

INTERNATIONAL RESEARCH JOURNAL OF MANAGEMENT SOCIOLOGY & HUMANITIES



ISSN 2277 – 9809 (online)

ISSN 2348 - 9359 (Print)

An Internationally Indexed Peer Reviewed & Refereed Journal

www.IRJMSH.com
www.isarasolutions.com

Published by iSaRa Solutions

Civil Procedure as a Tool of Delay: A Critical Analysis of the Code of Civil Procedure, 1908

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Abstract

The administration of civil justice in India continues to face persistent criticism due to prolonged litigation, mounting pendency, and procedural inefficiencies. The Code of Civil Procedure, 1908, enacted to ensure fair and systematic adjudication of civil disputes, has increasingly been scrutinized for its unintended role in facilitating delay rather than ensuring timely justice. This research critically examines whether the procedural framework of the Code structurally incentivizes delay and whether litigants, legal practitioners, and institutions strategically exploit procedural mechanisms to prolong disputes. The study specifically analyzes the misuse of procedural devices such as adjournments, interim injunctions, stay orders, amendments of pleadings, and multilayered appellate remedies, which often transform procedural safeguards into instruments of obstruction.¹

Adopting a doctrinal and empirical methodology, the paper combines statutory interpretation, judicial precedent, and policy analysis with empirical observations derived from court pendency statistics, disposal rates, and procedural trends reflected in judicial data. The study examines the extent to which procedural flexibility under the Code contributes to backlog and judicial inefficiency, while also evaluating whether delay stems merely from implementation failures or from structural weaknesses embedded within the procedural framework itself. Important judicial interventions aimed at curbing dilatory tactics are critically assessed to determine their effectiveness in reforming litigation culture.²

Further, the paper undertakes a comparative analysis of stricter case management systems operating in common law jurisdictions, particularly in the United Kingdom, Singapore, and the United States, where judicially controlled timelines, sanctions against procedural abuse, and active case management have significantly reduced delays. The paper argues that while the Code was designed to advance procedural fairness, its current operational structure often rewards strategic delay and procedural abuse. It concludes that India must move toward a stricter judicial case management model supported by technological integration, procedural discipline, and stronger sanctions to restore public confidence in civil justice and ensure that procedural law serves justice rather than obstructing it.

¹ The Code of Civil Procedure, 1908, Preamble.

² Mulla, The Code of Civil Procedure, 19th edn, LexisNexis, Introduction.

Keywords: Civil Procedure, Code of Civil Procedure 1908, Judicial Delay, Adjournments, Interim Stay, Case Management, Civil Justice System, Procedural Abuse, Court Pendency, Judicial Reform.

Introduction

Nature of Civil Justice in India

The civil justice system constitutes one of the most fundamental pillars of democratic governance because it provides individuals, institutions, and organizations with a formal mechanism for the enforcement of rights, resolution of disputes, and protection of legal interests. In India, civil justice encompasses a wide range of matters, including property disputes, contractual disagreements, family conflicts, commercial claims, tortious liabilities, inheritance disputes, tenancy matters, and issues concerning specific performance and compensation. The procedural framework governing the adjudication of such disputes is primarily regulated by the Code of Civil Procedure, 1908 (hereinafter referred to as CPC), which establishes the legal machinery for the institution, hearing, adjudication, execution, and appeal of civil suits.³

The significance of civil justice extends beyond the mere resolution of disputes. It plays a vital role in ensuring social order, maintaining economic confidence, and preserving the rule of law. In a constitutional democracy, access to civil justice serves as an essential component of legal equality because it enables citizens to enforce contractual obligations, secure proprietary interests, and seek remedies against legal wrongs. The procedural law governing civil disputes is expected to strike a balance between procedural fairness and adjudicatory efficiency. While justice demands that litigants receive adequate opportunities to present evidence and defend claims, procedural mechanisms should simultaneously ensure timely resolution and prevent abuse of the judicial process.⁴

However, the functioning of civil justice in India reflects a significant paradox. Although the CPC was enacted with the objective of facilitating fair adjudication, procedural complexity and excessive formalism have often hindered expeditious justice delivery. The famous legal maxim “justice delayed is justice denied” has acquired profound relevance in the Indian civil justice context, where litigants frequently experience prolonged uncertainty due to delays extending across several years or even decades. Consequently, civil litigation in India has increasingly become associated with procedural stagnation, mounting costs, and declining public confidence in judicial institutions.⁵

The effectiveness of civil justice is measured not merely by the correctness of judgments but by the speed and accessibility with which justice is delivered. Delayed adjudication often results in economic hardship, psychological distress, and practical denial of substantive rights. In many cases, litigants abandon legitimate claims because of financial exhaustion or procedural frustration.

³ The Code of Civil Procedure, 1908, Sections 9, 26 and Orders V, VI, VII, VIII, XX and XLI.

⁴ Constitution of India, Article 39A.

⁵ *Kailash v Nanhku* (2005) 4 SCC 480

Thus, civil justice cannot be evaluated solely from a doctrinal standpoint; rather, it must be assessed in terms of procedural functionality and institutional efficiency.⁶

Delay as a Systemic Crisis

Judicial delay has emerged as one of the most persistent and structural crises confronting the Indian legal system. Civil litigation, in particular, suffers from extraordinary procedural delays that undermine the legitimacy and effectiveness of the justice delivery mechanism. Unlike isolated instances of inefficiency, delay in civil courts has become systemic, institutionalized, and deeply embedded within procedural practice.

