



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Adjournment: Deferring the Trial or Justice to a Future Date?

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Received 11 November 2023; *Accepted* 07 December 2023; *Published* 11 December 2023

Denial of timely justice amounts to the denial of justice itself. As everybody knows, the courts of this land should bring justice quickly. For years, we have seen and experienced long procedural delays by the courts in expediting cases and adding to the existing backlog of cases as well as being a time-consuming and expensive process for the parties. Many factors can be attributed to the procedural delays in the system, adjournments being one among them. Multiple adjournments have proved to be a challenge to the smooth functioning of the courts that casts a shadow of doubt towards the working of the courts to the public. In this context, it is pertinent to reconsider the practice of adjournments as judicial reform. The judges of the Supreme Court have expressed their infuriation towards counsels who plead for repeated adjournments, causing delayed justice and hampering the judicial decision-making process. This short article attempts to analyze, the provisions under the Code of Civil Procedure 1908, with relevant case laws, the effects overall system of law and justice, with some guidelines and suggestions to lessen the burden on the courts and the public that emanates from unnecessary adjournments to expedite cases efficiently.

Keywords: *adjournments, cpc, procedural delays, judicial decision-making.*

INTRODUCTION

Adjournment in the Indian judicial system comes to the forefront once again, this time by the Chief Justice of India (CJI) DY Chandrachud who expressed concerns over the increasing

number of adjournment requests made by lawyers in the Supreme Court and said that ‘the top court cannot be reduced to a ‘tareekh pe tareekh’ court (a court of adjournments)¹, a phrase which is most associated with the idea of courts in the scene from the film Damini where clients seek adjournments and the courts routinely grant them.’

Testimonial to the fact is that statement made by the honorable CJI, ‘On an average per miscellaneous day from 1st September to 3rd September, 154 adjournments are circulated, 3688 adjournments in 2 months. This defeats the purpose of filing and listing’ which is concerning.²

Furthermore, Dr. P. C. Alexander, former Governor of Tamil Nadu and Maharashtra and Member of Parliament stated that ‘There are many measures which the judiciary can take without waiting for additional financial support from the government, but minimal effective action has been taken on these by the judiciary and they continue to cause delays in the disposal of cases. They include laxity shown by the courts in matters like the production of witnesses on the dates posted for their examination, granting requests for adjournments of cases without good reasons, inordinate delays in giving copies of documents, allowing lengthy arguments by the advocates, and the practice of judges themselves writing unnecessarily long judgments’ where he attributes adjournment as one of the malaise which ails the judicial system which the Law Commission of India has reaffirmed in its 229th Report.³

In a survey conducted in the year 2015-2016, the results portrayed that the reasons for the litigant's delay were due to judges not passing orders quickly, and cases getting delayed due to the non-appearance of opposite parties on the dates fixed for trial (61 percent and 26.1 percent

¹ Debayan Roy, ‘Supreme Court cannot become a ‘tareekh pe tareekh court’; will lose the trust of people: CJI DY Chandrachud’ *Bar and Bench* (03 November 2023) <<https://www.barandbench.com/news/supreme-court-cannot-become-tareekh-pe-tareekh-court-will-lose-trust-people-cji-dy-chandrachud>> accessed 04 November 2023

² Padmakshi Sharma, ‘Don't Want This To Be A ‘Tareekh Pe Tareekh’ Court’: CJI DY Chandrachud Urges Lawyers To Not Seek Unnecessary Adjournments’ *Live Law* (03 November 2023) <<https://www.livelaw.in/top-stories/dont-want-this-to-be-a-tareekh-pe-tareekh-court-cji-dy-chandrachud-urges-lawyers-to-not-seek-unnecessary-adjournments-241510>> accessed 04 November 2023

³ Law Commission, *Need for division of the Supreme Court into a Constitution Bench at Delhi and Cassation Benches in four regions at Delhi, Chennai/Hyderabad, Kolkata, and Mumbai*, (Law Com No 229, 2009) para 2.11

of the respondents respectively attribute such factors for court delays in civil petitions).⁴ Therefore, it is vital to reconsider the application of the provisions concerning adjournments to get out of the adjournment culture so that confidence and trust put by the litigants in the Justice delivery system is not shaken and the Rule of Law is maintained.⁵

