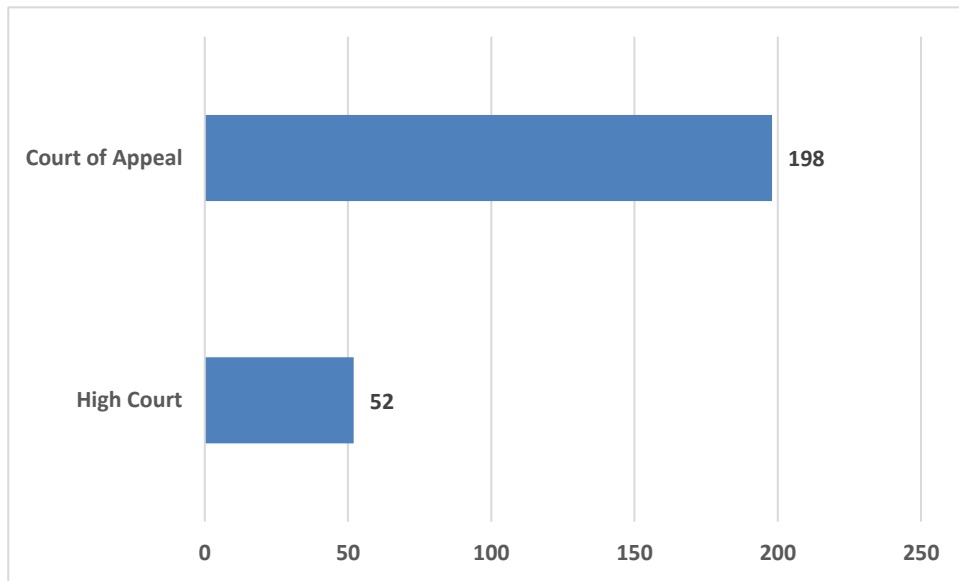


After the establishment of “Court of Appeal in India”, regarding the final Court among “High Court” and “Court of Appeal” for deciding Civil Cases,

- 73.2 % are of the opinion that “Court of Appeal” should be the final court
- 26.8 % are of the opinion that “High Court” should be the final court

11. If a “Court of Appeal is established in India, which of the following should be the final Court for deciding Criminal Cases”? (check any one)

- A. High Court - 52 (20.8 %)
- B. Court of Appeal- 198 (79.2 %)

