|LAW AUDIENCE JOURNAL|
|VOLUME 2|ISSUE 2|JUNE 2020|ISSN (O): 2581-6705|
|INDEXED JOURNAL|IPI VALUE (2019): 2.32|
|IMPACT FACTOR (2018): 2.527|

|LAW AUDIENCE JOURNAL®|

|VOLUME 2 & ISSUE 2|JUNE 2020|

|ISSN (O): 2581-6705|

EDITED BY:

LAW AUDIENCE JOURNAL'S

EDITORIAL BOARD

|LAW AUDIENCE JOURNAL|
|VOLUME 2|ISSUE 2|JUNE 2020|ISSN (O): 2581-6705|
|INDEXED JOURNAL|IPI VALUE (2019): 2.32|
|IMPACT FACTOR (2018): 2.527|

Email: lawjournal@lawaudience.com, info@lawaudience.com,

Phone: +91-8351033361,

Website: www.lawaudience.com.

Facebook: www.facebook.com/lawaudience

Instagram: www.instagram.com/lawaudienceofficial

Contact Timings: 5:00 PM to 9:00 PM.

|LAW AUDIENCE JOURNAL|
|VOLUME 2|ISSUE 2|JUNE 2020|ISSN (O): 2581-6705|
|INDEXED JOURNAL|IPI VALUE (2019): 2.32|
|IMPACT FACTOR (2018): 2.527|

DISCLAIMER:

Law Audience Journal (ISSN (O): 2581-6705) and Its Editorial Board Members do not guarantee that the material published in it is 100 percent reliable. You can rely upon it at your own risk. But, however, the Journal and Its Editorial Board Members have taken the proper steps to provide the readers with relevant material. Proper footnotes & references have been given to avoid any copyright or plagiarism issue. Articles published in ***Volume 2 & Issue 2*** *are the original work of the authors.*

Views or Opinions or Suggestions ***(if any)****, expressed or published in the Journal are the personal point of views of the Author(s) or Contributor(s) and the Journal & Its Editorial Board Members are not liable for the same.*

While every effort has been made to avoid any mistake or omission, this publication is published online on the condition and understanding that the publisher shall not be liable in any manner to any person by reason of any mistake or omission in this publication or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this work.

All disputes subject to the exclusive jurisdiction of Courts, Tribunals and Forums at Himachal Pradesh only.

|LAW AUDIENCE JOURNAL|
|VOLUME 2|ISSUE 2|JUNE 2020|ISSN (O): 2581-6705|
|INDEXED JOURNAL|IPI VALUE (2019): 2.32|
|IMPACT FACTOR (2018): 2.527|

"JUSTICE DELAYED IS JUSTICE DENIED: A COMPARATIVE ANALYSIS OF DISCREPANCIES IN RULES OF THE COURTS RELATED TO CIVIL MATTERS AMOUNTING TO JUDICIAL DELAYS."

AUTHORED BY: MR. RALPH RODRIGUES & CO-AUTHORED BY: MR. SHAUNAK BHATIA, PRAVIN GANDHI COLLEGE OF LAW, EMAIL IDS: RALPHYRODRIGUES@GMAIL.COM, SHAUNAK26@GMAIL.COM,

PUBLISHED AT: WWW.LAWAUDIENCE .COM.

I. INTRODUCTION:

"Justice delayed is Justice denied" is a popular phrase in the alleys of the legal profession. It is an ideal which lays down the standards the judiciary must conform to when dispensing justice. It must be sure and swift. Justice, which is not forthcoming, in a timely fashion is effectively the same as having no recourse at all. 'Not only must justice be done; it must also be seen to be done'.[1] In its Preamble the Constitution of India has elevated 'Justice' to the highest pedestal and significantly valued justice as superior to the principles of equality, liberty and fraternity. Again, the Preamble distinctly denotes the precedence of social and economic justice over political justice.

But, the reality of the situation is that even after 70 years of the adoption of the Constitution, a multitude of cases are found decaying in Indian courts, some of which are pending for several years or even decades. In numerous cases, litigants fighting their case do not get justice during their lifetime, and in several such cases their successive generations are still waiting to be served. Meanwhile, thousands of under-trials are disregarded and die in jails without conviction. As per statistics available from the National Crime Records Bureau in 2018 - 4,63,025 individuals (figures for men, women and foreign nationals included) were

[1]R v Sussex Justices; Ex parte McCarthy 1 KB 256, 259, (1924) .

incarcerated in Indian prisons, out of which only 1,39,488 were convicts, the remaining 3,23,537 being under trials.[2] The Indian justice delivery system is plagued with a massive backlog of cases in the courts. The inevitable delay in dispensing of justice is upsetting the trust of the public and weakening confidence in the legal system. It is leading to a dilution of social justice and hindering the fragile socio-economic development of the country.[3] In ordinary Civil litigation this problem of delay has assumed alarming proportions. As per statistics available from the National Judicial Data Grid (NJDG): 19,22,112 - Civil cases pending in High courts pan India, with over 3,28,026 cases pending which are between 10-20 years old. This pendency of cases represents a crisis for the judiciary whose strength is not adequate to meet the footfall of cases that are being instituted.

The Honourable Law Commission of India in its 245th report has examined the problem of delay in the court system. The report was largely motivated by the decision of the Apex Court in ***Imtiyaz Ahmad v. State of Uttar Pradesh & Ors.***[4], in which the issues of delay in the lower courts was termed as a matter of great national importance. The Supreme Court asserted that timely justice is an important facet of access to justice,[5] and directed the Law commission to focus its resources on collection and assessment of data from the various subordinate and high courts pan India, in order to arrive at a tangible figure and get a ballpark estimate of how many cases are really pending in Indian courts, and to recommend a scientific formula to assess how many additional courts must be constituted and how many more judges would be required to clear the arrears and backlog of cases.[6] An analysis of the data provided in the report pertaining to the rate of 'institution, disposal, and pendency' in the higher judicial services over a period of ten years (2002-2012) suggests that while all three factors have seen an overall rise over the past decade, disposal of cases has not been at par

