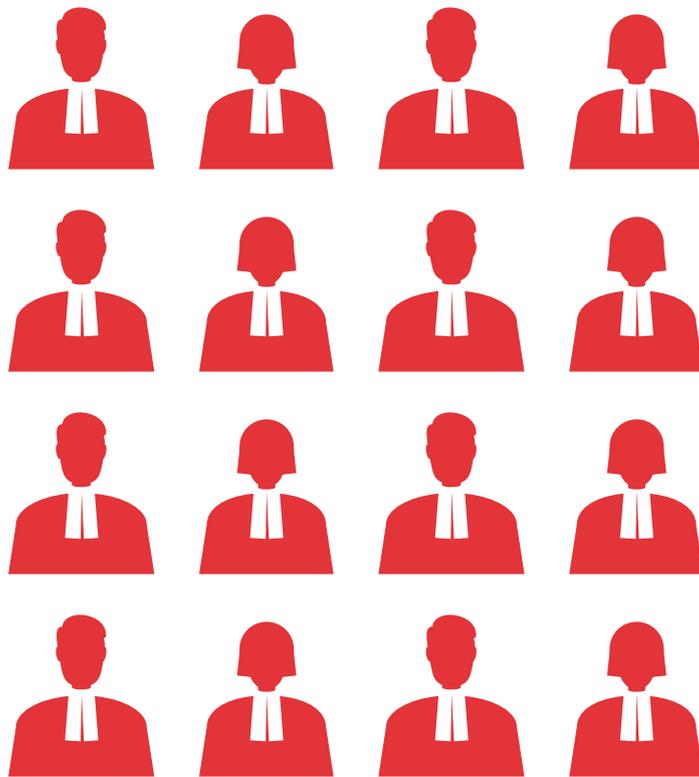


A Survey of Advocates Practicing Before the High Courts



About the Authors

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This report is an independent, non-commissioned study undertaken by the Vidhi Centre for Legal Policy, an independent think-tank doing legal research to make better laws and improve governance for the public good.

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A Survey of Advocates Practicing Before the High Courts

Prashant Reddy T.
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Introduction

The debate on judicial reforms in India has traditionally focused on the alleged shortage of judges, funds and infrastructure. A fourth factor which greatly influences the functioning of the Indian justice system is the legal profession. As Rajeev Dhavan points out, the judiciary is a rare institution of the state that is “designed to be virtually operated by a unique private market economy”.¹ Not only do advocates, as a class of professionals, have a complete monopoly over the practice of law, but also they are responsible for regulating themselves through a system of peer justice.

Despite the critical importance of the legal profession to the functioning of the justice system, it has received very little attention, in India, from either the academy or policymakers. From the academy, the main source of empirical studies on the Indian legal profession have been American scholars from the law and society movement who were studying the ability of formal legal system created by the British to withstand pressure from the proponents of returning India to more informal traditional legal systems. Typically, a single court would be chosen by these scholars who would then spend time studying advocates and the manner in which they secured business, organized themselves, marketed themselves to clients and interacted with their clerks and judges.² These scholars identified several interesting characteristics that distinguish Indian legal practitioners from their equivalents in other jurisdictions. These include amongst other things, their orientation towards litigation rather than advising, their individualism and lack of specialisation.³ One study by an Indian sociologist, focused on advocates practicing before the district courts at Gobindgarh, Punjab. This study focused on their education, caste composition, specialization in law, the

effect of kinships within the profession and finally, their relationships with their clients, munshis and touts who procure them business.⁴

The other major source of studies about the Indian legal profession has been the Law Commission. These studies tend to focus on the big picture across India and have been conducted at different times adopting different methodologies. One such report in this regard is the commission’s 131st report.⁵ In this report, where the Law Commission was assisted by an Indian sociologist, who authored the study on the Gobindgarh courts,⁶ questionnaires were sent out to various bar councils and High Courts soliciting their views on a range of issues regarding the legal profession. The questions covered issues of professional ethics, strikes by lawyers, the role played by the legal profession in impeding access to justice and the falling reputation of lawyers in the court of public opinion. Some lawyers, like those in the Bombay Bar Association took a dim view of the questions in the survey on the grounds that “the queries were framed in a populist manner with a pronounced bias against the legal profession” and that the Law Commission “had already predetermined some of the issues therein.”⁷ Others from the Ahmedabad Bar Association expressed similar views stating that “the innuendo emanating from the language and the frame of the questions is despicable and hence resented”. Of the bar associations/councils that replied, several reportedly agreed with the Commission’s question that the legal profession has fallen in the estimation of the general public due to overcrowding of the profession and apathy on behalf of the Bar Council of India while others disagreed.⁸

¹ Rajeev Dhavan, *Litigation Explosion in India* (1986) at p. 13.

² Kidder, R. L. (1974) *Formal litigation and professional insecurity: legal entrepreneurship in South India* *Law & Society Review*, 9, 11; Morrison, C. (1972) *Kinship in professional relations: a study of North Indian district lawyers* *Comparative Studies in Society and History*, 14(1), 100-125; Morrison C. (1969) *Social Organisation at the District Courts: Colleague Relationships among Indian Lawyers* *Law & Society Review*, 3(2:3), 251; Rowe, P. (1969) *Indian Lawyers and Political Modernisation: Observation in Four District Towns* *Law & Society Review*, 3(2:3).

³ Galanter, M. (1968) *Introduction-The Study of the Indian Legal Profession* *Law & Society Review*, 3, 201.

⁴ J.S. Gandhi, *Lawyers and Touts: A Study in the Sociology of the Legal Profession* (1982).

⁵ Report No. 131, *Role of the Legal Profession in Administration of Justice*, Law Commission of India, available at <http://lawcommissionofindia.nic.in/101-169/Report131.pdf>.

⁶ Gandhi (n 4).

⁷ *ibid* at p.7.

⁸ *ibid*.

Others reports of the Law Commission on the legal profession, such as the 266th Report have studied the Advocates Act, 1961 with a focus on the loss of court working days due to strikes called by lawyers, their contemptuous behaviour in courts, the quality of legal education etc.⁹ It is rather ironic that a Law Commission report that focused on strikes was met with a nationwide call for a strike of advocates by the Bar Council of India (BCI).¹⁰

A survey of the above literature reveals that there has never been a single national level engagement with individual members of the Bar. Even the few local surveys of individual court complexes that were referred to above were conducted in the nineties and earlier. Much has changed in India since then and we know very little about the legal profession's perception of the higher judiciary, the Bar Council, their average earnings etc. It is in this backdrop that we at the Vidhi Centre for Legal Policy ("Vidhi") decided to conduct a survey of practicing advocates. For the purposes of this report, we are only describing the survey results. We will most likely, in a future publication, interpret the results and explain their implications for the legal profession.

⁹ Report No. 266, The Advocates Act, 1961(Regulation of Legal Profession), Law Commission of India, available at <http://lawcommissionofindia.nic.in/reports/Report266.pdf>.

¹⁰ Prabhati Nayak Mishra, *BCI Calls for Nationwide Protests against Law Commission Report on Advocates Act*, Live Law March 26, 2017 available at <https://www.livelaw.in/bci-calls-nationwide-protests-law-commission-report-advocates-act/>.

Research Methodology

The survey was designed to be administered to advocates practicing before the various High Courts in India. At present there are 25 High Courts in India, however, given budgetary constraints, the survey has been limited to 8 High Courts namely Allahabad, Bombay, Calcutta, Delhi, Gujarat, Kerala, Madras and Patna. These High Courts were selected keeping in mind two criteria: (i) the High Courts at Bombay, Calcutta, Madras and Allahabad are amongst the oldest and largest High Courts in the country (in terms of judges) and whose traditions and practices date back to the 19th century; (ii) the High Courts at Delhi, Gujarat, Patna and Kerala were located in the same geographical zones as the previous four High Courts ensuring that we had at least two High Courts in the north, south, east and west of the country making the survey as geographically representative as possible. These 8 High Courts overall have 57% of the total High Court judges in the country.

General Information about the survey sample

Sample sizes across High Courts:

356

Delhi

351

Allahabad

358

Bombay

356

Calcutta

355

Gujarat

350

Kerala

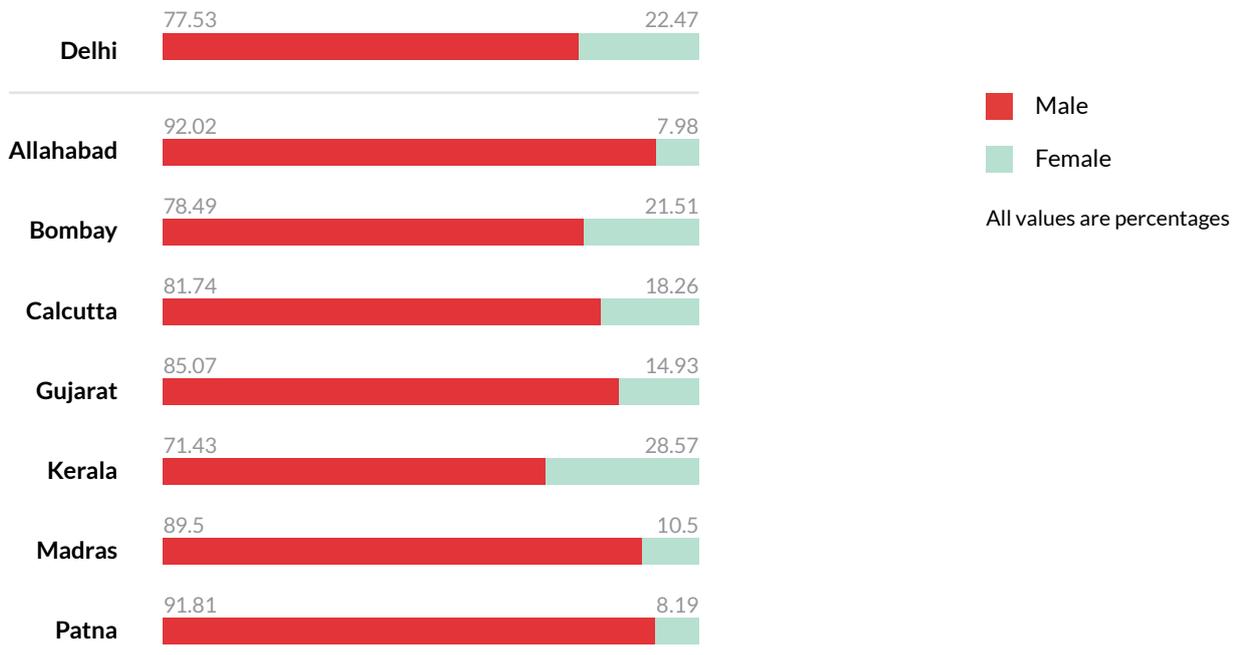
400

Madras

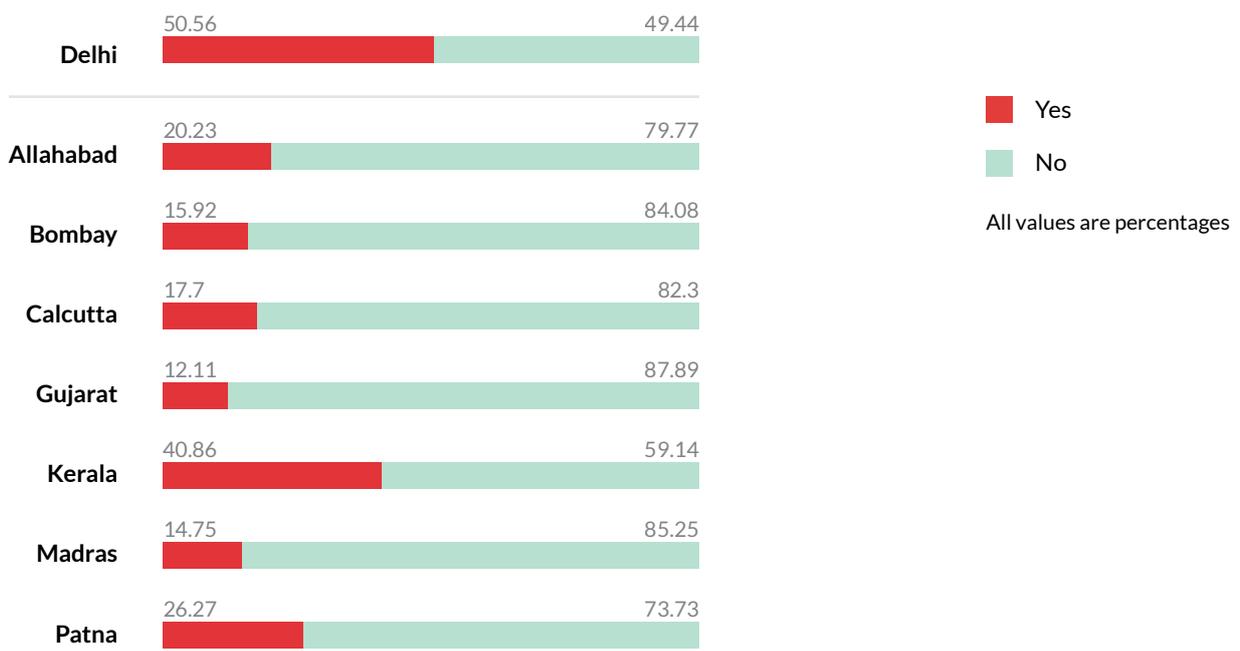
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Patna

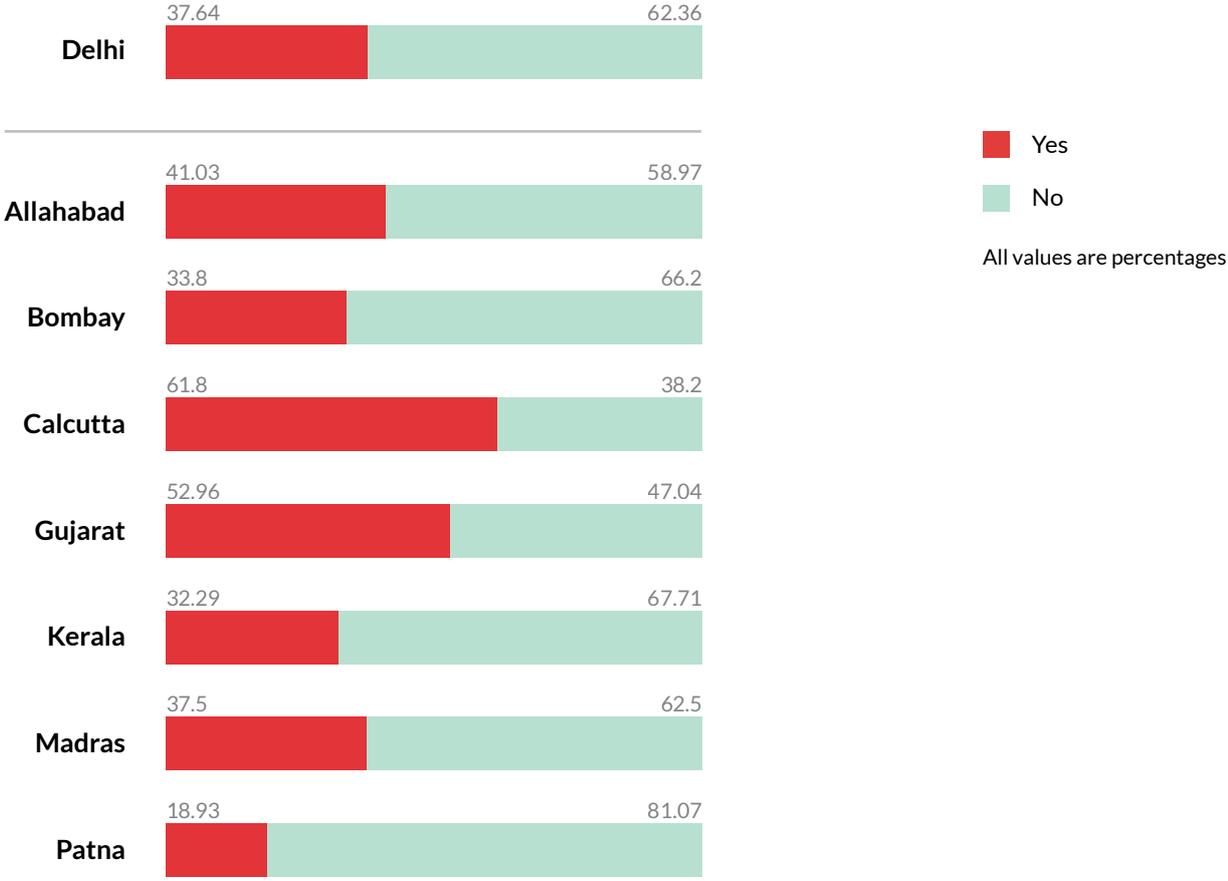
Q2 What is your gender?