The problem of delay manifests itself in several forms, including repeated adjournments, prolonged interim injunctions, procedural technicalities, delayed recording of evidence, excessive case burden, insufficient judicial infrastructure, and prolonged appellate proceedings. Civil disputes frequently remain unresolved for extensive periods, resulting in a phenomenon where litigation itself becomes punitive. Rather than functioning merely as a means of dispute resolution, litigation increasingly becomes a strategic weapon used to economically and psychologically exhaust opposing parties.⁷

One of the most problematic dimensions of judicial delay lies in the misuse of procedural safeguards. Provisions originally designed to protect fairness often become instruments for obstruction. Adjournments intended to ensure reasonable opportunity are repeatedly sought to postpone proceedings. Interim injunctions, meant as temporary relief to preserve legal interests, frequently continue for years without final adjudication. Appeals and revisions, intended as safeguards against judicial error, often become mechanisms for prolonging litigation indefinitely. Consequently, procedural law may unintentionally incentivize delay by rewarding litigants who possess greater financial and procedural resources.⁸

The consequences of systemic delay are multidimensional. From an economic perspective, delayed civil justice discourages investment and commercial confidence because contractual disputes remain unresolved for prolonged periods. From a social perspective, unresolved family and property disputes contribute to interpersonal conflict and social instability. Legally, delay weakens evidentiary reliability as witnesses become unavailable, documents deteriorate, and memories fade over time. More importantly, procedural delay undermines faith in constitutional governance because citizens increasingly perceive the justice system as inaccessible and ineffective.⁹

Judicial delay therefore cannot be treated merely as an administrative inconvenience. It represents a structural challenge affecting access to justice, rule of law, and legal legitimacy. The crisis necessitates a deeper examination of whether procedural inefficiencies arise solely from inadequate implementation or whether the CPC itself contains structural features that inadvertently perpetuate delay.

⁶ Law Commission of India, 77th Report, *Delay and Arrears in Trial Courts*, 1978.

⁷ Mulla, *The Code of Civil Procedure*, 19th edn, LexisNexis, Introduction.

⁸ Law Commission of India, 77th Report, *Delay and Arrears in Trial Courts*, 1978.

⁹ Marc Galanter, *Law and Society in Modern India*, Oxford University Press.

Historical Evolution of Procedural Law

The development of procedural law in India has deep historical roots linked to colonial legal administration. Before codification, dispute resolution in India was largely governed by diverse customary practices, religious principles, and regional legal traditions. During colonial administration, the need for procedural uniformity prompted the British government to introduce codified procedural frameworks to regulate civil adjudication.¹⁰

The earliest attempt at codification emerged through the Civil Procedure Code of 1859, which was introduced to standardize judicial procedures in British India. However, the code suffered from several deficiencies and lacked comprehensive applicability. Subsequent reforms resulted in the enactment of the Codes of 1877 and 1882, both of which sought to address procedural complexities and administrative shortcomings.

The present CPC was enacted in 1908 with the objective of consolidating and amending laws relating to civil procedure. The Code sought to establish uniform procedural standards while ensuring fairness, consistency, and judicial predictability. Its framework included provisions regarding jurisdiction, pleadings, institution of suits, summoning procedures, discovery, evidence, interim relief, execution of decrees, and appellate remedies.

While the CPC represented an important achievement in procedural codification, its colonial foundations significantly shaped its institutional character. The procedural architecture was designed for an era marked by limited litigation and bureaucratic judicial control. Over time, socioeconomic changes, expanding populations, increasing commercial activities, and constitutional rights litigation drastically transformed the nature and volume of civil disputes. Yet, the procedural framework remained substantially rooted in earlier assumptions regarding litigation patterns.

Recognizing procedural inefficiencies, several amendments were introduced, particularly in 1976, 1999, and 2002, with the objective of reducing delays and simplifying litigation. Reforms sought to restrict adjournments, regulate amendments of pleadings, expedite written statements, and strengthen judicial discretion in case management. The enactment of the Commercial Courts framework further introduced stricter procedural timelines for commercial disputes. Despite these reforms, procedural delays continue to dominate civil litigation, raising important questions regarding the adequacy of legislative intervention.¹¹

The historical trajectory of procedural law reveals a central contradiction: despite repeated reform efforts, the civil justice system remains burdened by delays. This historical persistence suggests that procedural inefficiency may not merely reflect implementation failures but may also arise from deeper structural characteristics embedded within the procedural design of the CPC itself.

Research Problem and Significance

The central problem addressed in this study concerns the relationship between civil procedure and judicial delay in India. Although delay is frequently attributed to judicial vacancies, inadequate

¹⁰ Upendra Baxi, *The Crisis of the Indian Legal System*, Vikas Publishing House.

¹¹ The Code of Civil Procedure, 1908, Preamble.

infrastructure, and increasing litigation, comparatively limited scholarly attention has been devoted to examining whether the CPC itself structurally enables delay. This research departs from conventional explanations by critically investigating whether procedural provisions inadvertently incentivize litigants to prolong disputes.

The study specifically focuses on procedural mechanisms such as adjournments, interim stays, appeals, revisions, amendments, and evidentiary processes to determine whether these safeguards are susceptible to strategic misuse. The research seeks to evaluate whether procedural flexibility, intended to preserve fairness, has gradually transformed into a procedural culture of delay.¹²

The significance of this study lies in its doctrinal and policy relevance. From a legal perspective, understanding structural inefficiencies within procedural law is essential for designing meaningful judicial reforms. From a policy perspective, prolonged litigation imposes severe economic and social costs upon individuals, businesses, and state institutions. Further, in an era emphasizing judicial accountability and access to justice, procedural reform has become a matter of constitutional significance.¹³

This study is particularly important because it moves beyond purely normative criticism and incorporates empirical analysis of court data and pendency trends. By combining doctrinal interpretation with institutional realities, the research seeks to produce a comprehensive understanding of procedural delay and its structural dimensions.

Research Questions and Objectives

Research Questions

The present study seeks to answer the following research questions:

1. Whether the provisions of the CPC structurally contribute to delay in civil litigation?
2. To what extent are procedural mechanisms such as adjournments, interim injunctions, appeals, and amendments misused as tools of delay?
3. Whether judicial delay primarily results from implementation failures or from structural deficiencies within the procedural framework itself?
4. How effective have judicial and legislative reforms been in curbing procedural abuse and reducing pendency?
5. Should India adopt a stricter judicial case management model similar to other common law jurisdictions?
6. What procedural reforms are necessary to balance fairness with efficiency in civil adjudication?

