PENDENCY OF CASES IN THE SUPREME COURT OF INDIA: NECESSITY OF A COURT OF APPEAL

Thesis Submitted for the Award of the Degree of

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in

Law

By

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2025

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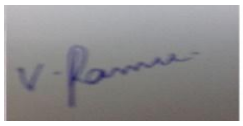
DECLARATION

I, hereby declared that the presented work in the thesis entitled "**PENDENCY OF CASES IN THE SUPREME COURT OF INDIA: NECESSITY OF A COURT OF APPEAL**" in fulfilment of degree of **Doctor of Philosophy (Ph.D.)** is outcome of research work carried out by me under the supervision of **Prof. (Dr.)Gaurav Kataria** , working as **Professor & Head of the Dept.**, in the **School of Law - LD02,** of Lovely Professional University, Punjab, India. In keeping with general practice of reporting scientific observations, due acknowledgments have been made whenever work described here has been based on findings of other investigator. This work has not been submitted in part or full to any other University or Institute for the award of any degree.



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CERTIFICATE

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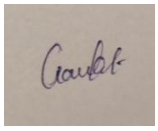

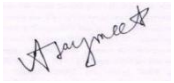

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ABSTRACT

It is rightly said that justice is the first promise of the Indian Constitution and Judiciary is the backbone of democracy. Indians take pride in India being the world's largest democracy. We will be surpassing China in population and become the world's most populous country by the end of the year 2023. However, it is unfortunate that all Courts in India are reeling under a mounting pendency of cases. The situation is quite worrisome even in the Supreme Court of India, where 71,411 cases are pending adjudication as on 31st March 2023. The pendency is ever increasing in the Apex Court despite the fact that the number of Judges has been increased from 7 in 1950 to 34 in 2023. One of the reasons for the mounting pendency of cases in the Apex Court is the abuse and misuse of Article 136 of the Constitution by the Advocates to challenge the judgments of High Courts through Special Leave Petitions (SLP's). The lenient approach of the Supreme Court in admitting SLP's is equally to blame. The jurisdiction of Supreme Court is divided into three types, i.e., Original Jurisdiction, Appellate Jurisdiction, and Advisory Jurisdiction. But the founding fathers of the Constitution never envisaged the Supreme Court to become an ordinary appellate court and it was mainly meant to interpret and adjudicate intricate Constitutional issues. However, with the establishment of several quasi judicial bodies (Tribunals and Commissions) over the past 30 years, the appellate jurisdiction of the Supreme Court has significantly expanded. On the other hand, the Supreme Court of USA accepts very limited number of appeals every year and the number of Judges therein (9) has never been increased since its establishment in the year 1789. Some cases are pending adjudication in the Supreme Court of India for more than 30 years. In order to restore the common man's faith in the justice delivery mechanism, it is imperative to reduce the pendency of cases in all Courts in India, including the Supreme Court. Increasing the number of Judges is one of the methods to reduce pendency, but it has not proved very effective in the Supreme Court. Another method which has been adopted by more than 60 countries across the globe is the establishment of a Court of Appeal, which is placed above the High Courts and below the Supreme Court in hierarchy. In this thesis, the researcher has traced the history of appellate jurisdiction of the Supreme Court and discussed various merits and demerits of establishing a Court of Appeal in India. For the purpose of empirical research, data has been collected through the questionnaire method from a wide range of respondents. The responses submitted by the respondents have been analyzed in the form of graphs and pie charts. The researcher is of the opinion that a Court of Appeal must be established in India with five regional benches, i.e., one bench each for North, South, East,

West, and Central India. One of the arguments in favour of establishing a Court of Appeal is that it will help in reducing the pendency of cases in the Apex Court. Moreover, litigants from far flung States like Tamil Nadu, Kerala, Arunachal Pradesh, and Nagaland, find it difficult to approach the Supreme Court because of distance constraint. On the other hand, around 22% appeals in the Supreme Court are filed against the judgments of Delhi High Court and the Punjab and Haryana High Court because they are in very close proximity of the Apex Court. In 2010, the Government of India had suggested the setting up of four regional benches of the Supreme Court to ensure that the Apex Court is easily accessible to litigants from every nook and corner of the country. But unfortunately, this suggestion was rejected by the Chief Justice of India in the year 2012. Therefore, establishing a Court of Appeal with five regional benches seems to be the only method to reduce the mounting pendency of cases in the Supreme Court. For this purpose, the researcher has drafted and suggested a Constitution Amendment Bill, highlighting the jurisdiction, procedure, and powers of the Court of Appeal. The researcher intends to send this Bill to the Law Commission of India and the Parliament of India for deliberations and subsequent enactment through the constitutional amendment process.

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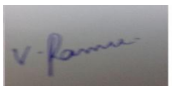
I am privileged to acknowledge the valuable guidance, persistent encouragement and continuous intellectual support of my learned Supervisor **Prof. (Dr.)Gaurav Kataria** , working as **Professor & Head of the Dept.**, in the **School of Law - LD02,** of Lovely Professional University, Punjab. Sir, your untiring and un-paralleled guidance, thought provoking criticism and meticulous analysis helped bring structure to this thesis.

I offer my sincere thanks and heartfelt gratitude to my esteemed co-supervisor **Dr. Ajaymeet Singh**, Advocate, Punjab and Haryana High Court, and previously worked at (till 24-12-2022) as Assistant Professor, School of Law, NMIMS, Chandigarh, whose expertise and insight were instrumental in transforming my ideas into relevant research.

My thanks are also due to Prof. (Dr.) Sanjay Modi, Head of Faculty, Lovely Faculty of Business and Arts and Dr. Meenu Chopra, Associate Professor and HOD, School of Law and all the teachers from the School of Law, Lovely Professional University, Punjab, for their constant cooperation and encouragement. It adds to my pleasure and I feel contended to mention inspiring support and guidance provided to me by Professor Niti Kant, Department of Physics, Lovely Professional University, Punjab, and Dr. Hari Om Sharma, Associate Professor, Sharda University, Noida, during the course work.

I am highly grateful to the Librarians of the School of Law and the Staff of Lovely Professional University, Punjab for their cooperation and help during the course of this study.



Signature

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CHAPTER-I: INTRODUCTION

1.1. INTRODUCTION:

India's civilization is amongst the oldest and the legal framework prevalent in India is based on the laws of ancient religion. Much before i.e. in 400 BC, Manusmriti and after that the Yajnavalkya Smriti formulated "rules relating to human behavior that should be followed in society and procedures that should be strictly followed in times of exploitation".

The Mughal Era had elaborate principles of the Muslim Law digest, i.e., "Fatawa-i-Alamgiri and Fatawa-i-Jehangiri". By the 19th century, Indian courts were dealing with all types of cases (civil and criminal) and were experiencing a degree of equality, justice, and religious intolerance. The British Era in India brought in the system of common law and precedence in the judiciary, putting an end to the legal system of Mughals. The present Court system was basically induced by "The Mayor's Courts", which came into existence in the year 1726. The First Independence War which happened in 1857 and further The Indian High Courts Act, 1862, transformed "The Mayor's Court System" into "Supreme Courts and High Courts in India", and then further "The Privy Council" became the highest appellate court for India.[1]

India is the largest democracy of the World and the 2nd most populated country (1.42 billion) after China (1.43 billion) and area-wise it owns 7th position. It has the oldest history, culture and civilization.[2]

Every single transaction between individuals gives rise to a new litigation. All trifles go to courts that gives rise to an impatient judiciary, upset genuine litigators and over- burdened courts.

[1] "Evolution of The Indian Legal System", available at: http://www.legaleraonline.com/articles/evolution-of-the-indian-legal-system (Visited on August 16, 2019).

[2] http://www.populationu.com/indiapopulation#:~:text=India%20population%20in%202020%20is,in%20the%20world%20after%20Chinaq. (Accessed on 21.06.2020)

Our history and culture originate from the Indus Valley Civilization in 2500 B.C. as a sovereign and ideal country with rich heritage and best economy and guaranteeing justice to all of its countrymen as enunciated. Our culture and civilization was at the top throughout the World, However, our these two distinct great qualities were sabotaged slowly and slowly by the foreign invaders one by one staring from Alexander in 326 B.C., followed by Mohammed Ghaznavi from Arab then by the Turkish through Mohammed Gauri, thereafter Mongol and ultimately in 1526 the Mughal Empire came to Rule us through Babar, succeeded by Humayun, Akbar and Jahangir. Then came British who Ruled our Country for about 350 years. During these period of invasion and the British colonialism, our culture and civilization were eroded, damaged beyond repair and polluted to an extreme extent as a result our Countrymen were subjected to all sorts of exploitation, oppression, injustice andpoverty.

After suffering for thousands of years of subjugation, tyranny and injustice, but ultimately under the leadership of Mahatma Gandhi, India secured Independence from the British Raj and became a "Sovereign, Democratic and Republic country". In the Preamble of our Constitution we adopted with a view to achieve the avowed objectives in the Preamble of our Constitution had promised to all of its citizen to secure - *Justice*, *Equality*, *Liberty and Fraternity.*

We framed our Constitution guaranteeing justice to all, Fundamental Rights to citizens, establishing a socialistic pattern of society envisaging for

> *"minimise the inequalities in income and eliminate inequalities in status, facilities and opportunities"*[3]and —
>
> "*….that the citizens, men and women equally, have the right to an adequate means oflivelihood;*
>
> *that the ownership and control of the material resources of the community are so distributed as best to subserve the commongood;*
>
> *that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;"*[4]

[3] Article 38 of the Constitution. "Art. 38 renumbered as cl. (1) thereof by the Constitution (44th Amendment) Act, 1978, s. 9 (w.e.f. 20-6-1979)."

[4] Article 39 of the Constitution.

INDEPENDENCE TO TILL DATE

The simplification and adjustment of national policies and laws that are ought to be one and the same across the country in all departments and sectors which leads to a real solution-giving situation that answers the drawbacks when writing law experts and makers who really digest the situational-problems and can furnish solutions with respect to the problems appropriately.

Initially, important statutes were made by British like Indian Penal Code of 1860; Contract Act of 1872; Negotiable Instruments Act of 1881; Transfer of Property Act of 1882; CPC of 1908 and many other. The Constitution of India, 1950, came into existence after the independence of India.

At the time of independence, India was socially scattered, with poor economy, with very less exports and industrialization, with many religions, customs and beliefs. These factors actually paved a way to the British to rule in India. India invested in infrastructure, industrialization, education, communication and transport by discontinuing inefficient methods and out-dated technologies that led to more employment to the people. Government granted protection to minorities, encouraged industries by issuing licences that regulates the growth and controlled the foreign exchange. In the process of developmental evolution, laws started becoming obstacles to the people in the form of harassment. Many a times, politicians became rulers, while intellectuals and bureaucrats became hurdles to the Constitutional promises.

At the beginning of liberalization in 1991 India was bankrupt. Entrepreneurship began to flourish after liberalization and nation entered into world business competing with China. The situation lead to issues like national interest as secondary, learning about rights, over sighting responsibilities & obligations resulting in disparity of wealth and political funding in the mask of well-being of common man

Law is basically made through Central and State Acts. And further by the way of Rules, Regulations, Notifications, Circulars, Press Notes, Judgments. RBI and SEBI like bodies notifying over a press and notifications. Growth in the number of litigants is directly proportional to the population growth. Litigants are filing as many appeals as possible for their rights irresponsibility with out thinking of parallelproblems. As a result, judges' number is fallen short although after introducing fast-track courts and tribunals. Still, number of pending cases are increasing drastically from time to time. Pending cases as on 31st March 2023 in the "Supreme Court" were 71,411.

"*Each Supreme Court bench hears for admission about 60 cases each Monday and Friday, varying from Constitutional matters to Inter-State disputes, revenue matters,*

competition law matters, commercial disputes, family disputes and land matters. As against this, the entire US Supreme Court passes judgement on about 80 cases each year, and a slightly higher number is heard by the UK Supreme Court each year, typically only being cases of public importance;"

In our Constitution, the legal and judicial system almost remained the same. There are only few changes, concerning the marginalized sections of our society who had suffered for thousands of years of oppression and exploitation at the hands of Barons, feudal lords, affluent section and the capitalist class. When we got Independence, our population was around 33 crores[5] and the present population is about 1.42 billion i.e. 142 crores.[6] With the rise of population and a large number of enactments made by "the Parliament and the State Legislatures" since 1950 onward, the number of courts in the District level has been increased many fold and in addition to the traditional courts like "Judicial Magistrate's court, Courts of Civil Judge both Junior Division and Senior Division, Additional District Judges and the District Judges, a number of New class of Courts and Tribunals like Motor Vehicle Tribunal, Family Courts, Juvenile Justice Courts, Mediation Centers, Lok Adalats, Gram Nyayalayas etc" have been established to off load the pressure on the traditional courts. Apart from that the cadre strength of "the District Judges and the Civil Judges" have been increased and the strength of the Judges of "the High Courts and the Supreme Court" have also been increased with a view adjudicate the cases within a reasonable time. At the State and National levels also several types of Courts and Tribunals like Central Administrative Tribunals, State Services Tribunals, State Consumer Disputes Redressal Forums, State Education Services Tribunals, Debt Recovery Tribunals, Armed Forces Tribunals, Income Tax Tribunals, Real Estate Regulation Authorities, RERA Tribunals, National Consumer Disputes Redressal Commission, National Green Tribunals, Debt Recovery Appellate Tribunals, Income

[5] Census of India, 1951

[6] http://www.populationu.com/india-population#:~:text=India%20population%20in%202020%20is,in%20the%20world%20after%20China.. Accessed on 13.05.2019

Tax Appellate Tribunals, etc. Similarly, parallel courts like "Labour Courts, Industrial Tribunals, Railway Claims Tribunals, Railway Rate Tribunals" are functioning. These additional Courts and Tribunals were created specially to relieve the traditional courts from additional workload so as to enable them provide speedy justice.

In the year 1947 itself, when we got Independence, our courts were overloaded with court cases and then also, the pendency was a very serious concern and one of the reasons for creating additional courts was to free from additional work-load of the traditional courts, but unfortunately all these efforts could not bring the fruitful results and the pendency remained as such. The situation arising of the arrears of cases became an anxiety to the then Hon'ble Prime Minister in 2009 when he observed that *"India has to suffer the scourge of the world's largest backlog of cases and timelines which generate surprise globally and concern at home."*

All Courts and Tribunals in India are beset with tremendous backlog of cases. As per the data provided by the National Judicial Data Grid, total pending cases in India are **4,89,39,297,** as on **31st March, 2023**. The breakup of which is in the **Subordinate Courts** it is **4,28,15,384,** in **all High Courts** it is **60,52,502,** and in the **Supreme Court** it is **71,411**. The details of pending cases category-wise are given in the table below:

Particulars	**Civil**	**Criminal**	**Total**
PENDING CASES			
Years	3022401(33.54%)	7124111(30.93%)	10146512(31.66%)
1 to 3 Years	2670545(29.63%)	6689954(29.04%)	9360499(29.21%)
3 to 5 Years	1402395(15.56%)	3451321(14.98%)	4853716(15.15%)
5 to 10 Years	1302768(14.45%)	3616804(15.7%)	4919572(15.35%)
10 to 20 Years	476729(5.29%)	1798461(7.81%)	2275190(7.1%)
20 to 30 Years	104090(1.28%)	304885(1.28%)	408975(1.28%)
Above 30 Years	33668 (0.37%)	47635(0.21%)	81303(0.25%)
Total	9012596	23033171	32045767
Case Type Wise			
Original	6602718	20920510	27523228
Appeal	485809	393512	879321

Application	562513	1527794	2090307
Execution	1323346	57980	1381326
Stage Wise			
Appearance/Service Related	2001456	10014781	12016237
Compliance/Steps/stay	1569012	1690182	3259194
Evidence/Argument/Judgment	3794034	7351878	11145912
Pleadings/Issues/Charge	1030100	1759417	2789517
Institutional cases			
LastMonth's cases	293185	1187677	1481538
Disposed cases			
LastMonth's cases	320992	1200431	1522389
Cases of Sr Citizens			
Cases filed	1514256	514608	2028864
Women			
Cases filed	1453821	1568625	3022446
Delayed due to Reason			
Cases filed	30024	50132	80156

A. STAY ORDERS AND PENDENCY

There are many factors for the delay in deciding the cases. Some main reasons are shortfall of human resources, infrastructure, vacant positions and witnesses non-appearance to the Court. In the total pendency of cases, share of all higher courts' share is about 45%, which is of major concern for the pendency of cases.

A.1. PENDENCY IN QUASI-JUDICIALAUTHORITIES:

This figure is apart from the pendency in the Central Administrative Tribunals, Income Tax Appellate Tribunal, Income Tax Tribunals, National Company Law Tribunal, National Consumer Commission, National Green Debt Recovery Appellate Tribunals, Debt Recovery Tribunal, Industrial Tribunals, Labour Courts, State Public Services Tribunals, Armed Forces Tribunal, Motor Accident Claims Tribunal, Railways Claims Tribunal, Railway Rates Tribunal, State Consumer Disputes Redressal Commissions, District Consumer Disputes Redressal Forums, State RERA Tribunals, Conciliation Officers etc., which if counted together, then roughly comes to the figure given above in respect of subordinate courts. **Thus, the entire pendency all over India in all Court, Tribunals and quasi-judicial authorities would be around 6 crore.**

A.2. PENDENCY OF COURT CASES

At present there are 672 “District Courts” and 25 “High Courts” in India with the “Supreme Court as the Apex Court”.

Worried due to the alarming backlog of cases in our Judiciary, the then “Chief Justice of India, Justice Ranjan Gogoi” urged to the Prime Minister to increase the number of “High Court Judges” and also the retirement age be increased for three years more. Justice B.N. Agrawal, the then Justice of the “Hon'ble Supreme Court of India”, while delivering Presidential address on 1st Aug 2007 at the Lecture Series organizedby the Supreme Court Bar Association[7] expressing his disgust and anxiety over the pendency of cases had said as follows:

> *“to blame the judiciary alone for it is wrong as other limbs of the State need also play their role in solving this problem. But those who say that justice delivery system is on the verge of collapse make such statements by looking at the overflowing dockets only without peeping into the real scenario. These are the people who need to be told that influx of cases is also a sign of faith reposed by the people in the administration of justice and it is that faith which, inter alia, is one of the reasons for docket explosion”.*

Justice Agrawal further pointed out that “one of the reasons of arrear of cases is a large number of enactments by the Parliament and the State legislatures and the delegated legislations made there under by the executives, which ultimate create more disputes under such enactments resulting into mounting pressure upon the working of the courts”, lamented that the Parliament or the State legislatures while making new laws do not fit it appropriate to make provision for additional courts to deal with the litigations arising out of the new laws. He also blamed the executives for its inaction in discharging their duties and obligations under the new laws made which ultimately results into litigation. He said

[7]Justice B.N. Agrawal. Pendency of Cases and Speedy Justice-– (2007) 6 SCCJ-1.

> *"The increase in the institution is partly because of increase in the number of cases…… besides inaction on the part of the Union Government, the Governments of various States and Union Territories and their instrumentalities in observing Rules apart from maladministration.."*[8]

Governments being the largest litigant, Justice Agrawal was of the view that the Central as well State Governments must try to redress the grievance of the common man objectively try to adjudicate the matter through their own mechanism. We are aware that in the Rules made concerning any matter, there exists an appellate forum in the Rules and it is expected that if any dispute is raised under the Rule, the competent authority shall pass orders strictly in according to the provisions of the Rule objectively, dispassionately and without any favour or bias and it should be free from malafide and if the person is aggrieved by the order passed by the competent authority and the Appellate Authority decides the appeal with an open mind and if this is done then there shall be a little scope to approach the court, but unfortunately this is not happening as a result of which court cases arise.[9]

Traditionally, the Subordinate Courts were to adjudicate the cases pertaining to the *inter alia,* following laws:

I.P.C., 1860, Cr.P.C. 1898, C.P.C., 1908, Specific Relief Act, 1963, Indian Evidence Act, 1872, Indian Contract Act, 1872, Transfer of Properties Act, 1925, Indian Succession Act, 1925, Indian Easement Act, 1882, Muslim Personal Law (*Shariat*) Application Act, 1937, Sales of Goods Act, 1930, etc. But after Independence in the year 1947, an era of New legislations were enforced as follows:

Hindu Marriage Act, 1955, Special Marriage Act, 1954, Protection of Civil Rights Act, 1955, Limitation Act, 1963, Companies Act, 1956, Banking Regulation Act, 1949, Domestic Violence Act, 2005, Right to Information Act, 2005, Negotiable Instruments (Amendment) Act, 2018 (Sec. 138), Muslim (Protection of Rights on Marriage) Act, 2019, Banning of Unregulated Deposits Schemes Act, 2019, Fugitive Economic Offenders Act, 2018, Mental Healthcare Act, 2017, Integrated Goods & Services Tax Act, 2017, Rights of Persons with Disabilities Act, 2016, Insolvency & Bankruptcy Code, 2016, Anti Hijacking Act, 2016, Aadhar (TDFOSBS) Act, 2016, Juvenile Justice Act, 2016, Black Money & Imposition of Tax Act, 2015, Street Vendors Act, 2014,etc.

[8]Ibid. [9]Ibid

With the advent of the enforcement of new legislations, the number of filing of cases increased many fold, but while discussing the question of pendency of court cases, we forget to notice that on the hand the rate of disposal has increased, while on the other hand the rate of filing has also increased in the same ratio. Thus, in this scenario the root cause of pendency, in the first instance, is lack of increase of the courts as well as its infrastructure, among others. There are more than 15,000 courts in India spread in approximately 3219 Districts & Talukas, as per the data of NJDG.

As per the latest study, about two crore cases are pending in "the subordinate courts at the trial stage". The Fifth Law Commission of India headed by Sri K.V.K. Sundaram in 1969 had recommended for amendment in the C.P.C., 1898 to bring certain measures to tackle the problem of the pendency and other matters and for doing so it focused primarily on the criminal law side, thus recommended for drastic changes in the Cr.P.C. The "Central Government" on the advice of "the Law Commission" introduced the amendments in the Cr.P.C., which passed "The Code of Criminal Procedure, 1973".

Cr.P.C. was subsequently amended in 2005 by means of which after Chapter XXI, a new Chapter namely- Chapter XXIA was added to provide "PLEA BARGAINING" with a view to give some relaxation in the pendency and save time of the courts. Under this Chapter, Sections 265A to section 265L were added.

In India's lower courts, land-related cases take the longest time to resolve.[10]The coloured diagram given below shows categorization the number of cases pending period-wise like below 1 year, between 1-3 years, between 3-5 years, between 5-10 years and above 10 years in Industrial cases, Civil suits, Land Acquisition matters, Arbitration, Labour disputes, All original cases and all appeal cases respectively in the diagram. The black, light yellow, light magenta and red strips denotes cases of below one year old, between 1 - 3 year older, 3 - 5 year older, 5 t- 10 year older respectively. Cases exceeding 10 year older are outside spectrum, thus not shown in the diagram. The figure given is in lacs:

[10] Source: NJDG, njdg.ecourts.gov.in, Accessed on 25.09.2018

i. Industrialcases

ii. Civil suit

iii. Landcases

iv. Arbitration

v. Labourcases

vi. All originalcases

vii. All appealcases

A.3. PENDENCY IN THE SUPREME COURT, HIGH COURTS AND DISTRICT COURTS

Justice J. Chelameswar, Judge of the "Supreme Court of India" (as he then was) had very eloquently discussed the problem of pendency in the "Supreme Court". While delivering a lecture as the Chief Guest in the Indian Law Institute, New Delhi on 8.9.2014 under –Justice H.R. Khanna Memorial Lecture.[11] Justice Chelameswar informed that pendency in the "Supreme Court" in the year 2013 was 32,476 and during the first five years of its existence less than 1000 SLPs were filed and most of them were decided in the same year, thus there were no pendency during the first years. However, this number swelled upto 2000 and those cases were also decided within a period of one year. There were no pendency in the first decade of establishment of the "Supreme Court", but unfortunately by the end of the 2013 the number of Appeals under Article 136 was 32,476 and number of appeals under Article 132 i.e. appeals with certificates granted by the Hon'ble High Courts was 213. Thus, the total pendency became 32,689, and this figure rose to **71,411 as on 31 March 2023 as per the data provided by the National Judicial Data Grid.** The oldest appeal pending was of 1983, whereas the oldest SLP was of the year 1992.

The other causes of pendency is the stay orders granted by the higher courts and appellate courts, which are generally not time bound and the delaying tactics adopted by the party who secures the stay or injunction order. A study conducted by "the Centre for Research & Planning, Supreme Court of India"[12] observed as under:

> *"The subordinate judiciary works under severe deficiency of 5,018 court rooms. The existing 15,540 Court Halls are insufficient to cater to the sanctioned strength of 20,558 Judicial Officers as on 31.12.2015, resulting in the judicial officers having to work under undesirable conditions. A similar picture emerges in terms of the residential accommodation for the subordinate judiciary - here the shortage is of 8,538 quarters, or above 40% of sanctioned strength of judicial officers. The staff position for Subordinate Courts is also not encouraging, 41,775 such positions are lying vacant, thus further hindering in the functioning of the courts."*

[11] "Supreme Court- Jurisdiction, Problem of Pendency", Justice J. Chelameswar (205) 9 SCCJ-1.

[12] "Subordinate Courts of India: A Report on Access to Justice 2016, Centre for Research & Planning, Hon'ble Supreme Court of India", New Delhi- Ch. II. "Indian Judicial System-Current Inadequacies In Manpower, Comparison With Other Branches Of Governance And Barriers To Access To Justice" page 5.

According to study conducted by DAKSH Legal, main cause of delay is that there is no time frame fixed for the disposal of cases and there is always uncertainty in this matter. Sometimes, the arguments by the Counsels and the hearing process are continued unnecessarily, which could be controlled by the e-Courts. Sometimes it is delayed for want of investigation, submission of charge-sheets and production the prosecution witness by the police, which is the responsibility of the Executive.

B. CAUSES OFPENDENCY

Hon'ble Mr. Justice Chelameswar finds two major reasons for pendency, *inter alia*,

(1) filing of appeals without obtaining certificates from the respective "High Courts" under "Articles 132 and 133 of the Constitution of India";

(2) the "Supreme Court's" liberal approach of admitting SLPs; and

(3) Stay Orders from higher court.

During the first decade of the existence of our "Supreme Court", most of the appeals that came to be registered in the Court were after obtaining certificates from the concerned High Court under Articles 132 or 133, but after 1999, when number of such appeals was 599, it gradually began decreasing to 213 in the year 2013 although the trend started right from 1952, but during those days our "Supreme Court" was strict for compliance of the provisions contained in Articles 132 or 133 as the case may be before approaching the "Supreme Court". We have at least two land mark decisions of the "Supreme Court" namely: *Ashwani Kumar Ghosh v. Arabinda Ghosh*[13] and *Hindustan Commercial Bank Ltd. v. Bhagwan Das*[14], in which the Court had deprecated in the strongest terms for approaching the Court without obtaining the certificates from the concerned High courts. In *Ashwani Kumar Ghosh* (supra) case, the Hon'ble Supreme Court observed as follows:

[13]AIR 1952 SC 369 pp. 386 para 70.
[14]AIR 1965 SC 1142 pp. 1148 para 3.

"70. ……..The Petition, however, has been presented before us as an application under Article 136 of the Constitution of India for special leave to appeal from the judgment of the Special Bench of the Calcutta High Court. We have been pressed to proceed with the matter on the footing ***as if special leave to appeal has been given and the delay in the presentation thereof has been condoned by this Court.*** *I deprecate this suggestion, for I do not desire to encourage the belief that an intending applicant who has not applied for or obtained the leave of the High Court and who does not say a word by way of explanation in the petition as to why he did not apply to the High Court and as to why there has been such delay in applying to this Court should never get special leave from this Court for mere asking."*

In this case of *Hindustan Commercial Bank case*, the Hon'ble Supreme Court was pleased to straightway dismissed the SLP only on the ground that "before moving to the Hon'ble Supreme Court, the petitioner neither obtained leave from the Patna High Court to file the appeal under Article 133 of the Constitution of India nor complied with the Rules of the Supreme Court on the subject". The Hon'ble Supreme Court observed:

"3.Now, no appeal lay to this Court under Article 133 of the Constitution from the judgment of the learned Single judge of the Patna High Court.....it would lie on the certificate issued by the High Court under Article 132 of the Constitution. The appellant did not move the High Court for the issue of the certificate, though it had earlier presented a petition praying for the grant of certificate on this footing. In view of Order 12 Rule 2, no application to this Court for special leave to appeal in this case could be entertained, unless the High Court had been first moved and had refused to grant the certificate. Under Order 45 Rule 1 of the Supreme Court Rules, this Court could, for sufficient reasons shown, excuse the appellant from compliance with the requirement of Order 13 Rule 2. Up till now, the appellant has not applied to this Court for exemption from the compliance of Order 13 Rule 2. In the absence of any order of exemption order 13 Rule 2 applies with full force, and peremptorily enjoins that no application to this Court for special leave to appeal shall be entertained. The Rule is mandatory. The special leave to appeal being obtained in contravention of the Rule is liable to be revoked."

C. EFFECT OF PENDENCY

The pendency of the cases adversely effects the law and order problem and also hampers the economy of the Nation. The pendency, which counts for about 90% from the Subordinate courts directly effects the bulk of the society i.e. the common man-e.g. farmers, labourers, daily wagers, low paid employees, students, teachers, petty vendors, small businessman, which in turn adversely effects our economy.

"The then Chief Justice of India, Justice Ranjan Gogoi" while addressing a function at Guwahati on 4th August, 2019[15] had said that more than 2 lacs cases were pending for the last 25 years, while about 1,000 cases had not been decided even after 60 years. He also told the gathering that on the one hand there was pendency of 90 lacs civil cases, on the other hand in 20 lacs of such cases even summons were not issued. He had said for this pathetic condition, only judiciary cannot be blamed, but the Executive branch of the State is also equally responsible for it. He also said that on the criminal side, the pendency was more than two crore, out of which in one crore of such cases summons were not issued. It is the duty of the Executive to serve the summons, where it has miserably failed and trial starts only after service of the summons. He said that he had requested all the Chief Justices of the "High Courts" on July 10, 2019 to give priority for old cases by forming two groups *viz* 50 years old cases and 25 years old cases.

According to a news report[16], Bombay High Court had innovated a "time machine concept" to curb the delay. In this case, a rent control matter, the original plaintiff i.e., the land lady and the defendant i.e. the tenant had died contesting their case and thereafter their second generation were contesting the original case. The case has gone from the Court of Civil Judge, where it was initiated, the plaintiff (land lady) got the decree in her favour, to the Revisional Court, Appellate Court, "High Court", again to the trial Court by remand from the High Court and again coming back to the "High Court". The "High Court" finally decided the matter in favour of the deceased land lady through her heir in succession. Hon'ble Mr. Justice Dama S Naidu of "the Bombay High Court", who was hearing the case pertaining to the year 1986 of rent control matter said:

[15] PTI News Agency

[16] News Agency dated September 7, 2019

"Courts and delays are correlatives, they go together. The reasons are a legion. They range from infrastructural inadequacies to insufficient adjudicators to protracted procedures to plain misplaced priorities."[17]

Pendency in the Supreme Court: In 2006, it was more than 40, 000 and in 2017, it rose to 54,000. In the High Court, 37 lacs in 2006 and 43 lacs in 2017, In the Subordinate Courts, it were 3 crores in 2006 and 3 crores in2017 .

- In April 2018, there were about3 Crore pending petitions across all the courts in the country, i.e, "the Supreme Court, all High Courts and all the Subordinate Courts including District Courts".

- Of these, 86% cases were pending in the the "subordinate courts, followed by the 24 High Courts (13.8%)". The remaining 0.2% cases are pending in the "Supreme Court".

- Between 2006 and April 2018, pendency has increased by 8.6% across all courts. Pendency before "the Supreme Court increased by 36%, High Courts by 17%, and subordinate courts by 7%". **There was a rate of Disposal spanning from 28% to 55%.**

[17] Supra; "The petition had been filed by Rukminibai, a city resident, seeking to evict some tenants from her property. She died as the case wound its way, and her heirs took over. According to the petitioners, the property was leased to the family of Manoramabai generations ago. Manoramabai, too, has passed away. Eviction proceedings were initiated against the tenants in 1986, and the trial court and the high court Ruled in the owners' favour subsequently. In 2016, the tenants moved the HC again, citing a change in circumstances. Securing favourable orders in the past, the owners claimed they needed the property back to be used as shops by their unemployed children. While the Maharashtra Rent Control Act largely protects tenants, owners' bonafide need is a valid ground for eviction. But two of the children had since secured government jobs and did not need the place anymore, the tenants argued. The arguments led Justice Naidu to cite novelist Charles Dickens' words about endless court proceedings. The owners' family was large, and even if two members got jobs, the premises might be required by others, he said. 'In Dickensian diction, innumerable children may have been born into the cause...young people may have married into it, innumerable old people may have died out of it.The little of the plaintiffs may have been promised a new toy (bi)cycle when the case is settled, but may have grown up pending the case, possessed a real cycle, ridden it through his life, and ridden away into the other world,' the judge said. 'A case can be perennial but not the life, nor its needs. As it were, courts have time machines for cases remain constant for decades on end. But not the clients or causes,' the judge said, 'ruling that the tenants' plea had no merit." PTI

D. INCREASE IN NEW CASES PER YEAR INCREASING PENDENCY

- From 2016 to 2006, The cases disposal in Supreme Court increased from 57,000 to 76,000; in High Courts increased from 14.4 Lakhs to 16 Lakhs; and in subordinate courts increased from 1.6 crores to 1.9 crores; Even after disposal of cases in such numbers, their is increase in pendency due to adding-up of new petitions.

- In the "Supreme Court", the case disposal rate has come to 57%, in the "High Courts" it has come to 28%, and in the subordinate courts to has come to 40%.

After the effective measures initiated by National Litigation Policy enunciated by "the Ministry of Law and Justice, Government of India", and introduction of Alternative Dispute redressal forums for combating the problem of pendency, like Lok Adalats, Arbitrators, Conciliators, Mediation Centres have been constituted new innovations have been devised by our "Supreme Court and the High Courts" for the people-particularly the marginalised class as so make them feel and realize the option of easy and economically viable means to secure speedy and economic justice by resorting to these Alternative Disputes Redressal Forums. The Lok Adalats, Arbitrators, Conciliators and Mediations centers are also contributing enough in this direction, hence it is being popular day by day.

1.2. SIGNIFICANCE OF STUDY

Globally, 63 nations have Separate constitutional courts and Appeal courts for which reason, the burden is low on those nations' Supreme Courts and there is a fast disposal of cases. Supreme Court of India ought to deal with the issues of Constitution only, is the need of hour. The newly established "Court of Appeal ought to be placed between the High Courts and the Supreme Court". Advantages other than faster justice and lessening burden of "Supreme Court of India" are as below mentioned:-

- Advantage of Proximity:- when Courts become nearer, Communication and access would be much better to the clients and counsels which makes the job faster with very less expenses.
- Advantage of cost:- Advocates who work with (the clients) in the lower courts can continue to work without "AOR (Advocate on Record) and the Senior Advocates"

which very much lessens the expenses.

- Advantage in Employment:- New opportunities and promotions to the existing in the fraternity of Justice.

INTERNATIONAL STATUS

List of 63 Countries having separate Constitutional Courts:

Albania	Gabon	Nepal
Angola	Georgia	Niger
Armenia	Germany	Peru
Austria	Guatemala	Poland
Azerbaijan	Hungary	Portugal
Belarus	Indonesia	Romania
Belgium	Iran	Russia
Benin	Italy	Serbia
Bosnia and Herzegovina	Jordan	Slovakia
Bulgaria	Kazakhstan	Slovenia
Burma	Republic of Korea (South Korea)	South Africa
Chad	Kosovo	Spain
Chile	Kyrgyzstan	Syria
Colombia	Latvia	Republic of China (Taiwan)
Democratic Republic of the Congo	Lebanon	Thailand
Croatia	Lithuania	Turkey
Czech Republic	Luxembourg	Uganda
Dominican Republic	Republic of Macedonia	Ukraine
Ecuador	Malta	Uzbekistan
Egypt	Moldova	Zambia
France	Mongolia	Zimbabwe

1.3. REVIEW OF RESEARCH IN THE SUBJECT

Review of Research and Development in the Subject:

The 229th "Law Commission of India's Report", published in August 2009, advises to establish the benches separately for hearing constitutional matters and appeals. It also advises "to hear appeals from High Courts through newly established benches of Supreme Court". Till date these reformable advises are pending same as the pending petitions of Supreme Court.[18]

On 6th page in the Report, it mentions that: "*As constitutional adjudication occupies a place of its own, it always merits consideration as to whether there should be a separate Constitutional Court, as is the position in about 55 countries of the world (Austria established the world's first separate Constitutional Court in 1920), or at least the Supreme Court should have a Constitutional Division. Many continental countries have Constitutional Courts as well as final Courts of Appeal called Courts of Cassation (Cour de Cassation in French) for adjudication of non-constitutional matters. A court of cassation is the judicial court of last resort and has the power to quash (casser in French) or reverse decisions of the inferior courts*."

On 7th page in the Report, it mentions that: "*Whether the Supreme Court should be split into Constitutional Division and Legal Division for appeals, the latter with Benches in four regions – North, South, East and West, is a subject of fundamental importance for the judicial system of the country. This Report considers the question as to whether there is need for creating a Constitutional Court or Division in our Supreme Court that shall exclusively deal with matters of constitutional law and four Cassation Benches one each in the four regions."*

On 17th page in the Report, it mentions that: *"The liberal attitude of the courts in entertaining appeals from the lower courts has also contributed to the steady increase in the backlog. Those who have the financial resources go on appeal on the decisions of the lower courts to the next higher court, and finally to the Supreme Court, even when no interpretation of the law may be involved. When the accused are influential politicians or rich businessmen, the cases can go on endlessly, bringing down in this process the reputation of the judicial system itself. If appeals can be limited to a small number, say one or two, depending on the nature of the crime, it can help a great deal in reducing pendency*."

[18] "Law Commission of India, 229th Report on Need for division of the Supreme Court into a Constitution Bench at Delhi and Cassation Benches in four regions at Delhi, Chennai/Hyderabad, Kolkata and Mumbai" (5th day of August, 2009).

On the 18th page of the Report, it is mentioned that: *"We have tried some of the above-mentioned measures for the last 59 years of the functioning of the judicial system in our country. The result appears to be far from satisfactory. Time has come when the entire judicial set-up will have to be overhauled and refurbished in order to make the goal of speedy justice a pulsating reality. It is quite often argued that the present pattern of working of the Supreme Court needs to be revised if any success in this direction is to be achieved. The indiscriminate acceptance of appeals on trivial issues of facts by the Supreme Court quite often overloads itself. In fact, only important issues need be litigated in the Supreme Court. Also, the present situation makes the Supreme Court inaccessible to a majority of people in the country*."

In 20th page of the Report, it mentions that: *"The said Benches shall act as Cassation Benches to deal with appeals from a High Court in the particular region. The apex court could then deal with constitutional issues and other cases of national importance on a day to day basis since the accumulated backlog of cases would go to the respective zones to which they pertain*."

A. INEQUITY IN THE COURTS' CASE-LOAD

The 34 Judge "Supreme Court" heard a number of cases. Anyone who feels that they have been unfairly sentenced in a lower court or in a court of law may appeal to the Supreme Court. Even though the Court has overturned few, it allowed many to be heard. In 2011, court's judges ruled in favor of some 47,000 of the 9,070 cases out of 9,070 (or about 19 percent).Hearing to quite number of cases needed quite a time leading up to pending of cases. On an average, it takes more than four years for the "Apex Court" to decide a backlog case. In the case of an average plaintiff, it takes around a decade and a half of complete proceedings from "the district court, then to the High Court, and then to the Supreme Court". Even after the "Supreme Court" has granted leave the appeal, it is not accessible equally to all. Complaints do not exist from all provinces. Most of the appeals are filed in the "Apex Court from the decisions of the Delhi High Court" (12%) because of the proximity. Only 1.2% cases have been submitted from "the High Courts of Jammu and Kashmir and Odisha". And from "the Madras High Court", it is only 1.1%. The electronic filing system has been introduced a few years ago, through which the litigants can easily file cases in any Court. However, it has not been able to resolve the root cause. The "Apex Court" decisions in the last five years include 16% in service matters, 13% in direct or indirect tax matters, 9% in land acquisition cases, and 21% in criminal matters. Defendants can afford high-value and efficient attorneys in cases which are less significant to the nation. Most tax and employment matters are decided by "the Supreme Court, not the High Courts". As a consequence, result was that the Apex Court spent

thousands of hours of valuable time hearing cases "involving wealthy litigants living in and around Delhi".[19]

B. COURT THAT GOT DISTRACTED

Sometimes important cases on the Constitutional Bench are not heard. In order to hear any important case involving a constitutional issue, a Bench comprising of at least five Judges has to be constituted. In the 1960's, the court used to decide more than 100 such cases per year. As of now, several important pending issues of the Constitutional Bench are in line to be listened.The rise in appeals has hampered court in taking up and adjudicating the Constitutional matters and in listening to petitions that is the only and only solution to go directly to the "Supreme Court where fundamental rights have been violated". The Apex Court does not encourage plaintiffs to directly approach the Supreme Court, and often directs them to the High Courts.

C. THE COURT CONFIRMING ITS OWN UNCERTAN VOICE:

There was a 33% increase in spending between 2005 and 2011 by "the High Courts". However, the number of cases referred to "the Supreme Court increased by 45%". As more and more appeals were admitted by the "Supreme Court", the litigants began filing additional appeals. In 2009, "the Law Commission of India" recommended the creation of "regional benches of the Supreme Court in Mumbai, Chennai, Kolkata and New Delhi". The Commission also recommended the creation of a separate "Constitutional Bench in New Delhi to hear important Constitutional matters". The cases are interdependent due to the shortage of sufficient judges in number. "*Do the law officers certify the need to file an appeal and specify the reasons why it is not considered fit or proper to file an appeal? Whenever any Ministry approaches the Law Ministry on any matter, the Law Ministry expresses its views and sends the file for the opinion of the law officer concerned. The law officer at the level of Additional Solicitor General or the Solicitor General sometimes has to examine even petty matters, or service matters, and consider whether it involves a matter fit enough to be taken to the Supreme Court. Ultimately, it depends on the opinion of the law officer of the Union. There have been suggestions for structural reforms of the Supreme Court, including formation of regional Benches. There is a view that the Supreme Court is tilted towards a particular class. Of course, the court was expected to hear matters involving important questions of law and the Constitution or the public interest.*"[20]

[19] Nick Robinson, "A court adrift", May 3rd Frontline 4 (2013)
[20] Mohan Parasaran, "A people's court", May 3rd Frontline 14 (2013)

Due to the increased load of cases,"high rate of admission, and constitution of multiple two-judge Division Benches resulted in a tremendous increase in the number of judgments handed down by the Supreme Court, which in-turn increases the chances of inconsistencies in judgments".[21]

Justice Felix Frankfurter of the Supreme Court of USA suggested that "*The Supreme Court, as the apex court, must sit en banc (have one bench only) to ensure that determinations are final and authoritative. Nick Robinson's empirical study on the Supreme Court had shown that between 2005 and 2010, the number of cases in the Supreme Court increased by 51.8 per cent. These three factors—increase of workload, a higher rate of admission, and constitution of multiple two-judge Division Benches— combined resulted in an increase of judgments handed down by the Supreme Court. Due to the lack of settled precedents, potential litigants have increased. H.M. Seervai wrote, Take a chance at the Supreme Court, believing there is some possibility of success.More than 80 per cent of the decisions are matters that come by way of special leave petitions under Article 136 of the Constitution. At the admission stage of petitions, the Supreme Court must provide clear requirements in law as to when such a matter under Article 136 will be taken up. This will, slowly, lead to clarity of the ways in which discretion under Article 136 will ordinarily be exercised. They can be free to follow either the conflicting decisions depending on the facts of the case, or if doing so would be unjust to the litigant concerned, refer the matter to a three-judge or a Constitution Bench (if it satisfies Article 145(3) for final disposal. This saves immense amounts of judicial time and helps in speedy disposal of cases.*"

Latest statistics shows that as on 31st March 2023, "there are 71,411 pending cases in the Supreme Court of India". When it is analyzed, it is found that the Supreme Court judgments from 2005 to 2017, the focuses was on "appeals from High Courts" (93% of judgments) and especially civil cases (64%).

[21] Arghya Sengupta, "Inconsistent decisions", May 3rd Frontline 19 (2013)

On the other hand, writ petitions, filed against fundamental rights are of less importance, which were four percent of total judgments. In a 2013 paper, Nick Robinson, a legal expert, stated that "the Supreme Court hears numerous appeals as a way to ensure that the Supreme Courts and lower judges fear that they are incompetent, corrupt, or biased".[22]

Year	Arbitration	Civil Appeal	Criminal Appeal	Transfer Cases	Unclassified	Writ Petition
2005	2	629	204	Null	68	37
2006	7	876	231	Null	61	49
2007	11	1062	392	Null	53	41
2008	13	1926	766	Null	55	49
2009	5	1372	767	Null	28	46
2010	8	899	419	Null	11	43
2011	4	779	428	Null	16	44
2012	6	461	333	Null	4	45
2013	3	624	361	1	25	63
2014	3	466	295	Null	20	57
2015	9	513	240	Null	5	45
2016	5	531	153	Null	3	50
2017	2	501	191	Null	18	76
Total	78	10639	4780	1	367	645

Among the appeals cases from the High Courts, few High Courts are unfairly represented in "the Supreme Court judgments". Theoretically, if all the High Courts act in same way, "the number of appeals from each High Court should be equal to the number of cases that the High Court listens".

Aggregating all judgments from the country's high courts, we find that India's oldest high courts (Madras, Bombay and Allahabad) account for a bulk of "the Supreme Court's appeal judgments". To correct the number of decisions they make, High Courts are represented excessively, which may "promote access to the Supreme Court unequally".

[22] Backlog burden of Supreme Court, from Aadhaar to Ayodhya, available at:https://www.livemint.com/Politics/tzhLriWMkIxwe3XtG5U5yH/Supreme-Court-pending-cases-from-Aadhaar-to-Ayodhya.html (Updated: 19 Sep 2018, 11:59 AM IST)

D. HC SOURCE OF SC JUDGEMENTS

The information given below shows SC scores for unequal numbers (compared to HC decisions)

High Court	HC judgements	SC judgements	Size of HC
Allahabad High Court	315968	2141	160
Andhra Pradesh High Court	26943	902	61
Bombay High Court	96653	2307	94
Calcutta High Court	224274	1505	72
Chhattisgarh High Court	45927	19	22
Delhi High Court	101813	1581	60
Gauhati High Court	11544	207	24
Gujarat High Court	1042366	807	52
HP High Court	67871	99	13
J & K High Court	11498	44	17
Jharkhand High Court	258472	63	25
Karnataka High Court	467519	723	62
Kerala High Court	402524	917	47
Madhya Pradesh High Court	1234673	770	53
Madras High Court	386584	2144	75
Manipur High Court	Null	2	5
Orissa High Court	21042	510	27
Patna High Court	59929	1302	53
Punjab and Haryana High Court	650362	1005	85
Rajasthan High Court	160590	814	50
Sikkim High Court	143	7	3
Tripura High Court	Null	2	Null
Uttarakhand High Court	83148	28	11
	5669843	17899	1071

"Most of the practices are well invited. The 229thLaw Commission report recommended that various benches be established to hear complaints and constitutional matters. This report also advised the benches be established in the Regional High Court to listen to the appeals from High Courts. Like many cases in the Supreme Court these changes are pending still.[23]

"It is time for us to start Benches of The Supreme Court in at least four major cities. One Bench each can be established in Mumbai, Chennai and Kolkata to begin with, he said, in the launch event of his book when he completed two years in office as Vice President."[24]

Referring to the recommendations of the Standing Committee, Naidu said there was a need for benches in the High Court in the southern, western and eastern districts. This will eliminate the need for people to travel long distances, he said. While insisting that more judges are needed to end the growing number of cases, Naidu also expressed support for the idea of having two divisons of the Supreme Court, one dealing with constitutional matters and the other dealing with appeals.

1.4. OBJECTIVES OFRESEARCH

In order to reach to conclusion and to suggest the establishment of a Court of Appeal between the High Courts and Supreme Court of India in order to decrease the burden and reduce the pendency of cases on The Supreme Court of India, following objectives are framed:

- To identify the challenges the Supreme Court faces in disposing of appeals, analyze the legal framework of appellate jurisdiction in India, and investigate why cases are pending, and to assess the impact of pending appeals on the operation of the Supreme Court.
- To analyze the comparative advantages of an appellate court system in other countries and propose suitable models for establishing the highest Court of Appeal in India based on the existing appeals system in other countries.
- To examine the origin and importance of the Indian Supreme Court as a constitutional court, including its contributions to constitutional growth and the exercise of constitutional review.
- To analyze the inflow and outflow of cases in the Supreme Court through different jurisdictions and examine the court's workload in writs, civil, and criminal appeals, special leave petitions, review, and curative petitions, advisory jurisdiction, and public interest litigation.
- To propose effective measures to reduce the arrears of cases by suggesting new methods, based on the experience and study.
- To assess the stakeholders' responses and highlight their suggestions and roles in reducing the case load from the judiciary in India.
- To provide concluding remarks and suggestions for improving the pendency of cases in the Supreme Court of India and the need for the additional highest court of appeal.

[23]Appeals sourced@"http://www.helplinelaw.com/civil-litigation-and-others/SHCI/appeals.html" (On August 16, 2019).

[24] Vice-President, VenkaiahNaidu on Supreme Court benches, sourced@"https://www.hindustantimes.com/india-news/venkaiah-naidu-for-supreme-court-benches-in-4-major-cities-says-can-begin-here/story-P8eaLdCBXn4ULgyjk4EVaJ.html" (on August 11, 2019).

1.5. HYPOTHESES

Exploratory Hypothesis:

The researcher proposes several potential explanations for the pendency of cases in the Supreme Court of India and the need for a court of appeal and aims to test these hypotheses through the research process. The hypothesis also focuses on examining different factors that may contribute to the problem, such as the comparative study of other countries, the role of the Indian Supreme Court as a constitutional court, the workload of the court, and the suggestions and responses of stakeholders.

1. The pendency of cases in the Supreme Court of India is a significant problem that requires establishing a court of appeal to address it.
2. A comparative study of the judicial systems in other countries, such as the United States, United Kingdom, European Union, Australia, and Canada, will reveal best practices that can be adopted in India to reduce the pendency of cases in the Supreme Court.
3. The constitutional review exercise by the Indian Supreme Court plays a critical role in promoting constitutionalism in the country. Its significance as a constitutional court is vital to the functioning of a state governed by the Constitution.
4. The workload of the Indian Supreme Court in different jurisdictions, including writs, civil, and criminal appeals, special leave petitions, review and curative petitions, advisory jurisdiction and PILs, is a significant factor in the pendency of cases in the court.
5. The suggestions and responses of the stakeholders will play a vital role in addressing the problem of pendency of cases in the Supreme Court of India and the need for a court of appeal.

Null hypothesis and Alternative hypothesis:

Null hypothesis (H0): The pendency of cases in the Supreme Court of India is not a significant problem that does not require establishing a court of appeal to address it.

Alternative hypothesis (H1): The pendency of cases in the Supreme Court of India is a significant problem that requires establishing a court of appeal to address it.

Null hypothesis (H0): A comparative study of the judicial systems in other countries will not reveal any best practices that can be adopted in India to reduce the pendency of cases in the Supreme Court.

Alternative hypothesis (H1): A comparative study of the judicial systems in other countries will reveal best practices that can be adopted in India to reduce the pendency of cases in the Supreme Court.

Null hypothesis (H0): The constitutional review exercise by the Indian Supreme Court does not play a critical role in promoting constitutionalism in the country, and its significance as a constitutional court is not vital to the functioning of a state governed by the Constitution.

Alternative hypothesis (H1): The constitutional review exercise by the Indian Supreme Court plays a critical role in promoting constitutionalism in the country, and its significance as a constitutional court is vital to the functioning of a state governed by the Constitution.

1.6. RESEARCH METHODOLOGY

To have a lucid and clear picture of different aspects of over-load and bulk pending cases in the Supreme Court of India, the present study will be both Doctrinal and Empirical. In the present study the researcher has opted for Doctrinal research by using Primary data and also Empirical research with the questionnaire to 250 respondents.

Doctrinal: Data for the purpose of the study will be collected from primary source, i.e., from the Supreme Court of India as follows:

- Collecting the Data of total cases from a cut-off year/date from the Supreme Court of India.
- Analyze the collected data by narrowing down the sub sets as follows:
    - Data of only appeals (which are not constitutional issues) from the total number of cases as a sub set.
    - The obtained data will be tabulated by making a matrix of year wise appeals from all states

Based on the two variables, namely, "the number for appeal cases yearly from each High Court to the Supreme Court of India" and "Proximity i.e., the distance between the Specific High Court and proposed Court of Appeal in that Region", the tabulated data will be analysed and interpreted to reach to logical and plausible reasons which will also be a working tool to identify the specific places to establish The Court of Appeal for each region. In order to make the study focal and objective, the researcher will confine the study to establish Courts of Appeal in India regionally with five benches across the country, namely Eastern India, Western India, Northern India, Southern India and Central India, i.e., a group of neighbouring states can have a Common Court of Appeal.

The legal material available i.e., the database of the Supreme Court of India, website of the Supreme Court of India, other legal web-portals such as Manupatra, etc., and The Law Commission Reports shall be analysed. Comparative study of various legal systems of developed countries where Court of Appeal has been established will be undertaken in order to supplement efforts of each other at different scales.

Empirical: Number of respondents for the study includes a total of 250 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 Teachers (with PhD)

1.7. DESIGN OF STUDY

The work has been started with the study of the books, journals, reports and Supreme Court data. It shall further proceed with the questionnaire, as suggested and recommended by the Course Supervisor and Co-Supervisor. Vague ideas, those cannot be put into reality in the present adversarial system of courts in India, like prevailing in other countries have to be very carefully dealt. The study will be an outcome of experience and existing practices.

For the lucidity and simplicity, the work has been divided in Six Chapters:

CHAPTER 1: INTRODUCTION

This chapter comprises the Introduction to the problem, outlines of the important objectives and structure of the study. It contains the conceptual framework and emerging dimensions including a brief discussion of the pendency of cases in the Supreme Court of India. Also includes the significance of study, objectives of study, hypothesis and research methodology adopted for the purpose of thiswork.

CHAPTER 2: COMPARATIVE STUDY WITH OTHER COUNTRIES

This chapter adumbrates the **Comparative study of the judicial systems** prevailing in India with other Countries, such as United States of America, United Kingdom, European Union, Australia, and Canada. The over all content consists of milestones at the National and state level and critical analysis of the current situation.

CHAPTER 3: THE ORIGIN AND IMPORTANCE OF INDIAN SUPREME COURT AS A CONSTITUTIONAL COURT

The importance of the Constitutional Court in a State governed by the Constitution is explained in this chapter.In the process of constitutional growth, the contributions of the highest Judiciary (may be Supreme Court or Constitutional Court or whatever name does it have) is indispensable and of the utmost importance. Moreover, the importance of the exercise of constitutional review by the Constitutional Court and the promotion

of constitutionalism in a particular State isalso explained. The analyzing of special features of constitutional adjudication *vis-a-vis* the Supreme Court of India is examined. The emergence of Supreme Court of India before the independence and its significance as a Constitutional Court is discussed briefly. The provisions relating to the different jurisdiction of the Supreme Court in the Constitution and its birth are also analyzed with the help of the debates of the members of Constituent Assembly.

CHAPTER 4: THE INDIAN SUPREME COURT AND ITS BURGEONING APPELLATE JURISDICTION

This Chapter examines the inflow and outflow of cases in the "Supreme Court" through different jurisdictions vested by the Constitution and the Statutes enacted bythe Parliament.The method of empirical analysis is opted to know the percentage ofadmission and disposal in each and every jurisdiction of the Supreme Court. The data gathered by Dr. Rajeev Dhavan, Mr. Nick Robinson and Vijay K. Gupta are utilized for this purpose.The workload of the Supreme Court in Writ, Civil, and Criminal Appeals, Special Leave Petitions, Review and Curative petitions, Advisory jurisdiction, PIL's are analyzed during a particular period according to the availability of data. Further, the overall workload of the "Supreme Court", which includes Admission, Disposal and Pendency from 1950 to 2014 are analyzed with the help ofthe data provided in the 2014 annual report of the Supreme Court. The pictorial and graphical representation are used for easy understanding of the fluctuations in each and every year. A critical analyzation is made relating to the vesting of the appellate jurisdiction of the Supreme Court directly from the Tribunals and Commissions by the Statutes enacted by the Parliament. Furthermore, the rates of disposal of ordinary appeals other than Constitution Bench matter (in years) are also analyzed.

CHAPTER 5: DATA COLLECTION, ANALYSIS AND INTERPRETATION OF DOCTRINAL AND EMPIRICAL

This chapter comprises Suggestes effective measures to reduce arrears of cases by propounding new methods, basing upon the experience and the study. It encompasses the ideas given by different statutory or Government bodies, meant to reduce the case load from the judiciary in India.

CHAPTER 6: SUGGESTIONS AND CONCLUSION

This chapter embodies **findings, assessing the Responses** of The Stake- Holder that highlights the suggestions given by the stake holders, and their roles.The study closes with this chapter, embodying **Concluding Remarks and Suggestions**. In the light of concluding remarks, certain reform measures have been suggested for offloading the cases from the Indian Courts.

There is also Appendices annexed with the thesis, that gives the details of the litigation policies, recommendations of the Chief Justices and Chief Ministers' conferences, Rulings. It contains additional information which is not part of the text itself but which may be helpful in providing detailed information in understanding the research problem.

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CHAPTER-II: COMPARITIVE STUDY WITH OTHER COUNTRIES

INTRODUCTION

The Indian Constitution is borrowed largely from the Constitutions of United States of America, Canada, United Kingdom and Australia. So, we need to look into the judicial systems prevailing in those countries too. In this Chapter, we shall study the pendency in other Countries and in this connection; we shall examine this matter available in 04 advanced Countries, namely: (i) U.S.A. (ii) U.K. (iii) Canada and (iv) Australia.

Before studying the matter in these four Countries, we have first to have a look on their judicial system, its structure, hierarchy, working model, nature of disputes and social and demographic backgrounds of the Country.

2.1 JUDICIAL SYSTEM IN USA

The USA, a Federal Country, had borrowed Common Law system from England. There is a Federal Judiciary and State Judiciary for all of its States. It has 50 States, District of Columbia and 05 Island territories including Puerto Rico. The Judiciary in U.S.A. is headed by a Supreme Court, a creation of Article III of the U.S. Constitution which is highest Federal Court. The U.S. Judiciary is independent from the Executive and the Legislature, where the Judges either of the Federal Courts of Appeals or State courts are appointed for life subject to

their good conduct and that their salary and other emoluments cannot be lowered down during their tenure.[25]

Below the Apex Court in the line of hierarchy each State has its own Supreme Court also, although it is known by various names depending upon from State to State. In the States New York and Maryland, it is called "the Court of Appeal". Similarly, in Massachusetts and New Hampshire these courts are known as "Superior Court of Judicature or Supreme Judicial Court".

Generally these Courts are situated at the respective State capitals, but some Supreme Courts sit at a place other than the State capitals. The jurisdiction of the U.S. Supreme Court is over the Federal laws, where as the jurisdiction of the State Supreme Courts cover only the State laws. The decisions of the State Supreme Court are final unless the decision involves any Federal law also and that case the U.S. Supreme Court is the final authority. There may also be cases where the parties to the dispute belong to more than one State in that matter also the Supreme Court of the United States acquires the jurisdiction. However, in certain specified, only the U.S. Supreme Court has jurisdiction.[25] The U.S. Supreme Court generally hears cases involving interpretation of the Constitution of U.S.A., violation of Federal laws, admiralty, treaties, bankruptcy, and litigants from more than one State etc. It hears both Civil and Criminal matters.

Further, the U.S. Supreme Court does not hold any trial. In some States, there is no appellate court as such in those States, an appeal directly from the trial court to the State Supreme Court, which becomes final and binding. Generally each State has one State Supreme Court, but several States like Oklahoma have two Supreme Courts- one for Civil and another for Criminal matters.[26]

It has both the Appellate as well as Original jurisdiction. The Supreme Court basically adjudicates disputes relating the question of federal laws. The Constitution has empowered the U.S. Supreme Court to "interpret the Constitution and the Laws and to

[25] Section 1 of Article III of the U.S. Constitution.

[26] Section2.1,Constitutionof USA says: "the judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the united states, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the united states shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects".

hear appeals from any judgment or decision of the State Supreme Courts if any question of federal law is involved". The present judicial system was introduced in the year 1789 by the U.S. Congress enactment. Each State has its own "Supreme Court, which is the highest Court of the State". Some States have given different names. In the States of Maryland, New York and District of Columbia, it's known as the "Court of Appeals". In New York, it is named as "Supreme Court - Appellate Division", because it is both a trial court as well as appellate court. The State of Massachusetts gave its name as Supreme Judicial Court. In Maine, it is named as "Supreme Judicial Court". The trials are conducted by the Trial courts situated within that State and the cases are tried by Jury in criminal matters within its jurisdiction and but if the place of crime is beyond the jurisdiction of the Jury then the Jury's seat is determined by the Statutes.[27]

The States of Oklahoma and Texas have a unique system by establishing two Supreme Courts – each for civil side and Criminal side. The Court hearing criminal cases is called "the Court of Criminal Appeals" and the other one adjudicating civil matters is called "the Supreme Court".

The Country has 13 Circuit Courts of Appeals also comprising of 179 full-time Circuit judges in all. These courts are the Intermediate appellate courts. Initially there were 09 Circuit Courts which were established in the year 1891, but subsequently the numberwasraisedto13.TheseCourtsarenamedandstyledas –United States Court of Appeal for the District of.....‖ *The U.S. Circuit Court of Appeals has power to review the judgments of the District Courts.* The Appellate Court hears the Appeal by a Bench of 3-Judges. It has jurisdiction both over civil as well Criminal matters. In U.S.A., these Circuit Courts are the most powerful Courts. Next to the Circuit Courts of Appeal, there exist twelve regional Courts of Appeals for Washington D.C., Columbia, Maine, Rhode Island, New Hampshire Massachusetts, Puerto Rico, Connecticut, Vermont and New York etc. Since there is a Federal system in U.S.A., hence there is clear cut division of powers between "the Federal and State Governments", but the residuary powers vests in the States.[28] Right to equality clause as enshrined in Article14

[27] Sub-section 3 of Section 2 of Article III of the U.S. Constitution
[28] Article X (Amendment 10 - Reserved Powers)

of our Constitution was borrowed from "the U.S. Constitution". Article XIV of the 14th Amendment of "the U.S. Constitution guarantees equality before law and equal protection of the laws".[29]

At the lowest level, there are trial courts designated as District Courts, which are Federal court, headed by a Chief District Judge and 30 District Judges and the cases are heard by a Bench, comprising of 3 Judges. They adjudicate the question as to whether the law was applied correctly and also hear appeals from the decisions from the Federal administrative agencies. There are 677 sanctioned strength of judgeship. It functions under the Federal laws and litigants of different states and Countries. The judgments of these courts are appealed to "the Courts of Appeals". In some cases, an appeal also lies with the U.S. Supreme Court. Normally every State has its own Federal District, and each District has several trial courts, headed by Chief District Judges.[30]

It has 94 District Courts, which have 318 seats. There is atleast one District Court in each State and there are 687 Court houses. Each District Court contains between 2 to 28 judges. The number of judges varies from District to District. In each District Court, there is a Government Advocate designated as "United States Attorney", who is appointed by the Department of Justice. Like the "United States Attorney", there is a system of "Federal Public Defender". Although he is appointed by the Government in the similar manner as the United States Attorney is appointed, but he represents the accused. The Federal Government has provided each court a federal law enforcement agency, known as United States Marshal, who is responsible to the U.S. Attorney General. One of the main duties of the U.S. Marshal is "to enforce and execute the warrants issued by the courts and court's other orders, judgments etc." and also to provide protection to the judges and other members of the court.

The Executive has a constitutional duty to implement and execute the orders, decree, judgments and decisions passed by the Courts. The Federal laws are

[29] Article xiv, amendment14 "rights guaranteed: privileges and immunities of citizenship, dueprocess,andequalprotection)1:–allpersonsbornornaturalizedintheunited states, and subject to the jurisdiction thereof, are citizens of the united states and of the state wherein they reside. nostate shall make or enforce anylawwhichshall abridge the privileges or immunities of citizens of the united states; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of thelaws".

[30] https://www.online-paralegal-degree.org/faq/what-is-a-district-justice/, accessed on 21.12.2018

enacted by the Congress, which comprises two Houses: namely – "the Senate and the House of Representatives". After the enactment, it has to be signed by the President and the law comes into force after its promulgation. Like India, there are Constituencies from which the people elect the Members of the House of Representatives like our Lok Sabha, which are 435 in number and such constituencies are known as the Congressional Districts.

It may be noted that there are separate Constitutions for each State.[31] However, the Citizenship is only singular. All State Constitutions are the basic laws for the State concerned. The United States Bill of Rights of the United States Constitution, provides that "the rights not enumerated in the U.S. Constitution shall be reserved for the State Constitutions". Every State has Republican Form of Government. Each State is headed by a Governor with its own Legislature and State Courts. The Constitution has also guaranteed to every person fair and speedy trial through the Jury System.[32]

INDICATORS OF JUDICIAL CASELOAD							
YEAR ENDING 31ST,							
For the years - 2009, 2014, 2017 and 2018							
Caseload	In 2009	In 2014	In 2017	In 2018	% of Change from 2009	% of Change from 2014	% of Change from 2017
U.S.A, Courts of Appeals=1							
FiledCases	60358	55623	58951	49363	-18.20	-11.30	-16.30
TerminatedCases	59604	56354	59040	51832	-13.00	-8.00	-12.20
PendingCases	50946	41624	407992	38330	-24.80	-7.90	-6.10
District Courts of U.S.A							
Civil cases							
Filed	258535	303820	292076	277010	7.10	-8.80	-5.20
Terminated	238640	260840	287114	286969	20.30	10.00	-0.10
Pending	302808	323441	3492722	339313	12.10	4.90	-2.90
Criminal (Includes Transfers)							

[31] From Wikipedia, the free encyclopedia
[32] U.S. Constitution: Article [Vi] (AMENDMENT 6 - RIGHTS OF ACCUSED IN CRIMINAL PROSECUTIONS).

Filed Defendants	95736	86705	75861	81533	-14.80	-5.90	7.50
Terminations Defendant	95233	89622	75514	76589	-19.60	-14.50	1.40
Pending Defendants	104403	103099	97411	102731	-1.60	-0.40	5.50
Bankruptcy Courts of U.S.A							
Filed	1202395	1038280	794492	779828	-35.10	-24.90	-1.80
Terminated	1073619	1149282	877908	838148	-21.90	-27.10	-4.50
Pending	1418472	1460799	10942952	1035967	-27.00	-29.10	-5.30
Post-Conviction Supervision							
Personnel Under Supervision	122633	131827	136296	132262	7.90	0.30	-3.00
Pre-Trial Services							
Total Cases Activated	102499	106405	89605	92818	-9.40	-12.80	3.60
Pretrial Services Cases Activated	101208	105700	89056	92374	-8.70	-12.60	3.70
Pretrial Diversion Cases Activated	1291	705	549	444	-65.60	-37.00	-19.10
Cases Terminated	1073619	1149282	877908	838148	-21.90	-27.10	-4.50
Cases Pending	1418472	1460799	10942952	1035967	-27.00	-29.10	-5.30
Post-Conviction Supervision							
Personnel Under Supervision	122633	131827	136296	132262	7.90	0.30	-3.00
Pretrial Services							
Activated - Total	102499	106405	89605	92818	-9.40	-12.80	3.6
Pretrial Services	101208	105700	89056	92374	-8.70	-12.60	3.70
Pretrial Diversion	1291	705	549	444	-65.60	-37.00	-19.10
Total Released on Supervision	30472	27014	23338	23006	-24.50	-14.80	-1.40
Pretrial Supervision	29236	26008	22579	22338	-23.60	-14.10	-1.10
Diversion Supervision	1236	1006	759	668	-46.00	-33.60	-12.00
[1] Excludes the U.S. Court of Appeals for the Federal Circuit.							
[2] Revised.							