Q4 Are you comfortable with sharing your caste details? If yes, please provide the name of your caste.

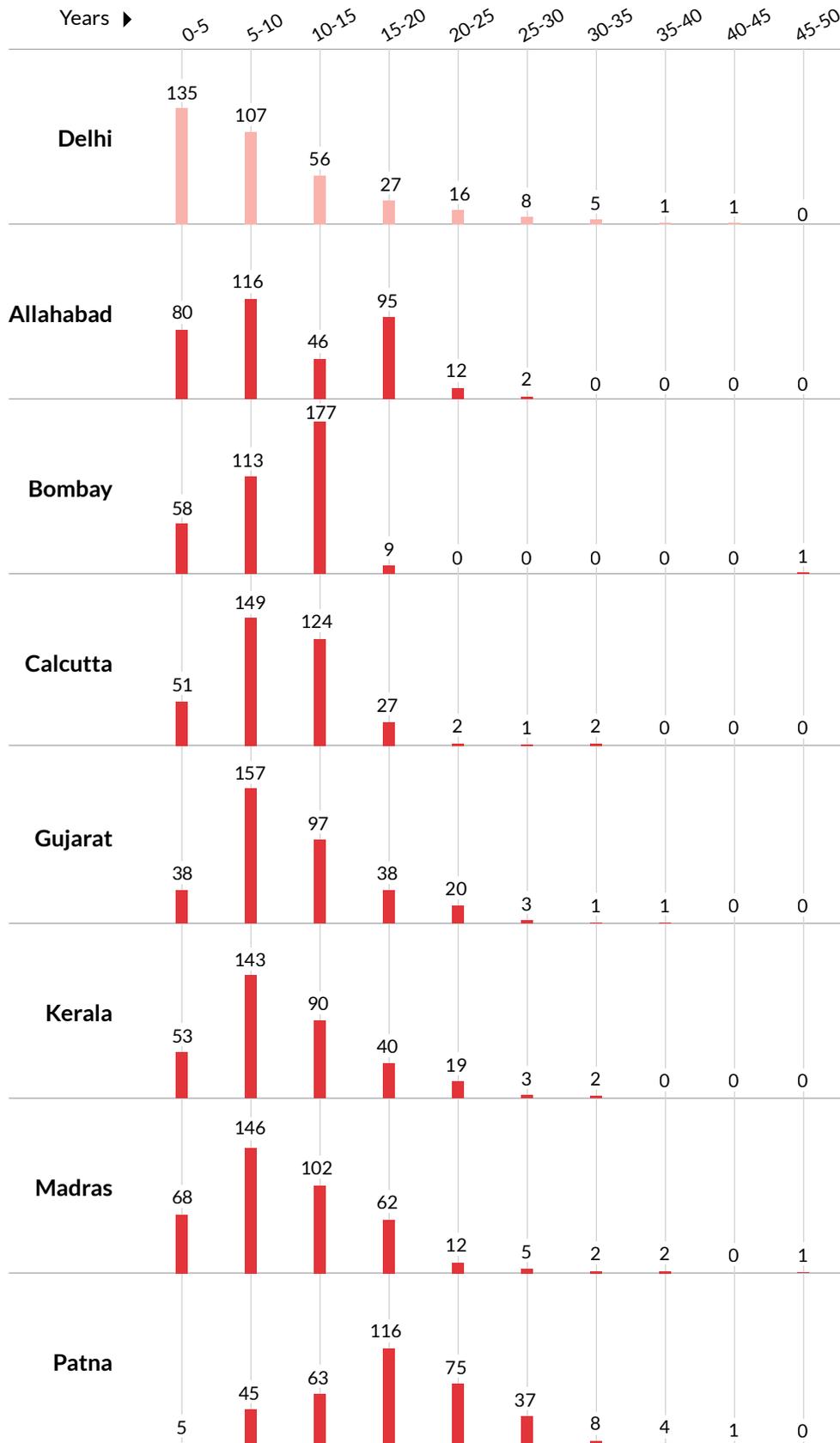


Q6 Do you come from a family of lawyers? [Y/N]



Q7

For how long have you been practicing law before this High Court?

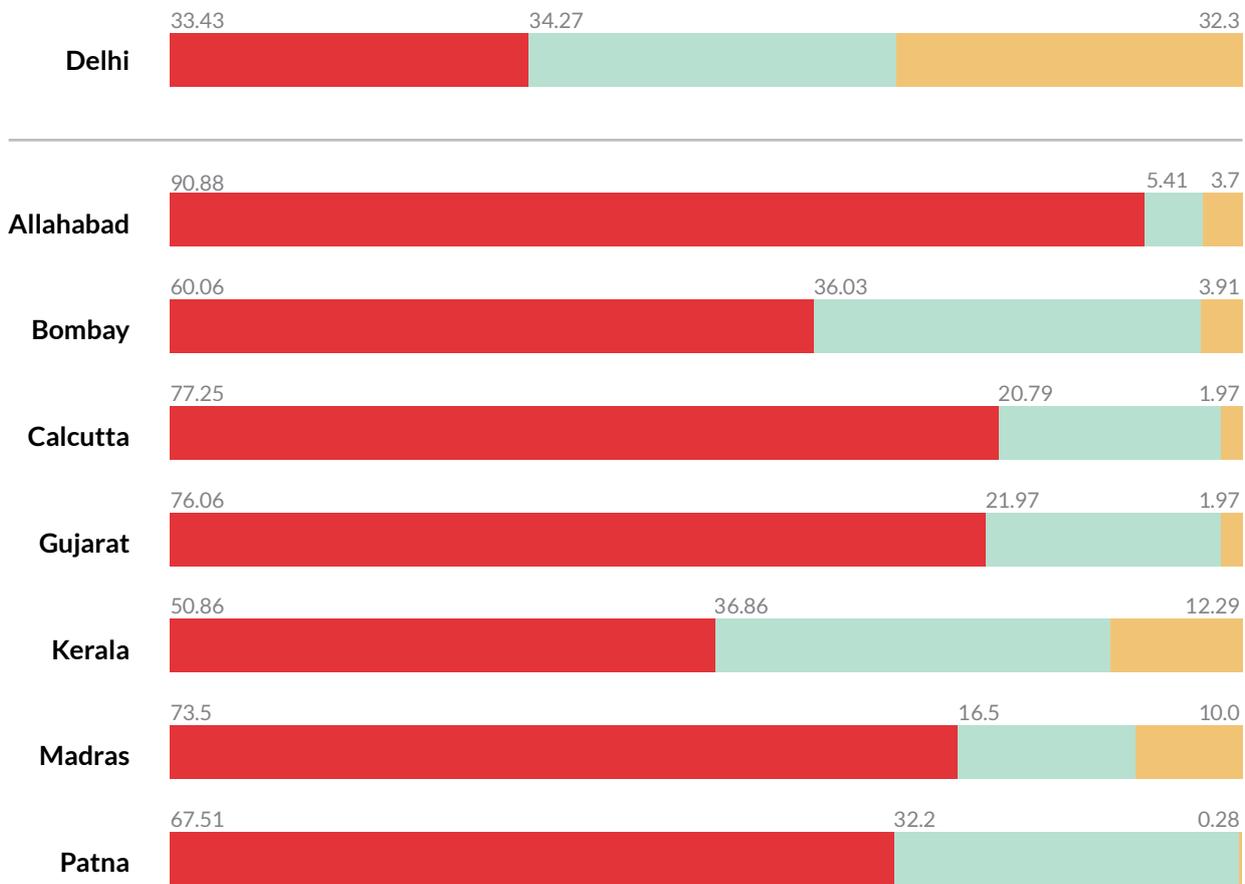


Q9

Do you practice exclusively at the High Court?

- A. Mostly at the High Court with a few cases at the District Courts
- B. Mostly at the District Courts with a few cases at the High Court
- C. Time is divided equally between the High Court and District Courts

All values are percentages



The topics that were covered by the survey

We covered three specific themes in this survey. The first was the perception of the higher judiciary amongst the advocates practicing before the High Courts. The second theme was regarding the relationship of advocates with the Bar Councils and the final theme focused on the earnings and practice of advocates practicing before the eight High Courts that were surveyed. The rationale for choosing these themes, is explained further in more detail.

I. The advocate's perception of the higher judiciary

Surveys of advocates should be distinguished from public opinion polls which attempt to measure the legitimacy of the judiciary because advocates as a class of professionals participate daily in the courtrooms.¹¹ Their close proximity to judges on a daily basis, allows advocates to observe the behaviour, competence and diligence of judges on the bench, most of whom are selected from the pool of advocates practicing before that High Court. It would not be an exaggeration to conclude that there is no one as competent as advocates, to 'judge' the performance of judges. Many jurisdictions have institutionalised bar polls to evaluate the performance of judges.¹² This exercise gains importance in the Indian context for there is no mechanism to assess or scrutinise the performance of the higher judiciary. This is unlike every other public office such as the bureaucracy whose performance is assessed through a system of annual confidential reports and politicians whose performance is judged through elections. It is in this context that we chose to include questions to measure the perceptions of advocates on different aspects of judicial functioning such as: (i) probity (ii) competence (iii) impartiality and (iv) independence from the government.

Apart from the above questions on performance of judges of the High Courts, we also asked advocates about their perception of the collegium system of judicial appointments wherein appointments to the higher judiciary are made on the basis of recommendation by sitting judges. As per a textual interpretation of the Constitution, the President is only required to consult the Chief Justice of India on the appointment of judges to the Supreme Court and High Courts. However, in the *Second Judges case*, which was initiated by the Supreme Court Advocates on Record Association, the Supreme

Court created the Collegium system of appointments.¹³ As per this decision, the opinion of the judiciary 'symbolised by the Chief Justice of India' would have primacy in judicial appointments. In the *Third Judges' case* the court effectively shaped the composition of the collegium that would advise the Chief Justice of India. The judgment extended the collegium to the Chief Justice of India and her four senior-most colleagues at the Supreme Court. In case of appointment of judges to High Courts, the process would begin with the Chief Justice of the High Court making a recommendation to the Chief Justice of India after consulting with two senior judges in that High Court. The Chief Justice of India is then required to consult with two senior judges at the Supreme Court before making a recommendation to the President.¹⁴

The Supreme Court defends the collegium system of appointments as being the best way of guaranteeing the independence of the higher judiciary although judges have publicly criticised the functioning of the collegium.¹⁵ In 2015, the Parliament amended the Constitution to create the National Judicial Appointments Commission (NJAC) which would replace the collegium system of appointments. NJAC consisted of five members, that included the Chief Justice of India, two senior Supreme Court judges, the Union Law Minister and two eminent citizens who were to be nominated by the committee consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the Lok Sabha.¹⁶ This constitutional amendment was promptly challenged before the Supreme Court, by lawyers practicing before the Supreme Court. In a decision rendered in 2015, the Supreme Court struck down the constitutional amendment creating the NJAC and preserved the collegium system of appointments to the higher judiciary.¹⁷

¹¹ Azim Premji University, *Politics and Society between Elections*, 2018, 95 available at https://azimpremjiuniversity.edu.in/SitePages/pdf/Azim_Premji_Univ_PSB_E_2018.pdf 95.

¹² Nebraska State Bar Association, *Judicial Evaluation Poll Results* available at <https://www.nebar.com/page/JPEResults>.

¹³ *Supreme Court Advocates on Record Assn v Union of India* (1993) 4 SCC 441.

¹⁴ Presidential Reference (1998) 7 SCC 739

¹⁵ *Supreme Court Advocates on Record Association and Another v Union of India* (2016) 5 SCC 1, [1220]-[1222] See also, Dhananjay Mahapatra, 'Collegium Meetings Follow No Principles of Law, says SC Judge' *Times of India* 28 August 2017, available at: <https://timesofindia.indiatimes.com/india/collegium-meetings-follow-no-principles-of-law-says-sc-judge/articleshow/60250720.cms>; Bhadra Sinha, 'Revolt' in SC collegium: Senior judge boycotts meet over lack of transparency *Hindustan Times* (September 3, 2016) available at: <https://www.hindustantimes.com/india-news/revolt-in-sc-collegium-senior-judge-boycotts-meet-over-lack-of-transparency/story-g9MofXzIxCuHeRv1Q72VHI.html>

¹⁶ Section 5, The National Judicial Appointments Commission Act, 2014, available at https://www.prsindia.org/sites/default/files/NJAC%20Act%2C%202014_0.pdf.

¹⁷ *Supreme Court Advocates on Record Association and Another v Union of India* (2016) 5 SCC 1.

Over the last few years, the Collegium system of appointments has come under increasing public criticism.¹⁸ Some of this criticism has manifested itself in the form of strikes and protests organised by advocates practicing before different High Courts.¹⁹ A lot of the criticism appears to be targeted at the lack of transparency in the internal workings of the Collegium system.²⁰

Given that it is the advocates practicing before High Courts who are required to appear before judges being selected through the collegium system of appointments, we felt it was necessary to ask these advocates for their opinions on the continuance of the Collegium system of appointment and whether the process required more transparency. We are hoping that their response to this survey helps gauge the performance of High Court judges, as well as the legitimacy of the collegium system in the opinion of lawyers practicing before High Courts.

Note:

In addition to the questions below, the advocates were asked another additional question in this section:

"Question 14: Do you think advocates who are relatives of sitting judges get preferential treatment from the bench?"

This question has been removed from the report after seeking legal opinion from Justice B. N. Srikrishna.