ADJOURNMENT UNDER THE CODE OF CIVIL PROCEDURE 1908

The provisions for the adjournment of civil petitions are mentioned in Order XVII of the Code of Civil Procedure 1908 (CPC)⁶. Subsequently, the CPC was amended in the years 1999 and 2002 to reduce the time taken in judicial proceedings and pronouncements that was lost in granting routine adjournments. These amendments aimed to expedite judicial proceedings and ensure practical work on each hearing date to alleviate the backlog of cases and delays in the interest of justice.⁷

Post the amendments, the Order under Rule 1 sub-rule 1 states that, 'The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing'. It further states that 'no such adjournment shall be granted more than three times to a party during hearing of the suit'.⁸ The succeeding sub-rule stipulates that 'the Court shall fix a day for the further hearing of the suit and shall make such orders as to costs occasioned by the adjournment or such higher costs as the court deems fit'.⁹

It is pertinent to note that some exceptions mentioned in the sub-rule mentioned above are relevant to consider in adjournment procedures. When the rules mentioned above are read

⁴ Harish Narasappa et al., 'Access to Justice Survey 2015-16' (DAKSH, November 2015) <<https://dakshindia.org/wp-content/uploads/2016/05/Daksh-access-to-justice-survey.pdf>> accessed 06 November 2023

⁵ Ashok KM, 'It Breaks the Back of Litigants; Insults & Kills Justice: Supreme Court Urges Courts to Get Out Of Adjournment Culture' *Live Law* (25 September 2021) <<https://www.livelaw.in/top-stories/supreme-court-adjournment-culture-repeated-routine-manner-182459>> accessed 06 November 2023

⁶ Code of Civil Procedure 1908, Or XVII

⁷ Varun Agarwal, 'Adjournments: The Bane of Civil Litigation' (2023) SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4549011> accessed 07 November 2023

⁸ Code of Civil Procedure 1908, Or XVII r 1

⁹ Code of Civil Procedure 1908, Or XVII r 2

together, it is to be noted that the court grants time only if sufficient cause is shown, and the reasons for the adjournment shall be recorded in writing. Furthermore, the court may grant adjournments, the upper limit being three times and the court may pass orders as to the costs occasioned by the adjournment as it may deem fit barring some exceptions like circumstances that are beyond the control of that party as mentioned in the provisions of sub-rule 2.

The constitutionality of the amendments in 1999 and 2002 was challenged in the case of the Salem Advocate Bar Association¹⁰, where the Supreme Court held that all the amendments made were intra vires of the constitution. The court found it appropriate to constitute a committee to ensure that the amendment made became effective and resulted in a quicker dispensation of Justice.¹¹ The Committee headed by M. Jagannadha Rao, former Judge and Chairman of the Law Commission considered the difficulties and made necessary suggestions, thereby submitting the report. It was observed by the court that on the joint reading of sub-rules 1 and 2, the maximum limit of adjournments could be breached where the circumstances were not in control of the party. The court made it an exception to grant adjournments even though there was a restriction to the number of adjournments (i.e. three) as provided under Order 17 Rule 1, keeping in mind that there may be some uncontrollable circumstances that cannot be avoided which may occur even after the party the court had granted the third adjournment. There may be instances that are beyond the control of the parties even after taking three adjournments like, a party may be suddenly hospitalized on account of some serious ailment or there may be a serious accident or some act of God leading to devastation or even examples like of the Bhopal gas tragedy, Gujarat earthquake and riots, and devastation on account of the tsunami¹², which necessitates taking multiple adjournments for various reasons due to the gravity of the issue. It is considerable for the courts to rely upon the facts of the case and take a call to accept/reject the adjournment on a case-to-case basis. Finally, the court can only grant adjournments in reasoned exceptional cases and cannot be granted routinely.

¹⁰ *Salem Advocate Bar Association, T.N v Union of India* (2003) 1 SCC 49

¹¹ *Ibid*

¹² Sandeep Kumar Mohanty, 'Arresting of Time through Adjournments under Code of Civil Procedure, 1908' (2020) 11 Pen Acclaims <<http://www.penacclaims.com/wp-content/uploads/2020/07/Sandeep-kumar-Mohanty.pdf>> accessed 07 November 2023

JUDICIAL PRECEDENTS RELATED TO ADJOURNMENTS

The adjournment culture has caused a decay in our judicial system by causing delays. The court, in many instances, has warned the counsels and litigants to refrain from such practice and has penalized them for the same. It is unfortunate that, though there are provisions to prevent such practice, some unscrupulous litigants have adopted such practice for personal benefits and gains. Here are some cases where the courts have tried to clamp down on unnecessary adjournments to ensure that speedy justice is attained.