2.1.1. PROCEDURE AND FUNCTIONING OF THECOURTS

The lowest court under the Federal judiciary is the District Court, which is trial court. The District judge is appointed by the US President subject to the confirmation by the Senate. It has both Civil and Criminal jurisdictions. There is one post, namely, "the U.S. Attorney, who is the Prosecutor for the Federal Government". The number of District Judges all over the Country is about 670. There are Federal Magistrates also, who are appointed by the District Courts judges for a tenure of 4 to 8 years, subject to their renewal. They have the powers to issue search warrants, arrest warrants, conduct initial trials and hearing, enlarging an accused on bail etc. They also hear civil matters. In each District, there are Bankruptcy Courts also.

The next higher court is "Court of Appeal". The appeals are generally heard by a Bench of three Judges. As discussed there are 50 States, but there are twelve federal circuits, as such each circuit comprises generally two to three States. Each circuit court comprises six to twenty nine judges. These Judges are appointed by the US President, subject to confirmation by the Senate.

At the apex, there is "the Supreme Court of United States" with its Headquarter at Washington D.C. and it functions from October to June next. Basically it is an appellate court in respect of federals laws, but it has also the sole jurisdiction to interpret the Constitution and to review the validity of federal laws. U.S.A Supreme Court'sJudges after the appointment through the President, they are approved by the Senate of U.S. Congress and they hold the office for life. The Chief Justice of the United States is the head of the Supreme Court having Eight Associate Judges. They come from eminent lawyers, circuit court judges and law professors.

2.1.2 DISTRICT COURTS

As per the report of the Federal Judicial Caseload Statistics, for the year 2019 in the District Courts, combined filing of both civil and criminal cases has dropped from 3,58,563 to 3,48,189 i.e. decrease by 3% ,whereas the disposal rate increased by about 1% and the pendency rate declined by 1%, i.e. decreased from 4,42,044 to 4,37,605 fell 16 percent to 1,617, whereas the disposal rate of appellate cases decreased by 2% and the pending rate remained stable.

2.1.3 U.S. COURTS OF APPEALS FEDERAL AND REGIONAL COURTS

Filings in Courts of Appeals came down to 16 percent to 1,617, whereas the disposal rate of appellate cases decreased by 2% and the pending rate remained stable and in the 12 regional courts of appeal dropped by 16 percent to 49,363 (down 9,588 of complaints) in 2018. Most of these decline is due to a number of actual litigation and mixed applications, which reduce the number of U.S. prisoner's complaints, other U.S. public complaints, and complaints of extinction. and public complaints dropped by 145 cases to 27,926.

The above data indicates that there is no pendency in the **courts of appeals** for the years 2009, 2014 and 2017; rather it has decreased by 24.8%, 7.9% and 6.1% respectively. Similarly, in the **District courts in the civil matters**, the rate of rise of pendency for the years 2009, 2014, was 21.1% and 4.9% and decrease of 2.9% in the year 2017 and on the criminal side the pendency was reduced by 1.6% and 0.4% in the years 2009 and 2014 respectively, whereas it was increased by 5.5% in the year 2017.

2.2. JUDICIAL SYSTEM OF UNITED KINGDOM

Our legal and judicial system is the legacy of the British colonialism. As a matter of fact a vast part our Constitution is based on “the Government of India Act, 1935”, although we have borrowed many constitutional theories basically from U.S. Constitution, but the Founding Fathers of our Constitution were also impressed with the Constitutional system of Australia and

Canada. Although Britain is a sovereign and Democratic Country, but it is not a Republic. The Head of the State is always the Emperor, wherein the King or Queen occupies Crown by hereditary. It is also not Secular state like India. In U,K., there is no written Constitution like ours, rather the British Government functions on its traditions and unlike India, the Parliament and its Judiciary and its other arms were not the creation of its Constitution, rather were created by the Crown through a Royal Charter. The British Parliament enacted the Judicature Act in 1873 by means an amendment made in 200, the Supreme Court of Judicature was established in 2009, which is final appellate Court on the civil side for entire Britain whereas it is the apex body having jurisdiction over criminal for Northern Ireland and Scotland. If any question of Constitutional interpretation or of National importance arises then the Supreme exercises its power to decide the dispute. In U.K. Judicial system, there also exists an official agency known as the Parliamentary Health Service Ombudsman to look after the complaints against the non-judicial officers of the U.K. Supreme Court and procedural complaints against the judges.

The Judicature Act also created High Court, which has 05 Divisions or Benches namely "Queen's/King's Bench, Chancery Bench, Common Pleas Bench, Exchequer Bench and Probate, Divorce and Admiralty Bench". Prior to the Judicature Act, the House of Lords was the final Court of Appeal, but after the enactment, the appellate power of the House of Lords was curtailed, but by a subsequent amendment in 1875, the powers were restored. The U.K. comprises three Countries namely "(1) England and Wales, (2) Northern Ireland and (3) Scotland". The U.K. is also called as the "United Kingdom of Great Britain and Northern Ireland." Great Britain comprises two Countries namely- "England and Wales, and Scotland", but Northern Ireland is not a part of Great Britain, sometimes it is called as a Province or Region of Great Britain.[33]

2.2.1. CONSTITUTION OF UNITED KINGDOM

As sated above, U.K. has no Constitution in the general sense. It is governed by established principles of

[33] Initially the supreme Judicial powers were vested in the Appellate Committee of House of Lords of U.K., but by an Act of Parliament of 2005, the present Supreme Court was established on 01.10.2009.

governance, law and justice; political conventions, social customs, precedents and conventions, centuries old set of statutes, Rules, case laws etc. For the first time in 1215, King John of England signed a written command historically named as the *"Magna Carta"* granting upon his subjects certain guarantees of charter of basic rights like liberty, justice, fair trial, free movement of its people, Church rights etc. The rights were to be implemented through Council of 25 Barons- members of the British nobility, which slowly developed into its Parliament. "*Magna Carta*" is regarded as the symbol of Liberty-like the Fundamental Rights guaranteed in our Constitution. The great jurist and Judge Lord Denning, M.R., described the *Magna Carta* as "*the greatest constitutional document of all times – the foundation of the freedom of the individual against the arbitrary authority of the despot".*[34]

As in India, the British Government also has three arms namely-the Parliament, the Judiciary and the Executive. The Parliament contains of "the Crown and two Houses, i.e., House of Lords (that is, the Upper House) and House of Commons (that is, Lower House)". Initially, House of Lords used to be supreme judicial body but presently the judiciary is headed by "the Supreme Court with the Chief Justice at the apex with eleven companion Judges". On 1st October2009, establishment of the "Supreme Court" took place under "the Constitutional Reform Act of 2005" by replacing the Appellate Committee of House of Lords. It is an Apex Appellate court for the U.K. for civil matters only but it is the final appellate court in the criminal matters for England, Wales and Northern Ireland. It has also powers to hear and adjudicate on "any important Constitutional and legal matters and also questions relating to the general public". For Scotland, there is "the High Court-Justiciary i.e. the Supreme-Criminal-Court of Scotland". The High Court is both trial-court as well as a court-of-appeal. Below the Supreme Court are (1) The Court-of-Appeals for England as well as Wales, (2) Court of Sessions for Scotland and (3) Court of Appeal for Northern Ireland. The most important feature of the Supreme Court is that "it has no power to review any law made by the British Parliament". The basic principle of justice is the Common Law which governs England, Wales and Northern Ireland, whereas Scotland is based on Roman law.

[34] Danziger & Gillingham 2004, p. 268. *1215: The Year of Magna Carta*. Hodder Paperbacks. ISBN 9780340824757.

SUPREME COURT SUBMITS ANNUAL REPORT TO PARLIAMENT

Under the British Constitutional system, the U.K. Supreme Court has to submit it's "Annual Report to the Parliament and the Annual Financial Statement to the Lower House of the Parliament and the House of Lords".[35]

2.2.2. POPULATION vs PENDENCY

Total population of U.K. of Great Britain and Northern Ireland is –

Thus total population is 6,78,23,925 (about 7 crores), where as the population of India is 1,42,29,85,098 (more than 142 crores) which is its twenty times. Now let us look court wise ratio between the two Countries. England is divided into nine regions and 48 ceremonial counties,

Regions: 9

Metropolitan **counties**: 6,

Non-metropolitan counties: 77,

Districts: 326

United Kingdom	6.7 Million
Wales Population	3.1 Million.
Northern Ireland	1.8 Million.
Scotland	5.50 Million

Description	Cases filed	Cases pending	Pendency rate	Cases filed in U.K.	Cases Pending
Civil cases	37,18,000	84,50,000	227%	15,56,000	NA
Criminal cases	1,52,22,000	1,86,51,000	123%	22,17,000	NA

[35] The Constitutional Reforms Act, 2005 [Section 54(1)] mandates the U.K. supreme Court to submit its Annual Report to Parliament and under Section 6(4) of "the Government Resources and Accounts Act, 2000", it has to submit its Annual Financial Statement.

Family courts	-	-	-	2,40,000	NA
Total	18,94,000	27,285,000	144%	40,13,000	NA

Pendency rate in the U.K. courts 2015 as on December, 2015[400], however, during the financial year 01.04.2018 to 31.03.2019 , the U.K. Supreme court had received 201 applications for leave to appeal, but allowed only 91 appeals to adjudicate and decided 64 such appeal.

2.2.3. JUDICIAL SYSTEM OF EU: COURT OF JUSTICE OF THE EUROPEAN UNION (CJEU)

In 1957, some European Countries entered into an International Treaty named as Treaty of Rome and created European Court of Justice by limiting their Sovereignty in the identified area and it is also called as the **European Court of Justice.**[36]

European Union (for short EU) also established a high judicial forum namely- "COURT OF JUSTICE OF THE EUROPEAN UNION (hereinafter referred to as–the CJEU)" basically with a view to ensure that in the European Supreme Courts, Courts of Appeal and the High Courts the European Union's law and the Constitutions are applied, upheld and interpreted correctly and uniformly. The other very important function of the CJEU, *inter alia,* to adjudicate disputes between the Governments of the Member States and European Union's instrumentalities. CJEU was established in 1952 at Luxembourg and it gives its finding on any principle of law laid down by the National Courts and overriding certain appeals, whereas General Court has jurisdiction mainly over disputes brought by EU governments, etc.[37]

The Court of Justice comprises one Judge from each Member State and eleven Advocate Generals; presently it is 27, whereas the General Court consists of two judges from each Member State. It hears appeals from the National Supreme Courts and also

[36] Dushyant Mahadik, "Analysis of Causes for Pendency in High Courts and Subordinate Courts in Maharashtra", 2015. The Administrative Staff College of India, Hyderabad, P.35: Primary source- European CEPEJ survey question 78.1.4 and 91.1.1-11 from www.coe.int/T/ dghl/cooperation/cepej/ evaluation/2016/Par_Pays/UK-England%20and%20Wales%20data%20file.pdf. Accessed on 14.03. 2018.

[37] https://en.wikipedia.org/wiki/European_Court_of_Justice. Accessed on 11.11.2019

Delivers rules on **law interpretation, law enforcement, EU legal acts annulling, ensuring the action and sanctions from EU institutions.**

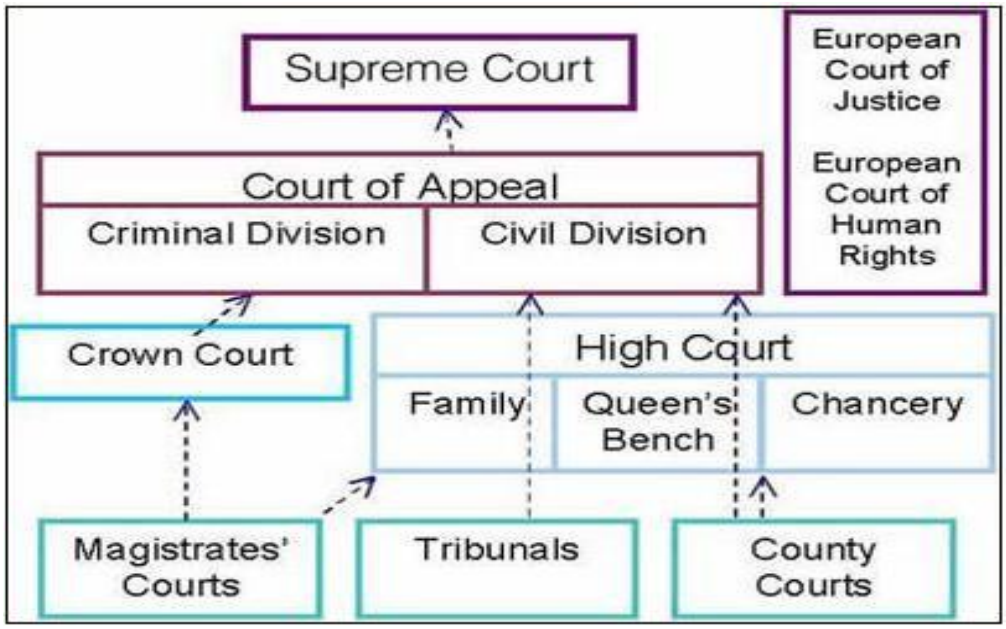
2.2.4. SANCTIONED POSTS OF JUDGES IN U.K.:

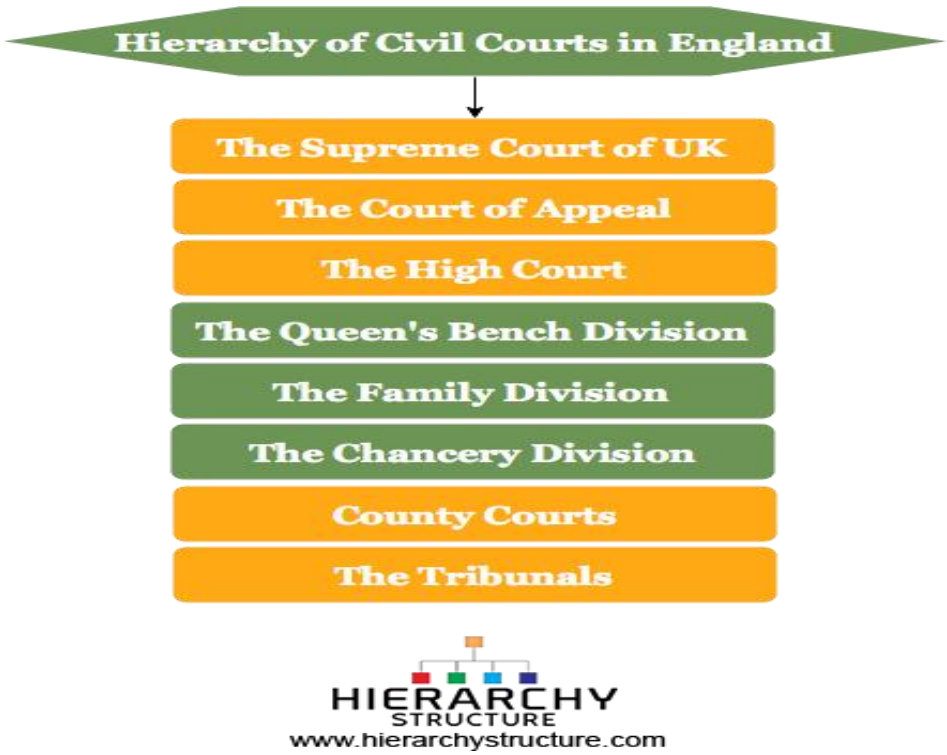
The "sanctioned strength of the Judges" holding posts in the Court of Appeal and the Magistrates court where District judges preside the courts is 3,210, the details of which are given in the Table below:

APPOINTMENT NAME BY TIER OF COURT	TOTAL POSTS
Division Heads	5
Judges of Court of Appeal	39
Judges of High Court	97
Judges of Deputy High Court	87
Advocates (Judge / Deputy Judge)	6
Masters, Costs Judges, Registrars	27
Deputy Costs Judges, Deputy Registrars, Deputy Masters	27
Judges - Circuit	670
Recorders	873
County Court's - District Judges	424
CountyCourt's - Deputy DistrictJudges	748
Magistrates' Court's - District Judges	127
Magistrates' Court's - Deputy District Judges	80
Sum	**3,210**

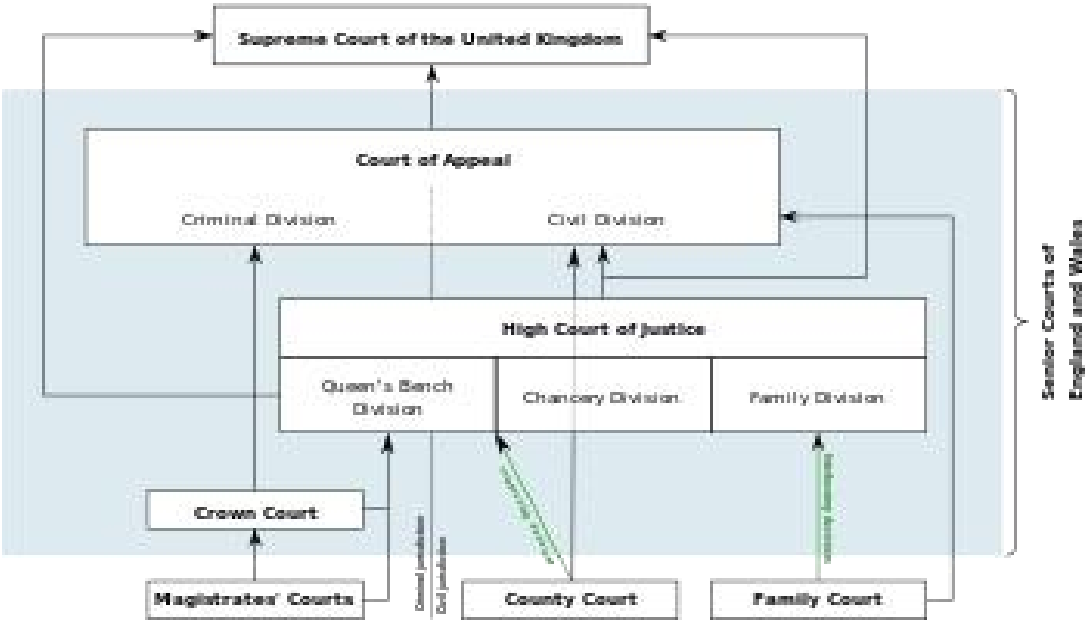
2.2.5. HIERARCHY OF COURTS IN UK

HIERARCHY OF COURTS IN ENGLAND [402]





[402]https://www.hierarchystructure.com/hierarchy-of-civil-courts-in-england/. Accessed on 06.09.2019



As discussed above, the U.K. comprises three Countries namely "(1) England and Wales, (2) Northern Ireland and (3) Scotland". The U.K. is also called as "the United Kingdom of Great Britain & Northern Ireland". Where, Great Britain consists of two Countries namely- England & Wales and Scotland. But Northern Ireland is not a part of Great Britain, sometimes it is called as a Province or Region of Great Britain. In "England and Wales", there are the following courts in order ofhierarchy:

1. Supreme Court,
2. Court ofAppeal,
3. High Court of Justice having threeBenches,
4. CountyCourt,
5. Tribunals.

1. THE SUPREME COURT OF U.K.

The U.K. Supreme Court Building

The "U.K. Supreme Court" is the Apex Court of for England and Wales. It is the successor of "the House of Lords and the Judicial Committee of the Privy Council". The number of judges is 12 including one President and one Deputy President. Their tenure is upto the age of 70 years.

2. COURT OF APPEAL

The "Court of Appeal" hears appeals against the judgments passed by the High Courts and Crown Courts. It contains two Divisions namely- Civil Division and County Court, whereas the Criminal Division has jurisdiction to hear appeals from the Crown Courts

3. HIGH COURTS

The "High Courts" have original jurisdiction in respect of civil matters and appellate jurisdiction both in criminal and civil matters. It comprises 3 Divisions namely- "the Chancery Bench, Queen's/King's Bench and Family Division or the Probate, Divorce and Admiralty Division". The **judges number** of the **High Court** should not cross 108, and "the Judicial Pensions and Retirement Act 1993" compels when, they including the senior **judges** all over the **United Kingdom** have to retire by the age of 70 years of age. There is an exemption for the **Judges** appointed before 31 March 1995 I.e there retirement age is by75 years.

4. CROWN COURT

The Crown court is a court having powers to try serious criminal matters. It functions with one judge each, who may be "a High Court judge, a Circuit judge or a Recorder assisted by Jury members" depending upon the gravity of the case. The Crown court has both civil and criminal jurisdictions. In criminal side, it acts as a court of first instance and also as an appellate. It hears appeals from the Magistrates court .Its judgments are subject to appeal to the "Queen's/King's Bench" of the High Court.

5. COUNTY COURTS

The "County Court" has civil jurisdiction all over the Country and has its seats at 92 places. This court is usually presided by a District Judge or a Circuit judge, who sits alone. Appeal against the judgments of the County Court lies with "the Queen's/King's Bench Division or Chancery Bench Division of the High Court".

6. MAGISTRATES COURT

The "Magistrates' Courts" are the criminal courts of the first instance except the offenders upto the age of seventeen years, for which there are separate courts named as the Youth court. These courts are presided over by a Bench of three Magistrates. There are 16,125 Magistrates. The Magistrate's court comprises of Bench of three Magistrates.[38] The Country is divided in 60 Circuits having 491 County courts except the City of London, where this system does not apply. There are 640 Circuit Judges and 441 District Judges. There is no provision for associating Juries.[39] About 30,000 Justices of the Peace adjudicated over 90 percent of criminal cases in England and Wales that are determined, who are unpaid laypersons or by the more than 60 Stipendiary (paid) Magistrates, those are trained lawyers. Whereas the Stipendiary Magistrates are the District Judges who are appointed by the Ministry of Justice of the U.K. Government, the Justices of Peace are honorary officer who come from practicing Solicitor or a retired district judge. These Honorary officers are paid some allowance. The Magistrate's court comprises a Bench of three Magistrates. The Police have to "produce the arrested person before the concerned Magistrate within 36 hours of arrest" and

[38] https://www.google.com/search?client=firefox-b-e&q=total+number+of+magistrates+in+england+and+wales. Accessed on 14.05.2019

[39] Encyclopedia Britannica- United Kingdom.

thereafter the Magistrate decides whether the arrested person has to be given bail or to remand him into judicial custody. The Magistrates deal with less serious criminal cases such as theft, assault, criminal damages, public disorder etc.

7. FAMILY COURT

It is a national court to hear all disputes relating to the family matters, presided by district judge or circuit judge. The appeal against the judgments of the family court lies with "the family division bench of the High Court".

8. YOUTHS COURT

The function of this case is similar to the Magistrates court, but it has jurisdiction over the children between the ages of ten years to seventeen years. This court is presided over by a Magistrate or a District Judge. The proceeding of the Youth court is not open to the public in view of the tender ages of the accused.

9. THE TRIBUNAL

The tribunal also known as the employment tribunal deals with the cases relating to the employers and its employees. The subject matters include employment, non-employment, terms of employment and condition of labour etc. It is like industrial tribunals and labour courts in india.

10. ECCLESIASTICAL COURT OR COURT SPIRITUAL

An ecclesiastical court, also called court christian or court spiritual, is there exists one court for the trial of a bishop, consisting of 9bishops. It hears disputes relating to the faith, sacraments of marriage, holding of church service, holders of ecclesiastical posts, the clergies and administration of church properties etc.

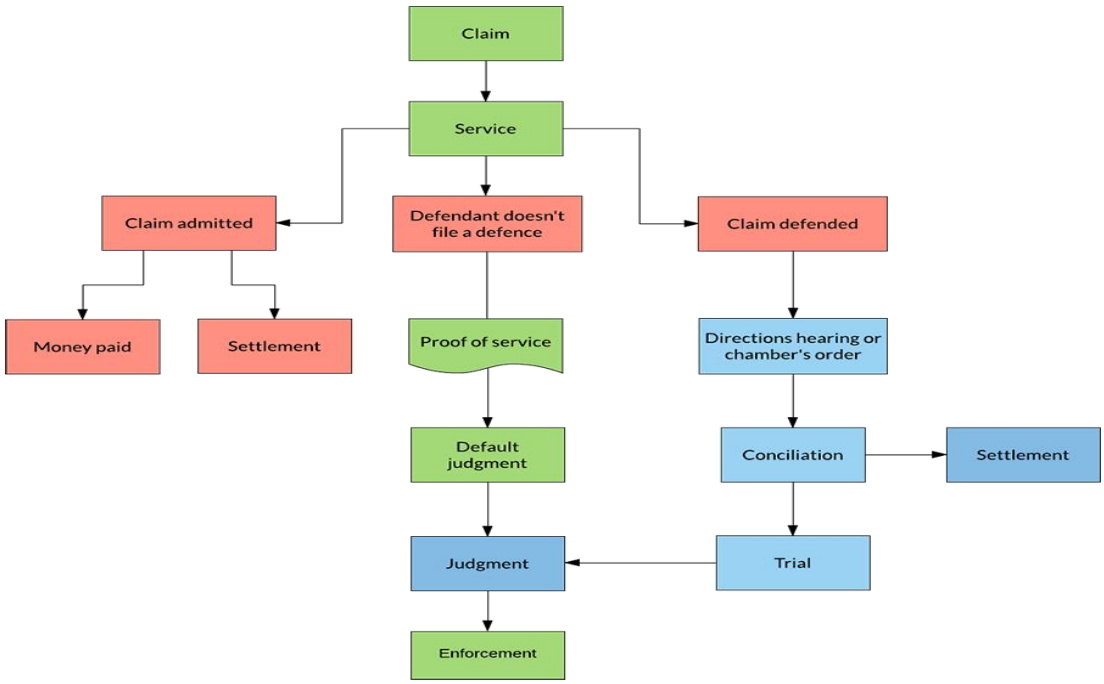
11. THE CORONER'S COURT

The coroner's court's main function is to enquire and investigate the matters relating death of any person. It also maintains a register of death and birth and of marriages.

12. CONTEMPT COURT

These courts tries the alleged contempt-nor if found guilty of disobedience of any court‘s order or creating hindrance or obstruction in the functioning of the courts or showing disrespect to the court, it inflicts punishment upon thecontempt-nor.

13. CIVIL CLAIM: STEPS AND PROCEDURES



PENDENCY IN U.K.

As per the report in 2018, provided by **Court Statistics for England and Wales,**[40] followings are the details of pendency‘s in the Magistrate‘s and the Crown‘s courts.

[40] Briefing Paper-Number CBP 8372, 16 December 2019.http://webcache.googleusercontent.com/search?q=cache:UFM7oMYJTAsJ:researchbriefings.files.parliament.uk/documents/CBP-8372/CBP-8372. Pdf+&cd=2&hl=en&ct=clnk&gl=in&client=firefox-b-e. ACCESSED ON 21.12.2019

COURT	PENDENCY DATA
MAGISTRATE'S COURT	In the Magistrates courts in England and Wales, 1.469 criminal cases were instituted and 1.473 cases including earlier cases were decided. The Magistrates court received 1.5 million, i.e.1, 50,000 cases. The backlog was 2, 93,000 as against 3, 27,000 in 2015, thus it was decreased by 34,000 in 2018. The above data shows that there is an improvement as regards pendency. The data indicates that 79% were related to summary offences, which are resolved without any trial, whereas the remaining 3,74,000 were tried and the cases decided accordingly by awarding punishment or committing to the Crown's court. There were 293,000 pending cases as on 31st December, 2018, which is lower than the pendency of the previous years. It was 327,000 in 2015.[41]
CROWN'S COURT	In the Crown's court, 1,03,000 cases were instituted and decided 109,000 cases out of which 8% cases were appeals from the Magistrate's courts. It had 33,000 pending cases in 2018, whereas it was 38,000 in 2017 and it was 55,000 at the end of 2014, thus, there was a fall 20,000 pendency in 2018 in four years from 2014 to2018.
COUNTY COURTS	It has received 2.07 million suits in 2018 out of which 87% (1.80 million) were claims for money and about 14% cases were decided in which the parties were unrepresented, thus need no trial.
FAMILY COURTS	It had received 263,000 family disputes and decided 214,000 cases in 2018. No data of pendency was made available by the court. Nearly half of the cases relate to

[41] Central Government has build infrastructure for judicial officers in lower courts from time to time and since1993 @ "http://webcache.googleusercontent.com/search?q=cache:UFM7oMYJTAs J.research brie fings.files.parliament.uk/documents/CBP-8372/CBP-8372.pdg+&cd=2&hl=en&ct=clnk&gl=in&client=firefox-b-e". (ACCESSED ON 15.10.2020)

	matrimonial matters and the rest of the cases involve children.
TRIBUNALS	The Tribunals received 449,000 cases in 2018.

WAITING TIME FOR DISPOSAL OF TRIALS IN U.K.[42]

In the Magistrate‘s courts, a litigant is given normally a waiting period for the completion of the trial from the date of institution of the case. In 2018, it was **157 days**, which was a bit lengthy period from the preceding year. However, the waiting remained almost the same for last several years. As a result of Legal Aid scheme, there has also been rise in unrepresented cases in the trial, which is a satisfactory situation.

For, statistics for the year **2018** on the length of time between different points are asbelow:

14. TIME LINE

CRIMINAL TRIALS

- 108 days forcharge-sheet,
- 29 days from the date of framing of charges and firsthearing,
- 157 days from institution of case and itsdisposal.

CIVIL MATTERS

- 31 weeks in petty matters from the date of institution to the date ofhearing
- 56 weeks in high valuationsuits,
- 23 weeks in Family courts from the date institution of dispute to finaldisposal.

COURT PERFORMANCE IN U.K.[43]

These statistics are reported under various categories, like “effective trial, ineffective trial, cracked trial and vacated trial”. An effective trial means such trials which are concluded within the scheduled period, an ineffective trial means such trials which could not be commenced on the scheduled date and its hearing is re-

[42] Ministry of Justice, U.K. Government-, Criminal Court Statistics, Table T2
[43] https://www.gov.uk/government/collections/criminal-court-statistics. ACCESSED ON 16.07.2019

scheduled, a cracked trial is such trial which could not be started on the date fixed and it is not re-scheduled, because in such cases no trial is required due to lack of evidence, plea bargaining or any other cogent reason and lastly a vacated trial denotes such trial which has been withdrawn.

The County Courts heard about 58,500 cases in the year 2017. In Claim cases the average time was 56 weeks. The average time taken by it for deciding the cases was 31 weeks there were and the Family Courts normally took 23 weeks.

DRESS/ROBES[44]

Since the Judges of "the Judicial Committee of the House of Lords" never prescribed any dress to be worn by them while sitting in the court, hence its successor i.e. the Supreme Court of U.K. followed the old practice and retained the Law Lords' tradition of sitting unrobed, hence they do not wear any prescribed dress in the Court rooms, although the Barristers and Advocates wear the formal dress as prescribed, but with the permission of the Court, they can also appear without any robe and in usual attire. However, the Judges wear the full dress of the 18th century on ceremonial occasions only.[45] On ceremonial occasions like the State Opening of the Parliament, Westminster Abbey to marks the beginning of the Judicial and swearing-in ceremonies of the Judges, which was followed by the convention adoptive by the House of Lord's Appellate Committee.

[44] https://venerablepuzzle.wordpress.com/2016/12/10/why-dont-british-supreme-court-justices-wear-robes/comment-page-1/ . ACCESSED ON 10.05.2019

[45] https://www.judiciary.uk/about-the-judiciary/the-justice-system/history/. ACCESSED ON 26.08.2018

JURY SYSTEM

In every criminal case in which the sentence for an offence is for more than six months imprisonment, the accused has right to seek "trial by Jury". **The Jury gives his findings of fact.**[46]

Normally in "the chancery division of the High Court", there is no requirement of any jury unless specifically directed by the court. In the matters of slander, libel, false imprisonment,malicious prosecution,breach of promise of marriage and seduction, any party to the dispute might seek trial by jury.

2.3. JUDICIAL SYSTEM OF CANADA

Justice Jules Deschenes, Justice of the Supreme Court of the Province of Quebec in his paper[47]said:

"In Canada, the Judiciary does not enjoy the same independence in the court administration as it does in relation to judicial prerogatives. Everywhere

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[46] Jury Trial: From Wikipedia, The Free Encyclopedia.

[47] Judicial Independence, The Contemporary Debate, 1988, by Shimon Shetreet and J. Deschenes, Chapter 47, pp 514-524); Reproduced in Chapter VI of the Reports of the Seminar.

across Canada, it is basically the provincial Ministers of Justice who are responsible for the administration and in turn they call upon various departments for the purposes of judicial administration. This administrative subordination of the Judiciary to the executive causes a great deal of friction. The friction has attained a uniform level throughout the Country, in the 13 States namely, the Central Government, the 10 provinces and two sparsely populated territories. Essentially, he says, the Judiciary is disturbed by two factors:

1. *The ambiguity in the position of the Minister of Justice or Attorney of Justice or Attorney-General who combines the function of Attorney for public prosecution and that of provider of courtsservices;*

2. *The ambivalent relations existing between Court staff and judiciary. The subordination of the Judiciary is rooted in the executiv*e's *overt intention to take, exercise and keep total control of the management of thecourts."*

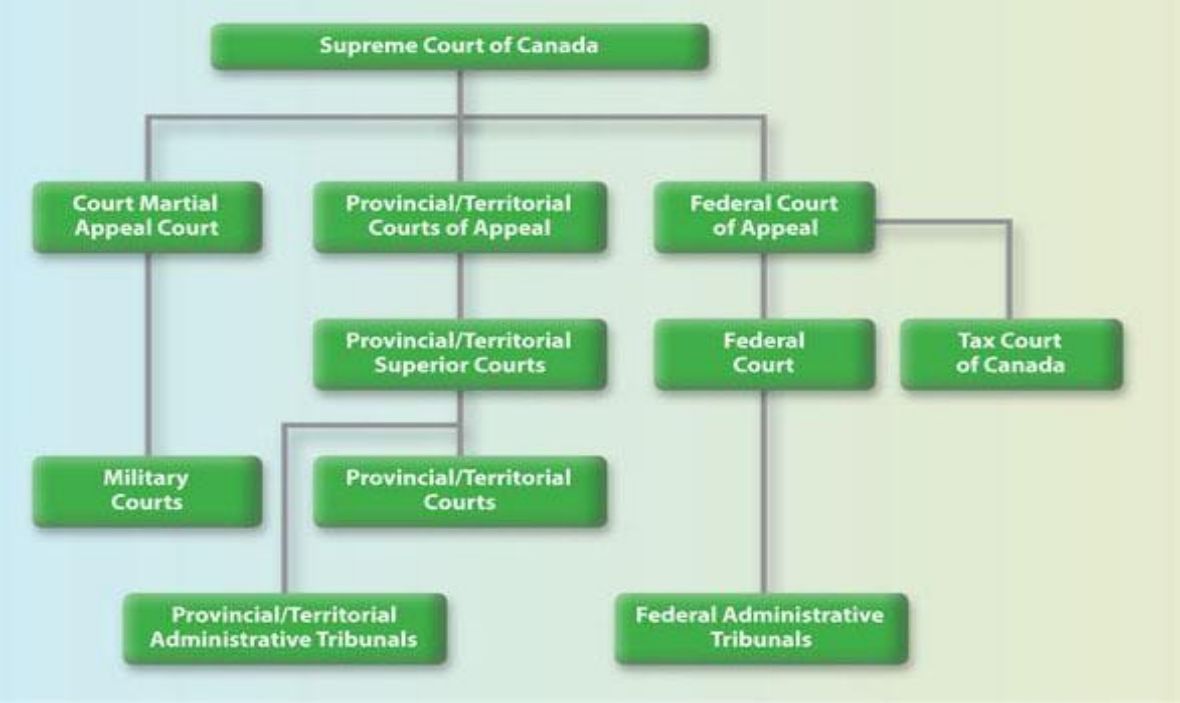
This situation has resulted into adverse effect in the public perception, where the Judiciary has to totally dependent upon the executive forgrant.

Canada'**s population is 3.76 crores and the area is 9.98 million Sq.Kms,** considered to be the second largest country of the world.

Under the Canadian Constitution, the Canadian judiciary is independent from the Executive. Although the law making power over the Federal Country vests in the Parliament, but the Provinces have been given powers to make laws for its Provinces. The Constitution provides four tier judicial courts with (a) the Supreme Court of Canada is the apex court. Below in the line of hierarchy are (b) Federal Court of Appeal (c) Provincial and territorial courts of appeal/Superior courts (d) Provincial and Lower Territorial courts. Apart from the Provincial courts, there are also courts like Youth courts, family courts, Small Claim courts and the judges for these courts are appointed by the respective Provincial Governments. Under the Supreme Court Act, the supreme court of Canada was established in 1875, the court consists of nine judges, three of whom must be from Quebec with the Chief Justice as its head, duly appointed by the Governor General-in- Council.

The Canadian Parliament has by law established the Canada's Supreme Court, Federal Court, Federal Court of Appeal and Tax Court and judges of these courts are appointed by the Federal Government. It has nine Provinces and Territories. The court structure is designed below.

4.3.1. OUTLINE OF CANADA'S COURTSYSTEM



A. THE SUPREME COURT OF CANADA[48]

The "Supreme Court" is the apex court of Appeal with its seat at Ottawa, Ontario. It is presided over by a Chief Justice and the strength of the judges is nine. Its jurisdiction includes, among others, review, appeals against the judgments of the Appellate courts of the Provinces and the Territories, whose decision becomes final. It has also Original jurisdiction, under which it decided the questions relating to the Constitutional matters. It has also advisory jurisdiction under which it may give its opinion sought by the Federal Government. Seat of the "Supreme Court" is at Ottawa

[48] http://vidhilegalpolicy.in/wp-content/upload/2019/05/sBurgeoningProblem.pdf. Accessed on 01.07. 2019

and it has adopted Teleconferencing system for the hearing of the cases, where the arguments are transmitted throughout the Country through Satellite and the parties across the county can participate in the hearing of their cases. Under the CONSTITUTION ACT, 1867, THE RETIREMENT AGE OF THE SUPREME COURT JUDGES IS 75 YEARS AND FOR THE JUDGES OF THE OTHER COURTS, IT IS BETWEEN 70 TO 75 YEARS.

The cases in the Supreme Court may be instituted by means of

1. Leave to Appeal like SLP in India,
2. Appeal as of Rightand
3. References made by the Federal Government seeking its opinion on any question of law. Grant of Leave to Appeal is purely discretionary. In 2018, the Supreme Court granted only 39 out of 484 petitions seeking Leave to Appeal i.e. rate was 8%. InIndia,

in the Hon‘ble Supreme Court normally all S.L.P‘s are allowed for hearing at the first stage.

I. PROVINCIAL AND TERRITORIALCOURTS

The Provincial courts have power to hear criminal matters, family disputes, breach of contract and claims etc. It has following branches:

1. the Provincial and the Territorial courts also known as the Lower courts,
2. the Superior courtsand
3. Appealcourts.

II. STRENGTH OFCOURT

There are about 750 courts in Canada and the three Federal courts have together seventeen Benches.

DETAILS OF CASES FILED AND DECIDED FROM 2008 TO 2018 IN THE SUPREME COURT OF CANADA

Data as on February 28, 2019

STATISTICS FROM 2008 TO 2018

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
FiledCases											
Finished applications for leave to appeal	528	542	488	554	551	490	561	542	577	526	531
Notices of appeal as of right	18	14	24	12	15	18	16	21	15	17	26
LeaveApplications											
Submitted	509	518	465	541	557	529	502	483	598	492	484
Granted but in pending	51	59	55	69	69	53	50	43	50	50	41(1)
% granted	10	11	12	13	12	10	10	9	8	10	8*
HeardAppeals											
Total	82	72	65	70	78	75	80	63	63	66	66
Right Thru	16	12	15	19	15	12	22	15	15	17	21
Thru Leave	66	60	50	51	63	63	58	48	48	49	45
Days Heard	60	55	51	60	65	65	63	50	53	60	59
Decisions thru Appeals											
Total	74	70	69	71	83	78	77	74	57	67	64
Delivered (ThruBench)	5	2	4	8	8	9	22	16	13	19	20
Delivered (Thru beingReserved)	69	68	65	63	75	69	55	58	44	48	44
Un-animous	56	44	52	53	60	53	61	52	35	36	31
Split	18	26	17	18	23	25	16	22	22	31	33

% of unanimous judgments	76	63	75	75	72	68	79	70	61	54	48
Appeals standing for judgment at the end of each year	38	40	36	35	30	27	29	18	24	25	25
Average Time Lapses (in months)											
Between filing of leave applicationand decisionon leaveapplication	3.2	3.2	3.4	4.1	4.4	3.3	3.2	4.1	4.0	3.8	5.5
Between date leave granted andhearing	8.9	7.6	7.7	8.7	9.0	8.2	8.2	7.3	7.5	7.4	6.7
Between hearing, judgment	4.8	7.4	7.7	6.2	6.3	6.2	4.1	5.8	4.8	4.6	4.8

* As on 28th February 2019.

Modified Date: 12-09-2019

All applications for leave, appeals and judgments are counted by individual file number.[49]

1. TIME FRAME FOR DISPOSAL OFCASES

The Supreme Court has prescribed a mandatory time frame of 8 to 10 months to finally decide the criminal cases by the trial courts. While commanding the trial courts to follow the time frame, the Canadian Supreme Court observed that "it was not in the interest of justice to ensure that the offenders are tried promptly and fairly, but it also gives public confidence in the strengthened justice delivery system". The quick hearing also benefits the witness as well as the victim.The delayed justice

[49] www.justice.gc.ca › eng › csj-sjc › just- website of Supreme Court of Canada. ACCESSED ON 28.11. 2019

shakes the public faith in the judiciary. The case elapsed time for cases that go to trial is 150 median days.

2. C.J.'S MESSAGE IN 2018

Rt. Hon. Richard Wagner, P.C. Chief Justice of Canada on the eve of the closing of the yearly session of 2018 had said "*i**n 2018, we decided a total of 64 cases,** covering everything from child custody to freedom of religion to equal pay. As we do every year, we have grappled with many difficult issues and worked to settle the law clearly and fairly."*

OntheuseoflatesttechnologiesintheCourt,hesaid"*Ourfirstjudgescould never have imagined how technologies like cable news, social media, and smart phones would change our worLearned Today, these are the media through which many Canadians learn about and interact with their public institutions, including the Court We have also become more active on social media (*FacebookandTwitter*); please follow us! And we've started publishing Cases in Brief."*[50] The Court has adopted electronic filing and allows the litigants to upload the same in the Court's website. The Court has also provided for the live-telecast of the proceedings.

2.3.2. TIME FRAME IN THE PROCEEDINGS IN THE SUPREME COURT

As discussed above, "the Canadian Supreme Court" has fixed a time-bound trial varying from 8 to 10 months for criminal courts; it has also fixed its own timeline for hearing of the cases before it. There are 09 judges in the "Supreme Court" including its Chief Justice, but the cases are normally heard by Bench consisting of five judges, in some very important cases it may be seven or nine judges. **A party is normally given two hours** to finish his case, which are webcast live on the website of the "Supreme Court" for general public. The Court has three sessions in a year-namely: Winter Session, Spring Session and Fall session.

[50]Appendix-G for complete text of the Message of the Chief Justice of Canada.

INSTITUTION OF CASES IN THE SUPREME COURT

The "Canadian Supreme Court is a Court of Appeal" and normally it grants only 40 to 75 leave to appeal against the judgments passed by the Provincial High Courts, Territorial courts and Federal Appellate courts. It has power to hear all disputes relating to civil matters, criminal matters and constitutional issues. It holds its courts in three sessions yearly each of three months.[51]

2.4. JUDICIAL SYSTEM OFAUSTRALIA

In Australia there is Federal system of Government, comprising of six States namely – (1) Victoria, (2) New South Wales, (3) Tasmania, (4) South Australia, (5) Western Australia, and (6) Queensland,3 Internal territories and seven external Territories. Since Australia is a Federal Country, hence each State has its own Parliament, Executive and Judiciary. Similarly, there is a Federal Parliament, Executive and the Judiciary. The Apex Court is named as "**The High Court of Australia**", which is the highest court of Appeal for both the Federal laws as well as state laws and it has also original jurisdiction. It is presided over by its Chief Justice. Its principal seat is at Canberra, but it also holds its Court in Melbourne, Sydney Adelaide, Brisbane, Hobart and Perth.

Although the Australian High court is an appellate court also, but an appeal lies only after the grant of Special Leave to appeal, which is not normally granted, it is granted in very exception cases only, and as a result "the Federal courts and State Supreme Courts" are virtually final appellate courts. Other Federal courts exists namely: "the Federal Circuit Court" and "the Family Court of Australia", each presided over by a Chief Justice. The "Federal Court" has power to settle disputes relating to the matters arising out of the Australian Federal laws and summary criminal matters. At the provincial level, "the Supreme Court" is the apex judicial body. These Courts are also Courts of Record. These Courts apply the Common Law and the Equity.

The Judges are appointed by the "Governor-General", in which the Judiciary has no role to play like India. A Judge will not be removed unless in the opinion of the Governor-General, he is found guilty of misconduct in his address to both Houses of Parliament.

[51] https://www.scc-csc.ca/review-revue/2018/images/hall-judges.jpg. Accessed on 22.06.2019

Their retirement age of the High Court Judges is 70 years; it is between 72-76 years in the State Supreme courts.

The Federal courts in the hierarchy are "(1) the High Court, (2) the Federal Court and, (3) The Family Court and (4) Commonwealth courts and Tribunals". For the States and Territories, there are Supreme courts for – "(1) Victoria, (2) Queensland, (3) New South Wales, (4) Western Australia, (5) South Australia, and (6) Tasmania, and three Internal Territories i.e. (7) The Australian Capital Territory court, (8) The Northern Territory court and (9) Norfolk Island courts". Like U.K., the Australian courts are also based on the Common Law and the Equity. The jurisdiction under the "Federal Court" is disputes relating to corporations, trade practices, industrial relations, bankruptcy, customs, immigration etc. on the original side and on the appellate side, it hears appeals from Tribunals and other judicial bodies. The "Family Court of Australia" is just the below "the High Court and the Federal Court" in the line of level in the Country. It is a creation of "the Family Law Act, 1975", by the federal Parliament. It hears the disputes relating to the marriage and divorce, parents disputes and matrimonial properties and children etc.

In hierarchy below the Australian High Court, there are Federal Circuit courts and subordinate to the State Supreme courts are Magistrates court and District court which is also called as the County court.

DISTRICT COURTS

The District courts or the County courts have power to try criminal matters and in civil matters, it can hear the disputes below $1 million and the Magistrates courts have jurisdiction over criminalmatters.

2.5. COMPARISON BETWEEN INDIA ANDU.S.A.

Let us now compare load-wise comparison between India and U.S.A. The present population of U.S.A is about 33 crores, where as the population of India is about 142 crore. The case load statistics of U.S.A. is prepared by its official agency known as the Federal Case-load statistics.

There are 28 States and 8 Union Territories (UT's) in India with 25 High Courts with 13 Benches in the States and 02 UTs, which together with "the Supreme Court of India" with 34 judges including the Hon'ble Chief Justice of India (CJI) at the national level, comprise the country's judicial system. Our Supreme Court is not only the Apex Appellate court rather it is also the Constitutional Court. Under "Article 129 of the Constitution of India", Hon'ble Supreme Court is a Court of Record which has punishing power for the contempt. Our Constitution according to Article 141 has mandated that "the law of the land is that as mentioned by the Hon'ble Supreme Court and is binding on all courts". Number of Subordinate courts i.e. "Courts of Civil Judges (Jr. Division), Courts of Civil Judges (Senior Division), Courts of Judicial Magistrates, courts of Additional Chief Judicial Magistrates, Courts of Chief Judicial Magistrates, courts of Additional Sessions Judges, Courts of Additional District Judges and the Courts of District Judges in India", is around 600. In High Courts some cases are heard by Single Judge Bench and some are heard by a Division Bench comprising of two Judges. In some cases where "any serious question of law or interpretation of the Constitution is involved", a Full Bench comprising of 3 Judges is constituted to decide the matter. The judicial hierarchy is briefly illustrated by the following diagram as provided under Articles 233 to 237[52] of ourConstitution:

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[52] **INDIAN CONSTITUTION (Chapter VI: Subordinate Courts)**
"

233. (1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to suchState.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court forappointment.

233A. Notwithstanding any judgment, decree or order of any court,—

(a) (i) no appointment of any person already in the judicial service of a State or of any person who has been for not less than seven years an advocate or a pleader, to be a district judge in that State,and

(ii) no posting, promotion or transfer of any such person as a district judge, made at any time before the commencement ofthe Constitution (Twentieth Amendment) Act, 1966, 118 THE CONSTITUTION OF INDIA (Part VI.—The States.—Arts. 233A—236.) otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or void or ever to have become illegal or void by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the saidprovisions;

(b) no jurisdiction exercised, no judgment, decree, sentence or order passed or made, and no other act or proceeding done or taken, before the commencement of the Constitution (Twentieth Amendment) Act, 1966 by, or before, any person appointed, posted, promoted or transferred as a district judge in any State otherwise than in accordance with the provisions of article 233 or article 235shallbedeemedtobeillegalorinvalidorevertohavebecomeillegalorinvalidbyreasononly"

As regards total pendency in the Indian courts, it is **90,32,841** in civil cases, and **2,32,30,740** in criminal matters, thus the total pendency in both civil as well as criminal matters, it comes to **3,22,63,481,** out of which **73.44%** civil cases and **75.32%** criminal matters are of more than 1 year old and total of disposed of cases are **2,73,17,326 and 7,07,11,799** in civil and criminal cases respectively, thus total cases decided comes to **9,80,29,125** on 23th April, 2020.

"

234. Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with Rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to suchState.

235. The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under suchlaw.

236. Interpretation

In this Chapter—

(a) The expression ‑ district judge includes judge ofacitycivilcourt, additional district judge, joint district judge, assistance district judge, chief judge of a Interpretation. Control over subordinate courts. Recruitment of persons other than district judges to the judicial service. THE CONSTITUTION OF INDIA 119 (Part VI.—The States.—Arts. 236-237.) Application of the provisions of this Chapter to certain class or classes of magistrates. small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;

(b) the expression ‑judicial service means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of districtjudge.

237.Application of the provisions of this Chapter to certain class or classes ofmagistrates

The Governor may by public notification direct that the foregoing provisions of this Chapter and any Rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in thenotification.

1. Ins. by the Constitution (Twentieth Amendment) Act, 1966, s.2."

Civil Cases More Than 1 Year Old
17496798(75.32%)
Criminal Cases More Than 1 Year Old
24130914(74.79%)
Cases More Than 1 Year Old
27317326
Total Civil Cases
70711799
Total Criminal Cases
98029125

As stated above, the present population of U.S.A. is about 33 crores, where it has 50 States and 02 Federal Districts i.e. Columbia and Puerto Rico, as per the Unique Identification Aadhar **India**, as of the December ending of and the **population projected** is 135,38,90,423[53] and as stated earlier ours is the largest democracy of the World and the 2nd most populated country (1.42 billion population) next to China.[54] Thus, India is about more than 04 times larger than U.S.A. in term of population. Now, if we consider the requirement of Judges in our country in order to meet the problem of pendency, then we simply require about more than 04 times the number of Judges sanctioned in U.S.A., but this not a simple answer to the vast and perplexed question of pendency in our courts, there are several other factors like our Constitutional mandates, justice delivery system, jurisdictions of the courts, Federal – cum- Unitary forms of Governments that exists in our Country as against the Federal system that exists in U.S.A. are also to be examined to find the answer. We shall discuss threadbare this issue hereinafter in detail in Chapter IV.

[53] "National Judicial Data Grid (District And Taluka Courts Of India)" As On 23th April, 2020. Countrymeters.Info › India: India Population (2020) Live — Countrymeters

[54] Ibid FN 1: https://www.worldometers.info/world-population/india-population/. ACCESSED ON 21.04. 2018.

In U.S.A. a party to a civil suit or a defendant in the criminal case generally has two forums proving justice, decision of a trial court and an appeal to the State Supreme Court where State laws are concerned, but where any federal law is involved, the also a litigant has two forums – "the Federal District Court and the U.S. Court of Appeal", whose decisions are final. Now let us see our system of administration of justice. A case starts from a trial court both in civil as well as criminal. In civil cases, once a suit is decided – either a decree is passed or the is dismissed, the aggrieved party has a right to go for appeal before the District Judge, where either the District Judge hears the appeal or he transfers the matter to any Additional District Judge having jurisdiction, who decides the appeal known as first appeal, After the decision of the Appeal, the aggrieved party has a right under the C.P.C. to move to the Hon'ble High Court, where the case is known as the second appeal. In some cases, the aggrieved party has also right of appeal in civil and criminal appeals respectively under "Articles 133 and 143 of the Constitution to move the Supreme Court after obtaining certificate of fitness from the High Court". There is also provision for moving the "Supreme Court as per Article 136 of the Indian Constitution as SLP", i.e., 'Special Leave Petition'. Any citizen has right to move the "Supreme Court under Article 32 of the Constitution if any of his Fundamental Rights is infringed".[55] There is also provisions for Review and Revision in certain cases under C.P.C. Similarly, in the criminal matters, there are courts of Judicial Magistrates 1st Class/Chief Judicial Magistrates, Judicial Magistrates 2nd Class and courts of Session Judges and the case is initiated in any of the two depending upon of the nature of offence under Section 28 and 29 of the Cr.P.C., 1973,[56] i.e. the offence punishable up to one year, more than

[55] Article 32 reads as "The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(1) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas *corpus, mandamus, prohibition, quo warranto and certiorari,* whichever may be appropriate, for the enforcement of any of the rights conferred by thisPart

(2) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)

(3) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution."

[56] **28.SentenceswhichHighCourtsandSessionsJudgesmaypass**—"(1)AHighCourtmaypass any sentence authorised by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the HighCourt.

(3) An Assistant Sessions Judge may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding tenyears."

one year but not exceeding three years, more than three years but upto ten years and more than ten years, life imprisonment and death sentence and apart from the above punishments, it has also powers to award fine. These powers are also subject to Revision and Appeal. In both "civil and criminal matters", the revisional or appellate court has, apart from reviewing the judgment under challenge, can also grant interim or regular stay of the implementation and operation of the judgment.

The Cr.P.C. also empowers the Hon'ble High Courts to hear criminal cases apart from the powers that has been vested in it by the Constitution.[57]

The powers and functions of "our Supreme Court" are quite different from "the U.S. Supreme Court". As discussed above, the U.S. Supreme Court normally hears Appeals and number of such appeals is microscopic small as compared to our Supreme Court and in exceptional cases only it invokes its original jurisdiction, but our "Supreme Court has three jurisdictions namely - original, appellate and advisory". Writ Petitions under Articles 31, 32 and 131A are filed directly and appeals under Articles 132, 133, 134 and 136 and another types of appeals are filed against the judgments of the High Courts and under Article 137 - Review of judgments or orders by it is also adjudicated by "the Supreme Court".

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[57] "**26. Courts by which offences are triable** — Subject to the other provisions of this Code--
(a) any offence under the Indian Penal Code (45 of 1860) may be triedby
(i) the High Court,or
(ii) the Court of Session,or
(iii) any other Court by which such offence is shown in the First Schedule to betriable;
Provided that any [offence under section 376, [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB] or section 376E of the Indian Penal Code] shall be tried as far as practicable by a Court presided over by awoman.]
(b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be triedby
(i) the High Court,or
(ii) any other Court by which such offence is shown in the First Schedule to betriable."

Supreme Court not only hears Appeals against "the judgments of the High Courts", it also hears Appeals against several Tribunals and judicial *fora* like- Central Administrative Tribunal, Income Tax Appellate Tribunal, Debt Recovery Appellate Tribunals, National Consumer Disputes Redressal Commission, National Green Tribunal, Election Petitions regarding "the elections of the President and the Vice President of India", and petitions arising out of "Monopolies and Restrictive Trade Practices Act, the Advocates Act, Customs Act, Contempt Petitions, etc". Apart from that new kind of litigation like Public Interest Litigation and disputes arising out Right To Information Act has emerged in one to two decades, which further mounts heavy pressure of workload over it apart from the matters referred to it by the President. Further, population explosion, socio-economic advances and the resultant awareness of legal rights have also added in the litigation, which we do not find in the U.S.A. The increasing filing of cases under Section 156 (3) of the Cr.P.C. in the courts of Chief Judicial Magistrates/Judicial Magistrates seeking direction to the Police to register F.I.Rs. After having failed to get relief from the Police to hear the grievance of the victim, is an example of socio-economic advances and the resultant awareness of legal rights. The other reasons for the delay are "new legislations made by the Parliament and the State Legislatures", which in turn puts an additional burden upon the courts for deciding disputes arising out of such legislations. Normally, neither the Parliament nor the State legislatures create additional court while enacting new laws, which ultimately adversely affects the functioning of theCourts.

> *"Nearly 90% of all pending cases in the country come from Indianlower courts (district and subordinate courts) which are the first port-of-call for most legal disputes. Among original cases (i.e., new cases registered at the courts), more than half the cases (56%) in Indian lower courts are disposed of within a year, the database shows. Much of this is because around half the cases registered in courts are dismissed without trial (21%), transferred to another court (10%), or settled outside the court (19%)."*[58]

2.6. DISPOSAL RATES IN U.S.A. ANDINDIA:

2.6.1. Disposal rate in U.S.A.

[58] http://prsindia.org/policy/vital-stats/pendency-cases-judiciary, Accessed on 23.08.2017

In U.S.A. there are currently, 157 D**istricts** in total from 5 special Municipalities and 3 Provincial cities.[59] It has 94 District Courts, each State has at least one District Court and there are 687 Court houses. Each District Court contains between 2-28 judges. The number of judges varies widely from district to district. There are currently 870 Article III authorized judges: 9 for Supreme Court, 179 for appellate courts, 673 for district courts, and 9 for International Trade Court.[60] The number of judges of "Court of Appeals" have become 200% compared to 1950, and the number of "District Court Judges" has become 300%.[61]

2.6.2. Disposal rate inIndia

As per the report prepared by PRS Legislative Research (PRS)[62] as on March 21, 2018, the pendency is as under:

In Hon'ble Supreme Court about 54,000 petitions, in the Hon'ble High Courts 43 lakhs petitions and in the Subordinate courts nearly 3 crores are pending, out of which 86% are in the Subordinate courts, 13.8% in the Hon'ble High Courts and 0.2% in the Hon'ble SupremeCourt.

2.6.3. Causes

Generally people criticize about the pendency, but they are not concerned about the disposal rate despite limited judge strength, court related man power, recourses, and infrastructure. In a span of 10 years from 2006, the disposal rate in the Apex Court rose to about 29,000 and in the High Courts, the rise was about 1, 60,000 during the same length of time and one of the reasons for arrear of cases is addition of New enactments and population growth. The rate of deciding the cases in the Apex Court came to be around 55 to 59 percent, in the High Courts it was around 28% and the same was about 40% in the District courts. It was also found that number of filing of criminal cases is

[59] District – Wikipedia en.wikipedia.org › wiki › District, Accessed on 2.09.2019
[60] United States Federal Judge – Wikipedia - en.wikipedia.org › wiki › United_States_federal_judge
[61] ttps://en.wikipedia.org/wiki/United_States_federal_judge (Retrieved 0n 31.08.2020)
[62] On the basis of data collected from Court News, 2006-2016, Hon'ble Supreme Court of India; "Prison Statistics In India, 2015", "National Crime Record Bureau"; "National Data Judicial Grid", last accessed on May 15, 2018; Lok Sabha Starred Question 521, April 4, 2018, Lok Sabha; Unstarred Question 4248

higher in the District courts as against the High Courts, but reverse is the position regarding institution of civil cases.

2.6.4. Financial Autonomy in U.S. Judiciary

While discussing the subject as exists in U.S.A., it was found the system in U.S.A. far better than India. The U.S. Congress had created a statutory body namely Federal Judicial Centre headed by "the Chief justice of the U.S. Supreme Court with six Judges selected by the Judicial Conference as its Members with the Director of Administrative Office to assist the Centre". The Judicial Conference consists of "the Chief Justice of the Supreme Court and 26 other Judges of the Supreme Court, Circuit Courts, Court of Appeal, and District Judges from each Circuit Court". One of the main functions of the Conference is to prepare Budget proposals for the U.S. Judiciary and to send the same to the U.S. Congress. Apart from preparing the Budget estimate for the judiciary, the Judicial Conference also controls the functions of thecourts.

2.7. COMPARISON BETWEEN INDIA AND UNITED KINGDOM

A. Budget Allotment inEngland

However, the Budget allotment on Judiciary in England also is no better than us. The Rt. Hon. "Lord Burnett of Maldon, Lord Chief Justice of England and Wales" in November, 2018, had also to express his dissatisfaction on the low budget sanction on the judiciary.[63] The Lord Chief Justice says underfunding has left system struggling to recruit judges and reduction in the grants for the judiciary has badly damaged the systemincluding ‑dilapidated‖court rooms.

The Rt. Hon. Lord Burnett of Maldon, while addressing to the Member of Parliament of the British Parliament highlighting the dilapidated condition of the court buildings, wherein the roofs were leaking, broken lifts, and faulty heating system in bad condition, said:

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[63] Lord Chief Justice's Report 2018. Justice Committee Tuesday 20 November 2018 "Lord Burnett of Maldon", Lord Chief Justice of England and Wales, In Twitter, Facebook and LinkedIn by Jane Croft from London November 21 2018.

"We are all conscious of the way in which money has been sucked out of the system,"……. "The MoJ unprotected generally has had a very substantial cut over the last few years and that has fed through into all the spheres of activity for which it isresponsible."

The Rt. Hon. Lord Burnett further said:

"a very substantial amount of money needs to be spent" with "proper investment rather than a sticking plaster".

Unlike U.S.A. there is no Financial autonomy for U.K. Judiciary which is criticized by the Jurists and Judges alike and lack of Financial autonomy is considered to be a threat on its freedom. The most influential and revered jurist in U.K., the Right Honourable Sir Lord **Nicolas Christopher Henry Browne-Wilkinson** PC, who was the Senior Law Lord of Appeal, in his paper in his F.A. Mann Lecture series – Independence of Judiciary – 1980[64] had severely criticized the British Parliament for not envisaging financial autonomy to the British judiciary. He was bold enough to say that "the executive's control of finance over the judiciary was the greatest threat to the Independence of the entire judicial system". He said:

"Control of the finance and administration of the legal system is capable of preventing the performance of those very functions which the independence of the Judiciary is intended to preserve, that is to say, the right of the individual to a speedy and fair trial of his claim by an independent Judge….the enforcement of the Rule of law by the Judges could be wholly frustrated by the refusal to appoint Judges, to provide court rooms for them to sit in or staff to service those courts….there is a failure of the provision of adequate courts and court staff to meet society's current demands for Justice….It is that aspect of the independence of the Judiciary which I wish toconsider."

[64] Tom Bingham, Senior Law Lord and Lord Bingham of Cornwell _the Business of Judging‖-by- Published by Oxford University Press- 2011 Ed. Paper Back- page 56) also in 1988 Public Law, page.44.

He points out that "in England, the Lord Chancellor and his department prepare a budget which is negotiated with the Treasury. The Government then asks Parliament to vote the money. Once this is voted, then the Lord Chancellor with the help of his department often allocates funds amongst the different demands for legal services. The Lord Chancellor, as a member of the government and a responsible minister is accountable to Parliament for the expenditure incurred of the money voted. But if Parliament and the Minister, between them, control the provision and allocation of funds, how can the administration of Justice be independent of the legislative or executive?"

He says:–*He who pays the piper calls the tune.*

The Right Honourable the Lord **Browne-Wilkinson** PC also pleaded that "the Judges must be involved in the preparation of the budget estimate" and subject to the supremacy of the Parliament, the administration of justice must be Independent and for this purpose the Lord proposed to constitute a body like American Judicial Conference to attain the goal of Independence of judiciary and also sought review of the entire judicial system.

B. INDIAN SYSTEM: Budget allocation on Judiciary inIndia

India Spends Only 0.08% Of GDP On Judiciary

"At a time when the Indian judicial system is seen as grossly lacking in infrastructure and in need for reforms to deal with the huge pendency of cases, the Union Budget for 2020-21 has made a cut in the allocation for creating infrastructure facilities for the judiciary, and in the funding earmarked for justice delivery and legal reforms. There is a cut in the allocation for creating infrastructure facilities for the judiciary- which includes Gram Nyayalaya and other court infrastructure - from Rs 990 crore in 2019-20 to Rs 762 crore in the coming financial year.

The total budgetary allocation for the Ministry of Law and Justice has gone down from the revised allocation of Rs 3173.36 crore in 2019-20 to Rs 2200 crore in the new budget. This is, however, mainly on account of the expenses incurred in the holding of Lok Sabha elections in May 2019, since the Election Commission's expenditure comes under the budget for the Ministry of Law and Justice. While the amount spent on holding elections, as perthe

budget, in 2019-20 it was Rs 1380.06 crore, it has come down to Rs 487 crore in the 2020-21 budget."[65]

The Budget provisions for the financial years 2011-12 and 2015-16 as on 30th November, 2019, no State or Union Territory has allotted and spent even 1% of its Budget with the exception of Delhi which spends 0.08% of GDP of the allocated budget for the Law and Justice Department was Rs. 4,386.33Crores, surprisingly it is reduced to Rs. 3,055.11 Crores in the year 2019 and 2020.[66]

2019's BUDGET: ALLOCATION FOR DEPARTMENT OF LAW AND JUSTICE

Independent Judiciary is the cornerstone of our Democratic and Constitutional framework and one of the basic features of the Independent judiciary is the financial autonomy i.e. it should not made to depend upon the sweet will of the Executive and in that circumstance, the Judiciary is bound to shed a part of its Independence, which is neither good for the Democracy nor for the Executive itself, because if the Executive does not provide sufficient Budget to it as per its requirement, then it shall result in delay in justice delivery system and as the proverb "*justice delayed is justice denied*" goes to say, it on the one hand creates dissatisfaction among the litigants resulting into law and order problem and increase in crime as well as retards the pace of social development, because in the words of eminent jurist Dean Roscoe Pound that – *the Law is an instrument of Social Change and Development"*, whereas on the other hand this situation it also looses faith in the Judicial system. Both the consequences, in fact, affect the Executive.

Therefore, in order to keep the Judiciary an Independent arm of the Sovereign, it is solemn duty of the Executive to guarantee financial autonomy to the Judiciary. In our Country, the tragedy is two-fold, on the one hand there is no financial autonomy and on the other had the Budget allocation to the judiciary far below its basic requirement, which is adversely affecting the justice delivery system, which has reached at its alarming stage thus, it needs immediate redressal on the priority basis for the Executive. It can be done only by bringing a Bill in the Parliament to this

[65] **Soni Mishra -** Budget 2020: Allocation For Judiciary Expenditure Has Been Reduced-_The Week' Dated **February 01, 2020.**
[66] www.indiaspend.com › india-spends-only-0-08-of-gdp. ACCESSED ON 09.10.2017

effect under "Entry 11- A in the Concurrent List of the Seventh Schedule of the Constitution of India".

