BEYOND THE TRIAL: EXAMINING UAPA AND OTHER LAWS IN THE CONTEXT OF 'PROCESS IS THE PUNISHMENT'

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ABSTRACT

Most of what Indian anti-terror law does to an accused person happens before a trial begins. This paper uses Malcolm Feeley's phrase, "the process is the punishment", to look at India's main anti-terror law, the UAPA, and at two other laws built around similar bail rules: the money-laundering statute (PMLA) and the National Security Act (NSA). It argues that long pre-chargesheet custody, a bar on anticipatory bail, a "prima facie" bail test that courts have read narrowly, and slow trials together make detention work as punishment regardless of how a case ends. The paper follows the Supreme Court's shifting answers, from *Watali* (2019) to Najeeb (2021) and then to the conflicting 2026 decisions in *Gulfisha Fatima*, *Andrabi* and *Tasleem Ahmed*, which have now been referred to a larger bench. It then tests the idea against particular cases, among them *G.N. Saibaba, Stan Swamy* and the *Bhima Koregaon* prosecution, and against the official conviction figures, while cautioning that a low conviction rate does not by itself show that the accusations were baseless. A comparison with the PMLA and the National Security Act shows that the concern is not confined to one statute. The paper closes with five modest proposals that Parliament and the courts could adopt without dismantling the Act: a time-bound review of long custody, a fuller look at the prosecution's material at the bail stage, timetables for framing charges, stage-wise public data, and compensation for people acquitted after long detention.

Keywords: UAPA, PMLA, National Security Act, bail, pre-trial detention, Section 43D

I. INTRODUCTION

Textbooks describe a criminal case as a sequence. There is an investigation, then a charge, then a trial, then a verdict, and punishment comes last. For many people booked under India's special security statutes the order is reversed. The deprivation of liberty, and with it the loss of work, family life and reputation, begins on the day of arrest and can continue for years before a single witness is cross-examined.

The framing for this paper comes from an American study. In 1979 Malcolm Feeley published his account of a lower criminal court in New Haven, Connecticut, under a title that has outlived its subject: *The Process Is the Punishment*.[1] His defendants mostly faced minor charges. His point was that the sentence a court might impose at the end counted for less than the cost of getting there. Arrest, a night in lockup, bail money, lost shifts and repeated appearances were the real price, and whether the charge eventually stuck was almost beside the point.

Terrorism prosecutions are not New Haven's misdemeanour docket. The allegations are grave, investigations are complex, and the State has a genuine interest in not releasing people who may be dangerous. But Feeley's insight does not depend on the offence being small. It depends on a gap between the moment a person loses liberty and the moment a court decides whether that was justified. The wider that gap, the more the process itself does the job of a sentence. In cases under the 1967 Unlawful Activities (Prevention) Act (UAPA) the gap is frequently very wide indeed.

One set of numbers explains why the question is pressing. In May 2026 the Supreme Court examined numbers the Home Ministry had given Parliament, which were based on National Crime Records Bureau data. For 2019 to 2023 the all-India conviction rate under the UAPA stayed in the low single digits (the Court gives the range as 1.5 to 4 per cent in one passage and 2 to 6 per cent in another), and in Jammu and Kashmir it stayed below one per cent.[2] The Court read this as a high probability of acquittal at the end of a trial. I return to that inference later, because a conviction rate does not measure how many accused were wrongly charged. Even so, a statute that produces long custody and then, in the great majority of decided cases, no conviction deserves scrutiny under any account of what criminal procedure is for.

[1] Malcolm M. Feeley, The Process Is the Punishment: Handling Cases in a Lower Criminal Court (1979).
[2] Syed Iftikhar Andrabi v. Nat'l Investigation Agency, Jammu, 2026 INSC 503 (India).

This paper makes three claims. One: what keeps people in pre-trial custody under the UAPA is mainly its procedure, more than the way it defines offences. Two: the Supreme Court's bail rulings under the Act have moved between a strict reading in *Watali* and a liberty-first reading in *Najeeb*, and in 2026 the Court's own benches disagreed about which of the two governs. Three: the concern reaches beyond the UAPA, since the PMLA and, in a different way, the National Security Act, 1980 pose the same question.

