AN ANALYSIS ON THE EFFECTIVENESS OF SECTION 309 CrPC IN DELIVERING JUSTICE

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Abstract

As everyone may have heard, the popular saying "justice delayed is justice denied." The pragmatic application of this principle can be observed in section 309 CrPC. The research aims to comprehend the provisions of Section 309 CrPC to study the critical balance between speedy trial and postponement of criminal proceedings when necessary, using pertinent examples. This section will examine the daily instructions that instruct the court to expedite the criminal proceedings until all witnesses have had a chance to voice their thoughts. "If necessary, it gives the Magistrate the authority to remand the accused to judicial custody once the offence has been determined and the trial has started." The provision also controls the criminal court's power to postpone or adjourn cases, highlighting the need to avoid prolonged stays of proceedings to prevent evidence from being lost to the passage of time and from unjustified harassment of the accused. If it deems necessary, the Court may postpone the investigation or trial after being notified of the offence. In a similar vein, the trial may be delayed by the court if needed. In both situations, though, recording the rationale behind the postponement or adjournment is necessary. The study's main contribution is understanding how section 309 operates and the limitations imposed in certain situations.

Keywords: *Justice, Offence, Trial, Delay, Investigation, CrPC.*

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INTRODUCTION

Every Indian citizen has fundamental rights articulated in Part III of the Indian Constitution. Among these, Article 21[1] holds particular significance, encompassing a spectrum of rights within its purview. One pivotal entitlement it encapsulates is the right to a speedy trial. In the framework of Indian law, the principle of equality under Article 14[2] is diligently applied to accused individuals. An accused person, denoting someone apprehended for the commission or imminent commission of an offence, is accorded specific rights during inquiries and trial proceedings. These rights are protected through constitutional provisions and the Code of Criminal Procedure, 1973.[3]

The Criminal Procedure Code is designed to streamline the disposition of investigations and trial proceedings, ensuring a continuous process once the examination of witnesses has commenced. Upon taking cognisance of an offence or during the trial, the court may adjourn or postpone proceedings for valid reasons to be recorded. However, such adjournments should not exceed 15 days when detaining a suspect, and no adjournments are allowed once witnesses have testified, except for exceptional reasons documented in writing.

While witnesses play a crucial role in the criminal justice system, the current treatment of witnesses in India is alarming. Witness reluctance stems from fear, pressure, and threats from accused parties, compounded by the lack of legal obligations for the state to provide witness protection. The repeated court appearances and the fact that they face adjournments add to their frustration and impede justice delivery. Witness cooperation is further hampered by negative interactions with law enforcement, prosecutors, and court officials, leading to a hostile environment and potential retractions that complicate the pursuit of justice.

To address these issues, the court may, by the CrPC Section 309,[4] adjourn or postpone proceedings based on careful assessment and documentation of reasons. The emphasis remains on prompt initiation and continuation of investigations or trials once witness examination has started. Magistrates are limited to detaining alleged offenders for a maximum of 15 days under this section, and adjournments are subject to stringent conditions and documented special grounds. Importantly, no adjournments are granted solely for the accused to establish innocence and avoid prescribed penalties. In specific cases, adjournments or postponements may be allowed with the stipulation that the prosecution or accused bears associated expenses. This framework seeks to

[1] The Constitution of India, art. 21.
[2] Ibid, art. 14.
[3] The Code of Criminal Procedure, 1973.
[4] Ibid. s.309(1).

balance efficiency in legal proceedings with the protection and cooperation of witnesses for a fair and effective criminal justice system.

