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# Unending Trial: The Misery of Under Trial Prisoners

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## ABSTRACT

*Criminal Justice System in India has many facets like the role of Prosecution, Investigating Agency or the Defense Lawyer. They all combine to make a trial successful. The Trial is the base on which the Criminal Justice System is based, the more the trials are done, the faster they are done, the better the system works. But what is the current status of trials in India? The Prime Minister in one of his public rally recently pointed out that the judiciary must also look towards the state of under-trial prisoners. There is a basic presumption under criminal law that a person shall be presumed to be innocent until & unless his guilt is proved or in short known as the rule of presumption of innocence. As noted earlier there is no time limit specified for completing investigation but there are time limits attached to filing of charge sheet when we read the statutory rule laid down in Section 167 of the Code of Criminal Procedure. The accused can get the bail as a matter of right after applying to the court after the 60 days or 90 days in whatever category the case falls if within this time frame charge sheet is not filed. The accused here in this case is again an under trial. But looking at the competency of the investigating authorities & reading the provisions of Section 173 of the Code of Criminal Procedure, there is still a scope of "further investigation" that can come into picture. Preventive Detention Laws are a product of preventive form of punishment, where punishment is so stringent that it will stop future crimes. But again the problem is the form but the process. The trial in these cases takes a whole lot of time to finish & in most of the cases because the accusation is just a vendetta the trial doesn't even start. Act like National Security Act are a prime example of it. The vagueness of the grounds of detention under the said act is such that more often the cases which are booked the detention period of the accused continues & after that the outcome of the trial is nothing. The Code of Criminal Procedure is a post-independence law which has its own problems that are of procedural nature or the non-effectiveness of the agencies involved or many other allied factors.*

*"It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones." - Nelson Mandela*

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## I. INTRODUCTION

Criminal Justice System in India has many facets like the role of Prosecution, Investigating Agency or the Defense Lawyer. They all combine to make a trial successful. The Trial is the base on which the Criminal Justice System is based, the more the trials are done, the faster they are done, the better the system works. But what is the current status of trials in India? The Code of Criminal Procedure generally & very beautifully lay down the procedure for Trial to be conducted but it is silent on the time limit in which it has to be completed. “Access to Justice” which is the most discussed topic not only on national but international platforms also. The word “access to justice” in common parlance is the victim approaching the authorities to get justice for the harm caused to him or her but in an expansive definition it would include the accused too. The accused will get access to justice when the trial against him will be concluded in a time bound manner. The Right to Speedy Trial has been expansively interpreted under the head of Article 21 which talks of Right to Life & Liberty. When a trial against an accused is pending, it is at this stage that the accused is tagged as an “under-trial”. The Law Commission of India<sup>3</sup> in its report stated that 'under-trial' is such person who are in judicial custody or remand for the purpose of investigation. Rules relating to giving judicial custody or police custody are provided in Section 167 of the Code of Criminal Procedure where 90-day custody at maximum can be given for offences having punishment of death, life imprisonment or imprisonment exceeding 10 years & 60-day custody can be given in other case. In this 60 & 90-day custody rule, maximum 15 days can be of police custody & rest will be judicial custody. According to the Report<sup>4</sup> of NCRB, at the end of the year 2017, 68.5 percentage of the population of the prison are under-trial.

There is a basic presumption under criminal law that a person shall be presumed to be innocent until & unless his guilt is proved or in short known as the rule of presumption of innocence. At International stage the standard minimum rules<sup>5</sup> giving special status to the under-trials provides that non-convicted prisoners are presumed to be innocent and shall be treated as such. Body of Principles for the protection of all persons under any form of detention or imprisonment<sup>6</sup> also lay stress on the treatment of under-trials and says that a detained person

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<sup>3</sup>Law Commission of India, 78<sup>th</sup> Report, 1979.

<sup>4</sup>Indian Jails overcrowded, understaffed, first post, Oct. 23, 2019, <https://www.firstpost.com/india/ncrb-report-on-jails-most-prisoners-are-undertrials-over-70-of-them-havent-studied-till-class-10-reveals-data-7538171.html>, accessed on 30<sup>th</sup> Mar, 2020.

<sup>5</sup>Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nation Congress on the prevention of crime and treatment of offenders, Geneva, 1955, Rule 84.