In the case of *Sk. Makbul v Sk. Sidik and Ors*¹³, the court pronounced that adjournments are sought by the counsels to deliberately delay the proceedings of the court. In this matter, the witness was called by the courts to provide testimony against the accused and the defense pleaded for an adjournment to protect his client and postpone the hearing if the witness. In this arrangement, the witness's time is wasted, as he had to make another appearance, in meanwhile the court opined that there is a possibility of witness tampering on the part of the defense to save his client. This process will render justice void and will cause people to lose faith in the nation's judicial system.¹⁴

The court in *Ramji Lal Sharma's case*¹⁵ observed, 'seeking unnecessary adjournments on non-existent grounds with an oblique motive of arresting or obstructing the progress of a case are the instances of contumacious conduct tending to interfere with the administration of justice inviting action for contempt.'

In another case before the Supreme Court¹⁶, it was observed that the appellant bank sought an adjournment on the ground that his advocate had to go out of town for medical treatment. The adjournment was granted for the same. Further adjournments were granted by the court due to compelling reasons and facts that were very pertinent to the matter. On the date of the next adjournment, the advocate for the appellant sought an adjournment due to personal reasons.

¹³ *Sk. Makbul v Sk. Sidik and Ors* AIR 1966 Ori 41

¹⁴ Anjali Giri, 'Adjournment of Judicial Proceeding' (*Legal Service India*)

<https://www.legalserviceindia.com/article-adjournment_of_judicial_proceeding> accessed 08 November 2023

¹⁵ *Ramji Lal Sharma v Civil Judge, Allahabad and Ors* AIR 1988 All 143

¹⁶ *State Bank of India v Kumari Chandra Govindji* (2000) 8 SCC 532

The court did not grant the adjournment and subsequently, the matter was dismissed. Paragraph 7 of the judgment read, 'In ascertaining whether a party had a reasonable opportunity to put forward his case or not, one should not ordinarily go beyond the date on which the adjournment is sought. The earlier adjournment, if any, granted would certainly be for reasonable ground and that aspect need not be once again examined if the date on which adjournment is sought for the party concerned has a reasonable ground. The mere fact that the adjournments had been sought for could not be of any materiality. If the adjournment had been sought for on flimsy grounds, the same would have been rejected.'

Another prime example of the potential misuse of adjournments for personal benefits could be seen in the case of *Sheela Devi & Ors v Narbada Dev*¹⁷, where the court noted that an advocate on record sought an adjournment by circulating a letter that he could not assist the court proceedings in the present matter as he had fallen ill. Whereas, in reality, the opposite party's counsel stated that the very advocate had appeared in a matter before another bench in the Supreme Court on the same morning. The court held the act as professional misconduct and directed action against the advocate.

IMPACT OF ADJOURNMENTS IN THE JUDICIAL SYSTEM

We are well aware of the number of cases pending in our judiciary and the time taken by the courts to decide a matter based on merits. We are all well acquainted with the legal maxim '*justice delayed is justice denied*'. Timely disposal of cases in an effective manner is paramount in upholding the principles of the rule of law in consonance with fundamental rights. At the same time efficiently disposing of cases and ensuring justice is given promptly is vital ('*justice hurried is justice buried*'). Therefore, the judiciary must exercise its discretionary powers in a reasonable and time-bound manner. There is no one-size-fits-all solution when it comes to granting adjournments in the judicial system. The court should evaluate the same based on the facts and circumstances of each case. In many instances, a lot of money and resources are wasted due to these adjournments, and the litigants and the witnesses have to bear the brunt of this when they

¹⁷ *Sheela Devi & Ors v Narbada Dev* (2005) 13 SCC 432

realize their matter is adjourned. There have been cases as mentioned above where litigants and witnesses are tampered with due to court delays. We have repeatedly dealt with the problem of adjournments arising out of the court's preoccupation with other cases.¹⁸ The principle must be accepted as absolute that a case must be taken up on the date fixed unless there is a good reason for an adjournment.¹⁹

A committee headed by Justice V.S. Malimath remarked that adjournments are a notorious problem in the functioning of the courts, where trial courts grant adjournments mostly on flimsy grounds²⁰. The report further opines that adjournments have considerably eroded the confidence of the people in the judiciary. Adjournments contribute to delays in the disposal of cases.²¹ Further stating, 'The right to a speedy trial is thwarted by repeated adjournments. Adjournment is a curse of the courts'. It also suggests that adjournment should be granted only when the court finds it necessary or advisable for reasons to be recorded.²² The committee also suggests that Section 309 should be amended to make the costs obligatory to be paid by the party that seeks an adjournment to the opposite party.²³

AUTHOR'S OPINION

For time immemorial, adjournments have always caused concerns for the smooth functioning of the courts and have added additional burden on the courts by a backlog of cases thereby jeopardizing the right to a speedy trial and to expedite cases efficiently. It is analyzed in this article that even though there are procedural safeguards mentioned in the Civil Procedure Code 1908, many advocates and litigants try to seek adjournments regularly and the courts grant them accordingly.