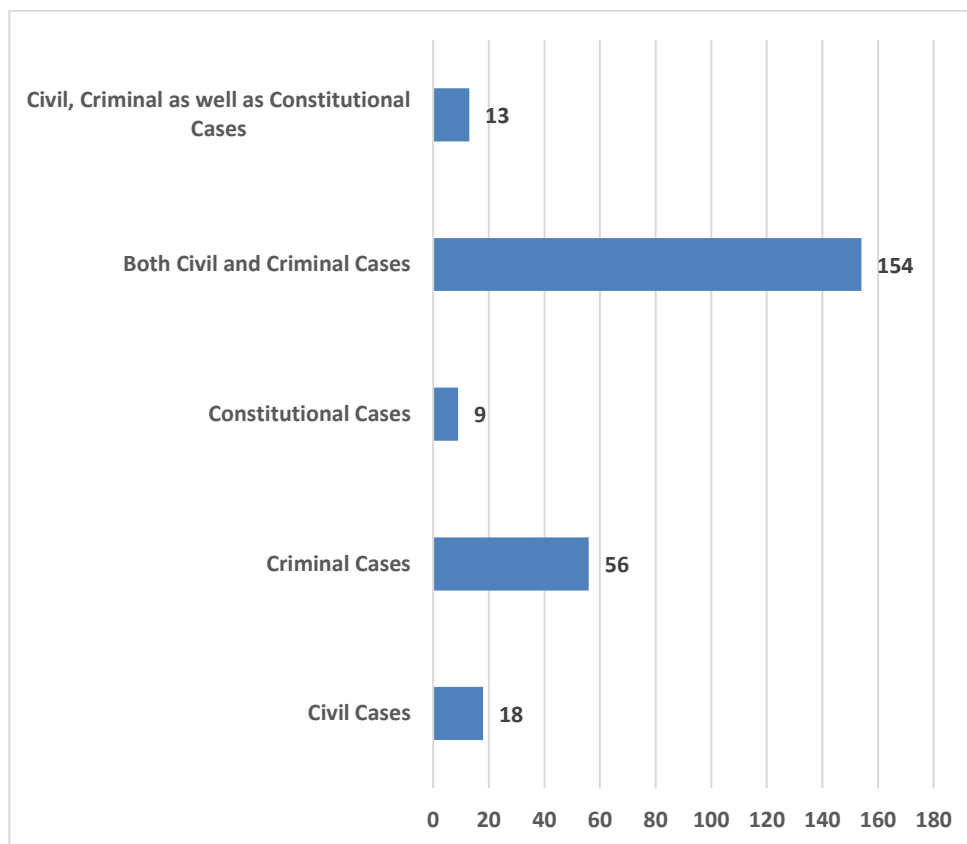


After the establishment of “Court of Appeal in India”, regarding the final Court among “High Court” and “Court of Appeal” for deciding Criminal Cases,

- 79.2 % are of the opinion that “Court of Appeal” should be the final court.
- 20.8 % are of the opinion that “High Court” should be the final court.

12. If a “Court of Appeal is established in India, what type of cases should be adjudicated by it in appeal”? (check any one)

- A. Civil Cases - 18 (7.2 %)
- B. Criminal Cases - 56 (22.4 %)