¹⁸ Arghya Sengupta *Independence & Accountability of the Higher Judiciary* (CUP 2019) 30-61; See also Prashant Bhushan, The Dinakaran Imbroglio: Appointments and Complaints against Judges (2009) *Economic and Political Weekly*, 44, 41-42. ¹⁹ Ilagovan Rajasekaran, *Lawyers in TN protest against 'arbitrary' transfer of Justice Tahilramani*, Frontline October 11, 2019 available at <https://frontline.thehindu.com/the-nation/article29507108.ece>; Lalmohan Patnaik, *Orissa HC Bar seeks national support on cause*, Times of India October 23, 2019 available at <https://timesofindia.indiatimes.com/city/cuttack/hc-bar-assn-seeks-natl-support-for-cause/articleshow/71711697.cms>.

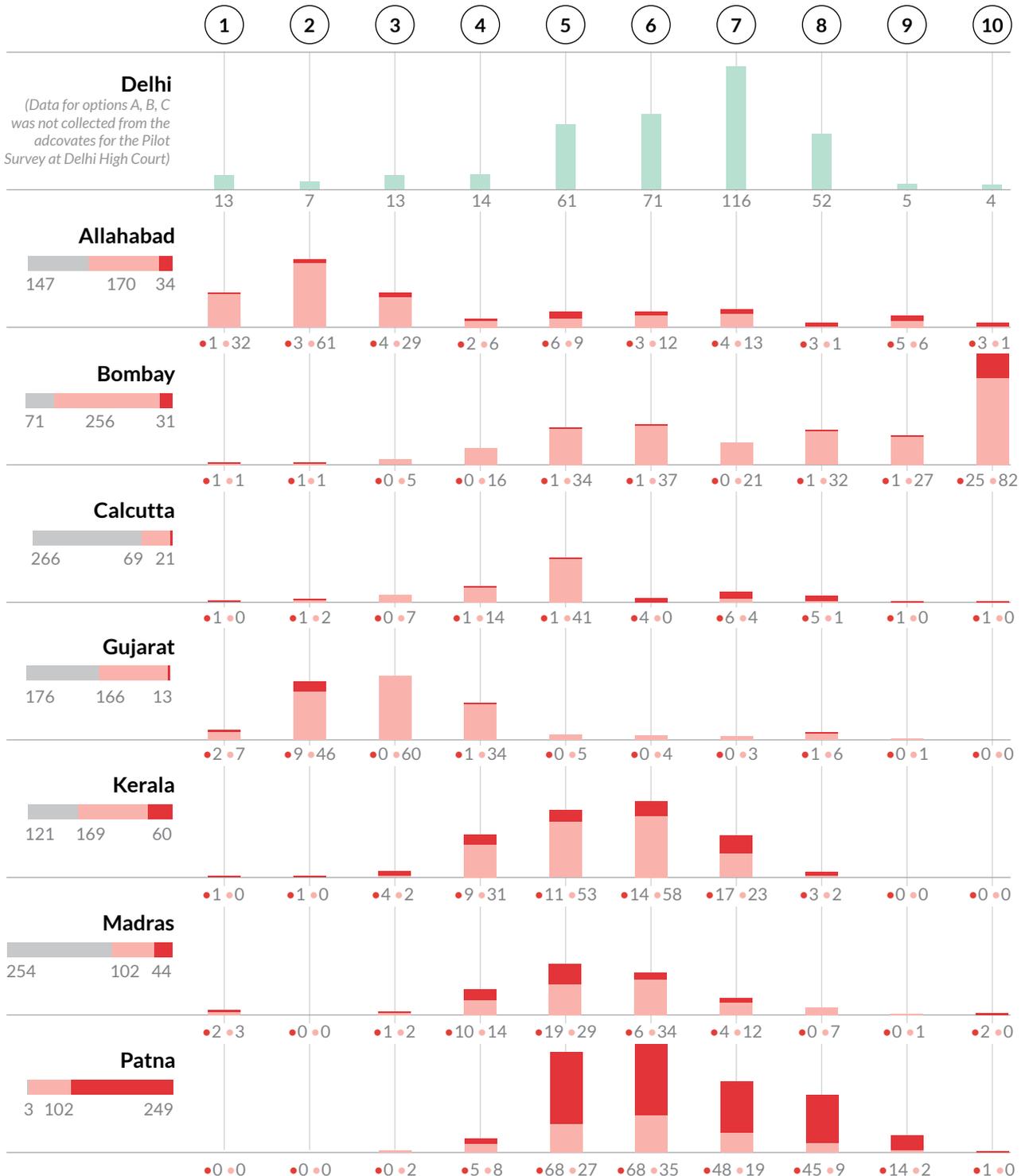
²⁰ Pradeep Thakur 'Collegium lacks transparency, needs reforms: Justice Shah' *Times of India* 28 November 2016 available at: <<https://timesofindia.indiatimes.com/india/Collegium-lacks-transparency-needs-reforms-Justice-Shah/articleshow/55656623.cms>>; Shoab Danial 'Controversy over SC judge appointments underscores need for transparency in collegium' *Scroll* 16 January 2019 available at <<https://scroll.in/article/909600/the-daily-fix-controversy-over-sc-judge-appointments-underscores-need-for-transparency-in-collegium>>.

Q10

How much of a problem do you think corruption is in the higher judiciary? On a scale of one to ten, rate your perception of corruption in the judiciary. A score of ten suggests that corruption is well entrenched in the higher judiciary.

Responses expected from the advocate, which need to be recorded in the application:

- A. The advocate did not want to answer the question.
- B. Advocate was reluctant but still answered the question [Record score between 1-10].
- C. Advocate had no hesitation in answering the question. [Record score between 1-10].

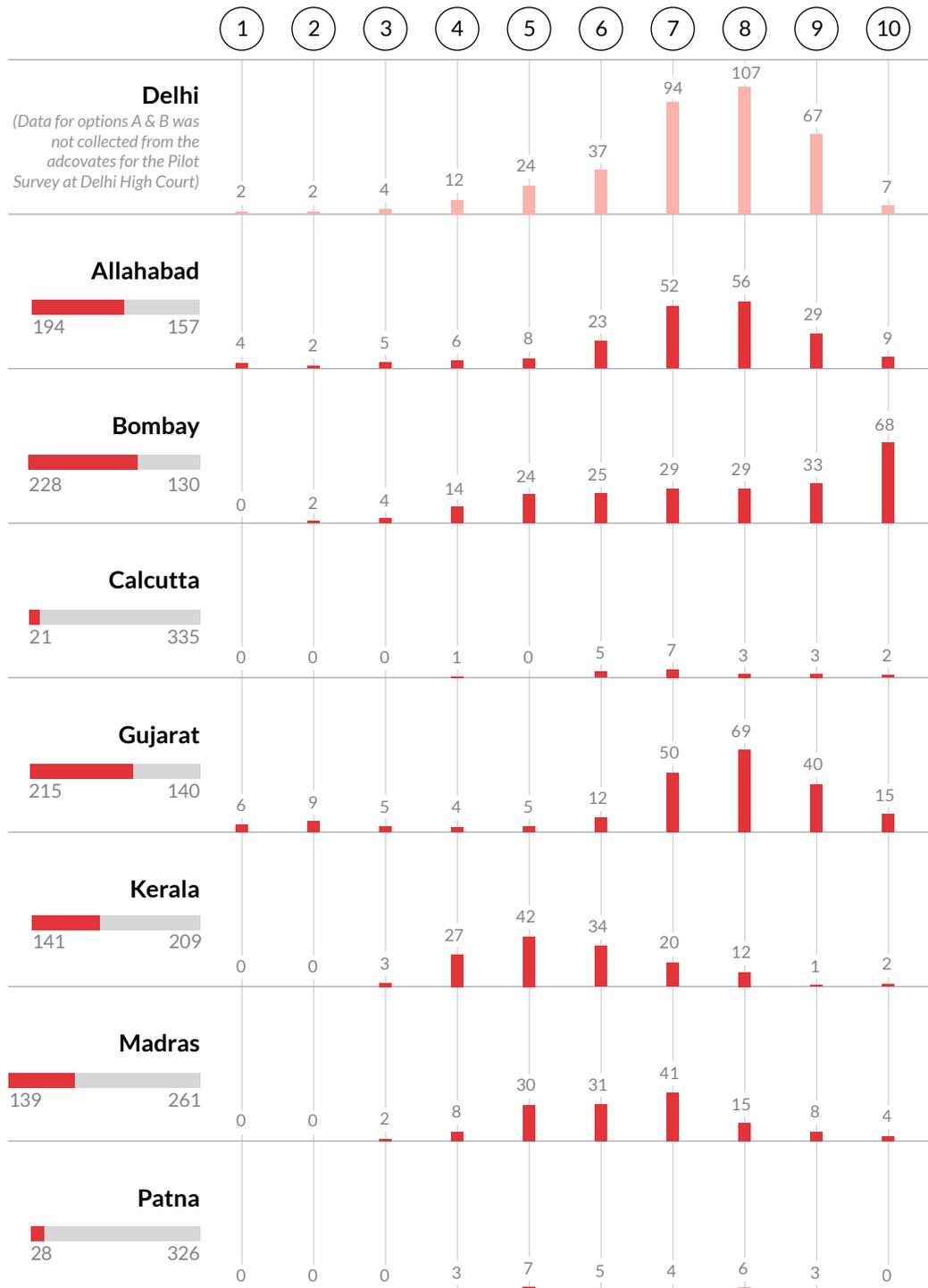


Q11

Are you satisfied with the quality of adjudication by the judges of your High Court? Please rate your response on a scale of one to ten, where ten suggests that you are completely satisfied with the quality of adjudication

Responses expected from the advocate, which need to be recorded in the application:

- A. Score between 1-10, OR
- B. Depends on the judge/bench.

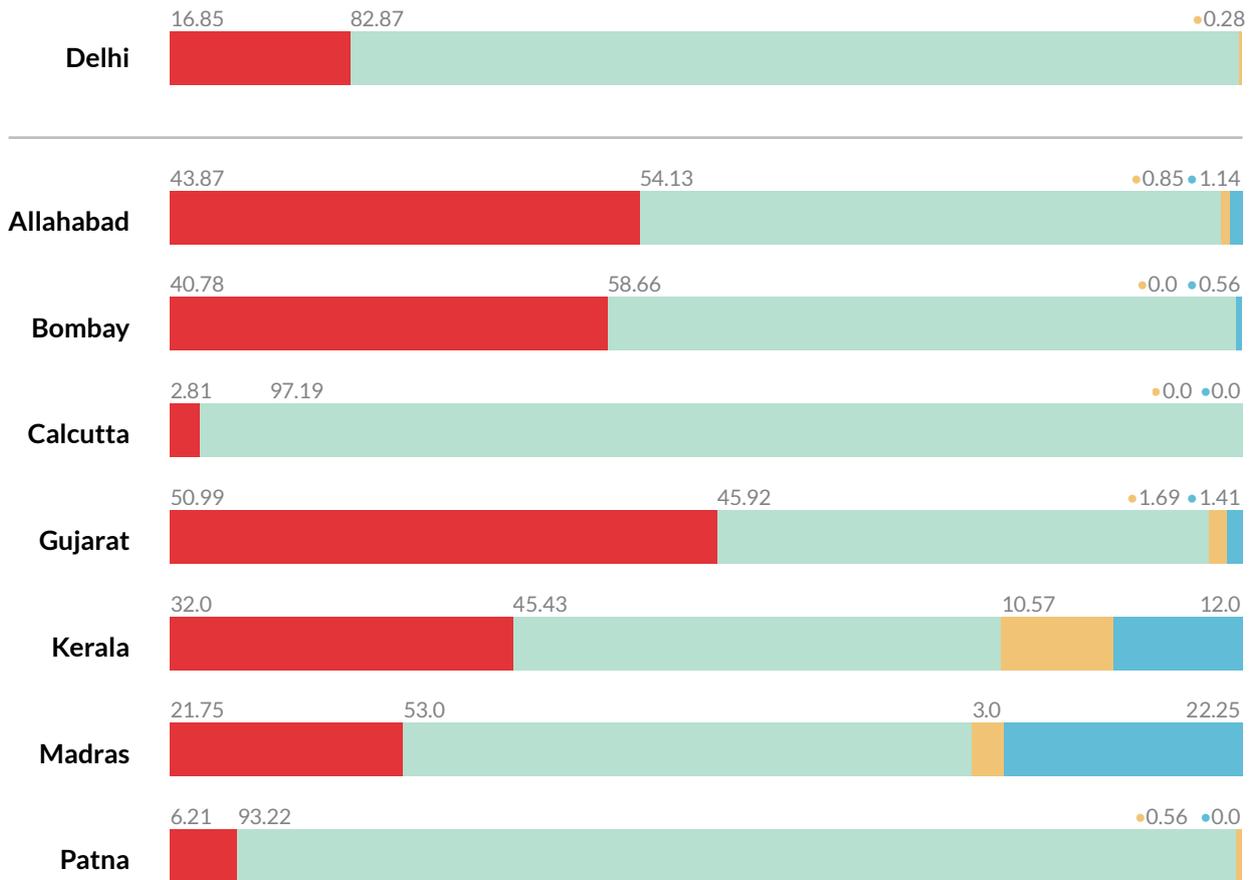


Q12

Do you think you get a fair hearing before the judge?