<sup>6</sup>Body of Principles for the protection of all persons under any form of detention or imprisonment, UNO, 1988, Principle 36.

suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial and another principle of the same convention talks about separate cells for the under-trials<sup>7</sup>. When we refer to the NCRB data which states that a high number of prisoners are under trial, a dilemma is created between presumption of innocence rule & article 21 of the Constitution of India which talks of right to life & liberty. Elaborately speaking that the fundamental rights guarantee one to be at liberty & presumption of innocence rule if applied to this situation then the under trials shouldn't be kept inside the prisons until their guilt is established.

## **II. THE ROUTE TO CONVICTION IN INDIA**

Wrongs are of two types: that is Civil Law, which makes the application of my civil laws in the country such as Hindu Marriage Act and the procedural aspect of that is given under the Code of Civil Procedure, 1908 & the other one being Criminal Law, which mainly touches legislations such as Indian Penal Code, Code of Criminal Procedure & the Indian Evidence Act. The Constitution of India also has provisions which provides for implicit protection in the form of fundamental rights which safeguard an individual during the trial process. Indian Penal Code is a general law which defines what kinds of offences are there and also prescribes punishment for them. There are some other special acts also which provide of penal offences and punishment such as POCSO Act, Domestic Violence Act, Information and Technology Act. The Code of Criminal Procedure lays down the general procedure on how the trial initiates and how it is continued & is culminated. Code of Criminal Procedure is the general procedural law for conducting a criminal trial in India, it enunciates the manner for collection of evidence, examination of witnesses, interrogation of accused, arrests, safeguards and procedure to be adopted by Police and Courts, bail, process of criminal trial, method of conviction, and the rights of the accused for a fair trial<sup>8</sup>. The procedure for a criminal trial in India, is primarily & generally, except as otherwise provided<sup>9</sup>, governed by CRPC<sup>10</sup>. The Code of Criminal Procedure divides criminal trial into summary trial, trial of summon cases, trial of warrant cases and cases triable by High Court and Court of Session<sup>11</sup>. The Summary Trial<sup>12</sup> are trials wherein cases are disposed of in speedy manner and the procedure are much simplified and recording of trials are done summarily. Warrant Case<sup>13</sup> means a case relating to an offence punishable

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<sup>7</sup>Ibid, Principle 8.

<sup>8</sup>For Fair Trial, see also: INDIA CONST. art.21.

<sup>9</sup>See: Section 5, Code of Criminal Procedure (1973), Act of Parliament No. 2 of 1974 (India).

<sup>10</sup>See: Chapter XVIII to XXI, Code of Criminal Procedure (1973), Act of Parliament No. 2 of 1974 (India).

<sup>11</sup>See: Chapter XVIII, Code of Criminal Procedure (1973), Act of Parliament No. 2 of 1974 (India).

<sup>12</sup>See: Chapter XXI, Code of Criminal Procedure (1973), Act of Parliament No. 2 of 1974 (India).

<sup>13</sup>See: Chapter XIX, Code of Criminal Procedure (1973), Act of Parliament No. 2 of 1974 (India).

with death, imprisonment for life or imprisonment exceeding two years. Trial of warrant case begins either by filing of F.I.R in police station or by filing a complaint before the magistrate. The summon cases<sup>14</sup> are defined as one who are not warrant cases, which means that the punishment of offence is less than 2 years. The Trial process has been specifically categorized in regards to the gravity of the offence. This was done so with one of the objective is not to overburden a particular court with huge number of cases, also the other purpose was the limitation on the courts & magistrates to give a specified amount of punishment. Still the courts are not able to complete the backlog of cases that are pending upon them. The trail in many of the cases for years in trail courts, the Supreme Court in one such case remarked into a case in which the trial is pending from last 12 years in the trial that “we are appalled”, the court directed the trial to be completed within 6 months & the accused was given bail<sup>15</sup>. There are other substantive factors that cause the delay and they are the vacancies of judges, the 127<sup>th</sup> Law Commission Report<sup>16</sup> of 1988 suggested that the judges to population ratio needs to be increased from 10 judges per million populations to 50 judges per million populations. The similar issue was raised in the case of All India Judges Association v. Union of India<sup>17</sup> in which the apex court also gave the similar guidelines. Not only slow progress of trial but the starting of trial is also an issue. When we see it from the angle of Code of Criminal Procedure, there is not even a single provision which puts an embargo as to when an investigation needs to be completed in order to commence a trial & when we delve into the special laws which have their own special procedure, the stringency is such that the accused stays in jail for indefinite terms without getting the trial started against him.