LITERATURE REVIEW

- Right to speedy trials and mercy petitions in India, Mr Kamal Kumar Arya[5]– This article primarily explores the various provisions of the Indian legal framework that provide for a speedy trial and for avoiding delays. It also talks about the jurisprudence behind speedy trials, reasons for delay, and the international genesis and evolution of the concept. It talks about speedy trials as a fundamental right that all citizens possess. However, the paper does not delve deep into the functioning of Section 309 of CrPC in aiding speedy trials.
- The fundamental right to a speedy trial: Judicial Experimentation, S.N Sharma[6]– This paper talks about the jurisprudence of the concept of a speedy trial. It then goes on to talk about the configuration of India's Constitution. It investigates the various judgments of courts in India about speedy trials. However, this article also does not talk about Section 309 specifically.
- Speedy Trial in India: Creation, Chaos, and Institutional Choices, Sharad Verma[7]– This paper claims that the breach of the right to a speedy trial is caused by the faults in the institution. They say that it is the burden of academia to identify the problem of undecidability of each case and to propose a solution to it. It presents a comparative analysis of the Indian system with the US and Canadian systems.
- On witness in the Criminal Justice Process: Problems and perspectives, G.S. Bajpai[8]– This paper seeks to analyse the situations under which the witnesses in the court of law turn hostile. Do these incidents also rely on the personality and character of the witness himself? The witnesses interact with officers of various departments. The study aims to identify the problems faced by the witnesses in these interactions. It also talks about witness protection and explores the many judgments delivered on the same subject.
- Effectiveness and Problems of Implementation of Assistance for Witnesses, Novita Irma Yulistyani, Umar Ma'ruf, Aryani Witasari[9] - This paper talks about the legal assistance needed to be witnesses in a criminal case, IT proposes rehabilitation of the witnesses,

[5] Mr. Kamal Kumar Arya, "Right to Speedy Trial and Mercy Petitions in India", Bharati Law Review, Jan-Mar., 2016.
[6] S.N. Sharma, "Fundamental Right to Speedy Trial: Judicial Experimentation", 38, IILI (1996) pp.236-242.
[7] Sharad Verma, "Speedy Trial in India: Creation, Chaos and Institutional Choices" 3.4 CALQ (2017) pp.38
[8] G.S. Bajpai, "On witness in the Criminal Justice Process: Problems and perspectives", ILR (2010)
[9] Novita Irma Yulistyani, Umar Ma'ruf, Aryani Witasari "Effectiveness and Problems of Implementation of Assistance for Witnesses" 4 LDJ (2022) pp. 61-68

including psychological rehabilitation. Witnesses often give conclusive evidence in criminal cases; hence, measures are to be taken to ensure that they do not turn hostile or comfortable.

- Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective, Jayanth K. Krishnan, C. Raj Kumar – Instances of accused persons spending years together in jail, waiting to be presented in court are not rare in India.[10] This paper examines the criminal justice system of India and empirically evaluates the judgments that have aided the condition of these accused persons. Where these rights may be judicially pronounced, they are not necessarily exercised in reality.

As can be seen, all of the above literature largely focuses on the jurisprudential aspects of speedy trials and witness comfort. In our paper, we seek to fill this gap and provisionally analyse Section 309 and its effectiveness in mitigating the hardships of having to go through long, never-ending trial procedures for both the accused and the witnesses.

RESEARCH METHODOLOGY

We looked at various research papers and read through various judgments to comprehensively understand the jurisprudence relating to Section 309 of the Criminal Procedure Code. We collected secondary data from various sources on the internet to substantiate our research. To better understand the people's perception and their willingness to appear as witnesses in the court of law, we also conducted an empirical survey and collected primary data in that regard. The survey was conducted using a Google form that was circulated through various social media platforms to elicit responses. The form was simple and easy to understand, to make it easier for the respondents to give straightforward answers. The questions largely consisted of scales on which the respondents could place their preferences. This helps us better analyse their behaviour. We analyzed the responses collected using various data analysing tools like bar graphs, pie charts, and pivot tables. We were able to come to valuable conclusions and inferences from such data analysis.

FINDINGS AND ANALYSIS

The provision

309. Power to postpone or adjourn proceedings. -1

[10] Jayanth K. Krishnan, C. Raj Kumar "Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective" 42 GJIL (2011)

[(1) In every inquiry or trial the proceedings shall be 1. Subs. by Act 13 of 2013, s. 21, for sub-section (1) (w.e.f. 3-2-2013). continued from day to day until all the witnesses in attendance have been examined unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded: Provided that when the inquiry or trial relates to an offence under section 376, 1 [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA or section DB of the Indian Penal Code (45 of 1860), the inquiry or trial shall] be completed within a period of two months from the date of filing of the charge sheet.]

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody: Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time: Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing: [Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.] [Provided also that- (a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party; (b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment; (c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.]

Explanation 1. - If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2. - The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused."