- C. Constitutional Cases - 9 (3.6 %)
- D. Both Civil and Criminal Cases - 154 (61.6 %)
- E. Civil, Criminal as well as Constitutional Cases - 13 (5.2 %)



The types of cases that are to be adjudicated in the “Court of Appeal” after its establishment are:

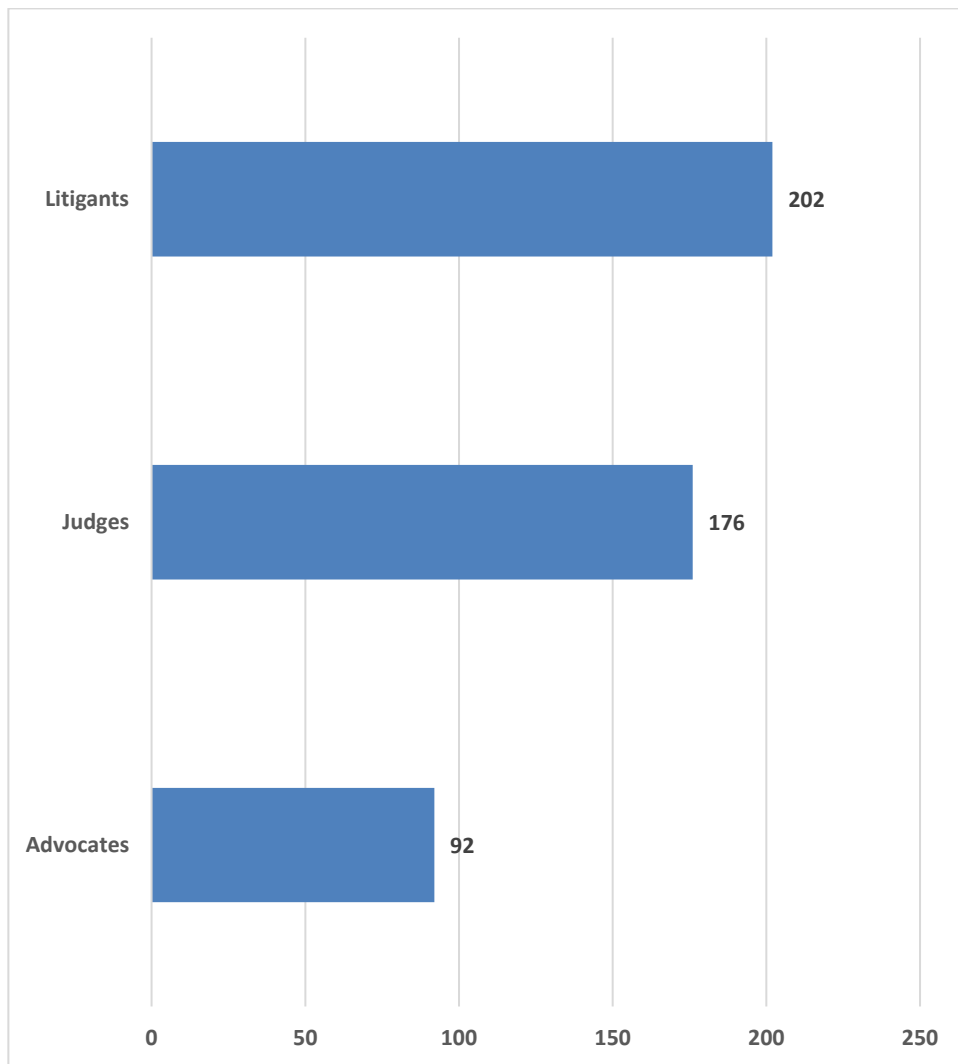
- 61.6 % are of opinion, Both Civil and Criminal Cases
- 22.4 % are of opinion, only Criminal Cases
- 7.2 % are of opinion, only Civil cases
- 6.4 % are of opinion, Civil, Criminal as well as Constitutional Cases
- 3.6 % are of opinion, only Constitutional Cases

