



Delay In Civil Litigation: Procedural Hurdles Within Cpc,1908

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ABSTRACT

The issue of delays in civil litigation in India is not novel. It is always a problem, and the main reason for it is the problems with the process in the Code of Civil Procedure, 1908 (CPC). The rules for adjournments, how to start a summary proceeding, issuing summons, and the protracted processes for appeals and second appeals all cause case backlogs and make things less efficient. This study discusses how these practices lead to longer delays in justice and possible legal changes that could make civil lawsuits in India go more smoothly.

KEYWORDS:

Civil litigation, delays, CPC 1908, procedure issues, adjournments, summons, backlog, reforms.

INTRODUCTION

The Indian judicial system is dedicated to the principles of equity and justice; however, the issue of protracted civil litigation persists as a significant challenge in the administration of civil justice. A primary contributor to this delay is the procedural framework instituted by the Code of Civil Procedure, 1908 (CPC). The CPC was created to give clear principles for how civil trials should be run, but over time it has become a source of inflexible procedures that make things less efficient. Provisions that allow more than one adjournment, the complicated way of serving a summons, and several levels of appeal have all made civil lawsuits take longer, which means that people don't get justice as quickly as they should. These delays make it harder for the law to work and make people less trusting of the legal system. So, it is very important to

know what the procedural bottlenecks are under the CPC and how to get around them in order to improve civil justice in India.

SALEM ADVOCATE BAR ASSOCIATION V. UNION OF INDIA (2005)

One notable instance of procedural delay is found in the seminal case *Salem Advocate Bar Association v. Union of India* (2005), in which the Supreme Court provided extensive commentary on the application of procedural provisions outlined in the CPC, especially concerning Order XVII and the delays resulting from adjournments. The Court clearly understood that it needed to stick to schedules and stop lawyers from causing delays. Even so, people on the ground don't seem to be following these observations very well. Another example is the process of serving summons, which has been delayed for a long time. This is partly because the techniques of service haven't changed since the last century, and low accountability has caused the procedure to be blocked for months or even years in certain circumstances. In many rural areas, the determination that service was not properly served led to the hearing being pushed back to a later date. If this was not done quickly, the hearing schedule was always postponed, which made the whole process take much longer. These examples show how procedural technicalities, which were meant to speed up justice, have actually slowed it down and made it harder for people to deal with delays in the process. Some of the changes mentioned above, like electronic summonses, case management meetings, and the length of adjournments, have been put into place to different extents. But these changes haven't had much of an effect because there haven't been any changes to the systems or training for workers to follow these rules.

PROVISIONS IN LAW

The Code of Civil Procedure, 1908 (CPC) has several rules that can directly cause delays in civil lawsuits because of problems with the rules and gaps in the law. Order V deals with sending and serving summons. This rule will cause delays because there will always be problems with tracking and method. Order XVII talks about adjournments. This is a rule that rate litigants and lawyers often utilize to excessively delay things, even though the Supreme Court only allows three adjournments in a single case. Section 96 gives a party the right to make a standard first appeal, and Section 100 gives a party the right to make a second appeal to the High Court. Both sections give the right to appeal and remedy, but they can also be used to delay proceedings. Order XX, which deals with announcing verdicts, is another rule that slows things down. When a decision is put off indefinitely, it can cause delays. Lastly, section 89 supports alternative dispute resolution (ADR), although it doesn't aggressively advocate its broad usage to lighten the load on the courts. These procedural rules may be meant to make sure that due process and fairness are followed, but if they aren't checked on regularly or changed, they become procedural roadblocks that slow down the civil court system.

THE EFFECT OF ADJOURNMENTS ON CIVIL CASE TIMELINES

One of the biggest reasons why civil cases in India take so long is because they keep getting adjourned. Order XVII of the CPC lets adjournments happen, but they are supposed to make sure that everyone is treated fairly by setting a time restriction on their proceedings. In actuality, many litigants and lawyers have used adjournments to slow down processes. The Supreme Court has tried to lessen the consequences of adjournments in litigations, but it is still okay for each party to have three adjournments. Some courts enforce this regulation more strictly than others. A lot of the time, adjournments are asked for without good reason, as when a party doesn't show up to court or when a lawyer doesn't prepare. This ongoing practice of delay disrupts a trial that was moving at a steady pace and makes the court's case backlog worse, which frustrates plaintiffs who may have wanted the process to go faster. Also, the long, wrong adjournments of court dates only make the bigger problem of squandering judicial time worse, which makes people lose faith in the public justice system and courts as organizations. So, it would make sense and be possible to deal with the practice of adjournments. This would mean that the Courts would have to rethink how they handle cases that seek to be adjourned.