- A. Always.
- B. Depends on the judge/bench.
- C. Never.
- D. Rarely.*

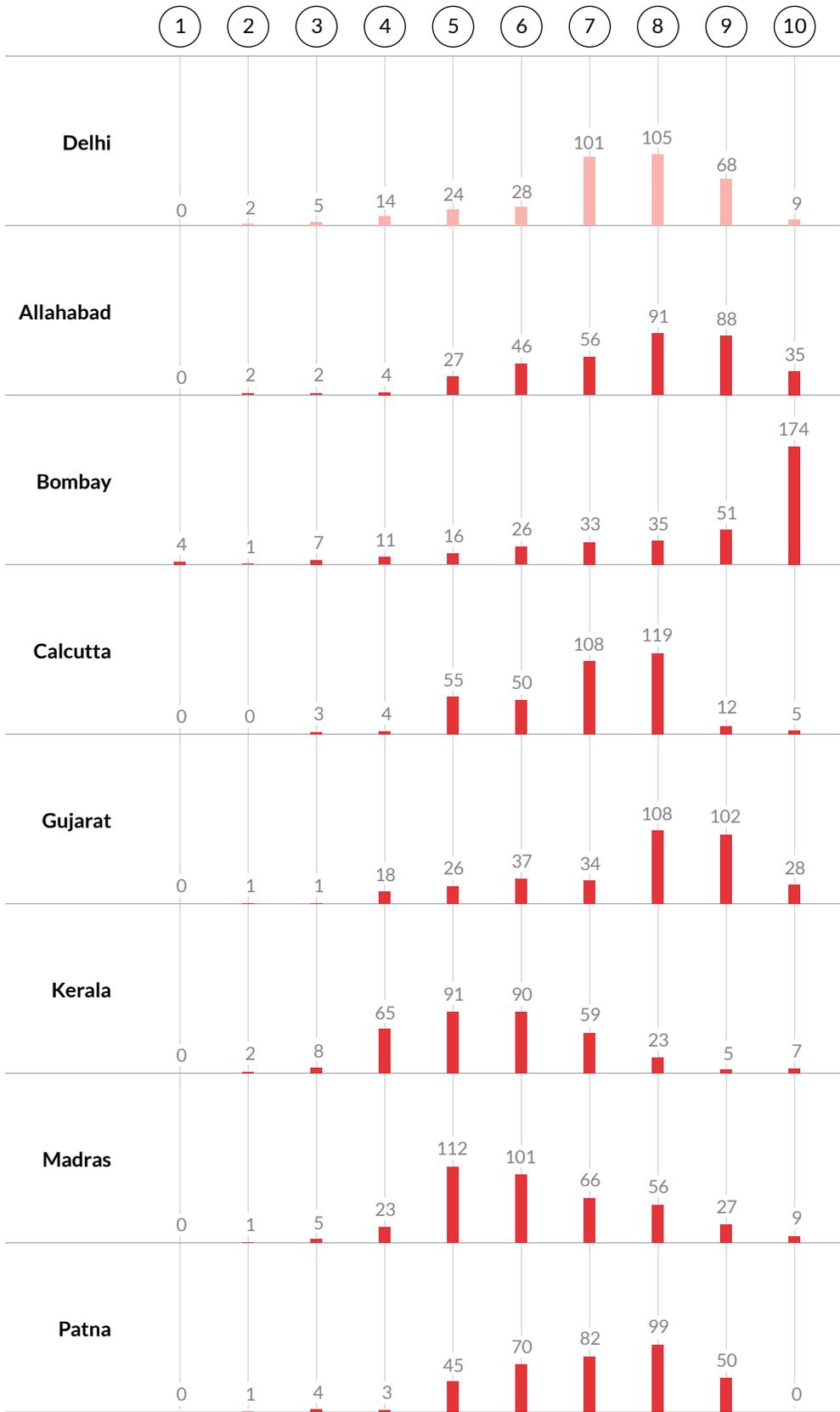
All values are percentages



* This option was not available to the respondents for the Pilot Survey at the Delhi High Court.

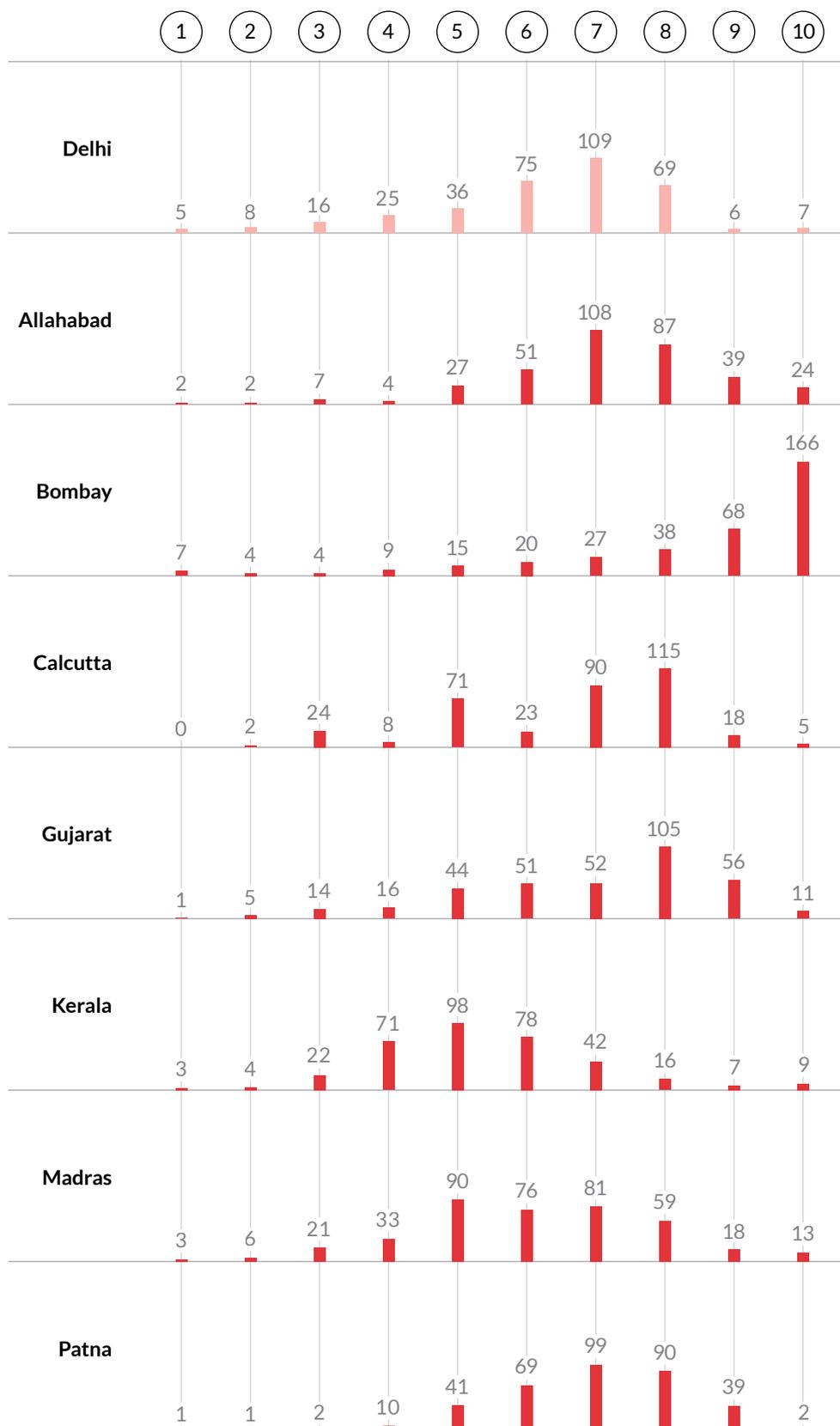
Q13

Do you think the judges allocate time efficiently while on the bench? Please rate your response on a scale of one to ten, where ten suggests that they are efficient with the use of time.



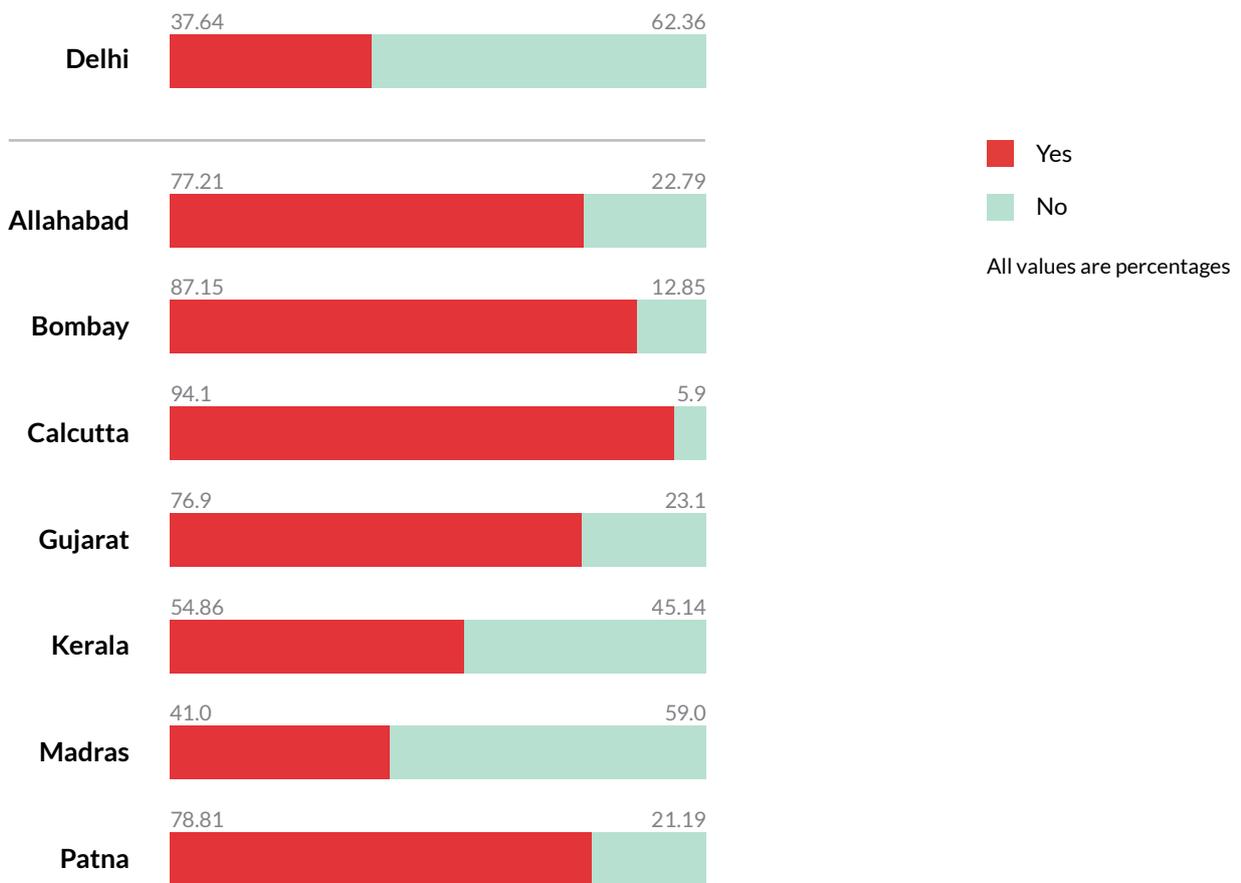
Q15

How independent do you think the judges of the High Court are from the government? Rate your perception of independence of the judges from the government on a scale of 1-10 where 10 indicates complete independence from the government.



Q16

Do you think that the collegium system of appointments, wherein the Supreme Court appoints judges to itself and the High Courts, ensures the selection of the most competent judges? [Y/N]

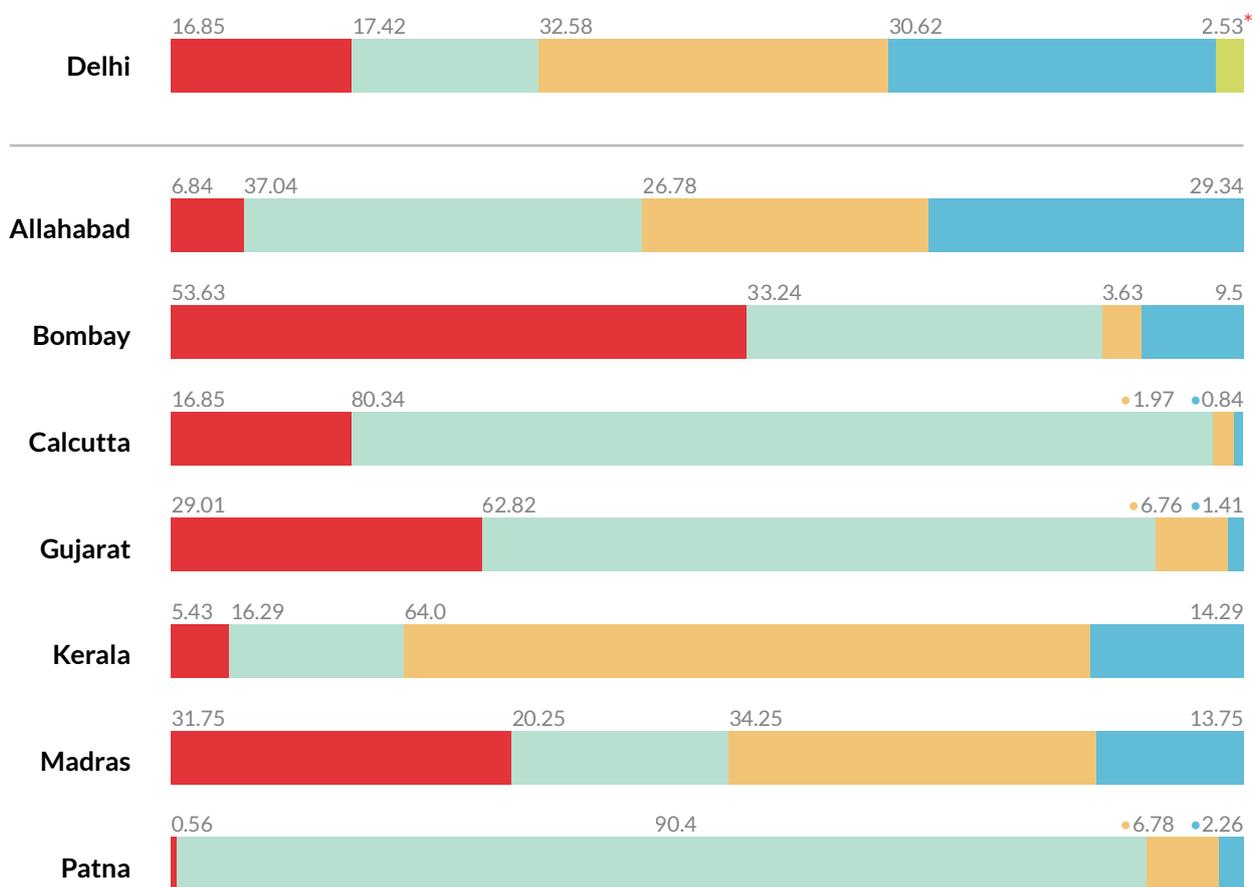


Q17

Do you think that the collegium system of appointments should be continued with or should it be replaced with some other mechanism such as the National Judicial Appointments Commission (NJAC), which was struck down by the Supreme Court in 2015?

- A. Continue with the system in its current form.
- B. Continue with the system with greater transparency.
- C. Replace the collegium system with NJAC.
- D. Find an alternative to the collegium that is not NJAC.

All values are percentages



* Respondents in the Pilot Survey at Delhi High Court were also provided an option E: *Have never heard of NJAC*. This option was excluded from the final questionnaire administered to the remaining seven High Courts. 2.53% of respondents chose the said option.

II. The perception of the Bar Council amongst advocates

In this section of the survey, we delve into one of the least explored aspects of the legal profession - the relationship between advocates and the Bar Council of India, which is the apex regulatory body for the legal profession. Prior to the enactment of the Advocates Act, 1961 the Indian legal profession was regulated by the High Courts under the British-era law called the Indian Bar Councils Act, 1926.²¹ In 1961 when a new regulatory framework was put in place by the Advocates Act, the power to discipline lawyers was shifted away from High Courts, to a system of peer justice wherein disciplinary committees setup by State Bar Councils and comprising only advocates would decide whether an advocate breached the professional rules of conduct laid down by the Bar Council of India.²² Over the years, there have been allegations of 'regulatory capture' that have been levelled against the Bar Council and the Law Ministry even proposed a new regulatory framework to replace the existing regulatory framework.²³ In this context, we thought it would be interesting to ask practicing advocates their perception of the Bar Council's effectiveness as a regulator.

The second issue that we touched upon, under this theme, is the effectiveness of welfare funds that were required to be mandatorily setup by the Central and State Government under the Advocates Welfare Fund Act, 2001 to provide a measure of social security to practicing advocates. The respective welfare funds were to be financed through two regular streams of revenue.