Objectives of the Study

The principal objectives of this research are:

1. To critically analyze the role of the CPC in contributing to delays in civil proceedings.
2. To examine the misuse of procedural devices for strategic litigation delay.
3. To assess judicial responses aimed at controlling procedural abuse.
4. To conduct an empirical examination of court pendency and procedural inefficiency.

¹² C.K. Takwani, *Civil Procedure*, Eastern Book Company.

¹³ Law Commission of India, 14th Report, *Reform of Judicial Administration*, 1958.

5. To comparatively evaluate case management practices in selected common law jurisdictions.

6. To propose reforms capable of ensuring speedy and effective civil justice in India.

The study further evaluates procedural safeguards introduced through amendments intended to improve efficiency and reduce judicial backlog. Important amendments considered include:

Literature Review

Historical Foundations of the CPC and the Problem of Delay

The contemporary crisis of judicial delay in Indian civil litigation cannot be understood without examining the historical foundations of procedural law. The present procedural structure governing civil litigation in India is rooted in colonial legal administration and reflects institutional assumptions that emerged under British rule. Although the procedural system was originally designed to ensure uniformity, predictability, and fairness, over time it gradually evolved into an excessively technical and formalistic framework. Consequently, the procedural law intended to facilitate justice increasingly became associated with prolonged litigation and procedural complexity.¹⁴

The historical development of the Code of Civil Procedure, 1908 demonstrates that the problem of delay is not merely an administrative or contemporary institutional failure. Rather, it is partially linked to the inherited procedural architecture of civil justice, which was designed in a fundamentally different social, political, and economic environment.¹⁵ The persistence of procedural delays despite repeated reforms suggests that historical legacies continue to influence the functioning of modern civil litigation.

Colonial Origins of the CPC, 1908

The origins of civil procedural law in India can be traced to British colonial governance, when legal codification became necessary for the efficient administration of justice across territories under colonial control. Prior to British intervention, dispute resolution in India operated through a diverse combination of customary laws, village councils, religious norms, local adjudicatory systems, and regional legal traditions. Judicial mechanisms varied considerably according to locality, religion, and community practices, resulting in procedural inconsistency.¹⁶

The expansion of British territorial administration created a need for a uniform legal system capable of ensuring predictability, bureaucratic control, and administrative convenience.¹⁷ The colonial administration recognized that economic governance and commercial expansion required a stable judicial system capable of resolving disputes through standardized legal procedures. Consequently, procedural codification emerged as an important colonial objective.

The earliest systematic attempt to regulate civil procedure occurred through the Civil Procedure Code of 1859, introduced to establish uniform procedural standards in civil courts. However, the

¹⁴ Order XVII, Code of Civil Procedure, 1908.

¹⁵ Law Commission of India, 77th Report, *Delay and Arrears in Trial Courts*, 1978.

¹⁶ C.K. Takwani, *Civil Procedure*, Eastern Book Company.

¹⁷ Law Commission of India, 230th Report, *Reforms in the Judiciary*, 2009.

1859 Code proved inadequate due to inconsistencies and limited applicability. To overcome these shortcomings, revised procedural codes were enacted in 1877 and 1882. Nevertheless, procedural fragmentation and interpretative difficulties persisted.¹⁸

The enactment of the CPC in 1908 represented the culmination of colonial procedural codification. The Code sought to consolidate and amend laws relating to civil procedure while creating a comprehensive procedural framework applicable across British India. It established rules governing jurisdiction, institution of suits, pleadings, summons, evidence, interim relief, execution, and appeals.

The colonial character of the CPC significantly influenced its procedural philosophy. The Code was drafted in an era where litigation volume was comparatively limited, judicial authority was bureaucratic, and procedural control served administrative efficiency rather than democratic accessibility. Colonial governance prioritized legal certainty and centralized control, often at the expense of procedural flexibility and accessibility.

As a result, the CPC adopted a highly formalistic structure emphasizing procedural compliance, documentary evidence, and hierarchical adjudication. While such procedural rigor may have served colonial administrative needs, its long-term implications became problematic in an independent democratic society characterized by mass litigation, expanding rights consciousness, and increasing socioeconomic complexity.¹⁹

Furthermore, the colonial legal system was not designed to provide rapid justice to ordinary citizens. Rather, it aimed to preserve order and facilitate administrative governance. The inherited procedural culture thus reflected excessive reliance upon technical formalities and layered adjudication, characteristics that continue to shape Indian civil litigation today.

The post-independence legal system retained the CPC with limited structural transformation, despite radical constitutional and social changes. Consequently, modern Indian courts continue to operate within a procedural framework whose origins lie in colonial assumptions that may no longer correspond with contemporary judicial realities.²⁰

Why Procedure Became Technical and Prolonged

One of the central criticisms of Indian civil litigation concerns its excessive procedural technicality and prolonged adjudication process. While procedural safeguards are necessary to ensure fairness and prevent arbitrary decision-making, procedural complexity can become counterproductive when it obstructs rather than facilitates justice. The evolution of the CPC reveals how procedural safeguards gradually transformed into instruments capable of delaying litigation.²¹

Emphasis on Procedural Formalism

The CPC was designed to ensure orderly adjudication through detailed procedural rules governing every stage of litigation. Procedural requirements relating to pleadings, summons, written

¹⁸ Justice V.R. Krishna Iyer, writings on procedural justice and judicial delay.

¹⁹ Law Commission of India, 221st Report, *Need for Speedy Justice*, 2009.

²⁰ *Asian Resurfacing of Road Agency Pvt Ltd v CBI* (2018) 16 SCC 299.

²¹ Code of Civil Procedure, 1908, Sections 96, 100 and 104.

statements, framing of issues, evidence recording, and appeals were intended to promote consistency and fairness. However, over time, strict procedural formalism encouraged litigants to focus excessively on technical compliance rather than substantive dispute resolution.