2.8. COMPARISON BETWEEN INDIA AND AUSTRALIA

The Australian judicial system is in much way better and effective than our judicial system. There is statutory provision under "the High Court of Australia Act, 1979", to prepare the Budget for the Australian judiciary by the Australian High Court, the apex court of Australia. After the draft budget is prepared by the Apex Court, it is sent to the Government, which in turn tables before its Parliament for its endorsement. Almost similar provision exists in Canada and Germany.

Similar position is also in Australia as in U.K. Lack of Financial autonomy was criticized by Mr. Justice R.D. Nicholson Judge of "the Australia High Court", the Apex Court of the Country in his paper titled – "Judicial Independence and Accountability: Can they Co-Exist"[67] said:

> *"the preparation of Judicial estimates by anyone not acting under the direction of the Judiciary and the exercise of control by the Government over the way in which the Courts expend the funds granted to them necessarily poses a potential threat to Judicial independence."*

He praised the system in U.S.A. where it "*provides for the judicial branch to have a right to present its budget direct to the legislature rather than through the Executive*."

FINANCIAL AUTONOMY IN CANADA & AUSTRALIA

Both in Canada and Australia like U.SA, there is financial autonomy to its judiciary. Under the Australian High Court Act, 1979, "the High Court of Australia" prepares the annual budget of the judiciary and sent its

[67] (67)(1993 Australia Law Journal 404) reproduced in Appendix-E/ legalaffairs.gov.in › sites › default › files. ACCESSED ON 05.07.2019

recommendation to the Government, which in turn places the budget estimate before the parliament, which approves the budget. Same is the position of Canada.

QUEST FOR FINANCIAL AUTONOMY BY OUR JUDICIARY

The demand for the financial autonomy had been made from time to time by the Judiciary, but so far no progress has been achieved. The "Supreme Court" by various judicial orders and judgments had directed the Government to grant financial autonomy to a reasonable extent. In various Joint Conferences of "the Chief Ministers and Chief Justices of the High Court", Conferences of "the High Courts Chief Justices" recommended by the Honorable Indian Chief Justice and attended by the Hon'ble Indian Law Minister has become an issue.

The Government of India had constituted "National Commission to Review the Working of the Constitution (NCRWC)" with Justice Manepalli Narayana Rao *VENKATACHALIAH* , former CJI as its Chairman to recommend for Judicial Reforms including pendency in court cases. The Commission organized a seminar on– **Financial Autonomy of the Indian Judiciary** on September 26, 2001,[68] which after a thorough deliberation had recommended to the Central Government for the grant of financial autonomy to the judiciary.

Resolution claiming Financial autonomy by the Seminar of NCRWC

In the seminar of NCRWC, the Annual Budget systems for the judiciary of other Countries like U.S.A., United Kingdom, Australia, Canada and other Counties were discussed and then compared it with India. First of all the speakers expressed their concern over the huge pendency of the cases in India even more than five decades after the Independence with the observation that the Governments, whether the Central Government or the State Governments have step-motherly treatment with the Judiciary. The Judge-population ratio and the infrastructure are the lowest in comparison to the aforesaid countries, apart from insufficient infrastructure; as a result our courts are overburdened with the cases. One of the resolutions was as follows:

[68] Appendix –E, which contains Chapter XI of the Recommendations of the Seminar on the subject matter of the Financial Autonomy of the Indian Judiciary. For details see Item No. 4 of Ch.VI.

"If a law is made by Parliament under Entry 11- A in the Concurrent List that will be sufficient for the present purpose.

11.16.2 Under the first part of that Entry, a law can now be made by Parliament both for constituting the National Judicial Council and the State Judicial Council, while under the second part, Parliament can establish additional Courts also, in addition to the Courts it can establish under Article 247 for purposes of Entries in List I.

11.16.3 Parliament can also establish the respective Administrative Offices for the National Judicial Council and for the various State Judicial Councils. Parliament can vest the said Judicial Councils with the powers already referred to and delineate their functions as stated above. The manner in which the budget estimates may be prepared by the National Judicial Council and the State Judicial Council can be elucidated. It may then be stated that the budget estimates so prepared will be discussed with the Union Executive or the State Executive, as the case may be, and a consensus will be arrived at keeping the needs of the Judiciary on par with other high priority items. The budget estimates as so settled will be placed before the Parliament or the State Legislatures, as the case may be. To that extent, there must belegislation."

In the Seminar, it was also unanimously resolved that:

"The independence of the Judiciary must have top most priority. In the last 50 years, there has been no proper allocation of funds commensurate with the corresponding increase in population, legal awareness, increase in legislation. There not being a periodic Five Year or an annual Plan for the Judiciary, the absence of such plans has compounded the problem. The result is that there is, in terms of International Covenants and Resolutions set out in Chapter II, a clear violation of the basic structure of the Constitution and of the basic human rights resulting in an excessive overload of cases. The Judges in all courts are constantly under pressure for early disposal of all cases, old and new. The pressure today weighs on the mind of the Judges so much that it can lead to a miscarriage Justice. Delay in disposal of criminal cases is resulting in the prosecution not being able to establish the guilt of the accused. Long delays in

the criminal courts at trial stages are requiring bail orders to be given to the accused or otherwise they would spend more time in jails than as under trial prisoners. Delays in criminal cases are resulting in witnesses turning hostile in many important cases, due to extra legal approaches made to them."

The Seminar also felt that lack of surroundings sufficient number of Judges, the supporting staff, resources, basic infrastructure, Judges Accommodation and court rooms are the main causes of irritants which are main reasons for the grant of adjournments which results in pendency. The new legislation also adds extra burden upon the Courts with no additional Courts provided. The Central or the State governments have not reasonably increased its Grant in the last 60 years what was due to the judiciary. The Commission in its Report to the Government had included the resolutions of theSeminar.

2.9. JUDGE-POPULATION RATIO

Ratio of Judge-Population in U.K. is 51:10,00,000.

The "Law Commission of India" in its 120th report submitted in 1987 entitled as "Manpower Planning in Judiciary - A Blueprint" had said that in U.K. , the Judge–Population ration is 51:10,00,000, in U.S.A. the ratio is 107: 10,00,000, whereas in India it is 19.49:10,00,000, thus there is need for increasing this ratio accordingly. The ideal number would be 50: 10,00,000.[69] Law Commission further said that there were only 10 judges to a million populations when there should be at least 50 judges per 10 lac populations and that one of the reasons that nearly 60,000 cases are pending in the "Supreme Court of India". It may be noted that the Law Commission had said that there are 107 judges per million, in U.S.A. In view of the mounting caseload, where a large number of Judges are required in the entire Judiciary, according to reply given by the "Union Minister for Law and Justice" on 11.07.2019 in the Rajya Sabha, 399 posts High Court Judges or 37 per cent of sanctioned judge-strength are lying vacant. As regards the Subordinate Judiciary, even the sanctioned strength which is 23,235 is not full because about 5,450 posts are lying vacant. Our Judicial system has insufficient resources, only 0.1% to 0.4% of the entire budget is granted to the Judiciary apart from inadequate availability of latest and advanced technological devices and facilities. Another cause of delay is the stay/injunction order passed by the appellate Courts and Hon'ble the High Courts and the Hon'ble Supreme Court which temporarily stops implementation and execution of the orders impugned in the higher courts and also the judicial proceeding. Even, Lower courts are struggling for the protection of the presence of witnesses, which is the 2nd largest cause for delay as per the NJDG data, with about 17% of cases pending over 5 years until July 2019 being delayed due to the complexity of the case.[70]

[69] Law Commission Report No. 120- Manpower planning in Judiciary: A Blueprint (Retrieved on17.8. 2020)/http:/Indiankanoon.org/doc/10361661/?type=print. Accessed on 11.12.2018.

[70] www.livemint.com › news › india › what-is-clogging-up-i...(Retrieved on 05.09.2020)

Arrears Committees in High Courts:

In the "Chief Justices Conference" held in 2015, it was decided that all the High Courts shall set up Arrears Committee to check the backlog and action plan was finalized and in his regard it was decided that the District Judges shall hold a monthly meeting with all judicial officers to monitor the problem of pendency.

Cause of Pendency-Shortages of Judges

As per statement made by the Union Law Minister Ravi Shankar Prasad[71] in the Rajya Sabha in 2019 the number of cases pending in various courts and the number of Judges are given in the table below:

Courts	**No. pending cases –**	**No. of posts of Judges**
Supreme Court	59,867	34
High Courts	44.75 lacs	1,095
District Courts	3.14 crore	23,235

There are 25 High Courts in India. The total number of judges authorized in therein is 1095, where 771 judges are permanent and the remaining 324 are authorized to have additional judges. As of May 1, 2020, 381 seats (approximately 35%) are vacant. There are 59,867 cases pending in "the Supreme Court", and 44.75 lacs cases in various "High Courts". At the regional and lower court levels, the number of cases pending since November 2019 stands at a staggering 3.14 crore, said the Legal Minister in Rajya Sabha. The numbers have not changed since December 2014.

One way to eliminate this huge backlog would be to fill all the approved spaces so that there will be enough staff to complete the task.

But sadly, the number of support staff in courts has not increased significantly since 2013. In 2013, there was a workforce of 15,115 employees, and in 2019, it increased marginally to 17,342. This contradicts the actual authorized powers of 19,518 and 23,566 respectively. Authorized capacity increased significantly and performance capacity was not aligned.

[71] The Wire: dated 27th Nov. 2019

Infrastructure of The Court

Sri Ravi Shankar Prasad, the Hon'ble Law Minister of India in reply to Question No. 43 in the 17th Lok Sabha on 20th November, 2019 said that the Central Government has built infrastructure for judicial officers in the lower courts from time to time and since 1993, a sum of Rs 7,453 crores were sanctioned. Only 54 percent of it was disbursed in various provinces, however, the money was intended for the utilization of new Court hallsconstructions. That is the reason, there is an increase in the number of Court halls, .I.e 15,818 in 2014, 17,103 in 2019 and 2,888 are under construction.[72]

Computers in district and lower courts also increased from 13,672 to 16,845 courts. Important information about trials and decisions can be viewed in "the National Judicial Data Grid". Currently, the status of more than 12.23 crore cases and 10.26 orders is available until November, 2019.[73]

2.10. CONCLUSION

In India, Court infrastructure, Computerization in the District and the Subordinate courts has enormously increased but, since 2013, there is no much increase in the strength of court staff including judicial officers across all the courts that is the major pretext behind heavy burden on the Courts. There was set up an Arrears Committee in each High Court of the country to check the backlog and prepare action plan accordingly.

For having a better understanding of the judicial syatem, we studied the judicial systems of "United States of America, United Kingdom, Canada and Australia". After keenly studying those, it is observed that The Australian judicial system is in much way better and effective than our judicial system and the system in U.S.A. is found far better than India. In India, the major concern is the economical crunch faced by the judiciary. In order to keep the

[72] doj.gov.in › sites › default › files › LS-Eng_14 (Retrieved on 05.09.2020).
[73] The wire.in › law › pending-court-cases (Retrieved on 05.09.2020).

Judiciary an Independent arm of the Government, it is solemn duty of the Executive to “guarantee financial autonomy to the Judiciary”. In our Country, the tragedy is two-fold, on the one hand there is no financial autonomy and on the other had the Budget allocation to the judiciary far below its basic requirement, which is adversely affecting the justice delivery system. The focus should not primarily be on the case load but the the disposal rate despite limited judge strength, court related man power, recourses, and infrastructure. The data highlights that the Judge- Population ratio is the basic reason behind huge problem of pendency.

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CHAPTER-III: THE ORIGIN AND IMPORTANCE OF INDIAN SUPREME COURT AS CONSTITUTIONAL COURT

"We are under a Constitution, but the Constitution is what the Judges say it is, and the judiciary is the safeguard of our liberty and our property under the Constitution".

– Chief Justice Charles Evans Hughes[74]

More than 50 years back, this is how the role of the American Supreme Court was described by the former Chief Justice of the U.S. Supreme Court. Even earlier to it, in1803, Chief Justice Marshall, speaking for a unanimous Court in the notable case of *Marbury v. Madison,*[75] regarding the Constitution as the paramount and fundamental law of the nation and has been said "It is emphatically the province and duty of the judicial department to say what the law is." This decision formed the basic principle as the federal judiciary is supreme in the interpretation of the law of theConstitution.Since then there has been respect by other organs of the Government not only in the United States, but also in all the countries governed by the Constitution, and it became a permanent and indispensable feature of the constitutional system. In most of the nations, the Apex Court of the country will perform dual functions; "Apex Court acts as the highest appellate Court by hearing appeals from the lower Courts and Tribunals, and as a Constitutional Court, where they expound the Constitution to resolve the disputes and regulate the future by interpreting the Constitution as per the timely need". In the new Constitutional Democratic Governments,[76] a separate Court is formed entrusting the function of pure constitutional adjudication. These Courts act as the highest Court of theland and deals only with the constitutional issues. The Supreme Court of India also exercises constitutional review in spite of vast appellate jurisdiction under the Constitution[77] and the jurisdiction through the Statutes enacted under Art.138(1) of

[74] He states before the Chamber of Commerce, Elmira, New York (3rd May 1907) published in Addresses and Papers of Charles Evan Hughes, Governor of NewYork, 1906-1908 (1908), p.139.
[75] 5 U.S. 137(1803).
[76] TOM GINSBURG, JUDICIAL REVIEW IN NEW DEMOCRACIES 7-8 (2003).
[77] Constitution of India; Art. 132 & 133.

the Constitution of India.[78] Besides, they exercise activist approach for an out-and-outjustice under Art. 142(1), Constitution of India.[79] The jurisdiction exercised by the Supreme Court of India cannot be compared with any other Court in the World. Although the activist approach of the Supreme Court was laudable by ordinary citizens, it has equally been subjected to many criticisms. The major criticism is the mounting arrears of cases and delay in the disposal of appeals which include matters relating to constitutional questions. In 1958 itself, the Law Commission of India[80] expressed concern that the Supreme Court was not able to deal with its workload. It was not adequately addressed then, the consequence of it, the ever increasing cases and regular mounting arrears. At the commencement of the Constitution, more Constitution Benches were brought about for constitutional adjudication.[81] However, due to the rising number of petitions and excess backlogs in the Supreme Court[82] made the Court sit in divided Benches and since the past decade, minimal number of Constitution Benches were decided[83] and many substantial questions of law involving the interpretation of constitution were dealt by smaller Benches.[84] Thus, it can be said that unfortunately, the country's highest judicial institution has lost its original character and the vast jurisdiction has been literally got converted into a general court of appeal. In these circumstances, this chapter analyses the importance of the Constitutional Court and the methods followed

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[78] INDIA CONST.art.138,cl.1: EnlargementofthejurisdictionoftheSupremeCourt. *See* Annexure B, at 300.

[79] INDIA CONST.art.142,cl.1: EnforcementofdecreesandordersofSupremeCourtandordersas to discovery, etc.-*See*AnnexureB, at301.

[80] LAW COMMISSION OF INDIA, REFORM OF JUDICIAL ADMINISTRATION, 14 VOL.1, SEP. 1958, @"http://lawcommissionofindia.nic.in/1-50/Report14Vol1.pdf" (last visited on August16,2015).

[81] The Five+Judge Bench Disposals (in percentage) during 1950-54 - 45.6; 1955-59 – 49.8; 1960-64 – 134.4;1965-69–69.4. *See* Rukmini S, *Cases decided by Constitution Benches dropping*, THE HINDU, Nov.14, 2013, http://www.thehindu.com/news/national/cases-decided-by-constitution-benches-dropping/article5348431.ece (last visited on Nov.20, 2015).

[82] "As on 01/03/2015, there are 61,300 pending matters before the Supreme Court, among which the Constitution pending matters are 29." *See* http://supremecourtofindia.nic.in/p_stat/pm01032015.pdf (last visited on November 15, 2015).

[83] of The Five+Judge Bench Disposals (in numbers) during 2000-04 – 77; 2005-09 – 36; 2010-14.

[84] Selvi v. State of Karnataka (2010), Suresh Kumar Koushal and another v. NAZ Foundation and others (2014), Nandini Sundar and others v. State of Chattisgarh.

by these Courts in Constitutional adjudicationwith thatof theSupremeCourtofIndia. Moreover, when the question is of how an institution is going to perform in thecoming years is asked, one must examine, how that institution has been instituted andthe performance since its inception. The researcher ventured to discuss elaborately the debates and discussions made in the Constituent Assembly by our founding fathers of the Constitution while conferring different jurisdictions on the Supreme Court and what they contemplated actually about the structure and functioning of theSupreme Court while conferring the constitutional powers and functions.

3.1 SIGNIFICANCE OF CONSTITUTIONAL COURT:

Constitutional Court can manoeuvre many crucial roles including the review of the legislation in line with Constitution, protection of citizens' rights, and providing a facility forthe dispute resolution in a federal system and to balance the separation of powers. The writings of the Constitution is authorized, but with the scope of errors sometimes; it sometimes may also be obscure, textured openly, unclear and generally in desperateneed of detailed explanation, which can be done only by an autonomous bureau and usually thepower lies with the judiciary I.e. in particular with the Constitutional Court.Thus, The Constitutional Court is a way of establishing the commitment made by all parties to the drafting of the Constitution in order to uphold its principles.[85] Morris Cohen has described Constitutional Court as "We cannot pretend that the Supreme Court (Constitutional Court) is simply a court of law. The issues before it depend on the determination of all sorts of facts and their consequences, and the values we are attaching to these consequences. These are questions of economics, politics and social policies which legal training cannot solve unless law includes all the social knowledge."[86] The responsibility of the Constitutional Court is therefore heavy. One of the key issues affecting this heavy burden is that constitutional cases often involve a choice. It is mainly for two reasons: First, some provisions of the Constitution are mentioned in broad or obscure terms. Determining what they mean in the specific case involves choosing between competing values. Second, some key terms from the Constitution may not be understood intellectually or concisely without extensive injection of content from a source other than the language and the intent of the authors.

[85] TOM GINSBURG, "JUDICIAL REVIEW IN NEW DEMOCRACIES" 22(2003).

[86] MORRIS COHAN, REASON AND LAW 73-74 (1950).

Among the adjudication of constitutional issues, rather than the the choice between parties, it is real important regarding goals.[86] In addition, foreign investors often consider an independent and effective judge as a symbol of national stability and investment potential. For example, President of Egypt Anwar Sadat established the Constitutional Court in part to show investors that the country is committed to enforcing the rights of property.[87]An important part of the Constitutional Court in constitutional judgment is to demonstrate the need for measures that facilitate the emergence of a special approach and to allow sufficient time for study and meditation. From a general point of view, it should be emphasized that the litigation of constitutional disputes by the country's Constitutional Court replaces an uncontested settlement of other types of disputes.Woodrow Wilson's explanation of a Court as a "Constituent Assembly continuously insession" is worth to keep in mind.It has been told that every time each generation writes their own principlesof constitution, but always totally different through the Supreme Courts' judgments.[88] Mr. Justice Frankfurter's appellative – "a very special kind of Court", is almost applicable all the Courts functioning to giving decisions for substantial questions of the constitution.[89]

3.2 IMPORTANCE OF CONSTITUTIONAL ADJUDICATION:

When the Judges adjudicate for the substantial questions of the constitution,it is most uneasy and difficult to interpret the meaning from the Constitution. It is not just because of a reason that constitutional law is often more superiorthe laws of other types. Rather it is because constitutional judiciary produces a regulation that can overturn or restrict a law enacted, and because this form of administrative justice is as complex as it is difficult to change.[90] Just with just 7 Articles & 27 amendments the U.S. Constitution is going on well for more than 200 years, just because of the U.S. Supreme Courts' interpretations of law. The judiciary of all legal systems, generally does into three forms of adjudications which are (1) Common Law (2) Statutory and (3) Constitutional.

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[86] LAW COMMISSION OF INDIA, REPORT *availableat*http://lawcommissionofindia.nic.in/101-169/Report95.pdf(last visited on July 16, 2014) [hereinafter95thReportofLCI].
[87] TAMIR MOUSTAFA, "THE STRUGGLE FOR CONSTITUTIONAL POWER" 4-6 (2007).
[88] ARTHUR SELWYN MILLER, "SUPREME COURT: MYTH AND REALITY" (1978).
[89] *Id.*,at24.
[90] Universal Law Publishing Co., Yale University Press 2008 (1990).

3.2.1. Common Law*:* The common law is made by Judges, at least in the sense of theinterpretation and application of a prior law, where so much a part of the process ofadjudication is the interpretation and implementation of regulation thatwas itself produced in earlier adjudication.[91]

3.2.2. Statutory: The interpretation and application are predominantly of regulation enacted by a legislature, although prior judicial decisions applying the Statute will find themselves subject to interpretation.[92] Neither common-law nor statutory adjudication pits Court against the legislature, and neither produces regulation that cannot be undone by subsequent legislation.[93] In certain circumstances, the common law will be a source of law for statutory interpretation.

3.2.3. Constitutional adjudication: The constitutional adjudication or constitutional review or judicial review can be applied to say that all prior governmental action is illegal because it is unconstitutional. The Constitutional Court had the apparent authority to pass on the constitutionality of the governmental action, and the decisionis final and conclusive. The question here is 'Should the Constitution should be treated on par with the Statutes?' To answer this, let us take the U.S. as an example, which is the first written Constitution in the World. Moreover, the judicial review has authoritatively taken its origin in the U.S. Supreme Court through the leading case of *Marbury v. Madison.* The constitutional adjudication through the doctrine of judicial review has its unique development and growth in the constitutional history of the United States. In this case, Marbury was appointed and confirmed as the peace justice of the District of Columbia, had not yet received his appointment as Judge when the of John Adams administration approved that of Thomas Jefferson and Secretary of State, James Madison. Marbury filed a petition to sue Madison in the Supreme Court for submitting the commission. He claim was that the acyion can be entertained by Supreme Court which had 'original jurisdiction' according to the Judiciary Act passed by the Congress in the year 1789;

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[91] The examples of common law may fall partly into the category of the subjects Contract and the Law of Torts.

[92] The Statutes regulating security markets; Industrial and Labour matters and Statutes dealing with other branches of the Government.

[93] If a majority of a legislature is unhappy about the development of the common law of civil liability i.e. torts, it can change the law by legislation, or at least undertake to do so.Moreover, if one if its Statutes is interpreted by the Courts in a manner that the legislature takes to be inappropriate, it can revise the Statute.

I.e., jurisdiction as a court of first impression, a trial Court ratherthan an appellate Court of appeal. The Court read the Act as granting it original jurisdiction,but it read the Constitution as denying Congress the authority to make such a grant.John Marshall wrote for a unanimous Court as "If both the law and the Constitution apply to a particular case so that the Court must either decide that case, conformable to the law, disregarding the Constitution; or conformable to the Constitution, disregarding the law; the Court must determine which of these conflicting rules governs the case: this is of the very essence of judicial duty. If then, the Courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply. The U.S. Constitution did not spell out that Courts were to consider it superior to ordinary law while treating it in the same fashion as ordinary law".[94] However, Art. VI, the Supremacy clause reads:[95] "This Constitution.... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."[96] Chief Justice Marshall's view may also be seen as drawing support from the structure of the Constitution and the different functions of the three branches of the Federal Government that result from the separation of powers.[97] Unlike the U.S., the Constitution of India has an express provision in the Constitution that any law which abridges the fundamental rights of the citizens, will be void to the extent of thecontravention.[98] Professor Gerald Gunther of Stanford University has pointed out that it is not clear in *Cooper v. Aaron*[99] is merely following *Marbury v. Madison*, as the Court seems to imply. *Cooper* insists on 'judicial exclusiveness' in constitutional interpretation, whereas, in *Marbury Case*, the Court declared only on 'judicial authority to interpret the Constitution.'[100] This distinction is of course extraordinarily important. In one way or another, many Presidents have accepted judicial authority

[94] Wellington, *Supra* note 18, at 22.
[95] U.S.CONST.art.VI,§2.*See*Annexure E, at 324.
[96] Like U.S., Article 375 of the Constitution of India
[97] Wellington, *Supra* note 18, at 23.
[98] *See* Annexure B, at 298.
[99] 358 U.S. 1 (1958).
[100] Gerald Gunter, '*The Subtle Vices of the Passive Virtues: A Comment on Principle and Expediency in Judicial Review*' 64COLUM. L.REV.I,25 (1964).

and rejected judicial exclusiveness; one being was Abraham Lincoln. The case of *Cooper v. Aaron* is certainly a plausible gloss on *Marbury v. Madison*. Thus, the Constitution is law and the judicial department is particularly well suited to say whatthe law is. Once it has spoken, that's that; other officials are under an obligation to recognize that they must obey.[101] There was a hue and cry against the judicial review by the Congress, more specifically, by the then President Thomas Jefferson. Judicial Review is seen as a deviant institution in American democracy. It is because of two facts and is closely related indeed. The first is, the Supreme Court justices are appointed, not elected. Secondly, when the Court holds a Statute unconstitutional, it acts as a majoritarian counter-institution. It blocks an outcome achieved by a body that we think of as democratic because its members were chosen and they reach the decision by majority rule.[102] However, jurists like Alexander Bickel, who favoured judicial restraint but viewed that someone must expound the Constitution and determine the Constitutionality of the Statutes in order to make the Government free from tyranny.'The problem is who: the judiciary or the head of the executive or the legislature itself or ultimately the people through the electoral process?' The Supreme Court was believed to be the 'institution of our government' better equipped for the publisher and custodian of constitutional values.[103] Moreover, one of the justifications for vesting the powers to the Court for constitutional adjudication is that Judges as a group are not apt to have tunnel vision.Unlike the bureaucrats, they have the jurisdiction of the generalist. Judges are also unlikely to be short-run political maximizers. Few political actors can be free of self-interest, and Supreme Court justices are a type of political actor. But they are far more capable of unbiased perspective precisely because they are not electorally accountable, or as subject to interest group pressures as elected officials are, or dependent on others, or, as a general proposition, looking to advancement.[104] The concept of judicial review got approval from all modern democratic Constitutions. That being said, the acceptance rate depends on the nations contemporary legal system. Judicial review has limitations in nations, namely U.K., Spain, Russia, Morocco, Chile, etc. 'Judicial Absoluteness' is found in nations like Brazil, India, South Africa, Bangladesh, etc. The only recourse for the Parliament to overcome the decision of the review of is by amendment.

[101] Wellington, *Supra* note 18, at 143.
[102] ALEXANDER BICKEL, THE LEAST DANGEROUS BRANCH, 18 (1962).
[103] *Id.*,at3.
[104] Wellington, *Supra* note 18, at 30.

But the process is extraordinarily difficult in some Constitutions whereas, it is neither flexible nor rigid but a blend of both in such Constitutions. The example inUnited States of America, there were only 27 amendments till 2015. This is only four times to overturn athe decision of The Supreme Court in the 225 year old Constitution. The example for latter isConstitution of India, which origined in 1950 and there were 100 amendments till 2015 and than, the Constitution (99th Amendment) Act, 2014 was struck down by the Supreme Court of India in *NJAC Case.*[105] Unlike in U.S. and other major democratic and federal Constitutions,[106] India even implements Judicial Review over constitutional amendments. It can invalidate any constitutional amendment as a result of a violation of the basic constitutional framework and this doctrine is neither exhaustive nor conclusive. It depends on case wise. This doctrine was initiated by the Supreme Court of India in *Kesavananda case*.[107] Parliament does not have the power to amend the Constitution and is subject to limitations under this doctrine. The influence of this doctrine extends to other countries.[108] Even in this 21st century, even after so much development and growth, the tension and emotion regarding the constitutional adjudication like judicial review is still the same. The tension is regarding the quality and the process that the institution shall follow which has the power of Judicial review. First, it is important to note the different aspects of constitutional justice, which may not be found in unconstitutional judgments. The other even, if found, they are found which are of much lower essence and degree. They are (a) Specialization, (ii) Consistency, (iii) Evolution of Constitutional jurisprudence as a body of doctrine, self-contained and coherent; (iv) Availability of adequate time. The above-mentioned considerations do not include independent categories and are therefore consistent, therefore, it may be worth scrutinizing in detail.[109]

[105] (2015) 6 S.C.C.408.
[106] Canada,Australia,RepublicofChinaandetc.
[107] A.I.R. 1973 S.C.1461.
[108] KEMAL GOZLER, JUDICIAL REVIEW OF CONSTITUTIONAL AMENDMENTS: A COMPARATIVE STUDY 52-53 (2008); *See also*, Manoj Mate, *State Constitutions and the Basic Structure Doctrine*, 45.2:362 COLUM. HUM. RTS. L. REV. SIDE BAR 450, 13(2014), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2429993.
[109] 95th Report of LCI, *Supra* note 14, at 7.

(i) Specialisation: The most significant aspect is the need for the proper and unique approach. Keynes, a famous economist described the Judges' role who decides a constitutional issue, mentions that "He must contemplate the particular regarding the abstract and (the) concrete in the same flight of thought. He must study the present inthe light of the past, for the future. No part of man's nature or his institutions must lieentirely outside his regard. He must be purposeful and disinterested in a simultaneous mood: as aloof and incorruptible as an artist, yet sometimes as near the earth as a politician."[110] In the report of Speciality Courts submitted in 1983, Chief Justice Warren Burger mentioned that, "It is evident, therefore that the concept of separate appellate jurisdiction is not an alien or subversive idea" and added that European countries had been using such Courts for centuries widely and more efficiently. He also raised arelevant question "If the advocates must be specialist then can we wholly ignore theneed for some specialization in the judicial systems?" U.S. Supreme Court's Justice Sandra Day O'Connor also encouraged specialization. In Chicago, when she was Speaking to the Council of Chief Justices of Courts of Appeal, she mentioned that she found the fields of probate, tax, domestic relations, criminal and administrative laws were exactly suite for specialization. A Judge with expertise in anfield or area of lawcan proceed with hearings faster and can resolves issues quickly, and a better way.[111] Article 323A[112] and 323B are the innovation introduced in the Constitution of India through the 42nd constitutional amendment. It provides that Parliament can introduce tribunal courts to adjudicate disputes concerning the employment and conditions of service of persons appointed to perform public functions under the Central, State or any local council or another, or a State-owned or controlled State.[113] An act of Parliament deliberately may determine the powers and functions of these courts and exclude the powers of all Courts, except those of the Supreme Court under Articles 136[114] and 41 with regard to matters of service under those respective courts. The provision aims to liberate the High Court, which was used in service matters and took up too much of court's time.[115]Article 323B[116] enable the appropriate legislature to trial by tribunals of any certain disputes.

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[111] FELIX FRANKFURTER AND JAMES M. LANDIS, THE BUSINESS OF THE SUPREME COURT 318 (1929).
[112] 95th Report of LCI, *Supra* note 14, at 9.
[113] INDIA CONST. art. 323A: Administrative Tribunals. *See* Annexure B, at 303.
[114] INDIA CONST. art. 136: Special leave to appeal by the Supreme Court. *See* Annexure B, at 300.
[115] M.P.JAIN, INDIAN CONSTITUTIONAL LAW 1541 (2014).
[116] INDIA CONST .art. 323B: Tribunals for other matters. *See* Annexure B, at304.

Disputes such as of taxation; Industrial and labour disputes; foreign exchange; ceiling on urban property; land reforms; elections to State Legislature or Parliament, production, supply and distribution of foodstuffs, procurement and control of prices of such goods and other essential goods; right, regulation of tenancy issues including the rent, title and interest of tenants and landlords; And, offenses against laws connected with these matters. The tribunals are also known as 'Specialised Courts' as they deal with the specific matter.Art. 323A and 323B are enabling provisions. Much legislation such as the Administrative Tribunals Act, Consumer Protection Act and the Competition Act, National Green Tribunal Act, National Tax Tribunal, National Company Law Board, Armed Forces Tribunal Act, etc. were set up in their respective Statutes. The technical or administrative members are the part of these tribunals. In the respective tribunals, Administrative members belonging to that tribunal are practically experienced in the functions and services of that tribunal and technical members are subject experts in thesubjects related to that tribunal. Most of the times, These technical and administrative members are recruited by the members from the executive. Recently, as a constitutional question, the Supreme Court raised an issue "whether the appointment by the executive with regard to the performance of judicial functions is a violation of the doctrine of separation of powers and the concept of the independence of the judiciary" and held that the National Tax Tribunal under The National Tax Tribunal Act was unconstitutional.[117] In spite of that, the Indian Government had made the National Company Law Appellate Tribunal and National Company Law Tribunal, both as constitutional.[118] The Government set up special Courts even in criminal matters such as terrorist offences, economic offences and corruption cases to expedite the trial. The landmark case concerning the setting up of Special Courts was *In re Special Courts Bill*,[119] where the Supreme Court upheld the validity of the Bill. That is the reason there are many special Courts to deal with specific type of crimes or offenses. Tribunals and Special Courts are not new to the Indian Legal system but as per the adjudication constitutionally, a Constitutional Bench shall be formed.

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[117] Madras Bar Association v. Union of India and another (2014) 10 S.C.C.

[118] Madras Bar Association v. Union of India and another (2015) 8 S.C.C.

[119] In re Special Courts Bill,A.I.R.1979S.C.478; (1979)1S.C.C.380.

by the Hon'ble Chief Justice of India to decide the constitutional issues for the questions raised in the matter or any case and when there is no specific and separate permanent Bench in the Supreme Court for dealing with such constitutional matters.

(ii) Consistency:

The second part of the constitutional judiciary that needs to be emphasized is consistency. In such cases it is very important, because the judgment that has been made will govern the operation of the State and its many organs and affect the rights and duties of citizens, for years to come. 'Flexibility' here means that a decision rendered in the past and the procedure consistent with the previous decision, the Court should consider carefully when deciding a case in which that approach may be related in some way. Follow or not to follow is the measure to be made by the Court time to time as per the circumstances.This function of the Court can be most adequately performed in the presence of a special division, which focuses only on constitutional questions.The limitations of the judicial role more beautifully explained by Justice Cardozo that "A Judge is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy disciplined by system, and subordinated to the primordial necessity of order in the social life."[120] Professor Shapiro dealing with another aspect of consistency in these words, "while describing the role of the Judge, his chief concern should not be whether or not a judgement pronounced in the next 20 years facilitate or hinder the raise of the Negro to a position of equality; it ought to be whether the equality standard he enunciates today will, in the next 20 years support him in the path of logic and consistency or lead him into the temptation of irrationality. Is the standard he enunciates today sufficiently general and rational to apply to the cases that will come before him tomorrow?"[121] and also notes, "Whenever a Constitution divides powers, it almost always necessitates a Constitutional Court to police the boundaries."[122]

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[120] BENJAMIN CARDOZO, "THE NATURE OF JUDICIAL PROCESS 141(Universal Law Publishing Co.,Yale University Press 2006)(1928).

[121] MARTIN SHAPIRO, "LAW AND POLITICS IN THE SUPREME COURT" 18 (1964).

[122] Martin Shapiro, *The Globalization of Law*, 1 IND.J. GLOBAL LEGAL STUD. 37,49(1993).

It is emphasized that the concept of consistency doesn'tequate that thereshould be no new improvements in adjudication in parallel with constitution. Means, there should be a stable-change i.e. there should be a reconciliation by the judiciary to the both parties.It means, "the Court is to decide not by what is good, or just or wise,but according to law, according to continuity of principle found in the words of theConstitution, judicial precedents, traditional understanding and like sources of law."[123] Unfortunately, it was failed in *T.M.A. Pai Foundation & others v. State of Karnataka & Others.*[124] The decision of the eleven-Judge Bench[125] raised more questions than it answered. A 5 member Constitution division in *Islamic Academy of Education and Another v. State of Karnataka and Others*[126] sat to interpret that verdict given by eleven Judge Bench[127] but some of the main questions remained unanswered in *Islamic case*. Again to clarify the uncertainty, a seven-Judge Bench[128] was constituted in *P.A.Inamdar and Others v. State of Maharashtra and Others*[129] and the task of the Bench was not to pronounce any of its independent opinions on the several issues which arose for consideration in *Pai case.* To obtain the *ratio decidendi* of *Pai case* and to inspect if the clarification or explanation given in *Islamic case* goes opposite to *Pai case*. And if it is correct, to how much correct? and if something mentioned in *Islamic case* was indispute with *Pai case*, basing on the equation of a binding efficacy of precedents, supersede the extent the opinion of the Constitution Benchin *Islamic case* contravene the *Pai case*. The Bench thus limited its decisions to unaided professional educational institutions and finally delivered the verdict favouring the unaided private educational institutions providing liberty in admission not subjecting to follow State quota system.[130] The *Pai case* involves the complicated question of law involving constitutional interpretation and though not answered clearly, the subsequent smaller

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[123] ARCHIBALD COX, THE WARREN COURT-CONSTITUTIONAL DECISION AS AN INSTRUMENT OF REFORM 21(1968).
[124]A.I.R. 2003 S.C. 355; (2002) 8 S.C.C. 481.
[125] CJI B.N. Kirpal and Justices G.B. Pattanaik, S. Rajendra Babu, K.G. Balakrishnan, Arjit Pasayat, V. N. Khare, Ruma Paul, Ashok Bhan, Syed Shah Mohammed Quadri, P. Venkattarama Reddy, S.N. Variappa,
[126] (2003) 6 S.C.C.697.
[127] CJI V. N. KhareandJusticesS.N.Variava, K. G. Balakrishnan, ArijitPasayat &S.B. Sinha.
[128] CJI R.C.Lahotiand Justices Y.K.Sabharwal,D.M.Dharmadhikari,ArunKumar,G.P.Mathur,TarunChatterjee&P.K.Balasubramanyan.
[129] (2005) 6 S.C.C.537.
[130] M.Anandakrishnan, *Vanishing Equity in Higher Education*, THE HINDU, Aug.24,2005, http://www.thehindu.com/2005/08/24/stories/2005082406791000.htm(last visited on Dec. 8, 2015).

benches clarified the *ratio decidendi* of the larger Bench. This case is a classic example of complexity in constitutional adjudication because of no 'Specialised Court' for that purpose. Further, in constitutional issues, the Constitutional Courts implicitly has a widerscope and viability as it wish to decide. In implementing the same, it should not create puzzle and confuse. Unlike the U.S.A., The Supreme Court of India, in the case of *State of Rajasthan v. Union of India*[131] the application of the doctrine of the political question was rejected. But, it is different in USA. Many socio-economic rights were formed under fundamental rights and also contained in the directive principles of governance. It has given a very meaning to timely basic needs and life and included the same in the Right to Life under Article 21 of the Indian constitution andalso 'Right to Sleep'[132] is included, which is in fact very peculiar.The then Chief Justice of India, S.H. Kapadia remarked that "the Supreme Court might have overstretched the human rights jurisprudence to include the right to sleep in the bouquet of fundamental rights, as enforcing such a right would be tough."[133] Moreover, over the years, the aspect of the PIL's social action has got refined and obscured by different form as 'public prosecution' in the Courts.Within these types of cases, court's intervention is not required to enforce the rights of poor people or disadvantaged in the community, but to correct the omissions or actionsof the executive or government officials or civil society organizations or government departments. They direct the most sophisticated river connection engineering in India over a period of time.[134] In fact, all the inscpectory and visionary administrations, both legal issuesindividuals' and fundamental rights are not been included. Many a times, they themselves arrogate the power of other organs monitoring the conduct of investigation and prosecution agencies, and these are perceived to have failed or neglected to investigate and prosecute ministers and officials of the government.

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[131] A.I.R. 1977 S.C.1361.
[132] In Re: Ramlila Maidan Incident dated 4/5.06.2011 v. Home Secretary, Union of India and others, (2012) 5 S.C.C. 1.
[133] PTI, *CJI: Judges should not rule nation, ridicules "right to sleep",* THE TIMES OF INDIA, Aug. 25, 2012, http://timesofindia.indiatimes.com/india/CJI-Judges-should-not-rule-nation-ridicules-right-to-sleep/articleshow/ 15686770.cms (last visited on Nov.10,2015).
[134] In Re: Networking of Rivers (2012) 4S.C.C. 51.

The height of this activism can be seen in the Jharkhand Legislative Assembly case[135] when the order was passed by Supreme Court of India to the Assembly to conduct a Motion of Confidence and also to conduct proceedings to the Speaker to in line with the vision that was already planned as an agenda. And, also ordered to record the proceedings and report to the Court. Here, in spite of Article 212[136] of the Constitution, it was ordered which states that courts should not investigate any legislative action. The Court, for all practical purposes, ignored the division of powers under the Constitution and performed the general administrative function over other branches of government by concealing other organ'sfailures of constitutional functions.[137] But, in this method, even though, the Supreme Court of India serves as the national conscience of the Indian people, there has no consensus on the distribution of justice and thus created further confusion and doubt as to whether it is a center of justice or not.

(iii) ConstitutionalJurisprudence Evolution:

A third factor that can be drawn into consideration regarding the necessity of systematic constitutional change. Importantly it is most needed that such a law ought to be allowed to evolve as an independent and also coherent doctrinal body, arising from the decisions given in-depth information and familiarity with the constitutional law that can easily emerge through regular contact with the work of a special character.[138]As society becomes more complex, the issues that will arise from the adjudication of the constitution will also tend to be more complex. The Court may be deeply involved in 'public suffering' and should change new doctrines to the needs of the time and thus enshrine constitutional principles in what is expected of society.It is not at all good to The Court while interpreting the Constitution to adhere to the originalism.

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[135] Rameshwar Prasad v. State of Bihar (2005) 7 S.C.C. 625.
[136] INDIA CONST. art. 212: Courts not to inquire into proceedings of the Legislature. *See* Annexure B,at 302.
[137] T.R. Andhyarujina, *Disturbing trends in judicial activism*, THE HINDU, Aug.6,2012, http://www.thehindu. com/opinion/lead/disturbing-trends-in-judicial-activism/article3731471.ece (last visited Nov.20, 2015).
[138] 95th Report of LCI.

H. Jefferson Powell commented on the role of the primary purpose in translating the Constitution. In his conclusion, he greatly diminishes the basic attraction (or, as he calls it, deliberately) otherwise. Since the founders themselves did not intend for the Constitution to be interpreted according to what future translators may gather for the intentions, expectations, and intentions of the composers, the will, or the will of the founders, it can't be said now that an authority to utilize their recorded texts. Objectives to expand the originalism is authentic, it must be that, when thingas a whole is considered, it is of quality to any other translation plan, or because Judges and attorneys after confirmation use the original purpose as their translation tool. Modern interpreters inspired by the past can also use the original purpose, but if they do, it is because they respect the tradition of translation.[139] It is clear that the theoretical concept sums up the ideas of the Judges so that they develop a critical thinking and are balanced in the text itself. Therefore, the Court must consider modern scientific and social developments and present modern constitutional principles and doctrines in order to achieve the public interest. The Supreme Court of India laboured significantly to the development of the constitutional jurisprudence. They borrowed many doctrines[140] from the U.S. to interpret the lists mentioned in the seventh schedule, to protect and improve the environment,[141] extended the rights of speech and expression with the inclusion of the right tofreedom of Press[142]& Right to Know[143] and propounded the Doctrine of postponement of publication of court proceedings[144] to control the rights of media over 'Media Trial'. They innovated Doctrine of Basic feature of the Constitution[145] and limited the amending power of the Parliament over the Constitution. To make justice accessible to poor and illiterate, they relaxed the *locus standi* principle and introduced the concept of Public Interest Litigation.[146]

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[139] H. Jefferson Powell, *The Original Understanding of Original Intent*, 98 HARV.L.REV.885,948(1985).
[140] Doctrine of Territorial Nexus, Doctrine of Pith and Substance, Doctrine of Occupied Field, Doctrine of Harmonious Construction, Doctrine of Severability, etc.
[141] Doctrine of Polluter Pays Principle, Doctrine of Precautionary Principle, Sustainable Development and Doctrine of Public Trust.
[142] RomeshThappar v. State of Madras A.I.R.1950S.C.124.
[143] State of Uttar Pradesh v. Raj Narain, A.I.R.1975 S.C.865; (1975) 4 S.C.C. 1.
[144] Sahara India Real Estate Corporation Ltd. and others v. Securities and Exchange Board of India and Another (2012) 10 S.C.C. 603.
[145]*Supra* note 35.
[146] The seeds of the concept of publici nterest litigation were initially sown in India by Krishna Iyer J., in 1976 in Mumbai Kamgar Sabha v. Abdul Thai (A.I.R. 1976 S.C. 1455) and was initiated in "Akhil Bharatiya Shoshit Karmachari Sangh (Railway) v. Union of India (A.I.R. 1981 S.C. 298)", wherein an unregistered association of workers was permitted to institute a writ petition under Art. 32 of the Constitution for the redressal of common grievances. Krishna Iyer J., enunciated the reasons for

The Public Interest Litigation later formed a new shape by the name "epistolary jurisdiction."[147] Concerning Art 21, they denied tointerpret the Constitution according to the original intent and enhanced the sense asprocedures that are established by law should be just, reasonable and fair and further thetheory of inter-relationship of rights were developed engraved in Article 14, Article 19 and Article 21 of the Constitutionand ensured the guarantee of substantive due process,[148] which was pin pointedly barred by the framers of our Constitution by the due advice from B.N. Rau. Far more, they sustained theindependence of the judiciary by striking down the Constitution (Ninety-Ninth Amendment) Act, 2014 and National Judicial Appointment Commission Act, 2014 as unconstitutional[149] as violation of the basic features, the Independence of the judiciary and separation of powers brought back the collegium system generated by the Supreme Court through *Supreme Court Advocates on Record Association (I) v. Union of India*,[150] which was not known to the Constitution and against the intent of the framers of the Constitution.

(iv) Time span:

The fourth and final consideration has a special interest in the constitution judgment is time. Some form of jurisdiction in the judgment of the Court with in the scope of its job and the number of cases comes and appears to be an integral part of the job of the appellate tribunal. That means, the final court must have sufficient forensic procedure for the cases, and therefore have full -fudge discretion to receive, refuse to take, cases at its earliest discretion as to its public-related significance. The final appeal must be made in its own right, not just on the number of cases it determines, but on the weight of the constitution and its significance. It is axiomatic that anything which requires serious reflection, needs time. Time is of great importance regarding several factors, such as (i) the complexity and gravity of the involved issues, (ii) effect of an adjudication of a constitutional matter in a particular direction that may have on the further course of public law; and (iii) nature and volume of materials that may be needed by the Court, for arriving at a proper liberalization of the rule of Locus Standi in Fertilizer Corporation Kamgar Union v. Union of India (A.I.R.1981 S.C.344), and the idea of 'Public Interest Litigation'

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[147] Sunil Batra v. Delhi Administration, (1978) 4 S.C.C.
[148] Menaka Gandhi v. Union of India, A.I.R. 1978 S.C.
[149] *Supra*note33.
[150] (1993) 4 S.C.C.441.

conclusion, on constitutional issues. Therefore, judges should have enough time and mental relaxation to do research, meditate, and analyze themselves. In finalizing decisions, there needs time for reviewing critically while preparing pending decisions; more time is needed to clarify and review everything that has happened before.[151] Time does not require only the primary function of analyzing in detail the items on which the Court relies. It is equally necessary to consider carefully the meaning of those matters and their effect on matters before the Court. Moreover, the decisions of the Supreme Court are collective decisions. It is not a solitary game or a debate between two parties. Each side has its mind quickly made upand then closed. The judgments require full considerations and re-considerations of all by the reasoned views of each.[152] In *Dick v. N.Y. Life Insurance Co.*,[153] the U.S. Supreme Court held that "without adequate study there cannot be adequate reflection; without adequate reflection there cannot be adequate discussions; without adequate discussion, there cannot be that fruitful interchange of minds which is indispensable to thoughtful, unhurried decision and its formulation in learned and impressive opinions."[154] Sr. Edward McWhinney has clearly stressed the necessityof availabilityof sufficient time for a Court of last alternative as "A final appellate tribunal can onlyfunction effectively when it has enough time adequately to consider, research and decide those cases that do come to it."

In link to the same, the *Kesavananda case* and *NJAC case* are unavoidable to be discussed. Even though deep rooted in the jurisprudence of the Indian Constitution, The 'Basic Structure Doctrine' was not precise and perfect. Even after *NJAC case* was pronounced, it was criticized very often. The thirteen-Judge Bench of*Kesavananda case* forced the Bench to finish off the arguments quickly and deliveredthe judgments because of shortage of time and the retirement of the CJI Sikri, the very nextday of the judgment day. There were totally 11 separate judgments in the thirteen-Judge Bench. The Bench was divided equallythat is 6 Judges[155] by four separate decisions held that the power of amendment was limited to the various limitations existing and enshrined in the Constitution including fundamental rights and the another six

[151] 95th Report of LCI
[152] *Id.*
[153] (1959)3L.Ed.2d935.
[154] *Id.*
[155] CJI Sikri, Justices Shelat, Grover, Hegde, Mukherjea and Jagannathan Reddy. Justices Hegde and Mukherjea; Justices Shelat and Grover made a common judgment respectively.

Judges[156] delivered six judgments separately. And every judgement mentions the same that were no limitations to amend the power of the Parliament.Whereas Justice H.R. Khanna's judgment does not fit either way.The eleven judgements Court's rulings were announced orally in court, and CJI Sikri issued and read the paper, entitled 'Public Opinion' and passed it on to all thirteen judges. Among them, One conclusion was that "Parliament did not have the power to amend the basic structure or framework of the Constitution." It was out of one of the conclusions in Honorable Justice H.R. Khanna's judgement. Out of the 13, 9 Judges signed the statement in the Court,[157] and the rest 4 judges refused to sign.[158] By reading the 11 judgments, this conclusion would not have been the opinion of many. It Judge Justice H.R. Khanna's view only. Justice Chandrachud opined that he had the opportunity of quickly going through his colleague's 4 draft decisions. No conference of all judges were convened to gain public opinion. One conference convened by the Head of Justice did not include those judges who felt that there were no restrictions on the power to amend; and the conclusion was not discussed in Court, as it should have been. Some have described the action of the Chief Justice as a national act. Some believe that it was a ploy to create an elusive majority.[159] Thus, a powerful and contradictory constitutional doctrine that was born accidentally in the eyes of one Judge and then added to the majority of the six, was adopted and adopted by nine Judges.

The 2nd instance is the National Judicial Appointment Commission Act, 2014, and the Constitutionality of Constitution (99th Amendment) Act. Amendments to the Constitution and subsequent Act based on the amendment are likely to replace the twelve-year collegium system, in which the top five supreme Court Judges had the power to appoint and appoint High Court Judges and Supreme Court Judges. After the prolonged and heated arguments for 4 months in 2015,[160] it struck down both the constitutional amendment and the Act on the basis of violating the

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[156] JusticesA.N.Ray, Palekar,Mathew,Dwivedi, Beg,andChandrachud.

[157] CJI Sikri, Justices Hegde, Grover, Shelat, Jaganmohan Reddy, Palekar, Khanna, Mukherjea andChandrachud.

[158] JusticesRay,Mathew,Dwivedi, andBeg.

[159] T.R. Andhyarujina, *Basic structure of the Constitution Revisited*, THE HINDU, May 21, 2007,http://www.thehindu.com/todays-paper/tp-opinion/basic-structure-of-the-constitution-revisited/article1845048.ece.

[160] Live Law News Network, *S.C. reserves judgment in NJAC case*, LIVE LAW.IN, July 15, 2015, http://www.livelaw.in/S.C.-reserves-judgment-in-njac-case/.

Basic Structure of the Constitution on 16th October 2015.[161] However, he found some lacking in the current college system and asked for propose to redo it, and because of pressure from advocates, public opinion wasasked on 5th November 2015[162] but pressed that, it should be in consonance with the nine-Judge bench of 1993 decision (Second Judges case).[163] It received about 3,000 proposals that went more than 15,000 pages, and the conclusion was that Government was not willing to write a 'Memorandum of Procedure' in the appointment of judges through the collegium, the Court by its judicial Order[164] directed the Central Government to draft it.It took a long time for the Government to finalise it but yet to enforce. Almost one year passed and during this period, no new appointments were made in the Supreme Court and the High Courts. The vacancies in these Courts as on May 31, 2016, were around 470, and it caused huge pendency of cases in every High Courts and in the Supreme Court too. The administration of justice is totally paralysed in Constitutional Courts because of the delay in the *NJAC case* and the story of seeking opinion for reforming the collegium system.

Concerning the leisure and training, Alexander Bickel has pointed out that Judges should have leisure time, training, and a tendency to follow expert techniques in pursuing government goals. The only reason we can't say anything: we can only connect structures and endings. Therefore, the reference must be rich in some way, in order to include the worship of buildings and the way one thinks. So the basic idea seems to be that the moral philosophy is what the Constitution is right about; that there is a proper way to apply such a philosophy: and that Judges are better than others at seeing it and engaging in it.

The renowned remark for the delay in the justice is 'justice denied' and it should be borne inmind "how the Court should function in dealing with constitutional questions and speedy disposal of those cases?"Presently, the Supreme Court has broad jurisdiction, and they cannot do magic to dispose of all the pending cases within the time frame. 34 Court Judges are busy handling various cases that caused the Constitutional Benches to be set up long ago to collect dust.

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[161] *See* http://supremecourtofindia.nic.in/FileServer/2015-10-16_1444997560.pdf.
[162] Krishnadas Rajagopal, *S.C.throwsopencollegiumsystemtopublicS.C.rutiny*,THEHINDU(Chennai), Nov.6,2015at1.
[163] *Supra*note81.
[164] Writ Petition (Civil) No.13 of 2005 dated Dec.16, 2015.

There were 29 Constitution bench pending cases according to the Supreme Court report ofNov.2014.[165]

The mounting arrears of work in the Supreme Court wiped out a vital fundamental right conferred by Article 32. In *P.N. Kumar v. Municipal Corporation of Delhi,*[166] Justice E.S. Venkatramaiah and K.N. Singh held that in view of the heavy backlog of cases, the Supreme Court would not entertain an Article 32 petition and the petitioner could get the same relief or more than that by approaching the High Court under Art. 226. Talking about the Constitution bench is even a very long process. Some set of questions can change the economic situation.

For instances, the definition of 'industry' under Sec. 2(j) of the Industrial Disputes Act, 1947[167] has been surrounded by controversy ever since the enactment of Industrial Disputes Act of 1947.[168] The confusion seemed to have been somewhat cleared with the landmark seven-Judge Bench decision in *Bangalore Water Supply Sewerage Board v. A. Rajappa and others*[169](hereinafter referred to as *Rajappa's case*). However, in 1998, a two-Judge Bench decision[170] of the Supreme Court in *Coir Board, Ernakulam v. Indira Devi P.S. and others*[171] called for a reconsideration of *Rajappa's case*, where the Supreme Court consisting of three- Judge Bench[172] held that the judgment delivered in *Rajappa's case* does not require any reconsideration.[173] Again, in 2005,[174] a five-Judge Constitution Bench[175] of the Supreme Court has accepted for considerationing again of the *Rajappa's case* as it doesn't set well in the present privatised, liberalised and economic globalised world. They have constituted a larger Bench to again considering the *Rajappa's case* but functional yet to be. Other important cases are touching vital constitutional questions kept unanswered for many more years.

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[165] *See* http://supremecourtofindia.nic.in/p_stat/pm01032015.pdf.
[166] (1987) 4 S.C.C. 609.
[167] Sec. 2(j) of Industrial Disputes Act.- Industry means any business, trade, undertaking, manufactureorcallingofemployersandincludesanycalling,service,employment,handicraft,orindustrialoccupationoravocationofworkmen.
[168] Act No. 14 of 1947.
[169] A.I.R. 1978 S.C. 548; (1978) 2 S.C.C. 213.
[170] Justice Sujata V Manohar and Justice DP Wadhwa.
[171] A.I.R.1998 S.C. 2801; (1998) 3 S.C.C. 259.
[172] Dr. A.S.Anand, C.J., S.P. Bharucha and M.K. Mukherjee, JJ.
[173] Coir Board Ernakulam Kerala State and another v. Indira Devi P.S. and others (2000) 1 S.C.C. 224.
[174] State of U.P. v. Jai Bir Singh (2005) 5 S.C.C. 1.
[175] Justice N.Santosh Hegde, Justice K.G. Balakrishnan, Justice D.M. Dharmadhikari, Justice Arun Kumar and Justice B.N.Srikrishna,

The instances are:- in the case of *Property Owners' Association v. State of Maharashtra,*[176] right to property's revision of extension, once a fundamental right and merely a legal right now, awaited the result for almost 20 years. The basis of this controversy comes from the 25th Amendment of the Constitution.A few decisions of the Constitutional Bench over time add a lot of darkness to the already problematic issue. Unable to harmonize all of them, a bench of 1996 referred theissues to a larger Constitution Bench. Similarly, the case pertaining to the authority of thestate and central Governments in alcohol business when taken cognizance by the Supreme Court in the case *State of Uttar Pradesh v. M/s. Lalta Prasad Vaish*[177] in 2007, where the 3 Judge Bench of the Supreme Court[178] framed six substantial questions forthe interpretation of the Constitution. There are many more cases that are been in limbo for many years.[179]

It took two decades to resolve the constitutional questions that were raised by parties. In *Rajeev Dhawan v. Gulshan Kumar Mahajan & Ors.*[180] and *Dr. Subramanian Swamy v. Arun Shourie.*[181] The petitions filed in the years 1994 and 1990 respectively raising substantial questions of law about Contempt of Court Act and the cases were disposed on 23rd July 2014. From these above mentioned instances, it is clear that the Supreme Court shows scant regard in disposing of the matter relating to the constitutional question. Thus, the major reason behind less constitution of Constitution Benches and reluctant in the disposal of it is due to the 'Time factor'.The huge backlog of ordinary appeal cases forces the Judges to concentrate less on constitutional matters. The Supreme Court has encountered this problem within few years of its inception. Hence, it is inevitable to discuss the original intent of the framers of the Constitution in conferring jurisdiction to the Supreme Court of India. Before venturing upon the debates of the Constituent Assembly, it is pertinent to bring out the position of the powers and functions of the highest appellate Court during pre-independence period.

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[176] (1996) 4 S.C.C. 49.
[177] (2007) 13 S.C.C. 463.
[178] H.K. Sema, Altamas Kabir, and Lokeshwar Singh Panta.
[179] M.J. Anthony, "Sittings of Constitution Benches have become a rarity", @ "http://www.rediff.com/news/column/sittings-of-constitution-benches-have-become-a-rarity/20131120.htm" (lastvisitedonNov.25,2015).
[180] (2014) 12 S.C.C. 618.
[181] (2014) 12 S.C.C. 344.

3.3. POSITION OF HIGHEST APPELLATE COURT DURING PRE-INDEPENDENCE PERIOD: THE PRIVY COUNCIL

Over several decades of British Rule in India, the final court of appeal was thePrivy Council.The supreme judicial authority enforced in India, of which all its courts were subordinate, was that of the Supreme Court, following judgments issued by the Privy Council. It used to decide on all kinds of personallaw issues, which was done by examining the ancient texts and customary laws of theIndian people.It constructed these laws in its own way.[182] The first event in which the right to appeal was granted by the Royal Charter to a Private Council from Indian court judgments was in 1726.The Charter granted by George Iestablished the Mayor's Courts in the three presidencies and gave a right of appealfrom those Courts in the three presidencies, first to the Governors in Council and thento the Privy Council, where the amount in dispute exceeded Rs. 4,000/-.The same right also reserved to the Recorder's Courts and the Supreme Court of Bengal, Madras, and Bombay. Anyone who is dissatisfied with the decision of any of those Courts in the case, where their value was more than 1,000 pagodas, except in the Bombay High Court, where the value of the claim must be more than 3,000 rupees in Bombay application to the Clerk of the Court. In addition, the Council was authorized to reject or approve the appeal and to vary, amend, or reverse the decision, at the discretion of the Royal liking.[183] In 1781, on the establishment of the Sudder Court of Bengal, an appeal was given from its decisions in civil suits the valueof which should be of £5,000/- and upwards. In 1797, a regulation was passed toprovide rules about appeals to the Privy Council opposing the decisions of the Court untilthe King's likes should be known from then. That Regulation limits the right to appeal within a period of six months from the date of the decision, and at the point of value in cases where the judgment that does not include the costs of the claim was a value of Rs. 50,000 / -. In 1818, the right to appeal a decision from the Madder Court of Madras and Bombay to the Private Council was suspended and in all Presidential offices reservations were granted the right of the Governor to refuse or accept appeals regardless of the provisions of the law.

[182] RAJEEV DHAVAN, JUSTICE ON TRIAL – THE SUPREME COURT TODAY 2(1980).
[183] HERBERT COWELL, HISTORY AND CONSTITUTION OF THE COURTS AND LEGISLATIVE AUTHORITIES IN INDIA, 214 (1936).

Or, controlling the exercise of the right of appeal.[184]Complaints may have been filed with the permission of the Supreme Courts of India in their decisions in criminal cases but there is no right to appeal unless any of the Supreme Courts of India have granted leave to appeal to the Privy Council.[185] In 1833, a Permanent Judicial Committee was appointed to dismiss the grievances and other matters referred to it by the King in Council in accordance with the Act.In the year 1838, An order was issued to the Council which limited the appeal of appeals from the Supreme Court of India by a period of up to six months from the date of the decision and at a point of value up to Rs. 10,000 / - instead of Rs. 50,000 / -. Following the merger of the Supreme Court and the Supreme Courts by the Supreme Courts Act, 1861, new Orders were issued to the Council, which is now the Council's Orders, dated 9 February 1920, amended by Council Orders 1927 and 1928.TheCivilProcedure Code of 1908[186] provide for appeals to be intended to lie to the Emperor in the Council from any last proclamation passed by the Supreme Court or any other Court having the final authority to appeal cases in all cases where the value of the matter directly or indirectly is Rs. 10,000 / - or higher; but when the appellate notice confirms the Court's decision immediately under it, the appeal must include a specific legal question. In some cases, a complaint can only be received if it is approved for appeal. However, there is nothing in this Act that prevents the improper use of the Governor's pleasure, or the violation of the rules made by the Judicial Committee. The High Court Charter gives the right to appeal to a complainant in any matter that is not under criminal jurisdiction.It may be from any final decision, order or proclamationof those Courts by an appeal, or from the exercise of the original power by a majority of the full number of judges, or of any District Courts where the appeal is not in the High Court. The court itself. The grant granted is subject to the principle that the disputed matter is a value at least Rs. 10,000 / -, or such order, judgment or order directly or indirectly involves a particular claim in lieu of that amount.An appeal arises from any other final judgment, decision or order in which the High Court shall declare a case suitable for appeal. The High Courts may, under the Charter, grant leave to appeal to the Privy Council from any preliminary or interlocutory judgment, decree, order or sentence in any matter not being of criminal jurisdiction.[187]

[184] *Id.*,at 215.
[185] *Id.*,at 216.
[186] Sections 109 to 112 and Order 45 of the Civil Procedure Code of 1908.
[187] Cowell, *Supra* note 114, at 221.

It is also empowered to appeal (provided the High Court declares the case worthy of the appeal and under such conditions as it may require) in any judgment, order or sentence of the High Court made using the original criminal jurisdiction. any criminal case, where, any point or points of law are set out in the opinion of the High Court. The High Courts are guided by their Charter in all appeals cases to confirm and forward to the Private Council a copy of the proceedings as they relate to any appeal, and the reasons given by the Judges concerning or against the appeal. The High Courts are also obliged to make decisions and orders of the People's Council.

The establishment of a Federal Court of India was provided by the Government of India Act, 1935. Consistently affects the power of appeal of the Privacy Council. Its jurisdiction after the formation of the federation, as the first Court, will extend to disputes between any parties, that is, the federation, or any other states or federal states, if and to date such disputes must be involved. any questions about the law or the truth, on which the existence or extent of the legal right depends.[188] The law empowers the State Court to accept appeals from the judgments, decisions and final orders of any British High Court by booking.[189] However, the appellate jurisdiction came into force only from 1st April 1937.This section ultimately prohibits the transfer of direct complaints in these cases from the High Courts to the Private Council with or without special consent. The State Legislature may provide that in civil cases, as provided in its Acts that the appeal can appear in the Supreme Court from by the decision, judgement or final order by the Supreme Court of British India without any warranty conditions.[190] Further, an appeal shall lie in a Federated State from a High Court to the Federal Court on certain grounds such as wrong interpretation of an Act or arsing under an agreement made under the Act and etc.[191] Besides this, it exercises advisory jurisdiction also.[192]

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[188] Sec.204oftheGovernmentofIndiaAct,1935:OriginalJurisdictionofFederalCourt.
[189] Sec.205 of the Government of India Act,1935: Appellate Jurisdiction of Federal Court in appeals from High Courts in British India.
[190] Sec.206 of the Government of India Act, 1935: Power of Federal Legislature to enlarge appellate jurisdiction.
[191] Sec.207 of the Government of India Act, 1935: Appellate Jurisdiction of Federal Courts in Appeals from High Courts in Federated States.
[192] Sec.213 of the Government of India Act,1935.- Power of Governor-General to consult Federal Court.

The decisions of the Federal Court can be appealable to the Privy Council but only through leave of the Federal Court or the Privy Council. However, the decisions in the to exercise its original power in any dispute affecting the interpretation of the Law or Order in the council under that or the level of jurisdiction of the jurisdiction and the executive authority given to the Federation as a result of the Entry Tool of any State and in such othercases provided under Sec. 208 is appealable without leave to the Privy Council.[193]

3.3.1. Indian Court for Indians:

The manner in which some of these laws were constructed by the Privy Council often led to critical comment and received with hostile reactions. For this reason, the idea of creating an independent judiciary and conferring finality to the Indian Courts dispensing with the Privy Council became a very important agenda in the proposal for Indian Constitutional reform in 1934 but could not succeed. Unlike Australia[194] and Canada,[195] India was able to confer finality on its own Court when itframed Constitution after attaining its freedom.[196] The history shows that how inevery Constitutional Bill, the Privy Council was conferred the final Court of appeal and it continued till independence. In 1895, Indian politicians drafted a Constitution of India Bill. This Bill wished to continue the Privy Council experiment.

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[193] Sec. 208 of the Government of India Act, 1935: Appeal to His Majesty inCouncil.

[194] ¨In1901,the ConstitutionofAustralia limitedappealsfromthenewfederal HighCourtofAustralia to the Privy Council, by prohibiting appeals on constitutional matters unless leave is grantedby the Australian High Court under Sec. 74 of the Constitution on *inter se* questions i.e. a questiondealing with the powers of the Commonwealth *vis-à-vis* the States or with the powers of the States asbetweenthemselves.TheHighCourtofAustraliausedthisprovisiononly onceforthe RoyalCommissionscase.However,theHighCourtinKirmaniv.CaptainCookCruisesPty Ltd(No2) (1985) 159 CLR 461, has stated that it will not give suchpermission and that the jurisdictionto doso'haslongsincebeenspent'andisnotlikelytoallowthequestiontogoabroadagain.Australia effectively abolished the right of appeal from the Commonwealth courts by statutes namelyPrivy Council (Limitationof Appeals) Act, 1968 and Privy Council (Appeals from the HighCourt)Act, 1975.Appeals from state courts, a continuation of the right to appeal decisions of colonial courtsbefore 1901 continued until they were also abolished by the Australia Act 1986, which was enacted byboththeU.K. andAustralianParliaments, ontherequestofallthestategovernments."

