



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Adjournment Culture: An Executioner of Justice

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*Received* 25 November 2022; *Accepted* 05 December 2022; *Published* 14 December 2022

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*Nobody is unaware of the landscape of outstanding cases in India. Approximately 4.7 Crore cases are waiting in India's courts to be disposed of, including over 70,000 cases in the Supreme Court and needless adjournments taken by advocates are a key factor to these delays. The bar mustn't emphasize allowing adjournments or appeals based on spurious reasons. Sometimes apart from adjournment, advocates take Passover and Passover can also cause delays, since moving a case from the morning schedule to the latter of the day may result in the matter not reaching the court at all, resulting in unreasonable delays in obtaining justice for the suffering petitioner. This paper will look at how the adjournment culture is undermining the concept of speedy trial or speedy justice, which is guaranteed by Article 21 of the Constitution. Civil cases are being adjourned for decades, and someone accused in a criminal case is spending more jail time waiting for the trial to conclude than the jail term granted when found guilty.*

**Keywords:** *adjournment, article 21, delay, section 309, cpc, crpc.*

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### INTRODUCTION

The primary goal of a judiciary is to administer justice promptly and in a just and equitable manner. The rationality of justice is dictated by law and process. Substantive laws often specify individuals' responsibilities and rights, whereas procedural laws aid in the effectiveness of substantive laws. The term "adjournment" refers to either ending or postponing court

proceedings to a later date<sup>1</sup>. Adjournment is not defined in Civil Procedure Code or Criminal Procedure Code but Order 17 of the Civil Procedure Code, 1908 and Section 309 of the Criminal Procedure Code, 1973 discuss adjournment in civil and criminal trials. The general rule of adjournment is that after a court starts hearing a suit, it should be continued till the final disposal of the suit, when hearing of evidence has once started, or the examination of witnesses has once begun, such hearing shall be continued day to day and the adjournment should be granted only for unavoidable reasons.<sup>2</sup> Many guidelines have been issued by the Supreme Court and other high courts regarding various grounds on which the court may grant an adjournment and circumstances under which the court may refuse an adjournment. Furthermore, judges have frequently expressed concern about the growing "adjournment culture," which causes unnecessary delays in the proceedings, wastes plaintiffs' time, efforts, money, and undermines the goal of expedited justice delivery and erode the public's faith in the legal system as a whole. The disposition of cases on time is extremely crucial for providing justice to the aggrieved and any unnecessary delay will be an obliteration of the rule of law.

### **CONDITIONS UNDER WHICH THE COURT MAY GRANT AN ADJOURNMENT**

Although refusing or granting adjournment is completely discretionary to the court and it's not subject to any pre-defined written set of rules, the court may grant an adjournment in some special cases for just and judicious causes only after thoroughly examining the facts and circumstances of a case<sup>3</sup>. Below are some of the circumstances under which a court may permit adjournment to fulfill the motive of justice.

- In a criminal trial, where police need some extra time to investigate throughout, interrogate the accused or people related to the matter, to provide some extra information about the case.
- The illness of either of the parties, their witness, or their advocate can be considered ground.

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<sup>1</sup> 'Adjourn' (Cornell Law School) <<https://www.law.cornell.edu/wex/adjourn>> accessed 15 November 2022

<sup>2</sup> Takwani CK (ed), *Civil Procedure Limitation and Commercial Courts* (9th edn, Eastern Book Company 2021) 425; Kelkar RV, *Criminal Procedure* (7th edn, Eastern Book Company 2021) 417

<sup>3</sup> *CIT v Express Newspaper Ltd.* (1994) 2 SCC 374; *Thakur Sukhpal Singh v Thakur Kalyan Singh* (1963) SC 146

- In case, the evidence available is insufficient to reach a conclusion or decide the case.
- Non-service of summons can make a ground for adjournment.
- If either of the parties is not prepared and needs additional time for preparation, the court may adjourn the matter to provide reasonable time for the preparation of the case.
- A pleader's last-minute withdrawal of appearance can serve as ground.