Procedural objections increasingly became litigation strategies. Minor technical defects in pleadings, jurisdictional disputes, and procedural irregularities often resulted in prolonged hearings unrelated to the substantive merits of cases. This procedural culture encouraged parties to exploit technical loopholes to delay proceedings and exhaust opposing litigants financially.

The highly structured nature of civil litigation created multiple procedural checkpoints, each of which could potentially be contested, challenged, or delayed. Consequently, procedural law gradually became an arena for strategic maneuvering rather than merely a neutral mechanism for dispute resolution.

Multiplicity of Procedural Opportunities

The CPC provides litigants with several procedural opportunities intended to protect fairness and natural justice. However, these safeguards also create multiple opportunities for delay.

For example:

- Repeated adjournments permit postponement of hearings.
- Amendments of pleadings may alter litigation at advanced stages.
- Interim injunctions often continue for extended periods.
- Appeals and revisions create multiple layers of adjudication.
- Execution proceedings may themselves become prolonged litigation.

Rather than ensuring swift dispute resolution, procedural multiplicity often transforms civil litigation into a prolonged process involving repeated interruptions and strategic delays. Parties possessing greater financial resources frequently benefit from procedural prolongation because delay itself becomes a form of pressure against weaker litigants.

This phenomenon is particularly visible in property and commercial disputes, where defendants may deliberately prolong litigation to retain possession or avoid financial liability. Consequently, procedural law may inadvertently incentivize obstructionist behavior.

Judicial Discretion and Adjournment Culture

Another factor contributing to procedural prolongation is the broad judicial discretion embedded within procedural provisions. While discretion is necessary to ensure fairness and contextual decision-making, excessive flexibility often produces inconsistency and delay.

For instance, courts possess discretion to grant adjournments in appropriate circumstances. Although adjournments are intended as exceptional procedural accommodations, they frequently become routine. Lawyers and litigants often seek repeated postponements due to absence of witnesses, incomplete preparation, scheduling conflicts, or tactical considerations.

Over time, adjournment culture became institutionalized within civil litigation. Hearings are often postponed repeatedly, resulting in cases extending across several years. The normalization of adjournments has substantially weakened procedural efficiency and contributed to judicial backlog.

Growth in Litigation and Institutional Inadequacy

The technical and prolonged nature of civil procedure must also be understood within the broader context of expanding litigation. The CPC was enacted during a period when litigation volume remained comparatively manageable. However, post-independence constitutional development, urbanization, economic expansion, rising property disputes, and increased legal awareness dramatically increased the number of civil cases.

Despite this expansion, procedural structures remained substantially unchanged. Judicial infrastructure, staffing, and procedural mechanisms failed to adapt adequately to rising litigation demands. Consequently, courts operating under outdated procedural assumptions struggled to cope with mounting caseloads.

The mismatch between procedural design and litigation realities contributed significantly to procedural delay. What may have been manageable in colonial courts became increasingly inefficient within a mass democratic legal system.

Procedural Safeguards Becoming Procedural Weapons

Perhaps the most important reason behind procedural delay lies in the transformation of procedural safeguards into procedural weapons. Litigants often strategically misuse legal mechanisms designed for fairness.

Examples include:

- Seeking repeated adjournments to delay proceedings.
- Filing frivolous interim applications to obstruct hearings.
- Misusing stay orders to indefinitely suspend adjudication.
- Pursuing repetitive appeals to prolong finality.
- Introducing delayed amendments to restart litigation stages.

Such practices demonstrate how procedural flexibility, while intended to protect justice, may inadvertently reward obstructionist litigation behavior. Consequently, delay often emerges not merely from inefficiency but from rational strategic incentives embedded within procedural structures.

Evolution Through Procedural Amendments

Recognizing the growing crisis of delay, lawmakers introduced several amendments to the CPC with the objective of expediting litigation and discouraging procedural abuse. Important reforms were introduced through the 1976, 1999, and 2002 amendments, followed by procedural innovations under commercial litigation laws.

The 1976 Amendment: First Major Structural Reform

The Code of Civil Procedure (Amendment) Act, 1976 represented one of the earliest major attempts to modernize civil procedure and reduce litigation delays. The amendment sought to simplify procedural rules, reduce technical barriers, and improve judicial efficiency.

Key objectives included:

- Simplification of procedural requirements.
- Reduction of unnecessary technical objections.
- Encouragement of substantive justice over procedural rigidity.
- Improved efficiency in case management.

The amendment attempted to strengthen judicial control over proceedings and reduce abuse of procedural formalities. However, despite reform efforts, implementation remained inconsistent, and delay continued to persist.

The 1976 reform demonstrated an important limitation of procedural reform: legislative amendments alone cannot guarantee efficiency unless supported by institutional discipline and judicial consistency.

The 1999 and 2002 Amendments: Controlling Delay

The 1999 and 2002 amendments represented more direct attempts to address procedural delay.

These reforms specifically targeted:

Restriction on Adjournments

Courts were encouraged to limit unnecessary adjournments to prevent repetitive postponement of hearings.

Time Limits for Written Statements

Stricter deadlines were introduced to prevent defendants from delaying litigation through prolonged non-filing of written statements.

Amendment of Pleadings

Restrictions were imposed on late-stage amendments to prevent parties from unnecessarily restarting litigation.

Case Management Orientation

Greater judicial supervision over proceedings was encouraged to improve efficiency and procedural discipline.

The reforms reflected an important policy shift from passive adjudication toward more active judicial management of litigation.

However, despite legislative intent, judicial interpretation frequently diluted procedural strictness. Courts often treated procedural deadlines as directory rather than mandatory in order to preserve substantive justice. While such flexibility protected fairness in exceptional circumstances, it simultaneously weakened procedural discipline and reduced reform effectiveness.

Thus, the amendments exposed a continuing tension between procedural efficiency and access to justice.

Commercial Courts Act and Managerial Procedure

A major shift toward stricter procedural discipline emerged with specialized commercial litigation reforms under the Commercial Courts Act, 2015.