13. Who would benefit from the establishment of a Court of Appeal in India?
(Multiple options can be selected)

A. Advocates - 92 (36.8 %)

B. Judges - 176 (70.4 %)

C. Litigants - 202 (80.8 %)



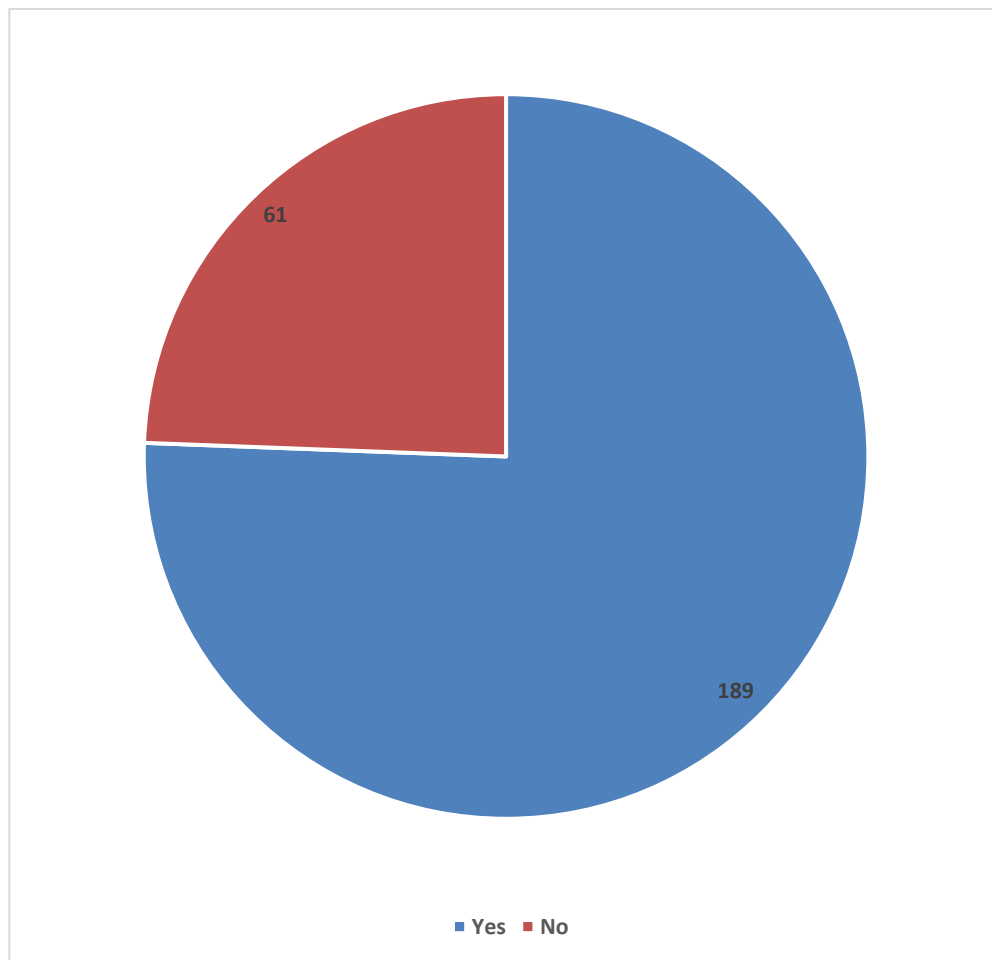
After the establishment of a “Court of Appeal” in India, the beneficiaries are:

- 80.8 % are of opinion, Litigants
- 70.4 % are of opinion, Judges
- 36.8 % are of opinion, Advocates

14. If “Regional Benches of the Supreme Court” are established, would it lead to contradictory judgments by various Benches? (check any one)

A. Yes - 189 (75.6 %)

B. No - 61 (24.4 %)

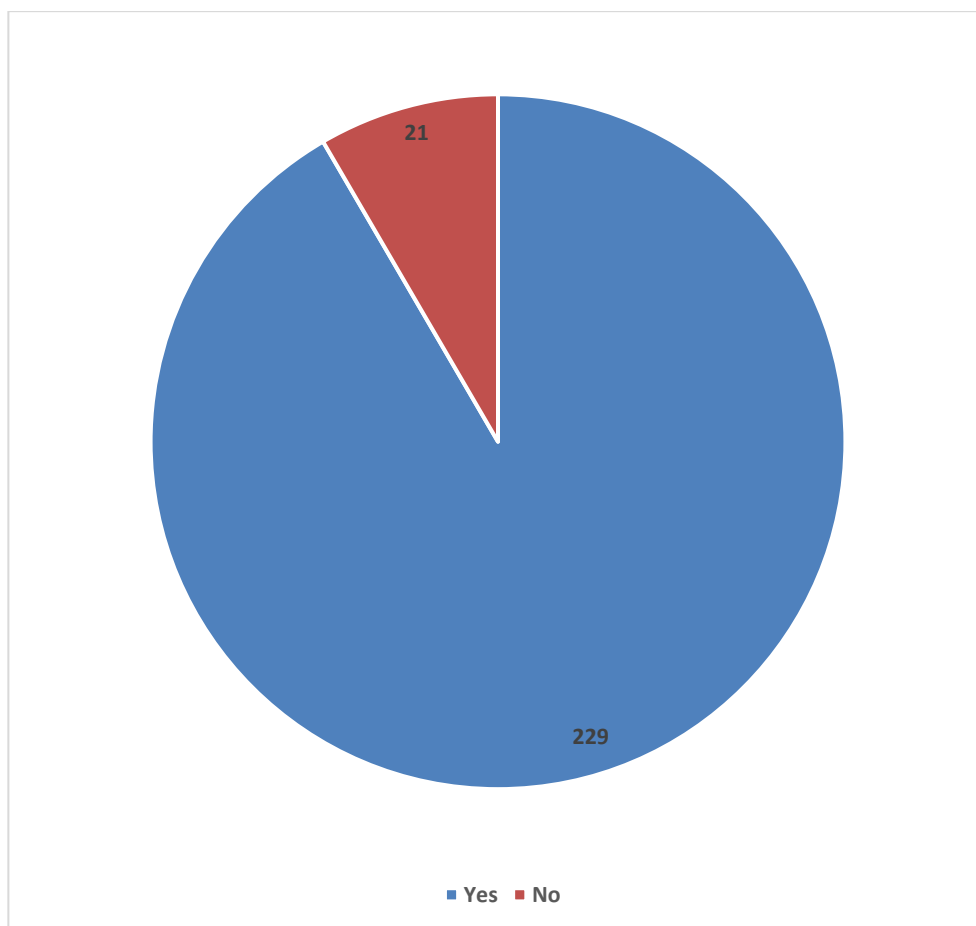


75.6 % are of the opinion that “If Regional Benches of the Supreme Court are established, would it lead to contradictory judgments by various Benches”.

15. In your opinion, “whether the litigants of far flung areas like Tamil Nadu, Kerala and North Eastern States find it difficult to approach the Supreme Court because of distance constraint”? (check any one)

A. Yes - 229 (91.6 %)

B. No - 21 (8.4 %)



91.6 % are of the opinion that “The litigants of far flung areas like Tamil Nadu, Kerala and North Eastern States find it difficult to approach the Supreme Court because of distance constraint”.

CONCLUSION

The authors claim that the primary cause of the growing backlog of cases in the Supreme Court of India is the rampant abuse of Article 136 of the Indian Constitution by the Advocates. The Supreme Court has been reduced to the level of a traditional appellate court as a result. The geographic distance between the High Court and the Apex Court is directly proportional to the quantity of pending cases that the Supreme Court of India has received from various High Courts. For instance, the Supreme Court is only 3 km distant from the Delhi High Court. As a result, it makes up the majority of the 12.5% of appeals that are currently pending

decision in the Supreme Court. In comparison, the Madras High Court is situated 2200 kilometers away from the Supreme Court, which means that only 1.1 percent of appeals reach the Apex Court.

SUGGESTIONS

In order to reduce the mounting pendency of cases in the Supreme Court of India, the authors proffer the following suggestions:

1. A Court of Appeal should be established in India, which should be placed above the High Courts and below the Supreme Court.
2. It should be established with 5 Benches so as to cater to all regions of the country. In our opinion, the Benches of the Court of Appeal should be established at Chandigarh (for North India), Kolkata (for East and North East India), Bhopal (Central India), Gandhinagar (West India), and Bangalore (South India).
3. The Court of Appeal at Chandigarh shall hear appeals from 4 States and 4 Union Territories, i.e., Punjab, Haryana, Himachal Pradesh, Uttarakhand, Jammu and Kashmir, Ladakh, Chandigarh and NCT of Delhi.
4. The Court of Appeal at Kolkata shall hear appeals from 9 States and 1 Union Territory, i.e., West Bengal, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland, Tripura, and Andaman and Nicobar Islands.
5. The Court of Appeal at Bhopal shall hear appeals from 6 States, i.e., Uttar Pradesh, Madhya Pradesh, Chhattisgarh, Bihar, Jharkhand and Odisha.
6. The Court of Appeal at Gandhinagar shall hear appeals from 4 States and 1 Union Territory, i.e., Gujarat, Rajasthan, Maharashtra, Goa, Dadra & Nagar Haveli and Daman & Diu.
7. The Court of Appeal at Bangalore shall hear appeals from 5 States and 2 Union Territories, i.e., Karnataka, Kerala, Tamil Nadu, Andhra Pradesh, Telangana, Puducherry and Lakshadweep Islands.
8. There shall be no provision to file an appeal from the decision of the Court of Appeal to the Supreme Court, except in cases where the accused has been convicted and sentenced to death by the Court of Appeal or the High Court, or the death sentence awarded by the trial court has been upheld by the High Court or the Court of Appeal.
9. Apart from cases involving death sentence, the Supreme Court of India should only entertain cases involving the interpretation of the Constitution under Article 136 of the Constitution.