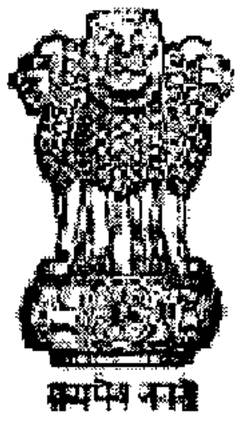

LAW COMMISSION OF INDIA

ONE HUNDRED TEWENTY FIFTH REPORT

ON

THE SUPREME COURT – A FRESH LOOK

1988

Tel. No. 384475

विधि आयोग
LAW COMMISSION
भारत सरकार
GOVERNMENT OF INDIA
शास्त्री भवन
SHASTRI BHAWAN,
नई दिल्ली
NEW DELHI

D. A. DESAI
Chairman

D.O. Wo. 6(2)(5) 188-LC

May 11, 1988.

Shri Bindeshwari Dubey,
Minister for Law and Justice,
Government of India,
Shastri Bhavan,
NEW DELHI.

Dear Shri Dubey,

Restructuring court system was an integral part of reforming justice system, a task which was assigned to the present Law Commission by the Government of India as per the letter of the then Minister for Law and Justice. Any structure to be internally sound and externally long lasting must be constructed from the foundation. Accordingly, the Law Commission commenced its research on the justice delivery system as in vogue in rural areas and recommended setting up of Gram Nyayalayas, a participatory model of justice.

Moving vertically upward in the judicial hierarchy, the Law Commission submitted a report on the working and functioning of the High Courts, bearing the heading "The High Court Arrears—A Fresh Look". Obviously, the next step was to deal with the Supreme Court of India.

The Law Commission has critically examined the functioning and working of the Supreme Court of India. The litigation explosion stares into the face and unless dealt with by adopting radical measures, the situation is likely to go out of hand.

I am, therefore, happy to forward herewith 125th Report of the Law Commission, named, "The Supreme Court—A Fresh Look".

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The report takes note of the various factors which have contributed leading to the present malaise and effective steps that can be taken to improve and retrieve the situation. It is hoped that the recommendations made in this report would be implemented in letter and spirit forthwith because the situation cannot brook any delay.

Any further deterioration might need a surgical operation for which the portent is indicated in the last chapter to which I feel compelled to draw your attention.

With kind regards,

Yours sincerely,

(Sd.)
(D. A. DESAI)

Encl: A Report

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CHAPTER I

PAST EFFORTS

1.1. Except an inveterate optimist, one would shudder to attempt to examine the crisis-laden situation in the Supreme Court and suggest even a modicum of reform. Numerous attempts in the past by knowledgeable and brilliant law reformers have met with a resounding failure. On the contrary, every such attempt had the dubious distinction of adding to the malaise. Therefore, one would shudder to enter in this no-win situation. And yet human ingenuity demands that failure may be confessed and yet after keeping in view all the past attempts, one must strive to find, if possible, an invigoratingly new solution in the fond hope that the intractable problem cannot be beyond the human reach. This report is a step in that direction.

1.2. Before the Law Commission can formally make some suggestions which may help in improving the situation, if not wholly solving the problem, it must, with advantage and consideration, look at the past attempts and briefly recall them so that a fallacy of repetition can be avoided and a refreshingly fresh outlook can be developed.

1.3. In the scheme of Indian Constitution, Supreme Court has a vital role to play. The Constitution-makers themselves had very high expectations from the Supreme Court when they conferred upon it the jurisdiction of widest amplitude. Avoiding comparison with the House of Lords in U.K. or the Supreme Court of United States, it can be said without fear of contradiction that the Supreme Court of India enjoys the widest jurisdiction, including the novel jurisdiction hitherto not enjoyed by any court system in any country of having original jurisdiction to grant relief in case of violation of fundamental rights. And the right to move the court itself is guaranteed as fundamental right. Without enumerating varied jurisdiction under the Constitution, such as under articles 32, 71, 131, 132, 133, 134 and 136, various statutes have provided for appeal to the Supreme Court. This expansive jurisdiction was further expanded by the Supreme Court itself by conferring upon itself the epistolary jurisdiction and added to it the jurisdiction enjoyed by entertaining social action litigation. By this varied and variegated jurisdiction, the Supreme Court of India has now been designated as Supreme Court for Indians. In this transformation from being Supreme Court of India to Supreme Court for Indians, the institution had to pay heavy price of facing mounting and unmanageable litigation. The problem has not surfaced only recently. Way back in 1955, when the first Law Commission was set up, amongst others, by its terms, it was requested 'to review the system of judicial administration in all its aspects and suggest ways and means for improving it and making it speedy and less expensive'.[1] Dealing with this term of reference, the first Law Commission, after noticing that the jurisdiction enjoyed by the Supreme Court is 'the widest and the most varied jurisdiction among the highest courts in the Commonwealth and Anglo-Saxon countries'[2], concentrated its attention on the inflow of work in the Supreme Court disproportionate to the output and the mounting arrears. It was convinced that, having regard to the average disposal of the court per year, it would appear that despite the increase in the strength, it may not be able to clear the existing volume of arrears. Amongst its recommendations dealing with the Supreme Court, attention was focussed upon improving the conditions of service of the Judges and application of greater strictness in the matter of admission of criminal appeals

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and petitions under the labour laws and introducing a stage of preliminary hearing in the matter of petitions under article 32 of the Constitution. The Commission entertained a pious hope that the situation may be watched for some time to evaluate the outcome of recommendations and the increased strength of the Judges. The diagnosis offered by the 14th Report and the remedial recommendations made for improving the situation were watched with baited breath.[3] To be precise, the situation considerably deteriorated and the periodical upward revision of the Judge strength of the Supreme Court failed to make any dent on the delay in disposal of cases and reducing mounting arrears. Conceding that 'whenever decisions are to be made in accordance with general, public and positive norms by third party mediators or adjudicators, some time must necessarily be consumed in arriving at authoritative and, hopefully, just decisions. Which time-costs are reasonable and which are unreasonable, is a matter for both value-judgment and empirical analysis'.[4] Yet it cannot be gainsaid that a system devised to do justice between contending parties who resort to the system for resolution of their disputes must be able to resolve the same within a reasonable time and with reasonable costs. Both these aspects were eluding the Supreme Court.

1.4. The Law Commission in quick succession examined the Code of Civil Procedure,[5] Criminal Procedure Code,[6] and repeated the performance.[7] Of course, these three reports did not strictly deal with the Supreme Court itself, yet it is appropriate to mention that the jurisdiction of the Supreme Court in matter of criminal appeals got slightly enlarged by introduction of section 379 in the Code of Criminal Procedure, 1973, which provided that 'where the High Court has, on appeal, reversed an order of an accused person and convicted him and sentenced him to death or imprisonment for life, he may appeal to the Supreme Court'. This provision has to be read in the light of article 134 prescribing appellate jurisdiction of Supreme Court in regard to criminal matters.

1.5. Article 133 of the Constitution as it was originally enacted granted a right of appeal to the Supreme Court depending upon the valuation of the subject matter of the dispute. An appeal would lie to the Supreme Court if the value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than Rs. 20,000. An appeal also would lie to the Supreme Court if the High Court certifies that the case is a fit one for appeal to the Supreme Court. This provision, in its operational stage, led to anomalous results. If a petition is filed in the High Court invoking its jurisdiction under article 226 of the Constitution with an averment that the value of the subject matter is dispute is Rs. 20,000 or more, the High Court would none-the-less have jurisdiction to dismiss this petition *in limine*, yet will have to grant a certificate in view of the language of article 133(1) as it then stood. Numerous appeals, which according to the view of the High Court can be styled as frivolous, were being filed in the Supreme Court because of the value of the subject matter of the dispute. In a republican Constitution, it was incongruous to grant a right of appeal merely depending upon the value of the subject matter of the dispute. Functionally translated, it would mean that a rich man can have his dispute brought right to the Supreme Court and a poor man, whose subject matter of the dispute is valued below Rs. 20,000, will be denied that right. Of course, those were the halcyon days of reverential attachment to fundamental right to property. However, the Law Commission, disturbed by the mounting crescendo of arrears, undertook the examination of the appellate jurisdiction of the Supreme Court in civil matters.[8] It was of the opinion that the minimum limit of Rs. 20,000 fixed in 1950 at the time of the enactment of the Constitution was too low in view of the fall in the value of the rupee and that, therefore, small property disputes only on the valuation of

the subject matter landed in the Supreme Court and that the Supreme Court should not be troubled unless a much larger amount was involved. Though the Law Commission started an inquiry with a view to raising the minimum value of the subject matter of dispute for purposes of appeal to the Supreme Court, it ultimately recommended that this value approach is anachronistic and must be dropped and that article 133 should be so recast as to permit 'an appeal to the Supreme Court from any judgment, decree or order in a civil proceeding of a High Court if the High Court certifies that the case is a fit one for appeal to the Supreme Court'.[9] This report was submitted in October 1971. Soon thereafter, the Law Commission was reconstituted.

1.6. On the reconstitution of the Law Commission, Government of India requested the reconstituted Law Commission 'to examine the same matter further regarding suitable amendment to article 133 of the Constitution so as to abolish the basis of valuation as conferring a right of appeal on a litigant'.[10] The Law Commission agreed with its predecessor that the test of pecuniary value has become irrelevant and, therefore, sub-clauses (a) and (b) of article 133(1) deserve to be deleted. The Commission accordingly recommended that article 133(1) of the Constitution should be amended so as to read as follows:—

> "(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the Union territory of India if the High Court certifies—
>
> (i) that the case involves a substantial question of law of general public importance; and
>
> (ii) that in the opinion of High Court the said question needs to be decided by the Supreme Court.".

The recommendation of the Law Commission was accepted by the Government of India and article 133(1) was amended as recommended, by the Constitution (Thirtieth Amendment) Act, 1972, with effect from February 27, 1973. The amendment was of a restrictive nature in the sense that the attempt was to narrow the inlet through which appeals on certificate from the High Court flow to the Supreme Court. As hereinabove indicated, when the pecuniary value basis was operational, the High Court, while dismissing a petition *in limine* had no option but to grant the certificate. Since the amendment, the High Court, if it dismissed the petition *in limine*, it would not ordinarily grant the certificate because if the case involved a substantial question of law of general importance, the High Court would not, dismiss the petition *in limine*, and if after full-dress hearing the petition is dismissed, the High Court ordinarily would not come to the conclusion that the second condition is satisfied that in the opinion of the High Court the said question needs to be decided by the Supreme Court. Therefore, this was the first attempt to narrow the noose through which cases flow to the Supreme Court.

1.7. However, the amendment of article 133(1) did not have the desired effect in as much as the wide jurisdiction enjoyed by the Supreme Court under article 136 remained untouched.

1.8. Again the Law Commission, while comprehensively dealing with Civil Procedure Code,[11] did not touch upon the jurisdiction of the Supreme Court.

1.9. By the year 1974, the arrears in Supreme Court had acquired notoriety and high visibility profile. 'All sensitive judges and lawyers have been feeling an increasing concern about the problem of growing arrears in the administration of justice. Delay made in the decision of cases at all stages inevitably leads to accumulation of arrears and these arrears have now assumed

a somewhat alarming dimension'.[12] Thus spake the Law Commission focussing its attention on structure and jurisdiction of the highest judiciary. Before formulating its recommendations, the Law Commission issued a comprehensive questionnaire and elicited information from all interest groups. After having closely examined the same, and being ably aided and assisted by the then Chairman of the Law Commission who himself was for long years a Judge of the Supreme Court and retired as Chief Justice of India, it made its recommendations. Only those may be dealt with here which deal with the problem of arrears and the delay in disposal of cases. The important recommendation was that article 134(1)(c) of the Constitution should be amended so as to restrict criminal appeals to the Supreme Court by certificate to cases where the certificate by the High Court is to the effect that the case involves a substantial question of law of general importance which needs to be decided by the Supreme Court. The Commission did not recommend any amendment in respect of appeals to the Supreme Court by special leave under article 136 of the Constitution. Some change was recommended as regards the procedure in respect of writ petitions before the Supreme Court in respect of trial of disputed questions of fact or the issue of *ad interim* orders in such petitions. The Commission was opposed to the creation of special service courts for trial of service matters as also creation of zonal courts of appeal. Therefore, the major recommendation was with regard to the eligibility for preferring criminal appeals to the Supreme Court.

1.10. Within a period of five years, the deteriorating situation in the superior courts attracted the attention of the Law Commission. It dealt with delay and arrears in High Courts and other appellate courts.[13] It is unnecessary to spend any time on this report because it does not deal with the problem of arrears in the Supreme Court.

1.11. During all this exercise it was felt that one of the important causes which contributes to the delay in disposal of cases and thereby enhancing the arrears was the delay in filling in vacancies in the Supreme Court and the High Courts. On a reference by the Government, the Law Commission examined the method of appointment of Judges and made certain recommendations.[14] No change was suggested in the procedure as at present prescribed for appointment of Judges of the High Courts and Supreme Court. The important recommendation was that process for filling in the vacancies must start right in earnest and every attempt should be made to avoid delay in filling in the vacancies. Since the report, no change in the method of appointment is visible and the delay in filling in the vacancies has become disturbingly longer.[15]

1.12. Having examined all peripheral approaches and recommended steps for retrieving the situation in the matter of arrears and delay in disposal of cases occurring in the Supreme Court, the Law Commission, unable to escape its responsibility for suggesting radical remedial measures for expeditious disposal of causes and controversies coming before the Supreme Court, embarked upon a novel idea: whether the Supreme Court deserves to be split into two separate divisions, namely, Constitutional Division and Appellate Division. The approach was likely to be of a radical nature and, therefore, the Law Commission issued an extensive questionnaire. It must be confessed that the response to the questionnaire, especially from the organised Bar, was very hostile. One can appreciate this hostility if, after conceding that the management of court dockets have reached a stage where impossibility is the word often repeated, yet the organised Bar did not come out with any specific concrete alternative suggestions for improving the situation and avoiding the split in the identity of the Court. The Law Commission, recalling that in the earlier report, Zonal

Court of Appeal was not favoured by the Law Commission, yet, having regard to the developing distressing situation, posed a question whether the Supreme Court be replaced by a Constitutional Court dealing exclusively with constitutional matters and establishment of a Court of Appeal as the final arbiter of disputes of law other than constitutional ones. The Law Commission also took note of the pungent criticism that the decisions of the Supreme Court create road blocks in the way of improving the conditions of the tillers of the soil by blocking zamindari abolition statutes commentators say that, in the present day Supreme Court as it is functioning, persons of humble origin or low economic status were unlikely to get justice or be appointed as High Court Judges so that the elitist character of Judiciary may undergo a fundamental change. The most radical and far-reaching recommendation made by the Law Commission was that it was 'desirable to create, within the highest court in the country, a machinery of a specialised character for constitutional adjudication—which is what a Constitutional Division envisages'.[16] The recommendation accordingly was that the Supreme Court of India should consist of two divisions, namely, (1) Constitutional Division, and (2) Legal Division.[17] The Commission spelt out the jurisdiction of each Division and the method of allocation of cases to the two Divisions. It also dealt with the composition of the proposed Constitutional Division and made detailed recommendations in that behalf.

1.13. If this recommendation had been implemented in letter and spirit, probably situation could have been very much retrieved. The present report does not derogate from the recommendation made in the 95th Report. Non-implementation of the report leaves one guessing as to whether the split is obnoxious in any manner. In fact, the Supreme Court itself has recently strongly advocated the creation of a National Court of Appeal leaving the Supreme Court to deal with constitutional matters only. A petition was filed by Bihar Legal Support Society complaining that while the rich and affluent can persuade the court to hear a case against a policy decision taken by the court even if it be at unearthly hour, yet, in the name of policy decision, the poor and the underdog are kept away from the doorsteps of the Supreme Court. Occasion for filing the writ petition, as appears from the judgment, was that 'a Bench of the Court sat late at night on September 5, 1986, for considering the bail application of Shri Lalit Mohan Thapar and Shri Shyam Sunder Lal and that the same anxiety which was shown by this Court in taking up the bail application of these two affluent gentlemen must permeate the attitude and inclination of the Hon. Court in all matters where question relating to the liberty of citizens, high or low, arises and that the bail application of small men must receive the same importance as the bail application of big industrialists'. Responding to this contention, a Constitution Bench, presided over by the then Chief Justice, noticed the clogged dockets of the Court which lead to such court practices as adumbrated hereinbefore and suggested a remedial measure that 'it would be desirable to set up a National Court of Appeal which would be in a position to entertain appeals by special leave from the decisions of the High Courts and Tribunals in the country in civil, criminal, revenue and labour cases and so far as the present apex court is concerned, it should concern itself only with entertaining cases, *involving questions of constitutional law and public law*'.[18] (Emphasis supplied).