Commercial courts introduced several procedural innovations:

- Strict filing timelines.
- Mandatory disclosure requirements.
- Time-bound written statements.
- Active judicial case management.
- Limited adjournments.
- Structured procedural schedules.

The commercial litigation framework reflected a transition toward a managerial judging model, where judges actively supervise procedural timelines instead of functioning as passive arbiters.

Commercial courts have demonstrated relatively improved efficiency compared to ordinary civil courts, suggesting that stricter procedural management may reduce delay. However, concerns remain regarding whether such rigidity can be uniformly implemented across all categories of civil litigation without compromising fairness and access to justice.

Structural Incentives for Delay in the CPC

One of the central arguments of this research is that judicial delay in India is not solely the result of inadequate infrastructure or judicial vacancies, but also emerges from procedural mechanisms embedded within the CPC itself. Although these procedural safeguards were originally designed to ensure fairness and due process, they are frequently exploited by litigants and lawyers to strategically prolong litigation. Consequently, procedural law often becomes an instrument of delay rather than a means of efficient justice delivery.

Adjournments as Instruments of Strategic Delay

Adjournments constitute one of the most frequently misused procedural tools in civil litigation. Under the CPC, courts may postpone proceedings when sufficient cause exists. However, repeated adjournments have become routine in trial courts, significantly contributing to judicial delay.

Order XVII CPC

Order XVII of the CPC regulates adjournments and empowers courts to postpone hearings when justified. Amendments to the CPC sought to restrict unnecessary adjournments by limiting the number of opportunities granted to parties. Despite statutory restrictions, courts often permit repeated postponements due to lawyer unavailability, witness absence, procedural objections, or tactical litigation strategies.

Judicial Tolerance and Lawyer-Driven Postponements

A major reason for delay is judicial tolerance toward adjournment requests. Lawyers frequently seek postponements citing professional engagements, incomplete preparation, or settlement discussions. Since courts are often burdened with heavy caseloads, adjournments become administratively convenient, gradually creating an institutional culture of delay.

Misuse Despite Statutory Restrictions

Although reforms attempted to reduce adjournments, litigants continue to misuse procedural flexibility. Parties seeking to delay adverse outcomes deliberately prolong proceedings to exhaust the financial and emotional resources of opponents. Consequently, adjournments often function as strategic litigation devices rather than exceptional procedural accommodations.

Interim Stays and Injunctions

Interim relief represents another procedural mechanism frequently associated with delay. Temporary injunctions are intended to preserve legal rights until final adjudication; however, in practice, such relief often becomes a substitute for final justice.

Order XXXIX Rules 1 & 2

Order XXXIX Rules 1 and 2 of the CPC empower courts to grant temporary injunctions where there is a risk of irreparable injury or dispute over legal rights. These provisions are essential to prevent injustice during litigation, particularly in property and commercial disputes.

Stay Orders and Status Quo Litigation

In practice, litigants frequently seek stay orders to halt proceedings or maintain possession over disputed property. Once a status quo order is granted, parties benefiting from delay often lack incentive for speedy disposal. This phenomenon is particularly common in land disputes, where temporary injunctions remain operative for several years.

“Temporary Relief Becoming Permanent Justice”

One of the strongest criticisms of interim injunctions is that temporary relief frequently becomes permanent in practical effect. Since final adjudication may take years, interim orders effectively determine outcomes without substantive resolution. Thus, procedural safeguards designed for temporary protection may unintentionally incentivize delay.

Appeals, Revisions, and Procedural Layering

The CPC provides multiple appellate remedies to protect litigants against judicial errors. However, this layered structure often contributes significantly to prolonged litigation.

Sections 96, 100, and 104 CPC

Section 96 provides for first appeals, Section 100 permits second appeals in substantial questions of law, and Section 104 governs appeals from specific orders. While these provisions strengthen fairness, they also increase procedural complexity.

First Appeal, Second Appeal, Revision, and SLP Culture

Civil disputes frequently move through several stages including trial, first appeal, second appeal, revision, review, and eventually Special Leave Petitions before the Supreme Court. This multilayered adjudication process often delays finality for decades.

Multiplicity of Proceedings

The multiplicity of proceedings creates opportunities for losing parties to strategically prolong disputes. Instead of accepting unfavorable judgments, litigants often exhaust every available procedural remedy, transforming civil litigation into a prolonged process of procedural exhaustion.

Dilatory Pleading Tactics

Procedural delays are also reinforced through pleading tactics employed by litigants.

Frivolous Objections

Parties often raise technical objections concerning jurisdiction, maintainability, or procedural defects to delay hearings. Such objections may substantially prolong litigation even when they lack substantive merit.

Amendment of Pleadings (Order VI Rule 17)

Order VI Rule 17 permits amendment of pleadings to ensure complete adjudication. However, litigants sometimes misuse amendment applications at advanced stages of litigation, effectively restarting proceedings and causing substantial delay.

Delayed Written Statements

Defendants frequently delay filing written statements to prolong proceedings. Although amendments introduced timelines for submission, courts often relax procedural requirements in the interest of justice, thereby weakening procedural discipline.

Evidence and Procedural Formalism

The evidentiary stage of civil litigation frequently becomes another source of prolonged delay.

Examination Delays

Recording evidence often takes considerable time due to repeated witness absence, adjournments, incomplete documentation, and lengthy cross-examinations. In many cases, evidentiary proceedings continue for years.

Summons, Witness Attendance, and Commissions

Delays in issuing summons, securing witness attendance, and appointing commissions contribute to procedural stagnation. Witness non-appearance and procedural formalities surrounding documentary evidence often disrupt hearing schedules and prolong adjudication.

Empirical Analysis of Civil Delay in India

The problem of judicial delay in India is not merely theoretical but empirically visible through rising pendency, prolonged disposal periods, and increasing litigation costs. Statistical evidence from the National Judicial Data Grid (NJDG), district court reports, and judicial institutions reveals that civil litigation in India frequently extends across several years, indicating a structural inefficiency in procedural administration.

