ADJOURNMENT: A CHALLENGE FOR THE INDIAN JUDICIAL SYSTEM

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ABSTRACT

This paper seeks to highlight the law of adjournment and how it has become one of the significant reasons behind the justice caused by endless delays in deciding a matter. Not only the advocates but also the judicial officers have made a mockery of the rule laid down in Code of Civil Procedure Code, 1908 which categorically states that only in an emergency situation beyond the control of parties, a request for adjournment be allowed. However, this rule is completely ignored leaving the innocent parties at the mercy of flawed legal system. Hence, this paper will not only highlight the issue but would also provide few recommendations that could be implemented to correct such a sorry state of affairs.

Introduction

"Justice delayed is justice denied", the legal maxim could not be more apt when we look at the issue of endemic delay in delivering justice in present judicial system of the country. The endemic delay in court proceedings is widely discussed topic in judicial reforms as it hampers the judiciary to play its role in the nation building. Before talking about reforms, one must examine reasons and inefficiencies behind the issue of endemic delays in the system. The are several inefficacies in the functioning of the courts especially in the lower courts causing a direct threat to the people right of free and speedy trial enshrined under Article 21 of the Constitution. However, this paper will examine one of the significant factors, the law of Adjournments and how it is used as a tool by the litigants to delay the court proceedings. Adjournment can be defined to defer a court proceeding to a further date on the request made by either party of the case. As per the research conducted to study the inefficiencies behind the delay in Delhi High Court, it came out that "adjournments, in particular, occur in alarming proportions in delayed cases. 91% of delayed cases involved at least one adjournment, and 70% involved more than three".[1] However, Civil Procedure Code, 1908 (hereinafter referred as The Act) lays down the rule regarding the adjournment and prescribe circumstances under which a request of adjournment be allowed by the judges, but these rules are ignored by the litigants and judges resulting into the blatant misuse of the provision.[2]

Therefore, in order to understand the law of adjournment and its impact on the judicial system, this paper is subdivided into four section; first, it will explain the law of adjournment highlighting the concerned provisions of The Act and case laws, second, it will highlight how the law of adjournment is misused to delay the court proceedings, third, the paper will talk about the steps taken by various high courts to prevent misuse of law of adjournment and finally, in the fourth part, the paper will law down several reforms that can be brought in to correct the situation arising out due to present "adjournment culture".

1) Law of adjournment

The law of adjournment is mainly governed by Order 17 of the Act wherein three rules are listed to prescribe conditions under which adjournment to the litigants may or may not be granted. As per Rule 1(1) of order, the court has the discretion to grant adjournment to a parties

[1] https://vidhilegalpolicy.in/wp-content/uploads/2020/06/InefficiencyandJudicialDelay_Vidhi-1.pdf (INEFFICIENCY AND JUDICIAL DELAY NEW INSIGHTS FROM THE DELHI HIGH COURT)
[2] The Civil Procedure Code, India Code (1908)

where sufficient cause is shown by them. However, at the same time, the proviso to rule 1(1) restrain the court to grant more than three adjournments to a party during hearing of a suit. The constitutional validity of the said rule was challenged before the Supreme Court of India in *Salem Advocate Bar Association, T.N.* v. *Union of India*[3], which was rejected by the court. However, a Committee headed by a Former Judge of the Supreme Court and Chairman, Law Commission of India (Justice M. Jagannatha Rao) was constituted to formulate the modalities and also to ensure that the said rule become more harmonious to prevent any kind of prejudice to either party.[4] The report of the committee was again considered by the supreme court where it was stated that the proviso of Rule1(1) shall be read with Rule 1(2) wherein clause (a) to (e) are incorporated to lay down the condition that are to be kept in mind while granting the adjournment. Clause (b) of Rule1(2) stipulates that no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party.[5] Hence, while reading both these provisions the court held that Order 17 Rule 1 does not forbid grant of adjournment where circumstances are beyond the control of party which means that the limit of three adjournment in proviso of Rule 1(1) would become redundant in the cases where party can show that the reason behind the request of adjournment is the situation which is beyond the control of party. Also, the court stated that adjournment, be it first, second or third is not the right of party as judges have to grant the adjournment only to party showing special and extraordinary circumstances.[6] However, at the same time, the court also said that in some extraordinary cases, it may become necessary to grant adjournment despite the fact that more than three adjournment are already granted (take example of the Bhopal gas tragedy, Gujarat earthquake and riots, and devastation on account of the tsunami). In addition to the afore-mentioned circumstances, an adjournment can also be granted in the cases where three adjournment are already granted, by resorting to Rule 1(2) of Order 17 as it allows the court to grant the adjournment by imposing cost or higher cost on the party but after having regard to the injustice that could be caused on the refusal thereof.[7]