1.14. This observation of the Constitution Bench of the Supreme Court presided over by the Chief Justice lent a powerful support to the recommendation of the Law Commission made in the 95th Report. Now if on the earlier occasion there was some visible hostility from the Bar against the suggestion for splitting the Court into two divisions, none is heard since the judgment. The institutional response of the Supreme Court is thus in favour of splitting the

court. The Government must, therefore, develop the necessary will to give effect to it; otherwise, an impression is likely to be formed that where a slight resistance comes, the will to deal with the recommendation of the Law Commission withers away forthwith. The present Law Commission accordingly lends its firm support to the recommendations made in the 95th Report as a step in the right direction, being comprehensive in character to make a dent which hitherto any other recommendation has failed to make in the backlog of cases in the Supreme Court.

1.15. In its continued search for solution, the Law Commission once again tried to suggest one more remedial measure for dealing with the developing situation in the Supreme Court. It appears that the Law Commission was of the opinion that unending oral arguments unaccompanied by written briefs consumed too much time of the court, leaving very little time for effectively dealing with more cases which has a notorious tendency to pile up arrears. The Law Commission accordingly submitted a report dealing with oral and written arguing with more cases which has a notorious tendency to pile up arrears. The Law Commission at that time did not favour total elimination of the oral arguments. Neither the Government nor the Supreme Court appears to have implemented the recommendations made by the Law Commission.

1.16. It is at this stage that the present Law Commission, charged with a duty to examine and recommend comprehensive judicial reforms, commenced its search from the grassroot level and moving upward has now reached a stage when it proposes to deal with the Supreme Court. Incidentally, the Law Commission, after having studied in meticulous detail previous reports and recommendations, reached an inescapable conclusion that pandering to the system will not improve the situation. There will have to be radical alteration in the system itself. It is not necessary to recall the various reports submitted by the present Law Commission save and except saying that detailed recommendations have been made to the Government for decentralisation of administration of justice by creating special tribunals to deal with specialist cases which hopefully would have some impact on the inflow of work in the Supreme Court.[20] Having thus a comprehensive view of what has been suggested till now and what has been attempted up till now, the present report briefly deals with the situation and would attempt to tackle the problem of arrears and delay from one more angle hitherto not recommended.

CHAPTER II

PRESENT SITUATION

2.1. Constitution-makers, while conferring very wide jurisdiction on the Supreme Court of India, possibly may not have envisaged the torrential inflow of work in the Supreme Court. Undoubtedly, while conferring jurisdiction of widest amplitude, they must have visualised that the Court would exercise jurisdiction with restraint and wisdom never forgetting the fact that it is neither a court of appeal nor a court for redressal of every legal wrong. The Supreme Court of India was to be an apex court, especially dealing with important constitutional issues and acting as a sentinel on the *qui vive*. Conferment of wide jurisdiction was referable to the keen desire of the Constitution-makers that in case of miscarriage of justice, the Court, without being handicapped by any procedural juggernaut would be able to reach the area of injustice and to redress the wrong. However, it was implicit in the conferment of jurisdiction that it would be exercised with restraint and wisdom, more or less influenced by the doctrine of candour. These limitations on exercise of jurisdiction self-imposed out of wisdom were treated as sufficient to so control and regulate the inflow of work that it was assumed with confidence that the Court will be able to keep under 'control the inflow of the work and manage the dockets and render justice by developing a system cheap, expeditious, informal and easily accessible. The mandate of article 39A would be its load star.

2.2. Was the assumption justified? In the glow of first flush of freedom from colonial rule and repatriating home a distant court (Privy Council) available for final adjudication in the matters in the form of Supreme Court of India, coupled with growing awareness of fundamental rights with conscious commitment to power of judicial review and availability of relief against administrative/executive injustice, opened the flood-gates of litigation. The Constitution-makers hopefully believed that the Supreme Court of India, manned by seven Judges excluding the Chief Justice of India, would be able to effectively handle the incoming litigation. What was overlooked was factors such as colonial structure of legal profession, cumbersome and technical rules of court procedures, long unending oral arguments, inordinate delay in making judicial appointments and total non-availability of modern court-management techniques, all of which have combined to create a monstrous figure of arrears, simultaneously causing long delay in disposal of causes and controversies coming before the Supreme Court of India. The problem has assumed such serious dimensions that it poses a serious threat to the very existence and credibility of the system. Even though the mounting arrears attracted the attention of the State and the Law Commission, the situation is deteriorating with the passage of time. This has led to the present situation being described as 'The Courts in Crisis'.[1] In the year 1986, the then Chief Justice of India, with considerable pain and anguish, stated that the judicial system in the country was almost on the verge of collapse.[2] And statistically speaking, situation since then has further deteriorated.

2.3. Conceding that the problem of arrears and delay is not unique only in India but is also raising its ugly head in all countries where Anglo-Saxon jurisprudence is in vogue, a Study Group appointed by the Chief Justice of U.S. Supreme Court in 1972 to examine the problem of arrears observed that the workload was rising to a level far beyond the capacity of the Justices to satisfactorily deal with the cases selected for hearing. The 1973-74 term of Supreme Court saw a new high of 5,079 cases on its dockets with 3,876 disposed of and the balance of 1,203 were carried over to the next term and it may recalled that the U.S.

Supreme Court may dispose of a case without assigning reasons in a written opinion. The 1983-84 term saw the institution of 5,155 cases out of which 4,162 were disposed of, with full written opinions handed down in 163 cases only, the remainder being disposed of either per curiam or by memorandum orders.[3] The problem in the House of Lords is not that acute. Even then, it is not possible for it to dispose of all cases which come to it, its jurisdiction being largely appellate. Coming home, the situation is vastly different.

2.4. The workload has been increasing in the Supreme Court year after year and, barring very few exceptions, the pendency has hardly decreased. The statistical information from the Supreme Court is available under four distinct heads. Matters which are already admitted, i.e., where leave to appeal is granted or which have come by certificate from the High Court and are styled as final hearing matters provide one head of information. Petitions for special leave filed in the Supreme Court directly provide another head of information. Miscellaneous cases provide the third head of information. Petitions under article 32 of the Constitution provide the fourth head.

2.5. The Supreme Court was set up on January 26, 1950, when the Constitution became operational. The situation at the close of the year 1950 was that 771 matters under the head Final Hearing were pending, which figure has risen to 80,837 by the close of the year 1986. The increase is roughly by 1000%.

2.6. In order to have a realistic picture of rising crescendo of work, it would be advantageous to examine the situation at the end of every decade since the setting up of the Supreme Court.

THE FIRST DECADE (1951-60)

2.7. The sanctioned strength up to the year 1956 was Chief Justice and seven other Judges. In 1956, the Judge strength was raised from 7 to 10. An attempt to tackle the problem of arrears was made by raising the Judge strength. It hardly made any significant impact on the ever-rising graph of mounting arrears (See Graphs I and II in Appendix II). The available information is tabulated. (See Table I in Appendix I). Gleaning through the Table, it transpires that there was perceptible reduction in pending matters for final hearing during the years 1952 and 1953 but thereafter every year the arrears piled up higher. In fact, during this decade, the arrears quadrupled. During this very decade, the first after the advent of the Constitution, the filing of petitions under article 32 complaining of violation of fundamental rights gradually decreased. The tabulated information in this behalf is revealing. (See Table II in Appendix I). This has been graphically demonstrated in Graph III. (See Graph III in Appendix II).

2.8. Turning to the institution of petitions for special leave under article 136, it transpires that the institution markedly increased from year to year which would be revealed by the tabulated information. (See Table III in Appendix I). The graphic description would be revealing. (See Graph IV in Appendix II).

2.9. During this period, the miscellaneous matters increased from 512 in 1955 to 3,194 in 1960. It thus appears that in the first decade, the Court could hardly manage the inflow of work with the result that the arrears started mounting up.

THE SECOND DECADE (1961-70)

2.10. During this period, the situation took a turn for the worse half-way through the decade. In the first four years of the decade, the disposal of final hearing matters exceeded the institution making a dent in the arrears but from

1965 onward, the situation, considerably worsened. The arrears took quantum jump in the year 1967. Presumably, that was the decade in which the cases of *L. C. Golaknath* v. *State of Punjab*[4] *and R. C. Cooper* v. *Union of India*[5] were heard by a Bench of 11 Judges in each case leaving few Judges to deal with other work. The arrears multiplied by two and a half times. This would be revealed by the tabulated information. (See Table IV in Appendix I and Graphs V and VI in Appendix II).

2.11. Similarly, during this very period, the institution of petitions for special leave rose by two and a half times as would be manifest from the Table (See Table V in Appendix I). This is graphically described in Graph VII, Appendix II.

2.12. Institution of writ petitions also simultaneously increased. It may be recalled that at the commencement of this decade, in the year 1960, the Judge strength was revised from 10 to 13, excluding the Chief Justice. The impact of the additional available Judge strength in the matter of disposal was felt in the years 1961, 1962 and 1963 but thereafter the Court could not cope with the institution.

THE THIRD DECADE (1971-80)

2.13. The institution, the disposal and the mounting arrears showed no respite and the trend during this decade was almost similar to the earlier two decades. The emerging scenario during this decade is tabulated. (See Table VI in Appendix I and Graphs VIII and IX in Appendix II).

In fact, the arrears rose by nearly 400% or quadrupled. Again, during this period, in the year 1977, the Judge strength was revised from 13 to 17. One noteworthy event that occurred during this period was that pursuant to 45th Report of the Law Commission, Article 133 of the Constitution was amended by the Constitution (Thirtieth Amendment) Act, 1972, by which the right to reach the Supreme Court on account of pecuniary value of the subject matter in dispute was taken away, hopefully expecting that frivolous litigation depending only on value of the subject matter in dispute would be eliminated. The hope appears to have been belied because there was no visible respite in the matter of rising arrears. Nor the increased Judge strength made any difference. The situation had become so alarming that massive effort was necessary to deal with the situation. The arrears were sufficient to alert everyone worried about the overload of justice institutions and its possible breakdown. Two attempts, one, to narrow the nosal through which large number of cases flow into the Supreme Court and two, raising the Judge strength in their combined effect, hardly made any dent on the situation. In the meantime, Parliament enacted Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, which gave a fillip to the inflow of criminal appeals to the Supreme Court. It is necessary to mention here that during this decade, famous fundamental rights case, *Kesavananda Bharati Sripadagalvaru* v. *State of Kerala* and another[6] was heard by a Bench of 13 Judges leaving practically none to attend to other cases. All these factors were responsible for 400% rise in arrears during this decade.

2.14. Apart from the rise in cases awaiting final hearing, there was rise in the institution of petitions for special leave and petitions under article 32 complaining violation of fundamental rights. Whenever institution of special leave petitions rise, miscellaneous matters rise simultaneously.

2.15. A short period development which contributed considerably to the fall in the number of disposal of cases may as well be studied. By the Constitution (Forty-second Amendment) Act, 1976, articles 144A and 226A were incorporated in the Constitution. Article 144A provided that the minimum number of

Judges of the Supreme Court who shall sit for the purpose of determining any question as to the constitutional validity of any Central law or State law shall be seven. Article 226A denied jurisdiction to the High Court to consider the constitutional validity of any Central law in any proceedings under article 226. Article 144A had the inbuilt tendency to delay the disposal of cases because more Judges were engaged in hearing some specific cases which could have been heard by smaller Benches. Later on, article 144A was deleted.[7] However, during the period it was on the statute book, it made its own contribution towards rising arrears.

THE FOURTH DECADE (1981-87)

2.16. The graph of arrears went on rising steadily and continuously during this period. This can be illustrated by the tabulated information (See *Table VII* in Appendix I and Graphs X and XI in *Appendix II*). It must be made clear that while the figures in the last column of the years 1981-86 do not include the number of miscellaneous cases pending, the figure in the last column for the year 1987 includes figures of special leave petitions, final hearing matters and miscellaneous cases. To be precise, the Annual Report for the year 1987-88 of the Ministry of Law and Justice, Government of India, furnishes official information about the pendency in the Supreme Court as on 31-12-1987 as follows:[8]

S.No.	Name of Court	Position as on	No. of Cases Pending
1.	**Supreme Court**		
	(i) Regular hearing matters	31-12-87	39,316
	(ii) Admission matters	Do.	51,315
	(iii) Miscellaneous matters	Do.	85,117
	Total		1,75,748
2.	**High Courts**	31-12-86	14,95,814

To further buttress the inescapable conclusion that year after year, the graph of arrears in the Supreme Court is relentlessly rising, it may be stated that at the end of the year 1983, 1,36,313 matters were pending in the Supreme Court; by the end of the year 1987, the figure rose to 1,75,748,[9] meaning thereby that in a span of five years, the arrears rose by roughly 40,000 cases.

2.17. Apart from the continuous rise in the quantum of arrears year to year, the more disturbing fact is that the cases, after having been brought to the Supreme Court, are not disposed of for over a decade. This will be clear from the information tabulated hereunder:[10]

Pendency Position — Supreme Court of India

As on	Regular hearing matters pending over 3 years	Regular hearing matters pending over 5 years	Regular hearing matters pending over 10 years
1 1-88	27,014	16,852	3,811

It is frightening to note that when a case is pending over 10 years in the Supreme Court and recalling the fact that even High Court takes sufficiently long time to dispose of the case, the case, since its commencement in the court of original jurisdiction, must be pending over two decades. If anyone in search of justice has to wait for full two decades, that itself is sufficient to confess the failure of the system.

2.18. During the period 1981-87, two cases occupied the Court for unduly long time. The challenge to the National Security Act, 1980,[11] occupied the Court's time from the 1st week of December 1980 to almost the commencement of the summer vacation in May 1981. Similarly, in what has come to be known as Judges' case,[12] a Bench of seven Judges heard the case from August 4, 1981, till practically the end of the year. A good number of Judges being occupied in hearing only one case or a couple of allied matters has the inbuilt tendency to push up the arrears.

2.19. Another significant development during this period is the rise in social action litigation and the advent of epistolary jurisdiction. Numerous letter petitions were received by the Supreme Court as well as large number of social action litigation were commenced. Disposal of these urgent cases kept back the hearing of the regularly admitted matters waiting final disposal, pushing up, to some extent, the arrears.

2.20. An extensive survey of the handling of causes and controversies by the Supreme Court of India during the period of its existence raises serious doubt about its future. The situation is day by day becoming more and more complex defying easy solutions. The problem of arrears in the Supreme Court has disturbed not only the Supreme Court but the Government of India, the legal profession and the academe. The Law Commission has also repeatedly focussed its attention on this none-too-likeable situation. The improvement is nowhere in the sight.

2.21. The situation becomes so depressing that very recently it provoked a Bench of the Supreme Court to almost shut the doors of the Supreme Court to those litigants invoking its jurisdiction under article 32 of the Constitution which confers guarantee to move the Court for enforcement of fundamental rights. Petitioners approached the Supreme Court of India for the issue of a writ in the nature of *certiorari* for quashing an order issued by the Deputy Assessor and Collector of the Assessment and Collection Department of Municipal Corporation of Delhi. The Court proceeded to dispose of the petition without expressing any opinion on the merits of the case, reserving liberty to the petitioners to file a petition, if so advised, before the High Court under Article 226 of the Constitution. In approaching the matter in this manner, a poignant observation of the Court deserves mention:

> "This Court has no time even to dispose of cases which have to be decided by it alone and by no other authority. Large number of cases are 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 take more than 15 years to dispose of all the pending cases.*"[13] emphasis supplied).