Pendency Statistics from NJDG

Data available through the NJDG demonstrates a substantial backlog of civil cases in district and subordinate courts. A significant proportion of cases remain pending for more than five years, while some continue for over a decade. Property disputes, land acquisition matters, family disputes, and commercial claims often experience prolonged adjudication due to procedural interruptions, repeated adjournments, and appellate litigation.

State-wise Civil Case Duration

The duration of civil litigation differs significantly across states due to variations in judicial infrastructure, vacancy levels, and court efficiency. Metropolitan states with higher litigation volumes often experience greater pendency, whereas some smaller jurisdictions exhibit comparatively faster disposal rates. However, prolonged timelines remain a nationwide challenge.

Disposal Rates and Judicial Efficiency

Although courts dispose of a large number of cases annually, new filings frequently exceed disposal rates, creating a persistent backlog. This imbalance reflects institutional strain and procedural inefficiency. Frequent adjournments, lengthy evidentiary stages, and repeated appeals contribute substantially to slower disposal.

Time-Cost Burden on Litigants

Delay imposes serious economic and social costs on litigants. Prolonged proceedings increase legal expenses, travel costs, loss of income, and emotional distress. In many situations, weaker litigants abandon valid claims because litigation becomes financially unsustainable, thereby weakening access to justice.

Empirical Patterns of Adjournment Frequency

Empirical observations indicate that adjournments are among the most common causes of delay in civil litigation. Hearings are frequently postponed due to lawyer absence, procedural objections, witness non-appearance, or inadequate preparation. Repeated adjournments significantly extend the life cycle of civil disputes despite statutory restrictions.

Backlog Trends in District Courts

District courts, which handle the majority of civil disputes, continue to face mounting pendency. Rising caseloads, insufficient judicial capacity, and procedural complexity have contributed to a backlog that slows dispute resolution and weakens public confidence in the civil justice system.

Table 5.1: Indicators of Civil Delay in India

Indicator	Data Trend	Implication
Average civil suit duration	Several years	Procedural inefficiency
Interim stay duration	High	Incentive for obstruction
Appeal disposal time	Prolonged	Multiplicative delay
Adjournment frequency	Frequent	Delayed hearings
District court backlog	Increasing	Institutional burden

Critical Observation

The empirical evidence suggests that delay in civil litigation is not accidental but systemic. High pendency, repeated adjournments, prolonged appeals, and increasing litigation costs collectively indicate that procedural inefficiency remains deeply embedded within India's civil justice framework. This supports the argument that reform must address both institutional weaknesses and structural procedural incentives for delay.

Judicial Responses to Procedural Abuse

The Indian judiciary has repeatedly recognized procedural abuse as a major cause of delay in civil litigation. Through various landmark decisions, courts have attempted to discourage unnecessary adjournments, restrict prolonged stay orders, and strengthen procedural discipline. Judicial intervention has therefore played an important role in addressing procedural inefficiencies, although challenges continue to persist.

Analysis of Important Judgments

Salem Advocate Bar Association v. Union of India

In this case, the Supreme Court upheld amendments to the CPC aimed at reducing delays and improving procedural efficiency. The Court emphasized that procedural law must advance justice rather than obstruct it and supported reforms limiting adjournments and procedural misuse. The judgment encouraged courts to adopt stricter case management practices and procedural discipline.

Kailash v. Nanhku

The Supreme Court addressed delays relating to written statements and procedural timelines. The Court held that procedural rules should not defeat substantive justice and allowed flexibility in exceptional circumstances. However, this judgment also highlighted a continuing tension between procedural efficiency and fairness, as excessive flexibility may unintentionally encourage delay.

Asian Resurfacing of Road Agency Pvt. Ltd. v. CBI

This judgment focused on the misuse of stay orders that often halted proceedings for years. The Supreme Court ruled that stay orders should not continue indefinitely and prescribed limits to prevent procedural stagnation. The decision reflected judicial concern that temporary stays frequently become long-term barriers to justice.

Shiv Cotex v. Tirgun Auto Plast Pvt. Ltd.

The Court strongly criticized the culture of repeated adjournments and emphasized that litigants cannot assume unlimited opportunities to delay proceedings. It stressed that procedural law requires discipline and that unnecessary postponements weaken public confidence in the justice system.

Critical Judicial Trends

Courts Condemning Adjournment Culture

Indian courts have increasingly criticized the routine practice of granting repeated adjournments. Judicial observations emphasize that adjournments should remain exceptional rather than becoming a litigation strategy. Courts have repeatedly warned that delay undermines the principle of timely justice.

Limits on Stay Orders

The judiciary has gradually moved toward restricting prolonged stay orders. Recent judgments reflect an effort to ensure that temporary relief does not indefinitely suspend litigation, particularly in property and commercial disputes.

Judicial Case Management Attempts

Courts have also encouraged active judicial supervision of proceedings through stricter timelines, procedural monitoring, and controlled scheduling. These efforts indicate a gradual shift from passive adjudication toward judicial case management aimed at reducing delay.

Critical Observation

Judicial responses reveal a growing awareness that procedural abuse significantly contributes to delay. Although courts have condemned adjournment culture and attempted to regulate stays and timelines, inconsistent implementation continues to limit reform effectiveness. Thus, judicial intervention alone may be insufficient unless supported by stronger procedural reforms and institutional accountability.

Comparative Perspective: Should India Shift to a Stricter Case Management Model?

The growing problem of judicial delay in India has generated significant debate regarding the need for procedural reform. Several common law jurisdictions have addressed similar concerns through stricter case management systems that emphasize judicial control, procedural discipline, and time-bound adjudication. A comparative examination of these systems provides useful insights into whether India should adopt a more structured procedural framework to reduce delay while maintaining fairness.

UK Model

The procedural framework in the United Kingdom underwent substantial reform through the introduction of the Civil Procedure Rules (CPR), aimed at reducing cost, complexity, and delay in litigation.