Investigation precedes Trial. During Investigation, arrests are made and investigation for that particular case continues resulting in case like that of Hussainara Khatoon<sup>18</sup> that the under-trials have been in jail for more time than their prescribed punishment for the offence alleged. As noted earlier there is no time limit specified for completing investigation but there are time limits attached to filing of charge sheet when we read the statutory rule laid down in Section 167 of the Code of Criminal Procedure. The accused can get the bail as a matter of right after applying to the court after the 60 days or 90 days in whatever category the case falls if within this time frame charge sheet is not filed. The accused here in this case is again an under trial. But looking at the competency of the investigating authorities & reading the provisions of

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<sup>14</sup>See: Chapter XX, Code of Criminal Procedure (1973), Act of Parliament No. 2 of 1974 (India).

<sup>15</sup>Rakesh Mishra v. State of West Bengal, 2021, SLP (Crl.) No. 5772 of 2020 (India).

<sup>16</sup>127<sup>th</sup> Law Commission of India Report, 1988.

<sup>17</sup>All India Judges Association v. Union of India, 2001, AIR 2002 SC 1752 (India).

<sup>18</sup>Hussainara Khatoon & Ors vs Home Secretary, State of Bihar, 1979, 1979 AIR 1369 (India).

Section 173 of the Code of Criminal Procedure, there is still a scope of “further investigation” that can come into picture. The Supreme Court has held in the case of *K. Chandrashekhar v. State of Kerala*<sup>19</sup> that the further investigation is the continuation of earlier investigation & not new investigation. Not only this but the Supreme Court in the case of *Vinubhai Haribhai Malaviya v. State of Gujarat*<sup>20</sup> gave the landmark ruling where it extended the magistrate’s power to order “further investigation” in an offence even at a post cognizance stage, until the trial commences. The question here is not of further investigation being done but this gives a tool to the investigating agencies to file an incomplete chargesheet in order to fulfill the statutory requirements of Section 167 of the Code of Criminal Procedure. The way chargesheets are filed & how much competent the investigation agencies are in filing the chargesheet can be very well noticed from the misuse of Section 66-A of the Information & Technology Act, 2000. The said provision which was declared unconstitutional by the Hon’ble Supreme Court in the case of *Shreya Singhal v. Union of India*<sup>21</sup> was seen to be still in use by the investigating authorities to charge the accused. To stop that the Home Ministry had to step in & issue guidelines<sup>22</sup>. This is how efficient the police are while framing of chargesheet, many of the charges which were to be put are left out & many of the charges are unnecessary put which ultimately results into consuming the time of the court.

To further add to the woes, the bail provisions also deny to fulfill the objectives for which they were incorporated under CRPC. Chapter XXXIII of the code deals bail & bail bonds, where bail is to be compulsorily given when the offence is bailable one, here the accused gets bail as a matter of right. The insertion of Section 436-A of the Code of Criminal Procedure<sup>23</sup> which states that if an under trial has been in jail for more than half of the maximum punishment for the crime he is charged with, he should be released on personal bond with or without sureties. The tenure of life imprisonment is to be calculated as per Section 57 of IPC<sup>24</sup> which is 20 years & the said section doesn’t apply to the offences which prescribe death penalty as the maximum punishment. But the real controversy is in Section 437 of the CRPC which states that how bail is to be given in non- bailable offence. Here the discretion of the court is to be exercised judiciously & it has to be seen that if any of the purposes for arresting a person and keeping him in custody is being compromised or will be compromised then the detention or the custody

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<sup>19</sup>*K. Chandrashekhar v. State of Kerala*, 1998, (1998) 5 SCC 223.

<sup>20</sup>*Vinubhai Haribhai Malaviya v. State of Gujarat*, 2019, JT 2019 (10) SC.

<sup>21</sup>*Shreya Singhal v. Union of India*, 2015, AIR 2015 SC 1523.

<sup>22</sup>Withdraw cases registered under Section 66-A of IT Act, <https://www.livelaw.in/top-stories/ministry-of-home-affairs-section-66a-it-act-withdrawal-of-cases-177463>, accessed on 15<sup>th</sup> July, 2021.

<sup>23</sup>Section 436A, Code of Criminal Procedure (1973), Act of Parliament No. 2 of 1974 (India), inserted through Criminal Amendment Act, 2005, Act of Parliament No. 25 of 2005.