[195] "Canada created its own Supreme Court in 1875 and abolished appeals to the Privy Council incriminal cases in 1888 by amending the Criminal Procedure Code.However, the Privy Council inNadan v. King [1926] A.C. 482 ruled that the provision of the Criminal Code barring appeals to the Privy Council was ultra vires of the Parliament of Canada as it was contrary to Sec. 2 of the ColonialLaws Validity Act 1865. This impediment was removed through the Statute of Westminster, 1931,which ended criminal appeals to the Privy Council in 1933 and civil appeals were abolished in 1949 with an amendment to the Supreme Court Act. However, cases begun before 1949 were still allowed to appeal after 1949, and the final case to make it to the Council was not until 1959 with the case of Ponoka-Calmar Oils v.Wakefield [1960] A.C.18."

[196] Abolition of Privy Council Jurisdiction Act, 1949.

The new Court envisaged by the Bill was to be given broad powers although little indication was given about the kind of people who would be Judges in this Court. Around that time, Indians had already begun to be appointed as members of the Privy Council. In the third decade of this century, a new idea seems to have gained ground. Sir Hari Singh Gour made several attempts to introduce a Bill in the Viceroy's Legislative Council whereby a Supreme Court of India would be created.Five such unsuccessful attempts were made. Meanwhile, the Congress prepared a Draft Constitution called the Commonwealth of India Bill, 1925. The strategy behind the Bill was to create another tier in the hierarchy of Courts. A new Supreme Court would hear appeals from High Courts and could certify cases for appeal to the Privy Council.The Nehru Report in 1928 made the Supreme Court, envisaged by the Bill of 1925 as the final Court of Appeal. An Indian Court in every sense, other than its working and methods, would preside over adjudicatory matters in India.[197] But the British did not consider these suggestions too seriously.

The Report on Indian Constitution Reforms (1919) did not mention the judiciary. Nevertheless, the Indian Statutory Commission under Sir John Simon,which reported in 1930, examined the pressures on the judiciary and noted that, therewas a tremendous confidence in the judiciary as an institution and especially in the High Courts despite the imputation of corruption amongst the lower judiciary. Specific mention was made of the fact that 'the readiness of many Indian tribes to obtain justice has been a constant source of frustration for Western observers and is a source of frustration for many Indians today.' In the recommendations, the Commission made nomention of acentral Federal Court. A particular recommendation was made to administratively de-link High Courts from provincial governments and make them administratively independentof the Central Government. In the year 1934, the White Paperon "Proposals for Indian Constitutional Reform"[198] considered the establishment of a state where there is a need for a State Court which in its original place will determine disputes between the Institute and the Provinces and the countries within; and in its appeal is related to the interpretation of the proposed Constitution. There had to be a complaint to the Privy Council on all these matters.

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[197] Dhavan, *Supra* note 113, at 9.

[198] "By the select committee of the House of Lords appointed to join with a Committee of the House ofCommons to consider the future Government of India and, in particular, to examine and report upon theproposalscontainedincommandpaper"4268,@https://archive.org/stream/indianconstituti029644mbp/indianconstituti029644mbp_djvu.txt (last visited on Nov.03, 2015).

There was also some discussion as towhether the Privy Council shouldbe replacedby a Supreme Court of India to hear appeals in all other civil and criminal matters; itcorresponded with the idea of an Indian Court for Indians.The White Paper arguedthatsince publicopinion was undecidedon this subject,a decision on this matter could be taken later. By way of abundant caution, it drew up tentative proposals for acourt with a civil and criminal appellate jurisdiction and it will be in addition to theproposed Federal Court and there would be appeals to the Privy Council by Special Leave from this Court. In any event, the Joint Committee Report on Indian Constitutional Reform (1934) did not agree that there should be a Federal Court of thekind described in the White Paper and was prepared to add an Advisory jurisdiction toadvice on legal and constitutional matters referred to it.Yet the committee was notwilling to accept proposals for an additional Supreme Court appellate jurisdiction innon-Constitutional matters because it would create a Court of parallel jurisdiction and dilute the importance to be attached to the Constitutional responsibilities of the Federal Court. In the end the committee's views prevailed and a Constitutional Federal Court was established. This Court could hardly be described as overworked. It sat for an average of 28 days a year for over 12 years and decided only 151 reported cases during its entire life; there was not enough work to do.

The real problem began when the Federal Court under "the Government of India Act, 1935", became the Supreme Court under "the Constitution of India". In its very first year, the docket of the Supreme Court contained more applications and petitions than the Federal Court had entertained during its entire life. The makers of the Indian Constitution took a policy decision to create a Court with a very powerful jurisdiction. This jurisdiction was to have the powers of the Federal Court as well as those of a great Supreme Court. Thus, it was an ambitious creation.

3.3.2. AT THE CONSTITUENT ASSEMBLY

In fact, the assembly was not so clear about its aims. It was not so trusting of the judiciary. In the late forties, following the Second World War, there was a lot of

obvious concern about human rights.[199] is natural that the makers of the Indian Constitution also wanted to protect the fundamental rights of the people. The Sapru Committee in 1945 wanted to create a Court which would pose as a guardian of the Constitution. Moreover, the Advisory Committee on Fundamental Rights, 1947 was very concerned to allow the Supreme Court "to interpret and protect the rights of the people". At the same time, some of the makers of the Constitution were a little worried about trusting the Court with extensive powers. In late 1946, in his 'Preliminary notes on Fundamental Rights', B.N. Rau mentioned the risk of entrusting courts and pointed out that there were three problems connected with courts being given power to deal with fundamental rights, in which one of them was "there will be a mass of litigation about the validity of laws and the result is likely to be a vast flood of a dispute immediately following upon the new Constitution."

On May 21, 1947, an *ad hoc* committee of the Supreme Court[200] filed a reporton the kind of Supreme Court they had in mind.There seems to have been no dispute about the fact that the Supreme Court should have a comprehensive federal, constitutional, fundamental rights and general appellate jurisdiction.This report didnot concern itself with the kind of powers that the judiciary ought to have. It merely sought to create a Supreme Court which would combine in it the functions of the existing jurisdictions of the Privy Council and Federal Court to act as the custodian of Fundamental Rights. It seems strange since the committee consisted of eminent lawyers and a Judge of the Federal Court of India. The Union Constitution Committee accepted the report of the *ad hoc* committee on July 13, 1947, concerning itself only with matters connected with the appointment and removal of Judges.Thefirst Draft of the Constitution devoted nineteen articles to the Supreme Court. It gave the Court a very wide jurisdiction. It would be useful to trace in some detail the deliberations of the makers of the Constitution on jurisdictional questions. The extent of the jurisdiction provides a clue as to the kind of role the Court has to play.

[199] The United Nations Declarations of Human Rights, 1948, the European Convention on HumanRights,1950andPresidentTruman'sdeclarationofthefourfreedoms,aresymptomaticofthecosmopolitananduniversalconcernaboutthese matters.

[200] The committee consists of S. Varadachariar, A.K. Ayyar, B.C. Mitter, K.M. Munshi and B.N. Rau.

3.4. THE ORIGINAL JURISDICTION:

3.4.1. Art.32[201] of the Indian Constitution:

The corresponding clause in the draft Constitution is Art. 25. The deliberation about the enforcement of fundamental rights took place on 9th December 1948.[202] The members raised more questions on "the suspension of enforcement of fundamental rights during emergency period" and less on the *res judicata* principle in moving writ before any number of Courts and before any Judge. The parallel jurisdiction vested with the High Courts and also conferring this power to the other Courts besides High Courts without prejudice to the powers of the Supreme Court were also analyzed. There was no mention about the caution of litigation explosion through this Article.

3.4.2. Art.131[203] of the Indian Constitution:

The corresponding clause in the draft Constitution is Art. 109.There was nodiscussion about the proliferation of appeals arising from this provision. It passed off smoothly except the remark made by Shri. Brajeshwar Prasad, who opined that Government of India should adjudicate in case of conflict between two countries or between the State and Government of India. The final decision is of the Government of India.[204] Shri. A. Thanu Pillai accorded his full support to Mr. T.T.Krishnamachari for removing the distinction between States in Part I and States in Part IIIof the first schedule in using this provision to approach the Supreme Court and further, the other important aspect was they removed proviso (i) of this clause,[205] which was accepted by Dr. B.R. Ambedkar also but after the commencement of the Constitution, the same proviso was inserted through the Constitution (SeventhAmendment) Act, 1956, s.5 for the proviso.

3.5. APPELLATE JURISDICTION:-

3.5.1. Art.132[206] of the Indian Constitution:

The corresponding clause in the draft Constitution is Art. 110 and the lengthy deliberation took place on 3rd June 1949. While dealing with this clause, the other

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[201] INDIA CONST. art. 32: Remedies for enforcement of rights conferred by this Part.
[202] ConstituentAssemblyofIndiaVol.VII,930-955(Dec.9,1948).
[203] INDIA CONST. art. 131: Original jurisdiction ofthe Supreme Court.*See*AnnexureB,at299.
[204] Constituent Assembly of India Vol. VIII, 589 (June 3, 1949) (statement of Shri. Brajeshwar Prasad).
[205] "Provided that the said jurisdiction shall not extend to a dispute to which any State is a party, if the dispute arises out of any provision of a treaty, agreement, engagement, sanad or other similar instruments which provide that the said jurisdiction shall not extend to such dispute."
[206] INDIA CONST. art. 132: Appellate jurisdiction of Supreme Court in appeals from High Courts

clauses like Art. 111 and Art. 112 had been deliberated at length. Mr. Naziruddin Ahamed moved an amendment to omit the words "as to the interpretation of the Constitution".[207] He contended that "if we keep the words objected to, the result would be to confine the power to grant certificate to errors as to the interpretation of the Constitution, and it will therefore automatically prevent the High Court from issuing certificate if there is an error of law which does not involve the interpretation of the Constitution" and he justified it as "The distinction between the question of law involving interpretation of Constitution and other questions of law was justified under old conditions where there was a division of jurisdiction between the Federal Court and now, as thefunctions of the Privy Council and the functions of the Federal Court has been united in the functions of the Supreme Court." He suggested for reconsidering Art. 110, 111 and 112 (presently Art. 132,[208] 133[209] and 136[210] of the Indian Constitution) such that one provision relating to leave of the High Court to determine the substantial question of law without of making either a distinction between civil and criminal cases or the difference between the interpretation of the Constitution and other question of law. Pandit Thakur Das Bhargava observed that the appeal remedy should not be curtailed using pecuniary limitations.[211] Dr. Bakshi Tek Chand supported the amendment moved by Mr. Naziruddin Ahmad.[212] Despite that, Dr. Ambedkar reminded how the constitutional questions arose under Government of India Act, 1935 in civil caseswhen the value was below Rs. 1000/- and in criminal cases where, the sentences were for imprisonment for small periods and when the important substantial questions were involved and suggested that unrestricted righ to appeal in matters having substantial constitutional questions which are now available,

[207] Constituent Assembly of India Vol. VIII, 592 (June 3, 1949) (statement of Naziruddin Ahmad).
[208] *See* INDIA CONST. art. 132
[209] INDIA CONST. art.133: Appellate jurisdiction of Supreme Court in appeals from High Courts regarding civil matters.
[210] *See* INDIA CONST. art. 136
[211] The value of the property should not be fixed as Rs. 20,000/- and if a man who possess a property of Rs. 5,000/- which is involved in litigation have the right to appeal otherwise Art. 110 will not bebeneficial to everyone. [Constituent Assembly of India Vol. VIII, 599 (June 3, 1949) (statement of Pandit Thakur Das Bhargava)].
[212] "That article seeks to replace section 205 of the Government of India Act, which deals with appeals in cases in which questions of the interpretation of the Constitution are involved.In such a case, an unrestricted right of appeal is given, whether the case is of civil or criminal nature, or arises in other proceedings and regardless of the value of the subject matter. It is a very valuable right which must be preserved in the Constitution, subject, of course, to the conditions that the High Court certifies that the question of law involved is a substantial one."

should be kept intact in the future Constitution also.[213] Shri Alladi Krishnaswami Ayyar replied to Mr. Naziruddin Ahmad about the scheme of different articles. Concerning Art. 110, there was no relation to the subject value, and is only related to the nature of the question raised. Article 111 relates to "the general right of appeal to the Supreme Court where civil rights are involved between two parties" and finally, Art. 112, "which gives broad power to the Supreme Court to entertain appeals from the High Court at the instance of the Supreme Court by granting special leave to it and remarked that the Supreme Court with all these provisions has wider jurisdiction than any superior court in any part of the world". Hence, under those circumstances, all cases may arise, cases involving constitutional inquiries and no, may arise before a Supreme Court, and the plaintiff may be remanded for trial in the Supreme Court.[214] He also shared this own experience in the Federal Court that "in several cases where an appeal has been lodged on a purely constitutional question, the Court has gone into the merits of the case and decided really on other points. Sometimes, the constitutional point is like a peg on which the litigant wants to hang his own appeal. He merely starts a constitutional question.The High Court grants the leave.The matter comes up before the Supreme Court. Then the counsel feels that there is not much force on the constitutional point, and then he practically concentrates his attention on the other points in the case. Further, it is to say that in every case in which a question of law arises in the whole of India in any court, an appeal must lie tothe Federal Court. It will certainly be in the interest of lawyers, and it may be in theinterest of wealthy litigants, but certainly, it will not be in the larger interest of this country."[215] The researcher totally agrees with the observation made by Shri. Alladi Krishnaswami Ayyar that the question is merely on the 'substantial question of law'will certainly increase the cases in the Supreme Court, and the Court will act like another appellate Court.

Dr. B.R. Ambedkar replied that the provision of Art. 110 and Art. 111 are different and said that the appeals where constitutional points arise are provided for in Art. 110 and questions where constitutional law is not involved are provided for in

[213] Constituent Assembly of India Vol. VIII, 613 (June 3, 1949) (statement of Dr. B.R. Ambedkar).
[214] Constituent Assembly of India Vol. VIII, 595-596 (June 3,1949) (statement of Shri. Alladi Krishnaswami Ayyar).
[215] Constituent Assembly of India Vol. VIII, 596 (June 3, 1949) (statement of Shri. Alladi Krishnaswami Ayyar).

Art. 111. He substantiated the differenceinvolvedinitthatwhen ever appeal goes to Supreme Court that includes substantial question of constitution, “the minimum number of judges have to sit in on the case will be five”. While in some cases complaints where no constitutional question arises has been left with theSupreme Court to define the number of Judges who wouldbe required to sit on it byits rules.The existence of the term ‘interpretation of this Constitution’ doesn’t preclude a complaint excluding where there is an involvement of constitutional.[216] Concerning, whether the Supreme Court should have criminal jurisdiction or not? The amendment moved by Mr. Naziruddin Ahamad was negatived. However, in subsection (3) of article 110 the words' not only because any of the above questions were incorrectly determined, but also ', the words' because any of the above questions were incorrectly determined. and with the permission of the Supreme Court 'was changed and the amendment was adopted.

3.5.2. Supreme Court Criminal Appellate Jurisdiction:

The debate concerning Art. 110 of the draft Constitution went out of the way andmany members have were irrelevant to the point of Mr. Naziruddin Ahmad. It is pertinent to cull out the debates of the members about the Supreme Court criminal appellate jurisdiction also because lengthy deliberation occurred on this issue. Shri Rohini Kumar Chaudhuri,[217] Pandit Thakur Das Bhargava,[218] Prof. Shibban Lal Saksena,[219] Mr. Frank Anthony,[220] Dr. P.K. Sen, Pandit Lakshmi

[216] Constituent Assembly of India Vol. VIII, 613 (June 3, 1949) (statement of Dr. B.R. Ambedkar).
[217] Constituent Assembly of India Vol. VIII, 596-97 (June 3, 1949) (statement of Shri. Rohini Kumar Chaudhuri).
[218] “He expressed his anguish and fear that till the Parliament passes any law relating to the Supreme Court criminal appellate jurisdiction, many persons who would want to appeal to the Supreme Court will not be able to avail them of that opportunity. He needs an absolute right of appeal by any person who lose his life or liberty and not seek special leave to appeal. He replied to Ayyar’s argument that if we keep ‘question of law’ instead of ‘interpretation of the Constitution,’ it will not open the flood-gates of litigation on the contrary if such question is decided once for all you will be closing the gates of litigation.” [Constituent Assembly of India Vol. VIII, 598-599 (June 3, 1949) (statement of Pandit Thakur Das Bhargava)].
[219] “He expressed his concern that the volume of civil litigation in this country is probably ten to fifteen times the volume of criminal cases.There is an absolute right of appeal in civil cases involving twenty thousand rupees or more.They have set greater sanctity on the property than on human life and suggested that if we want to restrict the volume of cases going to the Supreme Court, we must restrict the property value in the case of civil appeals.” [Constituent Assembly of India Vol. VIII, 600 (June 3, 1949) (statement of Prof. Shibban Lal Saksena)].
[220] He wholeheartedly supported Mr. Saksena and complemented that his point of view is an unexceptional one where he shared his own experience about the innocent condemned prisoners. Hefully accepted the adviceof Shri. Ayyar except where the men who are condemned to death should have the inherent right of appeal to the Supreme Court and no man should be hanged [Constituent Assembly of India Vol. VIII, 601-602 (June 3, 1949) (statement of Mr. Frank Anthony)].

Kanta Maitra,[221] Dr. P.S. Deshmukh,[222] Shri Jaspat Roy Kapoor[223] and Dr. Bakshi Tek Chand[224] are more concerned with the Supreme Court criminal appellate jurisdiction and expressed their grievance that no article of the Constitution opens the way for the people punished or convicted for loss of life or liberty by a Criminal Court particularly persons condemned to death to appeal to the Supreme Court as a right because the word 'criminal' does occur but they require interpretation of the Constitution. Conversely, Shri Krishna Chandra Sharma spoke that these provisions are taken as it is from the Government of India Act, 1935, and moreover, he contemplated that more appeals would go before the Supreme Court if the jurisdiction of the Supreme Court is liberalized and it will become impossible for the Supreme

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[221] "He opined vociferously that the right of appeal should be embodied in the body of the Constitutionitself and not left to Parliament.The Constitution makers should not shirk their responsibility scared away by the prospectof having to employ more Judgesand also suggested to add that the right of appeal should be embodied in the body of the Constitution itself besides Art. 112 B, which confers on the Supreme Court power to entertain and hear appeals from any judgment or sentence of a High Courtin the territory of India in the exercise of its criminal jurisdiction subject to such conditions and limitations as may be specified in such law." [Constituent Assembly of India Vol. VIII, 605-606 (June 3, 1949) (statement of Pandit Lakshmi Kanta Maitra)].

[222] He extended his wholehearted support from the point of view of personal liberty in India concurring with other members. [Constituent Assembly of India Vol. VIII, 604 (June 3, 1949) (statement of Dr. P.S. Deshmukh)].

[223] "He observed that one main ground which has been urged by the members who oppose the right of criminal appeal is that it will create a very large amountof work for the Supreme Court, and a very large number of Judges will require dealing with those cases. If they feel afraid of that, then somedevice should be adopted to reduce the number of civil appeals such as by limiting the value of the civilcases which come up for appeal i.e. we may increase it to Rs. 50,000/- or lakh of rupees. We hear somuch about inflation of currency in these days and the value of money having gone down and further,the life and liberty of a person are more valuable than money and in fact, cannot be estimated in terms of money at all. He raised a pertinent question that should or should not a convicted person have at least one single right of appeal. He opined that it is a fundamental right for which provision must bemade in the Constitution." [Constituent Assembly of India Vol. VIII, 608-609 (June 3, 1949) (statement of Shri. Jaspat Roy Kapoor)].

[224] "He compared with the Privy Council and observed that there is no right to Privy Council as of right in any case, whether the sentence is that of death or transportation for life or a short period, or whether the question of law involved is very substantial. Moreover, the High Court has no power to certify any case as a fit one for appeal to the Privy Council. It is only by special leave of the Privy Council that an appeal in a criminal case can lie.There are inconsistencies in granting special leave, and they do only on the ground that principles of natural justice had been violated.He expressed his doubt that whetherthe Supreme Court will follow the practice of the Privy Council or lay down a different convention in granting special leave under Art. 112.He also prefers that some provisions should be made in the Constitution giving a limited right of appeal in criminal cases under certain specified circumstances besides law made by the Parliament." [Constituent Assembly of India Vol. VIII, 610-612 (June 3, 1949) (statement of Dr. BakshiTek Chand)].

Court to deal with those appeals from the different High Courts.[225] Shri. K.M. Munshi also approved it.[226] Dr. B.R. Ambedkar did not make any positive comment on conferring the criminal appellate jurisdiction to the Supreme Court through constitutional provisions and confined to the amendment moved to Art. 110.[227]

3.6. Art.133[228] of the Indian Constitution:

The corresponding clause in the draft Constitution is Art.111. The deliberation on this article started on 3rd June 1949 and adjourned on 6th June 1949 and a little amendment made on 16th Oct. 1949, which is of no significance.Shri. Raj Bahadur proposed to delete the words "except the States for the time being specified in Part III of the first schedule" in Art. 111(1). He opined that there ought not be any discrimination or distinction between any 2 parts of the country.[229] Shri V.S. Sarwate[230] & Shri Yudhisthir Misra[231] supported this amendment. Dr. Bakshi Tek Chand moved deleted the words "not less than twenty-thousand rupees" and inserted with the words "or such amount as may be fixed by law by Parliament". If the amount is fixed in the Constitution, it will remain rigid limit until the Constitution is amended to make any change according to the depreciation of the money. It involves a cumbersome process. Thus, Parliament should be empowered to change it by bringing law to that effect.[232] But, it was objected by Mr. Naziruddin Ahamed[233] stating that some amount should be fixed in the Constitution may be fifteen thousand rupees

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[226] Constituent Assembly of India Vol. VIII, 600 (June 3, 1949) (statement of Shri Krishna Chandra Sharma).

[227] "He considered this question from not only abstract theoretical principles but from the practical point of view. He spoke through statistics that at least in one province it could not be less than 100 or 150, and we will have something like fifteen provinces in the future.It must mean that in cases of death sentences there would not be less than a thousand appeals per year. He opined that the issue of criminal appeal should be left to Parliament to consider, rather than to impose liability on the Supreme Court to hear all criminal appeals irrespective of limitations or restrictions." [Constituent Assembly of India Vol.VIII, 607-608 (June 3, 1949) (statement of Shri. K.M. Mushi)].

[228] Constituent Assembly of India Vol.VIII, 614-615 (June 3, 1949) (statement of Dr. B.R. Ambedkar).

[229] *See* INDIA CONST. art. 133

[230] "The inclusion of the words objected to detracts not only from the jurisdiction and authority of the Supreme Court over the entire territory of India but also detracts from the fullness of the unity of our country and the democratic freedom of the Indian States people. The House and the Government stand committed to bringing the States on a par with the provinces.As such it is only desirable that all distinctions, discrimination, and differences should be obliterated. We want no purple patches on the map of India.We want that the process of the integration and unification of our country should be accomplished at as early a date as possible."

[231] Constituent Assembly of India Vol. VIII, 625-626 (June 6, 1949) (statement of Shri V.S. Sarwate).

[232] Constituent Assembly of India Vol. VIII, 627-628 (June 6, 1949) (statement of Shri Yudhisthir Misra).

[233] Constituent Assembly of India Vol. VIII, 616-617 (June 3, 1949) (statement of Dr. Bakshi Tek Chand).

so that it would not be changed many times without amendment to the Constitution.[234] Professor Shibban Lal Saksena thought that the Supreme Court should be free to allow cases to be referred to the High Court only in those cases that Parliament has legally determined. It will limit the number of complaints in civil cases.[235]Shri M. Thirumala Rao submitted that we should not burden the Constitution with too much detail. Powers of the State Court and other courts must be vested in the national legislature for exercise.[236] Shri Alladi Krishnaswami Ayyar supported the amendment brought by Prof. Shibban Lal Saksena,which was moved by Shrimati Durgabai.[237] He stated that if Art. 111 alone stands with no reference toany Parliament's legislation, the appeal's conditions shall be crystallized and anymodification in the procedure of appeal or appeal's rightshall be only by anamendment of constitution that is not required. He made certain references to substantiate it.[238] Shrimati G. Durgabai found that Art. 111(a),(b) & (c)made the conditions of appealas part of the Constitution. She wanted a kind of elasticity, and observed that "it should be left to the wisdom of the Parliament to lay down by law if it finds necessary and essential to removethe rigidity and see that the conditions are not stereotyped".[239] Shri. B. Das felt that the Parliament should not interfere with the Supreme Court.[240] Shri Rohini Kumar Chaudhuri did not favour the amendment and said "everything shouldn't be left to the Parliament, and if they lay down the procedure and the circumstances under which an appeal could be filed to the Supreme Court will finish the whole thing."[241]

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[234] Constituent Assembly of India Vol.VIII, 617 (June 3, 1949) (statement of Mr. Naziruddin Ahmad).

[235] " He substantiated that if the Parliament is given the power to regulate the civil appeals to the Supreme Court it will be a much better situation that what is contemplated by this article.This article will be misused, and the Constitution will become a battleground for lawyers.They will take all civil appeals to the Supreme Court. And, when big counsels appear to argue cases of rich parties, the High Court will give them permission to go to the Supreme Court for appeal.If this article remains as it is, and all appeals incivil cases are permitted to go to the Supreme Court, then, in that case, we will require very many more Judges than even 20 or 30." [Constituent Assembly of India Vol. VIII, 620 (June 6, 1949) (statement of Prof. Shibban Lal Saksena)].

[236] Constituent Assembly of India Vol. VIII, 622 (June 6, 1949)(statement of Dr. M. Thirumala Rao).

[237] Constituent Assembly of India Vol. VIII, 622 (June 6, 1949) (statement of Shri Alladi Krishnaswami Ayyar).

[238] "If you take into account the history of legislative powers in India from the time the Letters Patent were issued, the jurisdiction of the several High Courts in India was subject, even before popular element was introduced, to the general legislative jurisdiction of the Governor-General in Council: and today even an appeal to the Privy Council, under the provisions of the Civil Procedure Code, is subject to the jurisdiction of the central legislature in India" [*Id.*].

[239] Constituent Assembly of India Vol.VIII, 627 (June 6, 1949) (statement of Shrimati G. Durgabai).

[240] Constituent Assembly of India Vol. VIII, 625 (June 6, 1949) (statement of Shri. B. Das).

[241] Constituent Assembly of India Vol. VIII, 628 (June 6, 1949) (statement of Shri Rohini Kumar Chaudhuri).

Dr. Bakhshi Tek Chand supporting Mr. Rohini Kumar observed that if the terms "subject to any law made by Parliament" are added at the starting of the Art. 111, as recommended by the amendment, then it shall be open to Parliament to devolve the powers of the Supreme Court in the matter of disputes falling under subsection (a) or (b) or (c) or in all the joint proceedings.[242] Dr. P.K. Sen also concurred that powervests with the Parliament to bring changes to provide elasticity will change the whole aspect of the article, and it requires careful consideration before supporting this amendment.[243] Dr. B.R. Ambedkar replied that Art. 111 is an exact reproduction of sections 109[244] and 110[245] of the Civil Procedure Code[246] and are just resounding the status between the Privy Council and the High Court and trying to prove them as between the Supreme Court and the High Court.[247]

3.7. Art.134[248] of the Indian Constitution:

When Art. 110 was deliberated, the house went far away and discussed more on "providing the Constitutional right of appeal to the Supreme Court in criminal matters" instead of law made by the Parliament for that purpose. A new article or clause emerged because of prolonged discussion under Art. 110. This new clause is moved as Art.111-A,[249] which is the corresponding clause of Art.134. The

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[242] Constituent Assembly of India Vol. VIII, 630 (June 6, 1949) (statement of Dr. Bakhshi Tek Chand).
[243] Constituent Assembly of India Vol. VIII, 631 (June 6, 1949) (statement of Dr. P.K. Sen).
[244] Sec. 109 of the Code of Civil Procedure.- When appeals lie to the Supreme Court.
[245] [Value of subject matters] Repealed by the Code of Civil Procedure (Amendment) Act, 1973 (49 of 1973).
[246] The Code of Civil Procedure, No. 8 of 1908.
[247] "Sec. 109 & 110 of the Civil Procedure Code are again a reproduction of the powers conferred by paragraph 39 of the Letters Patent by which the King constituted the different High Courts in the Presidency Towns.These Letters Patent were instituted or issued in the year 1862 and also contain a power to the Legislature to alter the powers given by the Letters Patent. But although this power existed right from the beginning they have remained undisturbed. If my amendment went through, the result would be this: that the Supreme Court would continue to be a Court of Appeal and Parliament would not be able to reduce its position as a Court of Appeal, although it may have the power to reduce the number of appeals orthe nature of appeals that may go to the Supreme Court." [Constituent Assembly of IndiaVol.VIII, 631-632 (June 6,1949) (statement of Dr. B.R. Ambedkar)].
[248] INDIA CONST. art.134: Appellate jurisdiction of Supreme Court in regard to criminal matters.
[249] "That after clause (2) of Article 111, the following new clause be inserted:- (3) An appeal shall lie tothe Supreme Court against the judgments of the High Courts in the territory of India in the exercise ofits criminal jurisdiction in the following cases:- (a) convicting accused persons as a result of acceptance of appeals against their acquittal. (b) sentencing to or confirming the sentence of death or transportation for life. (c) in respect of other matters when the High Court grants a certificate that the case is a fit one for appeal to the Supreme Court."

discussion on this article took place in two days 13th and 14th June 1949, respectively.Pandit Thakur Das Bhargava read his amendment in this new clause and it has beenfound that there is a plethora of amendments relating to the same matter, which nearlycomes to 26.[250] Shri L. Krishnaswami Bharthi suggested that all the amendments may be moved, and every member may speak on their amendment. Shri Alladi Krishnaswami Ayyar agreed on. Pandit Thakur Das Bhargava formally moved all his amendments as asked by the President. Ranging from the amendments of granting appeals in cases where the sentence was initially 5 years or greater up till the final amendment where the Supreme Court confirms the case is ready for an appeal to the Supreme Court and finally, Parliament may grant statutory authority to entertain or hear appeals in the High Court. Shri Jaspat Roy Kapoor, Dr. B.R. Ambedkar, Shri H.V. Pataskar, Dr. Bakshi Tek Chand, Kazi Syed Karimuddin, Mr.Naziruddin Ahmed moved their amendments subsequently. Mr. Z.H. Lari opened his discussion after all the amendments were moved by the members about this clause. He pointed out that the actual question in-front us is "Should the subject left totally toParliament or Should the Constitution by itself provide for appeals in specific cases"? Even after the House adopts the test and the Constitution shall provide for criminal appeals cases, what sort of case are those where a complaint will arise?[251] The whole debate revolves around the two questions. He favoured for three suggestions.[252] Mr. Tajamul Husain entirely agrees three points in the amendments moved by other members.[253] Shri Jaspat Roy Kapoor who had made some remarks relating to his

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[250] Constituent Assembly of India Vol. VIII, 821 (June 13, 1949) (statement of Pandit Thakur Das Bhargava).

[251] Constituent Assembly of India Vol.VIII, 827 (June 13, 1949) (statement of Mr. Z.H. Lari).

[252] "Firstly, if there is an appeal decided by a High Court and the High Court itself considers that the case is a fit one for appeal, there is no reason why such an appeal should not be allowed.Secondly, an appeal shall lie as a matter of right if the case involves a substantial question of law but it should be left to Parliament because it is not clear as to the number of appeals that are likely to come forward through such a provision. Thirdly, there should be a right of appeal as a matter of right where the High Court passes a sentence of death for the first time. Moreover, the right of appeal even in those cases where the sentence imposed on the accused for the first time exceeds five years can be made by the law prescribed by the Parliament if other suggestions also made to wait on that aspect."

[253] "Firstly, if the High Courtcertifies thatitis afitcase to be heard by the Supreme Court, the case must be sent there. Secondly, if the High Court reverses the acquittal order passed by a Session Court on appeal from Government and has given an order of death, in such case an appeal should be allowed to go to the Supreme Court. Thus, in all murder cases where both points of law and fact are involved, appeals from the High Court should go to the Supreme Court. The third point is cases, which involves substantial questions of law. Lastly, if the High Court enhances the sentence passed by the lower Court, then it must be allowed to go to appeal up to the Supreme Court." [Constituent Assembly of India Vol. VIII, 829 (June 13, 1949) (statement of Mr. Tajamul Husain)].

amendment and before that, had attacked Dr. Ambedkar that he gave uphis position, which he wanted to take up in conferring constitutional right to appeal tothe Supreme Court in criminal matters. Again, going to the square one he said that "no appeal shall lie to the Supreme Court except in accordance with legislation that might be passed by Parliament"[254] Kapoor pointed out that "the implication of the amendment is that if once the legislation confers this right to the Supreme Court, on a subsequent date, the Parliament may choose, annual, amend or revoke such legislation which is a dangerous proposition, which means, just to please the parliament, that the Supreme Court must act in a way to retain that right or not". He observed that "We have been crying for the independence of the judiciary. But when we come to frame legislation relating to the power of the Supreme Court, which is the highest judiciary in the land we are trying to lay down a provision which will virtually strike at the root of the independence not only of thejudiciary but the supreme judicial tribunal in the land. Thus, we should not leave it tothe sweet will of the Parliament to legislate or not to legislate to that effect."[255] He is more particular in one suggestion in his amendment[256] that Parliament is empowered to deal with the criminal jurisdiction then they must legislate the enactment within a year of the enforcement of this Constitution. Mr. Naziruddin Ahmad deliberated solong about the ill effects of non-conferring the constitutional right of appeal to the Supreme Court.[257] He thinks that the right of final appeal, whatever they are, should

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[254] ConstituentAssembly of IndiaVol.VIII,830 (June 13, 1949) (statementof ShriJaspatRoyKapoor).

[255] "Moreover, Parliament, which will come into being after the new elections, should deal with thelegislation; it means that the whole thing will be kept in abeyance for at least two years.The questionarises as to what will be the fate of those unfortunate persons who are condemned to death for the firsttime by finalorderof theHighCourt.Further,he concededthe considerablesubstance of thearguments of Dr. Ambedkar and Mr. Munshi that if there is an unrestricted right of appeal vested in theSupreme Court the case work would be a huge one.But, no member favour for an unlimited right ofappealtotheSupremeCourtandshouldbeconfinedtoafew specificcases."[*Id.*,at831-832].

[256] "That in amendment No. 24, the proposed new article 112-B, for the words 'Parliament may' the words 'Parliament shall' within one year of the commencement of this Constitution be substituted."

[257] "We have allowed under article 111, appeals in civil cases where a substantial question of law is involved, subject to a pecuniary limitation. The question is whether we would be right in putting any limitation on people's life and liberty. Can we distinguish the life and liberty of the meanest individual in the State from those of a wealthy man? In criminal law in a civilized State, no distinction can exist between the rich and the poor, between the great and the small. In fact, it is only by allowing recourseto the highest Court of law that the supremacy of law can be fully established." [Constituent Assembly of India Vol. VIII, 833 (June 13, 1949) (statement of Mr. Naziruddin Ahmad)].

be embodied in the Constitution itself and should not be left to the Parliament.[258] Moreover, he assured that "there would not be the number of cases crop up before the Supreme Court when we allow cases involving a substantial question of law alone".[259] On the other hand, in granting certificates also, the High Court will exercise extreme caution and will commit to issue a certificate only in cases where there was a total violation of evidence of party discrimination or procedural ruleswhere the certificate is issued and whatsoever, the Supreme Court under Art. 112 willalso exercise a restraining influence on indiscriminate appeals. Dr. B.R. Ambedkar substituted the new Art. 111-A[260] in the amendments Nos. 23 and 24 but did not sayanything and wished to reserve his remarks towards the end.[261] Pandit Thakur Das Bhargava congratulated Dr. B.R. Ambedkar and those who have brought about this compromise on this issue and observed that the amendment is in the influence of the exclusively with regard to notices of enhancing the revisional powers. He had only one issue concerning Art. 111(c). He also insisted that this House ought to take of and to see to provide either in High Courts or the higher

[258] "In fact,it has the right to appeal to His Excellency in the Council for criminal proceedings in connection with an important legal matter or in cases where gross injustice has occurred in any other manner. Similarly, the right of appeal should be given in criminal cases on suitable grounds and the appropriate cases are would be cases involving a substantial question of law. Further, if the different High Court may have conflicting views on the points of the law, that would be the basis for allowing the appeal to go to the Supreme Court, because thus alone the law could be made uniform and consistent. Thus, the matter of law should be considered to a certain degree of respect, and at least in the larger legal question, we should allow a man to request the intervention of the highest Court." [*Id.*, at 835-836].

[259] "The condition as to a 'substantial question of law' will eliminate all questions of errors of procedure which do not go to the root of the matter, which do not affect the merits of the case, and therefore, there is no fear of congestion of cases on this ground.Therefore, the fear that there would be congestion of cases if we allow the substantial question of law to justify appeals to the Supreme Court is unjustified.Therefore, it is submitted that the condition of a substantial question of law is a sufficient safeguard against frivolous appeals being taken to Supreme Court." [Constituent Assembly of India Vol. VIII, 838 (June14, 1949) (statement of Mr. Naziruddin Ahmad)].

[260] Art. 111-A: "Appellate jurisdiction of the Supreme Court with regard to criminal matters.- The Supreme Court shall have power to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India- (a) if the High Court has on appeal reversed the order of acquittal of an accused person and sentenced him to death; or (b) if the High Court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or (c) if the High Court certifies that the case is a fit one for appeal to the Supreme Court: Provided that an appeal under sub-clause (c) of this clause shall lie subject to suchrules as may from time to time be made by the Supreme Court and to such conditions as the High Court may establish or require. (2) Parliament may by law conferonthe Supreme Court any further powers to entertain and hearappeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law."

[261] Constituent Assembly of India Vol. VIII, 840 (June 14, 1949) (statement of Dr. B.R. Ambedkar).

Supreme Court that every such convicted person has got a chance to appeal.[262] Prof. Shibban Lal Saksena disappointed with the amendment because a person who is condemned to death will not proceed with the Supreme Court as a habit and only if the High Court certifies that the case is appropriate to appeal to the Supreme Court. The poor condemned prisoners will get affected and hope they will get a remedy in the law made by the Parliament.[263] Pandit Lakshmi Kanta Maitra was satisfied by this amendment saying it is comprehensive but firmly held the view that cases involving capital punishment ought be a rightful for appeal available in the Constitutionand not satisfied with the reason that number of criminal cases involving death sentences require a very large number of Judges.[264] Shri Krishna Chandra Sharma didn't agree with sub-clauses (a) and (b) although he agrees with sub-clause (c) and clause (2) ofthe amendment act.[265] Shri Alladi Krishnaswami Ayyar sought clarification in clause (c)of Art. 111-A that is a reproduction of Sec. 411-A of the Cr.P.C. relating to appeals from Supreme Court judgments. To the Supreme Court according to clause(c) it is open to impose any conditions or any restrictions on the right of appeal. In the same way, the High Court as per the choice, can impose any conditions of the right to appeal.[266] Shri Raj Bahadur remarked that "the accused person should not be provided with an opportunity to postpone or procrastinate the appeal under the garb of an

[262] "The proviso with regard to (c) is a thing which should not have been put in here.In regard to article111 on the civil side, the only requirement is that the High Court has to certify that the case is a fit onefor appeal to the Supreme Court. But regarding the criminal side, these restrictions are unnecessaryrestrictions in my opinion and have been placed concerning part (c) which say that the Supreme Courtshall make certain rules, and the High Court shall attach certain conditions.On the civil side, there areno such restrictions, and it passes my understanding why there should be these restrictions on the criminal side. Moreover, under part (a) of this amendmentthe only occasionwhere an appeal isallowed in respect of order against the order of acquittal is when a person has been sentenced to death. He opined that every person who after acquittal has been sentenced in the appeal should possess the inherent right to appeal.He also agrees that if there are thousands of such appeals our Supreme Court will be flooded with cases and in practice, there will be a great difficulty." [Constituent Assembly of IndiaVol.VIII,841(June 14, 1949) (statement of Pandit Thakur Das Bhargava)].

[263] Constituent Assembly of India Vol. VIII, 843 (June 14, 1949) (statement of Prof. Shibban Lal Saksena)

[264] Constituent Assembly of India Vol. VIII, 843 (June 14, 1949) (statement of Pandit Lakshmi Kanta Maitra)

[265] "He submits that the accused alone is not an aggrieved party, the victim also an aggrieved party and observed the stability of the State demands the cause of prevention of crime demands that the man must be hanged. Moreover, from the point of view of justice, it covers so many other questions, so many other cases or it is a general question of law that there should be uniformity on the principle of law or interpretation thereof, I would submit that sub-clause (c) of the amendment has a case." [Constituent Assembly of India Vol. VIII, 845 (June 14, 1949) (statement of Shri Krishna Chandra Sharma)].

[266] "The difficulty is how this clause takes us further than article 112 of the Constitution? The Supreme Court under Art. 112 is not fettered by these rules which are laid down for the benefit of the High Court under clause (c)?"

Appeal".[267] He was bothered very much by the inordinate delay in the disposal of cases in our country at that time and requested that the right of appeals may be dealt and decided by the parliament. Dr. Bakshi Tek Chand did not agree to enlarge the scope of the article to unreasonable limits to make right of appeal even on the lesser sentence passed by the High Court in an appeal on reversing the order of the acquittal. For all the matters, it is not necessary to transform the High Court as a Court of Appeal.[268] Concerning apprehension raised by Shri Alladi Krishnaswami Ayyar regarding sub-clause (c), he thinks that there is no conflict with Art. 112.[269] He answered to Raj Bahadur apprehension that this provision opens the floodgates of litigation as that it is the same.It is only in a limited number of cases that the High Court can determine whether a case is suitable for appeal. Dr. B.R. Ambedkar cleared that "the intention of Art.111-A is to refer general criminal appellate jurisdiction upon the Supreme Court and of a very limited character".[270] The purpose of subsections (a) and (b) is therefore to grant the right to appeal to a person who was first released and sentenced to death by the High Court. Concerning sub-clause (c), it is similar to Sec. 411 of the Criminal Procedure Code.[271] Moreover, it has been confined to very rigid limits by the proviso. It would be according to both the ends to the limitations and conditions and regularized by the High Court and the

[267] "He opined that so far as the right of appeal is concerned, there is a viewpoint that this right of appeal also constitutes the right to delay justice. The sub-clauses (a) and (b) give a very limited scope of appeals and only once in a blue moon that the High Court reverses order of acquittal, and that it is also very rare that a High Court takes over a case and decides it. However, the substantial number of cases would be falling under the purview of sub-clause (c) but everything depends on upon the rules providedattachedtothesaidsub-clause." [Constituent Assembly of India Vol. VIII, 849 (June 14, 1949) (statement of Shri Raj Bahadur)]

[268] "Life and liberty are certainly more important than property, but an unrestricted right of appeal eitherin civil or criminal matters will do incalculable harm to society, and moreover, the Supreme Court willbe flooded with criminal appeals."[Constituent Assembly of India Vol. VIII, 850 (June 14, 1949) (statement of Dr. Bakshi Tek Chand)].

[269] "The power of the Supreme Court to grant special leave to appeal is of a peculiar nature. This is at present done in exercise of the Royal prerogative which His Majesty the King exercises through the Judicial Committee of the Privy Council."

[270] "This provision has been inserted by taking one general principle which has been accepted without question, and that principle is that where a man has been condemned to death he should have at leastone right of appeal, if not more". [Constituent Assembly of India Vol. VIII, 853 (June 14, 1949) (statement of Dr. B.R. Ambedkar)].

[271] "There are two courses open to this House concerning Sec. 411 of Cr.P.C., and one is either to take away this provision altogether or to extend this provision to all the High Courts. I feel that deliberately taking away an existing right which has been exercised and enjoyed by people, at any rate, is unnatural, and the only alternative course is to enlarge the provisions in such a manner that it will apply to all the High Courts."

rules made by the Supreme Court. To the question raisedby ShriAlladi Krishnaswami Ayyar,[272] he replied that "the proviso was similar to the proviso contained in Sec. 109 of the Civil Procedure Code. In case if we consider sub-clause (c) in civil matters, not considering the Article 112, do we have problem can there to have sub-clause (c), although we have Art. 112"? One should remember that Article 112 is one that left the Supreme Court with absolute liberty by the way of conditional admissions of appeals. Law cannot come on the way in the subject of jurisdiction.In a question raised by the President about the differences between the cases in which the sentence was first issued by the Supreme Court where it is reviewed in terms of the development of the sentence and the cases in which the death sentence is imposed.[273] He answered it in two situations. If the High Court increases the sentence against the defendant, it does not begin to convict him; The suspect is already charged. In case of appeal against acquittal, the High Court reverses findings of the trial court to convicts defendant. The another difference is, in the case of a development, trial is turned as anordinary complaint, then the defendant has the legal right to appeal under the Cr.P.C. that shows merely the development of the sentence is not necessary, even his sentence may not get confirmed by the case's facts.However, if Parliament, further, feels that a case shouldbe provided, their is an alternative under Art. 111-A(2). All the amendments were withdrawn leaving the amendment brought by Dr. B.R. Ambedkar to get adopted.[274]

3.8. Art.136[275] of the Indian Constitution:

The corresponding article of the draft Constitution is Art. 112. The debate on this article took place on 6th June 1949 & 16th Oct. 1949.On 6th June 1949, Shri Ram Sahai moved an amendment,[276] which consists of two sections.First one deals with the exclusion of States and Unions of States from the Apex Court's jurisdiction.

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[272] "If Art. 112 defines the jurisdiction which the Supreme Court has over the High Courts if that is there in civil matters, why have sub-clause (c) in Art.111-A(1)?"
[273] Constituent Assembly of India Vol.VIII, 856 (June 14, 1949) (statement of Mr. President).
[274] Constituent Assembly of India Vol.VIII, 858 (June 14, 1949) (statement of Mr. President).
[275] *See* INDIA CONST. art. 136
[276] In article 112, the words "except the States for the time being specified in Part III of the First Schedule, in cases where the provisions of article 110 or article 111 of this Constitution do not apply" be deleted.

The another deals with limitations of the rights of the Supreme Court in Art. 110 and 111, which was moved by Dr. Ambedkar on behalf of the Drafting Committee.[277] Mr. Kaka Bhagwant Roy supported the amendment stating that NOT ALLOWING to make the appeal to the Supreme Court is a great injustice to the citizens of the state. As it is given in all provinces, The people of the States also should be given the right to appeal. Prof. Shibban Lal Saksena opined that "the Supreme Court should enable to decide appeals on the principles of jurisprudence and considerations of natural justice as like Privy Council besides entertaining any appeal against any judgement according to the law of the land".[278] Shri Krishna Chandra Sharma submitted that Art. 112 provides enough safeguard concerning thejustice being done to the individual whether in an order or a criminalproceedings or any civil case.[279] Pandit Thakur Das Bhargava observed that Art. 112 is exceptionally broad. The words "in any cause or matter is a departure from the established law of the land also". The jurisdiction under this article is almost exclusively divine in nature, for this Supreme Court will be able to bring about any decision that makes absolute justice between the nations and the people before it.[280] Shri Alladi Krishnaswami Ayyar observed that it was necessary to recognize the broader nature and scope of the state provided by this article. Nothing prevents the Supreme Court for the development of its own conventions, laws and the exercise of its powers as unrestricted waysince long in the nation.[281] Shri H.V. Pataskar appreciated the incorporation of special jurisdiction to the Supreme Court whether civil, criminal, revenue or otherwise.

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[277] Constituent Assembly of India Vol. VIII, 634 (June 6, 1949) (statement of Shri Ram Sahai).

[278] Constituent Assembly of India Vol. VIII, 636 (June 6, 1949) (statement of Prof. Shibban Lal Saksena).

[279] Constituent Assembly of India Vol. VIII, 638 (June 6, 1949) (statement of Shri Krishna Chandra Sharma)

[280] He relied upon Art.118 "for this purpose, which reads as 'The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree passed, or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament' I should like to think that our Supreme Court will also be above law in this matter, in this sense that it shall have full right to pass any order which it considers just; and in this light even if there is no right of appeal, the Supreme Court can interfere in any matter where dictates of justice require it to do so.Thus, the Supreme Court will be in this sense above the law, and this should not be restricted by any canon or any provision of law." [Constituent Assembly of India Vol. VIII, 638 (June 6, 1949) (statement of Pandit Thakur Das Bhargava)].

[281] "For example, there is nothing to prevent the Supreme Court from interfering even in a criminal case where there is miscarriage of justice.…" This plenitude of the jurisdiction under Art. 112 enable the Supreme Court to develop its jurisprudence according to the conditions suits the country. [Constituent Assembly of India Vol. VIII, 639 (June 6, 1949) (statement of Shri Alladi Krishnaswami Ayyar)].

The Supreme Court in this country is intended to serve the Lord's work in other lands where it is the source of all justice. Today there are no Kings, and in a natural way, a specific framework that should be the custodian of the administration of justice and that should ensure that justice is done between individuals and in all matters.[282] Dr. B.R. Ambedkar has agreed to the Article 112 without speaking any word and adopted the amendment moved by Shri. Ram Sahai. On 16th June 1949, Shri. T.T. Krishnamachari moved an amendment in Art. 112, where the words 'final order' in clause (1) are ought to be removed and revised by insertion of the words 'determination, sentence, ororder,' and regarding clause (2), it aims to exclude the decision of a court martial from the jurisdiction of the Supreme Court.[283] However, Prof. Shibban Lal Saksena moved for the deletion of the proposed amendment to clause (2) in Art. 112. He wished to bring a charge of breach of faith against Dr. B.R. Ambekar in this matter.[284] Shri R.K. Sidhwa had doubts about the accidents caused by military motor drivers killing the civil population and left scot-free leaving the victims to suffer without getting any compensation.[285] Pandit Thakur Das Bhargava remarked that in Cantonment Act and Territorial Forces Act still there are few offenses in where the civil citizens are accused and at least those sentences should be brought into the jurisdiction of the Supreme Court.[286] Dr. B.R. Ambedkar accepted the statement made by Prof. Shibban Lal Saksena and saidtheoretically thatproposition isstill correctbut according to the rulings of High Courts, British Courts and even the Civil Courts will not use jurisdiction to interfere with any acquisition or decision of a military tribunal.[287]

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[282] Constituent AssemblyofIndia Vol.VIII,639 (June6, 1949)(statement ofShriH.V.Pataskar).
[283] ConstituentAssemblyofIndiaVol.IX,376(Oct.16,1949)(statementofShriT.T.Krishnamachari).
[284] "I had tabled an amendment to Art. 112A in which I had especially desired that provision should be made that persons sentenced to death by courts-martial should be able to appeal to the Supreme Court. Dr. Ambedkar assured me that Art.112 covers these individuals, so I have withdrawn my amendment, but now just the contrary provision is being made and is going to be accepted. I have seen that thepresent procedure of Judge-Advocates is something against all the laws of jurisprudence, and I think that at least persons convicted of death should have the right of appeal to the Supreme Court after their judgments. In the name of discipline, the people should not be butchered." [Constituent Assembly of India Vol. IX, 377 (Oct.16, 1949) (statement of Prof. Shibban Lal Saksena)].
[285] Constituent Assembly of India Vol. IX, 377-378 (Oct.16, 1949)(statement of Shri. R.K. Sidhwa).
[286] Constituent Assembly of India Vol. IX, 378 (Oct. 16, 1949) (statement of Pandit Thakur Das Bhargava).
[287] "The Defence Ministry feel that if a member of the armed forces can look up either to the Supreme Court or the High Court for redress against any decision which has been taken by a court or tribunal constituted for the purpose of maintaining discipline in the armed forces, discipline would vanish.Imust say that it is an argument against which there is no reply." [Constituent Assembly of India Vol. IX, 379 (Oct.16, 1949) (statement of Dr. B.R. Ambedkar)].

It will open still to High Court or to the jurisdiction exercise by High Court, in case the military tribunal has exceeds the jurisdiction within the jurisdiction of the law that creates and constitutes this court or tribunal. In addition, it is permissible to an armed force's member to appeal to the Courts for warrant issues to determine whether a military tribunal is being conducted within the jurisdiction of the law. If amember of armed forces commits a certain crime and he will be booked both underordinary courts of criminal law and also court martial.The proposed amendmentswere adopted. He did not make any point relating to the increase of appeals fromcourt-martial to the Supreme Court as like he made in Art.111-A of the draft Constitution.

3.9. Art.138[288]oftheIndianConstitution:

The corresponding clause in the draft Constitution is Art. 114. There was only one amendment, which was brought by Mr. Gupte but not moved. Dr. B.R. Ambedkar clarified Shri Alladi Krishnaswami Ayyar regarding appeals in income taxcases that "this provision can be used for the purpose of conferring authority upon the Supreme Court in dealing with the matter explicitly."[289] When the discussion was taking place for conferring criminal jurisdiction for the Supreme Court under Art.111-A, Shri K. Santhanam pointed out that Parliament still has the power to invest theSupreme Court with jurisdiction. Dr. B.R Ambedkar replied that it was only with regard to the Union List alone.[290] There was no debate about the proliferation of appeals arising from this provision. The Article has been adopted on 6th June 1949 without any debate on it.

3.10. ART.143[291] OF THE INDIAN CONSTITUTION:

The corresponding clause in the draft Constitution is Art. 119. It is an advisory jurisdiction of the Supreme Court of India, where the Supreme Court tenderadvice to the President whenever he seeks any opinion on law or a fact in question. The President rarely finds opinion, so there was no debate about the cases crops up

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[288] INDIA CONST. art. 138: Enlargement of the jurisdiction of the Supreme Court.*S*
[289] Constituent Assembly of India Vol. VIII, 642 (June 6, 1949) (statement of Dr. B.R. Ambedkar).
[290] Constituent Assembly of India Vol. VIII, 855 (June 14, 1949) (statement of Dr. B.R. Ambedkar).
[291] INDIA CONST. art. 143: Power of President to consult the Supreme Court.

through President to the Supreme Court. There was only one amendment[292] which was brought by Shri H.V. Kamath on 27th May 1949. Besides this, he sought clarification that "whether it is mandatory for the Supreme Court to report its opinion to the President's question through this article"? The Supreme Court is not bound, replied Dr. B.R. Ambedkar. However, the amendment was decided to hold over by Dr. B.R. Ambedkar because it also has reference to articles 109-114.[293] However, it was not discussed later.

Thus, the Supreme Court of India contributed much to the development of constitutional jurisprudence of our country and produced landmark cases in constitutional adjudication and set a precedent for other Constitutional Courts. But, of late, it is collapsing because of huge backlog and mounting arrears of cases. The lack of enthusiasm in setting Constitution Benches over the past decade made the Supreme Court to act more as an appellate Court. The main reason is that, a small bench with the minimum numbercan clear most cases, and if 5 or greater number of judges are assigned a single case than ordinary complaints grow automatically. From the foregoing discussion, it is clear that the Supreme Court of India does not have any specific constitutional jurisdiction. Even after having Constitutional benches for adjudicating substantial questions of the constitution, which happens only with the consent of the Chief Justice of India. And, only as per the will of CJI, constitutional decision is determined. We have special Courts and Courts which dealt with cases that rise in a particular case but unfortunately we have failed to set up a Court or the Constitutional Court or the High Court to judge constitutionally.The framers of our Constitution gave a very broad-based appellate and original jurisdiction to the Supreme Court, which is very clear from the Constituent Assembly debates but they contemplated that it will function like Supreme Court of United States but unfortunately since the late 1950s, the Supreme Court sat in fragmented benches to clear arrears. The majority of the members agreed for broad jurisdiction to be conferred on the Supreme Court without anticipating the repercussions of it. Dr. B.R. Ambedkar stressed that the scheme of the Constitution was to allow constitutional,

[292] "That in clause (2) of Art. 119, for the word 'decision' the word 'opinion' and for words 'decide the same and report the fact to the President', the words 'submit its opinion and report to the President' be substituted respectively." [Constituent Assembly of India Vol. VIII, 387 (May 27, 1949) (statement of Shri. H.V. Kamath)].

[293] Constituent Assembly of India Vol. VIII, 387 (May 27, 1949) (statement of Dr. B.R. Ambedkar).

civil and federal appeals to the highest Court of the land. Later, he was convinced by the majority of members to add one more article in the Constitution to provide therightof criminal appeal only in capital punishment. Besides this, a very broad jurisdiction was given under Art. 136 i.e. grant of special leave by Supreme Court itself. Only a few members were concerned with the workload problems with this extended jurisdiction. The civil and criminal jurisdictions were altered through constitutional amendments and the Court also took policy decisions in limiting the entertainment of appeals. In spite of all developments, still the Court is reeling under the enormous backlog of cases.

CHAPTER-IV: THE INDIAN SUPREME COURTS AND ITS BURGEONING APPELLATE JURISDICTION

The "Indian Constitution" provides various jurisdictions for the Supreme Court of India under different categories having authority that includes the authority of the interpretation of Constitution. The alteration of the jurisdiction under the authority of the constitution cannot be done by the parliament. But, parliament can alter the "Supreme Court's authority of jusidiction" according to the Constitutions' Article 138. Parliament exercised this provision to the fullest extent possible and gave additional powers to the Supreme Court by the Constitution amendment and Acts enactments.Following the Constitutional Amendment Act (forty-two), Art. 323-A and Art. 323-B provides the tribunal-system as the expansion of the judicial system in the nation.[294] The idea of the amendment is to simplify the work of the Courts precisely the High Courts, that are over-burdened with labor, service, and other issues and the tribunals formed under certain regulations having the equal status that of the High Court as appeals. In addition, tribunals may approach the Supreme Court according to Art. 136. Further, Parliament has power to form a special or tribunal body according to Art. 323-B and this specific Act provides for "a direct appeal to the Supreme Court from these tribunals for the exclusion of power from the High Court". Besides the Parliament's extension of the jurisdiction, the "Supreme Court" enlarged its jurisdiction through its activist role by interfering in each and every Governmental policy with an intention of freeing the Governmentfrom corruption and saving the citizens' tax money. In this aspect, the Court was put in an awkward position by creating self-inflicted injuries and thereby finding it difficult to dispose of the appeals in a time bound manner. Thus, the researcher makes an attempt in this chapter to analyse critically over the "Supreme Court jurisdictions and particularly the appellate jurisdiction" with the available data to know either increase of filing or backlog of cases each year.

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[294] M.P.JAIN, INDIAN CONSTITUTIONAL LAW 456 (2003).

4.1. THE AUTHENTICITY OF THE DATA:

It is significant to note that the collection of empirical data relating to the docket in the Supreme Court carried out by Dr. Rajeev Dhavan during the period 1951 to 1970, Mr. Vijay K. Gupta from 1973 to 1981 and finally by Mr. Nick Robinson from 1993 to 2011 are neither conclusive nor perfect. Dr. Rajeev Dhavan retrieved information about the workload of the "Supreme Court" with the help of Supreme Court Judges and the registry, which he acknowledged in the preface of his book.[295] Mr. Vijay K Gupta collected data from the reported judgments in the All India Reporter, where all judgments of the Court were not reported in it, so not fully relied upon for the purpose of analysis.[296] Mr. Nick Robinson retrieved data by using internal Supreme Court data provided by the Court itself, and he concentrates on the admission docket from 1993, because before that, the data was unclear and has many deficiencies.[297] Even after 1993, the accounting of cases has some anomaly, and although it is imperfect, a complete understanding of the Court's docket is attempted to a possible extent. The researcher has relied on the data concerned according to the relevancy of the study.

4.2. SUPREME COURT UNDER THE "CONSTITUTION OF INDIA"

The "Supreme Court is a multi-jurisdictional Court" and its area of concern is much wider and have larger extent of limits than any Court of a same position in any

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[295] RAJEEV DHAVAN, THE SUPREME COURT UNDER STRAIN–THE CHALLENGE OF ARREARS, PREFACE (1978).

[296] VIJAY K. GUPTA, DECISION MAKING IN THE SUPREME COURT OF INDIA (1995).

[297] "For example, the annual statements and monthly statements sometimes are inconsistent with the statistics available in the annual report, especially in pending matters.The 2008-2009 Annual Report listed 20,947 pending regular hearing matters in 1995. Meanwhile, the 1995 annual statement contains 298 more pending regular hearing matters, or 21,245. Such discrepancies are reasonably frequent between the data in the annual statements and the annual report; luckily the differences are all as relatively minor. Further, the Supreme Court in its annual report and Court News keep track ofinstituted, disposed of, and pending admission cases, but it counts the disposal of unregistered cases inthe calculation. As a result, many cases are counted twice: once when they are instituted/disposedof/pendingasanunregisteredadmissioncaseandthenagainwhentheyareinstituted/disposedof/pending as a normal admission matter after they are cured.Meanwhile, unregistered cases that are never cured are still counted once even though they never appear before a Judge. For example, in2009, the annual report states the Court had 69,171 admission matters instituted while it disposed of 64,282 admission matters, and 30,087 admission matters were pending. In actuality, unregistered matters counted for 20,854 of the instituted admission matters, 20,112 of the disposed of admission matters, and 1,921 of the pending admission matters. As such, it would be more intuitive, and perhapsmore accurate, to state that in 2009 the Court had 48,317 instituted admission matters, 44,170 disposedof admission matters and 28,166 pending admission matters. By including unregistered matters in thefinal tally the Court effectively counts the same case twice, once as a defective unregistered matter, and then again once the defect is cured and the case is re-entered into the system as a normal admission matter." *See* Nick Robinson, *The Indian Supreme Court by Numbers,* 210-212 (Azim Premji University, LGDI Working Paper No. 2012-2, 2012).

part of the World.The Supreme Court under our Constitution is the greatest unifying and integrating force of our country. Its Writ runs throughout the length and the breadth of our vast country and "all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court".[298] The jurisdiction of the Court under ourConstitution may be as follows: (A) Original Jurisdiction (B) Appellate Jurisdiction and (C) Advisory Jurisdiction.

4.2.1. Actual Jurisdiction:

(i) Writ Jurisdiction under Article 32: It ensures the appealing rights by "moving the Supreme Court for the protection of fundamental rights". The Court is empowered to issue "directions or orders or writs" such as Mandamus, Prohibition, Habeas Corpus, Certiorari, Quo Warranto, whatever is needed for exercising the fundamental rights. Thus, Article 32 is popularly known as fundamental rights jurisdiction. The Court began by interpreting it widely at "the commencement of the Constitution". The Court took the view that "the right to move the Supreme Court" was a fundamental right, and it has to deal with that question of maintainability according to the nature of the case; it has no discretion in the matter.[299] This non-discretion absolutist approach was, however, dissolved in later years. In *Tilok Chand Moti Chand v. B.H. Munshi*,[300] the Supreme Court applied "the doctrine of laches or delay" to applications under Art. 32. In *Rabindranath v. Commissioner*,[301]Justice Sikri did not condone the delay of 15 years.[302] Nevertheless, ten years earlierthe same Court had ruled that fundamental rights cannot be waived.[303] The total cutback under this jurisdiction had happened in the year 1987, while Justice E.S. Venkataramiah in *P.N. Kumar v. Municipal Corporation of Delhi,*[304] directed the writ-petitioner to the "High Court as per Art. 226 instead of entertaining before the Supreme Court as per Article 32" saying that "this Court has no time today even to dispose of cases which have to be decided by it alone and by no other authority".

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[298] INDIA CONST. Art.144: "Civil and judicial authorities to act in aid of the Supreme Court".
[299] Daryao vs State of Uttar Pradesh, A.I.R.1961S.C.1457.
[300] (1969) 1 S.C.C.110.
[301] A.I.R.1970 S.C.470.
[302] Justice Sikri observed as "It is said that Art. 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay".
[303] Basheshar Nath v. Commissioner ofIncomeTax, A.I.R. 1959 S.C.149.
[304] (1987) 4 S.C.C.609.

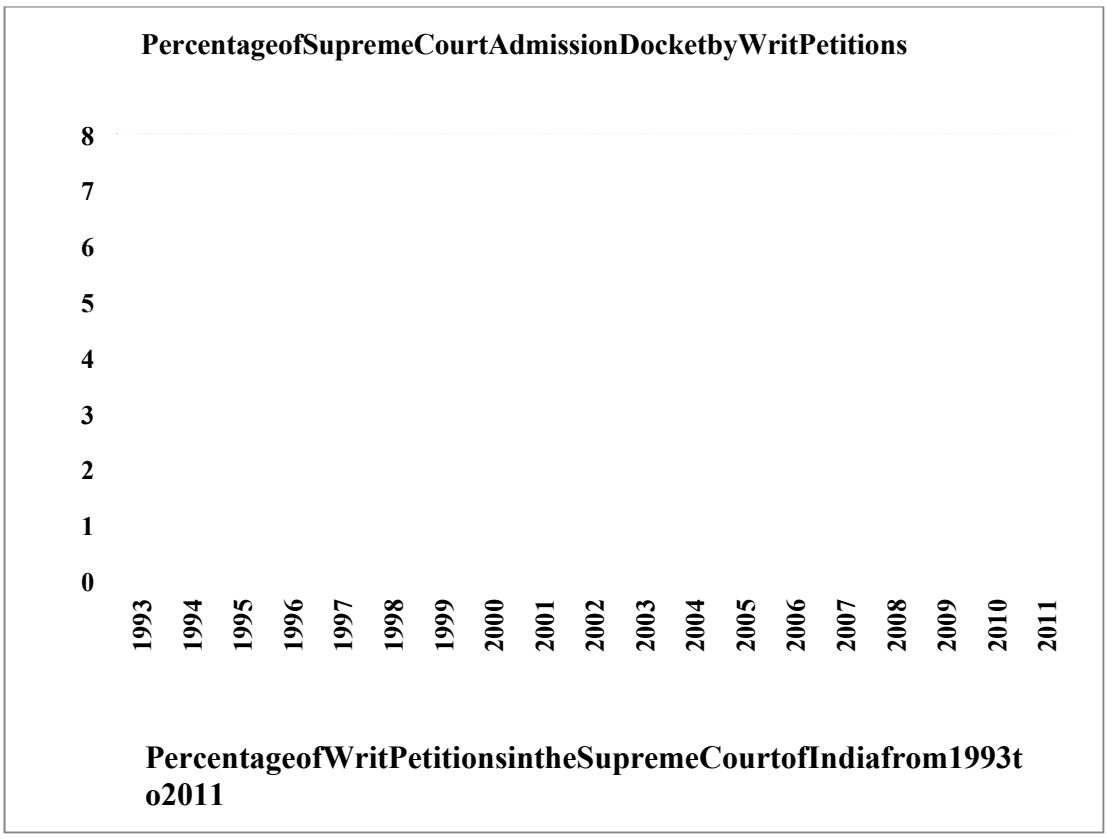
A large number of cases were pending from 10 to 15 years. Even if no new case is filed in this Court hereafter, with the present strength of Judges it may takemore than 15 years to dispose of all the pending cases." In the same year, in *Kanubhai Brahmbhatt v.State of Gujarat*,[305] the Supreme Court had expressed concern "to the clients moving towards the Apex Court as per Article 32 of the Constitution instead of firstly approaching the concerned High Court."[306] After that, it has become common practice in the Supreme Court to transfer a letter of request to a High Court without reviewing whether any fundamental rights had been violated. Thus, decrease in Writ petitions under Art. 32 are evident from the "Supreme Court" data available from 1993 to 2011.

Percentageof Supreme Court Admission Docket by Writ Petition			
Year	**WritPetitions**	**Year**	**WritPetitions**
1993	6.8	2003	2.1
1994	4.1	2004	2.5
1995	5.3	2005	2.7
1996	5.5	2006	2.1
1997	4.6	2007	2.0
1998	4.1	2008	1.9
1999	3.9	2009	1.5
2000	3.7	2010	1.2
2001	3.2	2011	1.8
2002	2.5		
Source:Nick Robinson analysis of Supreme Court Data			

[305]A.I.R. 1987 S.C.1159.