[2]Govt. of India, Ministry of Home Affairs, National Crime Records Bureau, 2018 (Apr. 20, 2020, 10:00 AM) http://ncrb.gov.in/StatPublications/PSI/Prison2018/TABLE-2.1.pdf.
[3] Sikri A.K. Sitting Judge, Delhi High Court, 'Reforming Criminal Justice System', Nyaya Deep, Vol. V111, Jna. 2007, p. 39.
[4]Imtiyaz Ahmed v. State of Uttar Pradesh & Ors. (2012) 2 SCC 688
[5]Keeping in view that timely justice is an important facet to access to justice, the immediate measures that need to be taken by way of creation of additional Courts and other allied matters, to help in elimination of delays, speedy clearance of arrears and reduction in costs. It is trite to add that the qualitative component of justice must not be lowered or compromised.
[6] 245th Law Commission of India Report, '*Arrears and Backlog: Creating Additional Judicial (wo)manpower*', (July 2014), (Feb. 22, 2020, 3:30 AM), http://www.lawcommissionofindia.nic.in/.

with the number of cases instituted in any given year, and this accounts for the backlog of cases.[7] A perusal of most recent ten-year data shows that between 2006 and 2016 the number of cases being disposed had increased significantly from: 14.4 lakh cases to 16 lakh cases in the high courts, and from 1.6 crore to 1.9 crore cases in the subordinate courts. Despite the increase in the case disposal rate, the overall number of cases pending has spiked due to freshly instituted cases steadily outpacing the number of cases that are being disposed-off.[8] In order to counter the delay various propositions have been suggested, keeping in mind the broader perspective of a system wide reform in order to fill the lacuna in the judicial system. Courts could actually benefit from a few of these suggestions, for example to increase the strength of judges in the system, curbing or limiting the indiscriminate use of 'stay orders', setting timelines for timely disposal of certain matters, creation of additional courts and efficient case management practices, and setting up a parallel set of courts to preside over certain matters which are trivial in nature and/or involve only payment of fines[9]. For the purposes of this paper acquaintance with the concept of case management is essential. Case management techniques must not be confused with court management, as these are two interrelated but entirely different concepts. For example, case management may involve creation of a timetable for disposal of cases, or early and proactive involvement of judicial officers in planning the progress of individual cases, controlling the discovery process, and scheduling hearings, trials and other allied litigation events. Court management on the other hand is associated with the individuals who are responsible for the functioning of the judicial machinery in order to identify gaps or loopholes that may exist in the functioning of courts, and tasked with evolving efficient management practices with respect to everyday functioning of courts by appointed court managers which is a logical step in the improvement of our court systems.[10]

[7]Centre for Policy Research, PRS Legislative Research: 'Vital stats: Pendency of cases in the Judiciary', (July 2018), (Feb. 26, 2020, 6:22 PM), https://prsindia.org/sites/default/files/parliament_or_policy_pdfs/Vital%20Stats%20-%20Pendency%20and%20Vacancies%20-Roshni%20-%20250718For%20Upload.pdf.

[8]supra note 7.

[9]Traffic/Police Challan cases which constituted 38.7% of institutions and 37.4% of all pending cases in the subordinate judiciary for the years 2009-2012.

[10]With a view to enhancing the efficiency of court management and resultant improvement in case disposal, Rs. 300 crore were allocated for employment of professionally qualified CM to assist judges. The CM, with MBA degrees, will support judges to perform their administrative duties, thereby enabling judges to devote more time

II. CASE MANAGEMENT STRATEGIES: WHAT DOES IT AIM TO DO?

The landmark judgment of the Honourable Supreme Court in the case of ***Salem Advocates Bar Association v. Union of India***[11], introduced the otherwise unheard concept of 'case flow management' in India. It is an overhaul process of the judiciary, which may significantly reduce litigation time, improve judicial efficiency, aims at reducing cost, and implements quality adjudication standards to achieve a timely and qualitative resolution of disputes.[12] In several jurisdictions globally, case management has been recognized as an integral facet of 'access to justice' and a basic principle of the rule of law which also makes it an indispensable aspect of basic human rights.

In the ***United States***, improvement of the civil justice systems was marked with the enactment of the Civil Justice Reform Act of 1990[13]. The act required 94 federal district courts to implement 'civil justice expense and delay reduction plans' that would 'facilitate deliberate adjudication of civil cases on their merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolution of civil disputes'.[14] In section 2(8) of the said Act, Congress finds that, 'dual problems of excessive litigation costs and delays, indicate that the civil justice system is not fulfilling its fundamental objective of adjudicating and resolving cases fairly, promptly, and inexpensively'.[15] While enacting the

---

to their judicial functions - Report of the Ministry of Finance, 13th Finance Commission, F.No.32(30).FCD/2010, pg.221, para 12.87, (Jan 10, 2020, 8:08 PM), https://www.prsindia.org/uploads/media/13financecommissionfullreport.pdf.

[11]Salem Advocates Bar Association v. Union of India (2003) 1 SCC 49.

[12]Advocate Niranjan J. Bhatt, Case Management - A Modern Concept, Law Commission of India - Papers presented in International Conference on ADR & Case Management (May 2003), (Feb. 14, 2020, 9:11 PM), http://lawcommissionofindia.nic.in/adr_conf/niranjan%20case%20mnt12.pdf.

[13]Civil Justice Reform Act, 28 U.S. Code § 471 (1990).

[14]Final report of the Judicial Conference of the United States on the 'Civil Justice Reform Act 1990' : Alternative proposals for reduction of cost and delay assessment of principles, guidelines & techniques (May, 1997), (Feb. 20, 2020, 5:09 PM), https://www.fjc.gov/sites/default/files/2017/CJRA-6-2-%20Civil%20Justice%20Reform%20Act%20Final%20Report%205-97.pdf.

[15]Civil Justice Reform Act, 28 U.S. Code § 2027 (1990) - Bill Introduced before the Senate of the United States of America (Jan, 1990) (Feb. 20, 2020, 3:55 PM), https://www.congress.gov/bill/101st-congress/senate-bill/2027/text.

bill Congress observed: 'Evidence suggests that an effective litigation management & cost and delay reduction program should incorporate several interrelated principles, including;

(A) The differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

(B) Early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

(C) Regular communication between a judicial officer and attorneys during the pre-trial processes.[16]

In the ***United Kingdom***, the Lord Chancellor of the British Government appointed Lord Woolf (Henry Kenneth Woolf, Baron Woolf) in March of 1994, to review the rules of the civil procedure, eliminate the complexity of civil litigation and facilitate access to justice.[17] Two reports, one interim and one final were created by Lord Woolf and his team of learned researchers in which were highlighted the various proposals for the reform of the civil justice system.[18]

At the heart of his recommendations was the allocation of civil cases to benches called 'tracks', which would in turn determine the degree of judicial case management. Broadly speaking, cases would be allocated to the small claims track, the fast track or to a multi-track, depending upon the value and complexity of the claim, the general idea being that resources devoted to managing and hearing a case must be proportionate to the importance and complexity of that case.[19] It was also recommended that appeals to higher courts from the lower courts must be based on similar principles to prevent a dilution of the efficacy of these reforms.