The first source was the enrolment fee paid to every Bar Council by new advocates on their enrollment. As per, Section 15, every State Bar Council is required to contribute 20% of their yearly enrollment fee to the advocate welfare fund of the State. The second source of revenue for the fund, was the revenue earned through the sale of welfare stamps by Bar Councils to advocates who are required to mandatorily affix these stamps on vakalatnamas. Over the years, there have been several allegations of misappropriation of these funds.²⁴ At the same time, advocates are going on strike asking for better social security.²⁵ Most recently advocates carried out a nation-wide rally demanding budgetary allocation of Rs. 5000 crores to cover insurance for all lawyers and stipend of at least Rs. 10,000 for entrant lawyers for five years.²⁶ In response the Ministry of Law announced plans to launch a "cohesive insurance scheme" for advocates.²⁷ In this context, one of the questions in the survey was aimed at gauging the number of advocates in each High Court who had benefited from the existing advocate welfare fund.

The restrictions imposed by the Bar Council of India against the advertising of legal services were the third issue covered under this theme.²⁸ The prohibition against advertising is linked to the general prohibition against solicitation of work by advocates and has existed since the colonial era. Notwithstanding challenges to the constitutionality of such a prohibition, it continues to stand, with some minor relaxations that permit lawyers

²¹ Law Commission, (n 5) at para 2.19.

²² Section 35 of the Advocates Act, 1961 available at <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/Advocates-Act1961.pdf>.

²³ Pratik Datta, *It's time for new regulations to protect clients from sly lawyers*, Economic Times July 16, 2016 available at [https://economictimes.indiatimes.com/blogs/et-commentary/its-time-for-new-regulators-to-protect-clients-from-unscrupulous-advocates/Draft-for-Legal-Practitioners-\(Regulation-and-Maintenance-of-Standards-of-Professions,-Protecting-the-Interest-of-Clients-and-Promoting-the-Rule-of-Law\)-Act,-2010-available-at-https://www.prsindia.org/uploads/media/draft/NALSA.pdf](https://economictimes.indiatimes.com/blogs/et-commentary/its-time-for-new-regulators-to-protect-clients-from-unscrupulous-advocates/Draft-for-Legal-Practitioners-(Regulation-and-Maintenance-of-Standards-of-Professions,-Protecting-the-Interest-of-Clients-and-Promoting-the-Rule-of-Law)-Act,-2010-available-at-https://www.prsindia.org/uploads/media/draft/NALSA.pdf).

²⁴ Aneesa Mathur, *HC asks Delhi Government to Frame Rules for Advocates Welfare Fund*, The Indian Express August 19, 2015 available at <https://indianexpress.com/article/cities/delhi/hc-asks-delhi-govt-to-frame-rules-for-advocates-welfare-fund/; Bar Council to probe Welfare Fund Fraud, Times of India October 13, 2018 available at https://timesofindia.indiatimes.com/city/thiruvananthapuram/bar-council-to-probe-welfare-fund-fraud/articleshow/66190217.cms>.

²⁵ *Telangana High Court Advocates stop work, demand funds for Welfare Programmes*, The Indian Express February 13, 2019 available at <https://www.newindianexpress.com/states/telangana/2019/feb/13/telangana-high-court-advocates-stop-work-demand-funds-for-welfare-programmes-1938140.html>.

²⁶ *Rs. 5000 Cr Budget for Advocate Welfare and more, BCI calls for Nationwide Rally on February 12*, Bar and Bench February 6, 2019 available at <https://barandbench.com/bci-nationwide-rally-advocate-welfare-feb-12/>.

²⁷ Sumit Saxena, *Law Ministry to launch cohesive insurance scheme for Lawyers*, Outlook July 24, 2019 available at <https://www.outlookindia.com/newscroll/law-ministry-to-launch-cohesive-insurance-scheme-for-lawyers/1582200; Lawyers want Rs. 5000 Cr for Welfare in Union Budget, to hold protest across India on Tuesday, Hindustan Times February 12, 2019 available at https://www.hindustantimes.com/india-news/lawyers-want-rs-5-000-cr-for-welfare-in-union-budget-to-hold-protest-across-india-on-tuesday/story-kS3acyeAqDtHLv3tnV8dEM.html>.

²⁸ Rule 36, Bar Council of India Rules (Under the Advocates Act, 1961) available at <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/BCIRulesPartItoIII.pdf>.

to create websites that provide basic information about their contact details, qualifications and area of practice.²⁹ The larger law firms regularly manage to work around these restrictions through surrogate advertising. It could be argued that this prohibition on advertising greatly stifles the ability of advocates, especially the one with specialisations, to reach out to potential clients. In light of this, we asked practicing advocates their view on this prohibition against advertising in order to understand the legitimacy of this prohibition from their perspective.

The fourth issue that we touched upon is the popularity of the colonial attire of the dress code that is prescribed by the Bar Council Rules for advocates practicing before the High Courts as part of its professional standards.³⁰ The black gown has come under occasional criticism on the grounds that it is a relic of a colonial era, as well as the fact that it is extremely uncomfortable to wear in the Indian summer,³¹ especially if the court is not air-conditioned. This dress code, on occasion has been challenged before the courts by advocates seeking a dispensation from wearing the gown during summer months.³² Against this backdrop we thought it would be useful to ask advocates whether they would want a change to the mandatory requirement of a dress code of black gown and jacket.

The final issue that we touched upon in this section was capacity building through continuing legal education (CLE) for practicing advocates in order to upgrade their skills and ensure they are kept updated on the latest developments in the law. In many countries, CLE is mandatory for a legal professional to maintain their active status. In India, CLEs are not a compulsory requirement although there exists, on paper, a Directorate of Legal Education which is entrusted with the task of regulating CLEs.³³ A study that was commissioned by the Law Ministry in 2017 indicated broad support for CLE amongst a small sample set of practicing advocates.³⁴ Although CLEs are not yet mandatory in India, there has been a culture of bar councils organising seminars and lectures for advocates. In this backdrop we sought to know from

the survey participants whether their respective bar councils were organising lectures and seminars and whether they would like their bar councils to organise more lectures and seminars.

²⁹ *V.B. Joshi v Union of India and Ors.*, Writ Petition (Civ.) 532/2000.

³⁰ Chapter 4, Bar Council Rules under Section 49(1)(gg), under Advocates Act, 1961

³¹ Rules III and IV, Chapter 4 Bar Council Rules, under Section 49(1)(gg) of the Advocates' Act 1961 exempt the wearing of advocates' gown except in Supreme Court and High Courts. For Supreme Court and High Courts, during summer wearing of black coat is not mandatory.

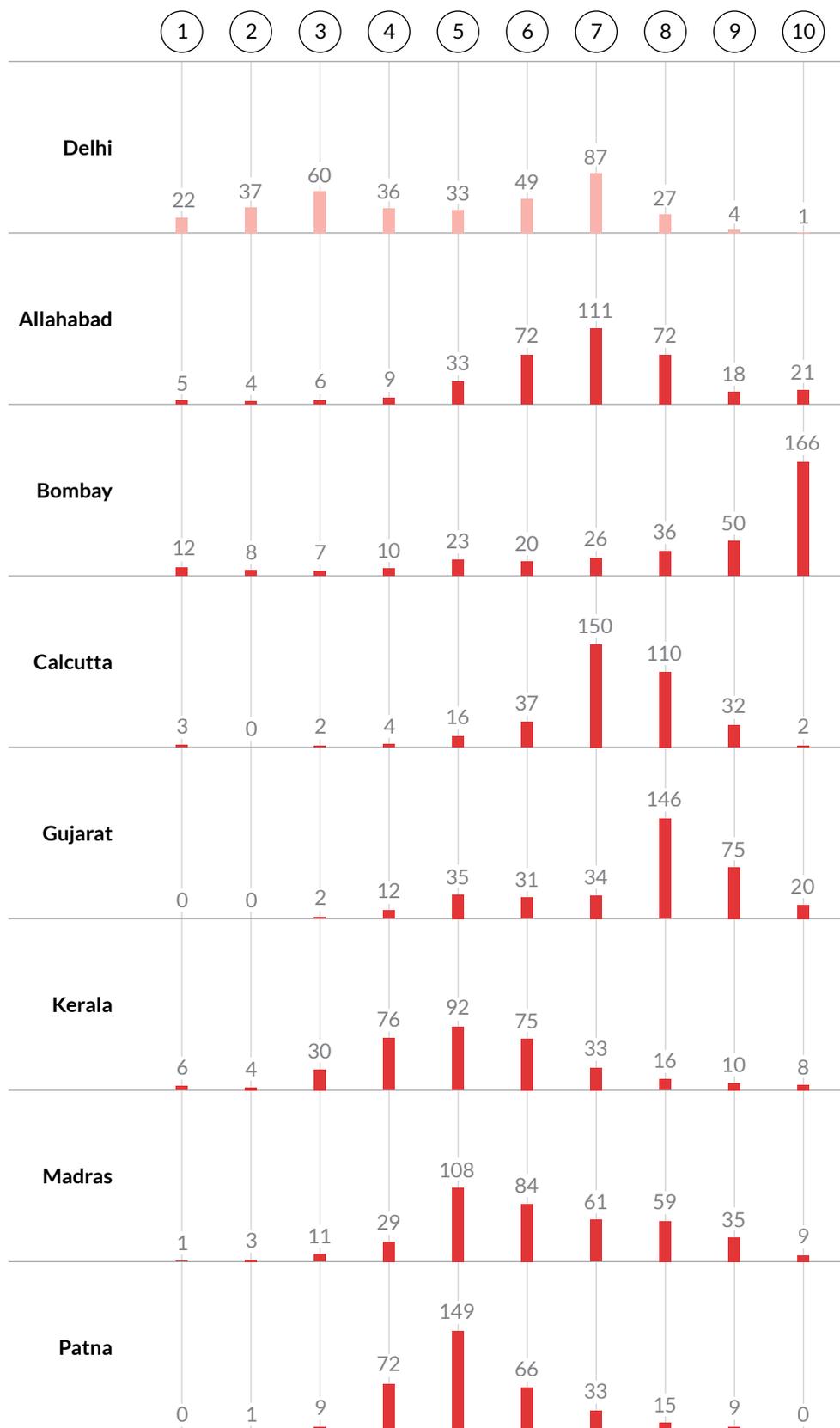
³² K.S. Sudhi, *Lawyers have to sweat buckets this Summer*, The Hindu April 10, 2019 available at <https://www.thehindu.com/news/cities/Kochi/lawyers-have-to-sweat-buckets-this-summer/article26786561.ece>; *Advocate Moves Kerala High Court for exemption from wearing Black Coat in Lower Courts in Summer*, Live Law March 30, 2019 available at <https://www.livelaw.in/news-updates/advocate-seeks-exemption-from-wearing-black-coat-gown-in-lower-courts-in-summer-143934>.

³³ Rule 34, Chapter IV, Rules of Legal Education, 2008 available at <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/BCIRulesPartIV.pdf>.

³⁴ Dr. Dipa Dube & Dr. Indrajit Dube, *Designing the Continuing Legal Education System in India for Advocates*, June 2017 available at <https://doj.gov.in/sites/default/files/IIT%20Kharagpur%20Final%20Report.pdf>.

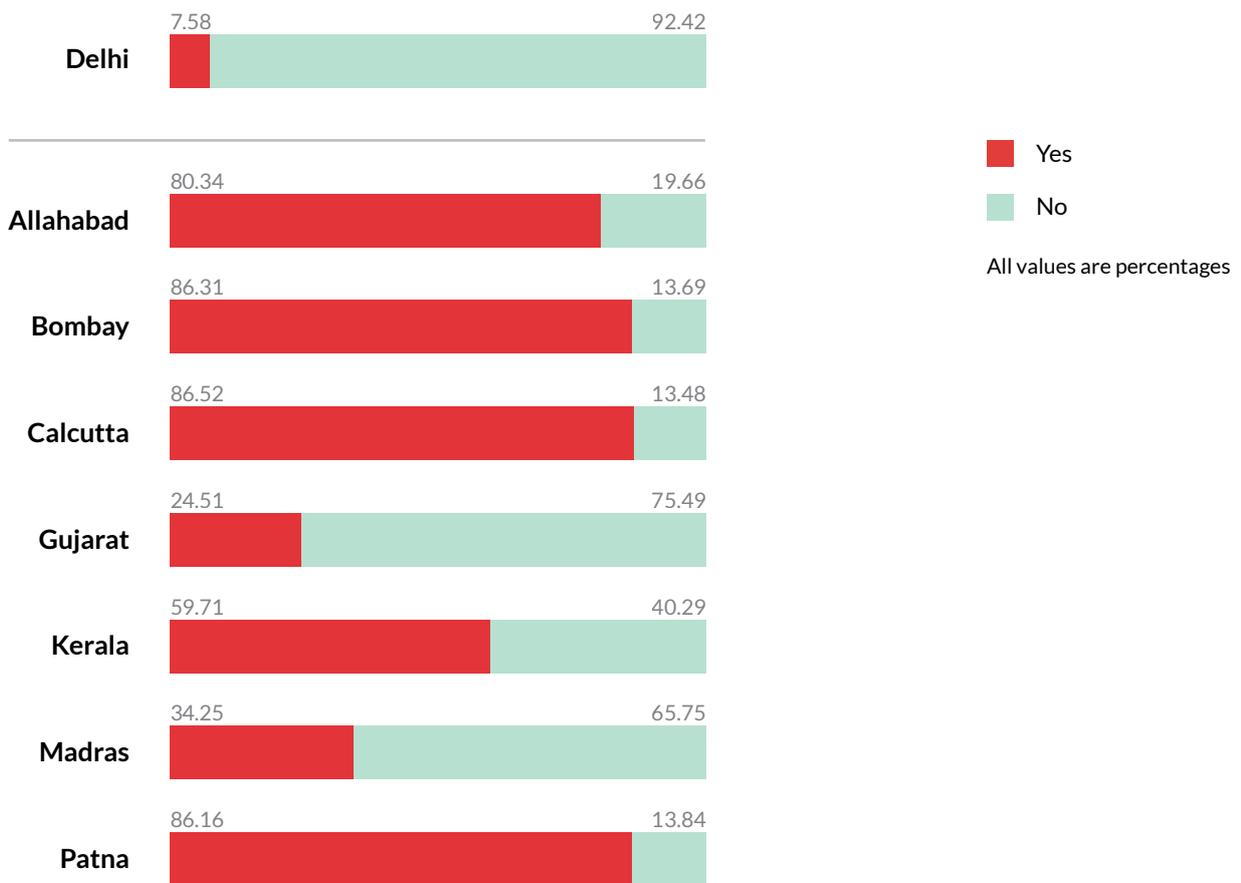
Q18

Are you satisfied with the quality of regulation of the legal profession by the Bar Council? Please rate your satisfaction on a scale of one to ten, where a score of ten suggests that you are completely satisfied with BCI's regulation of the profession.