<sup>24</sup>*See*: Section 57, Indian Penal Code (1860), Act of Parliament No. 45 of 1860 (India).

will continue but if none of the objectives of arrest are hindered then the bail can be given to the accused in non-bailable offences too. This giving of bail in non bailable offence is highlighted in the phrase “jail is the rule & bail is the exception”.

### **III. THE HORROR OF SPECIAL LAWS: THE STRICTER THE OFFENCE, THE STRICTER THE PROCESS BUT THE GREATER THE CAUTION**

Preventive Detention Laws are a product of preventive form of punishment, where punishment is so stringent that it will stop future crimes. But again the problem is the form but the process. The trial in these cases takes a whole lot of time to finish & in most of the cases because the accusation is just a vendetta the trial doesn't even start. Act like National Security Act are a prime example of it. The vagueness of the grounds of detention under the said act is such that more often the cases which are booked the detention period of the accused continues & after that the outcome of the trial is nothing. The Code of Criminal Procedure is a post-independence law which has its own problems that are of procedural nature or the non-effectiveness of the agencies involved or many other allied factors. But the CRPC because of its general nature has been time & again scrutinized on constitutional grounds. The code on the forefront has to keep the fundamental rights intact & also follow the ethos & spirit of the Constitution of India. But that is not the case with special laws such as UAPA, these are an exception to the general rule that are engraved in the Constitution of India<sup>25</sup>. The general principles of Criminal Law which are to be followed in compulsion are very well dealt under the general criminal law but they do not apply *mutatis mutandis* to the special laws such as UAPA. The Courts can allow maximum police remand of 15 Days under CRPC but the same can be done for a period of 30 days in UAPA<sup>26</sup>, whereas the 90-day rule to file chargesheet under Section 167 of the CRPC has been further diluted into 180 days. The strictness of the offence puts more responsibility on the authorities to exercise care & caution but the same is not exercised. Considering the nature of offence, police brutality is more often than not is inflicted on the accused. The provisions for bail are also very much stringent when read with regards to the offence involved<sup>27</sup>. Section 43 D (5)<sup>28</sup> of UAPA act deals with bail aspect & states that bail cannot be granted in cases where *prima facie* charges are true. This is what is called to be the horror of special laws. “*Prima Facie*” means that in order to decide the bail application the merits of the case are not required to adjudicated, the factors of Section 437 of the CRPC are also not

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<sup>25</sup>*See also*: INDIA CONST. art.22.

<sup>26</sup>*See*: Section 43-D, The Unlawful Activities Prevention Act, 1967, Act of Parliament No. 37 of 1967 (India).

<sup>27</sup>*See*: Union of India v. K.A Najeer, 2021, Criminal Appeal No. 98 of 2021 (India).

<sup>28</sup>*Ibid*.

required to be obliged in verbatim, if there is some role that can be attributed on the face of the incident before the court, the liberty of an individual will be restricted. Then on trial the Supreme Court<sup>29</sup> also has said while interpreting the provision of TADA that in order to attract protection under Article 21 there needs to be gross delay to attract the limits of this article. The jurisprudence behind this is well understood but looking at the definitions in such acts which constitutes offence, the vagueness & expansiveness leads to threat of it being misused more than it fulfilling the objectives.

#### **IV. JUDICIARY & UNDER TRAIL PRISONERS**

The Hon'ble Apex court has time & again expanded the purview of fundamental rights & given protection to prisoners on various important aspects such as right to fair trial, access to justice, right of speedy trial and the most significant that is the human rights aspect. These judgments have ensured that the prisoners including the under-trial get these rights as fundamental rights under Part III<sup>30</sup> of the Constitution of India. On violation of these fundamental rights, the victim can directly approach the Supreme Court of India under Article 32<sup>31</sup> of the Constitution of India and to the High Courts under Article 226<sup>32</sup> of the Constitution of India.

Granting access to the lawyer along with free legal aid services that were being brought by constitutional amendment & also through changes in the Code of Criminal Procedure. The Supreme Court judgment of *Madhav Hatawaimarao v. State of Maharashtra*<sup>33</sup> said that:

Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the Court shall, if the circumstances of the case, the gravity of the sentence, and the end of justice so requires assign competent counsel of for the prisoner's defence, provided the party does not object to that lawyer.<sup>34</sup>

The judgment was of the year 1978 and acted as a fundamental in providing legal assistance to the poor at that time or in present also is unaware of the rights available to them and since the majority of the country fights poverty hence they lack economic resources so that they could find better legal services. There is an express provision in Constitution of India under Article 39-A<sup>35</sup> which provides for Equal Justice and free legal aid<sup>36</sup>:

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<sup>29</sup>*Shaheen Welfare Association v. Union of India*, 1996, 1996 SCC (2) 616 (India).