Civil Procedure Rules (CPR)

The CPR replaced overly technical procedural practices with a system focused on efficiency and proportionality. Courts actively monitor litigation progress and ensure that procedural steps are completed within prescribed timelines.

Active Judicial Case Management

Unlike the traditional passive role of judges in India, courts in the UK actively supervise proceedings. Judges control timelines, limit unnecessary evidence, discourage procedural abuse, and ensure timely disposal. This managerial approach reduces opportunities for delay-oriented litigation.

Fixed Timelines

The UK system relies heavily on procedural deadlines. Delays without valid justification may attract sanctions, thereby discouraging strategic postponements and promoting procedural certainty.

Singapore Model

Singapore is widely regarded as one of the most efficient legal systems among common law jurisdictions due to its emphasis on procedural discipline and judicial efficiency.

Strict Procedural Discipline

Singaporean courts follow strict procedural schedules with minimal tolerance for unnecessary adjournments. Parties are expected to comply with timelines, and procedural non-compliance may result in penalties or dismissal of claims.

Judicial Efficiency Mechanisms

Technology-driven systems, electronic filing, and judicial monitoring contribute significantly to efficient case disposal. Judges actively intervene to prevent procedural misuse and ensure litigation progresses without unnecessary interruptions.

Australia and the United States

Both Australia and the United States employ procedural mechanisms designed to reduce delay and improve litigation management.

Discovery Control

Courts exercise control over discovery and evidence-related procedures to prevent excessive delays and unnecessary procedural complications. Judicial intervention ensures that evidentiary processes remain proportionate to the dispute.

Sanctions for Delay

Parties engaging in unnecessary procedural obstruction may face cost penalties, adverse orders, or dismissal of claims. Such sanctions discourage strategic delay and encourage procedural compliance.

Judge-Led Scheduling

Judges actively manage hearing schedules and procedural stages rather than allowing litigation to progress solely according to party convenience. This approach strengthens accountability and procedural discipline.

Critical Question: Would Stronger Judicial Case Management Undermine Access to Justice or Improve Procedural Fairness?

A stricter case management system in India could significantly reduce delay by limiting adjournments, enforcing procedural timelines, and increasing judicial supervision. However,

concerns exist that excessive procedural rigidity may disadvantage weaker litigants who require flexibility due to financial or practical constraints.

Therefore, India may not require complete transplantation of foreign models but rather a balanced approach. Stronger judicial case management, combined with reasonable procedural flexibility, could improve efficiency without undermining access to justice. A system emphasizing controlled discretion, stricter timelines, and sanctions against procedural abuse may ultimately strengthen procedural fairness by ensuring that justice is not indefinitely delayed.

Postdoctoral Argument: Does the CPC Structurally Incentivize Delay?

A central argument of this research is that delay in civil litigation cannot be explained solely through conventional factors such as judicial vacancies, inadequate infrastructure, or administrative inefficiency. While these factors undeniably contribute to pendency, they do not fully explain why procedural delay persists despite repeated amendments and judicial criticism. This chapter argues that the procedural structure of the Code of Civil Procedure, 1908 itself may unintentionally incentivize delay by rewarding litigants who strategically exploit procedural safeguards.

Delay is Not Merely an Implementation Failure

Judicial delay is often attributed to external institutional weaknesses such as shortage of judges, rising litigation volume, and inadequate infrastructure. However, such explanations remain incomplete because they overlook how procedural rules shape litigation behaviour. If delay were purely an implementation failure, procedural reforms and judicial warnings would have substantially improved efficiency. Yet, prolonged litigation continues to persist.

The repeated misuse of adjournments, interim injunctions, procedural objections, and appeals suggests that delay is partly embedded within the procedural framework itself. The CPC grants broad procedural flexibility to ensure fairness, but such flexibility may also create opportunities for strategic misuse. Therefore, delay should be viewed not merely as a managerial problem but as a structural feature influenced by procedural design.

The CPC May Unintentionally Reward Obstructionist Litigation

The CPC was enacted with the objective of ensuring fairness and protecting litigants from arbitrary adjudication. However, several procedural safeguards unintentionally benefit parties interested in prolonging disputes.

For example, repeated adjournments may delay hearings, interim injunctions may preserve possession for years, and appeals may postpone finality even after judgments are delivered. A litigant benefiting from the status quo often has a strong incentive to prolong proceedings because delay itself becomes advantageous.

This creates a procedural imbalance where financially stronger parties can strategically exploit litigation to pressure weaker opponents into compromise or abandonment of claims. In such situations, procedural law ceases to function merely as a mechanism of justice and instead becomes a tool of tactical advantage.

Procedural Multiplicity Creates Incentives for Economic Exhaustion

One of the strongest structural criticisms of the CPC lies in its procedural multiplicity. Civil litigation frequently involves several procedural stages, including pleadings, interim applications, evidence, trial, appeals, revisions, review petitions, and execution proceedings.

Each procedural stage increases litigation costs and extends timelines. Consequently, parties with greater economic resources may deliberately prolong disputes to financially exhaust opponents. In property and commercial litigation, prolonged delay often benefits the party already in possession or control of disputed assets.

Thus, procedural multiplicity transforms litigation into an economic contest where success may depend not only on legal merit but also on the capacity to endure prolonged procedural battles.

“Procedure as Litigation Strategy”

A significant theoretical concern emerging from this analysis is the transformation of procedure into litigation strategy. Instead of functioning solely as a neutral framework for adjudication, procedural law is increasingly used strategically to influence outcomes.

Litigants may:

- Seek repeated adjournments to postpone unfavorable decisions.
- File procedural objections to interrupt hearings.
- Use interim relief to maintain possession or advantage.
- Pursue multiple appeals to delay enforcement.

In such circumstances, procedure becomes a strategic weapon rather than a means of efficient justice delivery. This phenomenon suggests that delay is not accidental but often rational and incentivized within the procedural framework.