[306] "If this Court takes upon itself to do everything which even the High Court can do, this Court will notbe able to do what this Court alone can do under Article 136 of the Constitution of India, and otherprovisions are conferring exclusive jurisdiction on this Court. There is no reason to assume that theconcerned High Court will not do justice. Or that this Court alone can do justice. If this Court entertainswrit petitions at the instance of parties who approach this Court directly instead of approaching theconcerned High Court in the first instance, tens of thousands of writ petitions would in the course oftime be instituted in this Court directly. The inevitable result will be that the arrears were pertaining tomatters in respect of which this Court exercises exclusive jurisdiction under the Constitution will assume more alarming proportions…Faith must be inspired in the hierarchy of courts and the institution as a whole, not only in this Court alone. And, this objective can be achieved only this Courtshowing trust in the High Court by directing the litigants to approach the High Court in the first instance".

The above data is represented below through the bar diagram and the graphical picture to find out admission of writ petitions entertained from 1993 to 2011.



(ii) The Constitution of India's Original Suits as per Article 131: It provides special jurisdiction to the "Supreme Court" in case of "any conflict between 1) States (one or more) and Government ofIndia or 2) between Government of India and any State orStates on one side and one or more other States on the another side 3) between two ormore States, if any such such disputes involving any question upon the extent or existence of legal right dependency". The Constitution is the supreme law of the land that incorporates the precise principles of the treaty between the federal states that lead to the outcome of national and regional governments with specific powers and functions.It's necessary that there must be some independent agency touphold the Constitution and to keep the different states within proper limits. However, it is not surprising that various provincial governments or federal governments often pass laws that violate each other's authority. Also, the two neighboring regions of the federation may disagree on certain issues between them. Therefore, the chances of conflict "between the federal government and the regional governments on the one hand and between the regional governments themselves on the other are very high". In all these cases, there should be a proper agency for resolving all such disputes and defining the specific sector of each government and its mandate.[307] The agency being the federal judiciary.[308] In short, Art. 131 is the conscience-keeper, the balance wheel of the federation. There should not be any compromise on Art. 131 as like in under Art. 32. It is theforemost duty of the "Supreme Court in a federal Constitution to decide the disputes among the states or between the centre and the state(s)". However, Art. 131 is subject to the proviso and other provisions of the Constitution. Nevertheless, the Supreme Court by its interpretational acumen hears the matter which was excluded from Art.131 in one or other grounds to render complete justice to the parties come before them and to maintain the federal unity and stability, which is the essential function of the Union Judiciary by virtue of Constitution. The below mentioned cases seems to be removed from the actual jurisdiction of the "Supreme Court" and placed in other tribunals:

(a) Disputes specified in theProviso to Arts.131 and 363(1).[309] In 1970, the Central

[307] M.V. PYLEE, THE FEDERAL COURT OF INDIA, 12 (1996).

[308] Naming system of the function 'federaljudiciary' differs from nation to nation, i.e., "Supreme Court in India, Canada and U.S.A, High Court in Australia".

[309] INDIA CONST. art. 363: "Bar to interference by Courts in disputes arising out of certain treaties,agreements,….."

Government decided to abolish privy purses and other privileges of the Rulers.Forthis purpose, the Government of India moved a Constitution Amendment Bill in Parliament, but the same could not be enacted, so they took recourse to Article 366(22)[310] for the meaning of ruler. The validity of the Order of the President issued under Art.366 (22) in derecognizing all the rulers was challenged[311] "before the Supreme Court under Art. 32". A question for the consideration of the Court was 'Is the Court was barred from taking cognisance of the petition under Art. 363?' The Court answered in the negative and interpreted Art. 363 narrowly following the known principles of enactment's interpretations without considering the Court's jurisdiction by stringently adhering to the "exclusion of the jurisdiction of a civil court, and least of all the Supreme Court is not to be lightly inferred." (b) Regarding disputes of waters between states, in connection with the statutory tribunal mentioned in Art. 262(2)[312] mixed and read with Sec. 11[313] of Inter-State Water Disputes Act.[314] By this provision, the "Supreme Court" dismissed *in limine* the suit brought by the State of Karnataka challenging the interim Order of the Tribunal relating to the Cauvery Water Dispute[315] but the Supreme Court had admitted the Special Leave Petition challenging the final award of the Cauvery Water Disputes Tribunal[316] filed by the four states.[317] The inter-State river water disputes are aggravating the friction between oramong the states and the Tribunal Orders were flown in the air. Thus, taking the issue seriously, the Supreme Court by its interpretational tactics hears the dispute between or among the States on one ground or the other without taking cognizance as fresh water dispute. It shows that the entertainment of these cases by the Supreme Court despite lack of jurisdiction increases the burden of cases. "(c) Matters referred to the Finance Commission.[318] (d) Adjustment of certain expenses as between the Union".

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[310] " 'Ruler' means the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such Ruler."
[311] Madhav Rao Scindia v. Union of India (A.I.R.1971S.C.530); (1971)1S.C.C.85.
[312] INDIACONST. art.262cl.2:
[313] Sec.11of Inter-State Water Disputes Act, 1956. *See* Annexure C, at 313.
[314] Act No. 33 of 1956.
[315] CauveryWater DisputeTribunal, 1993 (Supp.1) S.C.C. 96.
[316] Venkatesan J., *Supreme Court admits SLPs against Cauvery Tribunal award*, The HINDU (Chennai), May 08, 2007, at 1.
[317] State of Karnataka, Tamil Nadu, Kerala and Puducherry.
[318] Art. 280.

and the State.The above (c) and (d) are highly technical in nature and only theexperts known the intricacies involved in it.So, the Supreme Court as a policydecision will not interfere into the affairs of the Finance Commission as well as the distribution of expenses between the Union and the State.[319] The exempted jurisdictions are subject to the interpretation of the "Supreme Court" and moreover, the other way of bringing the exceptions under Article131, through the advisory jurisdiction under Art.143(2).

(iii) Transfer of cases:

(a) Article 139A(1)[320]***:*** Provides that in issues of similar involvement, or more serious matter, similar legal proceedings are outstanding in "the Supreme Court and one or several High Courts or two or greater High Courts, and the High Court is content, in itself, or at request of Attorney General of India or any part in any such case, where those questions are of more importance, the High Court may quash the case or outstanding cases before the High Court or the High Courts and dismiss it, in all issues themselves". This Article was inserted by "the 42nd Amendment Act, 1976, and after that Clause (1) was substituted by the 44th Amendment Act, 1978". The purpose of this is for avoiding the conflicted judgments "between the High Courts and the Supreme Court". That is to preliminary to save the time and money to the petitioners for the matter facilitating the provision of a final declaration regarding constitutional question of law of the Supreme Court's law on such a long trial. Thisamendment is utmost necessary to effectuate quick disposal of cases as well as bringuniformityinlayingdownthedecisionsandavoidmultiplicityofcasesormushrooming of cases in different forums for the cause of action.This provision hasnot been invoked many items, but it has been "sparingly used by the Supreme Court when the question involved in the cases should be substantial and of great importance".[321] The cases crop up through this provision is meagre and cannot be saidasaburdentotheSupremeCourt.

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[319] DURGA DAS BASU, "COMMENTARY ON THE CONSTITUTION OF INDIA" 5643(2009).
[320] INDIACONST.art.139-A(1):Transferofcertaincases.
[321] Union of India v. M. Ismail Faruqqui, (1994) 1 S.C.C. 265; Punjab Vidhan Sabha v. Prakash Singh Badal, 1987 (Supp) S.C.C. 610.

(b) Article 139A(2)[322]***: "***Provides that the Supreme Court, if it deems it necessary to do so for the purposes of justice, may refer any case, complaint or other pending action before any High Court to any other High Court."

(c) Section 25[323]***, Code of Civil Procedure, 1908***[324]***: "***Provides that the Supreme Court may appeal any case, appeal or other action from the High Court or other civil court in the same region to the High Court or to another civil court in any other State."

(d) Section 406[325]***, Code of Criminal Procedure, 1973***[326]***: "***It provides that the Supreme Court may transfer any case or appeal from the High Court to another High Court or from a criminal court under one High Court to another criminal court having equal or higher jurisdiction, which is subordinate to another High Court."

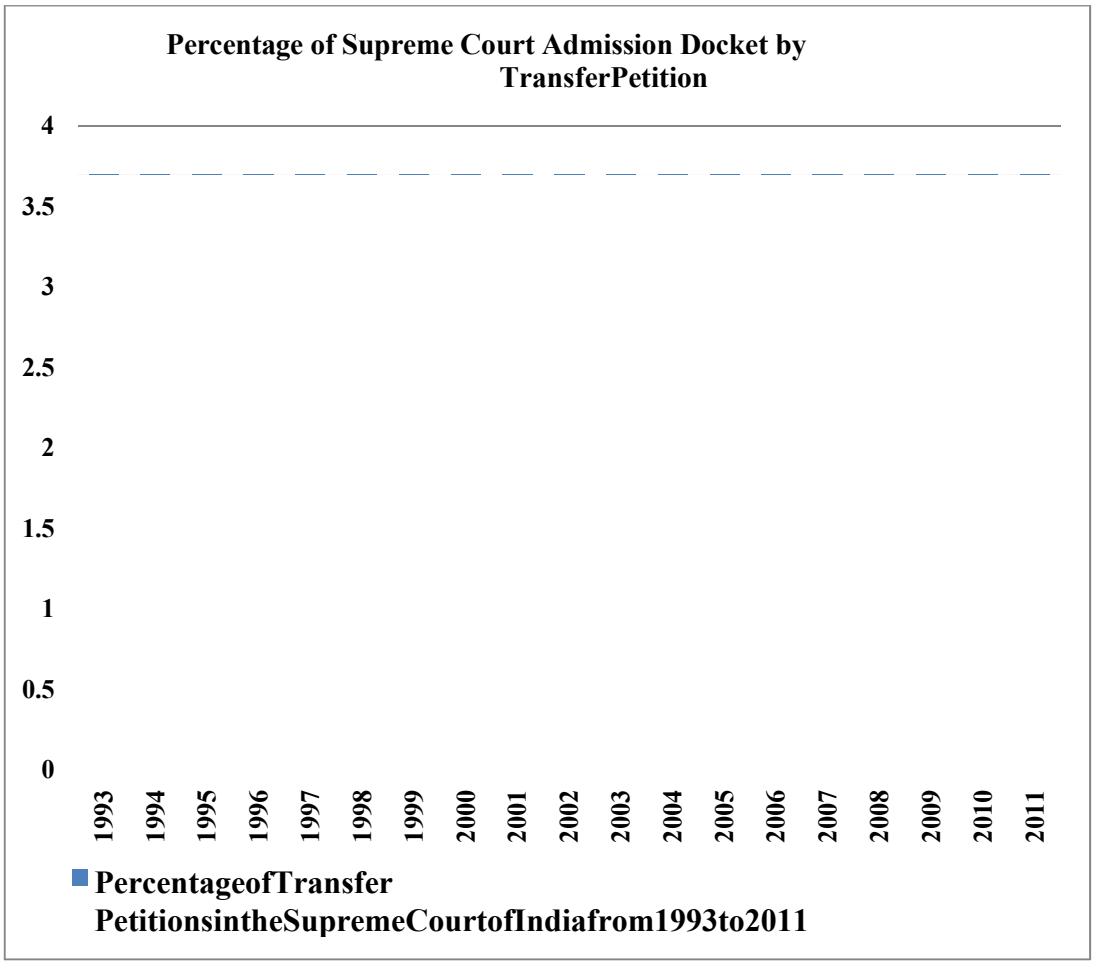
The above mentioned Article 139-A(2) and the corresponding sections of the Code of the Civil Procedure and the Code of the Criminal Procedure has been enacted with the object of "the assurance of the fair trial is the first imperative of the dispensation of justice". These provisions were enacted in order to provide the fair trial, appeal or proceedings in the High Court or the Courts subordinate to it. However, it was necessary not only at that point of time but also even now. This jurisdiction is much wider and a summation of interesting case-laws. The Court dwells deeper into great detail with regard to the complete record of case and goes into several aspects including consequences of political repression.It is also evident from the Supreme Court data available from 1993 to 2011.

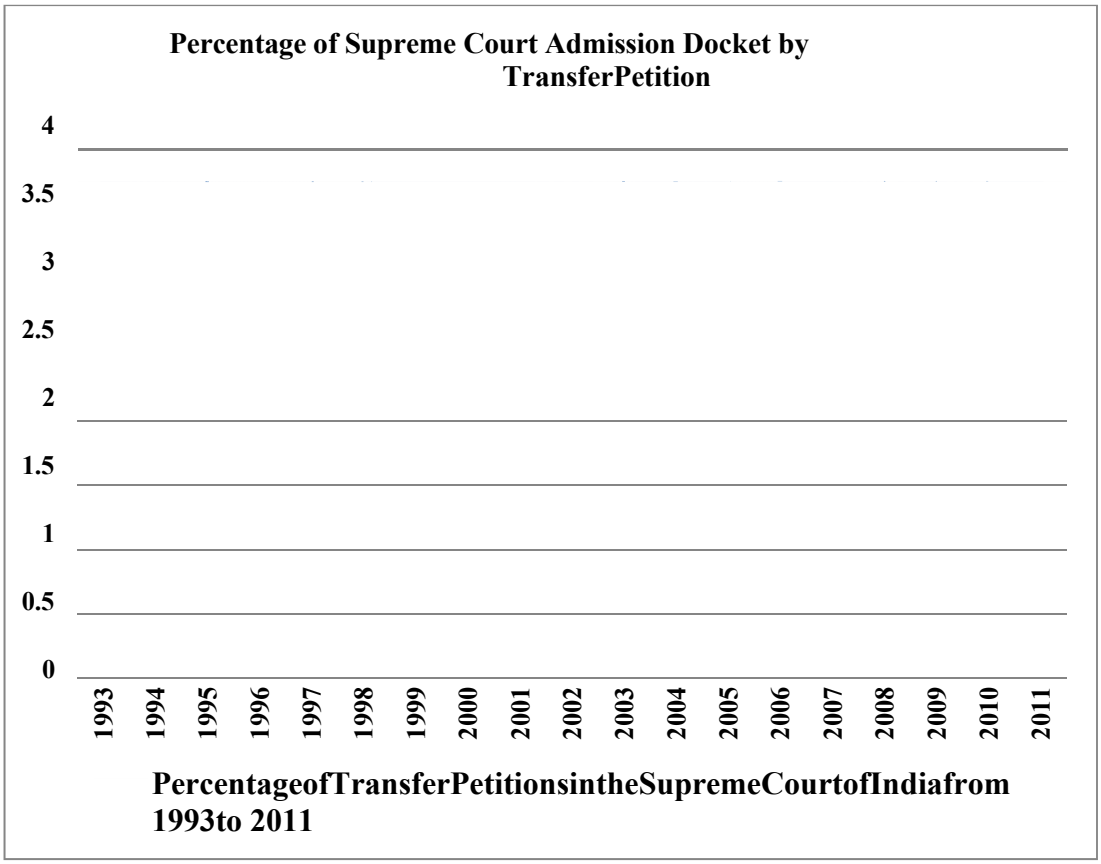
PercentageofSupremeCourtAdmissionDocketbyTransferPetition			
Year	**TransferPetitions**	**Year**	**TransferPetitions**
1993	2.6	2003	2.8
1994	2.4	2004	2.4
1995	2.2	2005	3.3

[322] INDIA CONST. art. 139-A, cl.2.
[323] Sec. 25 of the code of civil procedure: "Power of Supreme Court to transfer suits, etc".
[324] Act No. 5 of 1908.
[325] Sec. 406 of the code of criminal procedure: "Power of Supreme Court to transfer cases and appeals".
[326] Act No. 2 of 1974.

1996	2.6	2006	3.7
1997	2.2	2007	3.0
1998	2.2	2008	3.2
1999	2.5	2009	3.1
2000	2.3	2010	3.2
2001	2.6	2011	3.7
2002	2.7		
Source: Nick Robinson analysis of Supreme Court Data			

It is represented below through the bar diagram and the graphical picture to find out the admission of transfer petitions from 1993 to 2011.





(iv) **Dispute of Elections - *Constitution of India's Article 71*[327] *:*** The Court is very detailed considering the entire case record and enters into various aspects including the consequences of political repression. This provision has not been used more by the "Supreme Court". These are around four to five cases were brought up under this provision and the latest one is *Purno Agitok Sangma v. Pranab Mukherjee.*[328] The Presidential and Vice-Presidential contestants did not disturb the Supreme Court more by invoking this provision.

2.2.2. Constitution of India's Appellate Jurisdiction under the Supreme Court

(i) Constitution of India's Article 132: Facilitates appeal to "the Supreme Court from any decision, final order or decree of a High Court, even in criminal, civil or other matters, where the High Court certifies that the issue involves a substantial question of law for the Constitution's interpretation".

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[327] INDIAN CONSTITUTION. art.71: "Matters relating to, or connected with the election of a President or Vice - President."
[328] A.I.R. 2013 S.C. 372.

(ii) Constitution's Article 134 : Facilitates appeal to "Supreme Court by any final order, decision or judgment of sentence in a criminal matters of a High Court matter in case (1) the appeal overturns the defendant's order and sentenced him or her to in that case convict the defendant and convict him or her (2) withdrawn for trial in before hand, in any case from any subordinateCourt accused having convicted in trial and with sentence or (3) confirming the case is eligible to be referred to Supreme Court". Under this article, Supreme Court could hear an appeal from the decision of a single Judge of a High Court or on the grant of the necessary certificate, a Division Bench of a High Court. The Supreme Court has emphasized that this should be done "in very exceptional cases where a direct appeal is required because the grave importance andan early decision of the case must in the larger interest of the public or similar reasonsbe reached."[329] The jurisdiction conferred on "the Supreme Court is not that of an ordinary court of criminal appeal". Before granting a certificate, the High Court ought to be satisfactory with the substantial question of law or principle to bring it within the scope of Art.134(1)(c). In 1970, criminal jurisdiction was also given to the Court not just in capital punishment and life imprisonment cases but also in cases where theway of punishment has imposed a sentence of ten years or more. Justice Sikri points out that "the Parliament ought not have enlarged its administrative power in the year 1970 looks unfair as indeed this it is the only here where the Supreme Court engages with the amount of cases in front."[330] The work of Court's criminal was standard regarding this, there were very less appeals and less reported cases compared to pertaining to Article 133 as shown in the above table. The criminal appeals formed 6.13% of the Court'snormal docket in 1961 and 3.30% of its normal docket in 1970. The Court is not much burdened by the criminal cases even though the jurisdiction has been enlarged in 1970, which is dealt in detail below.

(iii) Constitution's Article 133 : Any appeal escalated to "Supreme Court from any decision (final order or decree) in proceeding in a civil issue of a High Court it

[329] Union of India v. Jyoti Prakash Mitter, A.I.R. 1971 S.C.1093, 1100; (1971) 1S.C.C. 396.
[330] Rajeev Dhavan, "THE SUPREME COURT OF INDIA – A SOCIO-LEGAL CRITIQUE OF ITS JURISTIC TECHNIQUES" 123 (1977).

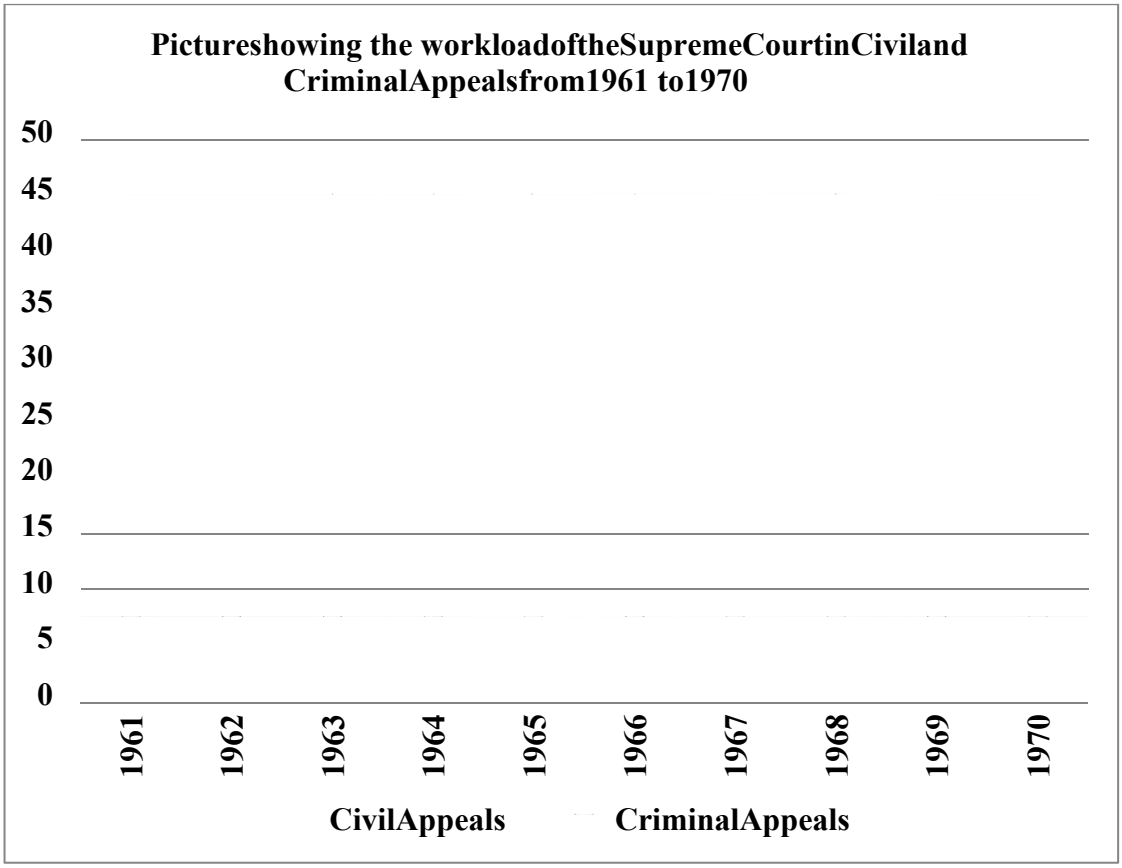
provides, if the the High Court affirms that the case involves a very important legal question and it considered and said that questions are needed to be decided by Supreme Court". This provision is meant only for the civil appeal from High Court. Before 1972, there was "a right of appeal to the Supreme Court from a decision of a High Court, if the value of the conflict of that subject is Rs. 20,000 or more". The Parliament has changed this by bringing the Constitution (Thirtieth Amendment) Act, 1972, and made that "not an appeal connected to civil case pertains to the Supreme Court as a matter of right unless it involves a substantial question of law". The case is not true in civil docket as like in criminal docket.The civil appeals docket, whichincreased from 1961 to 1970 from 19.68% to 33.54%.Almost 20% of the totalnumber of cases decided by the Court during the period from 1973 to 1981 comes under certified appeals from different High Courts. Of these, atleast 19% belonged to civil certified appeal and only about 1% comprised the certified criminal appeals.The Supreme Court data from 2005-2011 has been categorized by Mr. Nick Robinsoninto subjectwise like labour, service, arbitration, family, etc. In the subject wise, the criminal matters also occupied a place in it, which is comparably less than all the above said civil subjects and the average comes around 25% in admission disposal and 20% in the regular disposal. However, the data is not clear whether the criminal matterincludes only certified criminal appeals or direct criminal appeals under Art. 134 readwith Sec. 379 of the Code of Criminal Procedure or include SLP (Criminal) also. The researcher is unable to put the latest table on civil, and criminal appeal since the data available is only for seven years and put into micro-classification. It is significant to discuss "the Supreme Court view on the jurisdiction under Art. 132 & 133 of the Constitution". In *R.D. Agarwala v. Union ofIndia*,[331] the Court rejected the certificate granted i.e for directly appealing the Supreme Court, by the single Judge. The rule pertaining to "Article 133(3) of the Constitution was applied by the Court". It was criticized as *per incuriam* as it ignores *Election Commissioner v. S. Venkata Subba Rao,*[332] that specifically standardizes the limitation in Art.133 of the Constitution will not be applied to Art.132. The Supreme Court

[331] A.I.R.1971 S.C.299.
[332] A.I.R.1953 S.C.210.

has also gently chided High Courts for "giving leave to appeal to the Supreme Court without properly considering the matter."[333] The Court is, of course, anxious that High Courts not just send their dirty linen upstairs each time a difficult case comes up. The above data is represented below through the bar diagram and the graphical picture to find out the disposal of Civil and Criminal appeal from 1961 to 1970.

Table 1 Showing the workload of the Supreme Court in Civil and Criminal Appeals			
Year	**Civil Appeals to the total normal docket**	**Criminal Appeals to the total normal Docket**	**All Appeals to the total normal docket**
1961	19.68	6.13	25.81
1962	25.04	6.04	31.08
1963	29.57	5.81	35.38
1964	27.44	6.71	34.15
1965	30.13	4.96	35.09
1966	44.29	4.30	48.59
1967	37.22	5.04	42.26
1968	41.68	4.72	46.40
1969	38.09	3.68	41.77
1970	33.54	3.40	36.94
Source: Dr. Rajeev Dhavan analysis ofSupreme Court Docket 1961-1970			

[333] Nar Singh v. U.P., A.I.R. 1954 S.C. 457; Ahemedabad Mfg. and Calico Ptg. Co. Ltd. v. R.T. Ramnand, (1972) 1 S.C.C.898.



(iv) Provision of in the Constitution through the Appeal through Special Leave under Art.136: It facilitates that "the Supreme Court can make a discretion and grant Special Leave to appeal from any judgment (decree, determination, sentence or order in any case or matter) given by any Court or tribunal in the territory of India except for the Court or tribunal constituted under any law relating to armed forces". The SLP under thisprovision of the Constitution is very wide, and the Court has made an extensive use of itsprerogative under this category.The jurisdiction covered virtually all tribunals theconcept being interpreted widely.[334] The Court goes into question of law, matters of natural justice and even where the need arises, questions of fact.[335] The early Court had decided not to fetter its jurisdiction too much.[336]

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[334] Shivji Nathubhai v. UOI, A.I.R. 1960 S.C. 606 "(Central government exercising the power of review under R.54 of the Mineral Concession Rules, 1949, was held to be a Tribunal)".
[335] Dahyabhai Chhaganbhai Thakkar v. State of Gujarat, A.I.R.1964S.C.1563.
[336] The Court described the nature of this power in Dharkeshwari Cotton Mills v. C.I.T., A.I.R. 1955 S.C. 65.

Since 1980, the Special Leave jurisdiction has become very wide indeed. It covers a wide range of situations.The Court has, therefore, as a matter of policy stated that it will not normally go intoconcurrent findings of fact but does so if there is a grave miscarriage of justice. The Court will not normally allow new pleas to be raised but permits this in special cases. Presently, the Court is worried about its wide special appeal jurisdiction. Nevertheless, this jurisdiction is invaluable because it is a way in which the Supreme Court monitors the work of various bodies.

It is clear from Table 2 that the SLPs in civil matters initially occupy a less percentage because the civil cases can go to the Supreme Court as a matter of right through the pecuniary jurisdiction. But later on, the policy decision of the Supreme Court in entertaining the civil appeal made the litigants approach the civil matters through SLPs, and thereby it increases. Whereas, the SLPs criminal matter decreases from 1960 and further, the period from 1958 to 1965 showed a steady increase and maintained around 60%, and thereby it get reduced. Thus, from 1951-1970 shows the fluctuating approach in both civil and criminal SLP.

During 1973-1981, the Court has been dominated by Special Leave jurisdiction category. A total of 3425 decisions, i.e., “almost 85% of the decisional output of the Supreme Court consists of the determination of appeals from High Courts”. Only 24% of such appeals reach the Court through the channel of the certificate of fitness granted by the High Courts, whereas, the remaining 76% are added to the docket of the Supreme Court by the Court itself under its Special Leave jurisdiction. Almost 65% of the total disposal consisted of appeals under the Special Leave category. Within the Special Leave category, it will be further noticed that the disposal of civil special leave appeals occupies 37%, which has exceeded those of the criminal special leave appeals throughout the nine years period except 1979. Special Leave Criminal appeal holds the account of 27.7%. The table 2 below shows the SLPs both in civil and criminal matters from 1951 to 1970.

Table 2 showing the workload of the Supreme Court in Special Leave Petitions (SLPs)			
Year	**Civil SLPs to the total normal docket**	**Criminal SLPs to the total normal docket**	**All SLPs to the total normal docket**
1951	12.48	29.15	41.64
1952	16.93	27.44	44.37
1953	20.27	35.06	55.33
1954	17.27	31.63	48.90
1955	21.36	33.54	54.90
1956	31.02	31.02	62.05
1957	26.22	26.26	52.48
1958	32.30	31.43	63.73
1959	28.45	34.64	63.09
1960	27.81	32.89	60.70
1961	32.03	30.16	62.19
1962	34.39	27.82	62.21
1963	32.99	25.39	58.38
1964	35.83	26.77	62.60
1965	34.86	25.34	60.20
1966	26.33	15.66	41.99
1967	27.66	20.99	48.65
1968	30.41	18.77	49.18
1969	35.15	16.17	51.32
1970	35.44	17.01	52.45
Source: Dr. Rajeev Dhavan analyses of Supreme Court Docket 1951-1970			

The above data is represented below through the bar diagram and the graphical picture to find out the disposal of SLPs (Civil) and (Criminal) from 1951 to 1970.

1951 1952 1953 1954 1955 1956 1957 1958 1959 1960 1961 1962 1963 1964 1965 1966 1967 1968 1969 1970

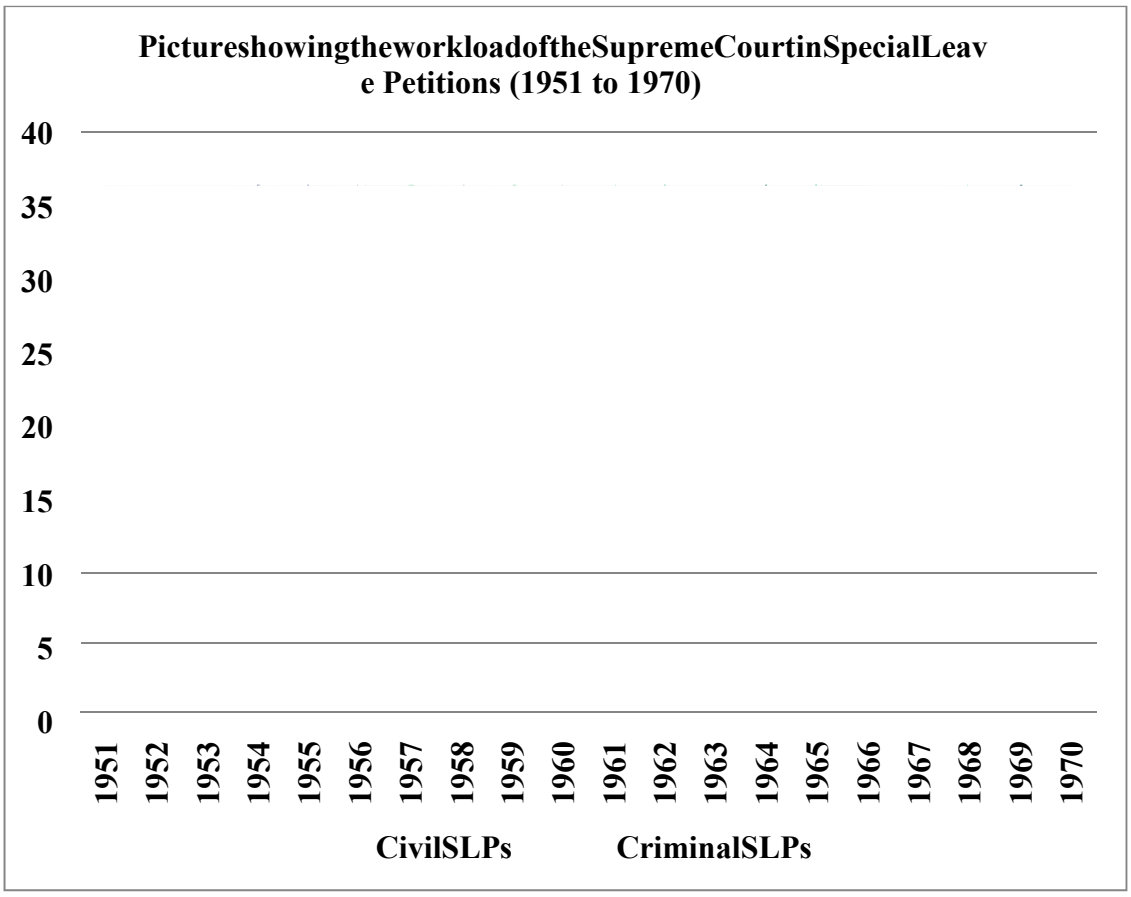
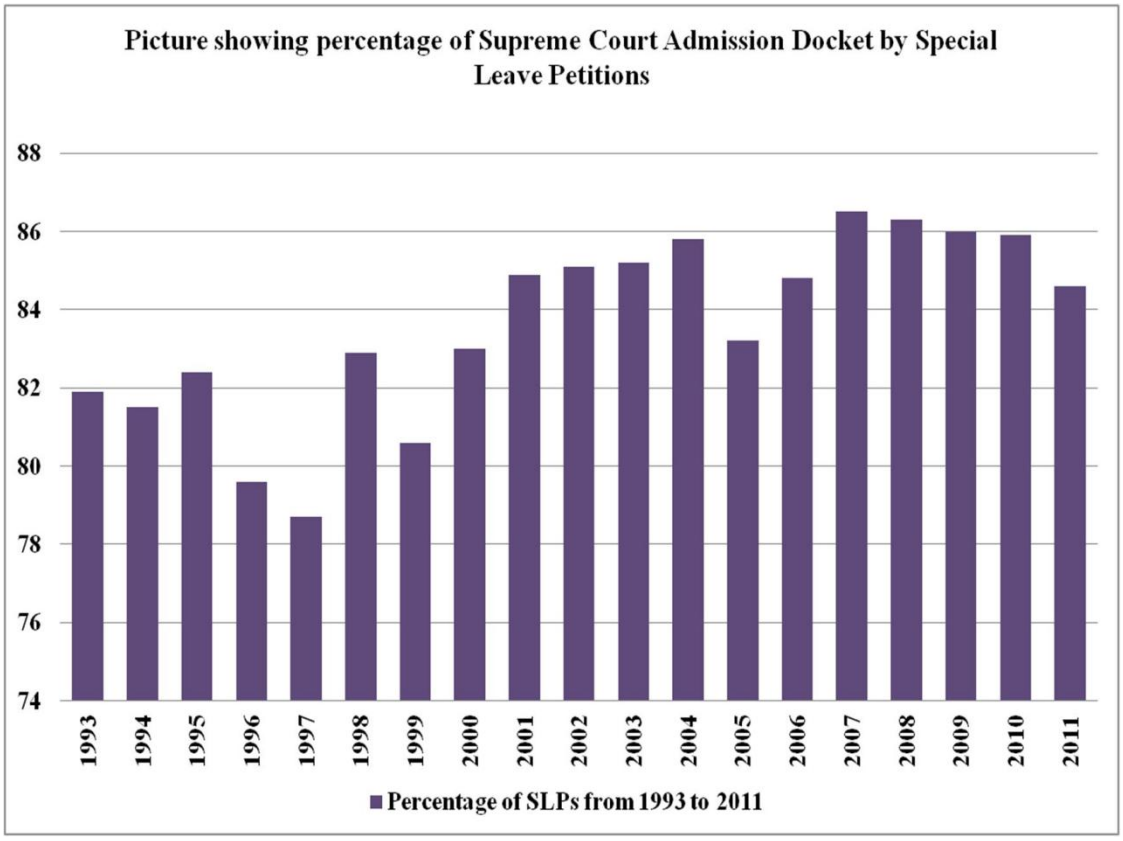
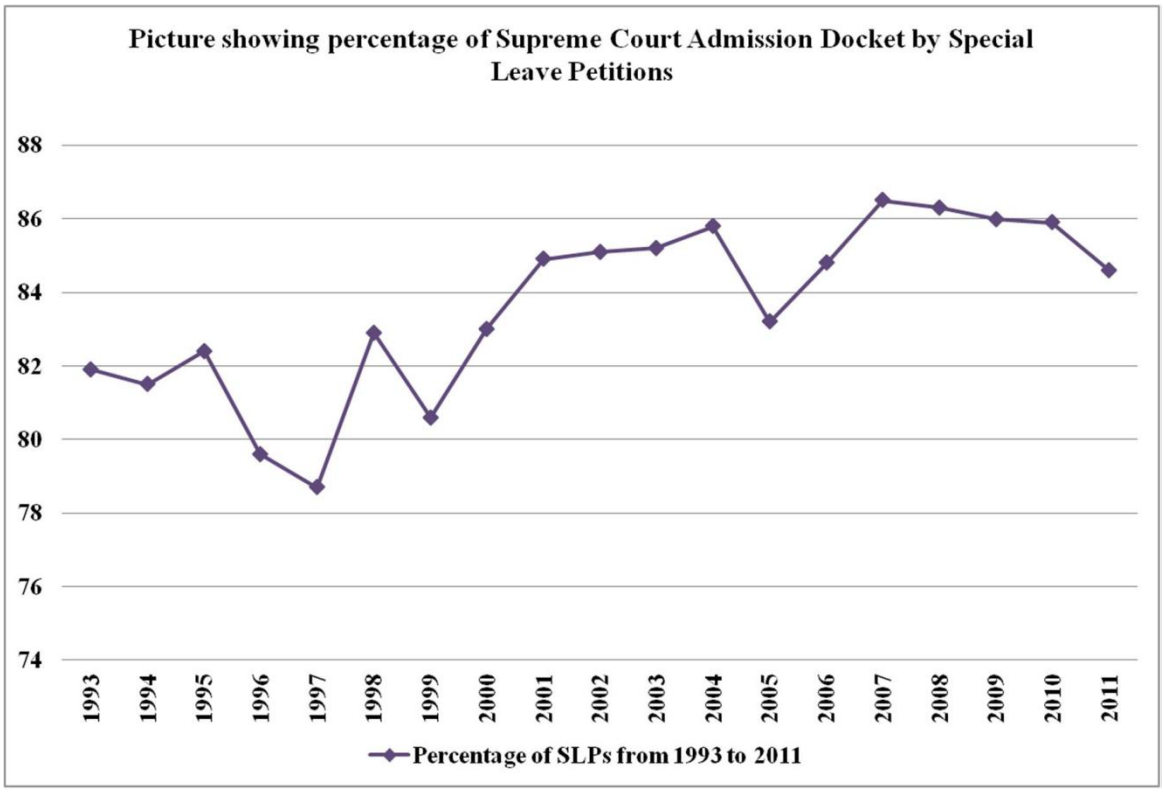


Table 3 Shows Percentage of Supreme Court Admission Docket by Special LeavePetition			
Year	**SLP**	**Year**	**SLP**
1993	81.9	2003	85.2
1994	81.5	2004	85.8
1995	82.4	2005	83.2
1996	79.6	2006	84.8
1997	78.7	2007	86.5
1998	82.9	2008	86.3
1999	80.6	2009	86.0
2000	83.0	2010	85.9
2001	84.9	2011	84.6
2002	85.1		
Source: Nick Robinson analysis of Supreme Court Data			

The above data is represented below through the bar diagram and the graphical picture to find out the admission of SLPs both Civil and Criminal from 1993 to 2011.





The Table 3 above shows the admission of SLPs both in civil and criminal matters from 1993-2011. It maintains an average of 84% of the Court's docket. It is very clear that the SLPs began to constitute a large part of the dockets that came to the Court. It tends to suggest that the Supreme Court had given a very wide twist to its jurisdiction in special leave cases. Two kinds of cases came up before the Court in this area. Firstly, there were cases of administrative justice.The Court could by its Special Leave jurisdiction monitor the work of the 'Tribunals'.The Court gave a broad meaning to the word 'Tribunal', that also includes the Central Government in case of a direct Order to a Company in the issue of share transfers.[337] There prevail certain conditions and, the Court declared that prescribed test to be tested and the body ought to be invested with a part of the jurisdiction of the State. The Customs Officer acting according to Sec. 167 of Sea Customs Act is not as good as a 'Tribunal' although it must do so with a judgment.[338] Secondly, those cases in criminal and civil matters which the Court could not hear under its normal civil and criminal

[337] Harinagar Sugar Mills v. Shyam Sundar, A.I.R. 1961 S.C. 1140.
[338] Indo-China Steam Navigation Co. Ltd. v. Jasjit Singh, A.I.R. 1964 S.C. 1140.

Jurisdiction were being heard under its Special Leave jurisdiction. However, the Court imposed limitations on many number of matters, which usually go under concurrent findings of facts other than and otherwise there is a greater injustice.[339] The Court will not give chance or oppurtunity for the first time litigation's,[340] except in extraordinary cases.[341] Whereas, interpretation on the ground of miscarriage of justice, though arbitrary, is very wide. The Supreme Court has demonstrated its jurisdiction under Art. 136 as an unstoppable power pool that can be confined to meaningful limits; the judgment given to the Supreme Court should be limited to one limit, namely, the wisdom and good sense of justice of the Judges.[342] Nevertheless, at the same time discouraged the indiscriminate invocation of Article 136. In 1952 itself, the Supreme Court in *Ashwini Kumar Ghose v. Arabinda Bose*[343] had "cautioned the High Courts against indiscriminate granting of the certificates in a casual manner".[344] The Supreme Court interpreted Order XIII Rule 2 and Order XLV Rule 1 of the Supreme Court Rules, 1950 in *Hindustan Commercial Bank Ltd v. Bhagwan Dass*[345] and held that "the appellant cannot approach the Supreme Court under Article 136 without exhausting the remedy in getting a certificate from the High Court under Article 132".[346] Nevertheless, the Supreme Court for the ends of the justice can relax this rule. Of late, it is uncommon to see the appeal with "the grant of a certificate from the High Court". No party even makes an attempt to secure a leave for appealing to the Supreme Court.

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[339] State of Rajasthan v. Kartar Singh, A.I.R. 1970 S.C. 1304 (where the Court appraised the evidence).
[340] Ram Gopalv. Madhya Pradesh, A.I.R. 1970 S.C. 158.
[341] Hiralal v. Kasturbhai, A.I.R.1966 S.C. 249.
[342] Kunhayammed v. State of Orissa, A.I.R. 2000 S.C. 2587, 2593; (2000) 6 S.C.C. 359.
[343] A.I.R. 1952 S.C. 369.
[344] "The petition, however, has been presented before us as an application under Art.136 of the Constitution for special leave to appeal from the judgment of the Special Bench of the Calcutta HighCourt.We have been pressed to proceed with the matter on the footing as if special leave to appeal hasbeen given and the delay in the presentation thereof has been condoned by this Court. I deprecate thissuggestion, for I do not desire to encourage the belief that an intending appellant who has not appliedfor or obtained the leave of the High Court and who does not say a word by way of explanation in thepetition as to why he did not apply to the High Court and as to why there has been such delay inapplying to this Court should nevertheless get special leave from this Court for the mere asking.As,however, the matter has been proceeded with as an appeal, I express my views on the questions thathavebeencanvassedbeforeus."(*Id.*,at 386,para70).
[345] A.I.R. 1965 S.C.1142.
[346] In the Supreme Court Rules, 1966, the Special Leave Petitions were dealt under Order XVI and in the Supreme Court Rules, 2013, there is a classification SLP (Civil) and SLP (Criminal). The former is dealt under Order XXI and the latter under Order XXII. In either of these rules, there is no similar provision imposing a mandatory condition to exhaust the remedy in getting a certificate under Art.132.

Article 132 and 133 were just in the textbook and not followed in real spirit.[347] Moreover, theSupreme Court Rules either in 1966 or 2013 did not contain any of the provisions assimilar to the Rules made in 1950 because the exception became the rule now.After2000, the Supreme Court adopted a more restrained view in entertaining the SLPs. In *Natpat Singh v. Jaipur Development Authority*;[348] it observed that 'the exercise of the jurisdiction conferred by Article 136 is discretionary. It does not confer "a discretionary power of widest amplitude on the Supreme Court to be used for satisfying the demands of justice; on one hand, it is an exceptional power to be used sparingly, with caution and care and to remedy extraordinary situations or situations occasioning gross failure of justice; on the other hand, it is an overriding power whereunder the Court may generously step in to impart justice and remedy injustice". With regard to this, "it is observed that Art. 136 is not a regular forum of appeal at all. It is a residual provision which enables the Supreme Court to interfere with the judgment or order of any Court or tribunal in India in its discretion."[349] Thus, the strong determination of the Judges alone will make a change in entertaining the petition under Art.136.

(v) Reference under Section 257[350] of the Income Tax Act, 1961[351]:

Income Tax Appellate Tribunal (ITAT), by the channel of its President, it may be forwarded to Supreme Court under "Section 257 of the Income Tax Act, 1961", question of law in case of a conflict in the judgments of the High courts, then is appropriate to refer to the Supreme Court. The invocation of this jurisdiction by the President of ITAT will rarely occur, and there is no precise data toshow how much cases arise under this provision. It is to be noted that this reference jurisdiction is used little by the Supreme Court.

4.3. STATUTORY APPEALS:

Besides the appellate jurisdiction conferred by the Constitution, the Parliament has enacted many Statutes and provide appeal provisions either directly to the

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[347] J.Chelameswar, "*SupremeCourt –Jurisdiction, Problemof Pendency"*, J-6 (2015) 9 S.C.C.(J).
[348] (2002) 4 S.C.C. 666.
[349] N. Suriyakalav. A. Mohandoss, (2007) 9 S.C.C.196.
[350] Sec. 257 of the Income Tax Act. *See* Annexure C, at 313.
[351] Act No. 43 of 1961.

Supreme Court from any Court, Tribunal, and Commission or through the leave of the Court, Tribunal and Commission. It also forms substantial portion in the Supreme Court docket. The Statutes, which provide appeals under the above two categories aresummarizedbelow:

4.3.1 Regarding Section 35L[352] The Central Excise and Salt Act, 1944[353]:

Appeals to "the Supreme Court against any decision of the High Court referred to it under Section 35G, in any case which the High Court finds fit to refer to the Supreme Court, by an order issued from Appeal Tribunal" pertaining to, among another things determining any question pertaining property tax for sale or the value of goods for testing purposes.Similar to the above provision in Customs Act, this provisionalso does not confer appeal directly from any judgment of the High Court and does only after the High Court make it through a reference under Sec. 35G[354] of the above said Act or certifies to be a fit one for appeal by granting a leave to the Supreme Court. However, the appeal lies directly from the Appellate Tribunal concerning the questionabout the value of goods or the relation to the rate of excise duty for assessment purpose.

4.3.2. Regarding Section116A[355], The Representation of People Act, 1951[356]:

Appeals to "the Supreme Court based on any question, in case of legal or factual, in any judgment issued from the High Court" according to Section 98[357] or Section 99[358] belonging to the Act.[359] This provision also provides appeal directly to "the Supreme Court from the Order of the High Court under Sections 98 and 99 of the Representation of People Act, 1951". This provision has been brought as an amendment and came into force in the year 1966 only.

4.3.3. Regarding Section 38[360],The Advocates Act, 1961[361]:

It facilitates the appeal to the Supreme Court t h r o u g h an order made by

[352] Sec.35L:AppealtoSupremeCourt.
[353]ActNo.1of1944.
[354]Sec. 35G of the Central Excise and Salt Act, 1944: Statement of case to High Court.
[355]Sec.116A:Appealsto Supreme Court.*See*AnnexureC,at315.
[356]ActNo.43of1951.
[357] Sec.98oftheRepresentationofPeopleAct:DecisionoftheHighCourt.
[358] Sec.99oftheRepresentationofPeopleAct.
[359] Subs.byAct47of1966,Sec.50,forSecs.116Aand116B(w.e.f.14-12-1966).
[360] Sec.38:AppealtotheSupremeCourt.
[361] ActNo.25of1961.

Bar Council of India's Disciplinary Committee through Section 36[362] or 37[363] of the Act. The above provision confers appeal directly to the Supreme Court of Indiafrom the Disciplinary Committee of the Bar Council of India. The Bar Council ofIndia can exercise disciplinary powers under Sec. 36 and by its appellate powersunder Sec.37 of the Advocate Act, 1961.

4.3.4. Section 261[364]of the IncomeTaxAct, 1961:

Appeals to the "Supreme Court against any decision of High Court against an order made over according to Section 256 by an order issued according to Section 254 prior October 1, 1998 or by appeal rised to the Supreme Court against an decision issued according to section 254 from that date, in any issue of the High Court confirming that it is eligible to be referred to the Supreme Court". This provision did not provide automatic appeal to the "Supreme Court unless the High Court gives a certificate that the present case is eligible to be appealed in the Supreme Court". However, Sec. 257[365] deals with the case's statement in specific cases to Supreme Court, which means, "If, on an application made by an order issued under Section 254[366] before the 1st day of October, 1998 under section 256 the Appellate Tribunal is of the opinion that, on account of a conflict in the decisions of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it throughits President direct to the Supreme Court". Thus, by this way of reference also, the appeal may reach to the Supreme Court.

4.3.5. Regarding Section 130E[367],The Customs Act,1962[368]:

Appeals to 'Supreme Court by a decision of High Court against by referring according to Section 130[369], in a case that High Court finds fit to refer to the Supreme Court any relevant order issued by the Appeal Tribunal, among other things, in determining any question related to the amount of property tax or the value of assets for the purpose of assessment". However, it was amended in the year

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[362]Sec.36oftheAdvocatesAct:DisciplinarypowersofBarCouncilofIndia.
[363]Sec.37ofthe AdvocatesAct:AppealtotheBarCouncilofIndia.
[364]Sec.261:AppealtoSupremeCourt.
[365]*See*Sec.257oftheIncomeTaxAct
[366]Sec.254ofthe IncomeTaxAct:OrdersofAppellateTribunal.
[367]Sec.130E:AppealtoSupremeCourt.
[368]ActNo.52of1962.
[369]Sec.130oftheCustomsAct:AppealtoHighCourt.

2005 and instead of an appeal to High Court, National Tax Tribunal was replaced with effect from 28.12.2005, and since the National Tax Tribunal was held to be unconstitutional, the appeal lies only from the High Court. This provision does not confer appeal directlyfrom any judgment of the High Court. The appeal lies to the Supreme Court only afterthe High Court either makes it through a reference under Sec. 130 of the above said Act or certifies to be a fit one for appeal by granting leave to the Supreme Court. But the appeal lies directly from the Appellate Tribunal concerning the question about the assessment of goods or related to the rate of custom duty.

4.3.6. Regarding Section19(1)(b)[370] The Contempt of Courts Act, 1971[371]

It appeals to the Supreme Court as a right of any decision or order of the High Court to exercise powers of contempt. Given it is very clear that "the appeal will go directly to the Supreme Court for any order or decision of the High Court that uses the power to punish for contempt". No leave from High Court is necessary to pursuethe appeal against the Order of the High Court. The aggrieved party "as a matter of right can approach the Supreme Court".

4.3.7. Regarding Section 379[372], The Code of Criminal Procedure, 1973[373] read along with Section 2[374] of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970[375]that was amended by the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Amendment Act, 1972:

Provides an appeal to Supreme Court against any order, judgment or sentence in a High Court case, if "the High Court (a) on appeal overturns the defendant's release order and sentenced him or her to death, imprisonment for life imprisonment or imprisonment for a period of at least ten years; (b) withdrawn from any court of its jurisdiction in which case has sentenced the defendant and sentenced him to life imprisonment or imprisonment for a period not less than ten years". This provision is similar to Art. 134 of the Constitution of India and has been analyzed above in detail.

[370] Sec.19: Appeals.
[371] Act No. 70 of 1971.
[372] Sec. 379 of the Code of Criminal Procedure: Appeal against conviction by High Court in certain cases.
[373] Act No.2of1974.
[374] Sec.2: Enlarged appellate jurisdiction of Supreme Court regarding criminal matters.
[375] Act No. 28 of 1970.

Although the criminal appellate jurisdiction of the Supreme Court has been relaxed both by the constitutional provision as well as the statutory provision, it did not create accumulation of criminal appeals in the Supreme Court docket.

4.3.8. Regarding Section 23[376],The Consumer Protection Act, 1986[377]:

It appeals to "Supreme Court from an direction issued by the National Commission, which favors appeals in case, the value of services or goods and compensation, if case of, the demand is more than Rupees One Crore". It provides appeal "directly to the Supreme Court from the Order of the National Consumer Commission". There is no leave of the Commission to prefer an appeal to the Supreme Court. As a matter of right, the aggrieved party can "prefer an appeal to the Supreme Court from the Commission".

4.3.9. Regarding Section 19[378] of the Terrorists and Disruptive Activities (Prevention) Act, 1987[379]:

This provision provides "appeal as a matter of right against the decision or Order by a designated Court moving to the Supreme Court both by facts and law but the order must not be an interlocutory Order". The appeal shall be filed "within thirty days from the date of judgement or Order". However, it can be extended if "the Supreme Court is satisfied that the appellant has sufficient cause for not preferring the appeal within thirty days". This was the first anti-terrorism law, which was in force between 1985 and 1995. This Act contains many controversial provisions and widely misused by the implementing authority. This invites criticism from different sections of the society and, finally, it made to lapse in the year 1995 since the Act is a temporary enactment.[380] As of now, appeals under this Act have reduced.

4.3.10. Regarding Section 10[381], The Special Court (Trial of offenses in relation with Transactions in Securities) Act, 1992[382]:

It appeals to "Supreme Court against any sentence, judgment or order, but not a negotiating order of a special court, either factual or legal".

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[376] Sec.23:Appeal.
[377] ActNo.69of1986.
[378] Sec.19: Appeal.
[379] ActNo.28of1987.
[380] Sec.1(4): It shall remain in force for a period of eight years from the 24th day of May, 1987, but its expiry under the operation of this sub-section shall not affect....
[381] Sec.10: Appeal.
[382] Act No. 27 of 1992.

This provision provides appeal "directly to the Supreme Court from the Order of the Special Court of both on facts and on law".

4.3.11. Regarding Section 15(z)[383], The Securities and Exchange Board of India Act, 1992[384]:

It facilitates "any aggrieved person out of any judgement of Securities Appellate Tribunal go for an appeal to the Supreme Court for a substantial question of law of any given judgement". This Provision facilitates to "appeal the Supreme Court only on a substantial question of law" out of any judgement based on "The Securities and Exchange Board of India (SEBI) Act, 1992". This provision was brought as an amendment i.e. The SEBI (Amendment) Act, 2002. Before this amendment, the "appeal lied to the High Court against the decision or Order of the Securities Appellate Tribunal on any substantial question of law of any given judgement".

4.3.12. Regarding Section 18[385],The Telecom Regulatory Authority of India Act, 1997[386]:

Appeals to the High Court against any non-negotiable order of the Appeal Tribunal for one or more of the reasons set out in Section 100 of the Civil Code. This Provision does not permit the parties concerned directly prefer an appeal to the Supreme Court. The appeal could be preferred against the Order of the Appellate Tribunal except the interlocutory Orderonly if it satisfied the conditions stated in Sec.100 of the Code of Civil Procedure.[387] Section 100 deals with the second appeal to the High Court from the appellate decreesand also the section enumerates the conditions when the second appeal should be entertained. The similar conditions will apply to the Order of the Appellate Tribunal at the time of entertaining the appeal by the Supreme Court.

4.3.13. Regarding Section53T[388], The Competition Act, 2002[389]:

It facilitates for appealing Supreme Court for any Appellate Tribunal's judgement. This Act replaced "the Monopolies and Restrictive Trade Practices Act, 1969",[390] where Sec. 55 of the said Act provides right to appeal to the Supreme Court directly and in consonance with that provision, the new and replaced Act also

[383] Sec.15Z:AppealtoSupremeCourt.*See*AnnexureC,at317.
[384] ActNo.15of1992.
[385] Sec.18:AppealtoSupremeCourt.*See*AnnexureC, at 318.
[386] ActNo.24of1997.
[387] Sec.100:Secondappeal. *See* AnnexureC,at309.
[388] Sec.53T:AppealtoSupremeCourt.*See*AnnexureC,at311.
[389] ActNo.12of2003.
[390]ActNo.54of1969.

Provide right to appeal to the Supreme Court under the above said provision.

4.3.14. Section 125[391]of the Electricity Act, 2003[392]:

It provides the "appeal from the decision or order of the Appellate Tribunal, and a petition is to be filed within 60 days from the communication date of the judgement". The Court may extend sixty days in addition to the above in case of satisfaction of theappellant with preventionwithgood reasonfor appealing. This Provision does not permit the parties concerned directly prefer an appeal to the Supreme Court. The appeal can be preferred only against the the Appellate tribunal's judgement with the conditions stated by Sec.100 of the CPC. Section 100 deals with "the second appeal to the High Court from the appellate decrees and also the section enumerates the conditions when the second appeal should be entertained".

4.3.15. Section 24[393]of the National Tax Tribunal Act, 2005[394]:

The provision of this Act provides appeal as a right for any person including any department that has a complaint against any decision or order of "the National Tax Tribunal". An appeal must be lodged within 60 days from "the decision or Order of the National Tax Tribunal". Nevertheless, the Supreme Court may permit any appellant to file the appeal beyond the said sixty days if it is satisfied thatsufficient cause has prevented the filing of an appeal.The appeal under this Act willnot arise because the Supreme Court has ruled in *Madras Bar Association v. Union of India and another*[395]that Sections 5, 6, 7, 8 and 13 as unconstitutional based on "the violation of the theory of separation of power and judicial independence". By declaring these provisions as unconstitutional, the rest of the provisions are rendering inconsequential and ineffective to that the complete act is declared unconstitutional.

4.3.16. Section 37[396] of the Petroleum and Natural Gas Regulatory Board Act, 2006[397]:

It provides the appeal from "the decision or order of the Appellate Tribunal", which does not include interlocutory orders and must be lodged within ninety days from the date of Order of the decision. However, the Court may extend the time.

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[391] Sec.125: Appealing Supreme Court.
[392] Act No. 36 of 2003.
[392] Sec.24: Appeal to Supreme Court.
[393] Act No. 49 of 2005.
[394] (2014) 10 S.C.C. 1.

if sufficient cause is shown. This appeal canbe preferred only against the Appellate Tribunal's judgement, if it satisfies with conditions stated by Sec.100 of the CPC and moreover, appeal not laying against the Tribunal's decision concurred with the parties consent.

4.3.17. Section 30[398] of the Armed Forces Tribunal Act, 2007[399]:

It facilitates appealing the Supreme Court against any Appellate Tribunal's judgement.However, this is subject to Sec. 31[400] of the said Act. It provides "leave to appeal to the Supreme Court by the Tribunal when it finds a point of law that is of public interest is involved in a decision of the Court of Justice, or it appears in the High Court that this point should be considered by that Court". All these statutory appeals are in addition to the very extensive jurisdiction that the Court enjoys under the Constitution. The appeals from these statutes occupy a substantial portion of Court's docket.

4.13.18. Section 31[401] of the Airports Economic Regulatory Authority of India Act, 2008[402]:

It provides the appeal from the decision or order of the Appellate Tribunal,which does not include interlocutory orders and it must be lodged within ninety days from the date of Order of the decision. However, the Court may extend the time limit if it satisfies the condition with the appellant's prevention by reasonable cause from filing the appeal in time.This appeal canbe preferred against the decision of the AppellateTribunal, only if it satisfies the conditions stated in Sec.100 of the Code of Civil Code, and moreover, appeal shall not lie against the decision of the Tribunal with the parties consent.

4.3.19. Section 22[403]of the National Green Tribunal Act, 2010[404]:

It provides the "appeal from the decision or order of the Appellate Tribunal anda petition is to be filed within 90 days from the date of order's communication". But, Court may extend the time. Only than if it satisfies the conditions stated in Sec.100, an Appeal can be made to the judgement of theAppellateTribunal.

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[398] Sec.30: Appeal to Supreme Court.
[399] Act No.55 of 2007.
[400] Sec.31of the Armed Forces Tribunal Act: Leave to Appeal.
[401] Sec. 31: Appeal to Supreme Court.
[402] Act No. 27 of 2008.
[403] Sec. 22: Appeal to Supreme Court.
[404] Act No. 19 of 2010.

4.3.20. Section 423[405]of the Companies Act, 2013[406]:

It provides the "appeal from the decision or order of the Appellate Tribunal and it has to be filed within sixty days from the receipt of the Order of the Appellate Tribunal". However, the Court may extend the time. It does not impose any conditions that it has to satisfy as stated in Sec. 100 of the Code of Civil Procedure. The aggrieved can "prefer an appeal to the Supreme Court as a matter of right".

4.3.21. Section 38[407] of The Pension Fund Regulatory and Development AuthorityAct, 2013[408]:

It provides "the appeal from the decision or order of the Securities Appellate Tribunal" and it has to be filed within 60 days from the Securities Appellate Tribunal's judgement date. But, the appeal can be preferred "only on any question of law arising out of such Order". The Court may extend the time limit for another sixty days.[409]

4.4. ADVISORYJURISDICTION:

Article 143 authorizes the Indian President to "verify a question of fact or law that is of public importance to the Supreme Court and get the opinion".This article also gives the President "the power to refer to the Supreme Court a dispute of the kind mentioned in Article 131 of the Constitution". The first reference made under this Article was, *Special ReferenceNo. 1 of 1951 in Re Delhi Laws Act and other Acts*.[410] Since 1950, only on 13 occasions, "the Supreme Court of India tendered advice to the President of India under this article", which follows as:

1. *In re the Delhi Law Act,* A.I.R.1951 S.C.332.
2. *In re the Kerala Education Bill,* A.I.R. 1958 S.C. 956.

[405] Sec.423: Appeal to Supreme Court.
[406] Act. No. 18 of 2013.
[407] Sec. 38: Appeal to Supreme Court.
[408] Act No. 23 of 2013.
[409] Keshav Mills Co.v. C.I.T. AIR1965 S.C. 1636.
[410] A.I.R. 1951 S.C. 332.

3. *In re Berubari (Indo-Pakistan Agreements),*A.I.R.1960 S.C.845.
4. *In re the Sea Customs Act,* A.I.R.1963 S.C. 1760.
5. *In re Keshav Singh Case,*A.I.R. 1965 S.C.745.
6. *In re Presidential Poll,* A.I.R. 1974 S.C.1682.
7. *In re Special Courts Bill,* A.I.R.1979 S.C.478.
8. *In re the matter of Cauvery Water Dispute Tribunal,* A.I.R.1992 S.C. 522.
9. *In re the matter of Ram Janamabhoomi*, (1993) 1S.C.C. 642.
10. *In re the matter of Ram Janamabhoomi,* (1993) 1S.C.C. 680.
11. *In re Presidential Reference (1998)* [*SupremeCourtAdvocates-on-Record Association (II) v. Union of India*], (1998) 4 S.C.C. 409.
12. *In re Gujarat Assembly Election Matter,* A.I.R. 2003 S.C. 87.
13. *In re Natural Resources Allocation,* (2012) 10 SC.C. 01.

The Court has clarified so many issues about the scope of this article in the above said cases and other cases, such as the Court is not bound to give an opinion. It cannot go into disputed questions and The President is empowered to obtain a Supreme Court opinion on any legal or factual matter that arises or as same as such importance and nature to the public which is appropriate to obtain that opinion. However, it should not be on hypothetical questions.Strictly speaking,the advisory opinion of the Supreme Court is not binding on the President though the President usually honours it and sometimes the Court also take an undertaking through the Attorney General that it will be honoured. The President can make the other references to the Supreme Court, which are (a) Article 317 of the Constitution ofIndia,[411] as regards removal of Chairman or any other Member of a Public Service Commission; (b) Sec. 11 of the Competition Act, 2002[412] as regards removal of amember of the Commission; and (c) Sec. 14[413] and 17[414] of the Right to Information Act, 2005 in removing the Chief Information Commissioner or Information Commissioner, State Chief Information Commissioner. As of today, these references were kept unused by the President of India. These provisions confer a special

[411] INDIA CONST.art.317: Removal and suspension of a member of a Public Service Commission.
[412] Sec.11 of the Competition Act, 2002: Resignation, Removal, and Suspension of Chairperson and Other Members.
[413] Sec.14 of the Right to Information Act: Removal of Chief Information Commissioner or Information Commissioner.
[414] Sec.17 of the Right to Information Act: Removal of State Chief Information Commissioner or State Information Commissioner.

jurisdiction upon the Supreme Court in respect of the removal and suspension of these authorities. To uphold the high integrity and freedom of the members and the independence of the institutions, the provision provides that the President can remove a chairman, Chief Information Commissioner both at Centre and the State or any other members or commissioners on the basis of evidence of misconduct or incompetence only if the High Court, in the case of which the President is speaking, is investigated in accordance with the procedure set out in that Act. 145. Then, report to the member concerned, as per the case, and it must be on anysuch grounds to be removed.The Order XLIII[415] of the Supreme Court Rules 2013[416] provides the procedure todeal with the reference made under Article 317 of theConstitution of India.These references to the Supreme Court are inevitable for the effective and independent functioning of the institution from the clutches of the legislature or other executive functionaries. The conferment of the reference jurisdiction to the Supreme Court is beyond criticism. Moreover, these provisions will be used very rarely, once in a blue moon.