[16]United States, Litigation Management Manual, Federal judicial Center (1992) pg. 1 (Feb. 28, 2020, 3:03 PM), https://www.fjc.gov/sites/default/files/2017/Manual-for-Litigation-Management-and-Cost-and-Delay-Reduction.pdf.

[17]A.A.S. Zuckerman, 'Lord Woolf's access to justice', The Modern Law Review, Volume 59 no.6, (November 1996) (Mar. 2, 2020, 5:45 AM), https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1468-2230.1996.tb02694.x.

[18]Access to Justice, Interim Report, (Lord Chancellor's Department, June 1995); Access to Justice, Final Report, (London: HMSO, 1996).

[19]Justice M. Jagannadha Rao, Case Management & its advantages, Law Commission of India - Papers presented in International Conference on ADR & Case Management (May, 2003). (Feb. 14, 2020, 7:00 PM), http://lawcommissionofindia.nic.in/adr_conf/Mayo%20Rao%20case%20mngt%203.pdf

In ***India*** it would be a folly to blindly implement case management techniques of foreign jurisdictions without a complete, thorough and unbiased study of the various aspects of the judicial system. Over the years, the various reforms which have been suggested and/or implemented to buttress the judicial machinery is just one set of solutions to a highly complex and multi-dimensional problem. This problem will not entirely cease, merely by improvements in the management of cases and associated court machinery. In the past, such efforts have been generally focused through ADR mechanisms, modernisation, increasing the number of judges, technological & infrastructural improvements etc. But little has been done, to improve where the principal part of this issue lays - Procedure of the courts in civil matters. The Constitution of India vests extraordinary powers in the High Court's in the matters pertaining to the rules of the court, which necessarily means that each High Court is authorized to frame rules to regulate their own practice and procedure and to regulate the sittings of the Court and its members thereof conferred upon it by virtue of Article 225 of the Constitution.[20] The Civil Procedure Code, 1908 (CPC) is the principal act which governs the parties in a civil suit, and the First Schedule to this code provides for various rules classified as orders (1-51), which make provisions relating but not limited to the institution of suit, filing of plaints before the court, rules governing the parties, costs, affidavits, suits by or against minor persons/persons of unsound mind etc. and other incidentals of civil matters. Section 121 contained in Part X of the Code, provides that rules in the First Schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this part.[21] Further, Section 122 of the Civil Procedure Code empowers the High Courts, not being the court of a Judicial Commissioner to make rules regulating their own procedure as also the procedure of the Civil Courts subject to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.[22] The disparity between the rules of the courts can be attributed to this enabling provision in the Civil Procedure Code, 1908 which allows each High Court to make its own additions/omissions to the rules in the First Schedule, as well as, rules of the subordinate courts falling within the purview of its supervisory jurisdiction. It is submitted that the

[20]INDIA CONST. art. 225.
[21]Code of Civil Procedure, 1908, No. 5, Acts of Parliament, 1908.
[22]Code of Civil Procedure, 1908, No. 5, Acts of Parliament, 1908.

inconsistency of rules of civil procedure among various courts tantamount to inequality. ***The variance of rules among courts in the exercise of its civil jurisdiction puts litigants in various jurisdictions on unequal pedestals of justice in terms of:***

(1)**Understanding the rationale** - behind why or how these rules vary at every stage of appeal or in various jurisdictions.

(2)**The time taken in matters**- from the institution of the plaint till the disposal of the matter, which may differ from court to court depending on how efficiently the rules have been framed in this regard.

(3)**Matters which are similar in nature** - and governed by the same law, are disposed of at varying rates in the various jurisdictions owing to the discrepancy in procedure.

III. METHODOLOGY OF STUDY:

For the purposes of this study secondary sources of information have been utilized. A wide variety of information has been collected and ample number of blogs, research articles, websites and a detailed examination of the topics relating to the Civil Procedure Code itself been made to solidify the hypothesis of this study. In order to understand why litigation in India is such an arduous process it becomes imperative to examine whether or not the procedures followed by each court, in civil matters is aggravating the already existing phenomena of judicial delay owing to the sheer volume of cases. To study this pattern, it becomes necessary to examine the provisions created by the various High Courts for itself and the subordinate courts in the rules which govern civil matters. For all practical purposes and making this comparative study effective and concise, this paper has been restricted to the study of the provisions made only in the Bombay and Delhi High Courts and Civil Courts and limited to the more basic and commonly understood civil procedures. The difference in procedure in the courts of these two jurisdictions are highlighted clearly below, and aims to paint a broad picture of the prevailing situation in the country with respect to civil litigation. Reproduced below are the extracts taken from the rules of the Delhi & the Bombay High Courts and Civil Courts respectively.

IV. COMPARATIVE ANALYSIS OF THE RULES OF THE COURT:

IV.I RULES RELATED TO SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND (TABLE 1):

Sr. No.	Delhi High Court (HC)[23]	Bombay High Court (HC)[24]
1	**3. List of all likely guardians ad litem to be filed** — (**a**) In suits, where the defendant is a minor, the plaintiff shall file with the plaint, a list of relatives and all other persons, with their correct addresses, who prima facie are most likely to be capable of acting as guardian for the minor defendant in the suit. (**b**) A notice shall be issued simultaneously to all such persons for which a single process fee shall be payable. Such persons shall be deemed to be unwilling to act as guardian ad litem, if, after service of notice, they fail to appear on date fixed.	**65. Person eligible to be guardian ad-litem** :- The person to be appointed guardian for the suit, if he has no interest directly or indirectly adverse to that of minor and is otherwise a fit and proper person to be appointed guardian for the suit, will ordinarily be (a) the guardian of the minor appointed or declared by an authority competent in that behalf, or (b) the testamentary guardian, or (c) the natural guardian, or (d) the person under whose care the minor is, and the plaintiff shall, if possible, obtain the consent in writing of one of such persons,

[23]The Delhi High Court (original side) rules, 2018, (Dec. 25, 2019, 6:00 PM), http://delhihighcourt.nic.in/writereaddata/upload/CourtRules/CourtRuleFile_BQGSY4Q2.PDF.
[24]The Bombay High Court (original side) rules, 1980 (amended upto 9th September, 2015) (Dec. 27, 2019, 10:00 AM) https://bombayhighcourt.nic.in/libweb/rules/OSrules/ch24.pdf.