All afore-mentioned reasons can serve grounds for adjournment, and the court may postpone the hearing to a later date, but this list is by no means exhaustive nor obligatory, the court has all the power vested in it to grant an adjournment for reasonable grounds, to deliver a judicious and fair decision in a case whenever required, but a judge is obligated to record special reasons for him granting an adjournment<sup>4</sup> and no adjournment shall be granted more than 3 times to a party during hearing of a suit<sup>5</sup>.

### **Constitutional Validity of 1999 Amendment to CPC**

By the 1999 Amendment Act, Proviso to Sub-rule of Order 17 was added which directs that a maximum of 3 adjournments can be granted by a court to a party during the hearing of a suit<sup>6</sup>. The Supreme Court in *Salem Advocate Bar Association (2) v Union of India*<sup>7</sup> held that the Amendment Act, 1999 is constitutional and intra vires. The Court also, held that in extreme and exceptional circumstances, rules do not apply strictly<sup>8</sup>.

### **COSTS OF ADJOURNMENT ARE TO BE PAID BY THE PARTY SEEKING IT**

According to CPC Order 17 R 1(2), the court must order the party requesting the adjournment to pay the other party's costs or higher costs before granting the adjournment. However, this sum must be reasonable and proportionate to the expenses incurred by the opposing party. There should be no cost imposed by the way of penalty or punishment.<sup>9</sup> A similar provision is given in CrPC in section 309 Explanation 1, according to this whenever the court grants an

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<sup>4</sup> Code of Civil Procedure, 1908, or 17 r 1(1), (2) (a)

<sup>5</sup> Code of Civil Procedure, 1908, or 17

<sup>6</sup> *Ibid*

<sup>7</sup> *Salem Advocate Bar Association (2) v Union of India* (2005) 6 SCC 344

<sup>8</sup> *Ibid*

<sup>9</sup> *Junaram Bora v Saruchoali Kuchuni* (1976) Gau 3; *Gauhati Bank Ltd. v Baliram Dutta* (1950) Ass 169; *Jadav bai v Shrikisan* (1946) Bom 113

adjournment or postponement in a case with “such terms as it thinks fit”, the court has the power to direct payment of costs by a party whose conduct prompted the adjournment.<sup>10</sup>

### **HOW ADJOURNMENTS ARE KILLING THE FAIR AND TIMELY DELIVERY OF JUSTICE**

Adjournment is a court’s discretionary power and cannot be claimed as a right<sup>11</sup>, as it will impose a substantial cost burden on the system. We do not get to see the much-needed strictness that needs to be present in real life. In a real-world scenario, given how easy it is to get an adjournment, it seems more like a right than an exception to the main rule. Adjournment is a well-known issue affecting the court’s workflow, and this misdemeanour erodes public confidence in the legal system. The easy grant of adjournment is a big reason for the late disposition of cases, killing the people’s right to speedy justice delivery. Due to easy adjournment grants, the general public faces many difficulties and hardships. Their precious time, hard-earned money, and efforts, which they could put somewhere else for their and our nation's benefit, are wasted. At times, the accused have to rot in jail unnecessarily because of this, and the witnesses who are present before the court just to help the court administer justice effectively feel resentful, and their valuable time and energy are wasted.

This is one of the reasons people, generally, refrain from becoming witnesses in any case. Adjournment is frequently used to intimidate the opposing party and force them to reach an agreement. And sometimes this tactic is used to coerce the witnesses into either refraining from telling the truth or not appearing as witnesses at all. To gain an unfair advantage over the opposing party, lawyers purposely prolong witness examinations for several years with the use of adjournment. Strike by the lawyers is not a rare phenomenon, it is very common to see lawyers on strike. The Supreme Court has held that a counsel has no right to go on strike on a call made by the Bar Association. The Counsel must attend court or make suitable adjustments. Only in exceptional cases where dignity, integrity, and independence of the bar and/or bench

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<sup>10</sup> Kelkar RV, *Criminal Procedure* (7th edn, Eastern Book Company 2021) 417

<sup>11</sup> *Chandra Prakash Ojha v District Judge Bareilly* (2004) All 204

are at stake, the court may disregard such protest and counsel's one-day absence from the hearing<sup>12</sup>.