Understanding

A straightforward interpretation of Section 309(1) CrPC[11] states that the court must document its reasoning if it decides to postpone the court proceedings to the next day. If not, each investigation or trial must go forward daily until all the witnesses have been cross-examined. There is one exception to the court's above-mentioned authority, nevertheless. It states that if the offence in question is related to any of the crimes listed under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, or 376DB of the Indian Penal Code, 1860[12], then the investigation or trial must be finished within two months of the date the charge sheet was filed. The CrPC Amendment Act, of 2008 introduced this clause for sub-section (1) into the CrPC.[13]

Sub-section (1) and the proviso were substituted with a new subsection (1) and proviso by the Criminal Law Amendment Act, 2013.[14] According to the new sub-section (1), the trial must be held daily, and adjournments should only be allowed when 'necessary' and for specified reasons. Within two months of the chargesheet's filing, the new proviso mandates that the offences mentioned there be the subject of a thorough inquiry.

The right to a speedy trial as a fundamental right

In *Hussainara Khatoon* v. *Home Secretary, State of Bihar*, Justice P.N Bhagwati recognised the right to a speedy trial as a fundamental right.[15] To understand this concept, one has to understand the wide ambit of Article 21 of the Constitution, which states that "*no person shall be deprived of his life and liberty except in accordance with the procedure established by law.*" This makes it the responsibility of the state to facilitate a speedy trial for the accused. It is a popular statement that "Justice delayed is justice denied." This statement stands true for both sides of a criminal trial. No innocent person must be put through the harsh edges of the law unreasonably. Both the accused's and the complainant's rights are violated when unnecessary delays are caused in a criminal trial. However, there must be a balance stricken as justice cannot be rushed either. "*Justice hurried is justice buried.*" Somewhere between the two extremes is a mid-ground that needs to be exploited to facilitate speedy and efficient yet just trials. Speedy trials have been around since the time of Mughal ruler Aurangzeb, and traces of it can be found in his "*Fatwa Namgiri.*" The courts have also held that a diligent, watchful trial judge can prove to be the best guardian of these rights. There are various judgments in this regard. However, we contend that a right to a speedy trial is not merely limited to the parties to the trial but also the other innocent stakeholders, such as the witnesses appearing in the court.

[11] The Code of Criminal Procedure, 1973, s. 309(1).
[12] Indian Penal Code, 1860
[13] The Code of Criminal Procedure (Amendment) Act, 2008, No. 5, 2009.
[14] The Criminal Law (Amendment) Act, 2013, No. 13, 2013.
[15] (1979) 3 SCR 532 (SC).

It is no justice for them to be dragged to the court unreasonably for choosing to aid the court in seeking justice. It must also be the fundamental right of these third parties that a trial is concluded speedily.

Landmark Judgments

It was stated in the 1941 case of *Emperor* v. *Md. Ebrahim*[16] that this clause does not permit an unlimited postponement of a case. An extended delay is known as a sine die adjournment. Criminal law seeks to expeditiously bring accused parties to justice so that, in the event of a conviction, they may face punishment and, in the event of an acquittal, can be freed. If the Government wants to file a petition or seek an adjournment with the court, they can get in touch with the Public Prosecutor directly, who is the right person to put the case before the court.

In the 1962 case of *Sukhpal Singh* v. *Kalyan Singh*,[17] the Supreme Court declared that no precise rules were controlling the court's jurisdiction to grant or deny an adjournment. Nonetheless, the court must grant it after taking into account each case's unique facts and circumstances and justifiable grounds. It is consequently necessary to document the justification for the adjournment. Power and corruption are major factors now. Even if the request is unreasonable, these criteria can be used with ease to postpone a trial and secure an adjournment of proceedings for a variety of reasons. As a result, they defeat the purpose of the legal provisions.

Additionally, the Malimath Committee[18] recommended against adjournments being used by courts to delay the trial and the dispensation of justice. The committee recommended that the exceptional conditions that must be satisfied for adjournments to be granted be specified to address this circumstance.

Only in the *Hussainara Khatoon* v. *Home Secretary, State of Bihar* [19] case did the Court rule that a timely trial- a trial that proceeds reasonably quickly- is an essential component of the basic right to life and liberty guaranteed by Article 21. Since then, the Court has accumulated a substantial body of case law regarding expedited trials, but it has never defined what a reasonable trial duration is.