		in order of priority referred to above, to his appointment as such guardian.
2	**4 Address for service of guardian ad litem**— Every guardian ad litem of a defendant, other than an officer of the Court, shall, within seven days of the order of his appointment as such or within such further time as the Registrar may allow, file in Court, particulars as provided in Rule 3 of Chapter III of these Rules. Failure on his part to do so may be deemed sufficient ground for removing him under Order XXXII rule 11 of the Code.	N/A
3	**3(c)** If the persons specified in the list filed under sub-Rule (a) of this Rule 3 are unwilling to act as guardian ad litem, the Registrar may, if there be more defendants than one, and their interests are not adverse to that of the minor, appoint one of such defendants, who may be willing to act as guardian ad litem; or may appoint, forthwith, one of the officers of the Court as such	**66. Procedure when plaintiff unable to obtain consent of persons eligible** :- If the plaintiff is unable to obtain the consent of any of the persons mentioned in the last preceding rule, he shall state the reasons of his inability and propose some other fit and proper person for being appointed guardian for the suit; a notice will then issue to the minor if

	guardian ad litem.	the minor is above 14 years of age and to the persons mentioned in the last preceding rule informing them that on a day to be therein named, the Prothonotary and Senior Master will, if no cause be shown to the contrary, proceed to appoint the person proposed by the plaintiff, or some other fit and proper person, to be such guardian as aforesaid. (Form No.7).

IV.I.I SUMMARY OF TABLE 1:

1. ***Rule 3(a) & (b)*** of the Delhi HC pertains to filing the list of guardians with the court by the plaintiff in cases where a suit is brought against a minor. It puts an onus upon the plaintiff to firstly, identify all possible individuals who are most likely capable of acting as guardian to the minor, and thereafter to obtain the correct addresses of such likely guardians and file the same along with the plaint. After this process is completed, a summons will be issued to all such persons, identified by the plaintiff for which a process fee would be applicable. If on the set date of the next hearing, such persons do not appear, they will be deemed to be unwilling to act as guardian for the minor **Rule 3(b)**. On the other hand, **Rule 65** of the Bombay HC first provides for a fitness test for the likely guardian of the minor, 'if he has no interest directly or indirectly adverse to that of minor and is otherwise a fit and proper person' which cannot be seen in the provisions of the Delhi HC rules. **Rule 65** also provides for the broad categories of all persons who are capable of acting as likely guardians for the minor in this order of priority - appointed, testamentary, natural, or any person under whose care the minor is. The only onus on the plaintiff is to obtain the consent in writing of one of these persons in the order of priority,

as compared to Delhi HC **Rule 3(a)** where the entire onus of identification and obtaining of address of the likely guardian of the minor is imposed on the plaintiff. Also, in the Delhi HC time may lapse between the issue of summons and the next date of hearing where the guardians who have been served with the summons are expected to appear, and their non-appearance or non-compliance with the same may hinder or further delay the proceedings.

2. ***Rule 3(c)*** of the Delhi HC provides that if the persons named in the list of likely guardians for the minor in a suit submitted by the plaintiff as per **Rule 3(a)** (refer table above) are unwilling to assume the role of guardian then, the registrar may appoint one of the defendants in the case, if there be more than one and his interests are not adverse to that of the minor, as the guardian of the minor. If all the above options are exhausted unsuccessfully, the registrar may appoint an officer of the court as the guardian of the minor. Conversely in the Bombay HC, if the plaintiff is unable to obtain consent of any one of the persons mentioned in the preceding rule (**Rule 65**) **Rule 66** requires the plaintiff to submit the reasons of his inability in writing and propose by himself a fit person to act as a guardian of the minor. Now if the minor is above the age of 14 a notice will issue to him, and the persons in the preceding rule informing them that on a day to be named if no cause is shown as to why he should not be appointed guardian, the prothonotary or the senior master will proceed to appoint the person proposed by the plaintiff. It is unclear from the Delhi HC rules, whether or not notice will be served on the minor (above 14 years of age) as stipulated in the Bombay HC rules. It must be pointed out that there is a considerable difference between the rules of the Delhi and Bombay High courts in this regard. In the Delhi HC, if a person refuses to stand as guardian, the co-defendants in the case may be required to do so (if there are any) and then as a last resort the officer of the court is appointed as guardian whereas in the Bombay HC, the plaintiff himself has to recommend a person who would stand as guardian and such persons appearance or role as guardian maybe compelled if they unable to show any cause to the contrary.

IV.II RULES RELATED TO FILLING OF AFFIDAVITS (TABLE 2):

Sr. No.	Delhi High Court (HC)[25]	Bombay High Court (HC)[26]
1	**7. Before whom affidavits are to be sworn**. — (a) Affidavits for the purposes of any cause appeal or matter may be sworn before a Notary or any authority mentioned in Section 139 of the Code or before the Court/ Registrar, or before the Commissioner generally or specially authorized in that behalf by Court. The authority attesting any such affidavit shall, wherever the person is known to him, append a certificate to that effect on the affidavit, and where the person affirming the affidavit is not known to the authority concerned, the certificate shall state the name of the person by whom the person affirming the affidavit has been identified. (b) Wherever an affidavit is	**196. Before whom affidavits to be sworn.** – Affidavits shall be sworn either before the officers referred to in Rule 197 below or before persons mentioned in section 139 of the Code of Civil Procedure, 1908 **197. Officers appointed to administer oaths.** The following Officers are appointed to administer oaths, declarations and affirmations to any person in respect of any judicial proceeding, which may be pending or about to be instituted in any Court in India:- (1)Prothonotary and Senior Master, (2)Commissioner for Taking Accounts, (3)Court Receiver,

[25]The Delhi High Court (original side) rules, 2018, (Dec. 25, 2019, 2:00 AM), http://delhihighcourt.nic.in/writereaddata/upload/CourtRules/CourtRuleFile_9GDNEC5D.PDF.
[26]The Bombay High Court (original side) rules, 1980 (amended upto 9th September, 2015), (Dec. 27, 2019, 8:00 PM), https://bombayhighcourt.nic.in/libweb/rules/OSrules/ch12.pdf.

	affirmed by an illiterate person, or a person not conversant with English language, the authority concerned shall, before attesting the same, translate and interpret the contents of the affidavit to the person affirming the same, and certify the said fact separately under his signature.	(4)Official Assignee, (5)Taxing Master, (6)Master and Assistant Prothonotary, (7)Deputy Official Assignee, (8)First Assistant to Court Receiver, (9)Insolvency Registrar, (10)Company Registrar, (11)Account Officer, (12)Assistant Master, (13)First Assistant to Official Assignee, (14) Second Assistant to Official Court Receiver, (15)Associates, (16) Chief Translators and Interpreter, (17)Deputy Chief Translator and Interpreter, (18) Assistant Chief Translator and Interpreter. [2] (19) Deputy Sheriff of Bombay
2	N/A	**203. Alteration in affidavit. -** No affidavit having any interlineation, alteration, or erasure shall, without the leave of the Court or the Judge in Chambers, be read or made

		use of in any matter pending in Court, unless the interlineation, alteration or what is written on the erasure is authenticated by the initials of the Officer before whom the affidavit is sworn.