The aforementioned interpretation of Rule 1 of Order 17 by the Supreme Court seems to solve all the ambiguity in the cases where adjournment is sought by the parties but, in the next section

[3] *Salem Advocate Bar Association, T.N. v. Union of India*, (2003) 1 S.C.C. 49 (India)
[4] *Duty, Responsibility & Accountability of Courts/Lawyers*, (2011) 4 LW (JS) 37
[5] The Civil Procedure Code, India Code (1908)
[6] *Salem Advocate Bar Association, T.N. v. Union of India*, (2003) 1 S.C.C. 49 (India)
[7] *Salem Advocate Bar Association, T.N. v. Union of India*, (2005) 6 S.C.C. 344 (India)

of this paper we will see how the provision of granting adjournment is used as a tool by the litigants to run away from their duty to appear on time in the court for their matter.

2) Misuse of provision

The advocates and to some extent, judges as well, have made the mockery of all the instruction given by the Supreme Court in *Salem Advocate Bar Association, T.N* case as the law of adjournment is not followed in accordance with the intent of legislature to lower down the rates of pending cases in the court. Instead, the law of adjournment has become a significant reason behind increasing number of pending cases in the Indian judicial system. A per the study conducted in Delhi High Court to study the reason behind delay in cases, adjournment came out to be a major factor. In 91% of delayed cases, counsel sought time at least once. In 70% of delayed cases, counsel sought time more than thrice; and in 30% of delayed cases, counsel sought time more than six times.[8]

In a paper titled "Continuances in the Cook County Criminal Courts' was published in the University of Chicago Law Review", adjournment is classified in three different categories and we will now try to understand it from the lens of India judicial system:

I. Fair hearing adjournment- These are the adjournments which are granted due to fair reason. An example of this would be adjournment arising after considering a special situation due to which hearing could not be proceeded.
II. Abuse adjournment- These are the adjournments which are sought after giving unnecessary or false excuses in the court misusing the law of adjournment for their own benefit.
III. System overload- Not only the advocated but judges as well, more often than not, are left with no other option than granting adjournment because of work overload. It is known to everyone that courts in India have to deal with number of cases every day and due lack of enough judicial officers in the courts, judges have to face extra amount of work every day leaving them with no other option to adjourn such cases which could not be heard due to lack of time and workforce.

Therefore, second and third type of adjournment are direct threat to system and need to be addressed as soon as possible. An associate, Anshul in Rohtak District courts told me that

[8] https://vidhilegalpolicy.in/wp-content/uploads/2020/06/InefficiencyandJudicialDelay_Vidhi-1.pdf (INEFFICIENCY AND JUDICIAL DELAY NEW INSIGHTS FROM THE DELHI HIGH COURT)

asking an adjournment on false reason is very common in lower courts and judicial officers, as well, do not hesitate much in granting adjournment. He also told that many a times reason of being out of station and being ill is stated before the court to ask for adjournment. If all this is true then definitely, we need to look into this situation. The next section will highlight steps taken by various high courts to deal with the situation of granting unnecessary adjournments.

3) Correcting the situation

The issue of backlog of cases has been witnessed as a consequence of seeking unnecessary adjournments by the parties and their counsels. The problem of pendency of suits and backlog of cases isn't new but has always persisted in the judicial system. Various committees in their reports have addressed and acknowledged the same. Committees like Rankin Committee of 1924, High Courts Arrears Committees of 1949 and 1972, Law Commission Reports of 1958, 1978 and 1979, Estimates and Satish Chandra Committee of 1986 are to name a few who have given their recommendation on the issue of pendency of suits and delay in disposing cases and have retreated the fact that the problems need to be effectively dealt with.