Rules in order 17 of the CPC, it is to be noted that it is entirely at the discretion of the courts to grant these adjournments. From the same rules, the court derives its powers not to grant these

¹⁸ Law Commission, *Reform of Judicial Administration* (Law Com 14, 1958) para 66

¹⁹ *Ibid*

²⁰ Ministry of Home Affairs, *Committee on Reforms of Criminal Justice System* (2003) para 9.14.1

²¹ *Ibid*

²² Ministry of Home Affairs, *Committee on Reforms of Criminal Justice System* (2003) para 9.14.2

²³ Ministry of Home Affairs, *Committee on Reforms of Criminal Justice System* (2003) para 9.14.3

adjournments. The legislative intent was bonafide in amending the said orders in 1999 and 2002 to minimize the number of adjournments that can be given by the quotes and impose costs while seeking excessive adjournments.

It is only in certain exclusive circumstances that are beyond the control of the parties that the courts can grant adjournments beyond the maximum cap of three times and the said reasons should be recorded. It is to be understood that certain compelling circumstances do occur after seeking three adjournments, like serious illness of the parties or the counsel, death of an individual who is an interested party in the present matter, act of God without any human intervention, etc. It is only in these circumstances that the courts can grant adjournments with legitimate intent to meet the ends of Justice. Nevertheless, litigants and the counsels should not use adjournment as a potential legal tool to satiate their interest or benefits associated therein leading to the abuse of the legal process.

Finally, the concerned stakeholders should adhere to the rules as mentioned under the Code of 1908 and not seek and grant adjournments regularly as per the whims and fancies based on illegitimate claims, but rather do so based on need, reasoning, reasonableness and legitimacy for speedy disposal of cases with due respect to the rule of law and not erode the public's trust in the judiciary and its judicial mechanisms.

CONCLUSION

The Apex Court in several pronouncements has deprecated the practice of seeking unwanted Adjournments as a device to pull on the litigations thereby illegally abusing the process of law & and clogging the Courts.²⁴ In the case of *Noor Mohammed v Jethanand*, the Supreme Court was concerned when the lower court granted the adjournment when the Counsel for the appellant was not present. It was astonishing how lawyers routinely sought adjournments and the courts acceded to the requests. The court remarked that access to speedy justice is a human

²⁴ Inder Chand Jain, 'Adjournments- Blatant Abuse of Process of Law & Liable for Clogging of Courts' (*Tax Guru*, 13 January 2021) <<https://taxguru.in/corporate-law/adjournments-blatant-abuse-process-law-liable-clogging-courts.html>> accessed 09 November 2023

right and the practice of seeking and granting adjournments reflects apathy that leads to procrastination litigation and abuse of the procedure.²⁵

It is heartening to see the courts putting a bar on granting multiple adjournments and heavily penalizing the parties who seek adjournments. For instance, in the case of *Union of India v Shri Domnic Issac*, a suit filed by the petitioner for recovery of money was posted for evidence, where the petitioner sought five adjournments to examine the witness. Though the presiding judge granted multiple adjournments, the witness failed to remain present and, as such, the judge closed the petition and directed to pay INR 10000 as costs considering the past conduct of the petitioners in seeking adjournments and lack of diligence on the part of the petitioners.²⁶

The courts and the judges should play an extreme balancing act to grant adjournments only when needed and refrain from granting them that possibly lead to an undue advantage to the parties by seeking frivolous adjournments. The Courts should adopt strict measures in matters of adjournments and impose exemplary costs on the litigants' adopting adjournments as a device for the prolongation of cases²⁷ to reduce the burden on the courts and dispose of cases promptly to instill a sense of confidence in the public in the judiciary.

²⁵ *Noor Mohammed v Jethanand* (2013) 5 SCC 202

²⁶ *Union of India Through Central Public Works Department v Shri Domnic Issac* WP(C) 73/2013

²⁷ *Noor Mohammed v Jethanand* (2013) 5 SCC 202