4.5. REVIEWJURISDICTION:

The Constitution enables the Supreme Court under Art. 137[417] to review the judgments made on the subject as per the provisions of any law made by Parliament or any rules as perArt.145.[418] Art.145(1)(e) empowers "the Supreme Court to make rules as per the conditions subject to which any order or judgment of the Court may be reviewed and the procedure relating thereto, which includes limitation for an application for the purpose". By virtue of this power, the Supreme Court has made Order XLVII[419] under Part IV of the Supreme Court Rules, 2013.It is not an inherent power I.e. to Review; which has to be conferred by law.A reviewpetition is also not an appeal in disguise.It amistake correction, instead of a substitution of view.It exercises this power only in exceptional cases such as when the previous decision was 'incuriam' or issued without significant or tangible facts., or if it shows wrong and

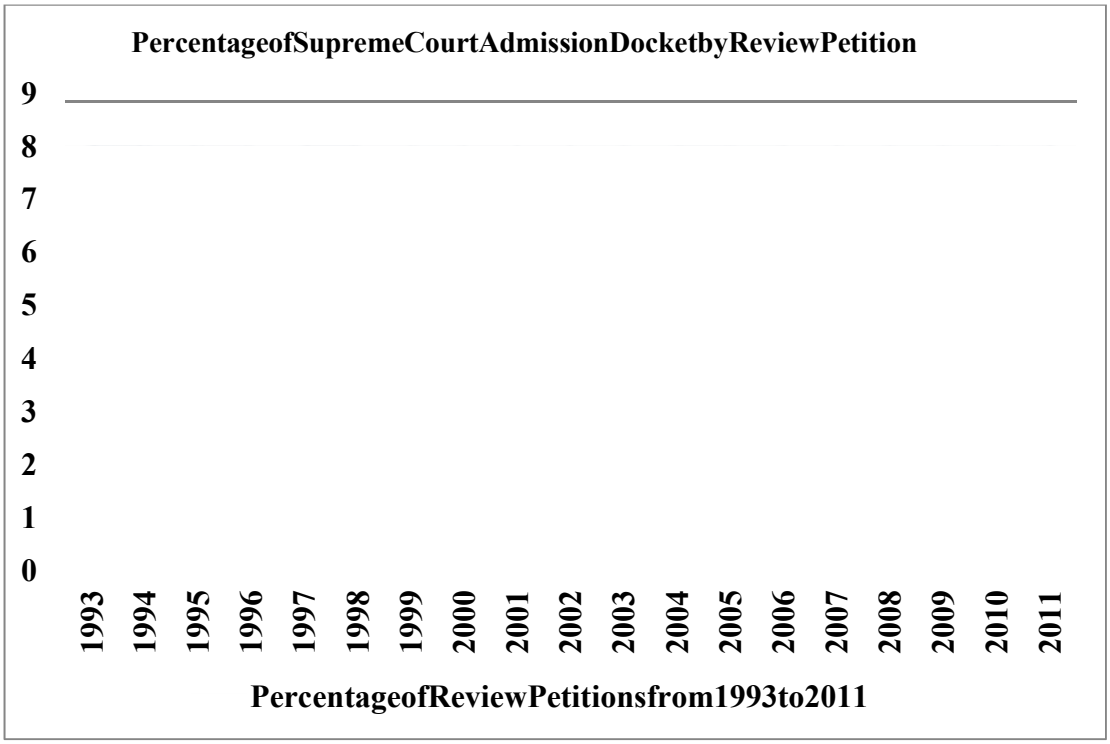
[415] The Supreme Court Rules, 2013,O.XLIII,
[416] Gazette of India Extraordinary, dated 27th May 2014. The Rules came into force on 19th Aug. 2014.
[417] INDIA CONST. art. 137: Review of Judgments or orders by the Supreme Court.
[418] INDIACONST.art.145cl.(e):RulesofCourtetc.
[419] The Supreme Court Rules,2013,O.XLVII: Review.

productive of public mischief.[420] In a formal case, the Supreme Court has inherent jurisdiction to reconsider and reverse its previous decision. But the same shall be exercised only whenthere are compelling substantial reasons. While considering the scope of review, it was thought that the amendment of the order came from the fundamental principle that justice is supreme. Used for debugging not to interrupt the conclusion and not to hear an appeal again. In order to keep a request for a review, it must be shown that there is a 'violation of justice.'[421] The review petitions occupy a meagre proportion in the Court's admission docket. From the below table, it is clearthatfrom 1993 to1997 itvaries largely from 0.3 to 8.0 in the court's admissiondocket.In contrast, since 1998, it remained a relatively stable fraction of the docket accounted for about 5%. The reasons may be Court's policy in entertaining the review petition.

Percentage of Supreme Court Admission Docket by Review Petition			
Year	**Review Petitions**	**Year**	**Review Petitions**
1993	0.3	2003	5.0
1994	3.9	2004	4.4
1995	6.0	2005	5.7
1996	7.8	2006	4.7
1997	8.0	2007	4.4
1998	5.4	2008	5.0
1999	5.6	2009	5.8
2000	4.5	2010	5.0
2001	4.5	2011	5.4
2002	4.6		
Source: Nick Robinson analysis of Supreme Court Data			

The above data is represented below through the bar diagram and the graphical picture to find out the admission of Review petitions from 1993 to 2011.

[420] Cauvery Water Disputes Tribunal, A.I.R. 1992 S.C. 522.
[421] Basu, *Supra* note 37.



4.6. JURISDICTION UNDER CURATIVE PETITION:

It was held that the judgment of the Supreme Court cannot be challenged in apetition under Art. 32. But at the same time, the Supreme Court can reconsider thefinal Judgment or Order on limited grounds in a "curative petition under its inherent powers, even after the dismissal of the review petition". This petition was born through

the decision in the case of *Rupa Ashok Hurra v. Ashok Hurra and Another.*[422] This remedy is available only in rarest of rare cases.The Supreme Courtlaid certain conditions under what circumstances, a curative petition can be filed, and it is as follows:

(a) Natural justice principles violation,such as denial to hear.

(b) The judge involved in the decision-making process, and who did not disclose his affiliation with the party in the case on the grounds of bias.

(c) Abusing the Court's process,and

(d) Aggrieved person's justice miscarriage.[423]

There is no data showing the number of curative petitions filed since 2002. The Supreme Court cleverly framed certain procedures to file a curative petition to avoid unnecessary litigation in re-examining the final decision of the Supreme Court. The procedural formalities contained in Order XLVIII[424] under Part IV of the Supreme Court Rules 2013 besides in the case, which it evolved are followed in *strictu sensu.*The principle underlining curative petition was explained elaborately in the recent case of *Yakub Abdul Razak Memon v. State of Maharashtra.*[425] These procedural precautions did not open the floodgates of litigation from curative petitions.

4.7. COMPLETE JUSTICE UNDER ARTICLE 142[426]:

This provision empowers the "Supreme Court as an Apex Court of Justice" that upholds the realization of complete justice to the commonest populace and caters tothe welfare of the society. The judicial power[427] conferred on the Courts by the Constitution or by any statutes, has to be exercised within the framework of either Constitutional norms or the statutory principles governing the situation. While deciding the issues, some amount of discretion is extended to the Judges and certain

[422] (2002) 2 S.C.R. 1006.
[423] Basu, *Supra* note 37, at 5940 & 5941.
[424] The Supreme Court Rules, 2013, O.XLVIII: CurativePetition.
[425] (2015) 9 S.C.C. 552, 567.
[426] INDIA CONST. art.142: Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.
[427] 'Judicial Power' as defined by Chief Justice Griffith in Huddart Parker and Co. v. Moorehead, CLR(1909),(1930) ALL ER 671 PC)."The exercise of this power does not begin until some tribunal which has power togive a binding and authoritative decision (whether subject to appeal or not) is called upon to take action."

parameters have also been provided with regard to exercise of such discretion. Whatis required to be administered is judicial discretion,[428] which should be judicious butnot personal.Constitutional Courts exercise higher discretion when compared to theother courts constituted under respective statutes.[429] The nature and ambit of powerunder Art. 142 explained by the Supreme Court in *Delhi Development Authority v. Skipper Constructions Co. (P) Ltd.*,[430] as it was recommended to leave the power undefined and unwritten in order to remain flexible enough to be molded to fit the situation. The Supreme Court also recognized that the fact that these powers were vested in the Supreme Court and that no one else could guarantee that they would be exercised with due diligence and caution in view of the ultimate goal of perfect justice between the parties.The Supreme Court widened their jurisdictions with the innovative orders, directions beyond the technical feasibility or procedural or substantial limitations of positive law by invoking the irinherent powers under Art.142. Many jurists critique that the act of the Supreme Court under Art. 142 is judicial activism and at times they usurp the powers of other organs in doing complete justiceto the parties. The public interest litigation[431] is one such innovation of the Supreme Court under Art. 142. The Supreme Court even invites letters,[432] newspaper reports aswrit petitions both in civil and criminal under Public Interest Litigation. This is contributing a substantial portion of the Court's docket.

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[428] "According to Black's Law Dictionary 'Judicial discretion' means the exercise of judgment by a Judge or court based on what is fair under the circumstances and guided by the rules and principles of law, a court's power to act or not to act when a litigant is not entitled to demand the act as a matter of right. The word 'discretion' connotes necessarily an act of a judicial character and as used withreference to discretion exercised judicially, it implies the absence of a hard and fast rule and it requiresan actual exercise of judgment and a consideration of facts and circumstances which are necessary tomake a sound, fair and just determination, and knowledge of the facts upon which the discretion mayproperly operate (*See* Section 27 Corpus Juris p. 289).When it is said that something is to be done atthe discretion of the authorities, that something is to be according to the rules of reason and justice andnot according to private opinion, according to law and not humour.It only gives certain latitude orliberty accorded by statutes or rules, to a Judge as distinguished from ministerial or administrative official in adjudication on matters before him." "Aero Traders (P) Ltd.,v. Ravinder Kumar Suri. (2004) 8 S.C.C. 307."

[429] P.B.VIJAYA KUMAR, DYNAMICS OF JUSTICEA' LA SUPREME COURT OF INDIA 420 & 421 (2011).

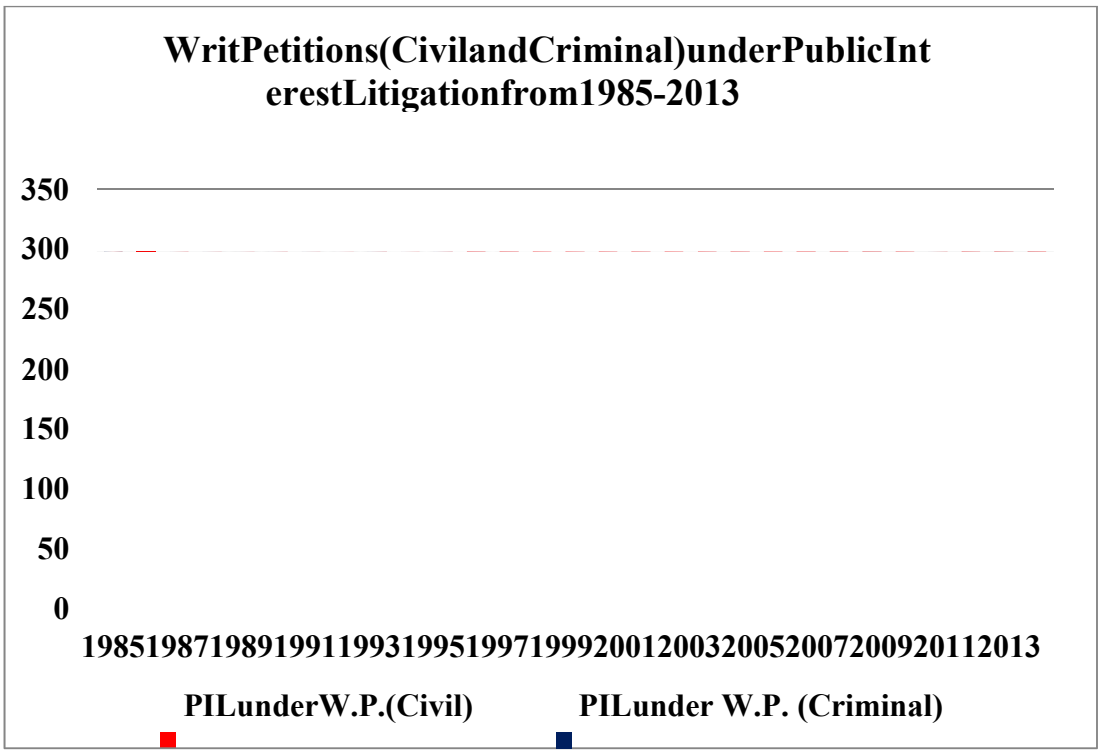
[430] (1996) 4 S.C.C. 622.

[431] "Justice V.R. Krishna Iyer introduced the concept of Public Interest Litigation" in "Mumbai Kamgar Sabha v. Abdulbhai", "representativeactions,probonopublicandlikebroadened forms of legal proceedings are in keeping with the current accent on justice to the commonman."(A.I.R. 1976 S.C. 1455).

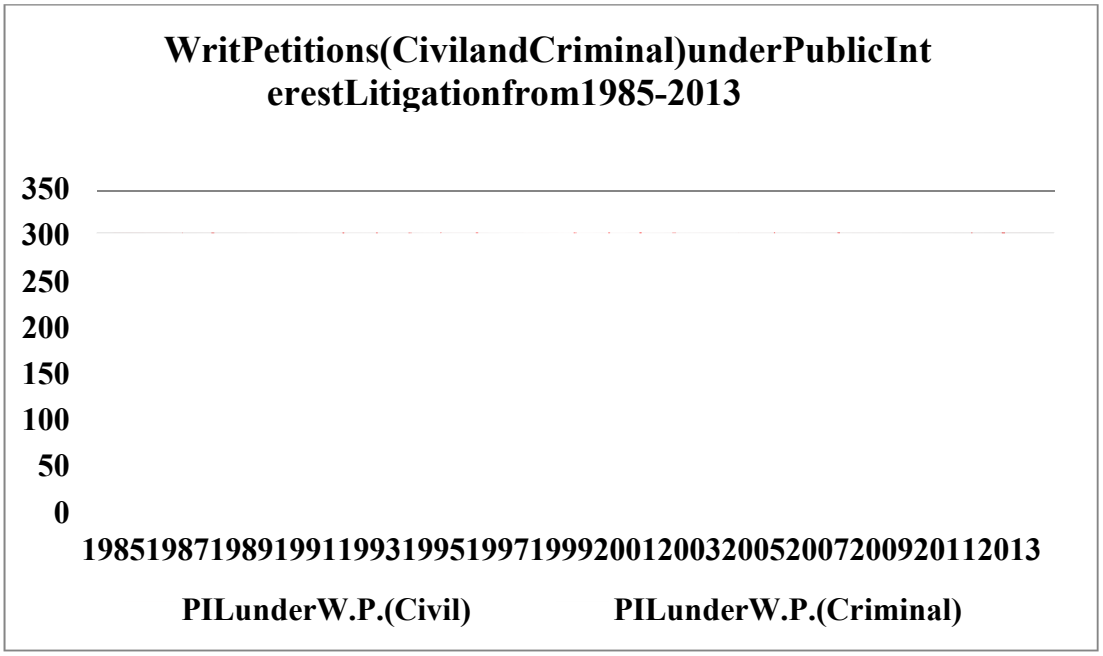
[432] In Sunil Batra v. Delhi Administration (II) (1980) 3 S.C.C. 488, the Supreme Court responded to a letter written by Sunil Batra on a scrap of paper.Batra wrote to Justice V.R. Krishna Iyer of the Supreme Court about the unbearable torture inflicted on a prisoner by jail authorities, and the Court spelled out the rights of detainees for the first time.

Letters or Petittions or Writs (Criminal and Civil) Filed under PIL in the Supreme Court			
Year of Petition	**Letters/Petitions (in all Languages)**	**Civil Writs**	**Criminal Writs**
1985	24,716	105	02
1986	25,419	286	10
1987	18,411	119	19
1988	16,271	071	25
1989	17,769	076	22
1990	17,971	092	26
1991	17,474	061	28
1992	16,961	062	16
1993	15,749	096	38
1994	16,466	083	20
1995	15,094	109	44
1996	19,180	185	36
1997	15,503	180	35
1998	13,087	160	17
1999	15,339	137	21
2000	17,764	161	22
2001	17,198	159	23
2002	15,518	186	13
2003	14,293	156	21
2004	15,653	171	22
2005	14,261	215	12
2006	19,840	226	17
2007	18,200	232	26(3)*
2008	24,666	193(1)*	33(1)*
2009	21,180	153(1)*	12
2010	24,611	115	14
2011	35,026	135	20(1)*
2012	41,314	126	23
2013	45,588	214(3)*	45(2)*
***Figure in brackets shows the number of Writ Petitions registered *suo-moto*. Source:TheIndian Supreme Courts' 2014 Annual Report (Published by the Supreme Court of India).**			

It is apparent from the above table that epistolary jurisdiction has been usedmore than filing regular petition under Article 32 for Social interest litigations orPublic interest litigations.The Court is kind to receive grievance letters from itscitizens, but it may turn into petition for public interest only if it is genuine or reallymade for a societal cause and not for personal interest or for publicity.[433] The lettersreceived by the Court are scrutinized by a Court staff and those documents that meet the requirements of the PIL will be listed on the High Court website and will be listed as matters of admission before the judges.[434] After delineation, the petitions which make up toPIL are relatively in minuscule proportion.Moreover, the PIL in civil outnumbers thePIL in criminal. Although it occupies only 1 to 2 % of the Court total cumulative-docket, it requires more or longer hearings another types of cases depending on the substance involved in it.The PIL engulf a significant part of court timings. Thebelow picture provide the entertainment of PIL both in civil and criminal matters and shows rising tendency although fluctuating every year.



[433] "*See* PeoplesUnionforDemocraticRightsv.UnionofIndia(1982)2S.C.C.253."
[434] "Supreme Court of India, Compilation of Guidelines to be Followed for Entertaining Letters/PetitionsReceived, available athttp://supremecourtofindia.nic.in/circular/guidelines/pilguidelines.pdf."



4.8. ALL TYPES OF CASES FROM 1950 TO 2014:

At this juncture, it is more significant to discuss the statement of the institutional, pendency and disposal of cases in the "Indian Supreme Court from 1950 to 2014". The data was culled out from the Supreme Court annual report 2014.[435] The above analysis pertain to the classification of cases under different jurisdictions of the "Supreme Court of India", whereas, the below data bring overall total cases instituted, disposed and pendency of cases in the "Supreme Court of India".

Data of Institutional, Disposal and Cases pending in the Supreme Court of India from 1950-2014			
Year	**Institutional cases (Includes Regular And Admission)**	**Disposal Cases (Includes Regular And Admission)**	**Pendency Cases (Includes Regular And Admission)**
1950	1215	525	690
1951	1924	1787	827
1952	1457	1672	612
1953	1714	1415	911
1954	2153	1949	1115
1955	2092	1869	1338
1956	2362	1978	1722
1957	2489	1928	2283

[435] THE SUPREME COURT OF INDIA, ANNUAL REPORT 2014, 76-79 (2014).

1958	2482	2317	2448
1959	2653	2511	2590
1960	3247	3181	2656
1961	3214	3553	2317
1962	3559	3833	2043
1963	3750	3283	2510
1964	4064	4068	2506
1965	3901	3785	2622
1966	5651	3841	4432
1967	5319	4081	5670
1968	6806	6170	6306
1969	7697	6468	7535
1970	7476	6348	8663
1971	7979	6491	10151
1972	9076	6822	12405
1973	10174	8175	14404
1974	8203	8261	14346
1975	9528	8727	15147
1976	8254	7734	15667
1977	14501	10395	19773
1978	20840	17095	23518
1979	20754	15833	28439
1980	26365	16953	37851
1981	31040	18690	50201
1982	43510	29112	64599
1983	55902	45824	74677
1984	49074	35547	88204
1985	51592	51078	88718
1986	27881	30700	85899
1987	28040	21807	92132
1988	27721	19895	99958
1989	27469	21400	106027
1990	28488	25238	109277
1991	32501	35341	106437
1992	26686	35847	97476*
1993	21648	20884	58794**
1994	42046	47890	52950
1995	51443	68337	36056
1996	33406	46216	23246
1997	32355	36569	19032

1998	36559	35233	20358
1999	34683	34707	20334
2000	37111	35300	22145
2001	39419	38842	22722
2002	44052	42439	24335
2003	50394	47979	26750
2004	58931	55530	30151
2005	50540	46210	34481
2006	61839	56540	39780
2007	69103	61957	46926
2008	70352	67459	49819
2009	77151	71179	55791
2010	78280	79509	54562
2011	77090	73133	58519
2012	76917	68744	66692
2013	76742	77085	66349
2014	81583^	83013^	62791
*** The shown Pending cases numberstill the year 1992 shows the figures of cases after increased number on files.** **** After 1993, the number of pending cases are are actual file-wise (i.e. without expanding hyphenated figures on files.)** **^ The data for Institution and Disposal is up to 30.11.2014.**			

The above data shows the total cases filed in different jurisdictions of the Supreme Court, which includes question of law as to the interpretation of the Constitution. As we have seen earlier, the majority of cases arise in the Court isbecause of the liberal use of Special Leave jurisdiction. The institution of the cases has been increasing steadily since the early 1950s. It was growing by few hundreds every year till the year 1965, the consequence of it reflected in the disposal and pendency thereon. The docket of the Court was increasing simultaneously as institution of cases grew substantially creating a lag in disposal rate. The institution of cases rose by few thousands from 1965 to 1976 thereby creating the same impact on pendency.A massive increase of cases found in the year 1977 and 1978 with almost 6,000 cases instituted extra in each year and the disposal is just around 3,000 and 6,000 cases each year respectively.The pendency also substantially increased in these years.The reason is mainly because of the Constitution (42nd Amendment) Act, 1976.

This amendment inserted a new article[436] in the Constitution, which brought certain changes in the Supreme Court manner of functioning. In view of this new provision any matter where any question as to the constitutional validity of any Central or State law is raised the same shall be determined by a Bench consisting of not less than seven Judges. It was further provided that "a Central law or a State law cannot be declared unconstitutional unless the most of the judges that is, two-thirds of the sitting Judges determined for the same purpose". In *M/s. Misrilal Jain v. State of Orissa and another*,[437] the Supreme Court expressed the desirability to reconsider the constitutional amendment.The Court took this instant case as an opportunity to address their grievances andbring the attention of the Parliament to amend the provision suitably as to leave the Court to constitute the strength of the Bench according to the merit of each case.[438] The request was agreed and the provision was finally repealed by the Constitution (45th Amendment) Act, 1977. The next step increase is from 1980 and, until 1985 there was a steady substantial increase of cases both in institution and pendency, whereas, more number of disposals can also be seen in these years except 1984. From 1986 to 1992, the cases instituted in the Supreme Court were substantially reduced. Inspite of that also, the pendency has not reduced and it was keep on increasing year byyear by thousands.The pendency figures shown up to 1992 show the number of cases after the combined number extended to files and from 1993 onwards the image of the interdependence is clever in terms of the actual file that is without adding the fake number to the files.Whereas, from 1993 to 2002, the cases instituted in the Supreme Court is standard and around 37,000 but the disposal was quite large in the year 1994 to 1997.The institution and disposal of cases were almost equal from 1998 to 2002,which made them to maintain the pendency rate around 20,000 during that period. However from 2003 to 2014, the cases instituted were increased dramatically again by few thousands till 2007 but able to maintainit to the average of 75,000 cases till 2014.

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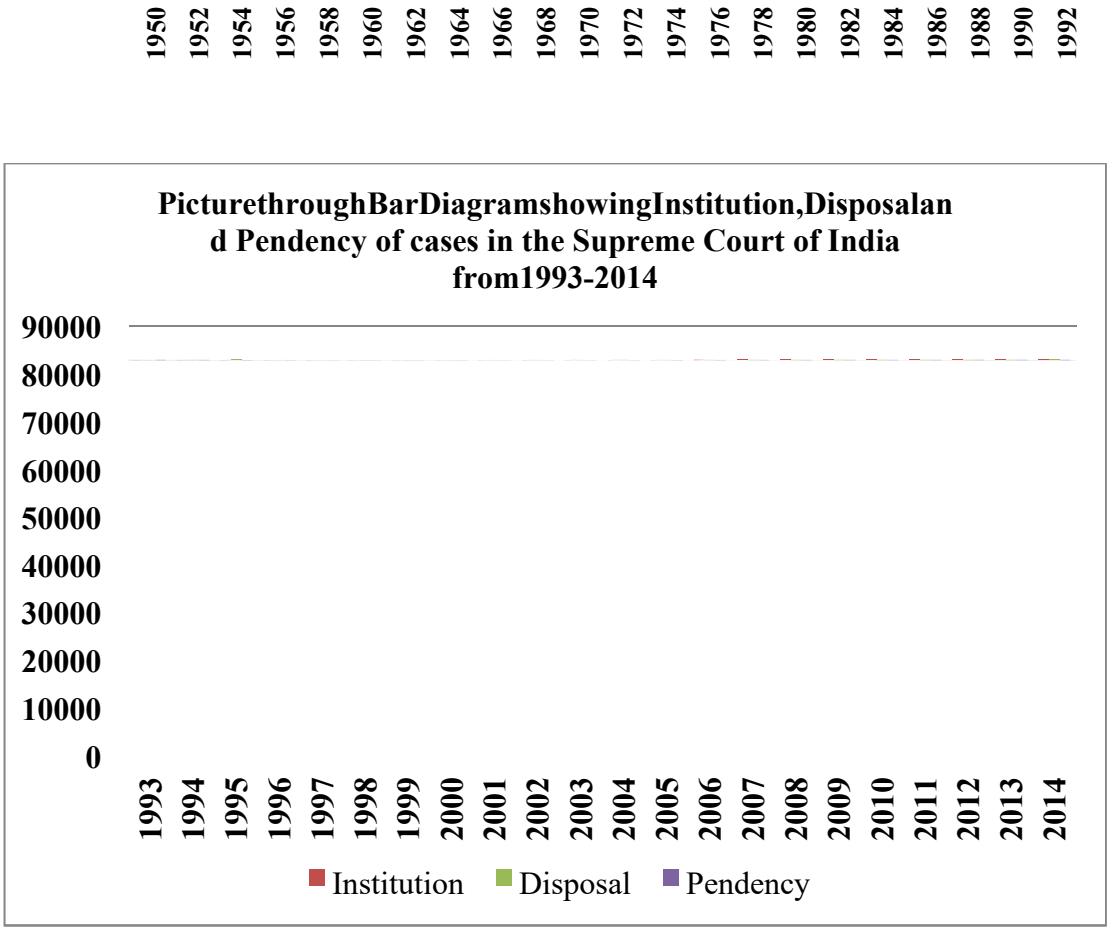
[436] INDIA CONST art. 144A: Special Provisions as to disposal of questions relating to Constitutional validity of law.

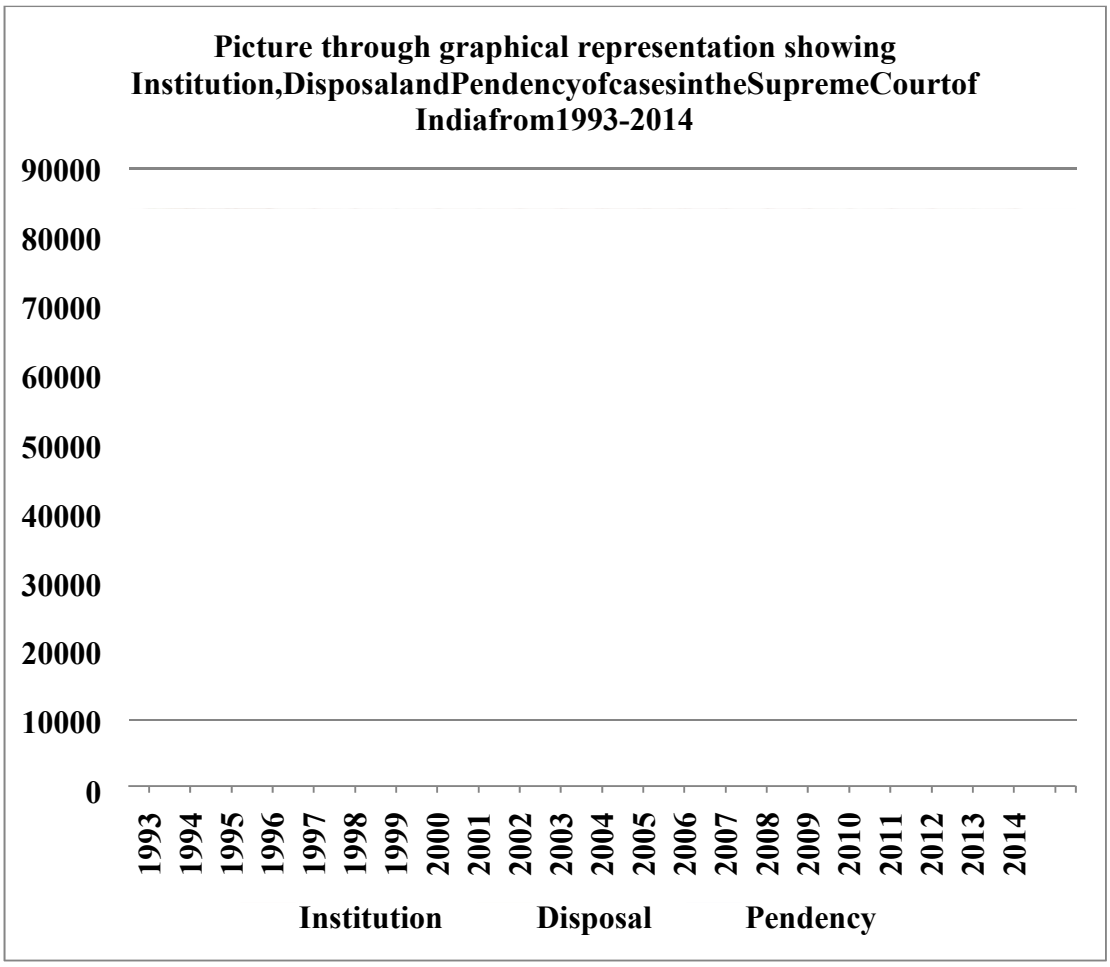
[437].R. 1977 S.C. 1686.

[438] "Article 13(3)(a),The Constitution of India. Defines LAW to include any Ordinance, Order, Bye-law, Rule,Regulation, Notification, etc. having the force of law with the result that sevenJudges of this Court may have to sit for determining any and every question as to the constitutional validity of even orders and notifications issued by the Government, which have the force of law.A Court which has large arrears to contend withhasnowtoundertakeanunnecessaryburdenbysevenofitsmembersassembling to decide all sorts of constitutional questions, no matter what their weight or worth.It ishoped that Art. 144A will engage the prompt attention of the Parliament so that it may, by generalconsensus, be so amended as to leave the Court itself the duty to decide how large a Bench should decide any particular case".

The disposal rate was poor from 2003 to 2007, which made the pendency to shoot upfrom 2007. But, the institution of cases is stable since 2009, whereas, the disposal ofcases lags behind in 2011 and 2012, which made the pendency rise.The main reasonsfor the fluctuation of institution and disposal of cases is because of the policy decision of the Court in the entertainment of the Special Leave Petitions. The data are represented through picture below for easy understanding.



1950 1952 1954 1956 1958 1960 1962 1964 1966 1968 1970 1972 1974 1976 1978 1980 1982 1984 1986 1988 1990 1992



Thus, it is very clear from the above analyses that the Court is really burdenedwith vast jurisdiction. A complete analyzes of all the jurisdictions and the docketemerging from each and it disposal thereby, provides a clear picture that the appellate jurisdiction of the Supreme Court is burdensome and particularly the Special Leave jurisdiction. Undoubtedly, the Court also enjoys broad discretion in entertaining Special Leave petitions. The exercise of unfettered discretion sparingly used by theCourt add heavy burden on its shoulders in disposing the cases on time. Besides the "burgeoning jurisdiction of the Supreme Court under Article 136, the Parliament is alsoimposing much burden on the Supreme Court by enhancing the appellate jurisdiction through the tribunals or commissions". Undoubtedly, the tribunals for different subjectmatter reduces the burden of regular Courts altogether especially the High Court but increases the workload of the Supreme Court by providing appeal to the highest appellate Court as a matter of right or providing conditions which can be easily circumvent by the litigants. The Parliament idea of creating more tribunals for speedier justice and to reduce the backlog of cases in ordinary Courts is appreciable.At the same time, providing appeal directly to the Supreme Court to correct the errors committed by these tribunals creates an extra burden for the Supreme Court. The datas analyzed are neither precise nor accurate but gave a glimpse on the docket explosion in the Supreme Court. The institution, pendency and disposal from 1950 to 2014 are hallmarks to reveal the Supreme Court's inability in handling the cases. Indisputably, the rise of the pendency of cases makes the Supreme Court to sit in fragmented Benches and concentrate on general appeal matters in order to dispose its wiftly thereby clear the backlog periodically. It seems that this made the Court to give little attention to the cases involving constitutional questions and reluctant in setting up of Constitution Benches as provided under law of the land.

CHAPTER-V: DATA COLLECTION, ANALYSIS AND INTERPRETATION OF DOCTRINAL AND EMPIRICAL DATA

5.1 DATA COLLECTION, ANALYSIS AND INTERPRETATION OF DOCTRINAL DATA

Data is Collected from 94 PDF files downloaded from Supreme Court of India portal, where every file contains “MONTHLY PENDING CASES - Types of matters pending in Supreme Court of India”. Data gathered covers the data between 08.05.2012 to 03.02.2022.

5.1.1 Collection of Doctrinal data. (From Supreme Court of India’s data repository)

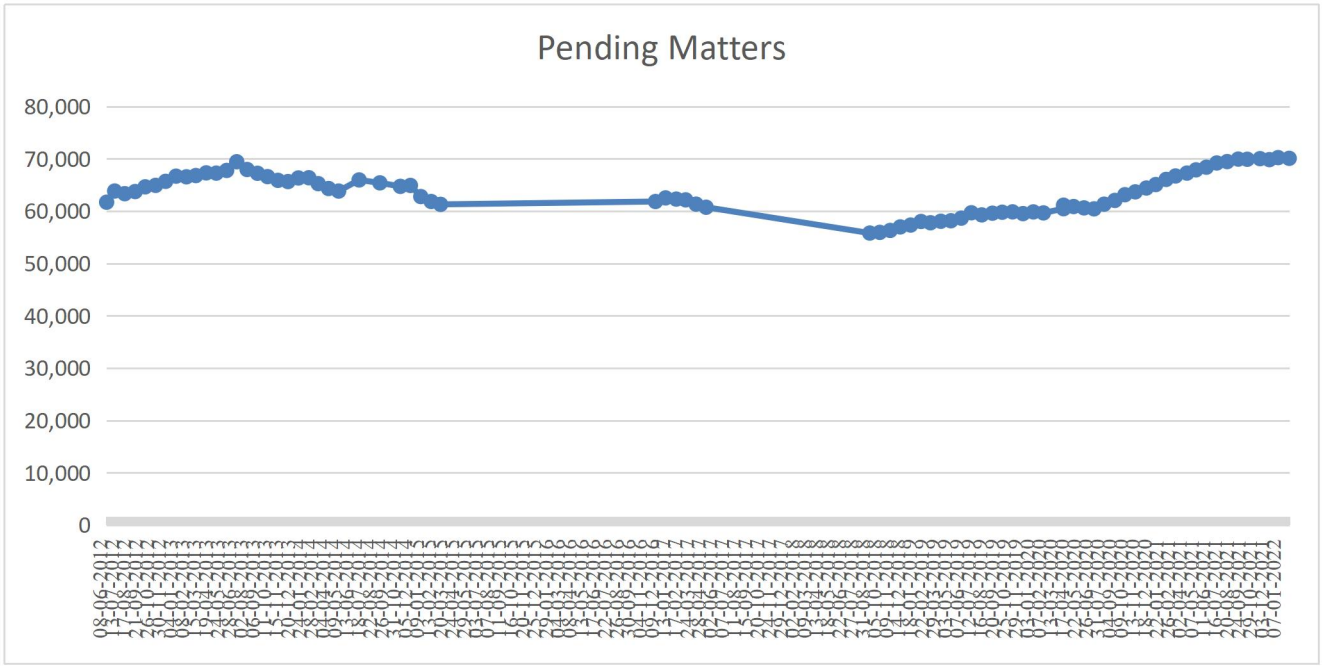
Total Judgments: The data is collected from all the 94 records (i.e through 94 queries in the application) which are the total decided cases in that period of time @ https://main.sci.gov.in/judgments, "Judgment Date" TAB, Judgments between two dates.

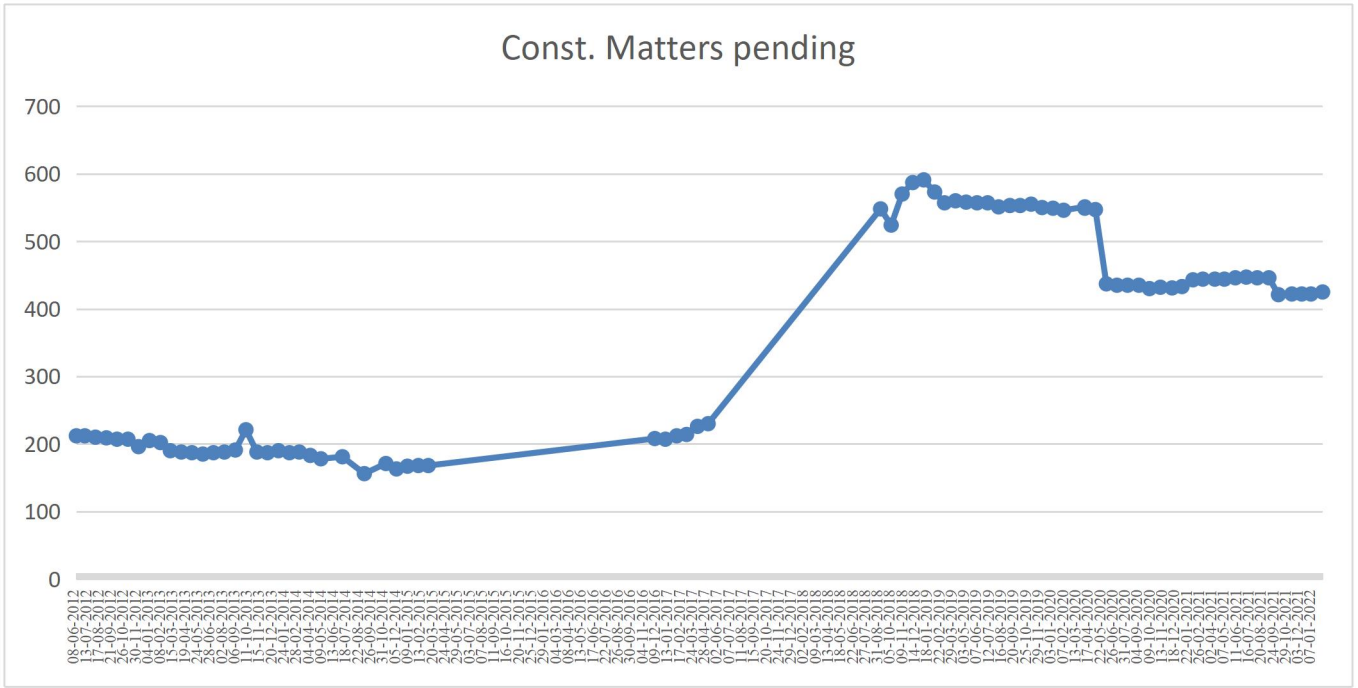
Constitutional bench Judgments: The data is collected from the 94 records (i.e through 94 queries in the application) which are the total decided cases in that period of time @ https://main.sci.gov.in/judgments, "Const. Bench" TAB, Judgments between two dates.

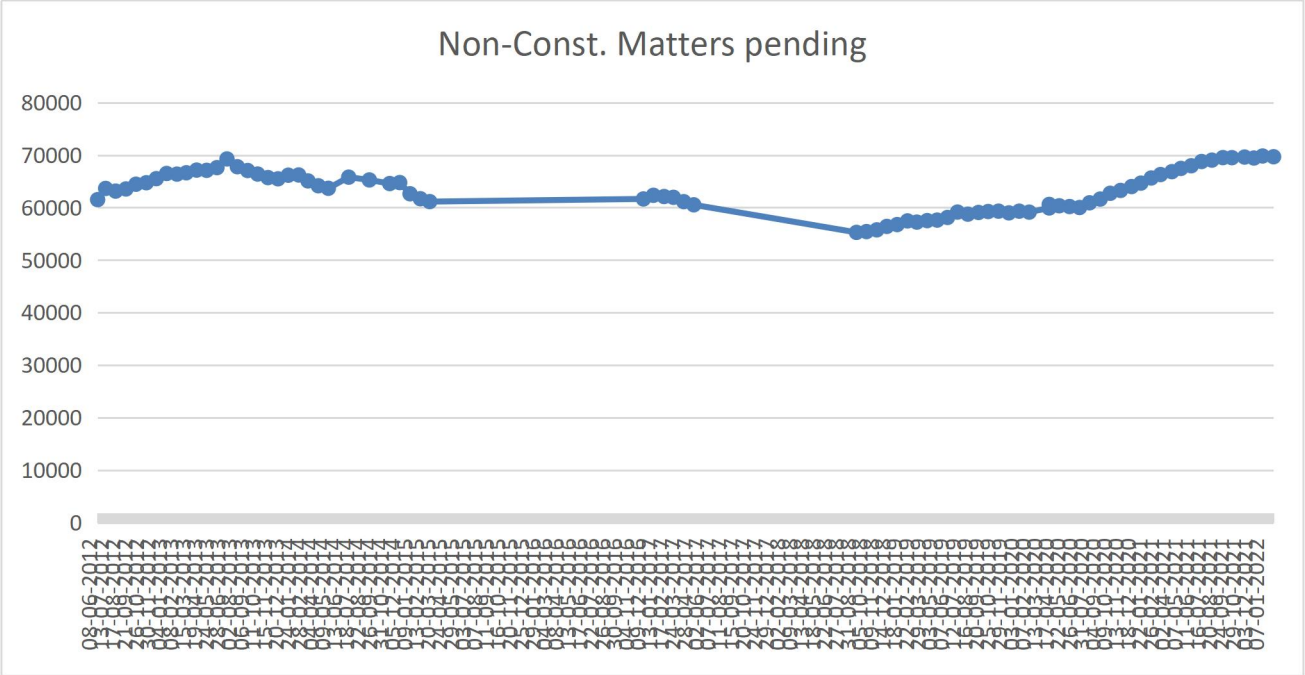
Judgments for the cases that are Other than Constitutional Issues: These are the difference between the **Total Judgments** and **Constitutional bench Judgments**.

5.1.2 Analysis of Doctrinal data.

The Data Collected is represented graphically through various graphs as follows:



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50000
40000
30000
20000
10000
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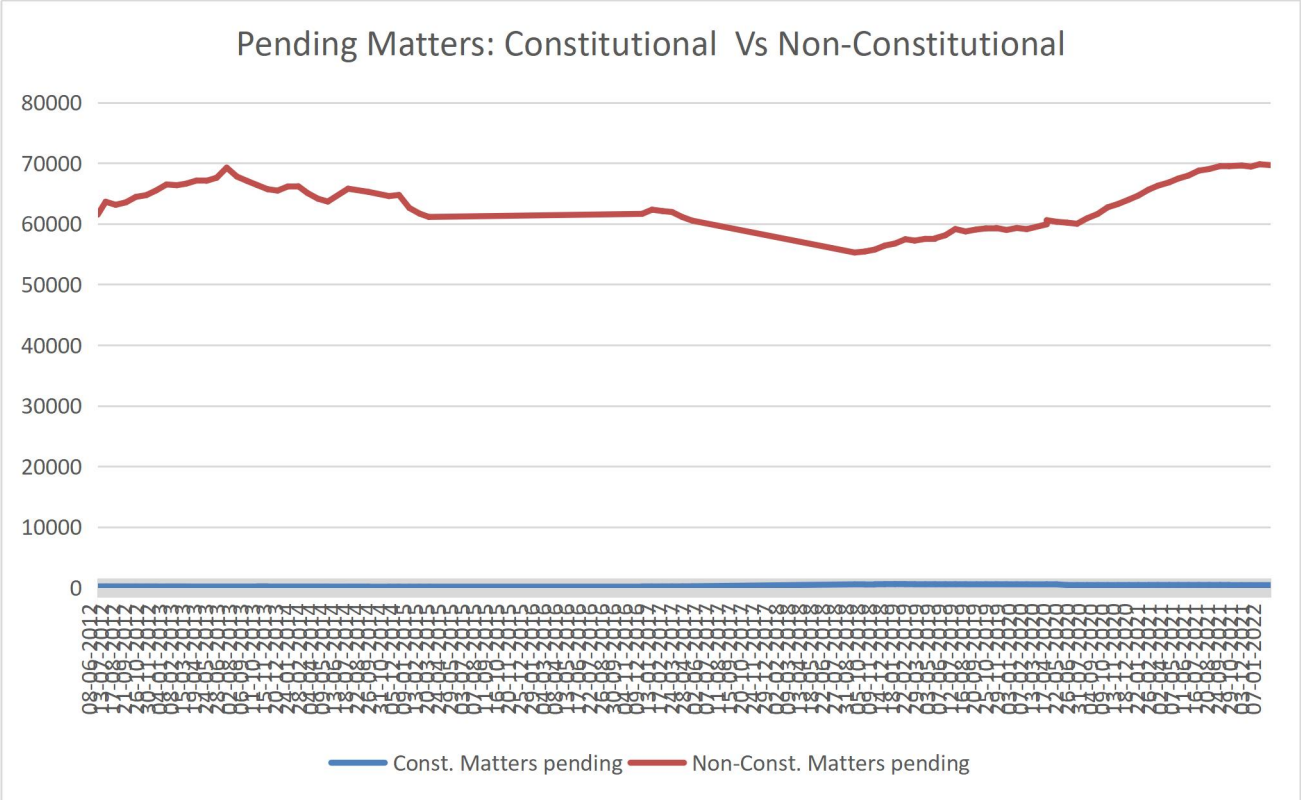
Pending Matters: Constitutional Vs Non-Constitutional
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50000
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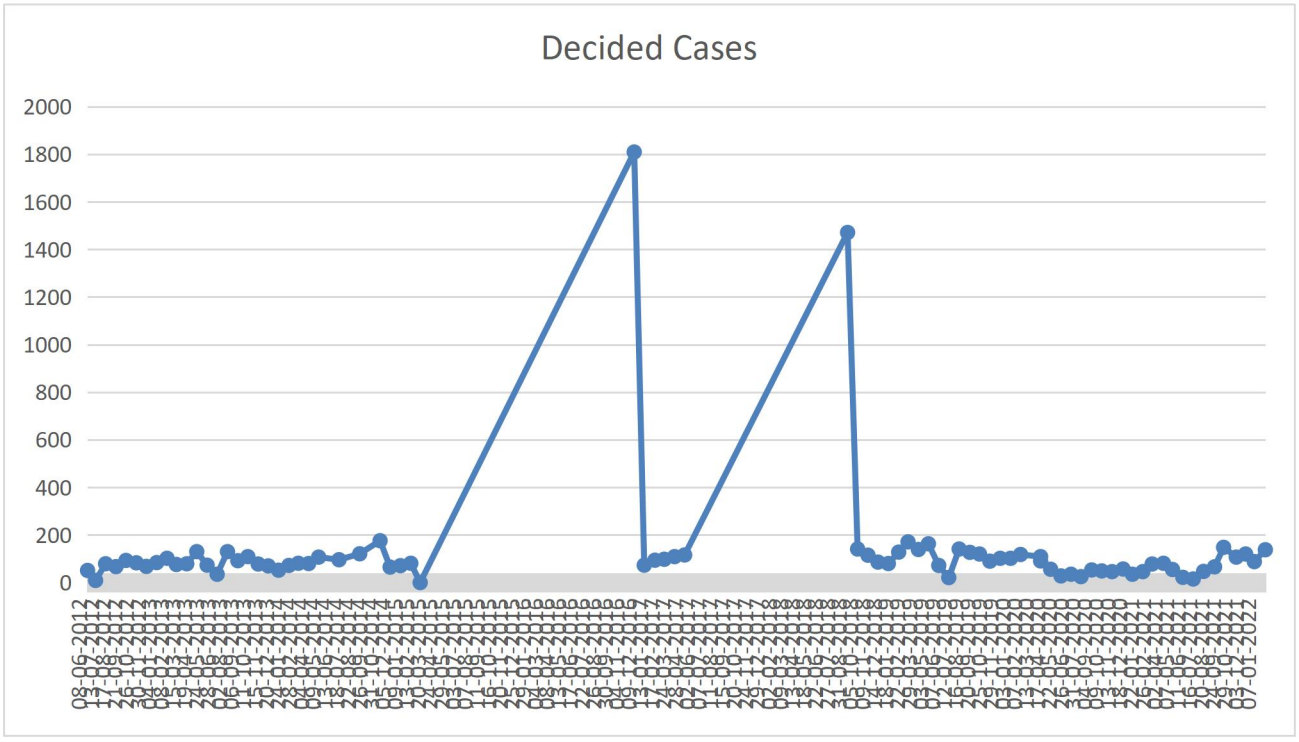
30000
20000
10000
0
Const. Matters pending
Non-Const. Matters pending


Decided Cases
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1800
1600
1400
1200
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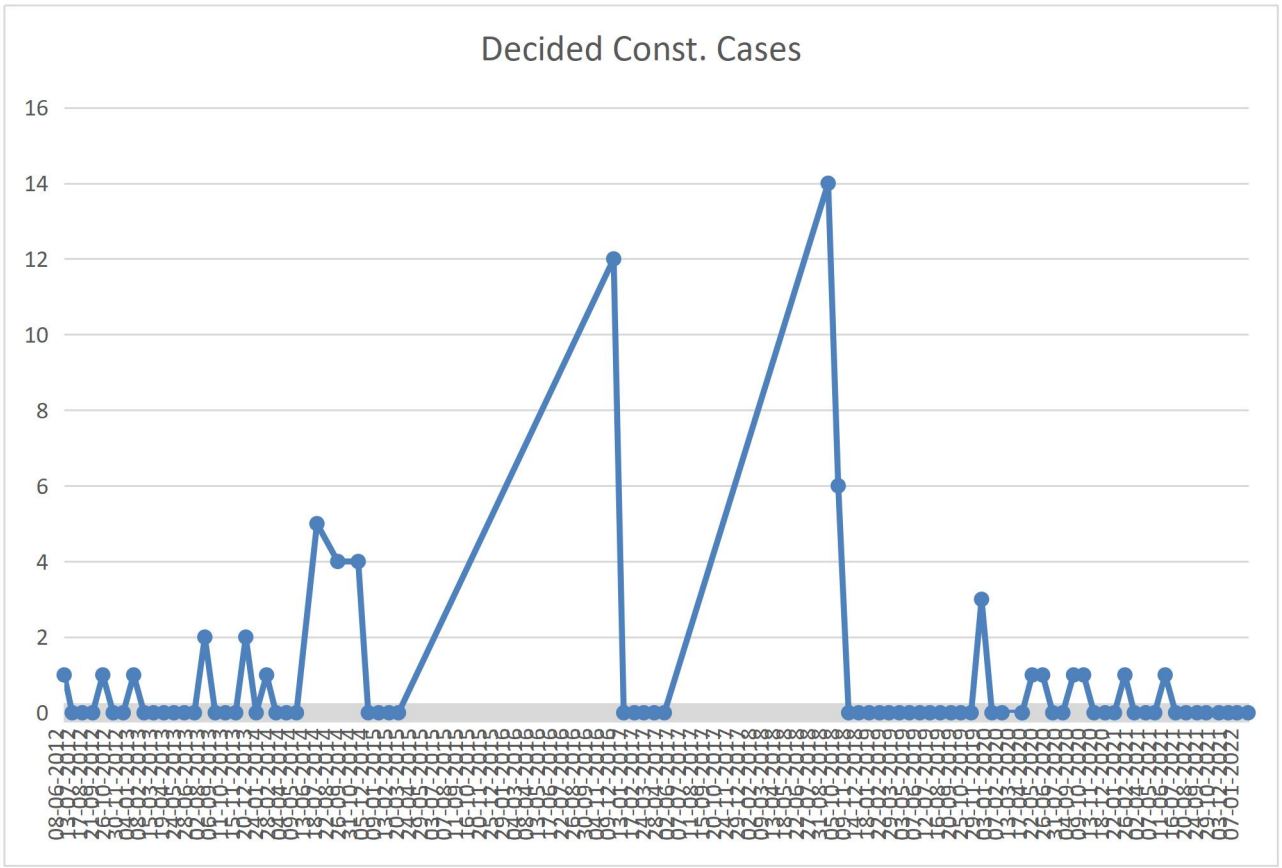
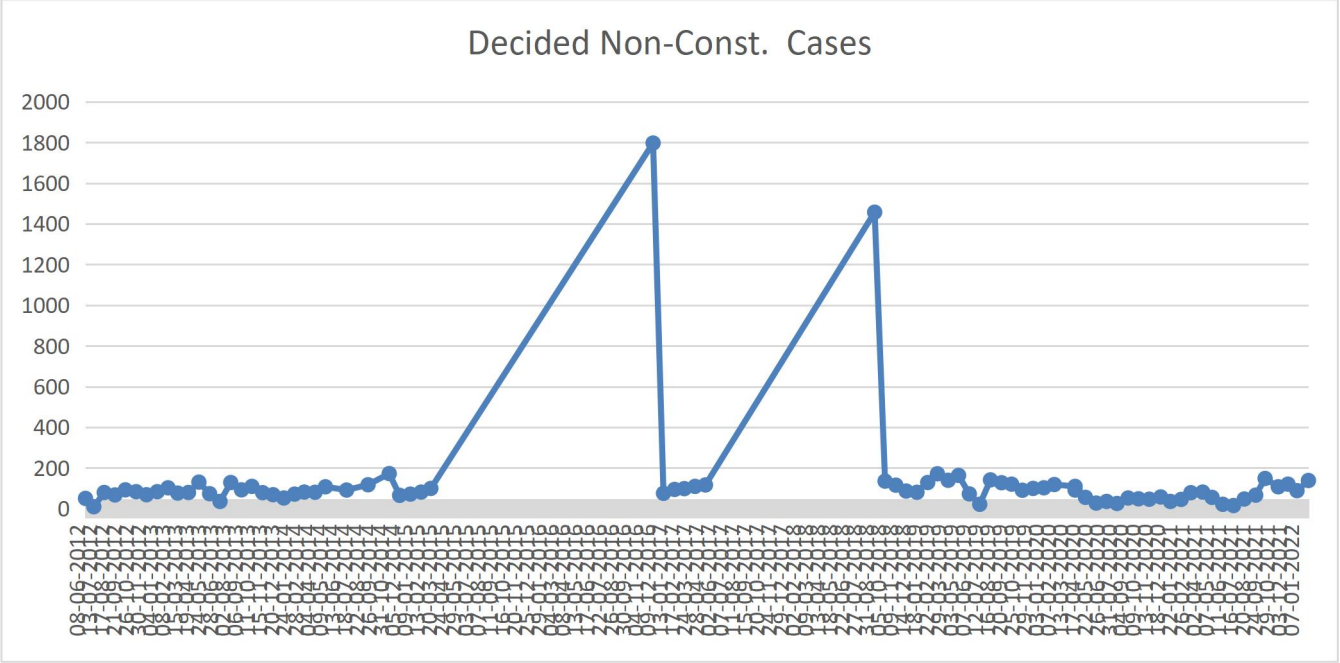
800
600
400
200
0


Decided Const. Cases
16
14
12
10
8
6
4
2
0


Decided Non-Const. Cases
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1600
1400
1200
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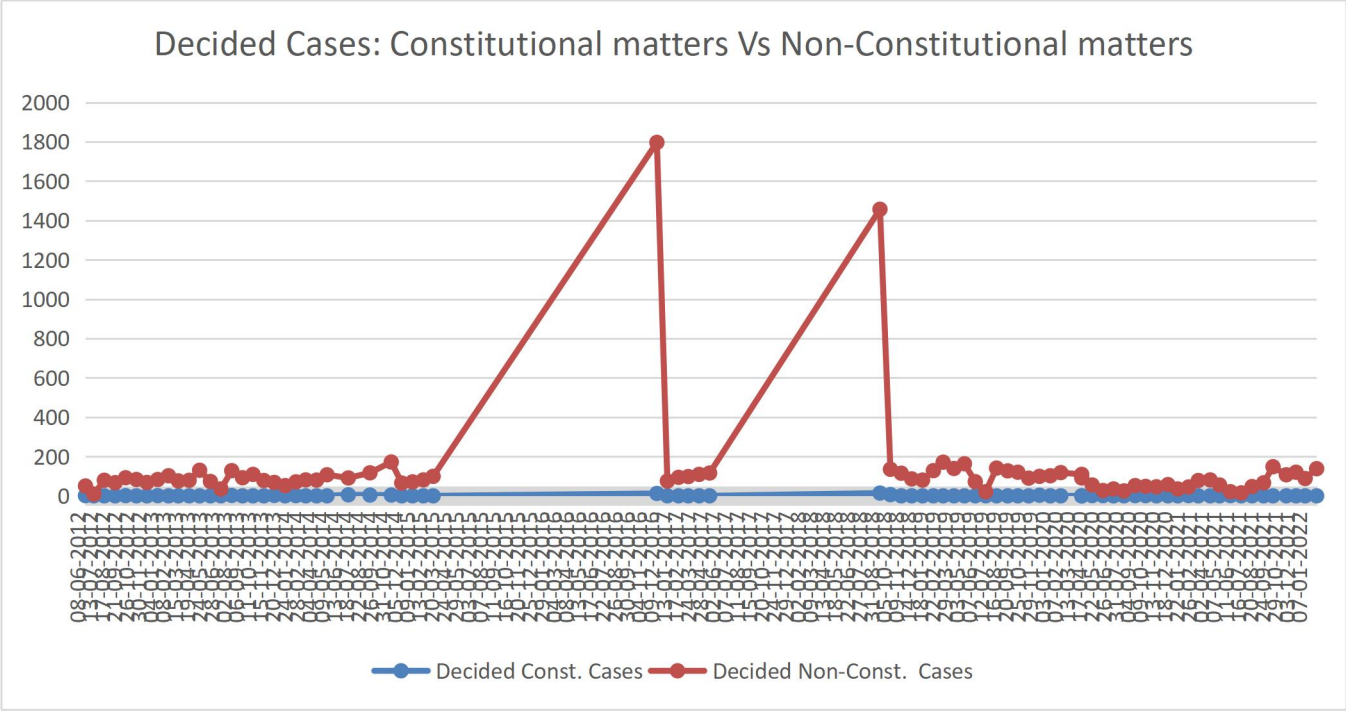
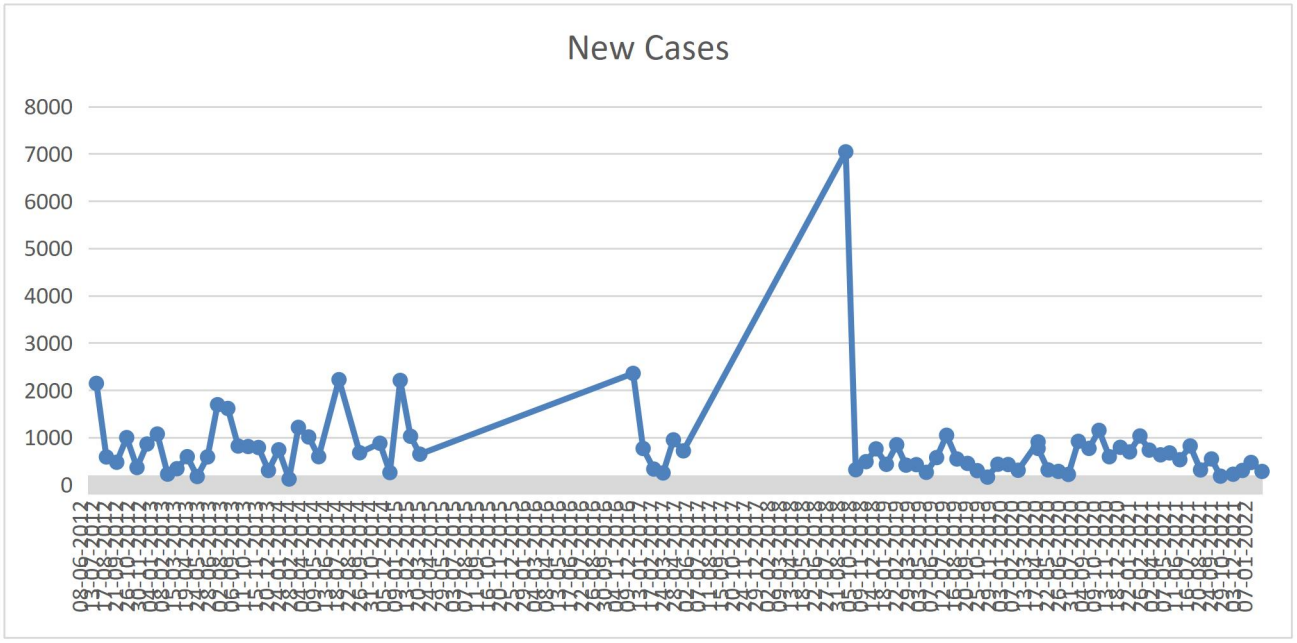
800
600
400
200
0


Decided Cases: Constitutional matters Vs Non-Constitutional matters
2000
1800
1600
1400
1200
1000
800
600
400
200
0
Decided Const. Cases
Decided Non-Const. Cases


New Cases
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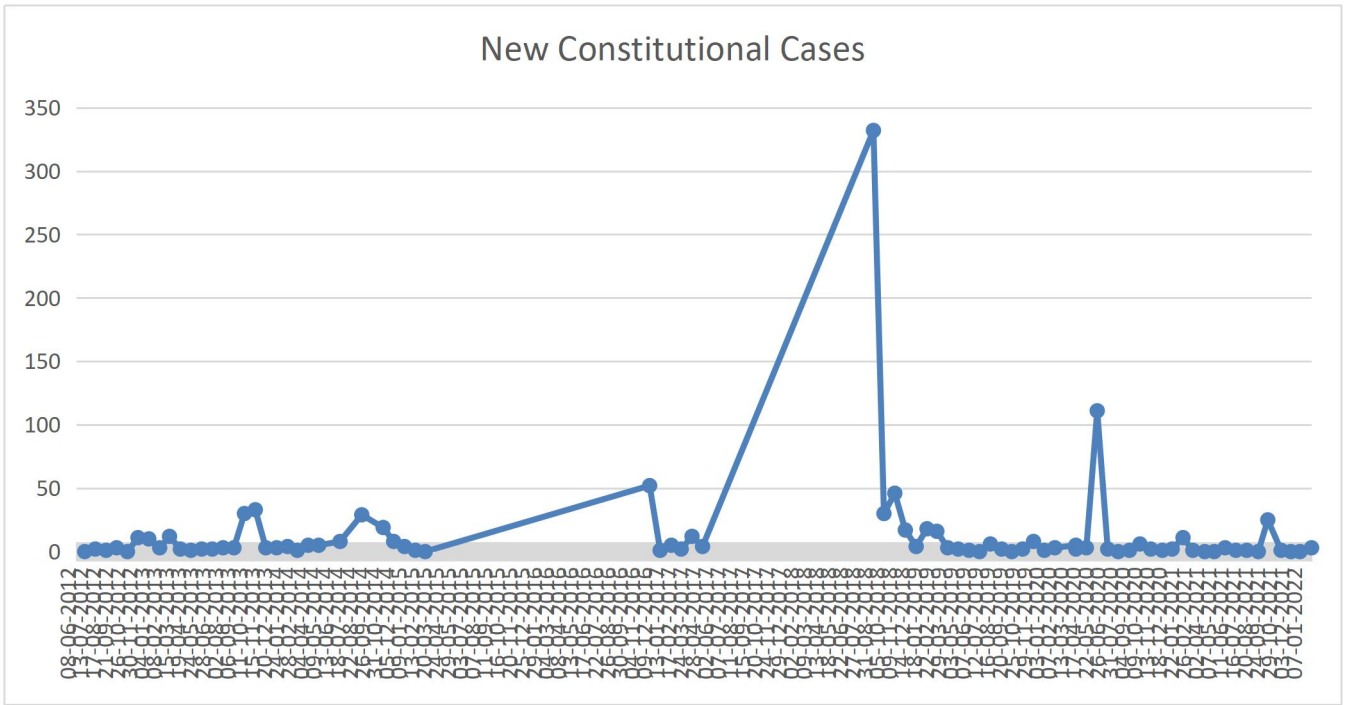
7000
6000
5000
4000
3000
2000
1000
0