Earlier another Bench of the Supreme Court while rejecting the petition leaving it to the petitioners to approach the High Court under Article 226 of the Constitution had observed that: "as it is, more than ten years old Civil appeals and Criminal appeals are sobbing for attention. It will occasion great misery and immense hardship to tens of thousands of litigants if the seriousness of this aspects is not sufficiently realised. And this is no imaginary phobia."[14] The parties

who approached the Supreme Court were advised to go to the High Court because the dockets of the Supreme Court are so clogged that till the turn of the century, the present backlog of cases cannot be cleared. Has the solution any merit? The situation in the High Courts is far more depressing than in the Supreme Court. The situation can be gleaned from the information tabulated below:[15]

High Courts

Year	Pendency at the beginning of the year	Instituted during the year	Disposed of during the year	Pending at the end of the year
1985	12,51,945	7,31,543	6,05,698	13,77,790
1986	13,77,790	Not available	Not available	14,95,814
1987	14,95,814	Do.	Do.	Not available

The situation in the High Courts appears to be comparatively worse than in the Supreme Court. If the Constitution-makers conferred original jurisdiction on the Supreme Court to grant relief where one complains of breach of fundamental rights, can it he denied on the short ground that the Supreme Court is unable to manage its own dockets and direct the parties to approach the High Courts where the situation is disturbingly depressing? Can litigants be pushed from pillar to post? The solution to the problem does not lie in shutting the doors of the Court. There was a sharp reaction from the Supreme Court Bar Association to the approach of the Supreme Court in declining to entertain the petition on the ground, amongst others, that it has no time to deal with the cases. The solution has to be found somewhere else.

CHAPTER III

CAUSES FOR DELAY AND PAST ATTEMPTS AT REMEDIAL MEASURES

3.1. Diagnostic effort unquestionably reveals that the system is sick almost beyond repair. There is no one who cannot say that the disease in the form of backlog of cases and delay in disposal of them has eaten into the vitals of the system and each limb is sick, the sickness becoming visible in the form of huge backlog appearing like malignant glands. Numerous persons and bodies have offered their own analysis of the causes that induce sickness. A brief reference to the same would not be out of place.

3.2. Everyone directly or indirectly connected with the justice system has been depressed by the delay and the chocking congestion in the Supreme Court with pending cases crying aloud for disposal. This, by itself, is likely to lead to disarray in the functioning of the constitutional Government: *to wit*, numerous decisions of the Government are being questioned in the Court and during the pendency of the matter, interim relief is granted by the Court, bringing the governmental machinery to a standstill and throwing the whole constitutional mechanism out of gear. The Courts have stayed, by their interim orders, collection of taxes to the tune of Rs. 4,000 crore. This aspect may be viewed in the background of deficient financing and leaving budgetary deficit unfilled. The functioning of the court has affected the quantity and quality of justice available to citizens. The court has become vulnerable and the credibility and reputation of judicial process is at stake. Delay in delivering justice invites in brief the wisecrack. Editorially expounded:

"Okay, blind, but why so slow?"[1]

3.3. Laws' proverbial delay in many lands and throughout history has furnished a theme for either a tragedy or a comedy. 'Bleak House' by Charles Dickens is a parody on justice system and the satire on the laws' delay has been universally acknowledged. It was a comedy. Hamlet summaries the seven burdens of men and puts the laws' delay fifth in the list. It is part of a tragedy. Similarly, Chekov, the Russian, and Moliers, the Frenchman, have composed tragedies on the theme of laws' delays. Gilbert and Sullivan have satirized it in a song. This may indicate that the problem is an age-old one and people live with it. The question is of the dimension now it has acquired. Regardless of the antiquity of the problem and the difficulty it presents, the interest groups have time and again suggested some remedial measures, if not to solve the problem, to make it manageable.

3.4. The Law Commission composed of eminent lawyers and outstanding Judges, while dealing with the arrears in the Supreme Court, felt that the unattractive conditions of service were largely responsible for not attracting the outstanding talent from the Bar and, therefore, 'an effort should be made to recruit distinguished members of the Bar directly to the Supreme Court Bench by inviting them to accept the appointment at a time when they can look forward to a fairly long tenure on the Bench'[2]. While not recommending any increase in the emoluments of a Judge of the Supreme Court, the Commission recommended that the 'pensions payable to Judges of the Supreme Court should be increased.....'.[3] It also incidentally observed that a continuous supervision should be maintained over piling up of the arrears so that, if necessary, 'a decision can be reached on the need for further increasing the strength of the Court'.[4] It hopefully believed

that these suggestions would in the long run bring down the arrears. The causes thus identified are a possible inadequacy in the Judge strength of the Court and presence of not requisite talent being appointed to Supreme Court because talented people find compensation for Judgeship unattractive and inadequate.

3.5. As the time passed, another ugly feature came to surface which was one of the primary causes for mounting arrears. The one cause held largely responsible for the malaise is the inordinate delay in filling in the vacancies in time in the Supreme Court. To give a graphic picture, an attempt has been made to convincingly establish that there is inordinate delay in filling in vacancies. Information has been collected for years 1981-86 in this behalf which has been tabulated (See Table VIII in Appendix I). An arithmetical approach would show that the delay in filling the vacancies caused a loss of 8,419 mandays during this period. If the vacancies had been filled in without unexplained delay and avoiding loss of mandays, the Court would have been able to dispose of 25,678 cases which would have lowered the mounting graph of arrears.

3.6. This aspect has been examined in depth and vividly described by the Law Commission.[5] The picture becomes curiouser when it is recalled that since the advent of the Constitution, there has been an upward revision in the Judge strength of the Supreme Court commencing from 7+1 in 1956 to 25+1 in 1986, yet this has remained a paper exercise because while strength is augmented, the newly-created posts are not filled in for years. To illustrate that point, let it be made clear that the last upward revision in the Judge strength of the Supreme Court was effective from 9th May, 1986,[6] yet for a period of nearly two years, not a single post from the additional strength has been filled. In fact, as of today, there is one vacancy in the earlier strength still remaining unfilled. Upward revision of Judge strength is founded on a certain assumption that the present Judge strength would not be able to cope with the inflow of work and to effectively deal with the arrears. Therefore, one way of solving the problem is to increase the strength of Judges. If the increase is worked out scientifically in the manner of disposal of cases by a Judge per year and thus a certain figure is arrived at, not filling in those vacancies would unquestionably mean that the inadequate strength continues to be inadequate notwithstanding the fact that there is an upward revision of strength. Merely passing legislation for upward revision of strength by itself is hardly of any consequence. The moment upward revision of strength is sanctioned, steps must be taken to fill in those newly created posts immediately so that the assumption behind upward revision of strength is scientifically worked out.

3.7. It must at once be conceded that Judges of the Supreme Court are overworked and not filling in the vacancies imposed an unbearable burden on those who are in position. Monday is reserved as admission day and, on an average, 50 special leave petitions/writ petitions are listed for admission before each Bench generally comprising of two Judges. This may entail reading of over a thousand pages. For the next three days, on an average, 10 to 15 matters are listed for admission as also a continuous running Board is assigned to each Bench listing final hearing matters. When these matters are heard, the judgments have to be pronounced. And ordinarily, in the Supreme Court, the judgments are prepared at home. This method entails heavy workload on Saturday-Sunday. Again on Friday, good number of matters are listed for admission and the Judges have to work hard on Saturday-Sunday for preparing their opinions plus approving the judgments of the colleagues circulated for opinion. There is little time left for the Judges to read and investigate on their own behalf. This intolerable burden of work provoked a former Chief Justice to say that failure on the part of Government to fill in the vacancies has operated as an act of cruelty to the existing Judges to carry on intolerable burden.[7]

3.8. There is a divergence of opinion on the question of upward revision of Judge strength. There is a body of opinion that if the Judge strength is revised very high and the Judges in the Supreme Court sit in Benches of two, inevitably there will be conflict of opinion and the quality of justice would suffer. There is an element of truth in this approach. There are others who believe that the situation has become so disconcerting that even if there is a risk in increasing the Judge strength very high, the risk will have to be run. Undoubtedly, proponents of both the views emphatically assert that the vacancies should be filled in as early as possible.

3.9. It may be pointed out here that this failure on the front of making appointments to fill in vacancies has been the subject matter of numerous discussions. On the earlier occasions, a pious hope was expressed that the vacancies should be filled in as early as possible. That hope remained unfulfilled. Consequently, the Law Commission was obliged to look at the problem afresh and, avoiding platitudinous observations, an effective remedy was suggested to deal with the problem of expeditious filling in of vacancies.[8] It would be legitimate to hope that the concerned Government will take adequate effective and expeditious steps to fill in the vacancies.

3.10. An analysis of the causes for delay in disposal of cases and consequently piling up of arrears has been done by a legal academe. He is of the opinion that conceding that looking to the legal system which makes inevitable a certain time consumption for arriving at authoritative and fair decisions, 'we must approach the problem of the overload in terms of institutional factors, which, by their very nature, can be changed with a view to enhancing expedition as an aspect of equity'.[9] He categorised the factors contributing to inexpedition in at least four categories: (i) Government-caused delays, (ii) court-caused delays, (iii) Bar-caused delays, and (iv) litigant-caused delays. Under the heading 'Government-caused delays', he adverted to the delay in filling in vacancies and failure of the Government to make realistic assessment of the judicial manpower needed for maintaining an efficient and a just justice administration. He has also analysed causes for delay in the trial and first appeal level courts but, as this report deals with the Supreme Court, it may not be necessary to refer to the same in detail. Under the heading 'Court-caused delays', he suggested drawing up a manual of court management for all level of judiciary and that there should be a training programme for the judicial officers. He also advocated holding of seminars to understand the new and comparative methods of court management. Under the heading 'Legal profession-caused delays,' he states that inequitable distribution of work coupled with forensic habits contribute to the escalation of time taken in disposal of cases which tend to enhance arrears. Under the heading 'Litigant Caused delays', he poses a question whether greater litigiousness, which has become evident since the advent of the Constitution, shows an increasing rights consciousness and access to law.[10]

3.11. Shri H. M. Seervai focuses his attention on the Supreme Court : Its Working and the Problem of Delay.[11] His analysis reveals various causes which, according to him, have contributed to the present situation. Briefly stated they are that the statement of case is unnecessarily dispensed with by the Supreme Court and outline of arguments is not an adequate substitute for a well-drawn statement of case. Another reason advanced by him is that the Judges generally, and the Judges of the Supreme Court in particular, intervene too much in the case. The third reason, according to him, is that unless the Judges have clear head, sound knowledge of the law, the gift of simple and clear speech and the gift of attentive silence and avoiding wrangles with the counsel, the delay in disposal of cases is inevitable. One more reason, according to him, is that

some Judges have a bias for certain causes such as labour law cases. According to him, the Judges must be value free, value neutral, because the Constitution of India has no fixed "philosophy" or no fixed "values".[12] The next cause, according to him, for the delay is the multiplicity of concurring and dissenting judgments.[13] The panacea recommended is to follow the Privy Council and the House of Lords without question. Total absence of accountability of the judiciary as an important factor has not met with his approval.

3.12. The steps taken by the Supreme Court itself to expedite disposal of cases may now be noticed. They are as under. In the year 1978-'79 a Committee was set up by the Chief Justice of India to suggest ways and means to tackle the problem of arrears. It is not known whether this Committee submitted any report. As the spectre of mounting arrears was haunting, amongst others, a full Court meeting of the Judges of the Supreme Court, presided over by the then Chief Justice in the year 1983, resolved to specify some matters which can be disposed of by a single Judge of the Court. The importance of this decision may be appreciated in the light of the provision that ordinarily every matter coming before the Supreme Court has to be heard by a Bench consisting of not less than two Judges nominated by the Chief Justice.[14] The incongruity of this provision can be visualised from the fact that in the High Court, numerous matters are disposed of by a single Judge but if a petition for special leave to appeal is preferred against the decision of a single Judge of the High Court, the same has to be heard as hereinabove indicated by a Bench consisting of not less than two Judges. Therefore, the full court specified matters which can be heard by a single Judge in the Supreme Court. To attain the object underlying this decision of the Supreme Court, the Supreme Court, in exercise of the power, conferred by article 145 of the Constitution, to regulate generally the practice and procedure of the court, framed a proviso to rule 1 of Order VII, which reads as under:

"Order VII, rule 1.—Subject to other provisions of these rules, every cause, appeal or matter shall be heard by a Bench consisting of not less than two Judges nominated by the Chief Justice:

Provided, however, that the following categories of matters may be heard and disposed of finally by a Judge sitting singly nominated by the Chief Justice:

(1) Special leave petitions arising out of the decisions or orders of a single Judge of a High Court or of a member of a Tribunal sitting singly,

(2) bail applications,

(3) applications for substitution other than those falling under rule 1(15) of Order VI,

(4) summons for non-prosecution,

(5) applications for exemption from paying Court-fees,

(6) applications for extension of time for paying Court-fees or for furnishing undertaking, bank guarantee or security,

(7) applications for disposal of an appeal in terms of a compromise petition,

(8) applications for withdrawal of special leave petitions, appeals or with petitions."[15]

The rule-making power conferred by article 145 of the Constitution is conditional in that the Court can frame the rule with the approval of the President. The President accorded his approval to this rule. The rule became operational from 30th July, 1983. A period of five years has rolled by and yet it is a matter of regret that the rule is not implemented. If this rule was implemented, instead of 8 Courts hearing admissions on Monday, 17 or 18 Courts may be hearing the same and the turn out will be multipled manifold. It is not possible to discern with accuracy the reasons behind reluctance to implement this rule. Presumably the Supreme Court Bar Association has resisted the implementation, though in a discussion with the former Chief Justice of India, he asserted that the Bar has veered round to cooperate in implementing the rule. The unfortunate fact remains that the rule is not implemented. In fact, in fairness to the Court, it may be pointed out that the Supreme Court itself claims to have taken some steps to tackle the problem of arrears. These steps may be listed:—

"(i) Matters involving common question of law are grouped together and listed in groups so that they can all be disposed of together.

(ii) In most of the matters, printing of the appeal record is dispensed with, which saves a lot of time and expenses of the litigants. In criminal appeals, counsel for the appellant is required to file cyclostyled record to save time, which would otherwise be taken in getting the record printed, so that the matter could be heard orally.

(iii) To save the Court's time, Hon'ble the Chief Justice is taking mentioning matters, which takes about one hour on each day, after the Court hours. (Now discontinued).

(iv) Supreme Court Rules have been amended empowering Hon'ble Judge in Chambers and the Registrar to dispose of certain types of matters which have previously been listed in the Court. This has been done to save the Court's time.

(v) Specialised Benches re-constitued by Hon'ble the Chief Justice and particular types of matters are assigned to such Specialised Benches for quick disposal.

(vi) Computer technology is soon going to be introduced in the Supreme Court, which is expected to help reduce the backlog of cases considerably.

(vii) Recently, Hon'ble the Chief Justice has directed that the counsel in each matter should file written arguments, if the arguments are to take more than five hours on each side. The oral arguments on each side (sic) are thus restricted to five hours unless the Court feels that more time is to be given to the counsel, in which case a maximum of ten hours are given for oral arguments to the counsel of each side. The length of oral arguments by counsel of both the sides has thus been curtailed with a view to securing quick disposal of matters.

(viii) The Court Administrator-cum-Registrar, who is a senior judicial officer, has been appointed very recently so that in conjunction with the present two Registrars, there can be a re-organisation of the working of the Registry and improving its techniques and efficiency.".[16]

3.13. As against these effete steps to deal with the situation, very recently the Supreme Court has enlarged its jurisdiction by holding that a writ petition can lie to it under article 32 against its own judgment between the same parties. Commenting on this judgment, a national daily stated that "The Supreme Court

judgment in the Antulay case is likely to open the floodgates for appeals against its own judgments when previously there was a finality about them".[17] This recent judgment of the Supreme Court is in teeth of a nine Judges Bench judgment wherein it was held that "it is impossible to accept the argument of the petitioners that judicial orders passed by High Courts in or in relation to proceedings pending before them, are amenable to be corrected by exercise of the said jurisdiction"[18], namely, by a petition under article 32 of the Constitution. If a judicial order passed by a High Court cannot be corrected by a writ petition under article 32 to the Supreme Court, that judgment is a greater authority of the proposition that a judicial order passed by the Supreme Court cannot be the subject matter of the writ petition to itself under article 32 and more specifically between the same parties. Avoiding any comment on the judgment, it needs to be pointed out that every decision of the Supreme Court would now be amenable to a petition under article 32 of the Constitution and, therefore, it is impossible to foresee with certainty the torrential inflow of litigation. It further needs to be pointed out that while on the one hand the Supreme Court declined to entertain a writ petition under article 32 of the Constitution even where it was competent[19] yet on the other hand it opens its own gate so wide by a hitherto unknown jurisdiction encouraging persons to approach it to question its own decisions.