IV.II.I SUMMARY OF TABLE 2:

1. Sec. 139 of the Civil Procedure Code specifies the following persons who may affirm an oath on affidavit: (a) any Court or Magistrate, or (aa) any notary appointed under the Notaries Act, 1952 (b) any officer or other person whom a High Court may appoint in this behalf, or (c) any officer appointed by any other Court which the State Government has generally or specially empowered in this behalf. In consonance with this provision **Rule 197** of the Bombay HC has supplied an additional elaborate list of 18 persons (refer **Rule 197** above) who are qualified to affirm an oath on affidavit. In the Delhi HC, on the other hand as compared to Bombay **Rule 7** merely states that an affidavit maybe sworn before the authorities mentioned in Sec. 139 CPC or before the Court/ Registrar, or before the Commissioner, and fails in providing any further category of persons. Such exclusion in the rule of the Delhi HC reduces the scope of persons who may be able to affirm an oath, and may significantly increase the burden on the persons who are authorized to do the same. **Rule 7** of the Delhi HC makes it mandatory to append a certificate to the affidavit in cases where the person making the oath is known to Affirming Authority and where the person affirming the affidavit is not known to the Authority concerned, the certificate shall state the name of the person by whom the person affirming the affidavit has been identified. No such provision exists in the rules of the Bombay HC. Further, **Rule 7** also puts an onus on the Affirming Authority before attesting an affidavit to translate the contents of the same to an illiterate person who is not conversant with the English language, and certify this fact separately under his signature. No similar provision is seen in the rules of the Bombay HC.

2. **Rule 203** of the Bombay HC provides that any interlineation, alterations or erasures in an affidavit may not be made without the leave of the Court in any pending matter unless the same is authenticated by the officer before whom the affidavit is sworn. No similar provision is seen in the Delhi HC rules. One may conclude the absence of such a rule in the Delhi HC, suggests the silent use of the customs of the court which litigants or a novice lawyer may not be aware of.

IV.III RULES RELATED TO SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND (TABLE 3):

Sr. No.	Delhi Civil Court (CC)[27]	Bombay Civil Court (CC)[28]
1	**3. Permission to sue-(a)** Any person as mentioned in **rule 2** (next of friend/ guardian ad-litem) may institute a suit on behalf of a minor and no permission of the Court is necessary for the purpose. An exception to this general rule has however been made by sub-rule (2) of Rule 4 of Order XXXII. If the minor plaintiff has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the	**182. Admission of next of friend-** When a suit is brought on behalf of a minor, the next friend shall make an affidavit, to be presented to the Judge with the plaint in the suit, that he has no interest directly or indirectly adverse to that of the minor, and that he is otherwise fit and proper person to act as such next of friend. The age of the minor shall also be stated.

[27]Trial in civil matters, The Delhi High Court rules, (Dec. 25, 2019, 4:15 PM), http://delhihighcourt.nic.in/writereaddata/upload/CourtRules/CourtRuleFile_UGB1P5L6.PDF.
[28]Mahendra C Jain, Bombay City Civil Court Rules and Presidency Small Causes Court (Bombay) Rules 2015, Noble Law House (2015).

	next friend of minor, unless the Court considers, for reasons to be recorded, that it is for the minors welfare that another person be permitted to act. **(b)** The next friend of a minor plaintiff can be ordered to pay any costs in the suit as if he were the plaintiff.	
2	**4. Minor may not be proceeded against ex parte-** A "guardian ad litem" for a minor must be appointed by the Court and the trial of the suit cannot proceed until such an appointment is made, the court cannot proceed, or pass an order or decree, ex parte against a minor. An application for the appointment of a guardian ad litem of a minor and the affidavit filed therewith shall state: Whether or not the minor has a guardian appointed under the Guardians and Wards Act, 1890, and if so, his name and address;	**183. Procedure by petition when defendant is a minor-** When a plaintiff knows that a defendant is a minor he shall, on the presentation of the plaint, present a petition for the appointment of a guardian for the suit for such defendant; such petition shall be in Form No. 70 and be verified in like manner as a plaint.

	The name and address of the father or other natural guardian of the minor; The name and address of the person in whose care the minor is living; A list of relatives or other persons who prima facie are most likely to be capable of acting as guardian of the minor; How the person sought to be appointed guardian or next friend is related to the minor; That the person sought to be appointed guardian or next friend has no interest in the matters in controversy in the adverse of that of the minor and that he is a fit person to be so appointed; Whether the minor is less than 15 years of age.	
3	**6. Choice of guardian, appointment of Court officers or pleader, funds for defence land accounts to be kept. Duties of guardian-** In appointing a guardian ad litem, the following order of	**184. Person eligible to be guardian ad litem-** The person to be appointed guardian for the suit, if he has no interest directly or indirectly adverse to the minor, and is otherwise fit.

	preference shall be observed- If there is a guardian appointed or declared by a court he must be appointed unless the court considers that it is for the welfare of the minor that some other person should be appointed, the court must record its reasons; In the absence of a guardian appointed, or declared by a court, a relative of the minor best suited for the appointment should be selected; In the absence of any such relative, one of the defendants should be appointed, if possible; And failing such a defendant, a court official or a pleader may be appointed. It should be remembered that no person can be appointed to act as a guardian ad litem without his consent (in writing). Consent may, however, be presumed unless it is expressly refused. When a Court official or	Will ordinarily be the (a) testamentary or (b) natural guardian or (c) the custodian of the minor, and the plaintiff shall, if possible, obtain the consent in writing of one of such persons to the above order. **185.Procedure when stranger appointed-** If the plaintiff is unable to obtain the consent of any of the persons in rule 184. He shall state the reason of his inability and propose some other fit and proper person; a notice will then issue to the minor and his testamentary or natural guardian, or failing them, to the person with whom the minor resides, informing them that on the day to be therein named, the Judge sitting in the Chambers will, if no cause be shown to the contrary, proceed to appoint the person proposed by the plaintiff, or some other fit and proper person, to be such guardian as aforesaid.