New Constitutional Cases
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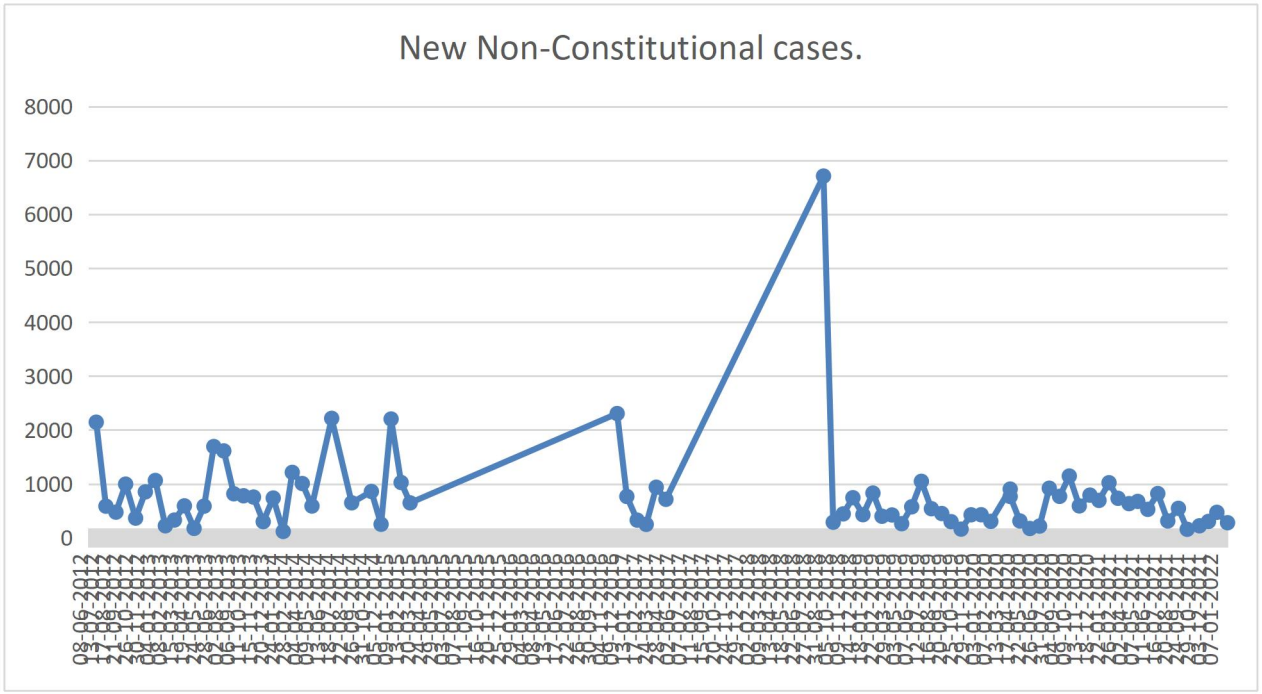
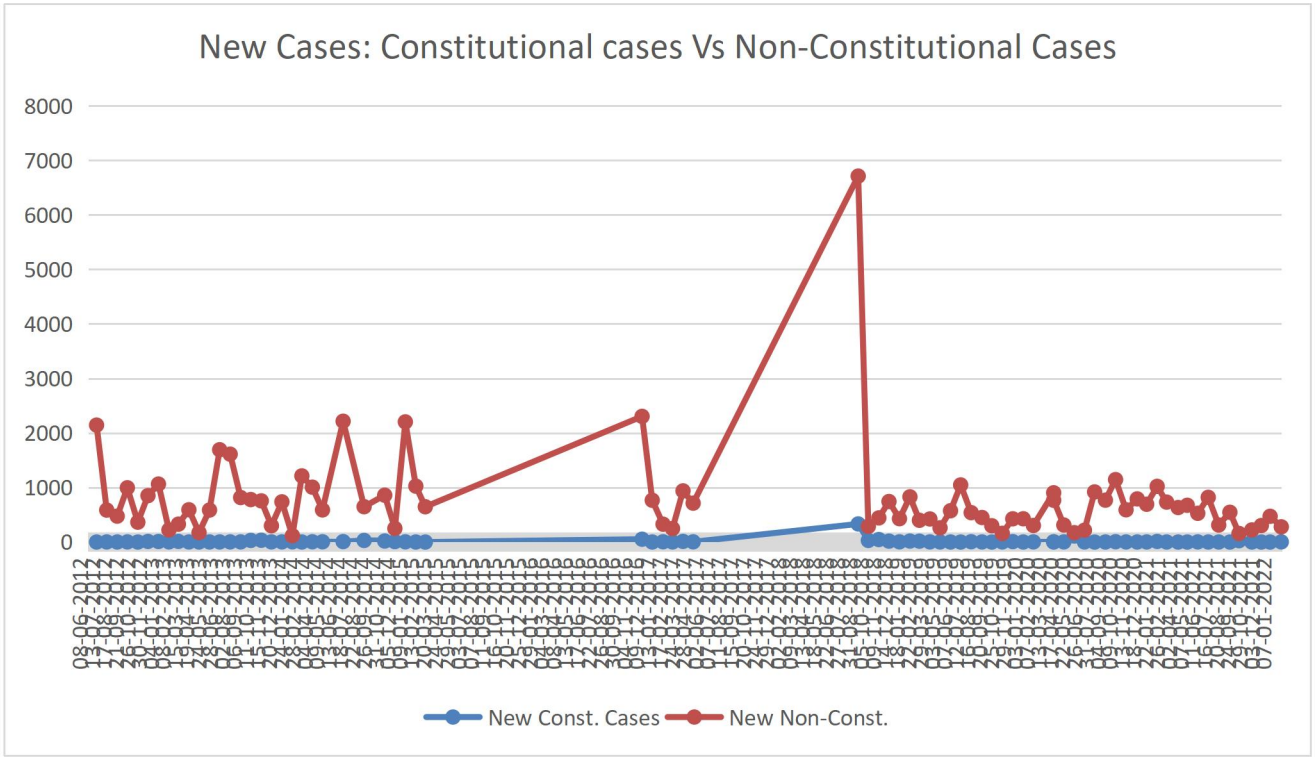
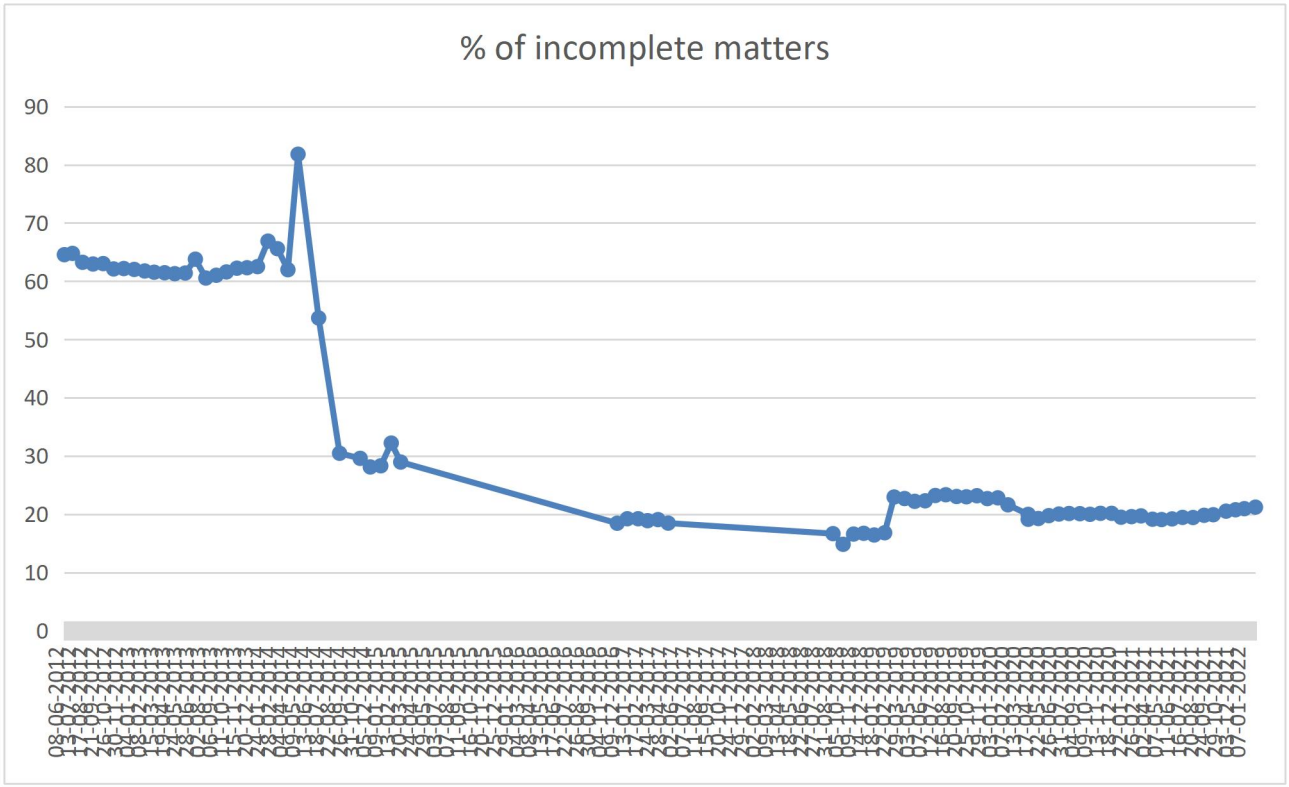
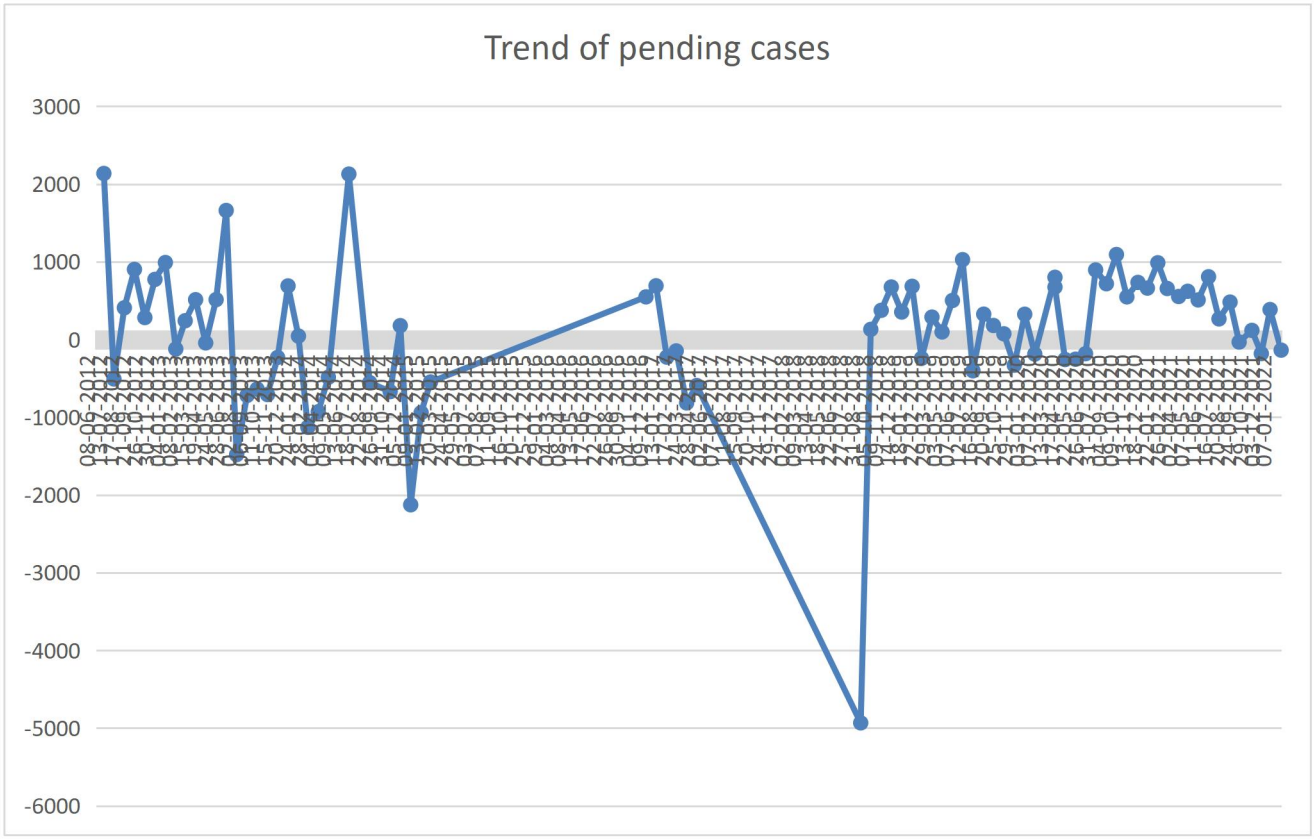
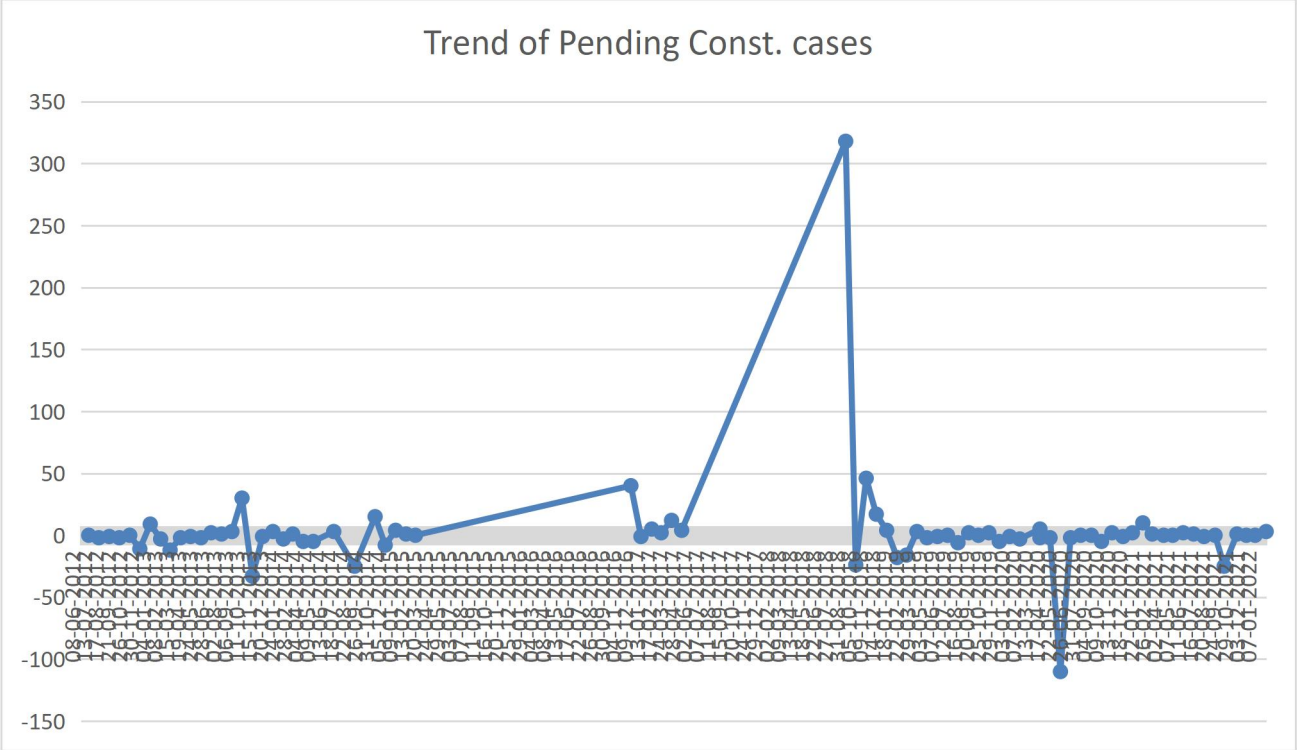
300
250
200
150
100
50
0

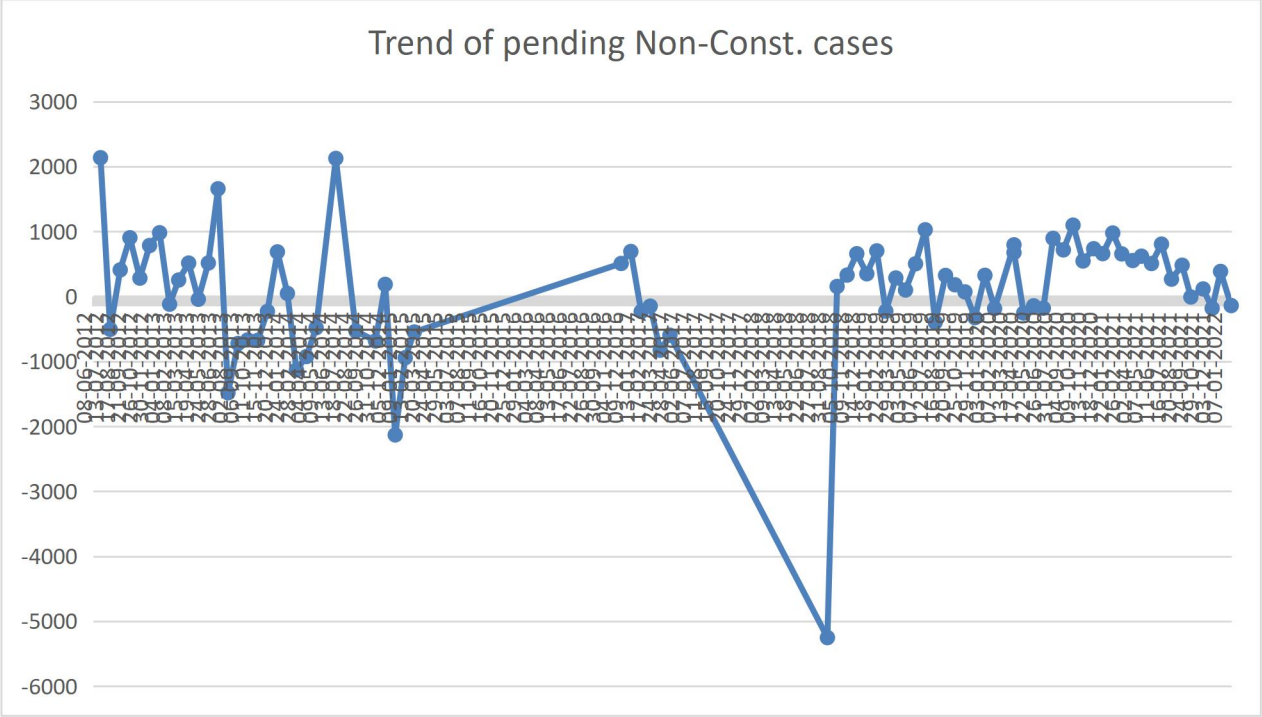

New Non-Constitutional cases.
8000
7000
6000
5000
4000
3000
2000
1000
0

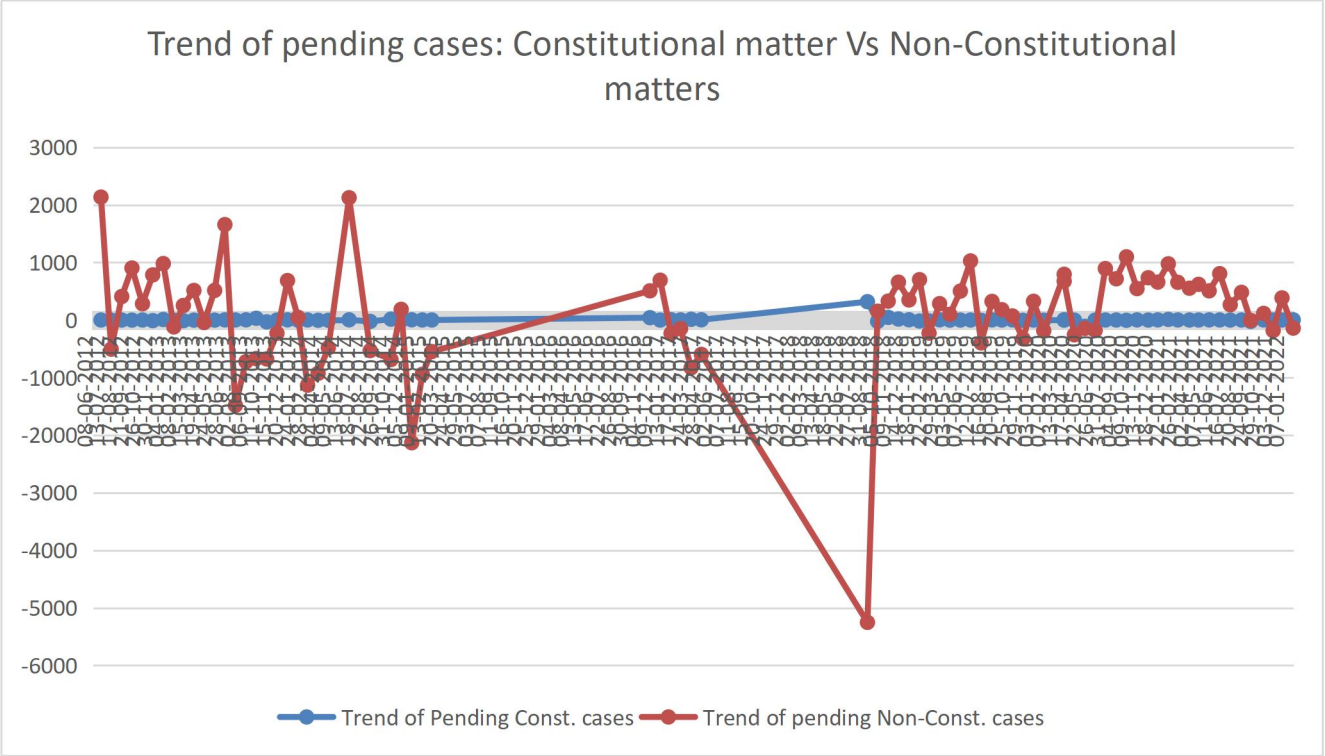

New Cases: Constitutional cases Vs Non-Constitutional Cases
8000
7000
6000
5000
4000
3000
2000
1000
0
New Const. Cases
New Non-Const.

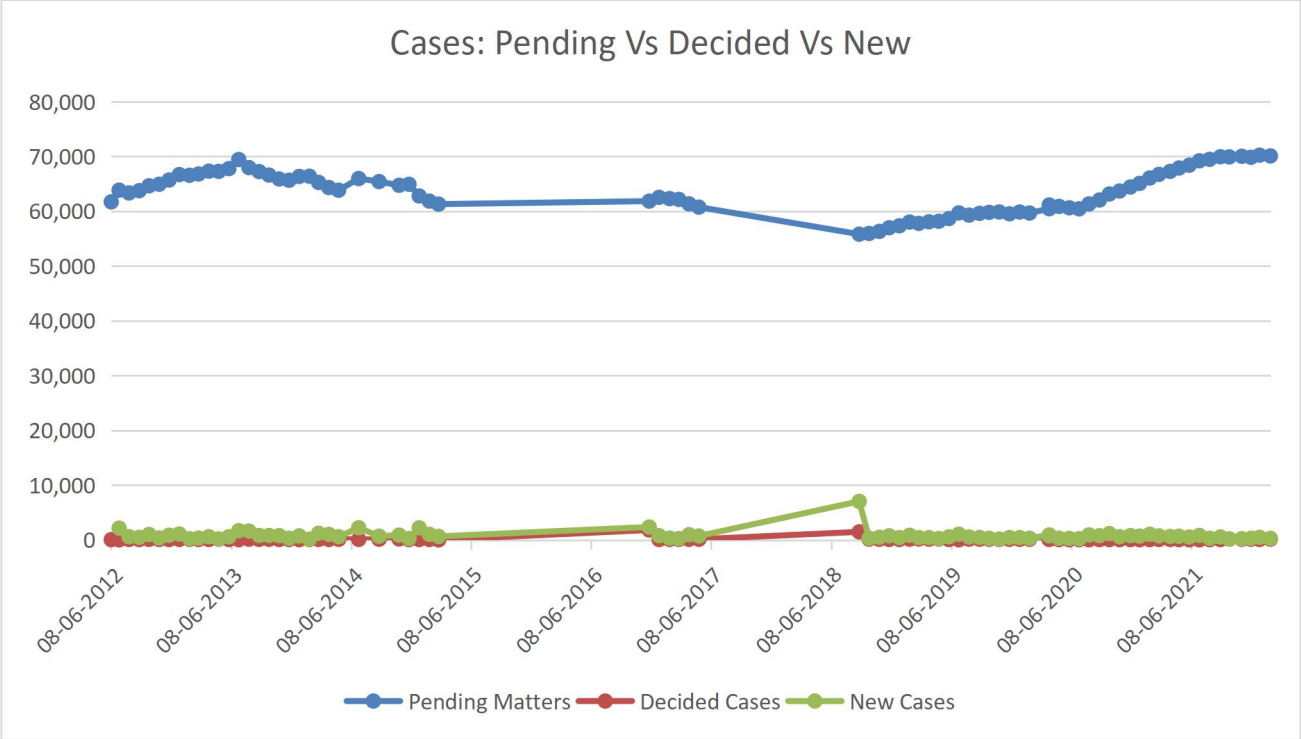

% of incomplete matters
90
80
70
60
50
40
30
20
10
0

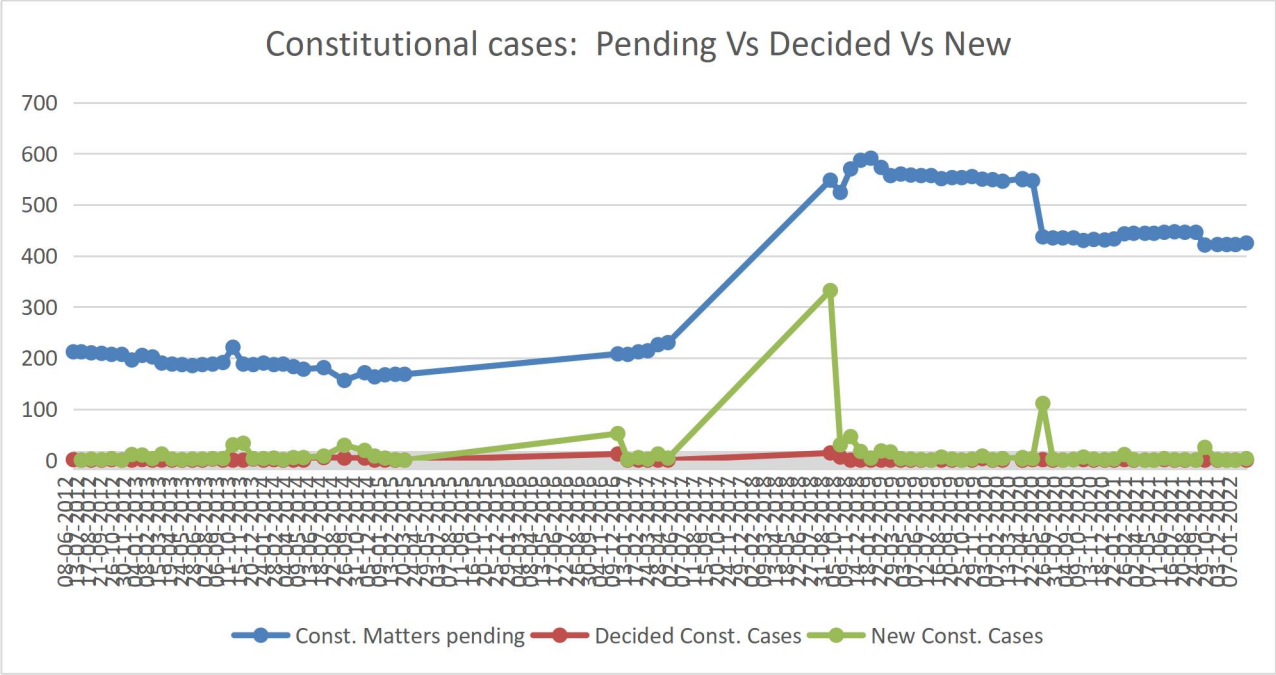

Trend of pending cases
3000
2000
1000
0
-1000
-2000
-3000
-4000
-5000
-6000

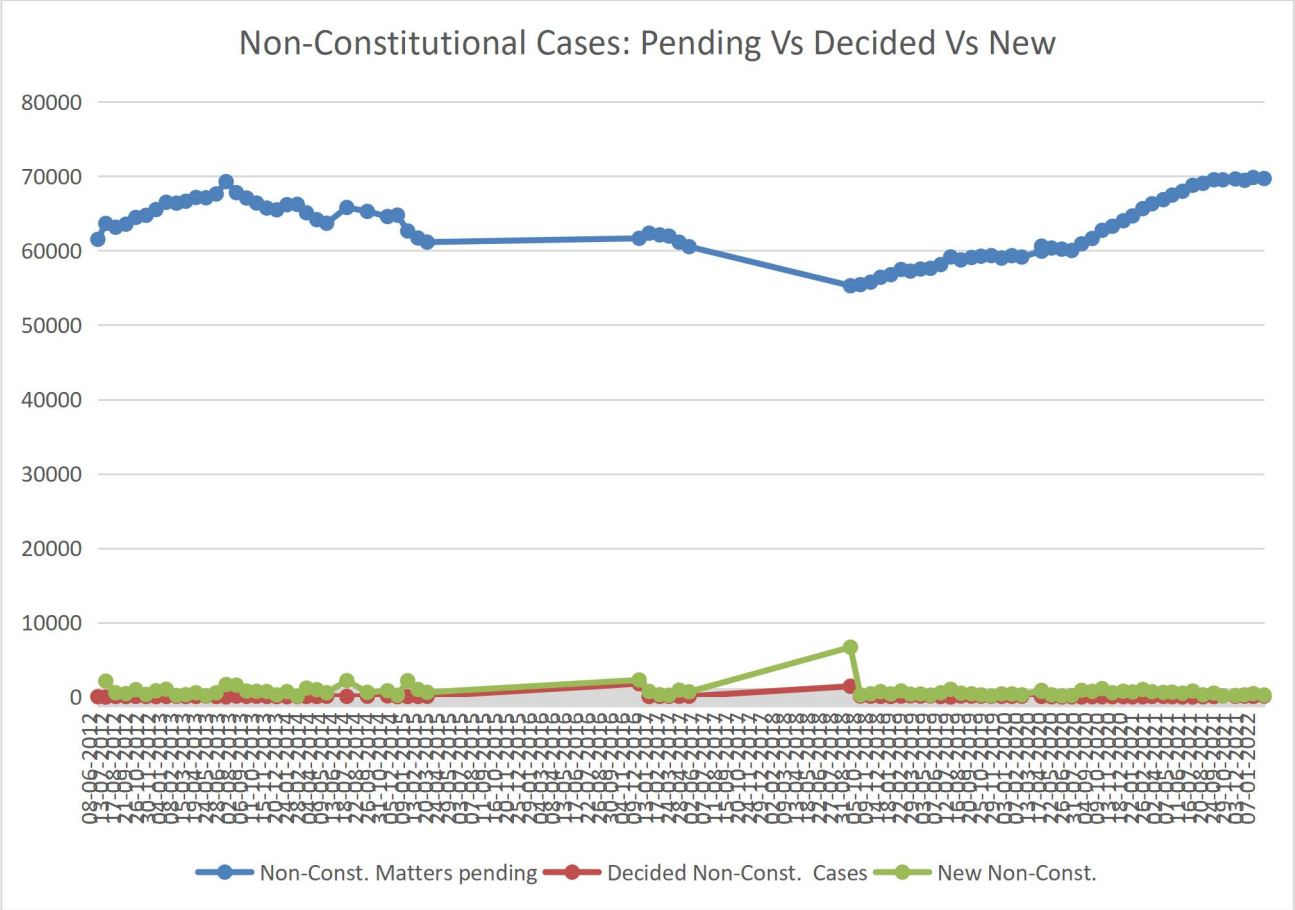

Trend of Pending Const. cases
350
300
250
200
150
100
50
0
-50
-100
-150


Trend of pending Non-Const. cases
3000
2000
1000
0
-1000
-2000
-3000
-4000
-5000
-6000


Trend of pending cases: Constitutional matter Vs Non-Constitutional matters
3000
2000
1000
0
-1000
-2000
-3000
-4000
-5000
-6000
Trend of Pending Const. cases
Trend of pending Non-Const. cases


Cases: Pending Vs Decided Vs New
80,000
70,000
60,000
50,000
40,000
30,000
20,000
10,000
0
08-06-2012
08-06-2013
08-06-2014
08-06-2015
08-06-2016
08-06-2017
08-06-2018
08-06-2019
08-06-2020
08-06-2021
Pending Matters
Decided Cases
New Cases


Constitutional cases: Pending Vs Decided Vs New
700
600
500
400
300
200
100
0
Const. Matters pending
Decided Const. Cases
New Const. Cases


Non-Constitutional Cases: Pending Vs Decided Vs New
80000
70000
60000
50000
40000
30000
20000
10000
0
Non-Const. Matters pending
Decided Non-Const. Cases
New Non-Const.

5.1.3 Interpretation of Doctrinal data.

The “Supreme Court of India” was only meant to adjudicate intricate Constitutional issues. However, acting under “Article 136 of the Constitution of India and through writ petitions filed under Article 32”, Advocates have actually converted the Apex Court into a regular court of appeal, resulting in a mounting pendency of cases. For the purpose of this project, data has been collected from the Supreme Court regarding the appeals filed. The data has to be analysed to ascertain the causes of increased pendency of cases in the “Supreme Court”.

Important point for the pendency is:

“The misuse of Article 136 of the Constitution by the Advocates is the primary reason for the mounting pendency of cases in the Supreme Court. It has relegated the Supreme Court as a regular court of appeal. The number of cases pending in the Supreme Court of India from various High Courts is directly proportional to the distance of the High Courts from the Apex Court. For ex: the Delhi High Court is just 3 km away from the Supreme Court and therefore, it contributes 12% (which is the highest) of the total appeals pending in the Supreme Court. On the other hand, the Madras High Court is 2200 km away from the Supreme Court and thus, contributes the minimum number of appeals to the Apex Court, i.e., just 1.1%.”

5.2 DATA COLLECTION, ANALYSIS AND INTERPRETATION OF EMPIRICAL DATA

Data is collected through a Questionaire, and the number of respondents for the study includes a total of 250 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 Teachers (with Ph.D.)

5.2.1 Collection of Empirical data. (Through Questionnaire)

Data is collected through the following Questionnaire:

QUESTIONNAIRE

I, Vutukuri Ramu, a student of School of Law, **Lovely Professional University, Punjab,** am presently working on my Ph.D. Thesis topic titled **"PENDENCY OF CASES IN THE SUPREME COURT OF INDIA: NECESSITY OF A COURT OF APPEAL".** I request you to kindly fill the questionnaire below. I assure you that your identity and responses shall be kept confidential and the data will be used only for the purpose of my research work.

Name: **Age:**

Designation/ Profession:

Place of Residence:

Contact (Phome/Mobile): **Email id:**

Questions

1. **Is the "Supreme Court of India" overburdened with cases? (check any one)**
   - **A. Yes**
   - **B. No**
2. **Is the "Supreme Court of India a regular Court of Appeal"? (check any one)**
   - **A. Yes**
   - **B. No.**
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**
   - **B. No**
4. **Should Article 136 be deleted from the Constitution of India by effecting a Constitutional amendment? (check any one)**
   - **A. Yes**
   - **B. No**
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**
   - **B. No**
6. **In your opinion, who is responsible for the mounting pendency of cases in the "Supreme Court of India"? (Multiple options can be made)**
   - **A. Advocates**
   - **B. Judges**

C. **Litigants**

D. **Government of India**

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 made)**

   A. **Increasing the number of Judges in the "Supreme Court"**

   B. **Establishing Regional Benches of the "Supreme Court"**

   C. **Establishing a "Court of Appeal between the High Courts and the Supreme Court"**

   D. **Deleting "Article 136 from the Constitution of India"**

   E. **Accepting very limited cases under Article 136 from the Constitution of India**

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

   A. **One**

   B. **Two**

   C. **Three**

   D. **Four**

   E. **Five**

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**

   B. **No**

   C. **Only in cases of death sentence**

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**

B. Court of Appeal

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

B. Court of Appeal

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

B. Criminal Cases

C. Constitutional Cases

D. Both Civil and Criminal Cases

E. Civil, Criminal as well as Constitutional Cases

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

A. Advocates

B. Judges

C. Litigants

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

A. Yes

B. No

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

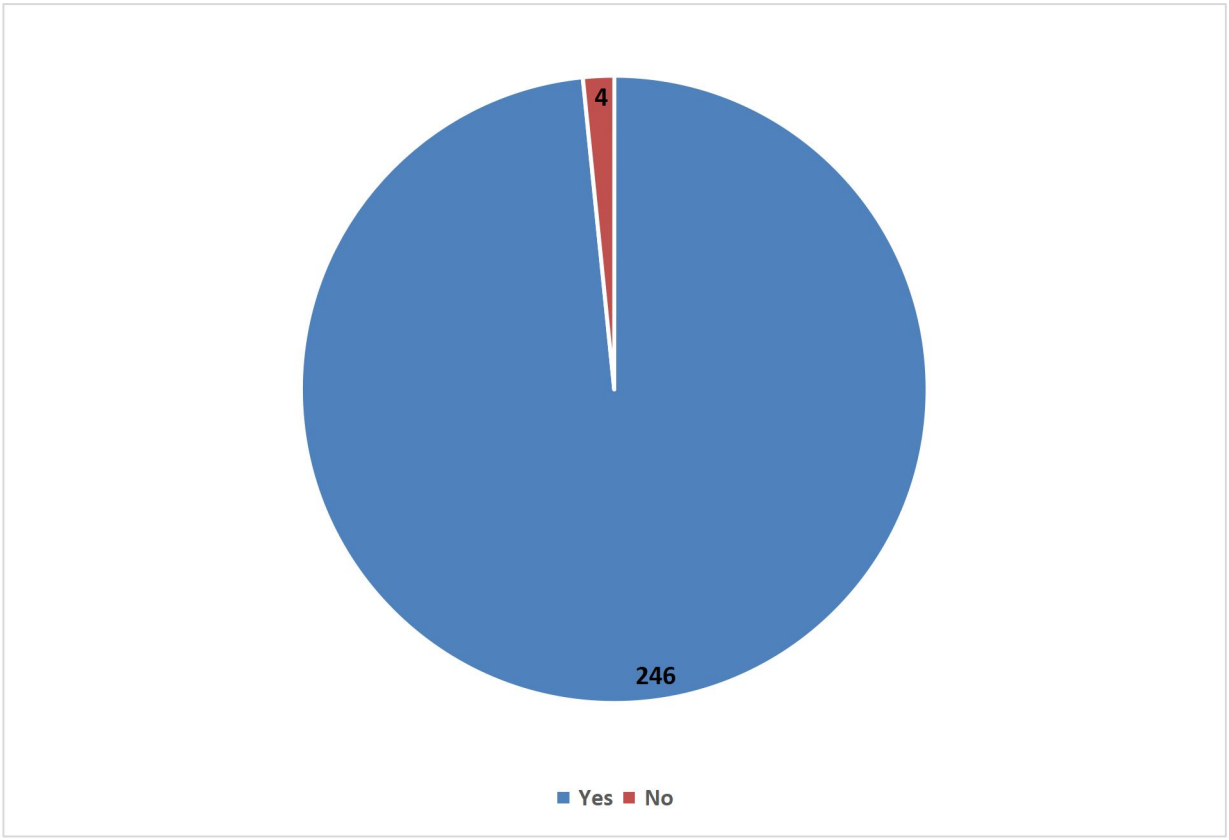
B. No

5.2.2 Analysis of Empirical data(from all types of Respondents)

Data collected is represented graphically as follows:

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

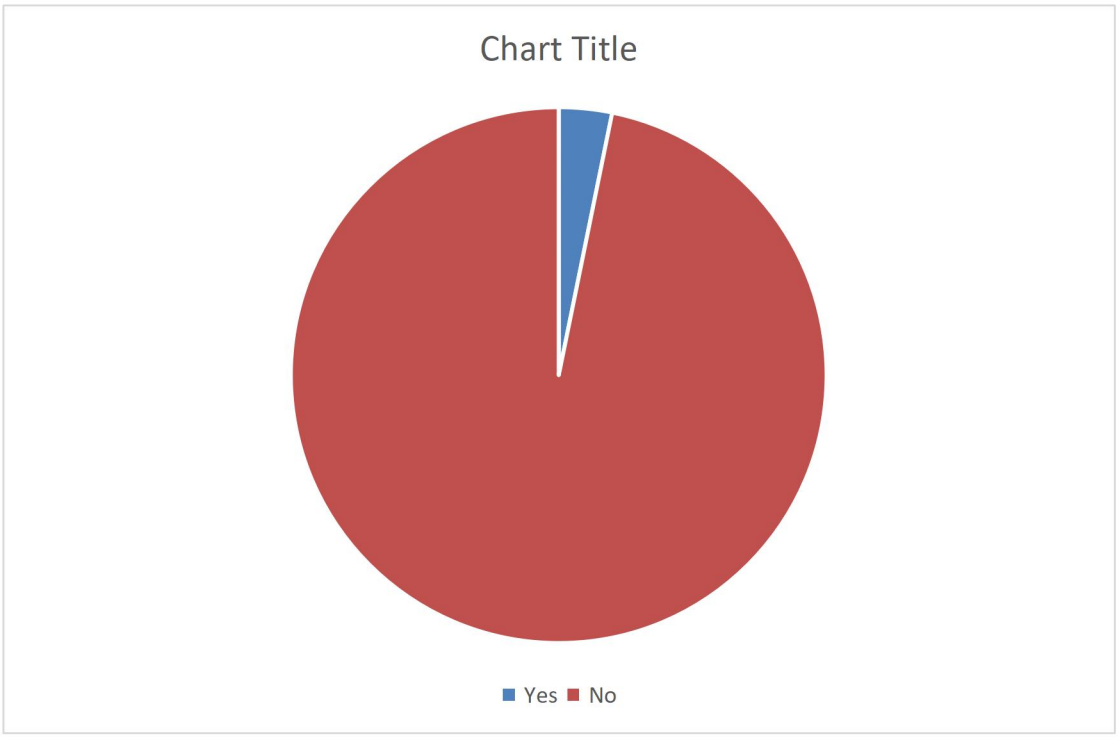
   A. **Yes - 246 (98.4 %)**
   B. **No - 4 (1.6 %)**



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)

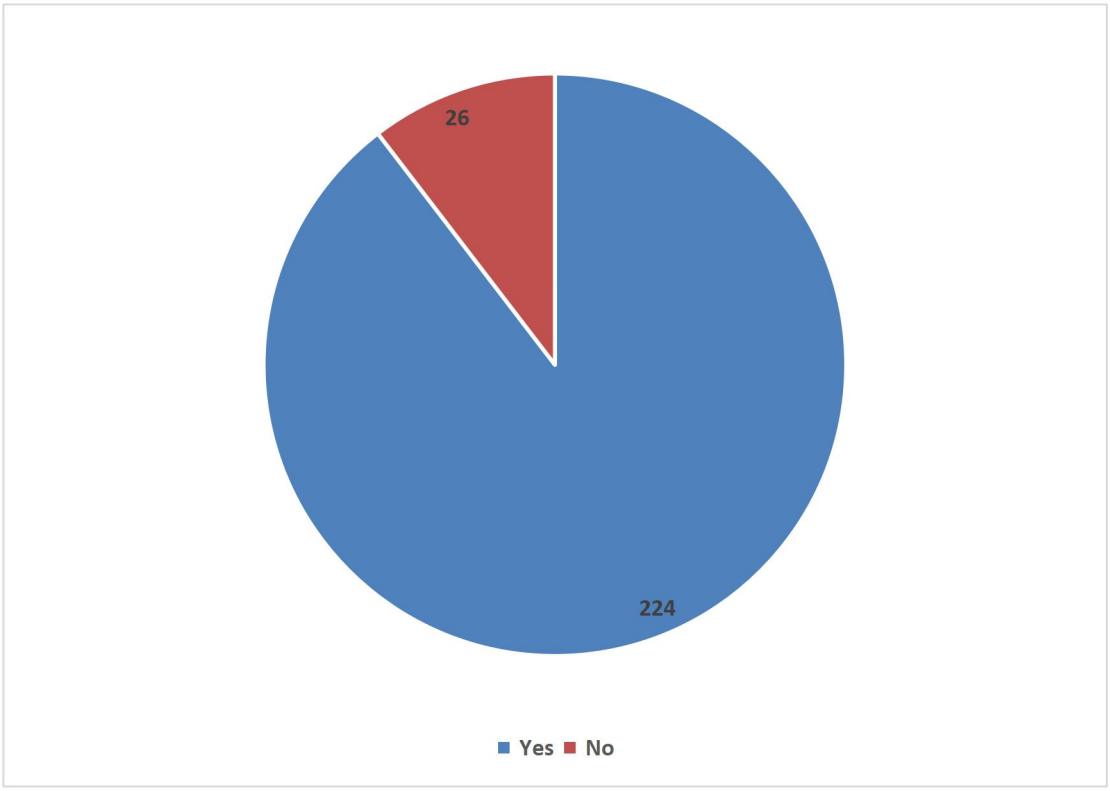
A. Yes - 8 (3.2 %)
B. No - 242 (96.8 %)



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)

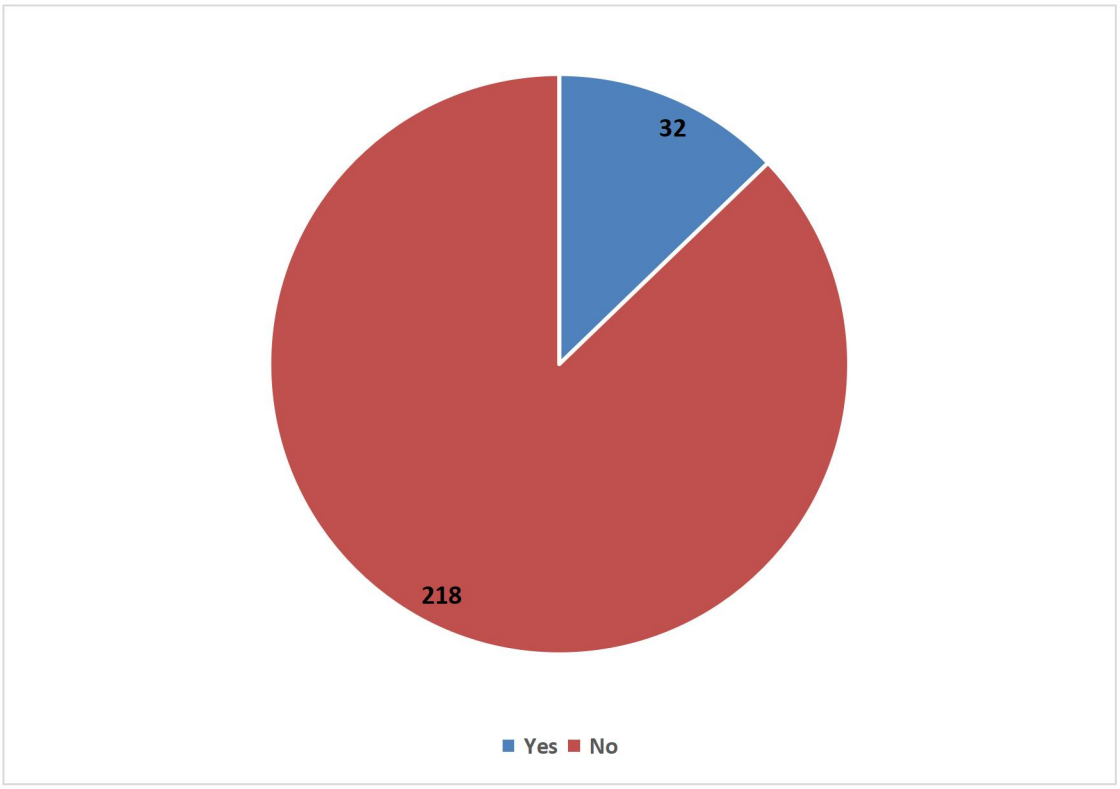
A. Yes - 224 (89.6 %)
B. No - 26 (10.4 %)



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)

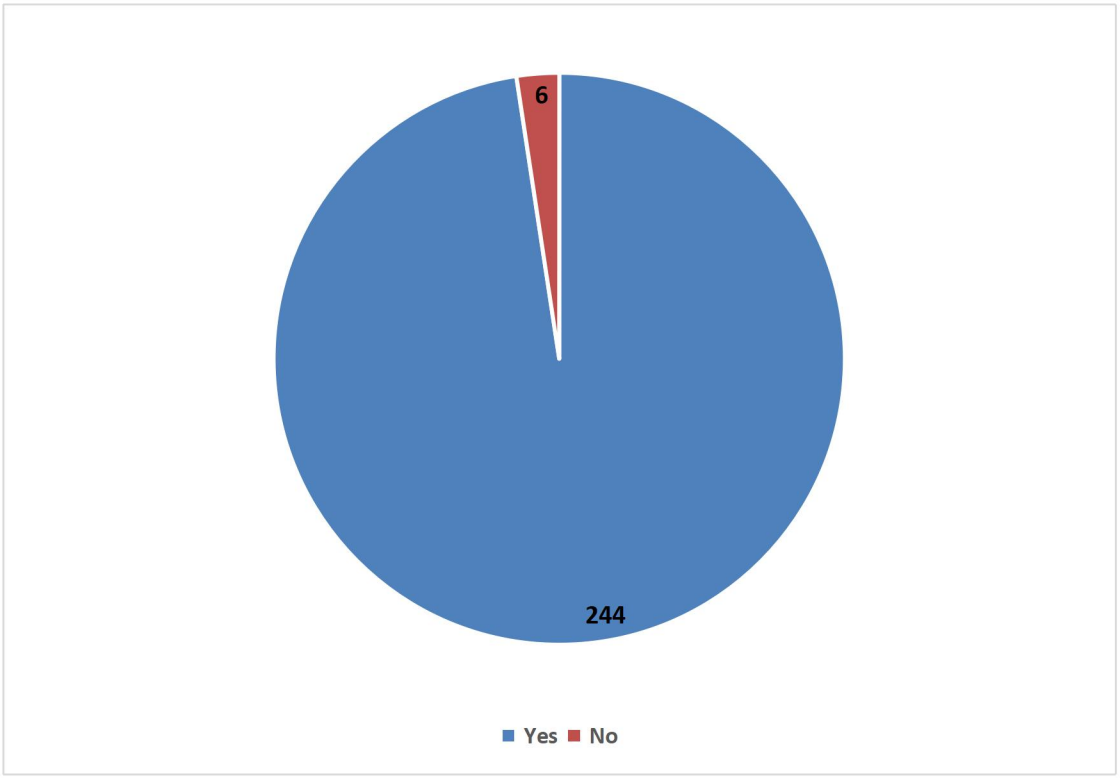
A. Yes - 32 (12.8 %)
B. No - 218 (87.2 %)



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)

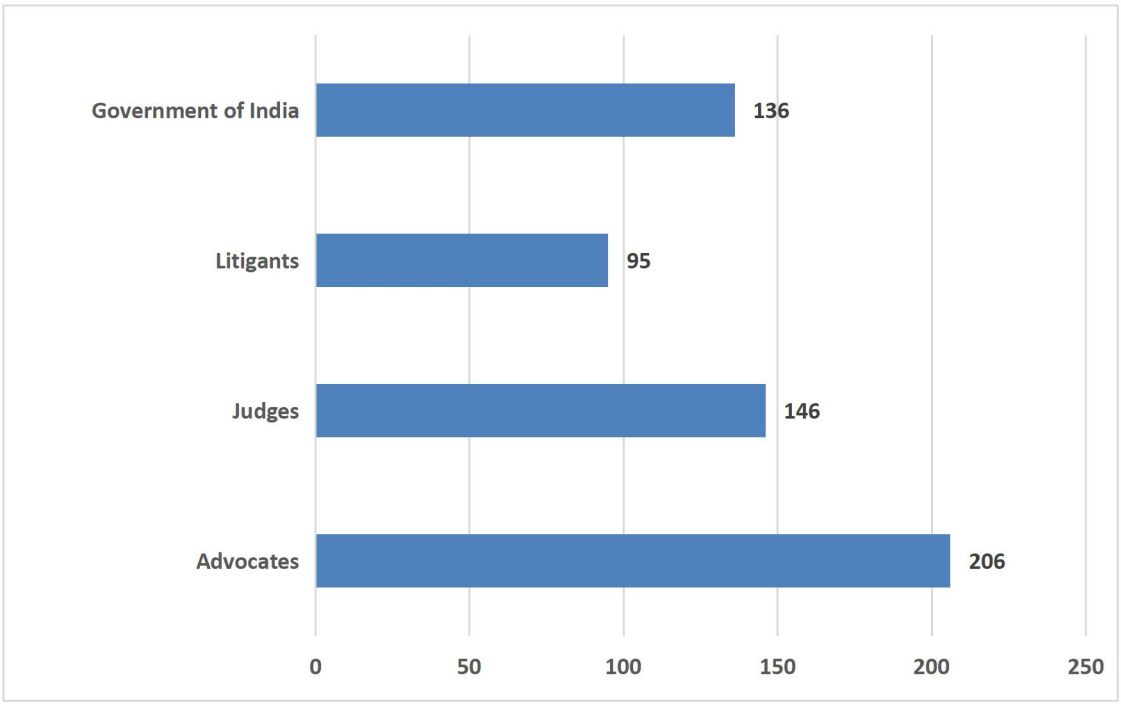
A. Yes - 244 (97.4 %)
B. No - 6 (2.4 %)



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 thatAdvocates 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)

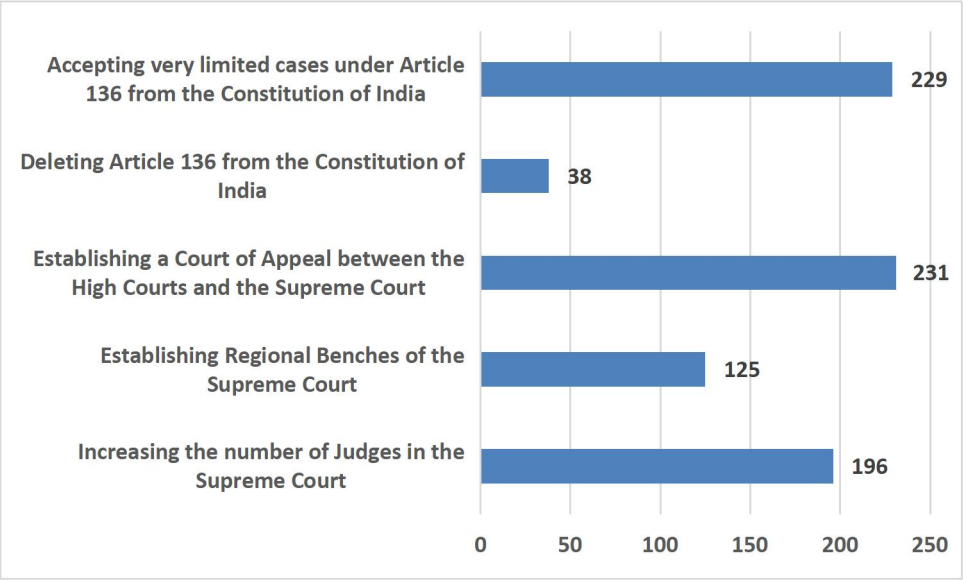
A. Increasing the number of Judges in the "Supreme Court"
- 196 (78.4 %)

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 %)

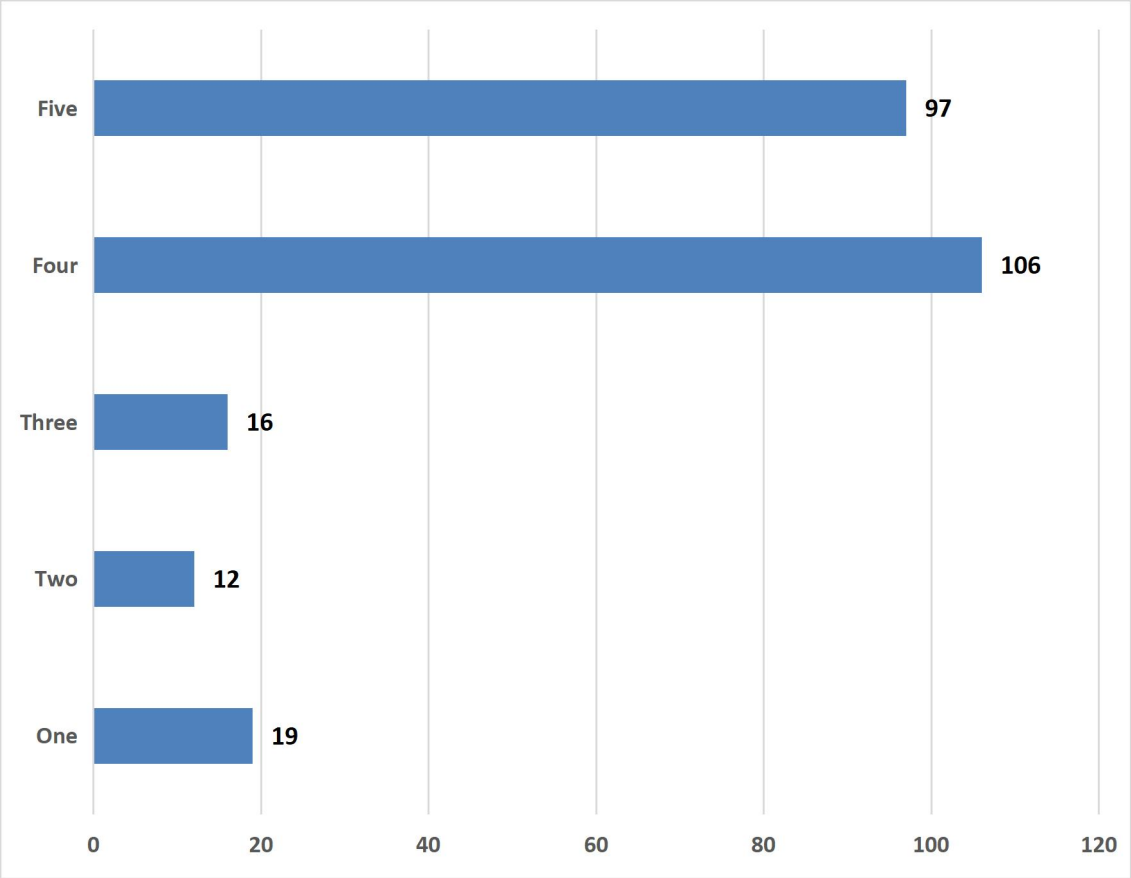


For reducing the pendency of cases in the "Supreme Court of India",

- 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 %)

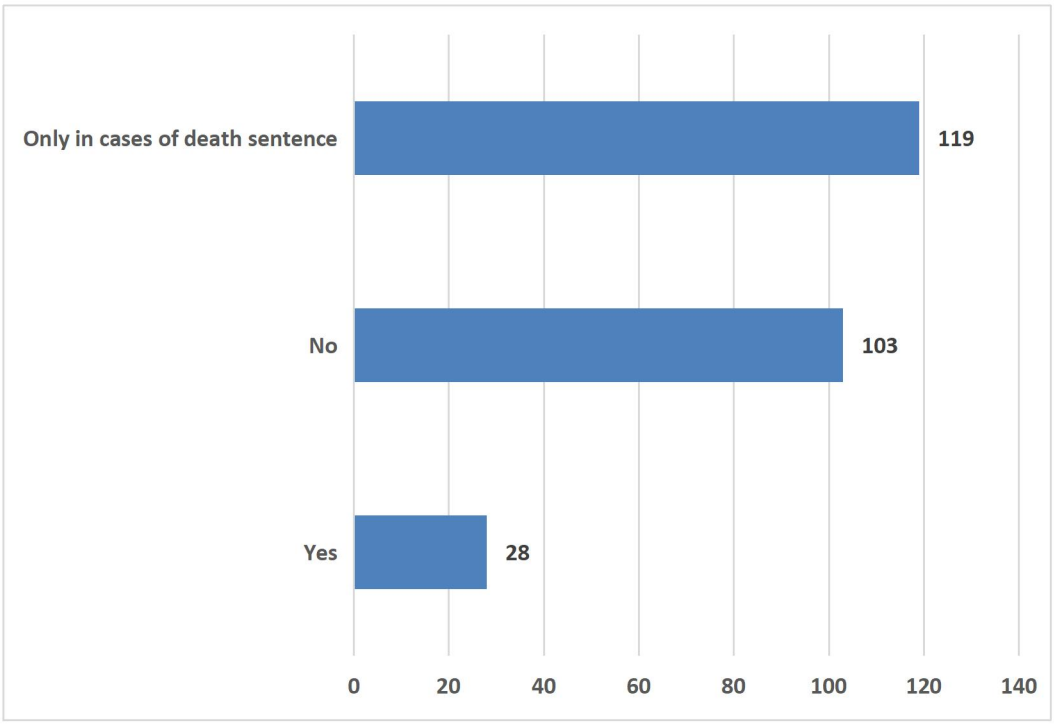


For number of benches, If a Court of Appeal is established in India,

- 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 %)

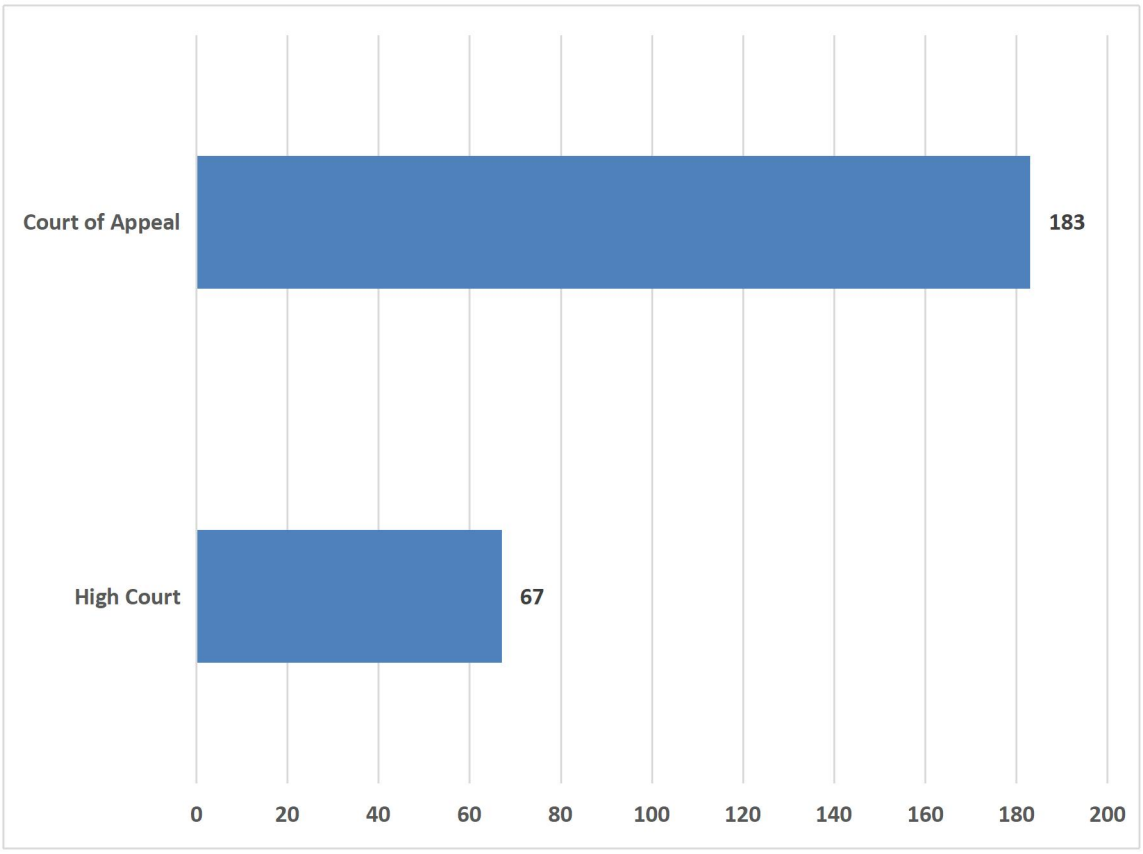


After the establishment of “Court of Appeal in India, regarding of having the provision of filing an appeal from the Court of Appeal to the Supreme Court of India”,

- 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 %)

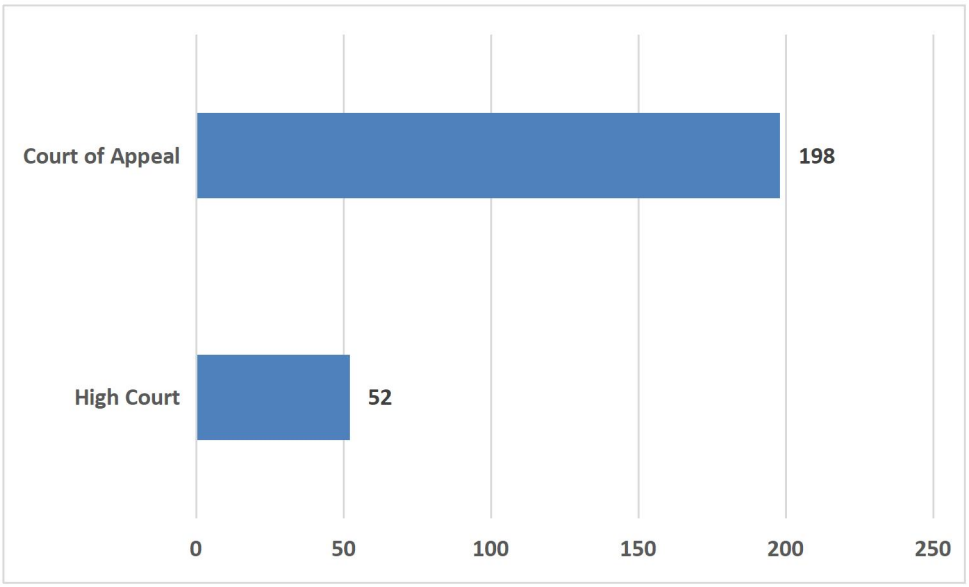


After the establishment of “Court of Appeal in India”, regarding the final Court among “High Court” and “Court of Appeal” for deciding Civil Cases,

- 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 %)

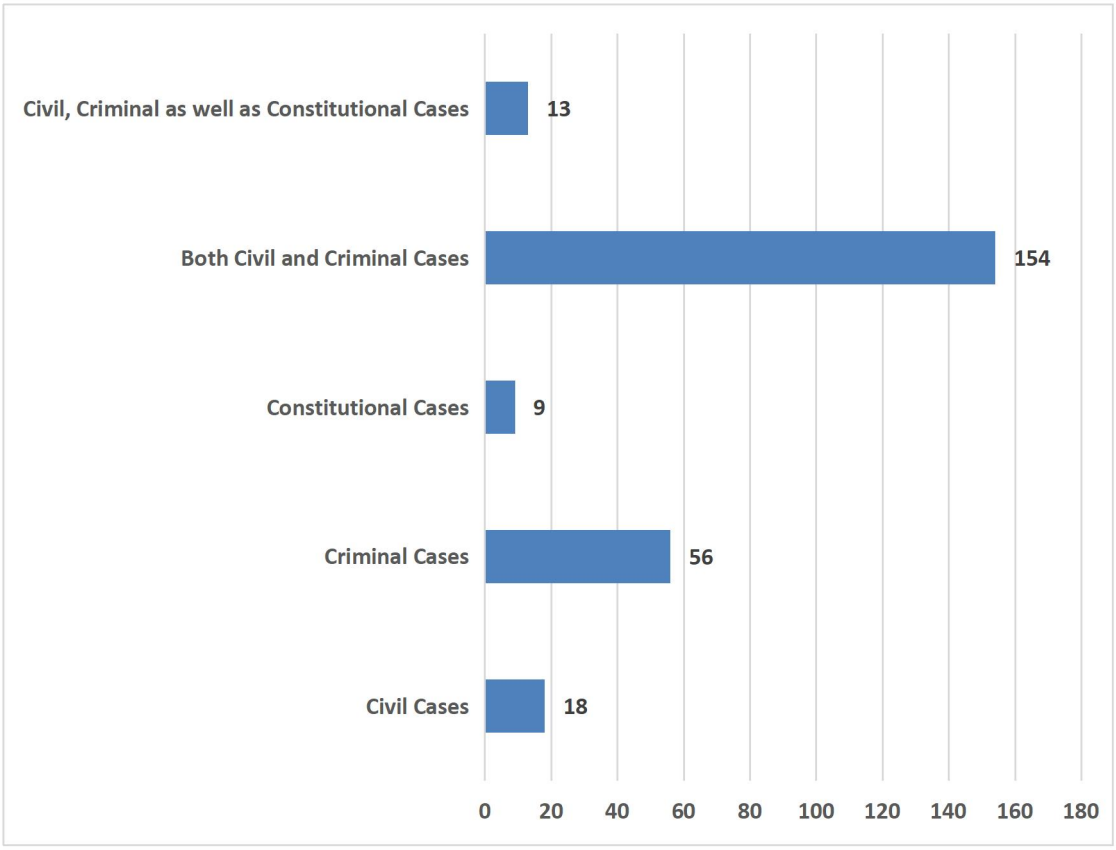


After the establishment of “Court of Appeal in India”, regarding the final Court among “High Court” and “Court of Appeal” for deciding Criminal Cases,

- 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 %)

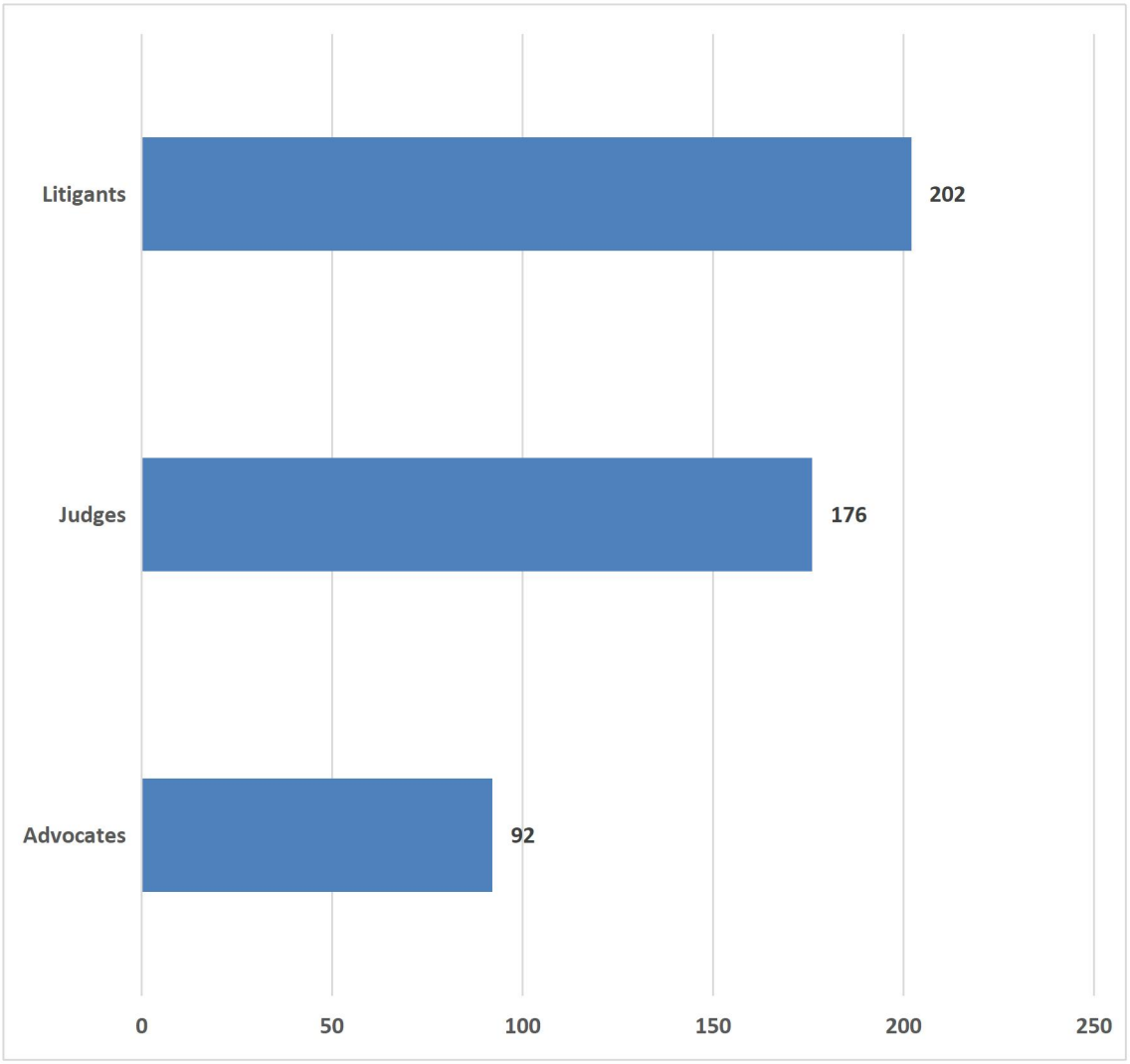


The types of cases that are to be adjudicated in the "Court of Appeal" after its establishment are:

- 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 %)



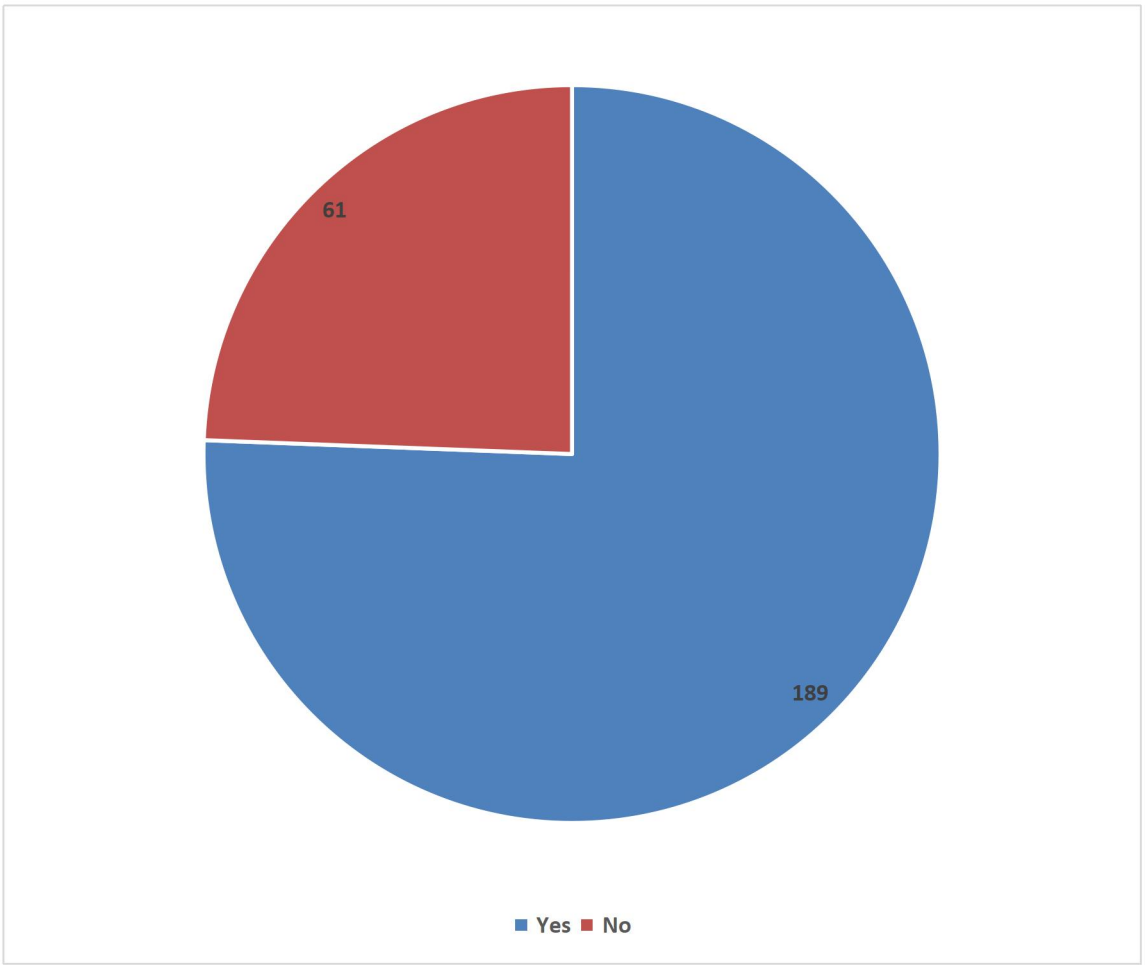
After the establishment of a "Court of Appeal" in India, the beneficiaries are:

- 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 %)

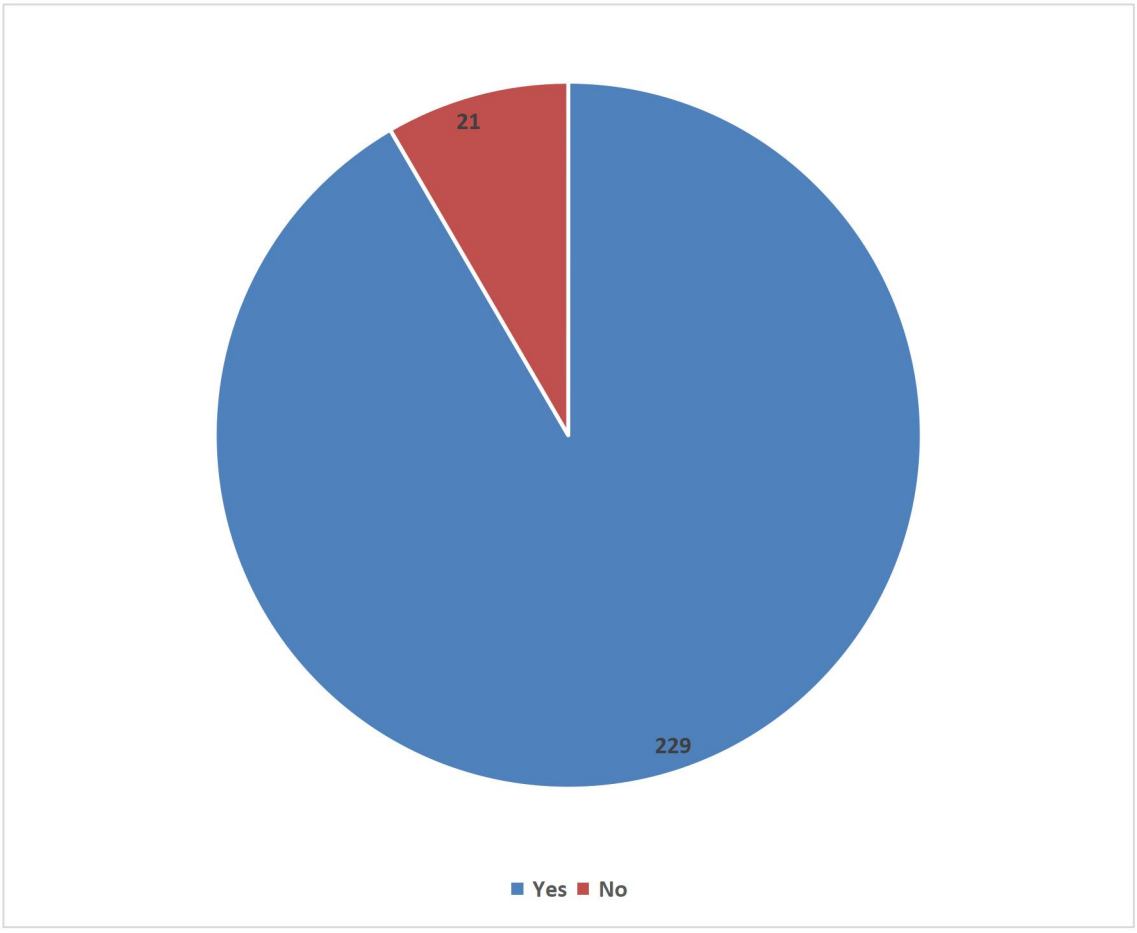


75.6 % are of the opinion that “If Regional Benches of the Supreme Court are established, would it lead to contradictory judgments by various Benches”.