<sup>30</sup>INDIA CONST. Part III, art. 12-35.

<sup>31</sup>INDIA CONST. art.32.

<sup>32</sup>INDIA CONST. art.226.

<sup>33</sup>*Madhav Hatawaimarao v. State of Maharashtra*, 1978, 1978 AIR 1548 (India).

<sup>34</sup>Supra note @31.

<sup>35</sup>INDIA CONST. art.39-A.

<sup>36</sup>INDIA CONST. art.39-A, inserted through 42<sup>nd</sup> Constitutional Amendment Act, 1976.



The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall in particular provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.<sup>37</sup>

The Supreme Court of India has been a constant watcher and has been active in protecting the rights of under-trials. The question of classification of under-trial prisoner from the offenders arose in the case of *Sunil Batra v. Delhi Administration*<sup>38</sup> where Justice Krishna Iyer said that:

We have the fact that a substantial number of the prisoners are under-trials who have to face their case in court and are presumably innocent until convicted. By being sent to Tihar Jail they are, by contamination, made criminals- a custodial perversity which violates the test of reasonableness in Art. 19 and of fairness in Art. 21. How cruel would it be if one went to a hospital for a check-up and by being kept along with contagious cases came home with a new disease.<sup>39</sup>

This judgment leads to the classification of different categories of prisoners inside the prison. The comparison of Justice Krishna Iyer to that of hospital perfectly summarises the need of categorization. The similar situation arose in the case of *Sanjay Suri v. Delhi Administration*<sup>40</sup> where the issue was that the young prisoners are kept alongside hardened prisoners which increases the chances of them being spoiled if not segregated. The Supreme Court of India passed similar guidelines in this case also. In *Balram Singh Yadav v. State of UP*<sup>41</sup>, the court held that transfer of under-trial from one jail to another to avoid overcrowding is valid. In the case of *Zoi Nath Sarmah v. State of Assam*<sup>42</sup>, the court observed that the refusal of the superintendent to allow the petitioners to meet the prisoner was invalid. This pronouncement of the Supreme Court was essential against the unwanted restriction of the administrative authorities. The Supreme Court has time to time stepped in so that the under trials are not denied of their rights and the arbitrary decisions of the administrative authorities. Recently when the pandemic situation arose in the form of COVID-19 and the Union Government of India implemented a national lockdown. The Supreme Court took cognizance of the state of prisons. The court said that the mechanism such as Parole should be used by the various state

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<sup>37</sup>Ibid.

<sup>38</sup>*Sunil Batra v. Delhi Administration*, 1980, AIR 1980 SC 1579 (India).

<sup>39</sup>Ibid.

<sup>40</sup>*Sanjay Suri v. Delhi Administration*, 1988, AIR 1988 SC 414 (India).

<sup>41</sup>*Balram Singh Yadav v. State of UP*, 1991, 1991 Cr.L.J. 903 (India).

<sup>42</sup>*Zoi Nath Sarmah v. State of Assam*, 1992, Cr.L.J. 2072 (India).

governments for the under-trial who are awaiting trial for the offences whose punishment is less than 7 years<sup>43</sup>. Also lots of bails were given on personal bonds during these times as bringing surety would have been dangerous to the life of the surety itself & also the fear of pandemic was such that people would be reluctant to go outside.

## V. CONCLUSION

The under trial faces two different sets of problem, one when he is booked under special law & the other when he is booked under general law. The recent of Dr. Kafeel Khan<sup>44</sup> shows how the effect of draconian National Security Act can be. Dr. Khan was eventually released after Allahabad High Court<sup>45</sup> revoked the charges against him. The detention period of Dr. Khan which was extended even after he was granted bail was held illegal by the court. He has written a letter to a United Nation body & stated about how he was treated in prison. He claimed that he was denied food, water, etc. He was under detention & as per the definition by law commission was an under trial. The question here is not about the stringency of the law but the accessibility of basic human rights because irrespective of whether you are booked under IPC or under any special law you are still an under trial. Although Hussainara Khatoon<sup>46</sup> gave us a fundamental right of speedy trial but people are still languishing in jails & awaiting trials. When the country got stuck with the coronavirus pandemic a high power committee was setup to review & suggest measures to decongest the jails in order to curb the spread of coronavirus. Likewise, the prisons under the leadership of District Magistrate & along with other stake holders such as jail superintendent, advocate under DSLA must form a local committee to regularly check the status of prisons in dealing with under trials, any deficiency must be made accountable on the jail authorities. The recent case of Father Stan Swamy<sup>47</sup> or the case of Nanaware<sup>48</sup> who died in Yedwada jail because of brain clotting & her trial was not even started from 6 years. The constitutionality of these detention laws are a different subject altogether but whether you are booked under such laws or any of the general law, you have a constitutional & more importantly Human right that the trial must be completed in fair & reasonable time