	pleader is appointed to act as a guardian the court has a power to direct the plaintiff or any other party to the suit to advance the necessary funds for the purposes of defence. The court official or a pleader should be required to maintain and produce accounts of the funds so provided and these should ultimately be recovered from such party (or rout of the property of the minor) as the court may think it just to direct after the result of the suit. The court official or the pleader appointed by the court as the guardian ad litem of minor defendant, should to the best of his ability communicate with the minor and his relatives in order to ascertain what defence can properly be taken in the case and further try to substantiate that defence by adducing proper evidence. **5. Notice to minors and**	**Service of summons-** (1) On such appointment being made the summons and other process or notice in the suit shall be served on such guardian ad litem on behalf of the minor, unless otherwise ordered. (2) Where no guardian ad litem has been appointed or for any other reason the court orders service, on a minor personally and such minor is unable to acknowledge the same, it shall be done by electing service on any person in whose charge the minor is or with whom he habitually resides. In case there is no such person, the service shall be effected by affixing a copy of the writ or other process (with a translation) on the outer door of the house in which the minor ordinarily resides.

	relatives etc.—No order should be made appointing a guardian ad litem unless notice is issued to the guardian of the minor appointed or declared by an authority competent in that behalf, or where there is no such guardian to the father or where there is no father to the mother, or where there is no father or mother to other natural guardian of the minor, or, where there is no father, mother or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule. A notice to the minor is not essential under the rules (as amended) but should ordinarily issue when the minor is shown to be over fifteen years of age as he may in that case be able to take an intelligent interest in the selection of his guardian and	

	the conduct of the proceedings.	

IV.III.I SUMMARY OF TABLE 3:

1. As per **Rule 3 (a)** of the Delhi CC provides that any person mentioned in preceding **Rule 2** (not reproduced above) who may be either next of friend or guardian-ad-litem, is permitted to institute a suit on behalf of a minor person and no permission of the court is needed is this regard. The only exception to this rule arises in Sub-rule (2) of Rule 4 of Order 32 in the CPC, which provides that if a guardian has been previously appointed by a competent authority, only such person can bring a suit on behalf of the minor, unless the court considers it to be in the interest of the minor to appoint another person as guardian. In **Rule 182** the Bombay CC on the other hand, when a suit is brought on behalf of a minor, the next of friend makes an affidavit along with the plaint mentioning also the age of the minor, affirming that he has no interests adverse to that of the minor and that he is a fit and proper person. The Bombay CC rules seems to throw caution to the wind, as compared to the elaborate process of the Delhi CC in as much as any person who institutes a suit on behalf of the minor is considered his next of friend, provided he swears on affidavit that he has no interest contrary to that of the minor. Neither is the exception of a previously appointed guardian contained in the rules of the Delhi CC provided for in the Bombay CC rules. **Rule 3(b)** of the Delhi CC also provides for costs to be paid by the minors next of friend as if he were the plaintiff himself, and this provision is not reflected in the Bombay CC rules.
2. **Rule 4** of the Delhi CC provides that a trial may not proceed against a minor or an order may not be passed ex-parte until a guardian-ad-litem is appointed for the minor in a suit. An application is required to be filed for the appointment of a guardian for the minor and an affidavit filed alongside it must contain certain particulars for e.g.: The name and address of the person in whose care the minor is living, whether the minor has attained 15 years of age, list of relative who could be likely guardians of the minor. On the other hand the Bombay CC rules mentions nothing about initiating proceedings or passing of ex-parte orders against minors. **Rule 183** of the Bombay CC requires the plaintiff to present

a petition for the appointment of a guardian for the minor defendant, and such petition must be in form 70 as opposed to the affidavit that has to be filed by the plaintiff with the concerned particulars in the Delhi CC.

3. **Rule 6** of the Delhi CC provides for the order of preference for choice of guardian to be appointed for the minor in a suit. It would either be the court appointed guardian, or a relative of the minor, or the co-defendants in the suit (if any), and finally an officer of the court if none of the above categories of persons can assume the role of guardian. However consent of the person so proposed to be appointed as the guardian is required before the appointment and may be presumed unless expressly refused. When an officer of the court is appointed as a guardian the court has a power to direct the plaintiff or any other party to the suit to advance the necessary funds for the purposes of defence, along with an onus on the appointed guardian (officer of the court in this case) to maintain full accounts of the expenditure of the defence so the same maybe recoverable from the minor or his estate as the case may be. A further onus is imposed on the officer of court appointed as guardian to communicate with the minor and his relatives if any, to arrange the best strategy of defence for the minor, and to substantiate said defence with proper evidence. Conversely in the Bombay CC **Rule 184** first lays down a fitness test that the guardian has no interest adverse to that of the minor and then lists the following categories of persons capable of acting as guardians: testamentary or natural guardian or the custodian of the minor; and the plaintiff shall also, if practicable, obtain the consent in writing of one of such persons. The fitness test provided for in the Bombay CC rules is not mentioned in the rules of the Delhi CC. When the plaintiff is unable to obtain the consent of the persons mentioned in rule **Rule 184**, **Rule 185** requires the plaintiff to state the reason of his inability in writing, and propose some other fit person. A notice will then issue to the minor and his testamentary or natural guardian, or failing them, to the person with whom the minor resides, informing them that on the day to be therein named, the Judge will, if no cause be shown to the contrary, proceed to appoint the person proposed by the plaintiff. The Delhi CC specifies an exhaustive list of guardians, and failing that list the officer of the court may be appointed as a guardian; a provision which is not included in the rules of the Bombay CC and the onus is on the plaintiff to propose a guardian when he cannot obtain

the consent of the persons stated in **Rule 184**. The provisions of the Delhi CC stand out as more elaborate in this regard, when it speaks about the appointment of the court officer as a guardian when no persons from the choice of guardians are available and it also creates a duty on such guardian to take due care and interest in the defence of the minor; whereas the Bombay CC has no such provision for appointing a court officer as guardian, nor does it impose a duty on the appointed guardian to make optimum use of the resources in the defence of the minor.