3.14. While discussing the causes, the remedies offered have also been adverted to. It is an undeniable fact that nothing so far recommended has even remotely improved the situation. It is, therefore, inevitable that drastic remedies will have to be prescribed to reprieve the situation before the situation gets totally out of hand.

CHAPTER IV

RECOMMENDATIONS

4.1. In the search for solution for the unbearable load of arrears under which the Supreme Court is functioning, the Law Commission studying the problem of judicial reforms approached the Chief Justice of India, by a letter dated January 19, 1988 (See *Appendix III*), requesting him to assist the Law Commission in the scientific analysis of the problem so as to churn out effective remedial measures. After drawing his attention to the earlier reports,[1] he was informed about the report submitted by the present Law Commission, especially dealing with decentralisation of administration of justice by suggesting specialist tribunals eliminating the jurisdiction of generalist courts. The Law Commission then, in the form of an approach paper, pointed out its tentative thinking on what ought to be done to effectively deal with the situation and which can be done without much effort expeditiously.

4.2. All those who concentrated their attention on the functioning of the Supreme Court and the problematic of arrears were convinced that one of the principal causes largely responsible for accumulating arrears is the inordinate delay in filling in vacancies in the Supreme Court. A few days back the Minister of State for Law and Justice replying to a question in Rajya Sabha stated that 9 vacancies remained unfilled in the Supreme Court. He further proceeded to state that the selection of judges involved consultation with the concerned constitutional authorities. He stated that it is not possible to indicate any definite time for filling up the vacancies.[2] If the sanctioned strength of the Supreme Court is 26 including the Chief Justice of India, the information supplied reveals that one-third of the vacancies have remained unfilled for over two years. Whatever may be the causes for this gross delay in filling in the vacancies, it is unthinkable that such long time may be required to be spent in filling in the vacancies. Accordingly, the Law Commission was convinced that even with the utmost sincerity, which can never be questioned, the root cause for this disturbing situation must be traced to the procedure for filling in vacancies. The Law Commission accordingly drew the attention of the Chief Justice of India that it has recommended a new forum for appointments to Supreme Court and High Courts.[3] That report is with the Government. It has been placed on the table of both houses of Parliament. The Law Commission then proceeded to point out that the recommendation for substitution of a different forum for dealing with judicial appointments may take some time before it becomes operational. In the interregnum, it would be dangerous to shut one's eyes to the problem of arrears.

4.3. It has been statistically established that there is inordinate delay in filling in vacancies. Therefore, an urgent step is necessary to deal with it forthwith before long term decision is taken in the form of setting up a new forum for judicial appointments. In the letter, it was pointed out that the vacancy occurs on retirement or death of a Judge in position. Death is such an uncertain event that one cannot foresee it and rationally deal with it in advance. But retirement is known in advance. In the past, pious observation was made that process for filling in the vacancy must start considerably in advance before the actual date of the retirement of a Judge which would cause the vacancy. There is no response to this suggestion and the situation remains unchanged. Therefore, a proposition was put for the consideration of the Chief Justice of India that hereafter whenever a Judge reaches the date of his retirement, he should not quit but from that day onward, unless his successor is ready to take over,

the provision contained in article 128 of the Constitution must be invoked. In other words, the Judge so retiring should continue to function as one who is requested under article 128 to act as a Judge of the Supreme Court till such time as his successor is ready to take over. This will ensure no impairment of the Judge strength of the Court even for a day. A possible critique of this suggestion was also pointed out specifying the rational answer to the same.

4.4. The second tentative proposal of the Law Commission centred round the effective use of the retired Judges of the Supreme Court who since their retirement have settled down in the capital. The advantages of effective use of this accumulated pool of talent were also specified. The letter also contained a request that these tentative suggestions may be implemented till such time as the permanent solution in the form of setting up a new forum for judicial appointment becomes operational. A request was made to Chief Justice of India as head of the judicial administration of the country and gravely concerned with the malaise in the system to respond not only to this tentative suggestion but also some more which he may think of making on his own after consulting his colleagues. The Chief Justice of India has not thought it fit to respond to this letter. The loss undoubtedly is of the Law Commission. But a body with a time-bound programme cannot indefinitely wait. It is also legitimate to infer that possibly there was no serious objection to those suggestions.

4.5. The Law Commission is of the opinion that the long term permanent solution of this problem of filling in vacancies lies in effective implementation of its report recommending a new forum for judicial appointments. During the interregnum, it is absolutely necessary to implement the two suggestions which are recommended herein.

4.6. The delay in filling in a vacancy has the inbuilt tendency to impair the Judge strength of the Court for such time as the vacancy is not filled in and the mandays lost by not filling in the vacancies in time invariably result in further piling up the arrears. Continued unimpaired Judge strength of the Court is indispensable to the proper functioning of the Court. This report is not concerned with finding out causes responsible for the delay in filling in the vacancies. It has been dealt with in the earlier report succinctly and fully. But till such time as effective steps are taken to fill in vacancies expeditiously, it is recommended that the retiring Judge shall continue to be in position till such time as his successor is ready to take over. This suggestion has two distinct advantages : (i) the Judge strength will remain unimpaired, and (ii) the highly experienced Judge would be available with his expertise to deal with the causes expeditiously because a newly appointed Judge takes time to acclimatize to the working in the Supreme Court. Unquestionably, these two advantages outweigh the critique of the suggestion. One criticism voiced during discussion was that if the outgoing Judge is one for whom the Chief Justice has good opinion, he may drag his feet in recommending the successor; but if he is one who is not so fortunate, he may be quickly put out of office by bringing in the successor as expeditiously as possible. This criticism lacks legitimacy for the reason that if expeditious appointment is generated for the reason herein stated, it would certainly be to the advantage of the institution. However, the better response to the criticism is that the vacancies are filled in chronologically so that one so good may continue, followed by one not so good. Even when successor for the next man is appointed, he would take over from the first-mentioned person. Added to this is the fact that the Chief Justice of India is free from all such biases and acts only and unquestionably for the good of the system. For these reasons, the apprehension is wholly unfounded. The advantages far

outweigh a possible suspected disadvantage and, therefore, this suggestion deserves to be implemented forthwith.

4.7. In dealing with the question of arrears, it must be stated that the sanctioned Judge strength has never been found sufficient to make any dent in mounting arrears. As pointed out hereinbefore[3], the Judge strength of the Supreme Court has been revised on four different occasions and at no point of time the revised strength has made any impact on the arrears. It is, therefore, safe to conclude that the existing Judge strength at any given point of time may at best be able to deal effectively with the current incoming work but will be totally ineffective in making any dent in the arrears. Therefore, leaving the present Judges strength to deal with the current work, a distinct new device is necessary to deal with the arrears.

4.8. It is widely known, and not questioned, that some Judges after retirement from the Supreme Court settle down in Delhi. Though they may have come from different parts of the country, when elevated to the Supreme Court, they may have their own reasons for settling down in Delhi. When they settle down after retirement in Delhi, they provide for their own residence, telephone and other facilities that they need. These retired Judges constitute a pool of rich talent which requires to be fully utilized. Before coming to the Supreme Court, they must have worked in High Court at least for a period of not less than 10 years and they have added to their expertise by being in the apex court on an average for about 5 years. All through their active career, they have decided causes and controversies coming before them. They have sharpened decision-making process which is an asset. Art of adjudication is in their blood. Court processes and court procedure are handy to them. They have acquired a certain expertise in dealing with matters, civil, criminal, tax, labour and constitutional, coming before them. To repeat, they represent a rich pool of talent. On retirement by superannuation, in view of the provision contained in article 124(7), they are prohibited from practising before any court or before any authority within the territory of India. They may do chamber practice but that hardly attracts all the retirees because by aptitude and any way of life, a number of them may not be interested in entering chamber practice. How to use this unutilized pool of talent—?

4.9. Whenever a suggestion is made to augment the strength of the Court, a question is always raised about the financial implications of the proposal. Whenever the Judge strength is augmented and more Judges are appointed the question of providing them with residence, perks and facilities and even extension of building and addition to staff are dangled as prohibitively costly and the proposals are put in cold storage. The recommendation which the Law Commission is making takes care of all these possible areas of additional expenditure.

4.10. To begin with, it is time to frankly annihilate a myth that expenditure on administration of justice is non-plan expenditure. A constitutional democracy founded on rule of law cannot develop even economically unless its legal formulations are in tune with its economic policy which, as the Preamble shows, must be socialistic in character. This dichotomy between economic planning and legal formulation has been largely responsible for courts taking a view different from the Executive in respect of even economic and taxation measures which necessitated amendment of the constitution on numerous occasions. Without adverting to this aspect at length, one can say with confidence that expenditure on administration of justice must be now treated as plan expenditure.

4.11. With this preliminary observation the existing situation may be given its due consideration. The buildings available to courts are hardly fully utilized, especially the building of the Supreme Court. Courts assemble at 10.30 and leave at 4 O' clock. Therefore, if some Courts can start functioning at 8.30 A.M. then without spending a farthing on building, additional Courts can effectively operate in the same building. Library, building facility, staff in the central ministerial establishment of the court would not need any augmentation. There will be a slight rise in the expenditure for providing some additional staff to the additional Courts.

4.12. On these introductory remarks, it is recommended that the retired Judges, minimum 12 in number, may be requested to sit in four Benches, each of three, and to take up old civil and criminal appeals. The Chief Justice of India may draw a base-line, the cases beyond which may be treated as those available for disposal by retired Judges sitting in Benches. For implementing this suggestion, constitutional amendment is not necessary because article 128 will effectively assist in implementing this suggestion. It is the experience of many Judges that the old matters sometimes hang on for not being even touched for want of time. These four Benches—two dealing with criminal appeals and two dealing with civil appeals—will handle old matters and the disposal is bound to be very fast because a number of matters would get disposed of for want of further interest in prosecuting the same as they are pending over two decades right from the day of institution in the court of first instance. The Chief Justice of India, in consultation with the President, may request such retired Judges residing in Delhi to accept this assignment to begin with for a period of two years.

4.13. To make this offer attractive, the retired Judges should be paid the same salary as the sitting Judges and pension should not be deducted. They have earned their pension. The whole concept of deducting pension on re-employment has become a disincentive. In fact, in the State of Gujarat, any retired Judge at any level, when re-employed, gets the salary admissible to the Judge in position plus his pension. It is worth emulating this wholesome suggestion and it is recommended accordingly.

4.14. This recommendation can be implemented without amending article 128 of the Constitution which provides that when retired Judges are requested to attend the sittings of the Supreme Court, they would be entitled to such allowances as the President may by order determine. The President may as well determine the same allowance as admissible to a sitting Judge of the Supreme Court. The practice hitherto followed is, to say the least, wholly unwholesome because one of the retired Judges who had worked as an *ad hoc* Judge informed the Law Commission that the allowance is almost of a daily-rated workman, a situation unbecoming for a retired Judge of the Supreme Court.

4.15. These Benches would sit from 8.30 A.M. to 12 noon. The Supreme Court may itself assemble from 12 to 5 with half an hour lunch because one hour lunch break is hardly necessary. The administrative supervision of the Courts presided over by the retired Judges will obviously vest in the Chief Justice of India.

4.16. The recommendations made herein are not in supersession of the recommendations made in earlier reports. Where both can co-exist, all the recommendations should be implemented. But where they stand in derogation to each other, those made herein should be implemented because the previous recommendations may not have found favour with the Government.

4.17. The Law Commission wants to reiterate that the recommendation for splitting the Court into two halves deserves to be implemented.[5] The present Law Commission has an additional reason for reiterating the recommendation. The Supreme Court sits at Delhi alone. Government of India, on couple of occasions, sought the opinion of the Supreme Court of India for setting up a Bench in the South. This proposal did not find favour with the Supreme Court. The result is that those coming from distant places like Tamil Nadu in the South, Gujarat in the West and Assam and other States in the East have to spend huge amount on travel to reach the Supreme Court. There is a practice of bringing one's own lawyer who has handled the matter in the High Court to the Supreme Court. That adds to the cost. And an adjournment becomes prohibitive. Adjournment is a recurrent phenomenon in the Court. Costs get multiplied. Now if the Supreme Court is split into Constitutional Court and Court of Appeal or a Federal Court of Appeal, no serious exception could be taken to the Federal Court of Appeal sitting in Benches in places North, South, East, West and Central India. That would not only considerably reduce costs but also the litigant will have the advantage of his case being argued by the same advocate who has helped him in the High Court and who may not be required to travel to long distances. Whenever questions of constitutionality occur, as pointed out in that report, the Supreme Court can sit *en banc* at Delhi and deal with the same. This cost benefit ratio is an additional but important reason for reiterating support to the recommendations made in that report.

4.18. The Law Commission in its earliest quest for solution was faced with unending prolix, long arguments in the Supreme Court covering days and months, yet it did not recommend total abolition of oral arguments.[6] Even though it has been said that arrangements have been made to curtail arguments on any one side not exceeding five hours in any given case, this is not effectively implemented. To take the recent example, an appeal after two concurrent findings of the Sessions Court and the High Court is being heard in the Supreme Court by a Bench of three Judges for more than ten weeks.[7] Therefore, it is now inevitable that this reverential approach to oral arguments must yield to the necessities of time. There are a number of cases which can be identified by the Chief Justice of India in which oral arguments can be totally dispensed with. Petitions for special leave which can be admitted without oral arguments need not be listed in Court but must be admitted by circulation. Those in which it is necessary to have arguments, the hearing may be confined to a period not exceeding half an hour. In matters listed for final hearing, the Court must prescribe the time in advance and strictly adhere to it. The Courts must be empowered to dispense with oral arguments and insist upon written briefs.

4.19. The Judges of the Supreme Court rightly complain of a very heavy unbearable work load. Quicker the hearing, larger number of judgments come to the share of a Judge. A written opinion requires lot of concentration and very little time is available to the Judges to concentrate on the same. The situation has the inbuilt tendency to delay delivering judgments. It is, therefore, now time to empower Judges to dispose of cases without written opinion. It would be open to the Bench to pronounce that the appeal is allowed or is dismissed or the order of the High Court is varied without reasons. Supreme Court decision being final, it is not necessary for it to give reasons for the benefit of any other tribunal. The written opinions must be pronounced in matters involving constitutional niceties or moot points of law which often occur before High Courts and Courts subordinate to High Courts to ensure continuity and certainty of law. In all other cases, the written opinions may be dispensed with and appeals may be disposed of without assigning reasons. There is

nothing novel or radical in this suggestion. Those who are the admirers of the working of the Supreme Court of the United States must also accept its way of working. Whereas the Supreme Court of U.S. gives reasoned opinions in only a few matters, a large number of matters are disposed of without assigning reasons. To illustrate, in 1983-84 term of the Court, of the 5,155 cases on its dockets, it disposed of 4,162 with finality. But of those many cases the Court disposed of, it decided only 285 on the merits, with full written opinion handed down in just 163 cases (an average number), the remainder being disposed of either *per curiam* or by memorandum orders [eg., affirmed, reversed or dismissed (i.e., vacated)].[8] This practice deserves to be accepted and implemented to relieve the unbearable burden on the Judges of the Court.

4.20. The country is fast moving towards 21st century. But its legal processes are as antiquated as antiquity can be. Modern technological advances have passed by justice system. Apart from more sophisticated software facility, primary necessity such as telex, was not available in the Supreme Court till recently. Computerisation of its Registry, though talked about, has still not been accomplished. Computerisation of library is a high priority necessity. The Court's time is wasted in collecting judgments bearing on the same subject. A push button system should be available to make handy all judgments on the same subjects. Cases covered by earlier judgments of the Court must be grouped together by a computer. Judges should be provided with dictaphone so that their time may not be wasted in waiting for the availability of a stenographer. These and many other technological advances deserve to be introduced in the Supreme Court forthwith.

4.21. These are all the recommendations.

CHAPTER V

PORTENT

5.1. Consistent generally with the approach of Law Commissions since their initiation that a very radical departure from the existing system is not recommended, in the opinion of the present Law Commission, situation has by now deteriorated to such an extent that it is time to utter a warning to all the affected interests that the next step would be something beyond the conception of any of those interests. Without repeating what has been stated that the Supreme Court by the sheer weight of its arrears has reached the crisis level situation, yet its identity and genius has not been tampered with. However, what the Founding Fathers of the Constitution foresaw even at the time of the framing of the Constitution, the same cannot be ignored when a time has come to take the step envisaged in the Constitution.