The evidence examined in this research indicates that the CPC may unintentionally create structural incentives for delay. Although fairness requires procedural safeguards, excessive procedural flexibility often rewards obstructionist behaviour and prolongs litigation. Therefore, meaningful reform requires more than institutional improvement; it demands procedural restructuring that balances fairness with efficiency and discourages delay-oriented litigation strategies.

Reform Proposals

The persistence of delay in civil litigation demonstrates that procedural reform must go beyond minor amendments and address structural inefficiencies within the civil justice system. Since procedural safeguards are frequently misused as tools of delay, reforms should aim to balance fairness with efficiency. The following measures may significantly reduce procedural abuse and improve judicial effectiveness.

Strict Adjournment Caps

Repeated adjournments remain one of the primary causes of delay in civil proceedings. Although the CPC places restrictions on adjournments, judicial practice often permits repeated postponements. Courts should adopt stricter enforcement of adjournment limits, allowing extensions only in exceptional circumstances supported by recorded reasons. This would discourage tactical delays and promote procedural discipline.

Cost Penalties for Frivolous Delay

Litigants who intentionally prolong proceedings through unnecessary applications, repeated objections, or bad-faith litigation tactics should face realistic cost penalties. Imposing substantial financial consequences for procedural abuse may discourage obstructionist litigation and reduce misuse of procedural safeguards.

Digitized Case Scheduling

Technology-driven scheduling systems can significantly improve procedural efficiency. Digitized hearing calendars, automated notifications, electronic filing, and virtual case tracking can reduce unnecessary postponements and improve coordination between courts, lawyers, and litigants. Digital monitoring would also improve accountability regarding case progress.

Time-Bound Disposal Framework

Civil litigation should operate within structured timelines for different procedural stages such as pleadings, evidence, arguments, and judgment delivery. Time-bound disposal frameworks would reduce uncertainty and ensure that cases do not remain pending indefinitely.

Automatic Expiry of Interim Stays

Interim stay orders should automatically lapse after a prescribed period unless expressly renewed by judicial order. Such a mechanism would prevent temporary relief from becoming indefinite protection and discourage parties from relying on prolonged procedural suspension.

Judge-Led Case Management System

Indian courts may benefit from a stronger judge-led case management approach where judges actively supervise litigation timelines, regulate procedural stages, and prevent unnecessary adjournments. Active judicial management would reduce procedural abuse and improve case progression.

CPC Reform Toward Managerial Judging

A long-term solution may require structural reform of the CPC toward a managerial judging model similar to other common law jurisdictions. Under such a framework, judges would play a proactive role in controlling litigation, enforcing deadlines, limiting unnecessary evidence, and discouraging procedural manipulation. However, such reforms should preserve sufficient flexibility to protect genuine cases requiring procedural accommodation.

Effective procedural reform requires both institutional strengthening and structural change within the CPC. Merely increasing judicial capacity may not resolve delay unless procedural incentives encouraging obstruction are addressed. A balanced model combining stricter timelines, technological modernization, judicial supervision, and procedural accountability may significantly improve the efficiency and credibility of India's civil justice system.

Conclusion

The present study critically examined the role of the Code of Civil Procedure, 1908 in contributing to delay within the Indian civil justice system. While the CPC was enacted to ensure fairness, consistency, and due process in civil adjudication, the research demonstrates that several procedural safeguards are frequently misused in ways that prolong litigation. Through doctrinal analysis, judicial interpretation, comparative examination, and empirical observations, the study

reveals that procedural delay in India is neither accidental nor entirely administrative; rather, it reflects deeper structural and institutional challenges.

Findings of the Study

The findings indicate that procedural mechanisms such as adjournments, interim injunctions, appeals, amendments of pleadings, and evidentiary formalities frequently operate as tools of strategic delay. Despite statutory amendments intended to improve efficiency, procedural flexibility often enables litigants to prolong disputes for tactical or economic advantage. Judicial decisions have repeatedly condemned procedural abuse, yet implementation remains inconsistent. The empirical analysis further demonstrates that prolonged pendency, increasing litigation costs, frequent adjournments, and growing backlog in district courts continue to weaken access to justice. Comparative analysis with common law jurisdictions suggests that stricter judicial case management, procedural discipline, and technological integration have substantially improved efficiency elsewhere.

Whether Delay is Structural or Operational

A central conclusion of this research is that delay in civil litigation is both structural and operational in nature. Operational factors such as judicial vacancies, inadequate infrastructure, heavy caseloads, and administrative inefficiencies undeniably contribute to delay. However, these explanations alone are insufficient.

The study argues that the CPC itself may unintentionally incentivize delay by creating procedural opportunities that reward obstructionist behaviour. Procedural multiplicity, broad judicial discretion, repeated appeals, and flexible timelines often permit litigants to use procedure strategically. Therefore, delay should not be viewed merely as a failure of implementation but also as a consequence of procedural design.

In this sense, the CPC does not deliberately promote delay; however, its structure frequently allows delay to become rational and beneficial for certain litigants. Thus, procedure increasingly functions not only as a mechanism for justice but also as a litigation strategy.

Need for Procedural Transformation

The persistence of judicial delay despite repeated reforms demonstrates the urgent need for procedural transformation. Incremental amendments alone may not sufficiently address structural inefficiencies. India requires a more balanced procedural framework that preserves fairness while preventing misuse.

Future reform should focus on stricter adjournment control, realistic penalties for procedural abuse, automatic regulation of interim stays, digitized scheduling systems, and stronger judicial case management. Lessons from other common law jurisdictions suggest that a managerial judging model, adapted to Indian realities, may significantly reduce delay without compromising access to justice.

Ultimately, civil procedure must serve as an instrument for the timely realization of rights rather than a mechanism of prolonged uncertainty. Justice loses meaning when procedural complexity indefinitely postpones resolution. Therefore, meaningful reform of civil procedure is essential not

merely for judicial efficiency but for strengthening public confidence in the rule of law and ensuring that justice remains both fair and timely.

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