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 %)



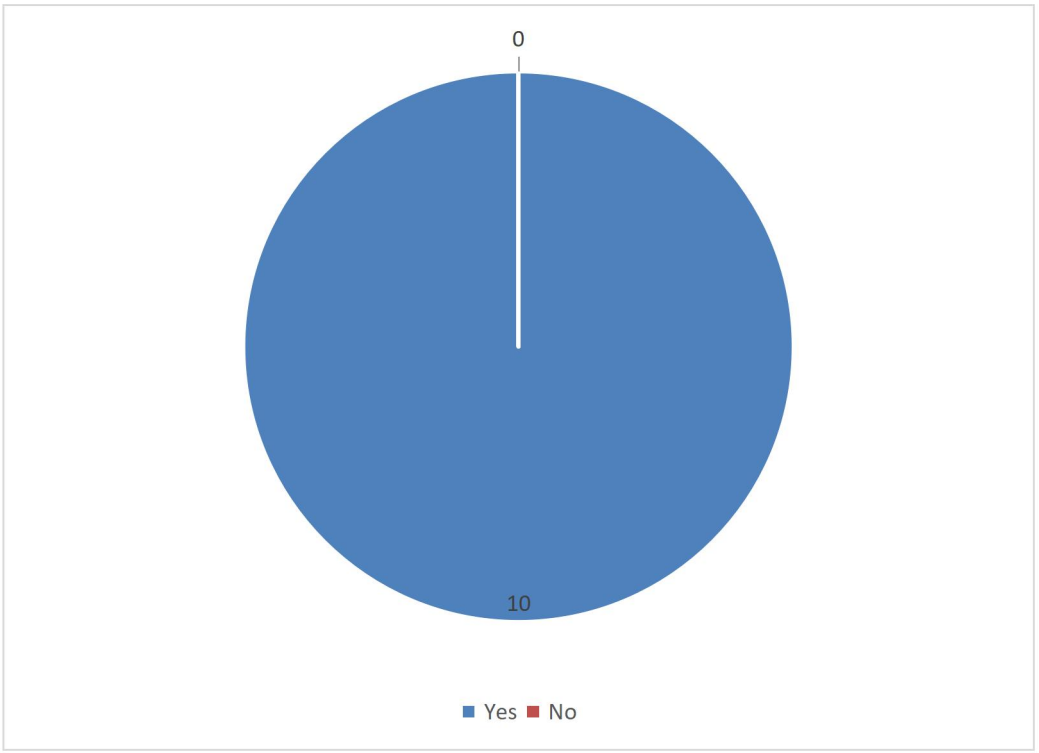
91.6 % are of the opinion that “The litigants of far flung areas like Tamil Nadu, Kerala and North Eastern States find it difficult to approach the Supreme Court because of distance constraint”.

5.2.3 Analysis of Empirical data(from all types of Honourable Judges)

Data collected is represented graphically as follows:

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

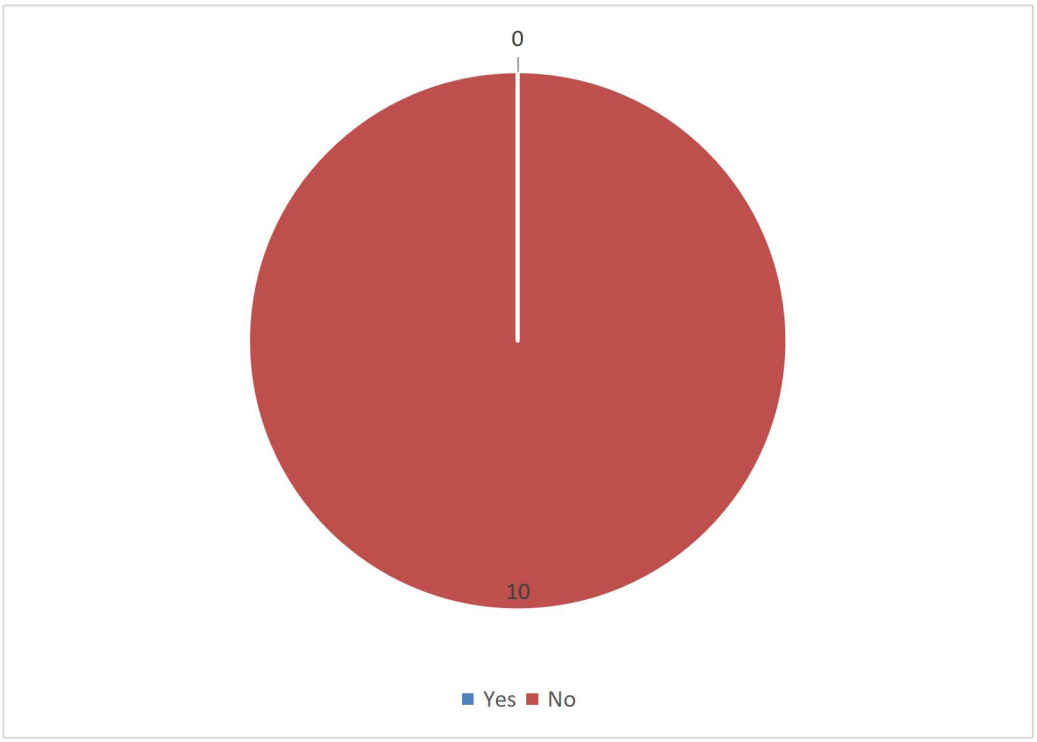
   A. **Yes - 10 (100 %)**
   B. **No - 0 (0 %)**



100 % 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)

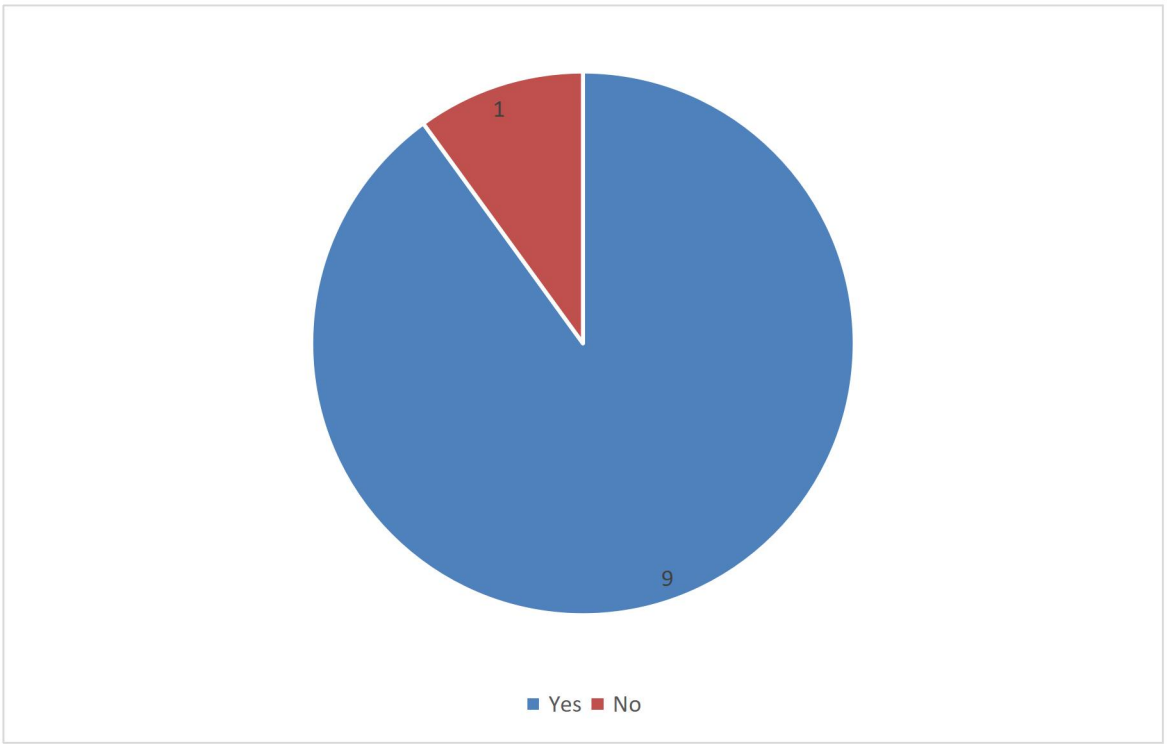
A. Yes - 0 (0 %)
B. No - 10 (100 %)



100 % 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)

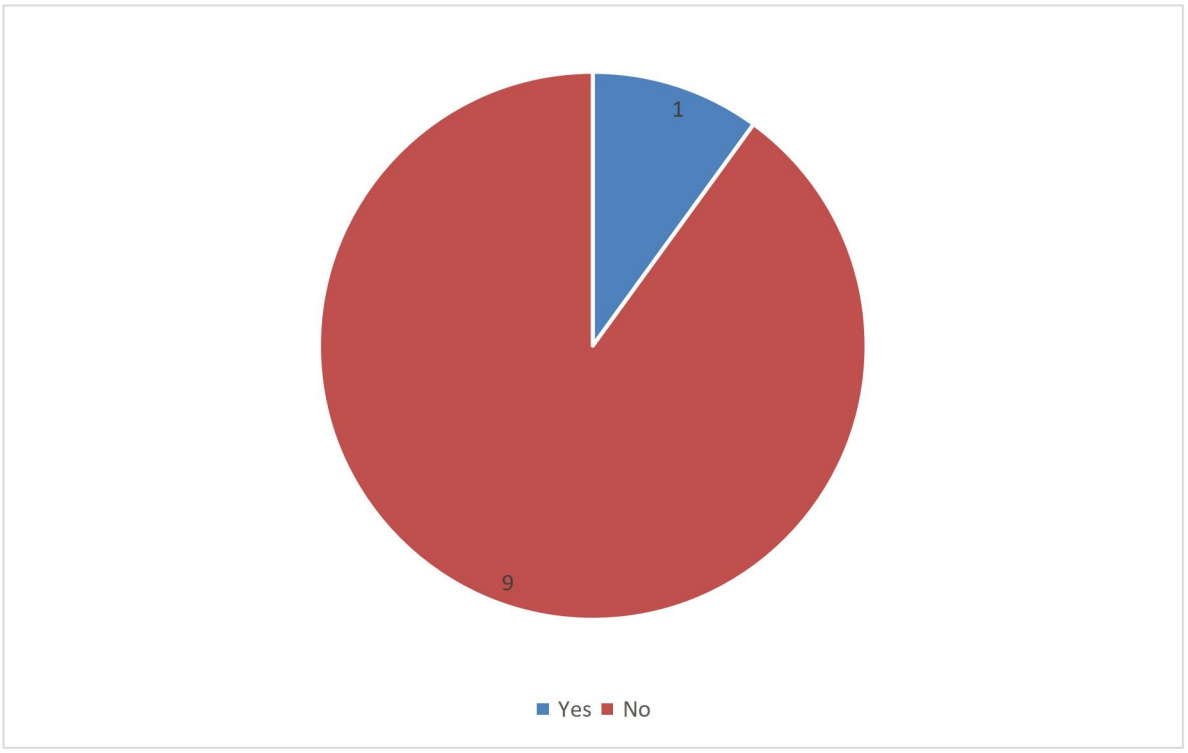
A. Yes -9 (90 %)
B. No - 1 (10 %)



90 % 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)

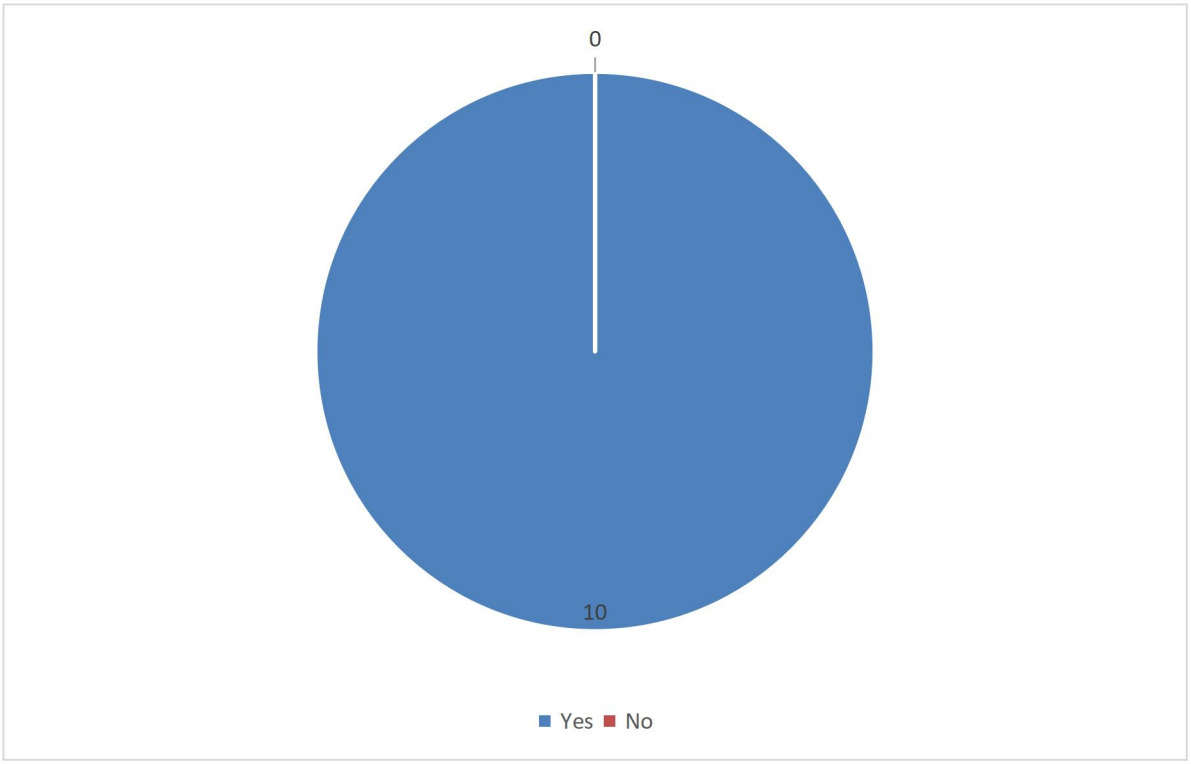
A. Yes - 1 (10 %)
B. No - 9 (90 %)



90 % 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)

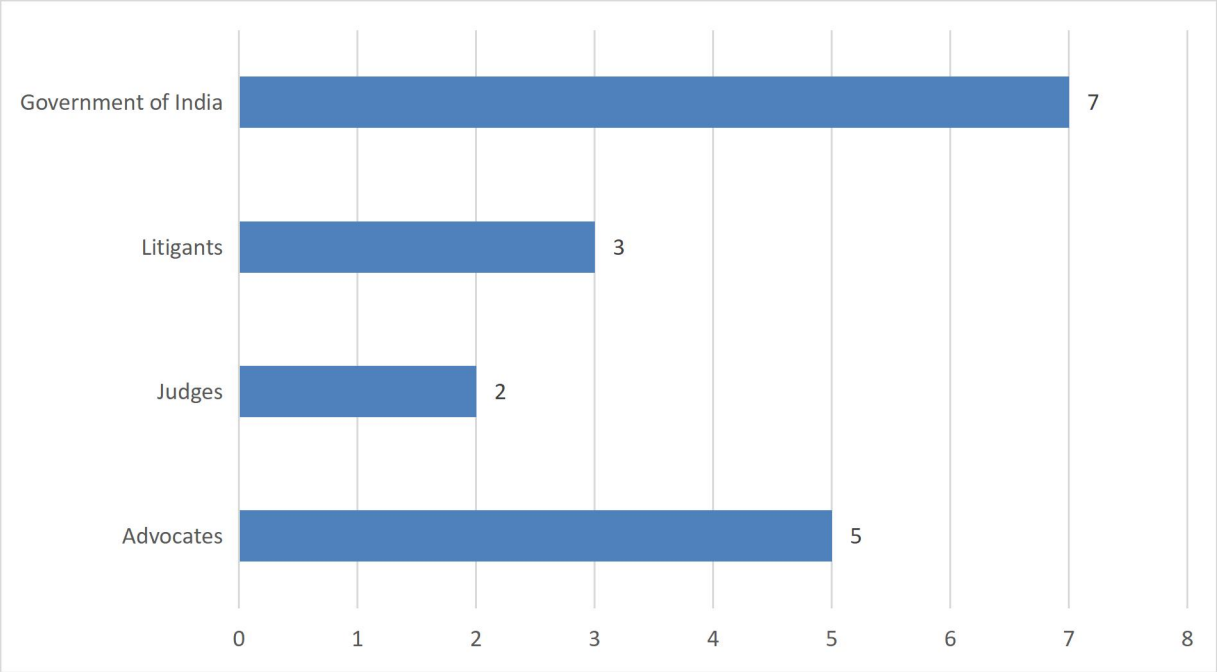
A. Yes - 10 (100 %)
B. No - 0 (0 %)



100 % 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	- 5 (50 %)
B.	Judges	- 2 (20 %)
C.	Litigants	- 3 (30 %)
D.	Government of India	- 7 (70 %)



For mounting pendency of cases in "the Supreme Court of India",

- 50 % are of the opinion thatAdvocates are responsible
- 20 % are of the opinion that Judges are responsible
- 70 % are of the opinion that Government of India is responsible
- 30 % 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)

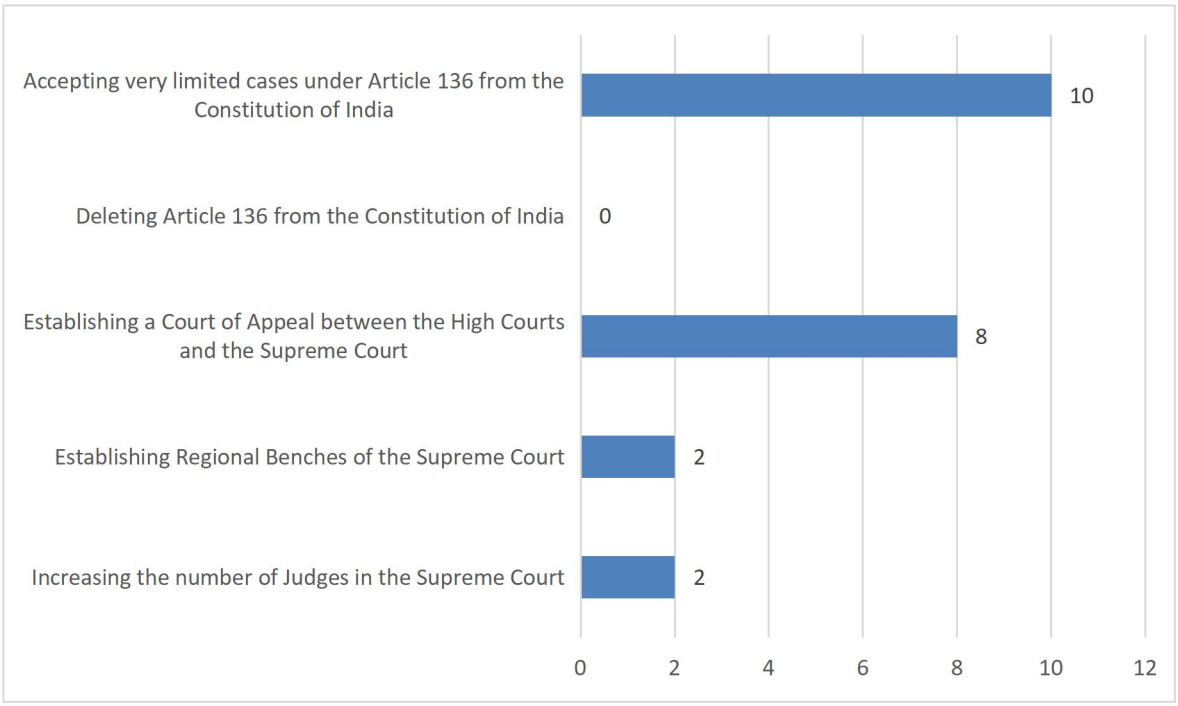
F. Increasing "the number of Judges in the Supreme Court"
- 2 (20 %)

G. Establishing "Regional Benches of the Supreme Court"
- 2 (20 %)

H. Establishing a "Court of Appeal between the High Courts and the Supreme Court"
- 9 (90 %)

I. Deleting "Article 136 from the Constitution of India"
- 0 (0 %)

J. Accepting very limited cases under "Article 136 from the Constitution of India"
- 10 (100 %)

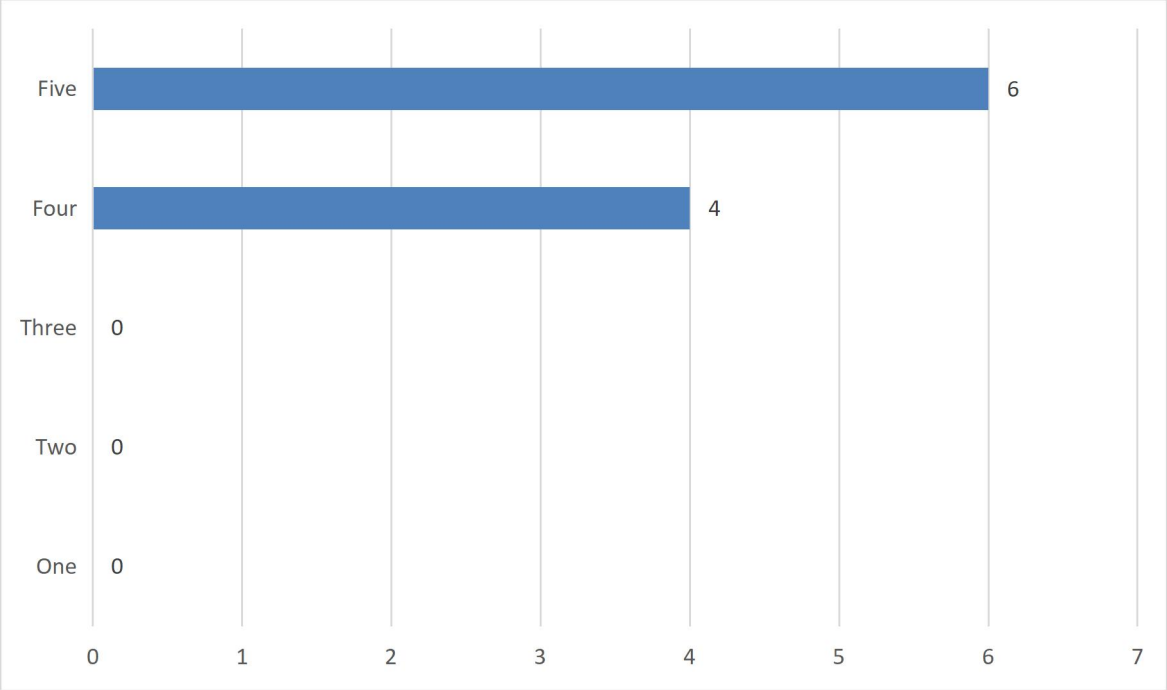


For reducing the pendency of cases in "the Supreme Court of India",

- 80 % are of the opinion of establishing "a Court of Appeal between the High Courts and the Supreme Court".
- 100 % are of the opinion that Court should accept limited cases under Article 136.
- 100 % are of the opinion that "NOT to Delete Article 136".
- 20 % are of the opinion to "Increase the number of Judges in the Supreme Court".
- 80 % 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)

F. One - 0 (0 %)
G. Two - 0 (0 %)
H. Three - 0 (0 %)
I. Four - 4 (40 %)
J. Five - 6 (60 %)

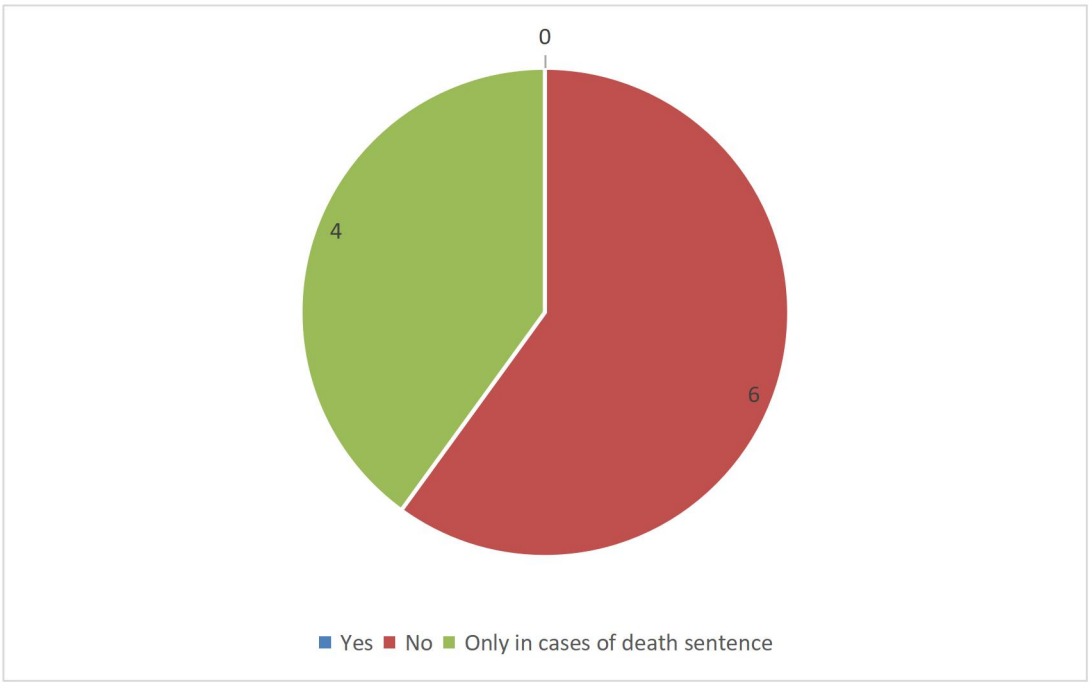


For number of benches, If a Court of Appeal is established in India,

- 40 % are of opinion for 4 benches
- 60 % are of opinion for 5 benches
- 0 % are of opinion for 1 benches
- 0 % are of opinion for 3 benches
- 0 % 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 - 0 (0 %)
B. No - 6 (60 %)
C. Only in cases of death sentence - 4 (40 %)

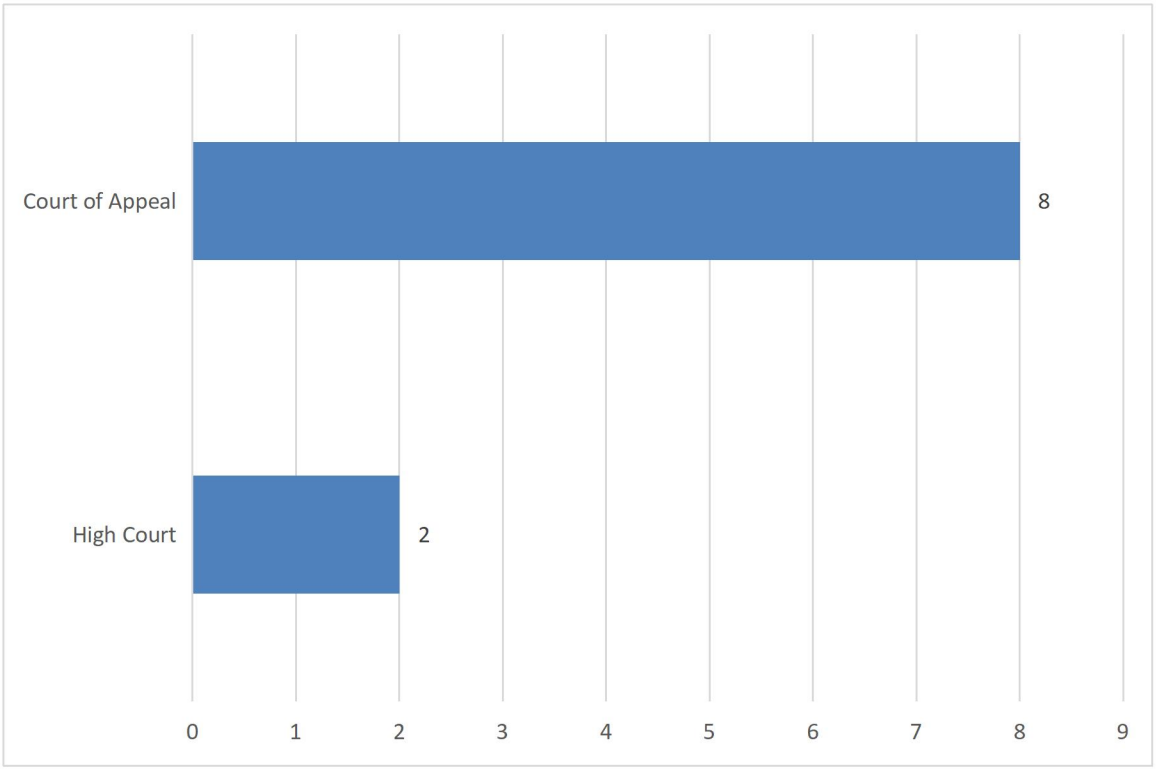


After the establishment of “Court of Appeal in India, regarding of having the provision of filing an appeal from the Court of Appeal to the Supreme Court of India”,

- 40 are of the opinion, “Only in cases of death sentence”
- 60 % are of opinion of “Not to have the provision”
- 0 % 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 - 2 (20 %)
B. Court of Appeal - 8 (80 %)

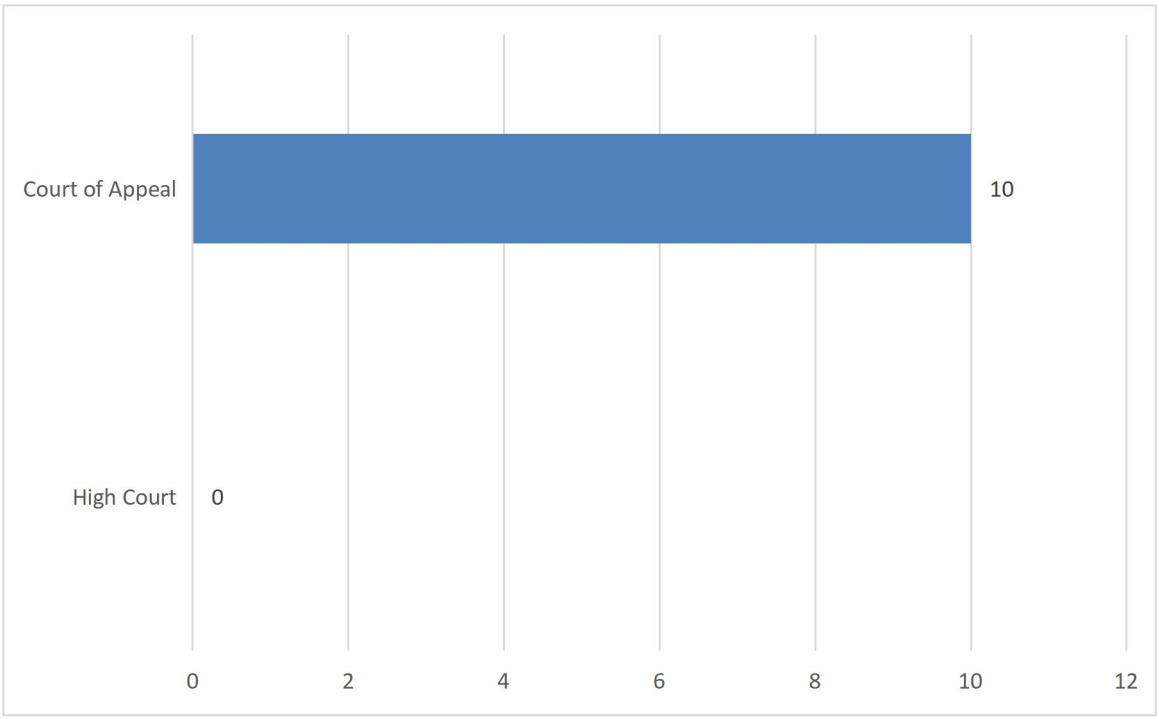


After the establishment of “Court of Appeal in India, regarding the final Court among High Court and Court of Appeal” for deciding Civil Cases,

- 80 % are of the opinion that “Court of Appeal should be the final court”
- 20 % 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 - 0 (0 %)
B. Court of Appeal - 10 (100 %)

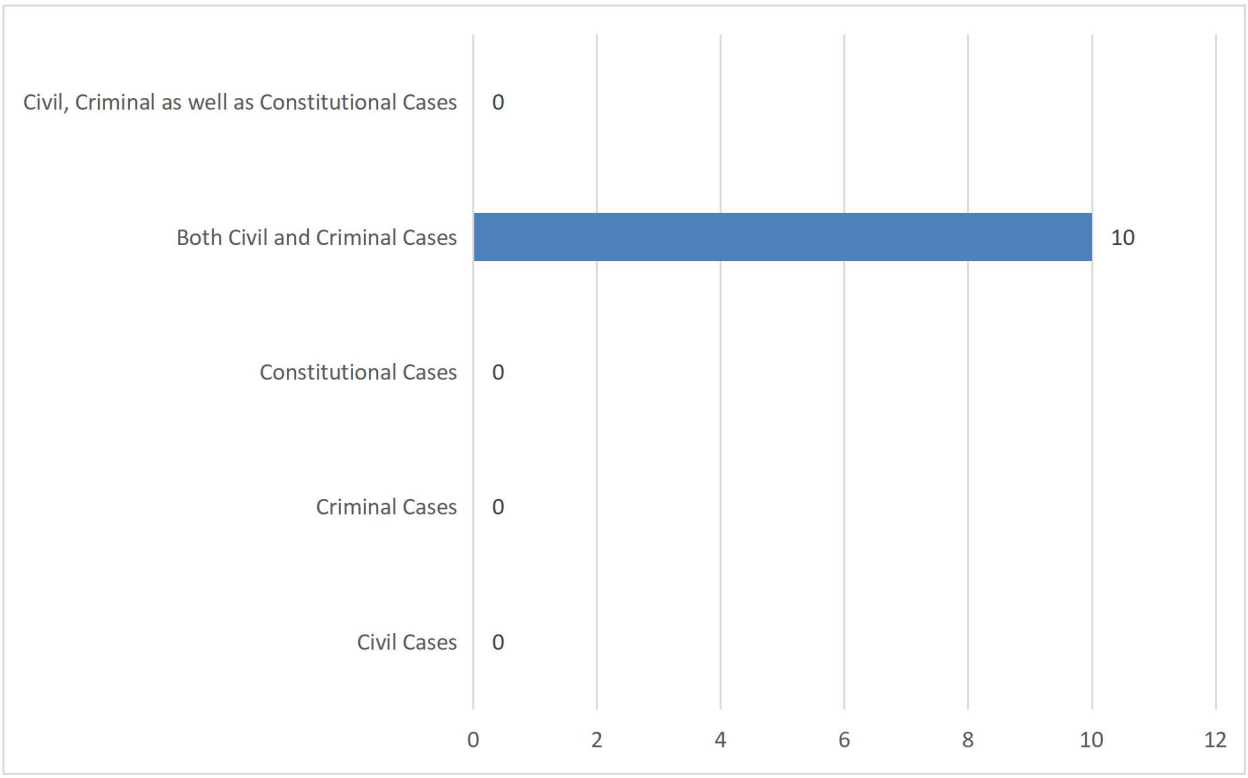


After the establishment of “Court of Appeal in India, regarding the final Court among High Court and Court of Appeal” for deciding Criminal Cases,

- 100 % are of the opinion that “Court of Appeal” should be the final court
- 0 % 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 - 0 (0 %)
B. Criminal Cases - 0 (0 %)
C. Constitutional Cases - 0 (0 %)
D. Both Civil and Criminal Cases - 10(100 %)
E. Civil, Criminal as well as Constitutional Cases - 0 (0 %)

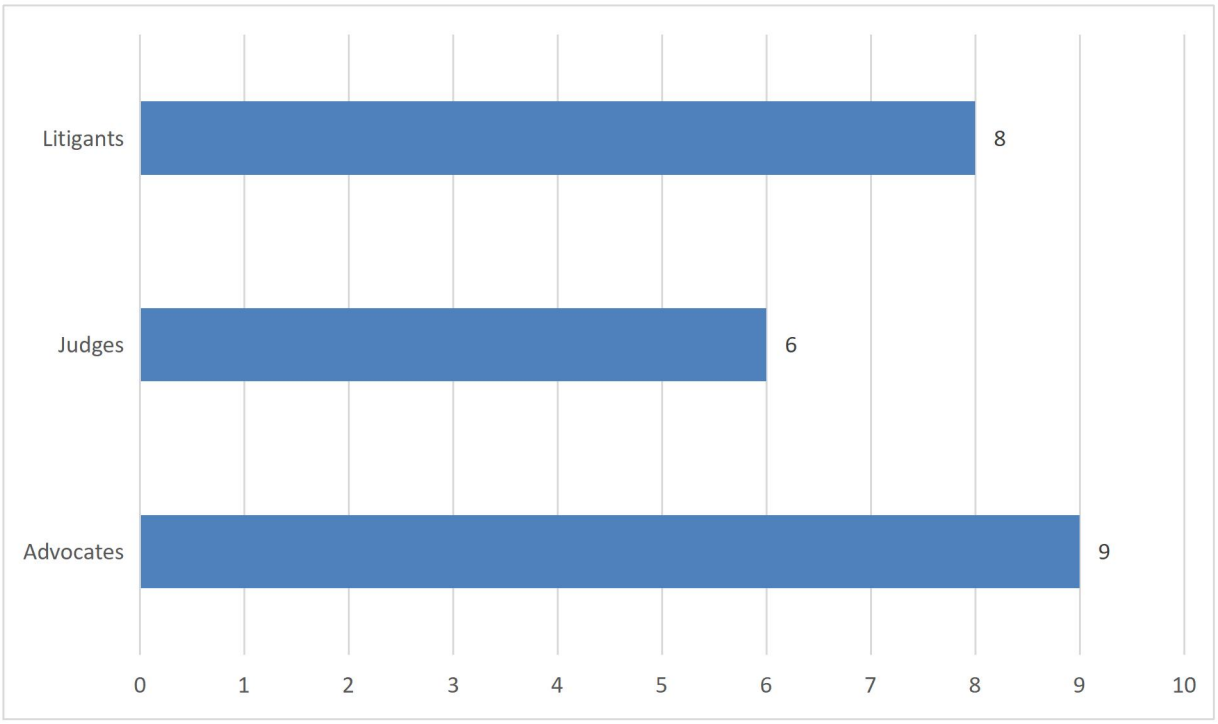


The types of cases that are to be adjudicated in the "Court of Appeal" after its establishment are:

- 100 % are of opinion, Both Civil and Criminal Cases
- 0 % are of opinion, only Criminal Cases
- 0 % are of opinion, only Civil cases
- 0 % are of opinion, Civil, Criminal as well as Constitutional Cases
- 0 % 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)

D. Advocates - 8 (80 %)
E. Judges - 6 (60 %)
F. Litigants - 7 (70 %)



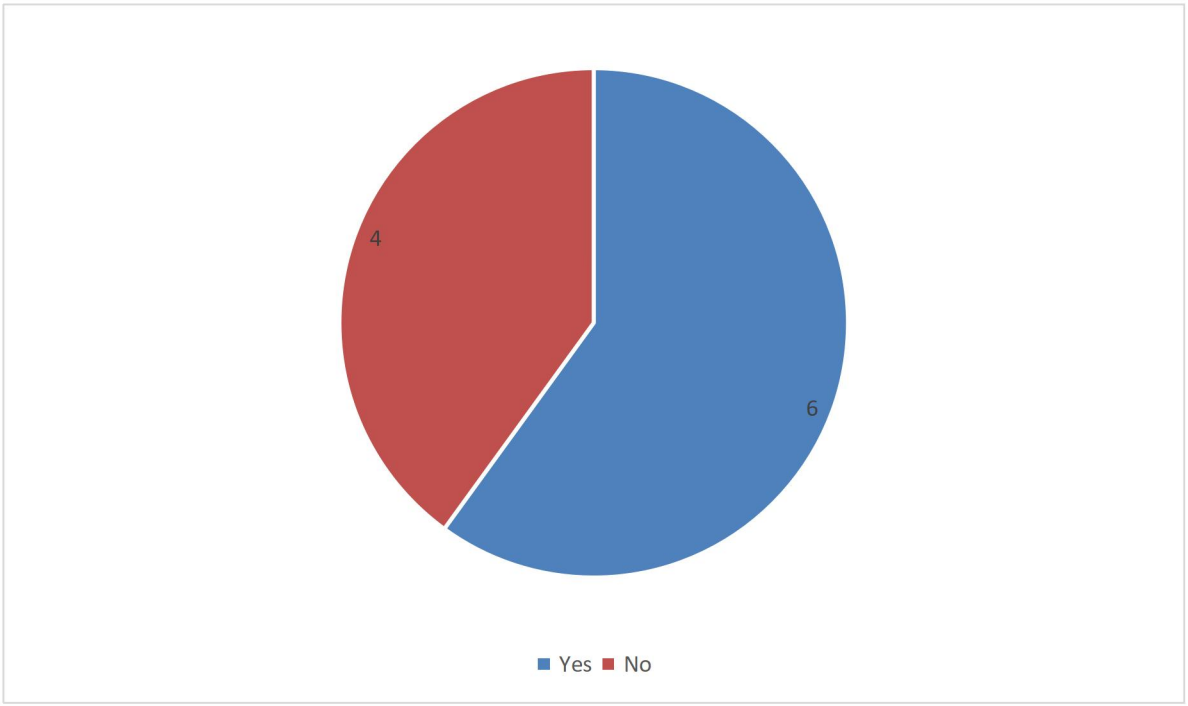
After the establishment of a "Court of Appeal in India", the beneficiaries are:

- 80 % are of opinion, Litigants
- 60 % are of opinion, Judges
- 70 % 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)

C. Yes - 6 (60 %)

D. No - 4 (40 %)

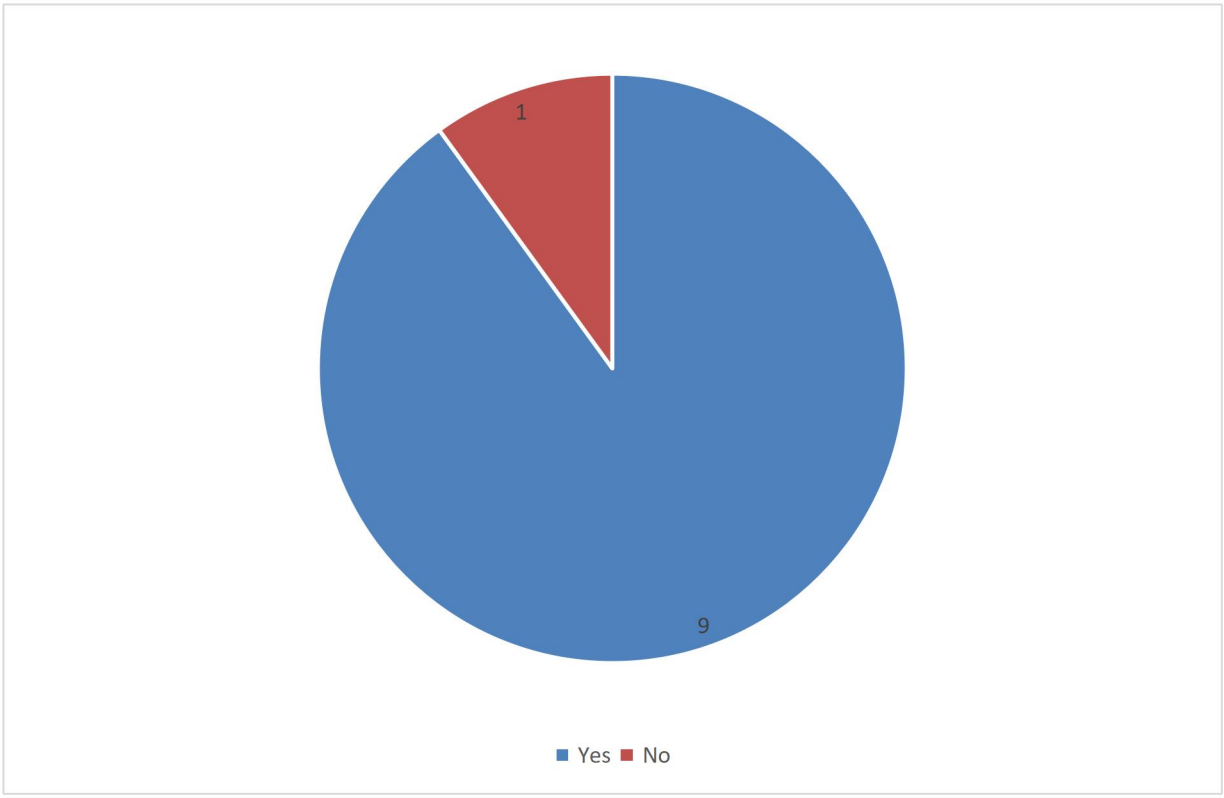


60 % are of the opinion that “If Regional Benches of the Supreme Court are established, would it lead to contradictory judgments by various Benches”.

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)

C. Yes - 9 (90 %)

D. No - 1 (10 %)



90 % 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”.

Suggestions

- The establishment of “Court of Appeal” would be a tremendous and beneficial step for the litigants.
- Appeals to the “Supreme Court” should only be in very important cases and should be minimized
- The establishment of “Court of Appeal” would beadvantageous to Litigants both in the proximity and cost issues.
- By the establishment of “Court of Appeal”, Structure of courts will be more well defined
- Establishment of “Court of Appeal” leads to fast disposal of cases
- After the establishment of “Court of Appeals”, posts of judges will be increased.
- Delay tactics of Litigants and Advocates will be decreased.
- After the establishment of “Court of Appeals, burden on the Supreme Court of India will definitely decrease, as it is going to adjudicate only Constitutional issues and very few criminal appeals”.

5.2.4 Interpretation of Empirical data.

From the analysis of the (Graphically represented Empirical data) following are the interpretations:

1. 98.4 % are of the opinion that “the Supreme Court of India overburdened with cases”.

2. 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. 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. 87.2% are of the opinion that “Article 136 **should not**be deleted from the Constitution of India by effecting a Constitutional amendment”

5. 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. For mounting pendency of cases in the “Supreme Court of India”, 82.4 % are of the opinion that Advocates are responsible

7. 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. For number of benches, If a Court of Appeal is established in India,42.4 % are of opinion for 4 benches and, 38.8 % are of opinion for 5 benches

9. After the establishment of “Court of Appeal in India, regarding of having 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”

10. 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".

11. 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".

12. The types of cases that are to be adjudicated in the "Court of Appeal" after its establishment, 1.6 % are of opinion, both Civil and Criminal Cases

13. After the establishment of a "Court of Appeal in India", 80.8 % are of opinion that beneficiaries will be Litigants.

14. 95.6% are of the opinion that "If Regional Benches of the Supreme Court are established, would it lead to contradictory judgments by various Benches".

15. 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".

Chapter – VI: Conclusions and Suggestions

6.1 Conclusions

Reasons why additional appellate courts may be needed in India:

1. Caseload: The current system may be overwhelmed with the number of cases being heard, leading to delays and backlogs. Additional appellate courts could help alleviate this issue by spreading out the workload. For instance, an additional court dedicated to hearing appeals related to criminal or civil cases could help reduce the strain on the existing system.

2. Access to justice: Additional appellate courts could increase access to justice for citizens, particularly in remote or underserved areas. For instance, by establishing an appellate court in a regional area, citizens would have more access to the appeals process, rather than traveling a great distance to access "the Supreme Court".

3. Efficiency: Additional appellate courts could lead to more efficient processing of cases, as appeals would not have to go through the same court system. This is similar to having more lanes of traffic on a highway. It allows the same amount of traffic to move through in a shorter amount of time.

4. Specialization: Additional appellate courts could be set up to specialize in specific areas of law, such as commercial or constitutional law, leading to more expertise and consistency in decision-making. This is like a doctor having specialized knowledge in a certain field; they understand the ins and outs of that particular area, enabling them to provide the best care to their patients.

5. Cost: Establishing additional appellate courts could also be less expensive than expanding the existing system. However, other experts argue that having too many specialized courts could create a costly and inefficient system. They argue that it would be better to have a smaller number of generalist courts that handle a wider range of cases. To answer this argument the researcher has done a cost-benefit analysis.

Cost-Benefit Analysis:

A "cost-benefit analysis" for establishing additional appellate courts in India would involve evaluating the costs associated with creating and maintaining the new courts against the

benefits they would bring.

Benefits:

Increased efficiency in processing cases, as appeals would not have to go through the same court system. This would allow appeals to be reviewed quickly and more efficiently, without going through the court system's lengthy process. This could potentially reduce the amount of time it takes to review cases, as well as the cost associated with it. More specialized decision making and expertise in specific areas of law, such as commercial or constitutional law. This could result in an expedited review process, therefore reducing the financial burden on affected parties.

Additionally, introducing specialized decision making will increase accuracy in cases of intricate and complex legal matters. Increased access to justice for citizens, particularly in remote or underserved areas. These advances will not only lead to more accurate decisions in legal proceedings, but also make justice more accessible to citizens who may not have had easy access to it in the past. Reduction of case backlog and delay in the current court system. To reduce the strain on the court system, a focus on resolving existing cases more quickly is needed. Cost-effective solution than expanding the existing system or creating a new court. By improving the efficiency of the court system, it can be more cost-effective than building a new court or expanding the current infrastructure.

Costs:

Financial costs associated with creating and maintaining the new courts, including salaries for judges and staff, construction and maintenance of facilities, and administrative expenses. Although there are costs associated with setting up new courts, it is important to consider the potential long-term savings. New courts have the potential to ease congestion in the current court system, which can lead to reduced costs associated with delays. In addition, new courts may be able to handle cases more efficiently, which can lead to reduced legal costs for parties involved in cases. Potential for increased complexity in the court system, which could lead to confusion and delays. On the other hand, some argue that new courts could actually lead to increased complexity in the court system, which could in turn lead to confusion and delays. Potential for increased bureaucracy and administrative costs.

Additional staff and resources required to manage and support the new courts. On the other hand, the new courts could also bring in additional revenue that offsets the increased costs.

The new courts could also help reduce crime rates, saving money in the long run. Potential for increased workload on existing courts while they are transitioning to the new system. Implementing the new courts has a few potential drawbacks, but the benefits could outweigh the costs. The new court system is a proposed set of changes to the way courts operate. While some costs may be associated with establishing additional appellate courts in India, the benefits of increased efficiency, specialization, access to justice, reduced backlog, and cost-effectiveness may outweigh them.

6.2 Suggestion: The Court of Appeal Model Bill Outline

Preamble:

A Court of Appeal in India has been proposed by this Bill with the aim of "reducing the number of cases pending and improving the administration of justice by establishing a Court of Appeal in India". According to the Bill, the "Court of Appeal will be established below the Supreme Court and above the High Courts in hierarchy, with the objective of reducing the pendency of cases in the Apex Court".

Chapter I: Establishment and Composition of the Court of Appeal

This Act establishes a "Court of Appeal as a superior court of record which shall be empowered to hear appeals from the decisions of the High Courts and other courts, within the scope stipulated in this Act, from decisions made by the High Courts and other courts. The Court of Appeal shall be composed of a Chief Justice and such number of Judges as the President may, from time to time, deem necessary. The President shall appoint the Judges of the Court of Appeal in consultation with the Chief Justice of India".

Article 1: Establishment of Courts of Appeal

Article 1(1): There shall be "Courts of Appeal" with five Benches.

Article 1(2): The "Courts of Appeal shall be placed below the Supreme Court of India, but above the High Courts".

Article 1(3): There shall be a Bench of the "Court of Appeal at Chandigarh (for North India), Kolkata (for East and North East India), Bhopal (Central India), Gandhinagar (West India), and Bangalore (South India)".

Article 2: Constitution of Courts of Appeal

Article 2(1): Every Bench of the "Courts of Appeal shall consist of a Chief Justice and until Parliament by law prescribes a larger number, of not more than fourteen other Judges".

Article 2(2): Every Judge of the "Court of Appeal shall be appointed by the President by warrant under his hand and seal and shall hold office until he attains the age of 65 years".

Article 2(3): A Judge may "by writing under his hand addressed to the President, resign his office".

Article 2(4): A judge may "be removed from his office in the manner provided in Article 124(4)".

Article 2(5): A person "shall not be qualified for appointment as a Judge of the Court of Appeal unless he is a citizen of India and —

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an Advocate of the Court of Appeal, or a High Court, or of two or more such Courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist".

Article 2(6): Every person appointed to be a Judge of the "Court of Appeal" shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

Chapter II: Jurisdiction and Powers of the Court of Appeal

The "Court of Appeal" shall have the power to hear appeals from the decisions of the High Courts in civil and criminal matters. The "Court of Appeal" shall also have the power to hear appeals from the decisions of other courts and tribunals as may be specified by the President by notification in the Official Gazette. The decision of the "Court of Appeal" shall be final and binding, and except hereinafter provided, no further appeal shall lie to the Supreme Court in the matters heard by the "Court of Appeal". The "Court of Appeal" shall have the power to review its own judgments and orders and to transfer cases from one bench to another.

Article 3: Jurisdiction of Benches

Article 3(1): The Bench at Chandigarh shall adjudicate appeals from the High Courts of four States and four Union Territories, i.e., "Punjab, Haryana, Himachal Pradesh, Uttarakhand, Jammu and Kashmir, Ladakh, Chandigarh and NCT of Delhi".

Article 3(2): The Bench at Kolkata shall adjudicate appeals from the High Courts of nine States and one Union Territory, i.e., "West Bengal, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland, Tripura, and Andaman and Nicobar Islands".

Article 3(3): The Bench at Bhopal shall adjudicate appeals from the High Courts of six States, i.e., "Uttar Pradesh, Madhya Pradesh, Chhattisgarh, Bihar, Jharkhand and Odisha".

Article 3(4): The Bench at Gandhinagar shall adjudicate appeals from the High Courts of four States and one Union Territory, i.e., "Gujarat, Rajasthan, Maharashtra, Goa, Dadra & Nagar Haveli and Daman and Diu".

Article 3(5): The Bench at Bangalore shall adjudicate appeals from the High Courts of five States and two Union Territories, i.e., "Karnataka, Kerala, Tamil Nadu, Andhra Pradesh, Telangana, Puducherry and Lakshadweep Islands".

Article 3(6): All Benches of the "Courts of Appeal shall be courts of record and shall have all the powers of such a court including the power to punish for contempt of itself".

Article 4: Appeals to the Supreme Court of India

Article 4(1): There shall be "no provision to file an appeal against the decision of the Court of Appeal to the Supreme Court of India", except in cases where the accused has been convicted and sentenced to death, or in cases where the death sentence awarded to the convict by the trial court or the High Court has been upheld by the "Court of Appeal".

Article 4(2): For the removal of doubts, "it is hereby clarified that subject to clause (1) of this Article, an appeal against a decision of the Courts of Appeal cannot be filed before the Supreme Court even under Article 136".

Article 5: Application of certain provisions relating to Supreme Court to Courts of Appeal

Article 5: The provisions of clauses (4) and (5) of Article 124 shall apply in relation to the "Courts of Appeal" as they apply in relation to the Supreme Court with the substitution of references to the "Courts of Appeal" for references to the Supreme Court.

Article 6: Appellate jurisdiction of Courts of Appeal in appeals from High Courts in regard to civil matters

Article 6(1): An appeal shall lie to the "Courts of Appeal" from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies:

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question needs to be decided by the "Court of Appeal".

Article 6(2): Notwithstanding anything in this Article, no appeal shall, unless Parliament by law otherwise provides, lie to the "Courts of Appeal" from the judgment, decree or final order of one Judge (Single Bench) of a High Court.

Article 7: Appellate jurisdiction of Courts of Appeal in regard to criminal matters

Article 7(1): An appeal shall lie to the "Courts of Appeal" from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to

death; or

(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(c) certifies that the case is a fit one for appeal to the Court of Appeal.

Article 7(2): Parliament may by law confer on the "Courts of Appeal" any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

Article 8: Officers, Servants and Expenses of the Courts of Appeal

Article 8(1): Appointments of officers and servants of every Bench of the "Courts of Appeal" shall be made by the Chief Justice of that Bench or such other Judge or officer of that Bench as he may direct:

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission.

Article 8(2): Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the "Courts of Appeal" shall be such as may be prescribed by rules made by the Chief Justice of each Bench or by some other Judge or officer of the Court authorized by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

Article 8(3): The administrative expenses of the "Courts of Appeal", including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund.

Chapter III: Miscellaneous

The President may make rules for regulating the practice and procedure of the "Court of Appeal". The "Court of Appeal" shall have the power to frame its own rules of practice and procedure. Branches of the "Court of Appeal" shall be established in India's North, South, East, and West regions, as deemed necessary by the President. This Act shall come into force on such date as the President may appoint by notification in the Official Gazette.

Article 9: Salaries and Allowances of Judges

Article 9(1): There shall be paid to the Judges of "Courts of Appeal such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule".

Article 9(2): Every Judge "shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as are specified in the Second Schedule":

"Provided that neither the allowances of a Judge nor his rights in respect to leave of absence or pension shall be varied to his disadvantage after his appointment".

Article 10: Transfer of a Judge from one Bench to Another

Article 10(1): The President may transfer a Judge from one Bench of the Court of Appeal to any other Bench.

Article 10(2): When a Judge is transferred, he shall, during the period he serves as a Judge of the other Bench, be entitled to receive in addition to his salary, such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory allowance as the President may by order fix.

Article 11: Appointment of Acting Chief Justice

Article 11: When the office of Chief Justice of a Bench of the "Courts of Appeal" is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by the next senior most Judge of that Bench.

Article 12: Restriction on Practice after being a Judge of the Courts of Appeal

Article 12: No person who has held office as a Judge of the "Court of Appeal shall plead or act in any court or before any authority in India except the Supreme Court".

Annexure: Questionnaire (Collection of Empirical data)

QUESTIONNAIRE

I, Vutukuri Ramu, a student of School of Law, **Lovely Professional University, Punjab,** am presently working on my Ph.D. Thesis topic titled **"PENDENCY OF CASES IN THE SUPREME COURT OF INDIA: NECESSITY OF A COURT OF APPEAL".** I request you to kindly fill the questionnaire below. I assure you that your identity and responses shall be kept confidential and the data will be used only for the purpose of my research work.

Name: **Age:**

Designation/ Profession:

Place of Residence:

Contact (Phome/Mobile): **Email id:**

Questions

01) Is the Supreme Court of India overburdened with cases? (check any one)

A. Yes

B. No

02) Is the Supreme Court of India a regular Court of Appeal? (check any one)

A. Yes

B. No.

03) 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

B. No

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

A. Yes

B. No

05) 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**

B. **No**

06) In your opinion, who is responsible for the mounting pendency of cases in the Supreme Court of India? (Multiple options can be made)

A. **Advocates**

B. **Judges**

C. **Litigants**

D. **Government of India**

07) In your opinion, what is the best solution for reducing the pendency of cases in the Supreme Court of India? (Multiple options can be made)

A. **Increasing the number of Judges in the Supreme Court**

B. **Establishing Regional Benches of the Supreme Court**

C. **Establishing a Court of Appeal between the High Courts and the Supreme Court**

D. **Deleting Article 136 from the Constitution of India**

E. **Accepting very limited cases under Article 136 from the Constitution of India**

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

A. **One**

B. **Two**

C. **Three**

D. **Four**

E. **Five**

09) 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

B. No

C. Only in cases of death sentence

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

B. Court of Appeal

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

B. Court of Appeal

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

B. Criminal Cases

C. Constitutional Cases

D. Both Civil and Criminal Cases

E. Civil, Criminal as well as Constitutional Cases

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

A. Advocates

B. Judges

C. Litigants

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

A. Yes

B. No

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

A. Yes

B. No