5.2. Article 124 of the Constitution provides for the setting up of a Supreme Court at the apex of the judicial hierarchy of the country. It was to be the court of last resort, of course subject to article 32. Jurisdiction of widest amplitude was conferred upon it so that unhampered by any procedural wrangle it can stave off miscarriage of justice or redress a wrong. Therefore, the Supreme Court of India has its own specific individual identity. It has its own genius. It has its own capability. It can reach any nook and cranny to undo injustice. But it was expected that it would exercise its jurisdiction with restraint and wisdom so that it would not be tied down in its own knots, including one of arrears, which, as pointed out,[1] has compelled the Court to shut its own doors to the litigants knocking at its doors.

5.3. The Law Commission is fully conscious of the fact that all the difficulties, troubles and tribulations which the Supreme Court is facing, it has still a place in the heart of the common men of the country. They look upon it with reverence. Undoubtedly, the credibility is taking a nose dive on the only ground of its inability to render justice within a reasonably short time. But this situation, it is hoped, can be repaired and considerably improved if the recommendations made in this report are implemented in letter and spirit. If unfortunately, as the past experience shows, some further indifference is shown to the recommendations, the Law Commission would not be failing in its duty to suggest radical measures of a surgical nature.

5.4. Article 32 confers a fundamental right to move the Supreme Court on the complaint of violation of fundamental rights. The Supreme Court has jurisdiction and powers 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 Part III of the Constitution. It was assumed that the Supreme Court at the apex of the judicial hierarchy retaining its corporate character an identity will be able to meet with the challenges of time. But the Founding Fathers were men of vision who foresaw that if the Supreme Court fails and falters, one need not throw up the hands in despair. Therefore, clause (3) of article 32 was enacted. It reads as under :

> "Without prejudice to the powers conferred on the Supreme Court by clauses (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).".

5.5. If one Supreme Court with its corporate structure retaining its identity fails to meet the challenges of time, the Founding Fathers envisioned setting up of as many Supreme Courts as the needs of the situation demand. This is inherent in clause (3) of article 32. Let not narrow wrangling of interpretation permit missing the core of the article. If on any existing court power of Supreme Court can be conferred, *ipso facto* the Parliament can create a new court and confer power of Supreme Court on it. And the germ of it lies in the earlier reports of the Law Commission[2] which may permit those apex court/tribunals to be conferred with jurisdiction of Supreme Court in their respective fields. The direction in which the Law Commission is forced to move is herein indicated. It is hoped the Law Commission may not have to invoke it.

(Sd.)
(D.A. DESAI)
Chairman

(Sd.)
(V.S. RAMA DEVI)
Member Secretary

NEW DELHI,
May 11, 1988.

NOTES AND REFERENCES

CHAPTER I

1. The first term of reference of the First Law Commission, LCI, *14th Report* on *Reforms of Judicial Administration*, p. 3.
2. LCI, *14th Report* on *Reforms of Judicial Administration*, p. 32.
3. U. Baxi, *The Crisis of Indian Legal System*, p. 58.
4. *Id.*, P. 59.
5. LCI, *27th Report* on *Code of Civil Procedure*, 1908.
6. LCI, *37th Report* on *Code of Criminal Procedure* 1898. (*Sections* 1 *to* 176).
7. LCI, *41st Report* on *Code of Criminal Procedure*, 1898.
8. LCI, *44th Report* on *Appellate Jurisdiction of the Supreme Court in Civil matters.*
9. *Id.*, p. 7.
10. LCI, *45th Report* on *Civil Appeals to the Supreme Court in Civil Matters.* p.1.
11. LCI, *54th Report* on *Code of Civil Procedure*, 1908.
12. LCI, *58th Report* on *Structure and Jurisdiction of the Higher Judiciary*, p.1.
13. LCI, *79th Report* on *Delay and Arrears in High Courts and other Appellate Courts.*
14. LCI, *80th Report* on *Method of Appointment of Judges.*
15. LCI, *121st Report* on *A New Forum for Judicial Appointments.*
16. LCI, *95th Report* on *Constitutional Division within the Supreme Court— A proposal for.* para 6.1.
17. *Id.*, p. 6.3.
18. *Bihar Legal Support Society* v. *Chief Justice of India and Another*, (1986) 4 SCC 767 at 770.
19. LCI, *99th Report* on *Oral and Written arguments in the Higher Courts.*
20. LCI, *114th Report on Gram Nyayalaya*· *115th Report on Tax Courts; 122nd Report* on *Forum for National University in Labour Adjudication; 123rd Report* on *Decentralisation of Administration of Justice*; *Disputes involving Centres of Higher Education.*

CHAPTER II

1. Dr. Upendra Baxi, *The Crisis of the Indian Legal System*, p. 58.
2. Justice P. N. Bhagwati, former CJI, in his Law Day Speech on November 26, 1986.
3. Henry J. Abraham, *The Judicial Process*, pp. 187-190.
4. AIR 1967 SC 1643.
5. AIR 1970 SC 564.
6. AIR 1973 SC 1461.
7. Constitution (Forty-third Amendment) Act, 1977.
8. Source : Annual Report of the Ministry of Law and Justice for the year 1987-88, Government of India, p. 31.
9. *Ibid.*
10. Source : Information supplied by Minister of State for Law and Justice in Rajya Sabha in reply to Unstarred Question No. 1646 on 10th March, 1988.

11. *A. K. Roy* v. *Union of India and another*, AIR 1982 SC 710.
12. *S. P. Gupta and others* v. *President of India and others*, AIR 1982 SC 149.
13. *P.N. Kumar and another* v. *Municipal Corporation of Delhi*, (1987) 4 SCC 609 at 610.
14. *Kanubhai Brahmbhatt* v. *State of Gujarat* AIR 1987 SC 1159.
15. *Supra* note 8.

CHAPTER III

1. Colliers Issue, dated June 14, 1952, p. 129.
2. LCI, 14*th Report*, p. 56.
3. *Ibid.*
4. *Id.*, p. 55.
5. LCI, 121*st Report : A New Forum for Judicial Appointments*, 1987, Annexure IV.
6. The Supreme Court (Number of Judges) Amendment Act, 1986.
7. P.N. Bhagwati, former Chief Justice of India, in his Law Day Speech dated Nov. 26, 1986.
8. LCI, 121*st Report.*
9. Dr. Upendra Baxi, *The Crisis of Indian Legal System*, p. 64.
10. *Id.*, pp. 64-78.
11. H.M. Seervai, Constitutional Law of India, Third Edition, Vol. II, p. 2454.
12. *Id.*, p. 2492, para 25.434.
13. *Id.*, p. 2477, para 25.411.
14. Order VII, rule 1, of the Supreme Court Rules, 1966.
15. *Id.*, proviso to Order VII, rule 1.
16. Source : Answer by Hon'ble the Minister of State in the Ministry of Law and Justice to Unstarred Question No. 1646 on 10th March, 1986, in Rajya Sabha.
17. Editorial in The Hindustan Times dated May 3, 1988.
18. *Naresh Shridhar Mirajkar and others* v. *State of Maharashtra and Another*, (1966) 3 SCR 744, ( )
19. See *Supra* notes 12 and 13 of Chapter II

CHAPTER IV

1. LCI, 14*th* , 58*th and* 79*th Reports.*
2. The Indian Express Delhi Edition 11th March, 1988.
3. LCI, 121*st Report.*
4. *Supra* note 6 of Chapter III.
5. LCI, 95*th Report.*
6. LCI, 99*th Report.*
7. Appeal arising out of the assassination of Smt. Indira Gandhi, the former Prime Minister of India.
8. Source : Henry J. Abraham, *The Judicial Process*, 5th Edition, pp. 187-190.

CHAPTER V

1. (1987) 4 SCC 609 and AIR (1987) SC 1159.
2. LCI, 115*th*, 122*nd* and 123*rd* Report.

APPENDIX I

TABLE I

Year	Pending at the beginning of the year	Institution during the year	Disposal during the year	Pending at the end of the year
1951	771	1602	1787	586
1952	586	1465	1672	379
1953	379	1717	1411	685
1954	685	2131	1930	886
1955	886	2111	1807	1190
1956	1190	2337	1955	1572
1957	1572	2460	1911	2121
1958	2121	2418	2295	2244
1959	2244	2647	2497	2494
1960	2494	3247	3202	2319

Source : Rajeev Dhavan, The Supreme Court under strain : The Challenge of Arrears, p. 35.

APPENDIX I

TABLE II

Year	Writ Petitions under Art. 32 Institution	Disposal	Difference between institution and disposal
1951	686	1000	314
1952	495	521	26
1953	409	381	128
1954	694	388	306
1955	446	472	26
1956	257	124	133
1957	171	214	43
1958	176	100	76
1959	200	135	66

Source : Rajeev Dhavan, The Supreme Court under strain : The Challenge of Arrears, p. 31.

APPENDIX I

TABLE III

Year	Special Leave Petitions (Civil)			Special Leave Petitions (Criminal)			Total excess of disposal over institution or vice versa
	Institution	Disposal	Difference	Institution	Disposal	Difference	
1951	200	196	—4	467	364	—103	—107
1952	248	200	—48	402	424	+22	—26
1953	348	232	—116	602	546	—56	—172
1954	368	417	+49	674	698	+24	+73
1955	451	411	—40	708	724	+16	—24
1956	725	799	+74	725	774	+49	+123
1957	645	602	—43	646	684	+38	—5
1958	781	816	+35	760	756	—4	+31
1959	753	780	+27	917	900	—17	+10

+Excess of Disposal over institution

— Excess of institution over Disposal

Source : Rajeev Dhavan, The Supreme Court under strain : The Challenge of Arrears, pages 29 and 123.

APPENDIX I

TABLE IV

Year	Pending at the beginning of the year	Institution during the year	Disposal during the year	Pending at the end of the year
1961	2319	3216	3558	1977
1962	1977	3559	3883	1703
1963	1703	3757	3290	2170
1964	2179	4064	4068	2166
1965	2166	3930	3814	2282
1966	2282	5507	3806	3983
1967	3983	5202	4146	5039
1968	5039	6576	6228	5387
1969	5387	7524	6641	6270
1970	6270	7106	6272	7104

Source : Rajeev Dhavan, The Supreme Court under strain : The Challenge of Arrears, p. 43.

APPENDIX I

TABLE V

Year	Special leave petitions (Civil)			Special leave petitions (Criminal)			Total of excess of disposal over institution or vice versa
	Institution	Disposal	Difference	Institution	Disposal	Difference	
1961 . .	1030	954	—76	970	945	—25	—101
1962 . .	1224	1243	+19	990	1048	+58	+71
1963 . .	1237	1221	—16	952	931	—21	—37
1964 . .	1456	1405	—51	1088	1058	—30	—81
1965 . .	1370	1423	—53	996	1021	+25	+78
1966 . .	1488	1408	—80	885	864	—21	—101
1967 . .	1439	1362	—77	1092	1040	—52	—129
1968 . .	1883	1890	+7	1162	1092	—70	—61
1969 . .	2503	2287	—216	1144	1252	+108	—108
1970 . .	2444	2174	—270	1173	1243	+70	200

+ Excess of disposal over institution.

— Excess of institution over disposal.

Source : Rajeev Dhavan, The Supreme Court under strain : The Challenge of Arrears, p. 41.

APPENDIX I

TABLE VI

Year	Pending at the beginning of the year	Institution during the year	Disposal during the year	Pending at the end of the year
1971	7104	7979	6491	8592
1972	8592	9096	6822	10846
1973	10846	10174	8175	12845
1974	12845	8203	8261	12787
1975	12787	9528	8727	13588
1976	13588	8254	7734	14109
1977	14109	14501	10395	18215
1978 . . .	18215	20840	17095	21960
1979	21960	20754	15833	26887
1980	26887	26365	16953	36293

Source : Rajeev Dhavan : The Supreme Court under strain : The Challenge of Arrears, p. 51.

APPENDIX I

TABLE VII

Year	Pending at the beginning of the year	Institution during the year	Disposal during the year	Pending at the end of the year
1981	36293	31040	18690	48643
1982	48643	43510	29112	63041
1983	63041	55989	45824	73206
1984	73206	49074	35547	86733
1985	86733	51592	51078	87247
1986 . . .	87247	12708	19118	80837
1987	80837) 152969*)	68911*	46132*	175748*

*Includes Admission, Regular and Miscellaneous cases.

Source : Information received from the Conference of Chief Justices of the High Courts/Chief Ministers and Law Ministers of the States held at Delhi on 31st August—1st September, 1985 and answer given by MSLJ to the Unstarred Rajya Sabha Question No. 1646 on 10th March, 1988.

APPENDIX I

TABLE VIII

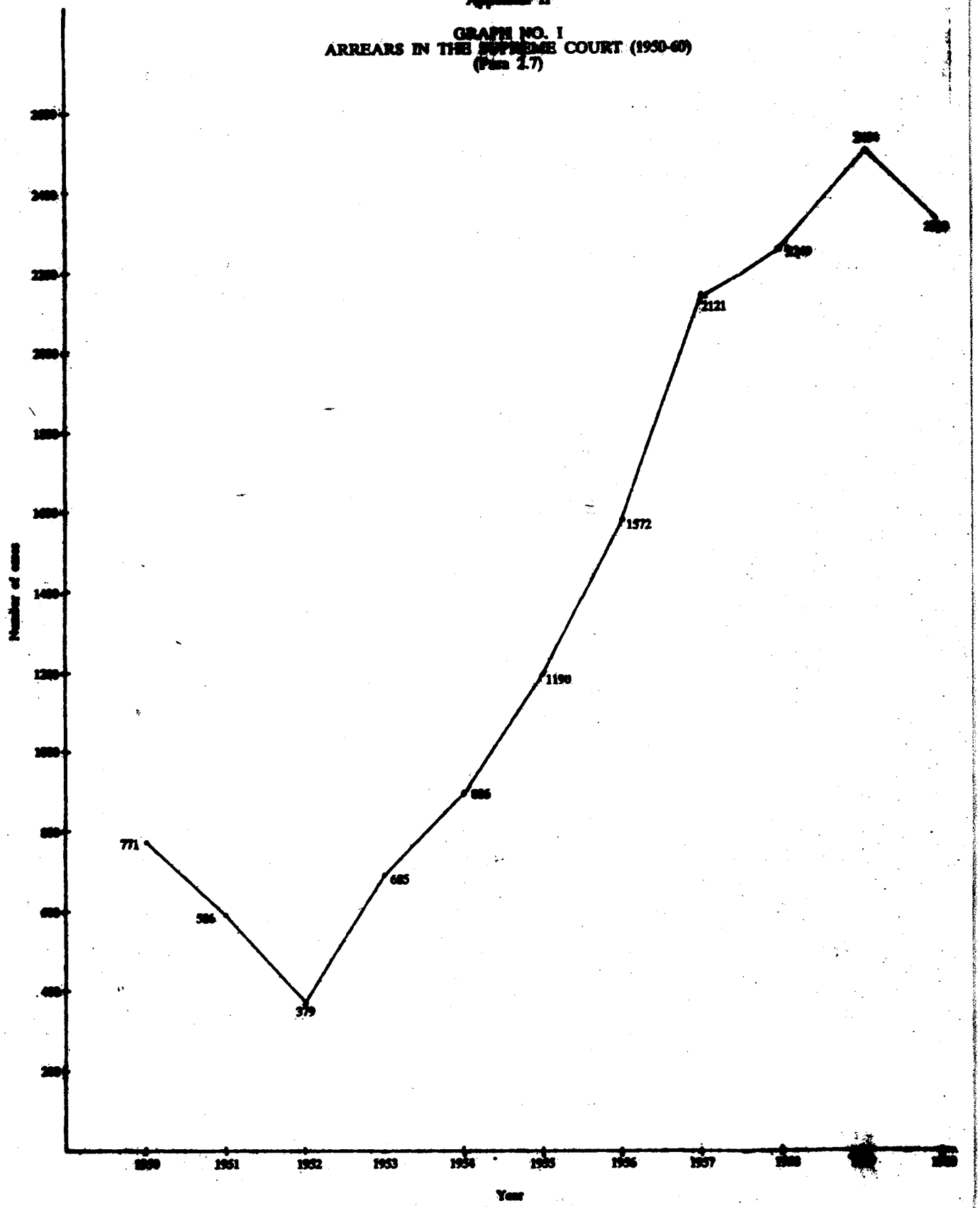
Statement showing the strength of the Judges of the Supreme Court (excluding the Hon'ble the Chief Justice of India) from the year 1981 to 1986