[16] AIR 1942 CAL 219.
[17] 1963 SCR (3) 733.
[18] Government of India, Report of the Committee on Reforms of Criminal Justice System (Ministry of Home Affairs, 2003).
[19] (1979)3 SCR 532 (SC).

In contrast, when asked to do so in *Abdul Rehman Antulay* v. *R.S. Nayak*,[20] A five-judge Supreme Court Constitution Bench declined to set deadlines beyond which no criminal case should be allowed to proceed because, without them, the interpretation of Article 21 in the *Maneka Gandhi* and *Hussainara Khatoon* cases would remain a theoretical concept. Setting a deadline for criminal cases is "neither advisable nor practicable," the court rules.

In *P. Ramachandra Rao* v. *State of Karnataka*,[21] the Court underlined the need for a prompt trial in criminal matters, admitted that it was still difficult to achieve in reality, and stated that it was not within its jurisdiction to establish deadlines for trials.

In *Vinod Kumar* v. *State of Punjab*,[22] the Supreme Court raised severe concerns about the use of dilatory tactics and the non-application of Section 309 and ruled that adjournments for unsatisfactory reasons were not desired.

The Supreme Court criticised the practice of courts adjourning cases without interrogating witnesses when they are present in *State of U.P.* v. *Shambhu Nath Singh*.[23] It was noted that a witness cannot be forced to appear frequently for the convenience of the concerned lawyer and that the trial court should recognise that the witness is a responsible citizen with other jobs to attend to make a living.

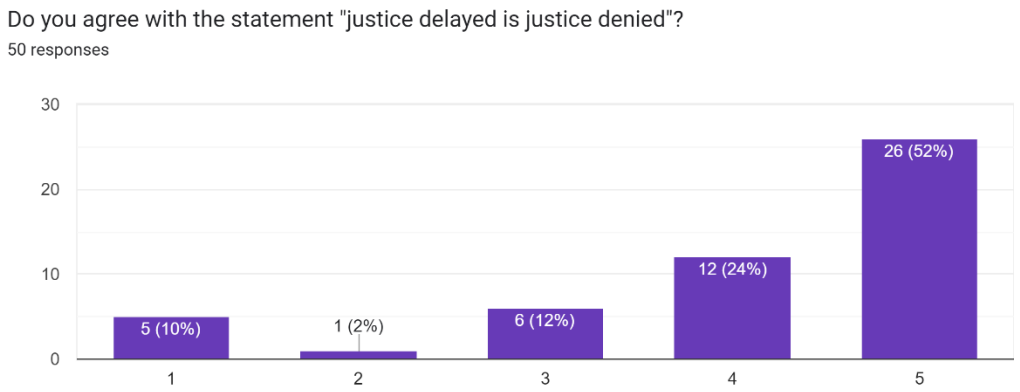
Along similar lines, the Bombay High Court said in *State of Maharashtra* v. *Rasiklal K. Mehta*[24] that one of the fundamental tenets of criminal law is that cases should be resolved as quickly and efficiently as possible. In the case of *Hirdeesh Sahu* v. *State of Madhya Pradesh*, the Madhya Pradesh High Court ordered all trial court judges to maintain strict adherence to Section 309 of the Cr.P.C., especially in sensitive situations like murder, kidnapping, and rape.[25]

Survey Analysis

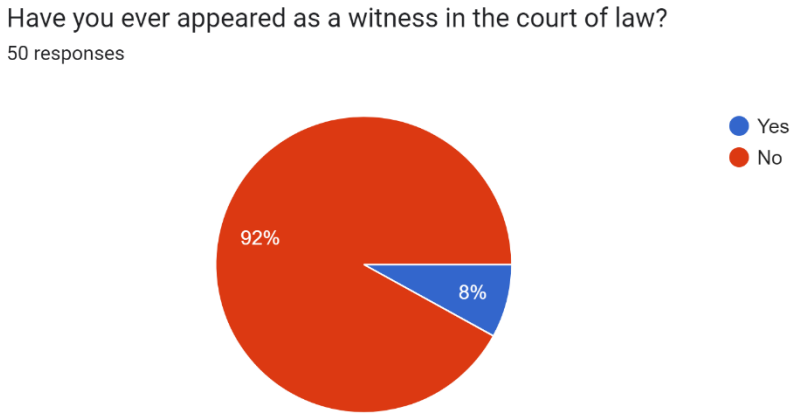
We surveyed 50 people to assess their perception of the role of witnesses in the procedure of courts. We also tried to examine their willingness to aid the courts as witnesses. The survey findings broadly show that there is a general unwillingness to appear in the courts as a witness.