The Law Commission headed by Justice H.R. Khanna, submitted the 77th Law Commission Report, 1978 relating to delay and arrears in Trial Courts and 79th Law Commission Report, 1979 relating to delay and arrears in High Courts and other appellate courts to the Law, Justice and Company Affairs Ministry. In the 79th Law commission report recommended that, "Adjournment of cases in the daily list should be an exception, not a rule".[9] Further to which in the year 1990, the Arrears Committee came out with extremely detailed recommendations emphasizing on the fact that "granting of unnecessary and frequent adjournment only prolongs the length of litigation." 230th Report on Reforms in the judiciary, 2009 gave various recommendations and adopted a few from Justice Ganguly's article, 'Judicial Reforms' which was published in the year 2008 in Halsbury's Law Monthly. The report highlights that in order to tackle various issues there needs to be an effective and complete utilization of court's working hours. "The judges must be punctual, and lawyers must not be asking for adjournments, unless it is absolutely necessary. Grant of adjournment must be guided strictly by the provisions of Order 17 of the Civil Procedure Code."[10]

[9] See LAW COMMISSION OF INDIA, SEVENTY NINTH REPORT ON Delay And Arrears In High Courts And Other Appellate Courts (Law Commission of India, New Delhi, 1979) (79th Report of Law Commission)
[10] https://journals.sagepub.com/doi/full/10.1177/2322005817733566 (Indian Judiciary: An Analysis of the Cyclic Syndrome of Delay, Arrears and Pendency**)**

It was estimated in the year 2016 that delay in the judicial system costs approximately 1.5 per cent of India's GDP. In the year 1979, the Supreme Court in the case of *Hussainara Khatoon v Home Secretary State of Bihar*[11] observed that Article 21 of the Indian Constitution which guarantees right to life and liberty also includes the right to speedy trial.

Delhi High Court in order to eliminate the issue of delay in cases and to maximize speedy trial, launched a pilot project named "Zero Pendency Courts" in the year 2017 which would analyze the working of the trial courts of Delhi and compile data regarding various reasons leading to this issue. One such reason that the project analyses is adjournment. With the help of a court log application which was developed by DAKSH, there were various reasons recorded behind the issue of adjournment such as absence of witnesses, delay in service of summons, adjournment by counsel or the parties, the parties being out of town, lawyers taking up more cases. The project effectively listed various practices which can be adopted in order to eliminate the issue of adjournment. Some of them being, using of various electronic application to issue summons, to list the cases effectively so that the cases are not adjourned because of lack of time, discouraging adjournments and imposing cost for frivolous and vexatious applications, by giving bulk dates to each party to effectively manage the case and to ensure that there are lesser adjournments.[12]

4) Reforms

Since the country is in dire need of reform to curb the situation at hand, this paper proposes following reforms that could be implemented by the legislation and judiciary.

I. **Record of adjournments**- Courts shall make a record of each advocate as to how many times they have asked for adjournments (their approval and rejection rate as well). This would ease the job of judges while granting adjournment to party.
II. **Strict provision in the Advocates Act, 1961**- Legislation can look forward to enacting a provision prescribing the penalty against the blatant misuse of adjournment. The fear of penalty would prevent the advocates to seek unnecessary adjournments from the court.
III. **Proper training of law students**- This reform would help to curb the situation of "adjournment culture" in coming future as its emphasis to train the law students

[11] *Hussainara Khatoon v Home Secretary State of Bihar,* AIR 1979 SC 1369 (India)
[12] http://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice_3MRRIN3QTHN.PDF (ZERO PENDENCY COURTS PROJECT)

regarding the misuse of adjournments and educate them as to how they may avoid practicing any such tactics in the court.

IV. **Strict guidelines by the Supreme Court**- The apex court shall pass the guidelines that are to be followed by judges while granting adjournment to a part.

V. **Full hour CCTV surveillance of court room**- Every court especially the lower courts must have CCTV camera installed in their court rooms to monitor the worktime of each judge. It is common practice of judges to take break from the work by moving to their chambers. Due to which several listed cases remain unheard. An advocate of Rohtak District Courts told that "judge sahb is not sitting" is the common phrase in the court complex. This shall also be corrected to deal with the problem.

VI. **Recruiting judicial officers**- The lack of judicial officers is one of the key issue behind the high rate of pending cases in our country. More and more judicial officers shall be recruited in lower courts.

Conclusion

The provision to grant adjournment was added in the Act with the intention to allow the litigants to ask for deferral of court hearing in an exceptional case, but this rule has time and again being misused by the advocates to ask for unnecessary adjournment. This unnecessary adjournment has become a major factor behind the increase in number of pending cases in Indian courts preventing the courts to fulfill their duty in the nation building. Not only advocates, but judicial officers have also been ignorant of this problem and are at fault by allowing such request made by advocates.

This situation needs to be dealt in light of people's right of free and speedy trial. Judiciary for the same reason has lost their credibility as people are losing hope in it. This paper seeks to provide reforms that may be implemented to correct the situation of unnecessary adjournments.