No.	Year	Sanctioned strength of the Judges of the Court	No. of Judges actually elevated to the Bench	Period		Vacancies remained unfilled	Period during which vacancies remained unfilled		
				From	To		Year	Months	Days
1	2	3	4	5		6	7		
1.	1981 .	17	13	1-1-81	14-1-81	4	0	0	14
		17	12	15-1-81	27-1-81	5	0	0	13
		17	13	28-1-81	29-1-81	4	0	0	2
		17	15	30-1-81	31-12-81	2	0	11	2
2.	1982 .	17	14	1-1-82	6-3-82	3	0	2	6
		17	13	7-3-82	31-12-82	4	0	9	25
3	1983 .	17	13	1-1-83	1-1-83	4	0	0	12
		17	12	13-1-83	14-3-83	5	0	2	2
		17	16	15-3-83	31-12-83	1	0	9	17
4	1984 .	17	16	1-1-84	24-6-84	1	0	5	24
		17	17	25-6-84	31-12-84	Nil	0	6	7
5	1985 .	17	17	1-1-85	8-5-85	Nil	0	4	8
		17	16	9-5-85	11-7-85	1	0	2	3
		17	15	12-7-85	16-6-85	2	0	1	5
		17	14	17-6-85	20-6-85	3	0	0	4
		17	13	21-6-85	30-9-85	4	0	1	10
		17	12	1-10-85	28-10-85	5	0	0	2
		17	14	29-10-85	31-12-85	3	0	2	3
6.	1986	17	14	1-1-86	8-3-86	3	0	2	8
		17	13	9-3-86	9-3-86	4	0	0	1
		17	16	10-3-86	6-4-86	1	0	0	2
		17	15	7-4-86	14-6-86	2	0	2	3
		17	14	15-6-86	1-10-86	3	0	3	7

Source : **Material supplied by Additional Registrar, Supreme Court of India.**

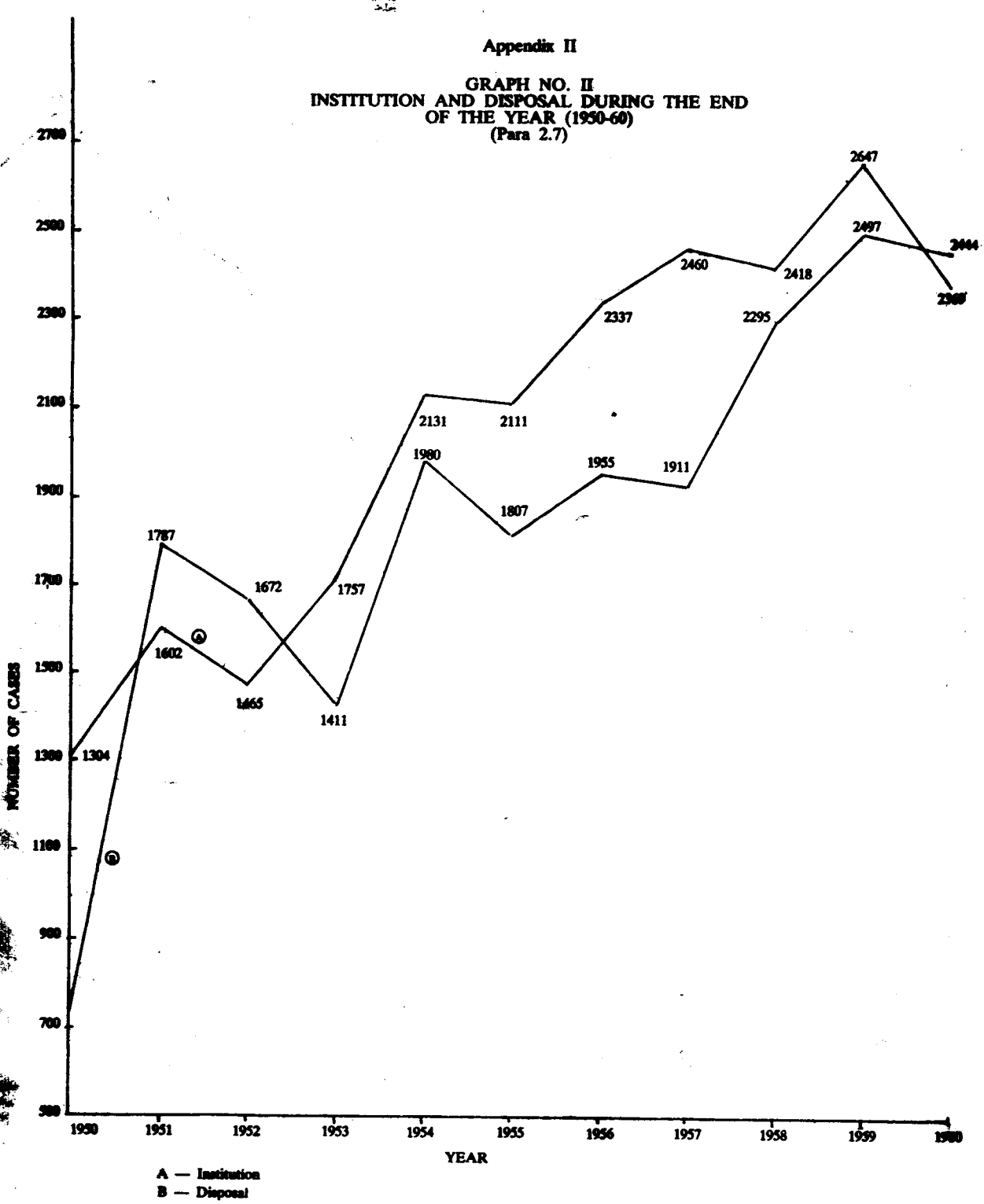
Appendix II

GRAPH NO. I
ARREARS IN THE SUPREME COURT (1950-60)
(Para 2.7)



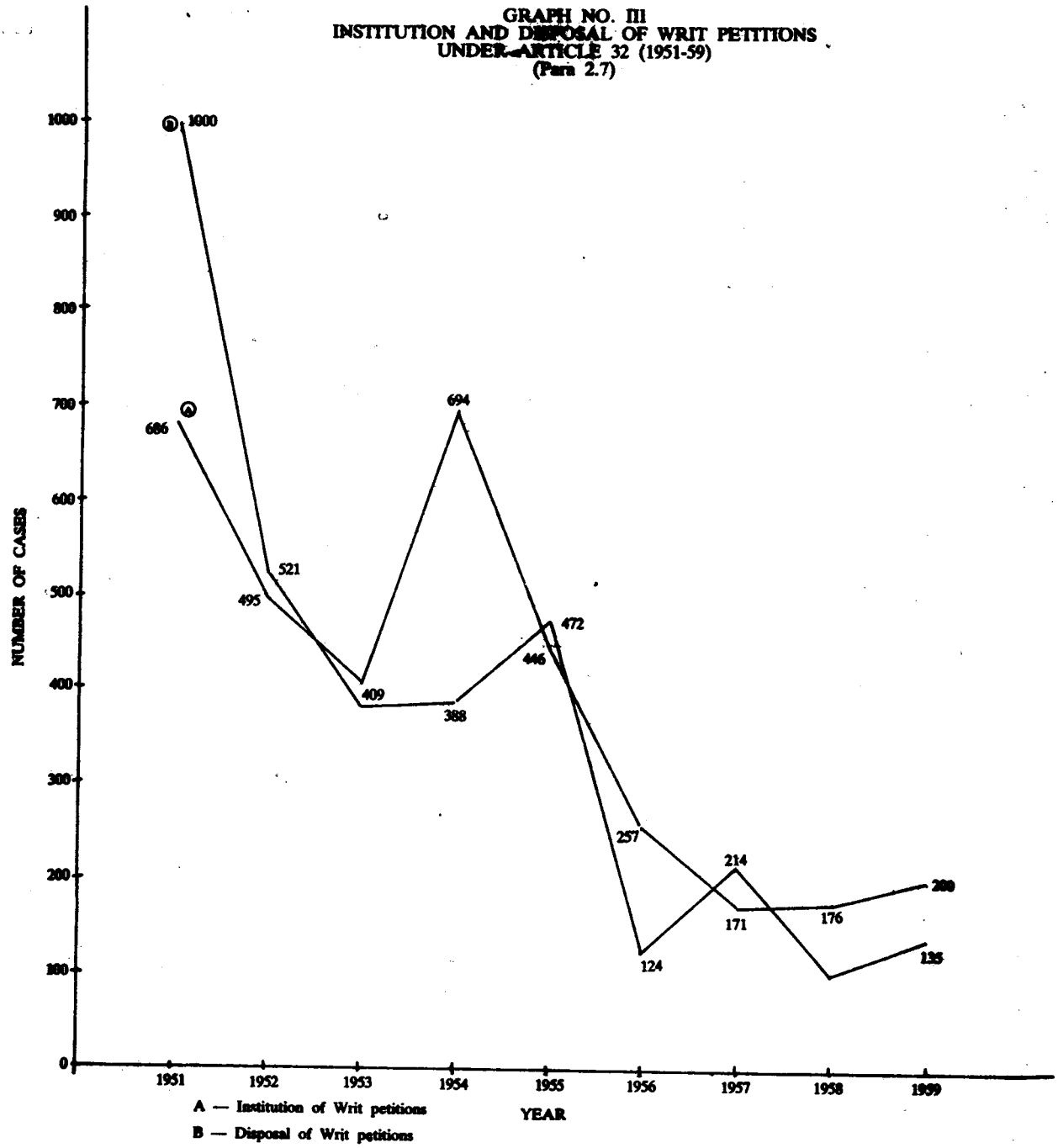
Appendix II

GRAPH NO. II
INSTITUTION AND DISPOSAL DURING THE END OF THE YEAR (1950-60)
(Para 2.7)



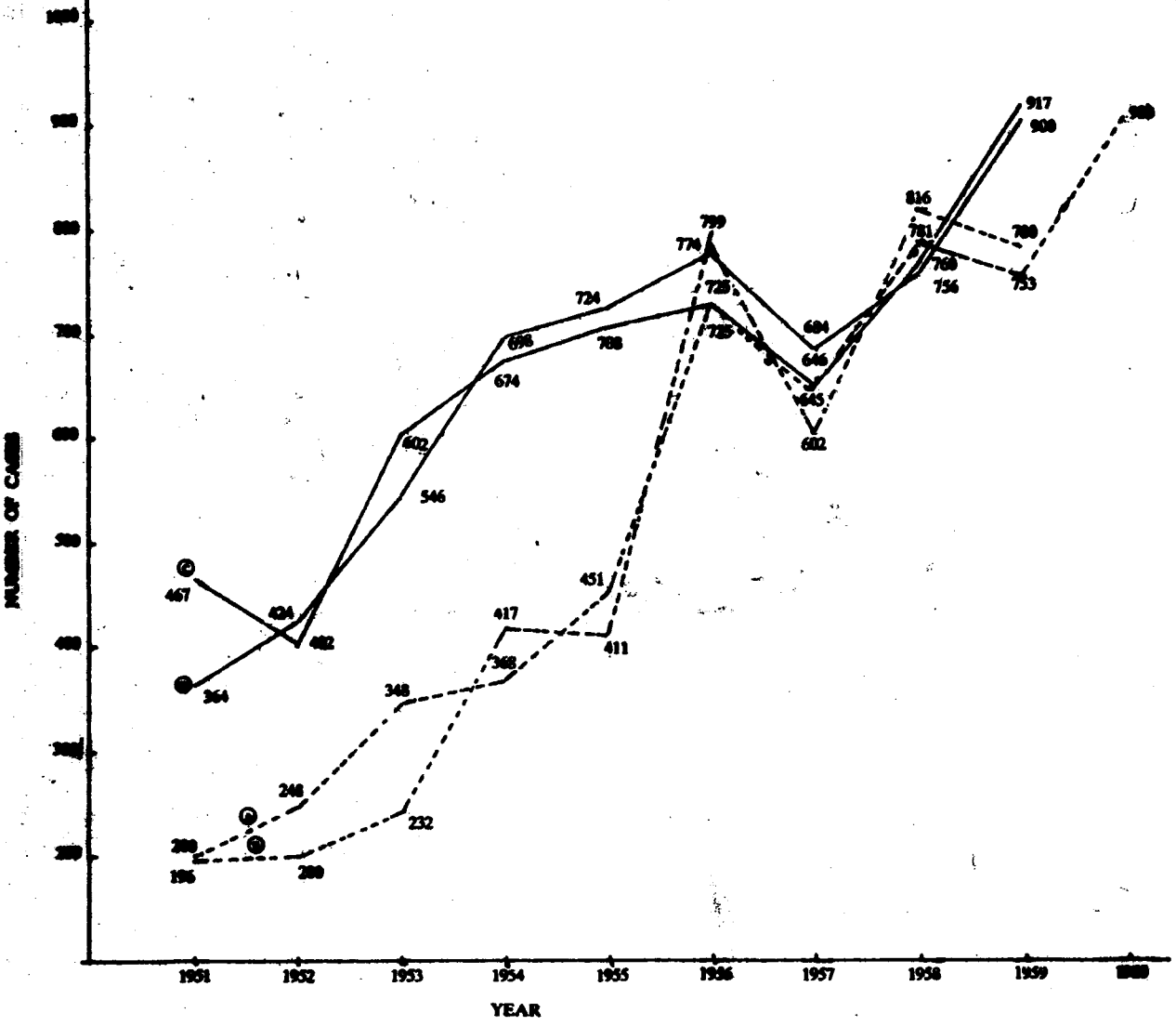
Appendix II

GRAPH NO. III
INSTITUTION AND DISPOSAL OF WRIT PETITIONS
UNDER ARTICLE 32 (1951-59)
(Para 2.7)



Appendix II

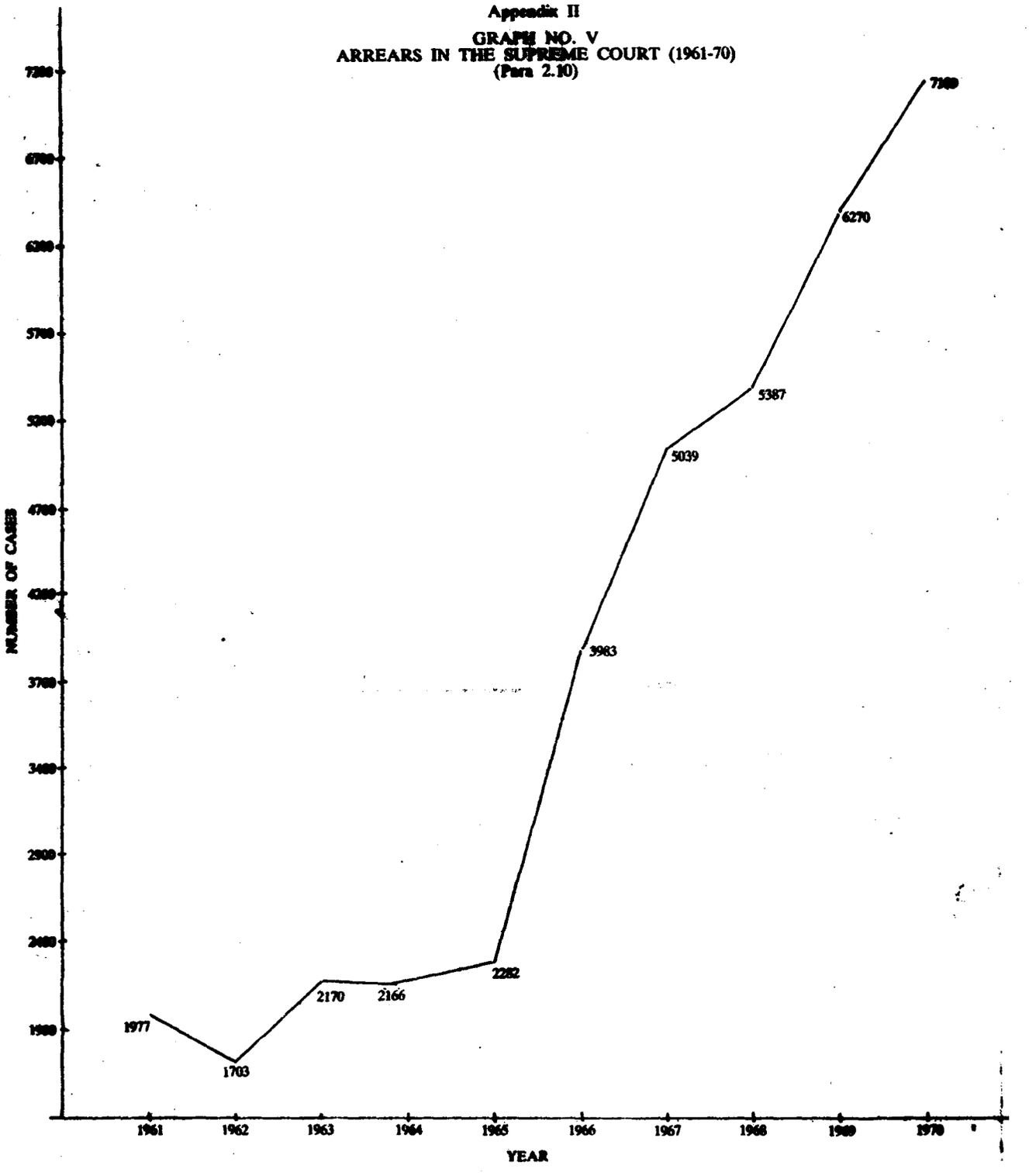
GRAPH NO. IV.
INSTITUTION AND DISPOSAL OF SPECIAL LEAVE PETITIONS-CIVIL AND CRIMINAL (1951-60)
(Para 2.8)