According to CPC Order 17 Rule 2 Proviso (c), the engagement of a lawyer in another court is no ground for adjournment, but lawyers are seeking adjournments on flippant grounds like going on vacations and family functions, and a lawyer is not the one on the losing end; he takes an adjournment and gets paid; it's the litigant who has to face problems and is charged heavily. In the case *Ram Siromani Tripathi v State of Uttar Pradesh*, an adjournment was sought on the ground that one of the leaders was out of the station<sup>13</sup>. In light of these reasons for adjournments, adjournment on the ground of engagement in another court appears to be a very reasonable ground for adjournment. And the judges are granting advocates adjournments for such unnecessary and frivolous reasons, which they aren't supposed to. Judges are finding it much more convenient to adjourn cases out of laziness and expect lawyers to seek adjournments<sup>14</sup>.

These sleazy tactics exploit the judicial system, delay the administration of justice, and abrogate the litigant's right to a fast trial or timely justice.

### **APEX COURT AND HIGH COURTS ON ADJOURNMENT**

The Supreme Court and the respective High Courts have raised concerns about adjournments and how they are sought on obnoxious grounds and granted so easily by the courts. Additionally, many guidelines have been issued by the apex court and the high courts, showing that this issue is not hidden from the apex court and the high courts. Former CJI J.C. Shah commented on the issue of adjournment, saying that the pile of pending cases has grown so huge that there is a risk of imploding judicial administration in the future if the number of cases

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<sup>12</sup> *Mahabir Prasad v Jacks Aviation (P) Ltd.* (1999) 1 SCC 37; *Sita Bai v Vidhyawati* (1972) MP 198; *Rafiq v Munshilal* (1981) 1 SCC 788; *Goswami Krishna v Dhan Prakash* (1981) 4 SCC 574; *Lachi Tewari v Director of Land Records* (1984) SC 41

<sup>13</sup> Sanjay Pinto, "Time' for Adjournments Running Out?' (*Deccan Chronicle*, 16February 2019) <<https://www.deccanchronicle.com/nation/in-other-news/160219/time-for-adjournments-running-out.html>> accessed 15 November 2022

<sup>14</sup> 'Judges Find It Convenient to Adjourn Cases, Says Madras High Court' (*The Hindu*, 15 December 2021) <<https://www.thehindu.com/news/cities/chennai/judges-find-it-convenient-to-adjourn-cases-says-madras-high-court/article37956659.ece>> accessed 15November 2022

before the court continues to rise at the same rate. And if this issue is not addressed, then the litigants will continue to face frustration and may start to lose faith in the courts and tribunals.<sup>15</sup>

In the case of *Radha v State of Uttar Pradesh*, the Supreme Court stated that the virus of adjournment should be controlled and invoked Gita's shloka "Awake! Arise! Oh Partha" to guide the trial courts on keeping a check on the adjournment virus.<sup>16</sup> Hon'ble Justice Dhananjay Y. Chandrachud, Chief Justice of India, remarked in a case in which the advocate sought adjournment that the Supreme Court's image of tareeh-pe-tareekh should change and the highest court of the country should be shown some respect; he also remarked on how judges spend a lot of time reading the case files and lawyers come and ask for an adjournment in the matter.<sup>17</sup>

While hearing the murder case of activist Raj Mohan Chandra, the honourable S.M. Subramaniam, Justice, observed that the judges, out of convenience and laziness, grant adjournments and expect advocates to seek adjournments<sup>18</sup>. The Supreme Court in *Syed Naseem Ahmed v Muhammad Abdul Hakeem* rejected the plea holding that a lawyer's inability to appear in court cannot be a reason for an adjournment. Order XVII Rule 1(2) proviso (d) of the Code of Civil Procedure was taken into consideration.<sup>19</sup>