4. **Rule 5** the Delhi CC makes a provision for notice that no person maybe appointed as guardian without first giving notice to such person, and hearing any objection on their behalf. Guardian in this case may be court appointed or father/ mother of the minor, natural guardian or the person in whose care the minor is. It also provides that it is practicable to serve a notice on a minor above 15 years of age so that he may take an active interest in his own defence and in the selection of his guardian. The Bombay CC rules on the other hand provide for the service of summons, and the manner in which it is to be served. It first provides that the summons or notice be ordinarily served on the guardian-ad-litem of the minor, and if such guardian has not been appointed then on the minor himself, and if the minor cannot acknowledge such notice it must be served on any person in whose charge the minor is or with whom he habitually resides. Unlike the Delhi CC rules, it does not provide for the age of the minor to serve a summons on him, but merely provides that if the minor is unable to acknowledge the notice it will be served upon his guardian. It further provides that if no such person exists the service shall be affected by affixing a copy of the writ or other process (with a translation) on the outer door of the house in which the minor ordinarily resides. This manner of issue of summons is not provided for in the rules of the Delhi CC.

IV.IV RULES RELATED TO FILLING OF AFFIDAVITS (TABLE 4):

Sr. No.	**Delhi Civil Court**	**Bombay Civil Court**[29]
1	N/A	**96. "Affidavit" to include plaint,**

[29]supra note 28.

		etc.- The word 'affidavit' in this chapter shall include plaint, written statements, petition, and any document required to be sworn; and the words 'swear' and sworn'; shall include 'affirm' and affirmed'
2	N/A	**98. Before whom affidavit to be sworn-** Affidavits shall, if taken within Greater Bombay, be taken before an officer of the Court, and if elsewhere in India, before the Officers indicated by the Code of Civil Procedure, Section 139.
3	N/A	**105. Alterations in affidavit-** No affidavit having in the Jurat or body there of any interlineations, alteration or erasure shall, without the leave of the court or judge, be read or made use in any matter pending in the court, unless the interlineations or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, [and is also initialled by the deponent and/or his advocate], nor in the case of any erasure unless the words or figures, appearing at the time of taking the affidavit to be written on the erasure, are rewritten and initialled

		in the margin of the affidavit by the officer taking it. [and is also initialled by the deponent and/or his advocate].
4	N/A	**106. Affidavits by blind persons-** Where an affidavit is sworn by any persons who appears to the officer taking the affidavit to be blind, the officer shall certify at the foot of the affidavit that the affidavit was read or read and interpreted (where necessary) in his presence to the deponent, that the deponent seemed perfectly to understand it and that the deponent made his signature or mark in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the court or a judge is otherwise satisfied that the affidavit was read over to, and appeared to be perfectly understood by the deponent.

IV.IV.I SUMMARY OF TABLE 4:

1. **Rule 96** of the Bombay CC contains a clear definition of the term 'Affidavit' and what is inclusive of it as compared to the Delhi CC rules where no such definition exists. Even if this term is very commonly understood in legal parlance, there is no reasoning logical or legal for not including the definition in the rules even merely for the sake of convenience. Moreover, there is no explanation as to why a particular court (Bombay CC) would

choose to define the term, while another court (Delhi CC) would see fit to exclude such definition.

2. **Rule 98** of the Bombay CC mentions the persons before whom an affidavit maybe sworn, a provision which is non-existent in the rules of the Delhi CC. Furthermore, the Bombay CC rules mention that an affidavit sworn in the region of Greater Bombay must be sworn before an officer of the court, but fails to interpret as to who constitutes an officer of the court. Conversely, if an affidavit is sworn in any other part of India it is to be sworn before the persons mentioned in Sec. 139 of the CPC.
3. **Rule 105** of the Bombay CC, lays down the procedure of alterations, interlineations and erasures in an affidavit which has been brought on record in a suit that no such alteration, interlineation or erasure may be made without the leave of the court and before it is initialled and authenticated by the officer who has affirmed the oath on the affidavit as also by the deponent or his advocate. In case of an erasure in the affidavit, the erased portion must be re-written and must be initialled in the margin by the officer affirming the affidavit and the deponent or his advocate as the case may be.

   The Delhi CC rules contain no such provision and it is presumed that the customs of that court would guide such procedures in the absence of the provisions in black and white. Again, it must be stressed that a layman, novice legal practitioner, or student of the laws may not be aware of such customs, and consequently difficulties may arise in the absence of written provisions.
4. **Rule 106** of the Bombay CC rules puts an onus on the affirming authority to read and interpret wherever required, the contents of an affidavit to a blind or visually impaired person, who is a deponent and certify the same at the foot of the affidavit, failing which no such affidavit maybe used in evidence unless the judge is satisfied that its contents were completely read and interpreted to or understood by the deponent. An identical provision is also contained in **Rule 205** of the Bombay HC (not reproduced above). But, no such provision is seen in the rules of the Delhi CC or the Delhi HC with respect to blind or visually impaired persons.

V. CONCLUSION:

From the examination and comparative analysis of the rules given above it is evident that discrepancies lie in the rules and procedures of courts, in the civil justice system. The crux of the issue which is sought to be raised by highlighting this discrepancy is the position litigants are placed in, when it becomes apparent that procedural differences are directly capable of affecting case timelines and significantly prolonging the period of litigation from jurisdiction to jurisdiction in similar cases; and even the system of appeals from lower to higher court within the same jurisdiction, making the entirety of the litigation a very demanding task. Even more so, that this differentiation has no (legal) basis aside from general convenience, but is purportedly a by-product of history and narrow foresight in modifying and revamping a judicial system which was designed and handed down to us by the early colonial rulers.[30]

Due to these different procedures, matters which may be extremely similar in nature tend to get disposed of at varying rates in different courts, primarily because at every stage the discovery process gets altered, fact finding, filing of affidavits, admission by the court, appointment of guardians, definitions of essential procedures- which may or may not be defined are some of the subjects which have been included in this study, and while comparing have been found to be dilatory in nature. Ultimately such discrepancy in procedure between and among courts, are leading to a delay in delivery of justice to the parties, even when matters are extremely similar in nature, while one court may take a longer period of time to admit and adjudicate matters, only on the ground that the procedure in said court is complex and different, as compared to another court where the procedure may be relatively simplified or relaxed. This begs the question that do such practices inter and intra courts amount to the unequal treatment of litigants in these matters? Can it really be said that all persons have equal 'access to justice', when litigants nationwide are put on different pedestals in terms of admission and disposal of their matters owing to procedural inconsistencies? If answered in the affirmative such questions may have significant implications on the notion of 'access to

[30]'There exists a school of thought which believes that our procedural laws, which are based on the English system, are not suited to the genius of our people. The alternatives to the English system are the (i) indigenous system & the (ii) continental system', 27th Law Commission of India Report, '*The Code of Civil Procedure 1908*' (1964) pg. 7, para 11, (Jan. 23, 2019, 7:00 PM), http://lawcommissionofindia.nic.in/1-50/Report27.pdf.