A — Institution of Special Leave Petition (Civil)
B — Disposal of Special Leave Petition (Civil)
C — Institution of Special Leave Petition (Criminal)
D — Disposal of Special Leave Petition (Criminal)

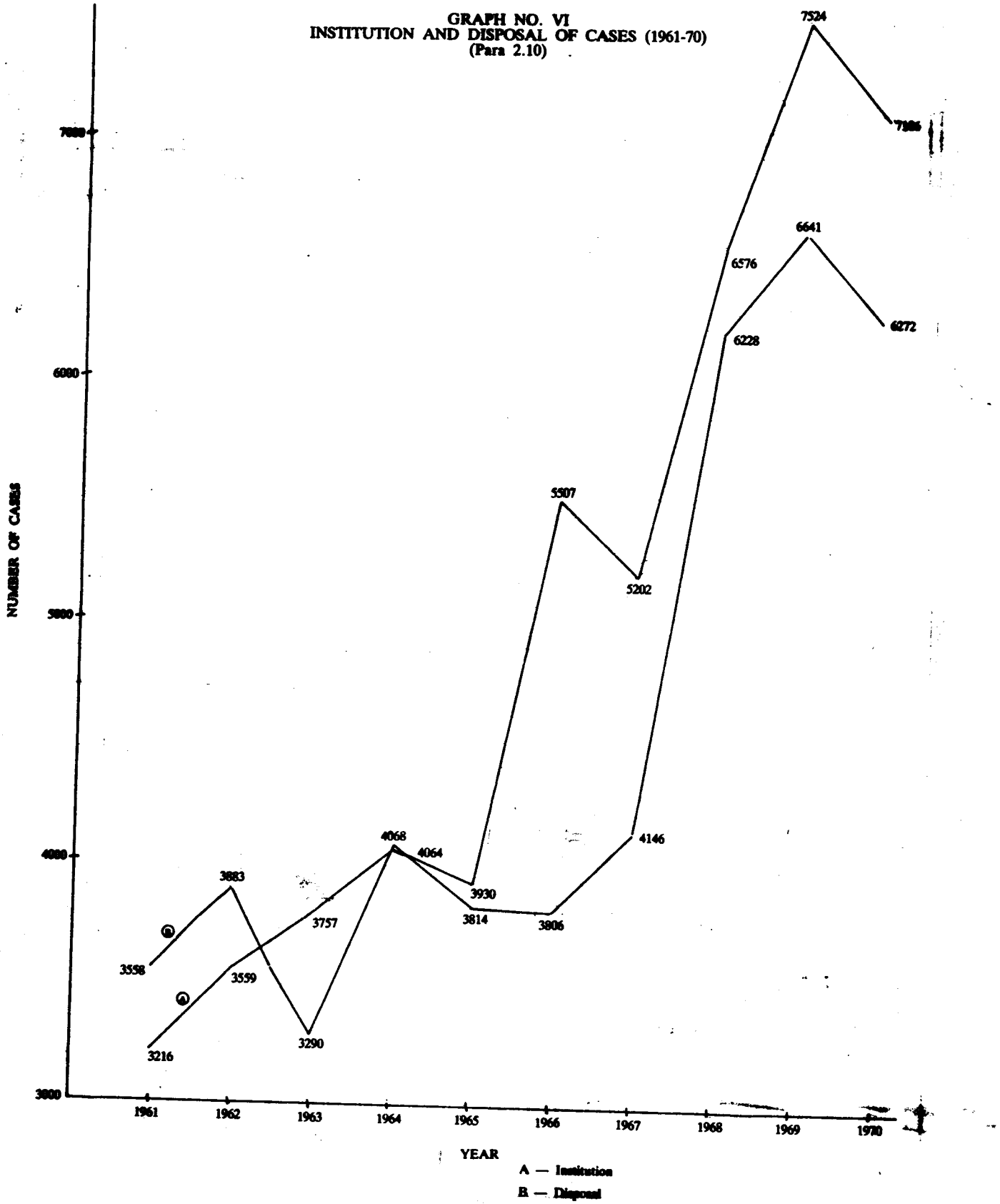
Appendix II

GRAPH NO. V
ARREARS IN THE SUPREME COURT (1961-70)
(Para 2.10)



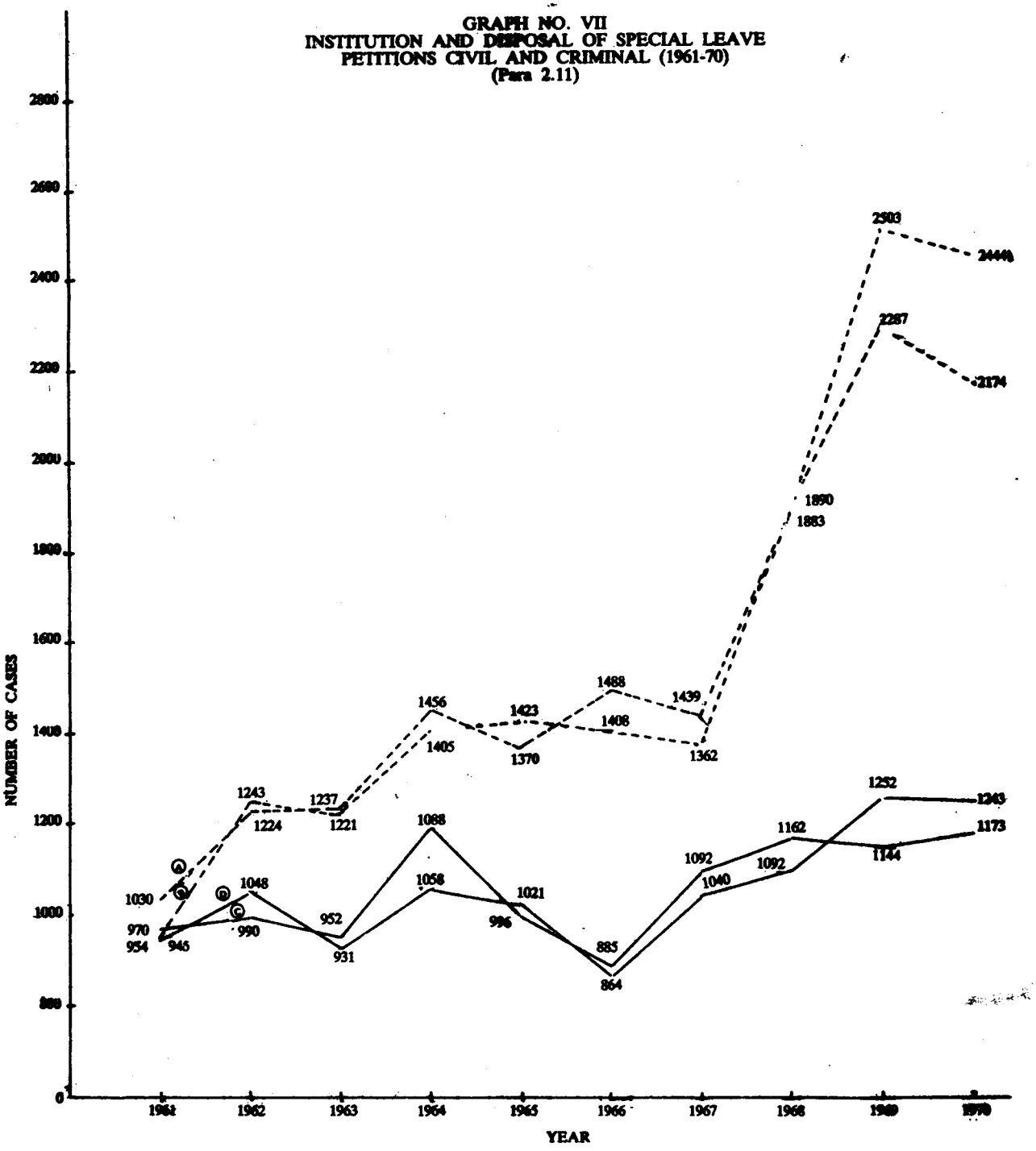
Appendix II

GRAPH NO. VI
INSTITUTION AND DISPOSAL OF CASES (1961-70)
(Para 2.10)



Appendix II

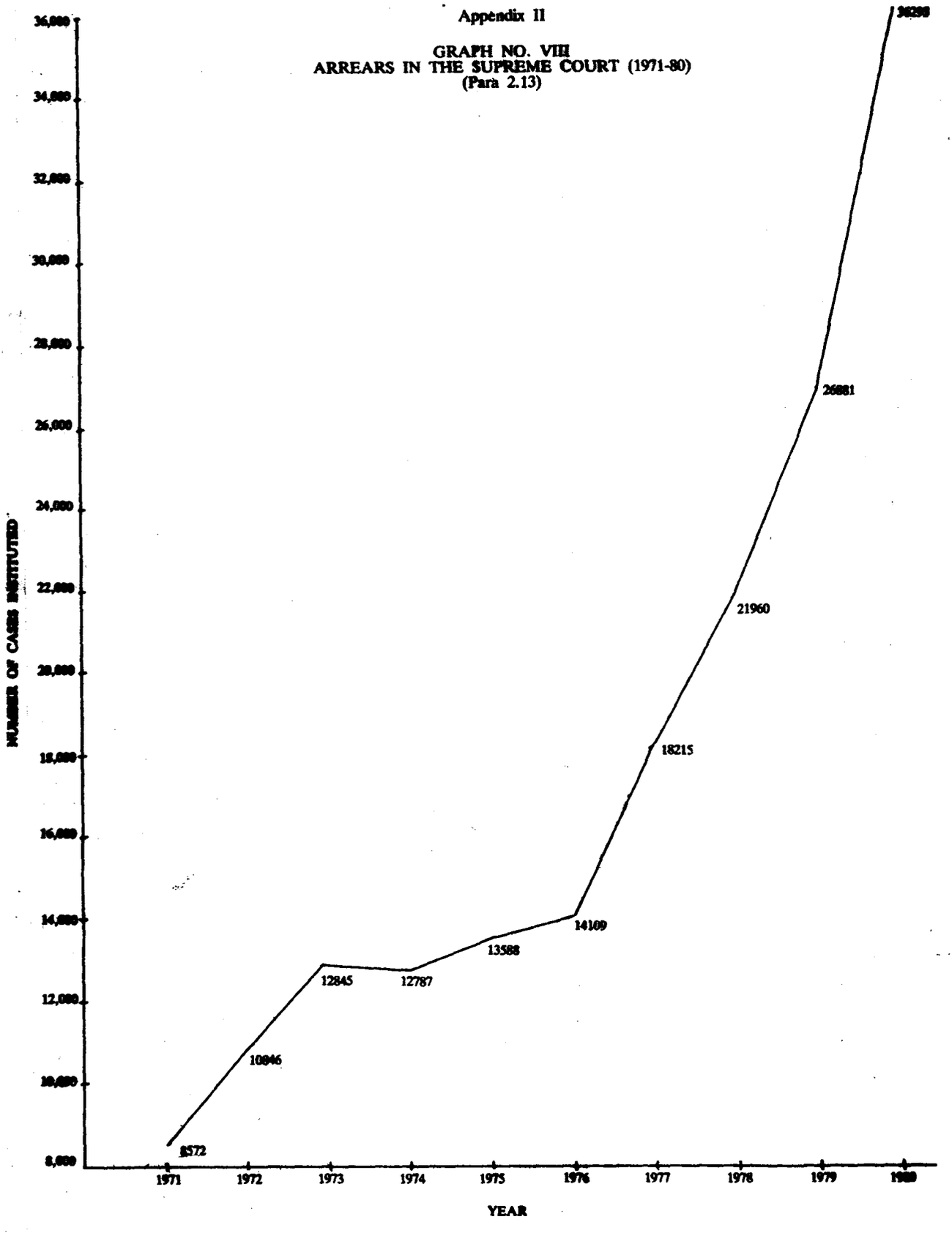
GRAPH NO. VII
INSTITUTION AND DISPOSAL OF SPECIAL LEAVE PETITIONS CIVIL AND CRIMINAL (1961-70)
(Para 2.11)



A — Institution of SLP (Civil)
B — Disposal of SLP (Civil)
C — Institution of SLP (Criminal)
D — Disposal of SLP (Criminal)

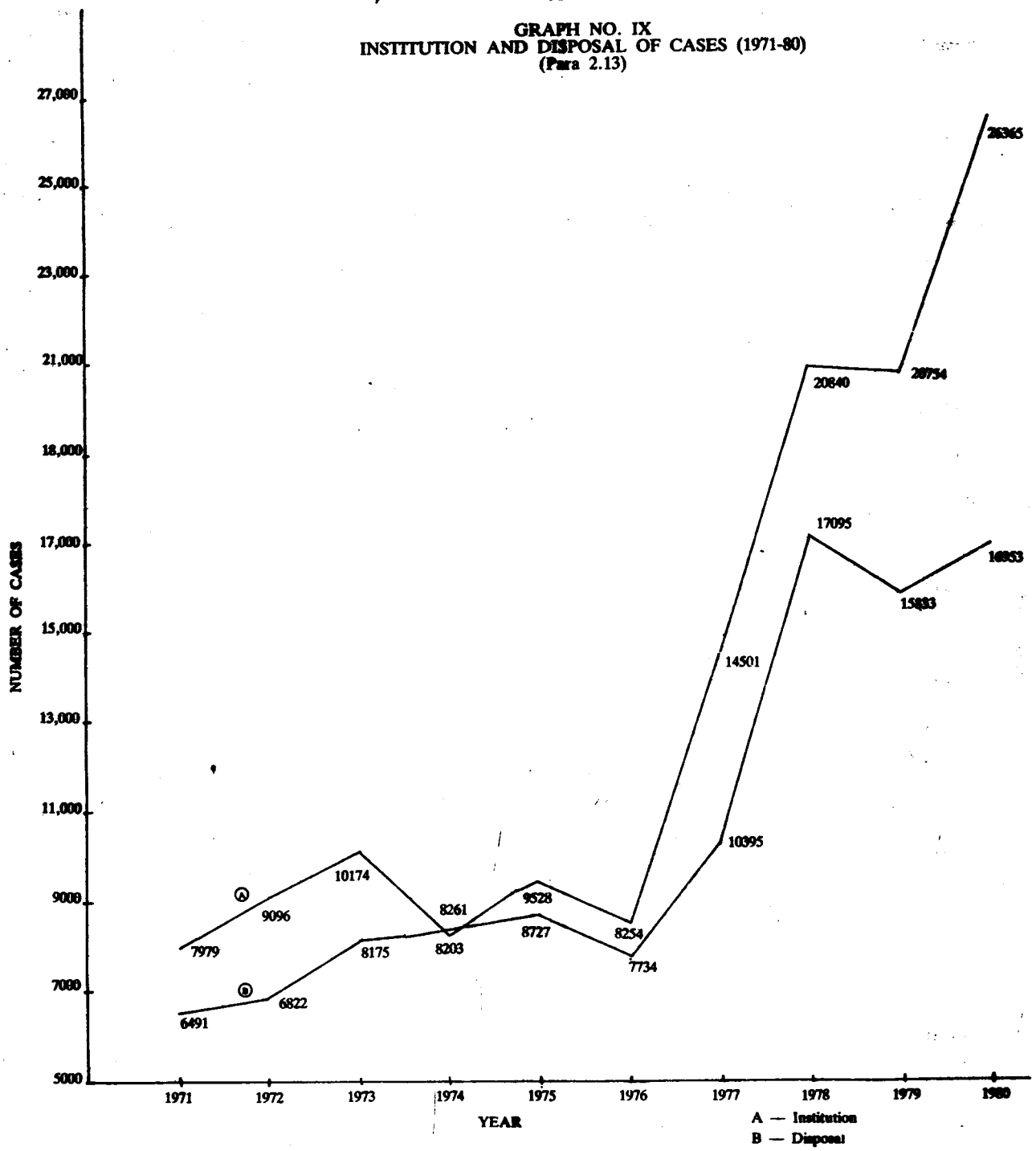
Appendix II

GRAPH NO. VIII
ARREARS IN THE SUPREME COURT (1971-80)
(Para 2.13)