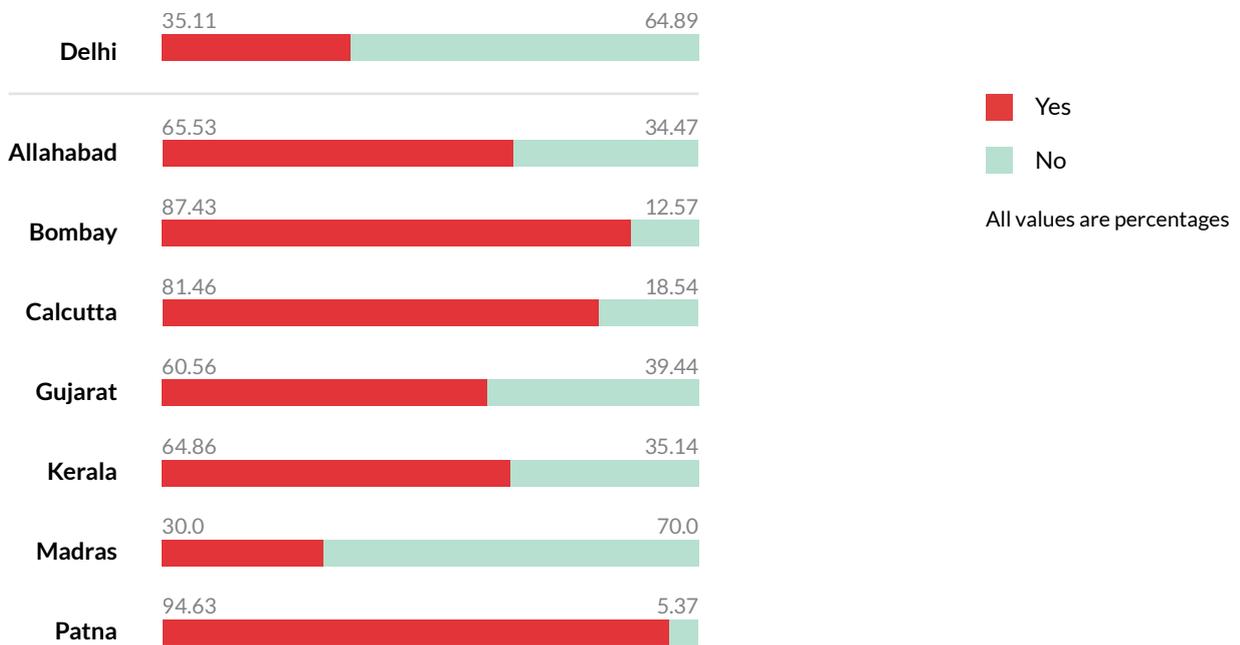
Q19

Have you or any other lawyer whom you know, received assistance from the Advocates Welfare Fund that was established by a law in 2001 [The Advocates Welfare Fund, 2001]? [Y/N]



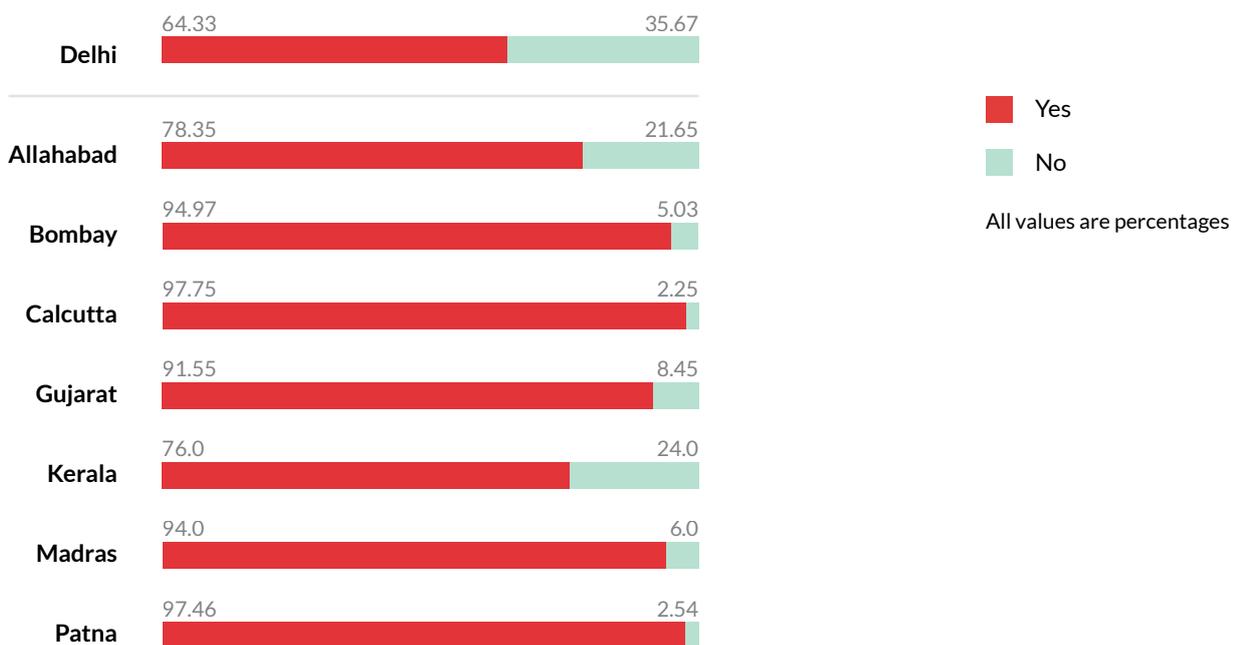
Q20

Do you think that the Bar Council should amend its rules to allow advocates to advertise their services to potential clients? [Y/N]



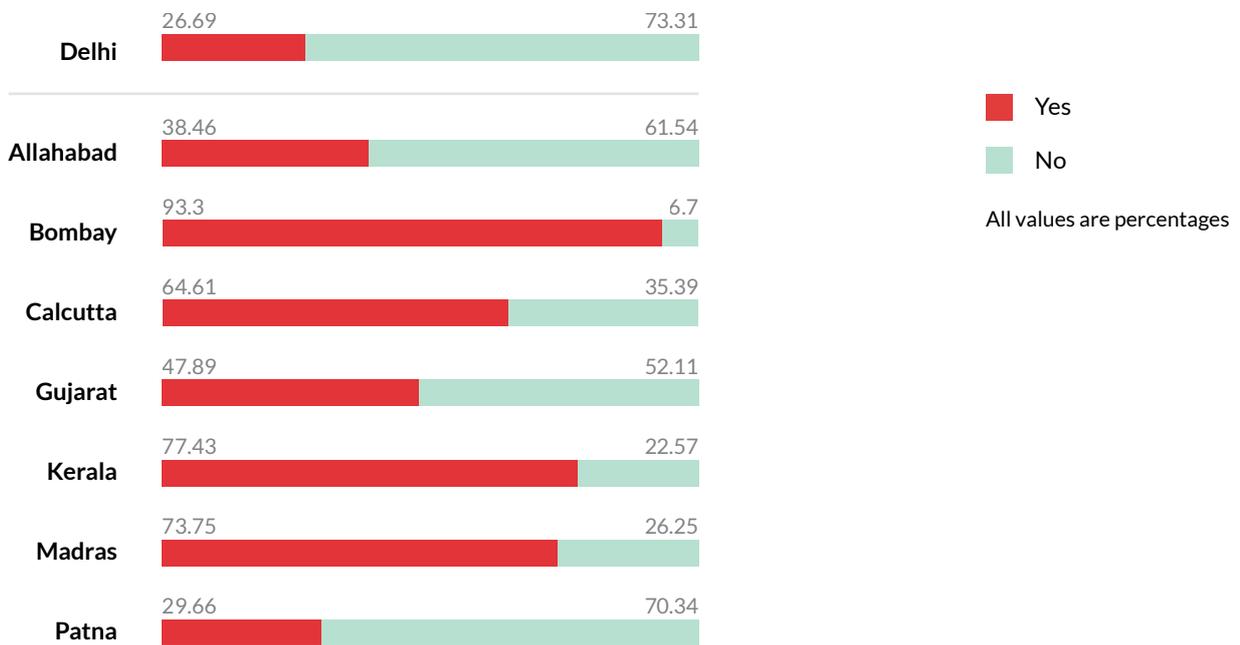
Q21

Do you support the current dress code of black gowns and jackets? [Y/N]



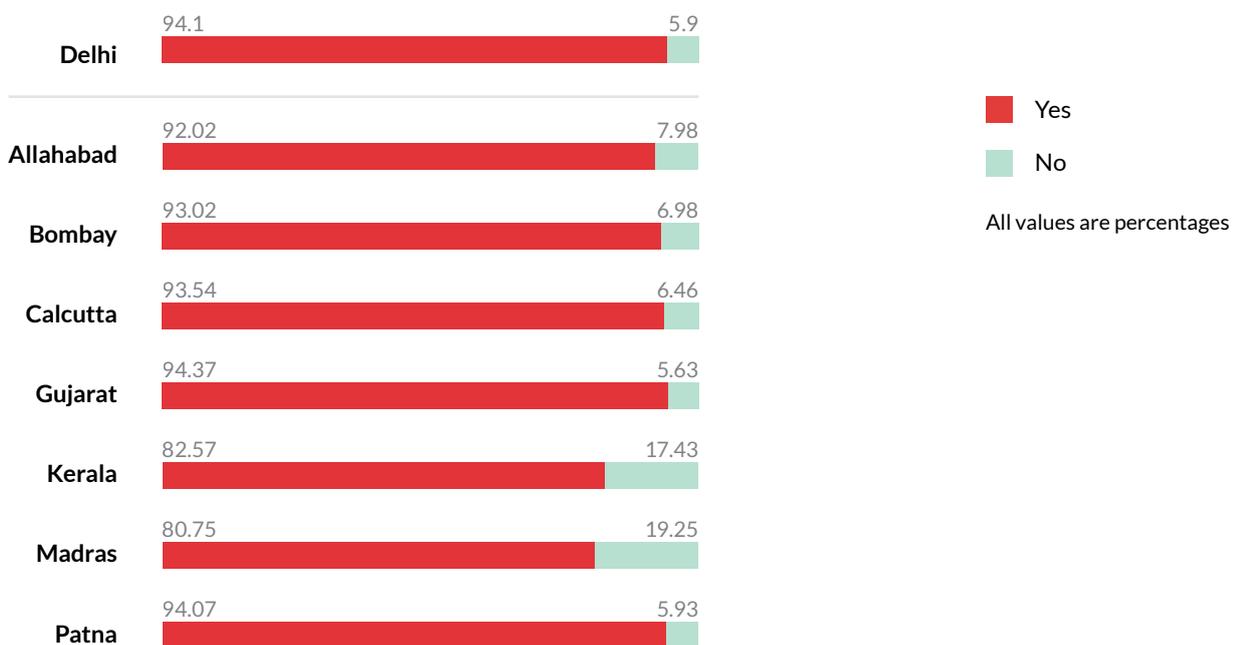
Q22

Does the Bar Council (not Bar Associations) organise lectures/workshops/seminars for advocates? [Y/N]



Q23

Do you think the Bar Council should be organising such seminars? [Y/N]



III. Information about the earnings and practice of Advocates

The Indian legal profession consists of an overwhelming number of advocates practicing before courts with only a miniscule few joining law firms to concentrate on transactional or advisory functions. Of the advocates practicing before courts, those who practise before High Courts account for only a minority since High Courts are generally confined to state capitals unlike District Courts which are present in every district of the country. There is very little information available about these advocates practicing before the High Court in terms of their earnings. There have been very few surveys of these lawyers and it is difficult to find even basic information about their earnings and their practice.³⁵ It is necessary for policymakers to collect such information because there appears to be increasing turmoil and insecurity amongst advocates which manifests itself in the form of strikes. While strikes are, undoubtedly more frequent before District Courts, it is not unknown for advocates practicing before the High Courts to go on strike. For example, in February, 2019 lawyers across the country on the call of the Bar Council of India in association with various State Bar Councils & High Court Bar Associations went on strike or protest with a slew of demands for the welfare of lawyers.³⁶ The demands included insurance cover for lawyers and their dependents, stipends for new litigating lawyers, financial protection and schemes to facilitate acquisition of land at cheaper rates. All of these demands

indicate a legal profession that is worried about the lack of financial security despite the existence of advocate welfare funds created under both state and central laws.³⁷

In this survey, we confine ourselves to collecting basic information on how much advocates think their counterparts across various age groups earn from their practice before the High Courts. We refrained from asking the survey participants about their own earnings because we anticipated that advocates would not be comfortable disclosing their earnings.

A second issue that we touched upon, was the affordability of law reporters and online legal databases which are the most extensive source of easily searchable legal information and which are required by all litigating lawyers. We specifically included this question because the Bar Council of India (BCI) has demanded that all Bar Associations of the country be equipped, at public expense, with libraries as well as e-libraries with adequate internet facilities.³⁸ We presumed that this demand was articulated by the Bar Council as a result of its members being unable to afford the subscription fees being charged by private publishers in the digital age.

A third issue that we touched upon, was information regarding the effect that caste/religion of the advocates has on their professional life. We included this question because there have been studies in the past which have

³⁵ A survey by Bar & Bench on litigating lawyers estimates that as many as 78% of first generation lawyers and 85% of second generation lawyers surveyed earn less than Rs. 5 lakhs per annum for the first 5 years of practice. The 6Q Survey on Litigating Lawyers (Results), available at <https://barandbench.com/how-much-do-litigation-lawyers-make-where-do-they-practice/the-6q-survey-on-litigating-lawyers-results/>.

³⁶ *Lawyers want Rs. 5000 Cr for Welfare in Union Budget, to hold protest across India on Tuesday*, Hindustan Times February 12, 2019 available at <https://www.hindustantimes.com/india-news/lawyers-want-rs-5-000-cr-for-welfare-in-union-budget-to-hold-protest-across-india-on-tuesday/story-kS3acyeAqDtHLv3tnV8dEM.html>.

³⁷ The Welfare Fund Act, 2001 available at <https://indiacode.nic.in/bitstream/123456789/2002/1/200145.pdf>; The Andhra Pradesh Advocates Welfare Fund and The Andhra Pradesh Advocates Clerks Welfare Fund Acts, (Amendment) Act, 1992 available at http://www.lawsofindia.org/pdf/andhra_pradesh/1992/1992AP19.pdf; The Goa Advocates' Welfare Fund Act, 1995 available at https://indiacode.nic.in/bitstream/123456789/6155/1/ocradvocates_welfare.pdf; The Gujarat Advocates' Welfare Fund Act, 1991 available at <https://indiacode.nic.in/bitstream/123456789/3209/1/Guj%2014%20of%201991.pdf>; The Himachal Pradesh Advocates Welfare Fund Act, 1996 available at <https://indiacode.nic.in/bitstream/123456789/3271/1/THE%20HIMACHAL%20PRADESH%20ADVOCATES%20WELFARE%20FUND%20ACT%2C%201996.pdf>; The Kerala Advocates Welfare Fund Act, 1980 available at <http://www.lawsofindia.org/pdf/kerala/1980/1980KERALA21.pdf>; The Tamil Nadu Advocates Welfare Fund Act, 1987 available at http://www.lawsofindia.org/pdf/tamil_nadu/1987/1987TN49.pdf; The Uttar Pradesh Advocates Welfare Fund Act, 1974 available at https://indiacode.nic.in/bitstream/123456789/8418/1/advocate_welfare_.pdf.