Firstly, we tried to see how much the respondents value speedy trials.

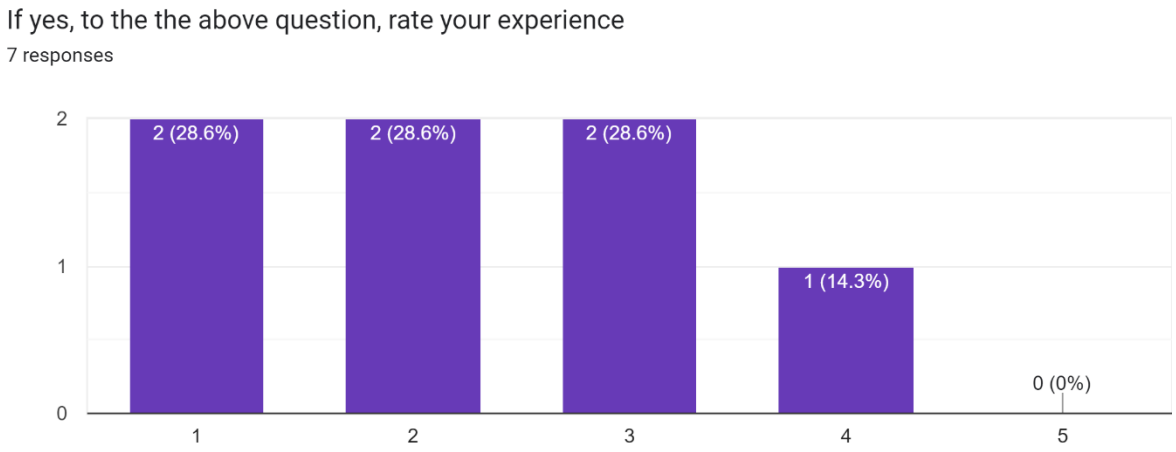
[20] (1992) 1 SCC 225.
[21] (2002) 4 SCC 607.
[22] (2015) 3 SCC 220.
[23] (2001) 4 SCC 667.
[24] 1978 SCC OnLine Bom 209.
[25] 2021 SCC OnLine MP 1210.



As can be seen from the above bar graph, more than half of the respondents said that they strongly agree with the statement "justice delayed is justice denied". This shows us that people value the timely delivery of justice. The more delay there is in delivering justice, the higher the violation of justice.



Only very few of the respondents had appeared in the court of law as a witness. This number is very low, considering that our survey was conducted across various demographics and locations. While this lack may be attributed to merely not having had the opportunity or need to appear in the court as a witness, there are other reasons, such as the sheer unwillingness to appear as a witness even when presented with the opportunity. Witnesses are depicted to be and are hence perceived to be tormented in terms of time and cost. Therefore, people are very reluctant to appear as witnesses unless it is necessary.