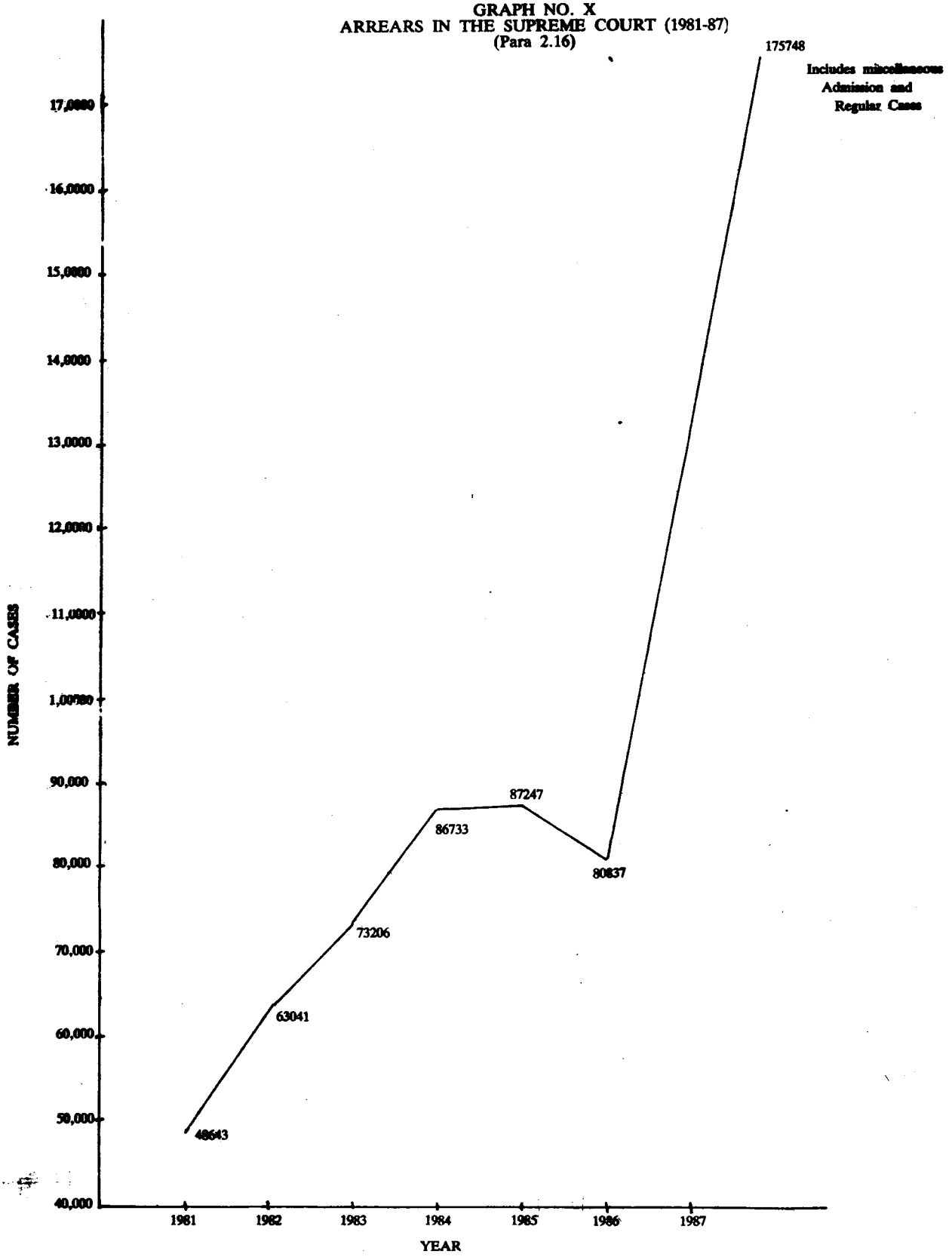
Appendix II

GRAPH NO. IX
INSTITUTION AND DISPOSAL OF CASES (1971-80)
(Para 2.13)



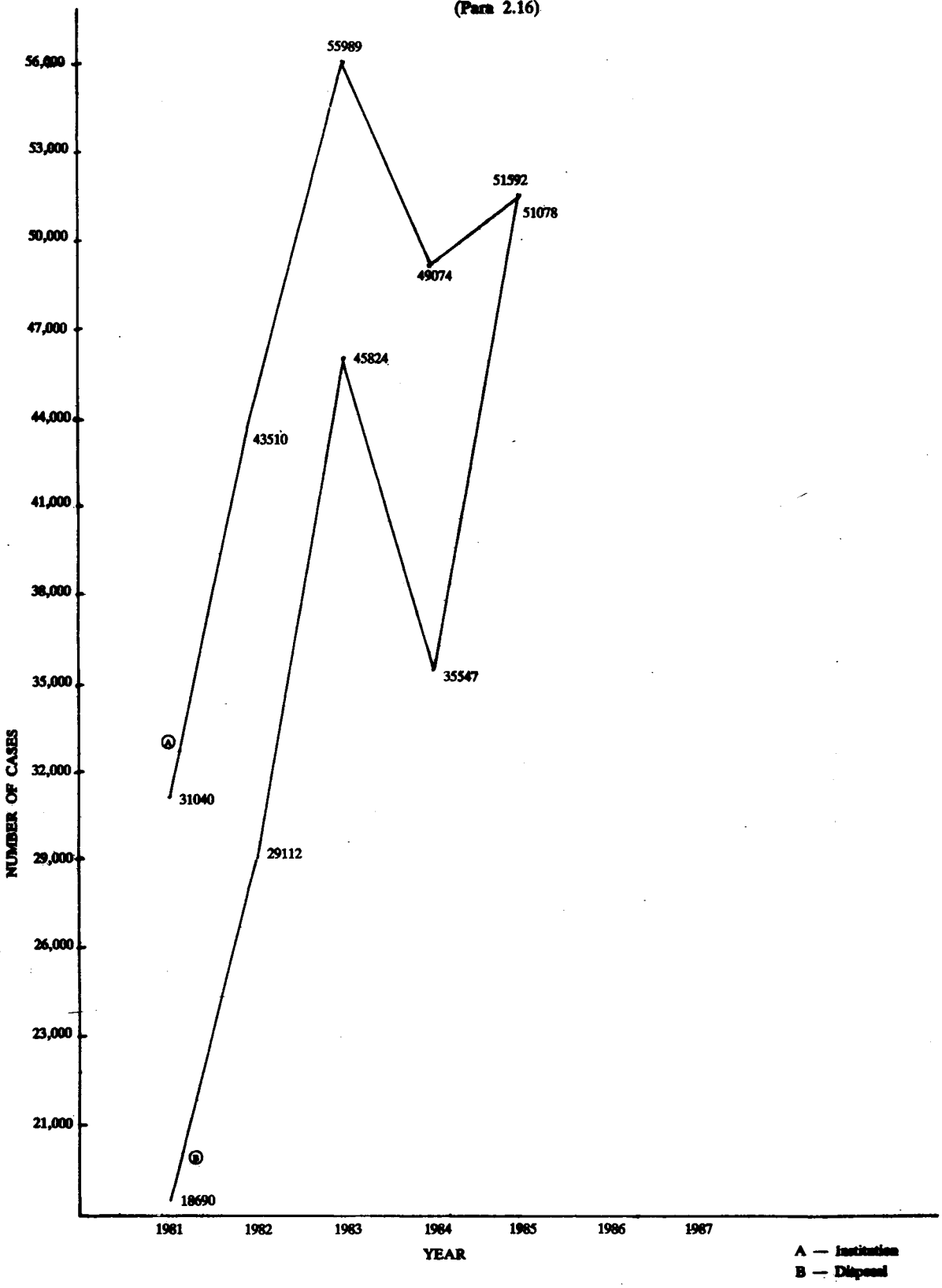
Appendix II

GRAPH NO. X
ARREARS IN THE SUPREME COURT (1981-87)
(Para 2.16)



Appendix II

GRAPH NO. XI
INSTITUTION AND DISPOSAL OF CASES (1981-85)
(Para 2.16)



No. 384475

APPENDIX III

(Para 4.1)

LETTER FROM THE LAW COMMISSION TO THE CHIEF JUSTICE OF INDIA

विधि आयोग
LAW COMMISSION
भारत सरकार
GOVERNMENT OF INDIA
शास्त्री भवन
SHASTRI BHAWAN,
नई दिल्ली
NEW DELHI

D. A. DESAI
Chairman

D.O. No. 3/Chmn/88/LC
January 19, 1988.

Dear Justice Pathak.

Government of India resolved to set up a Commission, to be styled as Judicial Reforms Commission, for indepth study of the present justice delivery system, its short-comings and infirmities and to recommend radical reforms in the same to make the system effective and resilient to meet the contemporary needs of the society. It had drawn up its terms of reference. In February 1986, the task of studying and recommending judicial reforms was assigned to the present Law Commission keeping in view the terms of reference drawn up by the Government of India, a copy of the same for convenience of reference is annexed to this letter. The Law Commission was requested to accord high priority to this new assignment. Accordingly, the Law Commission concentrated its attention on this assignment.

Since the reference, the Law Commission has submitted ten reports, the list of which is annexed to this letter for ready reference.

The Law Commission in its plan of work has reached the stage where it would undertake indepth examination of the problem of backlog in the High Courts and the Supreme Court of India, with particular reference to terms No. 1(iii) and 2 of the terms of reference.

In the past, the Law Commission has examined the structure and jurisdiction of the High Court in its 14th, 58th and 79th Reports. 14th Report on Judicial Administration has a chapter on Supreme Court of India. There was a radical suggestion of setting up a Constitutional Division within the Supreme Court in the 95th Report. I can justifiably assume that you are conversant with the recommendations in these reports. I must, however, state that the 95th Report is not at all implemented, not even printed till today.

The implementation of the recommendations of the Law Commission is tardy. In fact, more often the recommendations are ignored. Be that as it may, Government of India evinced a keen desire to introduce radical reforms in the justice delivery system of this country and, with that end in view, drew up the terms of reference.

I would like to inform you that the present Law Commission has submitted ten reports relevant to different terms of reference, three of them, i.e., 115th, 122nd and 123rd, directly deal with decentralisation of administration of justice by recommending Central Tax Court and eliminating the jurisdiction of the High Court in tax matters. Similar approach has informed the Law Commission in recommending Industrial Relations Commission at the State and Central level as also Central Educational Tribunal at the same two levels to deal with

specialist topic simultaneously eliminating the jurisdiction of the High Court in these matters.

The problem of arrears is directly interlinked with the dismal failure on the front of filling in vacancies in the High Courts and the Supreme Court of India. I am not aware as to where the fault lies. Fact remains that there is inordinate delay in filling in vacancies. In this connection I am happy to inform you that the Law Commission has submitted a comprehensive report recommending setting up of National Judicial Service Commission.

The Law Commission would examine the problem of backlog intertwined with the failure to fill in vacancies in the Supreme Court in its planned and projected work schedule.

I feel happy to inform you about the tentative thinking of the Law Commission in this behalf with a view to eliciting from you critical response to the same.

In the report on National Judicial Service Commission, the Law Commission has proposed setting up of a Commission headed by the Chief Justice of India to deal with the problem of filling in vacancies expeditiously in the Supreme Court and the High Courts. If implemented, the Law Commission is of the opinion that it would retrieve the situation to a considerable extent. But one cannot stay put there. I, therefore, approach you with a request to consider one more suggestion in this behalf.

I was told that a convention has grown up three decades back that till all the vacancies are filled in, the Chief Justice cannot resort to article 128 of the Constitution. The convention was established in the background of the fact that vacancies were filled in very expeditiously. The situation today is depressingly different. If the convention is respected in the altered circumstances, it would render article 128 nugatory, which the framers of the Constitution could not have anticipated. Therefore, the problem can be approached from two independent angles.

The vacancy occurs on retirement or death of a Judge in position. Death is such an uncertain event that one cannot foresee it and rationally deal with it, but retirement is known in advance. Therefore, even if steps are taken considerably in advance to fill in the incoming vacancies, yet if the vacancy is not filled in the outgoing Judge shall continue to be in position till the incumbent is appointed. One criticism voiced against this suggestion is that if Chief Justice has a good opinion about one Judge, he may not recommend the successor while someone, not such a hot favourite, may be pushed out by bringing in a successor as early as possible. This apprehension is wholly unfounded in view of the fact that the vacancies are filled in according to the chronology it has occurred. The difference can be of a month or two. But by adopting this method, the Court would at no time be without its sanctioned strength.

The second tentative suggestion is that in the capital city of Delhi, some retired Judges of the Supreme Court have settled down after retirement. They have established own residence as well as their transport arrangement. Article 128 provides that the Chief Justice of India may at any time, with the previous consent of the President, request any person who has held the office of the Judge of the Supreme Court or has held the office of a Judge of a High Court and is duly qualified to be a Judge of the Supreme Court, to sit and act as a Judge of the Supreme Court. Service of Judges who have settled down in the capital city can be enlisted. No capital expenditure is involved in view of the fact that no separate building is required to be established. It is merely a question of adjusting the court time. The retired Judges may be requsted to come at 8.30 in

the morning and work up to 12 noon. By setting up four different Benches of three Judges each, two Benches dealing with old civil and two Benches dealing with old criminal appeals, say, those instituted prior to 1980, they can dispose of as fast as possible many matters and it would be good use of the under-utilised installed capacity of the Supreme Court building. They have to be compensated by giving them full salary without deduction of pension and pension equivalent to gratuity. This would entail very little expenditure and would go a great way in disposing of old cases which has brought disrepute to the system. Simultaneously, it would be utilisation of a rich pool of experience of talented people, physically fit to render to the society which gave them the status. The convention hereinabove referred to may now be given a decent burial because it has outlived its utility.

I am not at all referring to setting up one Judge Bench in some matters because the Supreme Court is already seized up with the matter. This remedy will to some extent help in retrieving the lost situation arising out of the delay in filling in the vacancies.

This approach can *mutatis mutandis* apply to High Courts also.

May I request you that as head of the judicial administration of this country and gravely concerned with the malaise in the system, to respond to these tentative suggestions as also to make on your own some new and original suggestions which may assist the Law Commission in its none-too-easy task.

My earlier experience of writing separate letters to all Judges has proved to be a futile exercise. I am, therefore, addressing this letter to you with a request to consult your valued colleagues and to let me have your considered views as early as possible.

With regards,

Yours sincerely,
(Sd.)
(D.A. DESAI)

Hon'ble Shri R.S. Pathak,
Chief Justice of India,
Supreme Court of India,
Tilak Marg,
NEW DELHI.

Encl: As above.

MGIPCBE—S1—10 M of L & J/88—21-12-90—1000.