³⁸ Press Release dated 12.02.2019 of Bar Council of India after the peaceful protest rally seeking genuine welfare demands of the Advocates from the Government and after meeting with Hon'ble Law Minister, thereafter, February 12, 2019 available at <http://www.barcouncilofindia.org/press-release-dated-12-02-2019-of-bar-council-of-india-after-the-peaceful-protest-rally-seeking-genuine-welfare-demands-of-the-advocates-from-the-government-and-after-meeting-with-honble-law-minister/>.

³⁹ Kidder, R. L. (1974) *Formal litigation and professional insecurity: legal entrepreneurship in South India* Law & Society Review, 9, 11.

described how the caste of advocates influences the briefs they get from clients.³⁹ Unlike those studies which were conducted in District Courts, however, High Courts are located in large cities, which are presumably more cosmopolitan. Our questions on this issue was aimed at gauging the perception of advocates, as to whether their caste or religion influenced their ability to secure a brief from a client or relief from a judge.

The fourth and final issue that we examined for the purpose of this survey, is the question of language used by the High Courts to conduct its proceedings. While Article 348 of the Constitution states that English shall be the official language of all proceedings before the Supreme Court and all the High Courts in India, Parliament may by law authorise the use of other languages. Article 348 also makes provision for the Governor, with the previous consent of the President, to authorize the use of Hindi or any other local language for the proceedings of the Court. Such permission has been granted to at least four High Courts (Rajasthan, Uttar Pradesh, Bihar and Madhya Pradesh) to conduct their proceedings in Hindi. However similar requests by the Governments of Tamil Nadu, Chhattisgarh and Karnataka have not been considered.⁴⁰ These requests were likely influenced by both the urge to increase access to justice by conducting proceedings in a language understood by most of the citizens of the state, as well as the political requirement to honour the linguistic identity of advocates practicing before a particular High Court.⁴¹ We therefore asked the advocates participating in the survey whether they wanted English to be the sole language that could be used before High Court or whether they preferred bilingual High Courts where arguments could be made in either English or the local language.

Note:

In addition to the questions below, the advocates were asked another additional question in this section:

“Question 30: Do you think your caste determines the manner in which a judge gives a relief in your case? [Y/N]”

This question has been removed from the report after seeking legal opinion from Justice B. N. Srikrishna.

⁴⁰ *Use of Regional Languages in High Courts*, Press Information Bureau December 10, 2015 available at <https://pib.gov.in/newsite/PrintRelease.aspx?relid=132952>.

Use of Hindi Language in High Courts, Press Information Bureau September 3, 2012 available at <https://pib.gov.in/newsite/PrintRelease.aspx?relid=87283>.

⁴¹ *Tamil in the Courts*, The Economist April 11, 2013 available at <https://www.economist.com/johnson/2013/04/11/tamil-in-the-courts>.

Q24

What do you think is the average monthly income of an average advocate in the first 2 years of their practice before your High Court? (in Rs)

Key for Delhi:

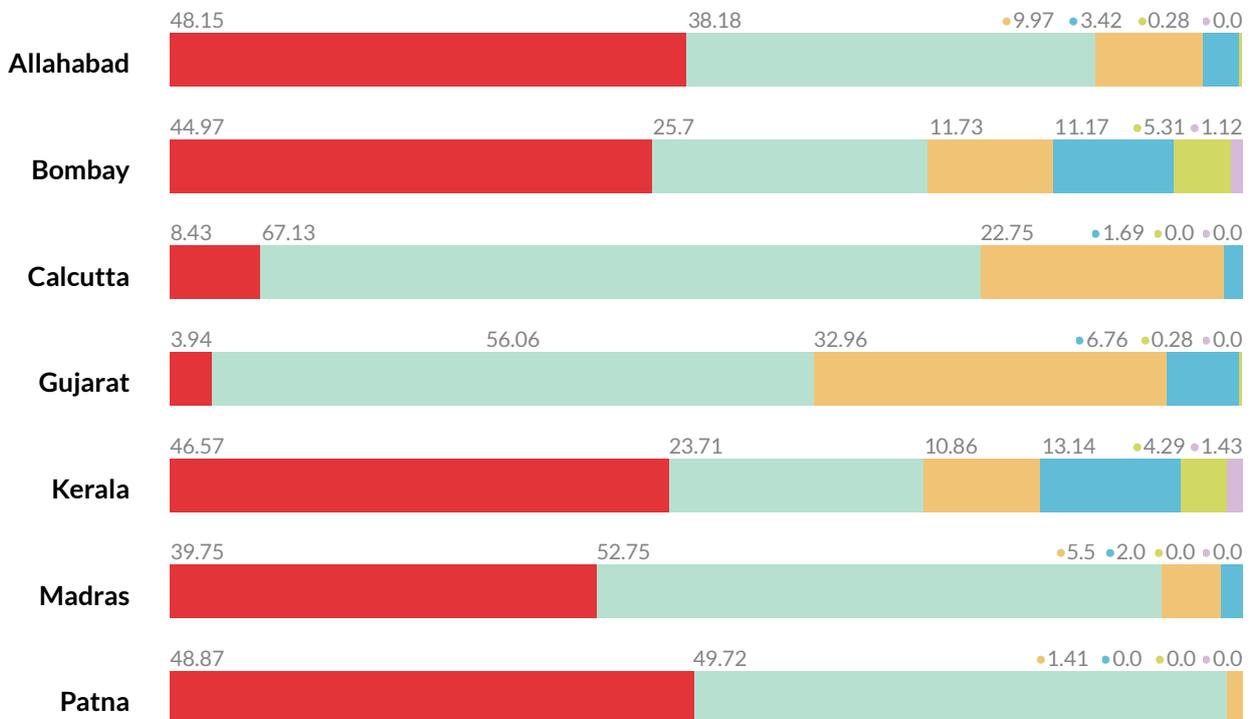
- A. 5000-20,000
- B. 20,000-40,000
- C. 40,000-60,000
- D. More than 60,000

All values are percentages



Key for Other High Courts:

- A. 2,000-5,000
- B. 5,000-10,000
- C. 10,000-20,000
- D. 20,000-40,000
- E. 40,000-60,000
- F. 60,000 and above



Q25

What do you think is the average monthly income of an average advocate practicing before your High Court for a period of 10 years? (in Rs)

All values are percentages

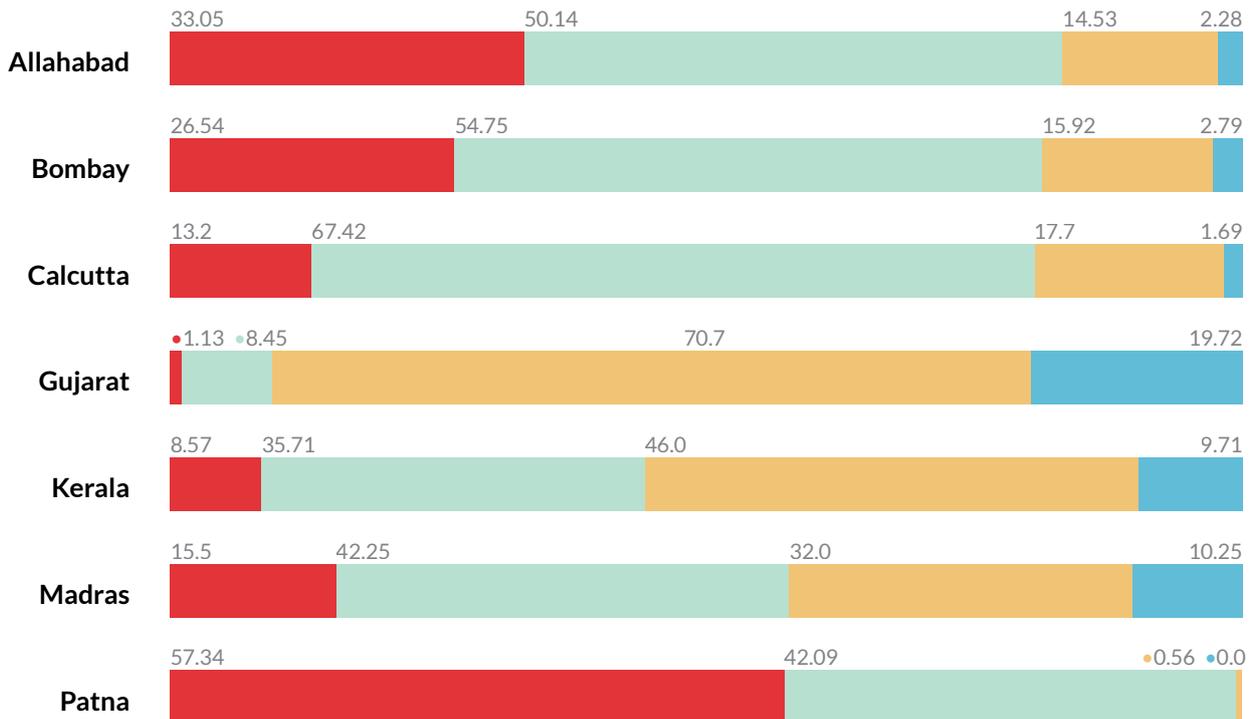
Key for Delhi:

- A. 20,000-40,000
- B. 40,000-60,000
- C. 60,000-80,000
- D. More than 80,000



Key for Other High Courts:

- A. 20,000-40,000
- B. 40,000-60,000
- C. 60,000-80,000
- D. More than 80,000



Q26

How much do you think a Senior Advocate practicing before your High Court charges per hearing? (in Rs)

All values are percentages

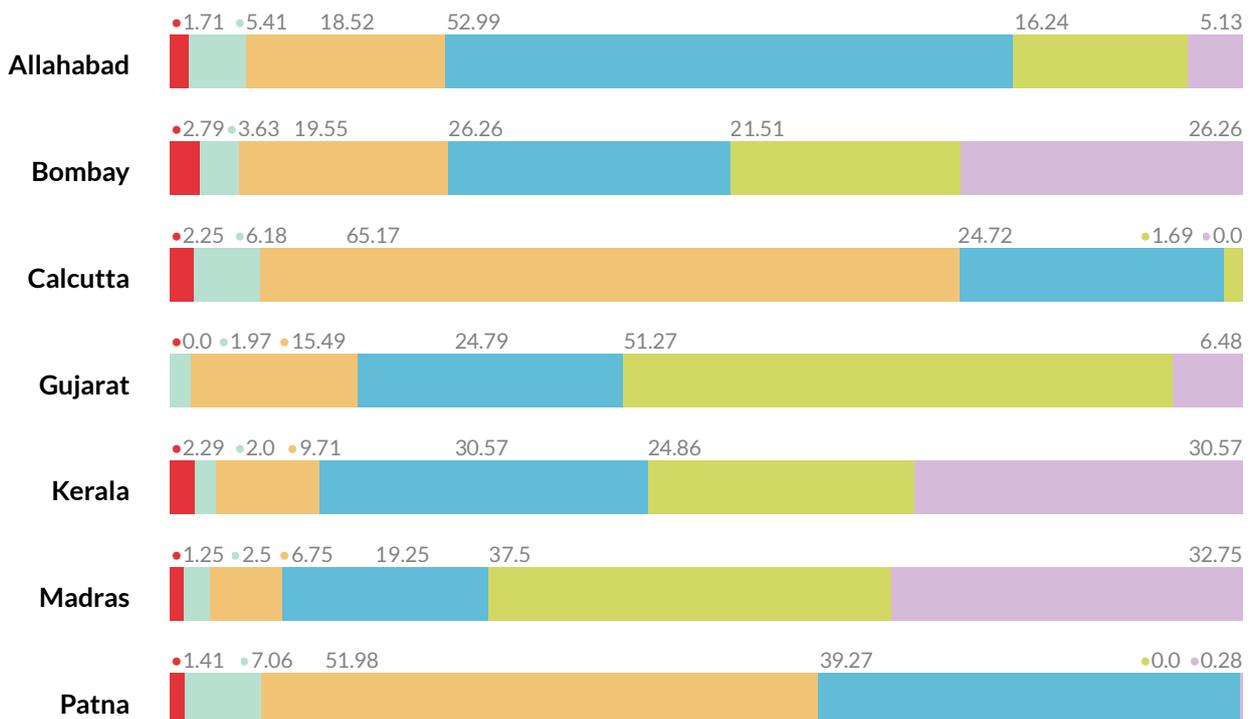
Key for Delhi:

- A. 10,000-30,000
- B. 30,000-50,000
- C. 50,000-80,000
- D. 80,000- 1,00,000
- E. More than 1,00,000



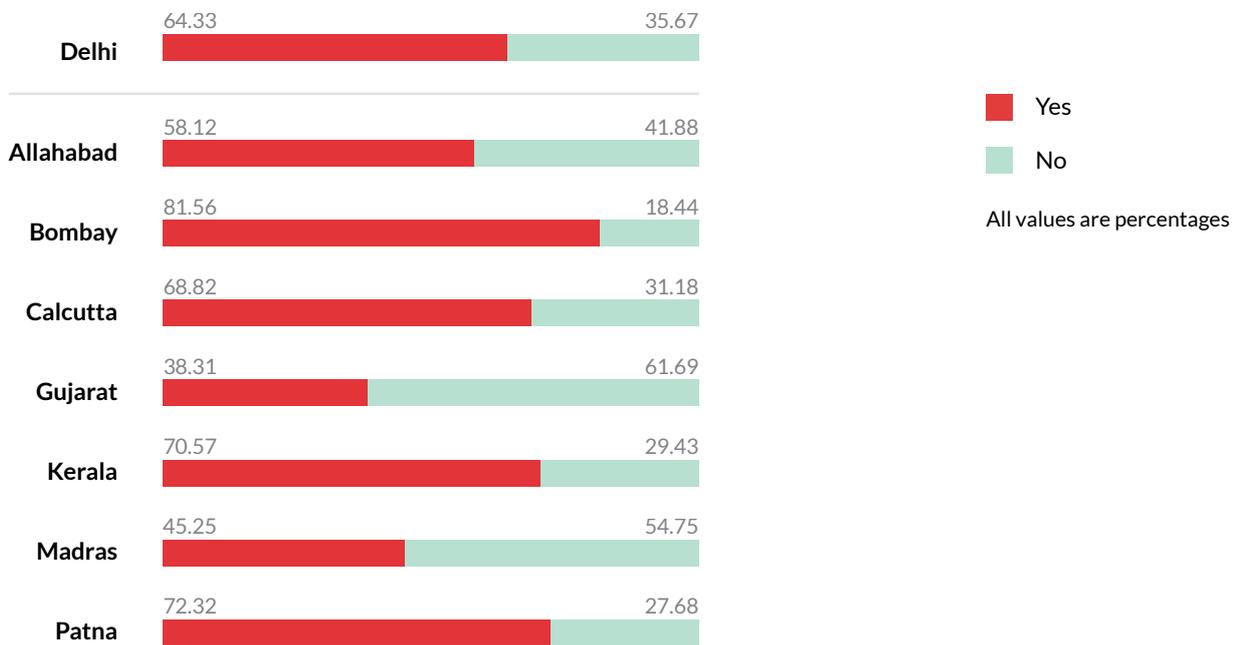
Key for Other High Courts:

- A. 10,000-30,000
- B. 30,000-50,000
- C. 50,000-80,000
- D. 80,000- 1,00,000
- E. 1,00,000-2,00,000
- F. More than 2,00,000



Q27

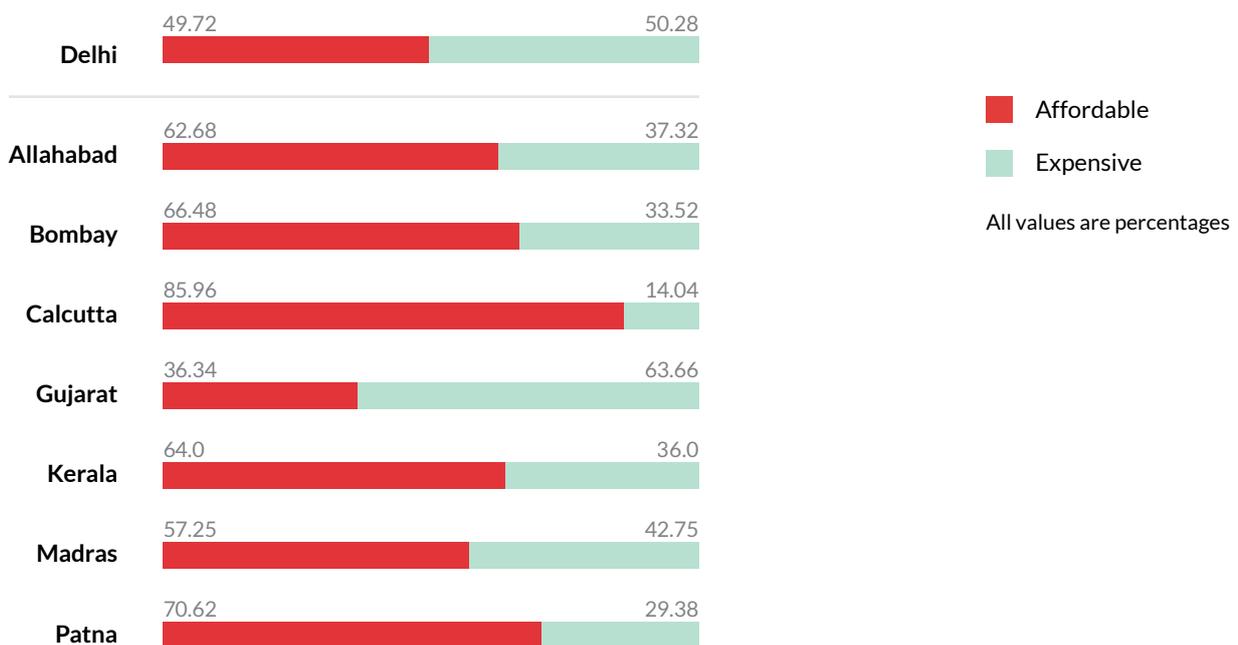
Do you subscribe to a law reporter (including online subscriptions)? [Y/N]



Q28

Do you find the subscription fee for law reporters/online databases to be:

- A. Affordable
- B. Expensive.

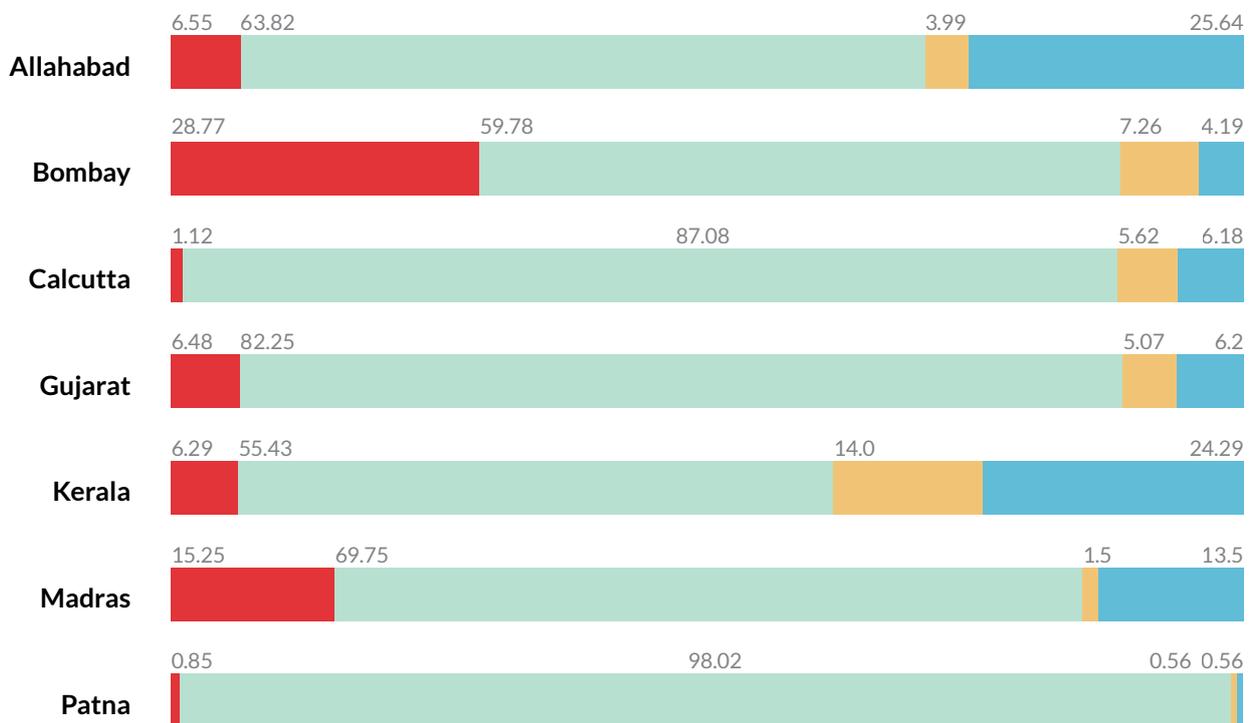


Q29
(A)

Do you think caste/religion of the client influences whether an advocate gets a brief?*

- A. Yes, caste of the client influences whether an advocate gets a brief.
- B. No, caste of the client does not influence whether an advocate gets a brief.
- C. Yes, religion of the client influences whether an advocate gets a brief.
- D. No, religion of the client does not influence whether an advocate gets a brief.

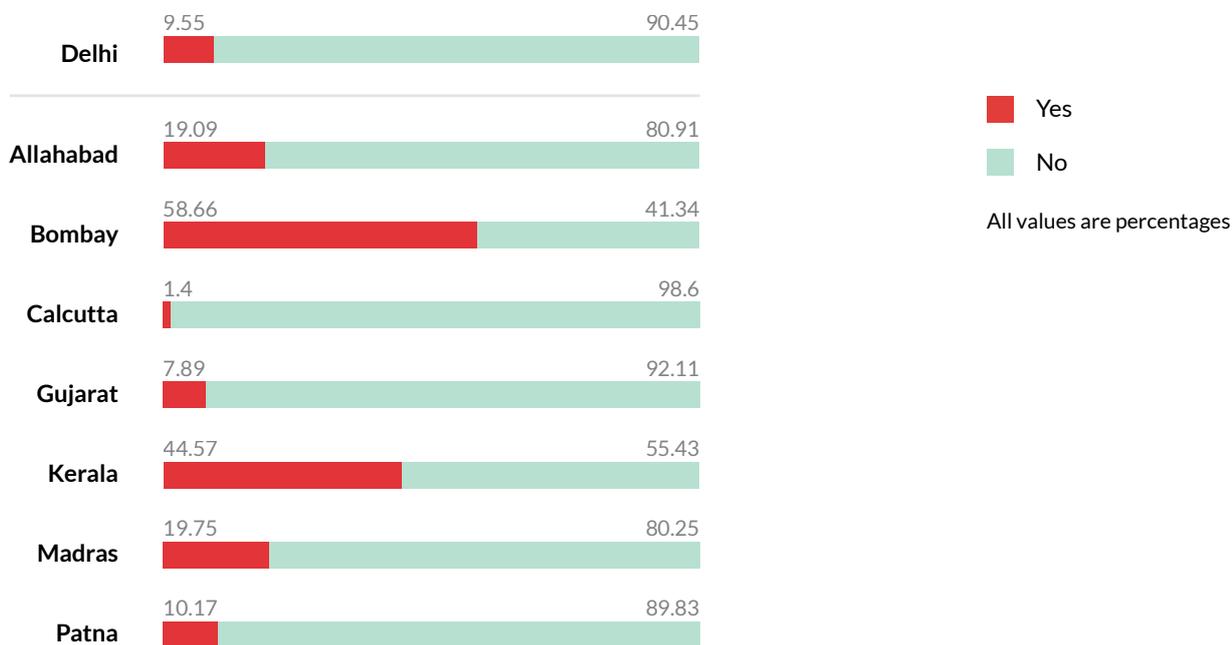
All values are percentages



* This question was not part of the questionnaire for the pilot survey at Delhi High Court.

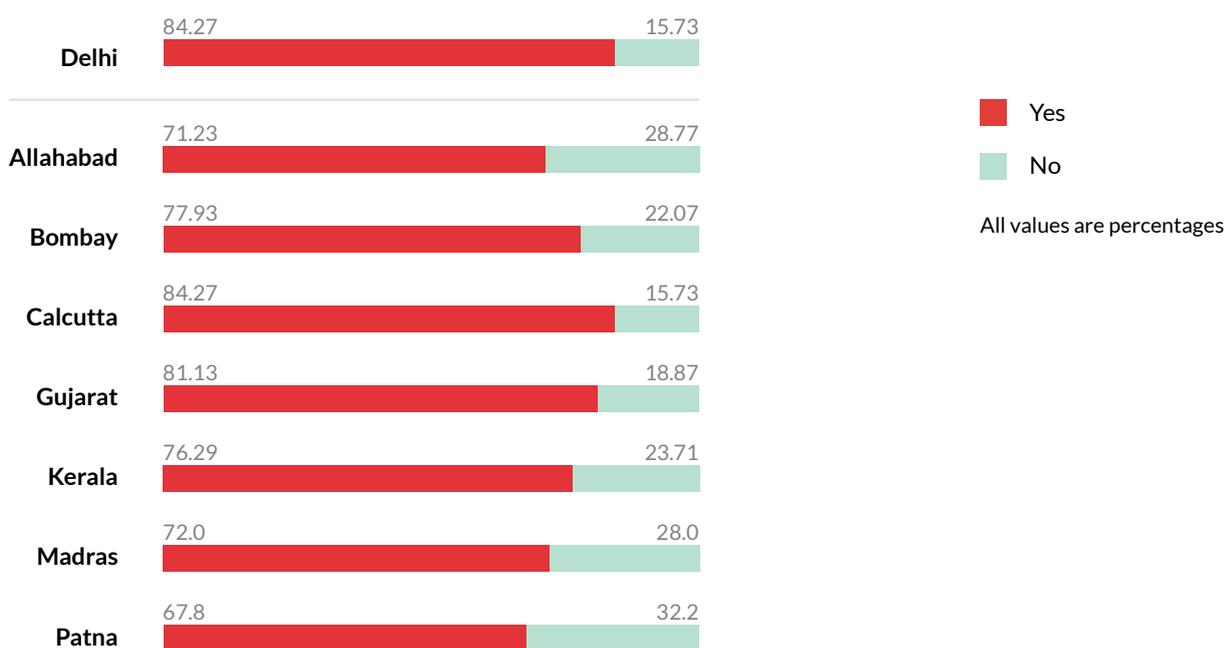
Q29
(B)

Do you think your caste determines whether a client gives you a brief? [Y/N]



Q31

Would you encourage your children to become advocates? [Y/N]

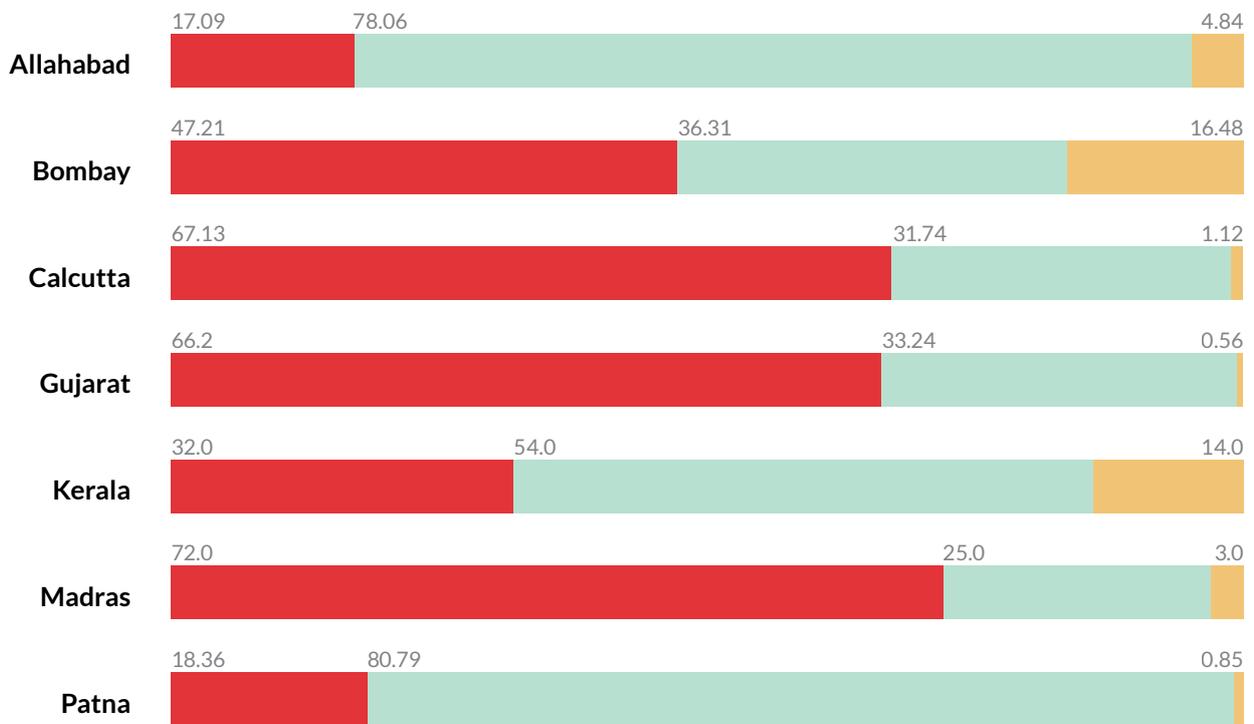


Q32

Should English continue to be the language in which High Courts conduct their proceedings?*

- A. English should continue to be the language in which High Courts conduct their proceedings.
- B. Advocates should be allowed the choice to argue in either English or their local language.
- C. Advocates should be allowed to argue in their local language exclusively.

All values are percentages



* This question was not part of the questionnaire for the pilot survey at Delhi High Court.

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