Justice S.M. Subramaniam in another case, *Samba Vaidyanathan v Raja Rama Varma*, contended that the courts are bound to evaluate the facts and circumstances for granting the adjournment, if the objectives of the party seeking adjournment are suspicious, then adjournment shouldn't be granted. The judge, in furtherance, added that a few legal minds and ill-natured litigants use adjournment as a method to exploit the loopholes present in the judicial

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<sup>15</sup> Saurabh Malik, 'Lawyers Need to Observe No-Adjournment Days' (*The Tribune*, 11 November 2019) <<https://www.tribuneindia.com/news/archive/chandigarh/lawyers-need-to-observe-no-adjournment-days-859133>> accessed 18 November 2022

<sup>16</sup> 'SC Invokes Gita to Convey Message against Adjournment' (*Deccan Herald*, 30 July 2016) <<https://www.deccanherald.com/content/561043/sc-invokes-gita-convey-message.html>> accessed 15 November 2022

<sup>17</sup> Kanu Sarada, 'No More Tareekh-Pe-Tareekh; Need to Curtail Adjournments: Justice Chandrachud' (*India Today*, 09 September 2022) <<https://www.indiatoday.in/law/story/no-more-tareekh-pe-tareekh-need-to-curtail-adjournments-justice-chandrachud-1998429-2022-09-09>> accessed 15 November 2022

<sup>18</sup> Judges Find It Convenient to Adjourn Cases, Says Madras High Court (n 16)

<sup>19</sup> *Syed Naseem Ahmed v Muhammad Abdul Hakeem* (2005) 12 SCC 302

system. Whatsoever, the courts should refrain from encouraging such adjournments sought by the litigants.

In *M/s Shiv Cotex v Tirgun Auto Plast P. Ltd. and Ors.*, Supreme Court expressed its disappointment in the growing adjournment culture and directed the courts below to discourage and be relentless on the litigants who seek adjournments. The court advised the courts below to not be silent spectators and adopt a proactive approach in hearing and trying to understand the litigant's intention in seeking an adjournment. The court should, henceforth, refuse adjournments that are not necessary or sought to cause a delay in the judicial process.<sup>20</sup>

## CONCLUSION

Adjournment has become a big problem in the justice delivery system. The right to a fair trial and speedy justice is invaded by the growing culture of adjournment. It has contributed to the growth of pending cases across the country in every court; from small cause court to the Supreme Court, no court is left unaffected by the disease of adjournment. Everybody, from the common citizen of this country to the highest court in the land to the legislature as a whole, is unaware of this phenomenon, and everybody is aware of the grave implications it can have for the litigant as well as for the nation as a whole. Law Minister Kiren Rijju proposed strictly adhering to the three-adjournment rule in a case, unless some unforeseen circumstance is causing the party to take adjournment, to mitigate the wrath of adjournment dooming the countrymen (litigants) during the conference of Chief Justices and Chief Ministers.<sup>21</sup>

The guilt of this tareekh-pe-tareekh culture is shared by everyone, including the litigants, the advocates, and the courts. The ill-minded litigants are seeking it to gain an unfair advantage over the other party in a suit. Advocates use this tactic to earn extra money from their clients. And the judges, out of laziness, are granting adjournments without testing the intentions of the party seeking adjournments. The solution to the problem of adjournment is already in front of us in the form of the 1999 amendment to the Civil Procedure Code, Section 309 of the Code of Criminal Procedure, and the guidelines issued by the Supreme Court. Just a strong will to apply

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<sup>20</sup> *M/S Shiv Cotex v Tirgun Auto Plast P. Ltd. & Ors* (2011) 9 SCC 678

<sup>21</sup> Kanu Sarda (n 19)

these is much needed, and crucially, they are the need of the hour. The judges at the district level have the highest share of responsibility. They should be cautious when granting adjournment and should only grant it as an exception, not as a right. A big part in resolving this problem can be played by the advocates; they should break the habit of seeking unnecessary adjournments. Then, hopefully, the scenario will change for the better.