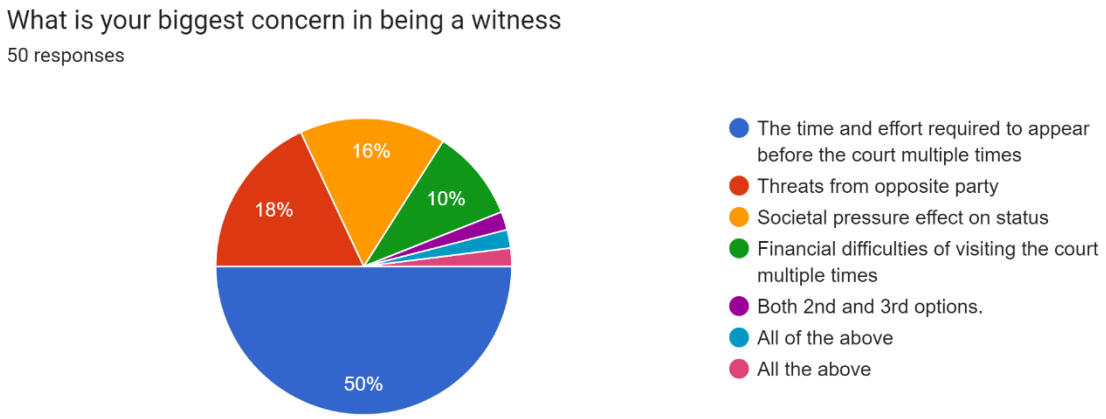
Of the very few people who had experienced being a witness, most of them said that their experience ranged from very bad to moderate. They probably faced issues with unnecessary procedural delays in these cases. It could also be the case that they were not given enough importance, and their role as witnesses was undermined. It is very natural that once they've had a bad experience, appearing as a witness, they would be reluctant to do so again. No one said their experience was very good. They are not presented with any incentive to appear as a witness in future cases.

Would you be willing to appear as a witness in the future?

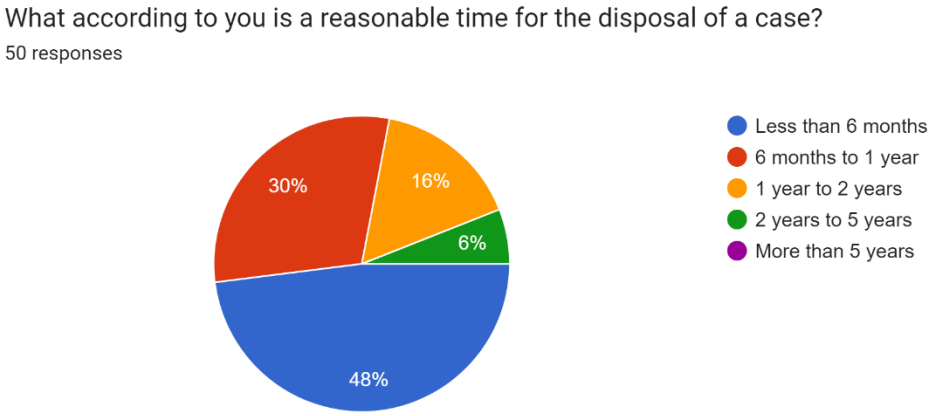
Count of Would you be willing to appear as a witness in the future?	**Column Labels**					
Row Labels	**1**	**2**	**3**	**4**	**5**	**Grand Total**
			1	1	1	
No	5	1	5	0	5	46
Yes	1	2			1	4
Grand Total	**6**	**3**	**15**	**10**	**16**	**50**

As can be seen from the above pivot table, people who had earlier appeared as witnesses were very unwilling to appear as one in the future. The people who were willing to appear as witnesses in the

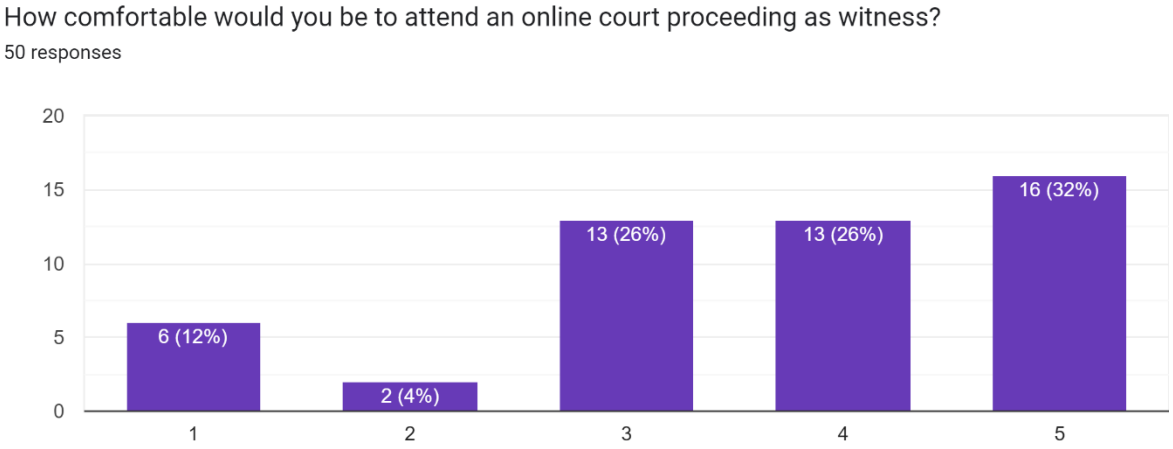
future were the ones who had never done so before. As a This stands testament to the sorry state of affairs of our criminal justice system.