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<sup>43</sup>Coronavirus: Supreme Court directs States and Union Territory, Mar 24<sup>th</sup>, 2020, <https://economictimes.indiatimes.com/news/politics-and-nation/coronavirus-sc-directs-states-uts-to-set-up-panel-to-consider-release-of-prisoners-on-parole/articleshows/74771877.cms>, accessed on Mar 30<sup>th</sup>, 2020.

<sup>44</sup>Dr. Kafeel Khan released from Jail after High Court clears him of NSA charges, September 2, 2020, <https://indianexpress.com/article/india/kafeel-khan-allahabad-high-court-national-security-act-charges-6578418/>, accessed on December 20<sup>th</sup>, 2020.

<sup>45</sup>State of Uttar Pradesh v. Nuzhat Perween, 2020, 2020 SC Online SC 1033 (India).

<sup>46</sup>Hussainara Khatoon & Ors vs Home Secretary, State of Bihar, 1979, 1979 AIR 1369 (India).

<sup>47</sup>Father Stan Swamy: Silenced in death, Anupama Katakam, <https://frontline.thehindu.com/cover-story/silenced-in-death/article35258197.ece>, accessed on 23<sup>rd</sup> July, 2021.

<sup>48</sup>Awaiting Trial for Six years, UAPA Prisoner Dies While in Custody, The Wire, Sukanaya Shantha, 25 Jan, 2021, <https://thewire.in/rights/uapa-undertrial-prisoner-death-custody>, accessed on 24<sup>th</sup> July, 2021.

without delay. When Section 436-A<sup>49</sup> was inserted to the CRPC & calculation under that section is done, the delay caused because of the fault of the accused is not included in the counting, going by this reasoning only when the delay from accused can be excluded in the counting then what about the delay caused due to inefficiency of state agencies. Like the recent question put up by Hon'ble CJI in regards to the constitutional validity of the law of sedition that they are more concerned with the accountability of the executives while booking person under the said law, the same concern should be made applicable here. The answer to this fundamental question is that the time period for completing investigation should be fixed for the non bailable offences under IPC and also for the offences dealt by special & preventive laws. All the under trials who are eventually acquitted of vague charges as that of Dr. Kafeel Khan must be entitled for compensation from the state, the more the number of days in jail, the more the amount of compensation if the charges were proved to be false & vexatious. The jurisprudence of Malicious Prosecution must be applied here. The court in dealing with the application of bail must be liberal & judicial exercise must be done keeping in mind the various factors such as medical history & condition of the under trial prisoner. As regards to the general laws, the most suggested solution is the appointment of judges so that the trial procedure is fastened. But the government & high courts have failed on this aspect. The appointment of judges is still pending in both the lower & higher judiciary. The provisions of Constitution states the formation of All India Judicial Services but the idea of implementing it is in dreams as the discussion for that are yet to be started within the government & courts. The recent issue which has picked up pace is delay in transmission of bail orders. This is an administrative failure like what we saw in the case where the Supreme Courts registry was at fault in listing the cases. The difficulty in first fulfilling the essential criteria to get bail has been an important issue, to add further if bail is granted by the court the bail transmission orders are provided with delay. The Andhra Pradesh High Court has taken cognizance of this issue<sup>50</sup> & issued guidelines by giving the option of downloading the order copy from the websites of High Court, the accountability of Presiding Officer & the registry of the Court has been called for & the Public Prosecutor will also assist with necessary instructions.

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<sup>49</sup>See: Section 436-A, Explanation, Code of Criminal Procedure (1973), Act of Parliament No. 2 of 1974 (India).

<sup>50</sup>Korra Bhaskara Rao v. State of Andhra Pradesh, 2021, Criminal Petition No. 3933 of 2021 (India).