DELAY IN THE SERVICE OF SUMMONS AND RELATED CONSEQUENCES

As stated in Order V of the CPC, service of summons is the most important initial step in starting any civil case. At this point, there is a worrying delay, which happens all the time and makes the legal process even slower. More often than not, service is slow, especially when court officials are supposed to give personal service but don't do it right or on time. There are more delays in logistics in rural or remote places. Defendants who don't want to be served also employ a lot of procedural loopholes to get out of it, which means that service has to be attempted more than once, which leads to more delays. Service can take months longer because of mistakes like wrong addresses or poorly prepared paperwork. These delays in serving summons make it harder for a person to get a fair trial because the matter is already on hold and there hasn't been a trial yet. It has been thought of and registered that electronic summons and registered mail with acknowledgment may be used in big practice areas, although they aren't always used the same way. Making service operations better is very critical for speeding up civil lawsuits.

USEFULNESS OF SECTION 89 CPC AND ADR MECHANISMS

When appropriate, Section 89 of the CPC lets courts send conflicts to Alternative Dispute Resolution (ADR) methods such as arbitration, mediation, conciliation, or judicial settlement. The idea was to provide people a quick and cheap way to settle their differences and take some of the pressure off the court system. But even if Section 89 CPC is still in place, it doesn't do much good since not enough people know about it, there isn't enough infrastructure, and the main judges don't always make clear or fair decisions. Many judges still don't know when or why to use Section 89 CPC to refer a matter when the parties have asked for a reference plan. This is because they might be worried about delaying formal adjudication, if any prospective settlement will be enforceable, or whether they will have to pay a guilty fee if nothing comes of it. Also, the

parties often stop what they want because they don't comprehend it, don't trust the procedure, the judge, or the other party. The Supreme Court said in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.* (2010) that judges should think about ADR in the right instances, but it doesn't look like they will do that anytime soon. Used the right way,

Section 89 CPC ¹can be used to divert appropriate cases away from formal court proceedings and significantly lessen the waste of time on procedural steps in the court arena. The need for additional infrastructure to the ADR systems and for judges to have proper demonstrated ways to reference or send parties to ADR systems is paramount if this tool is to be a success.

SUGGESTED AMENDMENTS TO THE CPC,1908

1. Hard Limit on Adjournments (Order XVII)²

Suggested Change: Include a mandate that only 3 adjournments are allowed per party per case with only extraordinary circumstances and written grounds to allow for additional adjournments.

Rationale: To deter frivolous adjournments and allow movement with timely hearings.

2. E-Service of Summons (Order V)

Suggested Change: Allow electronic service of summons (e.g. email, SMS, WhatsApp, or court portal service) to be a primary option for service, while making the physical parcel service a secondary option.

Rationale: To move through the process of serving defendants quicker and reduce any gaming of service time to delay proceedings.

3. Timely Disposal of Cases

Suggested Change: Announce mandatory deadlines for each aspect of the litigation process, i.e., pleadings, evidence, arguments, judgement.

Rationale: To create an expectation to complete the case faster, and to help hold the court accountable to procedural deadlines.

4. Case Management Hearings (Order X Rule 2)³

Suggested Change: To make case management hearings mandatory in all civil cases while also more detail on required timelines for each step of the trial.

Rationale: To allow for judicial oversight and to diminish the prospective guise of procedural delay for the defendant.

¹ Section 89, The Code of Civil Procedure, 1908 (India).

² Order XVII, The Code of Civil Procedure, 1908 (India).

³ Order V, The Code of Civil Procedure, 1908 (India).

CONCLUSION

Delays in civil litigation continue to be one of the most significant difficulties confronting the Indian legal system today, arising from the procedural impediments established by the Code of Civil Procedure, 1908. The CPC's rules were meant to make things fair and follow the law, but rules for adjournments, delivery of summons, appellate review, and other things have changed over time to become ways to cause delays because of misuse, lack of enforcement, and administrative problems. The continuing gap between law and reality persists even with limited judicial pronouncements and reforms. Ultimately, any reforms to the CPC must be accompanied by: stricter timelines for procedural steps; greater use of digital processes; broader use of the ADR mechanisms.

REFERENCES

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