When asked what their biggest concern was in appearing as a witness or what their major constraint was, half the people's answer was that time and effort were required. The largest reason for this is the unnecessary adjournments and delays, making the witness come to the court, sideling their other prior commitments. They have to make time out of their daily schedules, and employers do not usually give exemptions or leave for the reason of appearing as a witness in a court of law. They also have to spend a significant amount of money on travelling to and far from the court, especially when they reside far away from the court premises. That is why a substantial number of people choose financial constraints as their biggest concern, too. The other major factors chosen by people were threats from the opposite party and societal pressure. The former arises from the lack of security for witnesses. They are left vulnerable with no one to ensure their safety. The latter is a result of social stigma and fear about criminal trials that persist in society. The false depiction of these scenarios by the media only worsens the situation.



In the first question, we could see that the respondents largely believed in the timely and speedy disposal of cases and delivery of justice. The same perception is reflected in the responses to this question, too. Nearly half the respondents believed that less than 6 months was a reasonable time for the disposal of cases. This shows us the fervent desire for fast disposal by the people. However, knowledge of the law and bureaucracy tells us that this is scarcely possible, except in certain circumstances like summary hearings. The principle of natural justice is to give both parties a fair chance of being heard. Mere execution of this principle eats up the time of the courts in ensuring that no party or no plea goes unheard.



With the advent of the electronic age, court proceedings are also transitioning slowly to hybrid modes and online proceedings. The pandemic fuelled this process. The benefit of these online proceedings is that the major concerns of travel time, cost, and efforts are significantly reduced and, in most cases, brought to a nullity. Therefore, online proceedings carry the potential to

drastically increase the willingness amongst the people to appear as witnesses and improve their experience. It will make the whole process smoother and more convenient for the stakeholders, like witnesses. As can be seen, the majority of the respondents were between moderately comfortable and very comfortable in attending online court proceedings.

RECOMMENDATIONS

In this section, we propose certain policy measures and amendments to improve the existing framework. The suggestions provided were formulated after analysing the survey findings and landmark cases.

- As an immediate measure, the government must seriously consider the infrastructure development of the courtrooms. The courts should be developed to entertain virtual hearings in all possible circumstances. This measure addresses the concerns of the witnesses about safety, finances, and time delays.
- The witnesses should be sent repeated reminders and proper notices for prompt and effective communication. Modes of communication, such as social media messaging applications, can be utilised to send reminders for a faster transfer of information compared to the postal services. Implementation of these methods plays a role in diminishing the absence of witnesses.
- Proper communication between the judge and parties involved in the dispute should be present while deciding the adjournment date. This consultation of the parties helps facilitate the party's avoiding absence.
- The government should take up initiatives to encourage willingness to appear as witnesses among the people. Awareness campaigns and workshops in educational institutions should be organised to explain the crucial role of witnesses. This measure will result in legal awareness and active participation.

CONCLUSION

A multidimensional approach employed in the research assisted us in analysing the provision in a wholesome manner. The study revealed the disparity between policy and practice. Often, we may criticise the administrators for filling vacancies in the judiciary but have not questioned our role in delivering justice. As we recognise the concerns associated with attending court proceedings, we should realise that absence is also a key reason for pending proceedings. The laws should progress according to society's needs but not vice versa as no good law can be implemented without

awareness and acceptance. It may be an uphill task to maintain the delicate balance between speedy and impartial delivery of justice, though not impossible. However, we believe that efficiency in justice delivery should be made possible through increased active participation of the society rather than amendments to the existing framework. The provision has reasonably succeeded in bringing the policy in place but not to practice as certainly unambiguous from the examined landmark rulings followed by public perceptions.