justice'. 'The words 'access to justice' is inclusive of many characteristics, but is generally concentrated on two basic purposes of the legal system which allows people to discharge their rights and/or resolve their disputes under the legal machinery provided by the state. First, the system must be equally accessible to all; second, it must lead to results that are individually and socially just'.[31] In the Indian context 'access to justice' has been interpreted to fall under the wide umbrella of Fundamental Rights guaranteed in Articles 14[32]& 21[33] of the Constitution of India. In the judgment of the Apex court in the matter of ***Imtiyaz Ahmad***[34] it was observed that, 'access to justice is vital for the rule of law, which by implication includes the right of access to an independent judiciary and that the stay of investigation or trial for significant periods of time runs counter to the principle of rule of law, wherein the rights and aspirations of citizens are intertwined with expeditious conclusion of matters that delay in conclusion of criminal matters signifies a restriction on the right of access to justice itself, thus amounting to a violation of citizen's rights under the Constitution, in particular under Article 21.'[35] Even though the Imtiyaz judgment, pertained to judicial delay in criminal proceedings, the observations made in the judgment are relevant even from the standpoint of civil proceedings. In the case of ***Hussainara Khatoon v. State of Bihar***[36] the Supreme Court has declared the right to a speedy trial to be an integral and indispensable part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution. In the case of ***Anita Kushwaha v. Pushap Sudan***[37] the Supreme court has endeavoured to identify various components of 'access to justice' by observing that, 'access to justice may as well be the facet of the right guaranteed under Article 14 of the Constitution, which guarantees equality before law and equal protection of laws to not only citizens but non-citizens also. We say so, because equality before law and equal protection of laws is not limited in its application to the realm of executive action that enforces the law. It is as much

[31]Garth, Bryant G. and Cappelletti, Mauro, Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective (1978) Maurer School of law, Indiana University, Bloomington. (Feb. 22, 2020, 12:30 PM),
http://www.repository.law.indiana.edu/facpub/1142.
[32]INDIA CONST. art. 14.
[33]INDIA CONST. art. 21.
[34]supra note 4.
[35]supra note 4, at 699, para 27.
[36]Hussainara Khatoon (1) v. State of Bihar (1980) 1 SCC 81.
[37]Anita Kushwaha v. Pushap Sudan (2016) 8 SCC 509.

available in relation to proceedings before courts and tribunals and adjudicatory fora where law is applied and justice is administered. The citizen's inability to access courts or any other adjudicatory mechanism provided for determination of rights and obligations is bound to result in denial of the guarantee contained in Article 14 both in relation to equality before law as well as equal protection of laws. Inadequacy in the adjudicatory mechanism, is bound to prevent those looking for enforcement of their right to equality before laws and equal protection of the laws from seeking redress and thereby negate the guarantee of equality before laws or equal protection of laws and reduce it to a mere illusion. Civil litigation, and the procedures governing civil justice system, must therefore necessarily incorporate the principles of equality, by bringing all litigants nationwide, at par, in terms of the procedure that must be followed and complied with when bringing about a lawsuit, in order to re-imagine and bring about the true spirit of 'access to justice' and the dire need for laws which are able to promote the speedy adjudication of cases, and qualitatively enhance the litigant experience.

The lack of such equality tends to hamper the quality of justice at every stage, causes severe mental stress and apprehensiveness among litigants and in many cases may even actively dissuade people from approaching the courts to seek legal remedies, or availing oneself of the right to appeal as the next resort. Such scrutiny may very well, provide an answer to the question posed earlier, that procedural discrepancies in civil litigation, does indeed amount to the unequal treatment of litigants and also borders on the violation of the fundamental right of 'access to justice' guaranteed to citizens under the Constitution of India.

V.I RECOMMENDATIONS:

1. A **uniformity of procedural laws** must be achieved among courts in civil matters. It maybe suggested that in all matters apart from the ones pertaining to personal laws, there must be a centralized system, for the framing of common rules of procedure, along with its unvarying application to all the courts.

2. To achieve this, it would be necessary to **strip the High Courts of the power** to frame its own rules of procedure, and that of the subordinate courts, and such rules be formulated by a common authority or as an alternative arrive at a consensus as to the **common framing of the rules of procedure**.
3. States which have special or necessary requirements can **draw a separate list of rules**, which would act as addendum pursuant to the commonly framed rules.
4. To **constitute an authority** in each court at every level for the management of that court to facilitate grievance redressal and enquiry for and by litigants in matters related to the court procedure and rules, with an effective system to discover, rectify and reduce friction of judicial machinery.
5. A uniformity of procedural laws may open up **avenues to objectively evaluate the performance** of individual courts, as common and unvarying application of rules would mean that all courts are now at par in terms of the rules, and it makes performance evaluation more efficient if all courts are operating under identical rules.
6. Apart from the above mentioned aspects there are many **allied matters which need due consideration** like the corrupt practices within the legal system, the dearth of judges, lack of awareness among people about their rights, lack of good legal education in law schools, prioritization and listing of cases, deficiency of quality legal aid and lack of professionalism on part of the lawyers etc. all of which are subjects for another study.

In a speech delivered by former Chief Justice of India P.N. Bhagwati on the occasion of Law day in 1985, he lamented: 'I am pained to observe that the judicial system in the country is almost on the verge of collapse. Our adjudicatory system is creaking under the weight of arrears. It is a trite saying that ***justice delayed is justice denied***.

Those who are seeking justice in our courts have to wait patiently for years and years to get justice. They have to pass through the labyrinth of one court to another until their patience gets exhausted and they give up hope in utter despair. The only persons who benefit by the delay in courts are the dishonest who can with impunity avoid carrying out their legal obligations for years and the rich and the affluent who obtain orders of stay or injunction

against the Government and the public authorities and then continue to enjoy the benefit of such stay or injunction for years, often at the cost of public interest.'[38]

It is of paramount importance to reform and unify the judicial system, and to minimize if not entirely eliminating the issue of delay at the earliest in order to provide justice in a reasonable time. The onus and responsibility is significantly but not entirely on the judiciary, as many judges and many courts work tirelessly and ceaselessly to further the interests of justice.

But it is imperative that this voice of unity comes from within the judiciary itself; a clarion call, to bring about a revolution in the judicial system and ameliorate the confidence of the people in the Indian Judiciary.

[38]Speech Delivered by Chief Justice P.N. Bhagwati on November 26, 1985 on The Occasion of Law Day (1986)1 SCC J-1.