Part II looks at what Feeley argued and how far it travels. Part III sets out the UAPA's procedural design and Part IV follows the case law from *Watali* to the 2026 reference. Part V asks what the process has cost in particular cases, and Part VI turns to the other two statutes. Parts VII and VIII deal with constitutional standards and reform, and Part IX concludes.

A word on limits. This paper takes no position on the guilt or innocence of anyone named in it, which is for trial courts to decide. It is doctrinal. It works from statutes, judgments, official data and secondary commentary, and it cannot say anything about individual cases beyond what the public record shows.

II. WHAT FEELEY SAID, AND HOW MUCH OF IT TRAVELS

Before borrowing an idea it is worth being exact about where it came from. Feeley spent time in the lower criminal court of New Haven in the 1970s and watched how cases were actually handled, as opposed to how the law said they should be. What he found was a court that rarely looked like the trial in a law school textbook. Most cases ended without one. Defendants frequently pleaded guilty because contesting the charge meant more days in court, more money and more time away from work than the conviction itself would cost. For them the sensible choice was to end the process, and the guilty plea was how they did it.[3]

A later generation of scholarship pushed the argument in a slightly different direction. Writing about New York's misdemeanour courts, Issa Kohler-Hausmann argued that these courts had stopped trying to decide guilt in any serious way. In her account they worked as sites of sorting and supervision, where the repeated court date itself served as a tool of control.[4] Read together, the two accounts make a point that is easy to miss. The punishment in "process is the

[3] Feeley, *supra* note 1.
[4] Issa Kohler-Hausmann, Misdemeanorland: Criminal Courts and Social Control in an Age of Broken Windows Policing (2018).

punishment" is not an accident of a bad system. It can be the way the system works.

How much of this carries to India? Some of it does not. Feeley's exit route was the guilty plea. In UAPA cases that exit is largely closed, because the plea bargaining chapter of the Criminal Procedure Code leaves out offences punishable with death, life imprisonment or imprisonment beyond seven years, which covers the graver offences under the Act.[5] An accused person cannot buy his way out by pleading to something small. He has to stay in the process until it ends.

Other parts carry over with more force. In New Haven the process punished because it was informal and discretionary. Under the UAPA it punishes because the statute has formalised it. The costs Feeley counted are all there, along with some that are written into the law itself, such as a statutory bar on bail. That difference seems to me the most useful thing the comparison offers, because it moves the question from what individual actors do to what the legislation allows.

To keep the analysis honest I use three simple indicators in the sections that follow. The first is whether detention is the default or the exception once a person is accused. The second is how long it takes before a court looks at the evidence in a way that could end the case, whether through the framing of charges or a trial. The third is how often the process ends in conviction. None of these is perfect.

III. THE PROCEDURAL MACHINERY OF THE UAPA

The UAPA began life in 1967 as a fairly narrow statute aimed at unlawful associations whose activities threatened the sovereignty and integrity of India. Its present shape comes from later amendments. When the 2002 Prevention of Terrorism Act (POTA) was repealed in 2004, much of what it contained moved into the UAPA, and the 2008 amendment, passed after the Mumbai attacks, added the procedural provisions that matter most for this paper. Under the 2019 amendment the Union government can also name individuals, not just organisations, as terrorists.[6] In effect the UAPA has taken over, step by step, the machinery of two earlier terror laws, POTA and the 1985 Terrorist and Disruptive Activities (Prevention) Act (TADA). Both

[5] Code of Criminal Procedure, 1973, No. 2 of 1974, § 265A (India).
[6] Unlawful Activities (Prevention) Act, 1967, No. 37 of 1967 (India) [hereinafter UAPA], (as amended by Acts 29 of 2004, 35 of 2008 and 28 of 2019).

drew criticism for misuse, and both ended up lapsing or being repealed.

Ujjwal Kumar Singh's study of Indian anti-terror law makes the point that each successive statute has tended to carry forward the procedural exceptions of the one before, so that what began as an emergency measure settles into the ordinary order of things.[7] The UAPA fits that pattern. The Supreme Court sustained TADA's restrictive bail provision in *Kartar Singh v. State of Punjab* while accepting that the law had been misused,[8] and Parliament later wrote a bail restriction in the same family into the UAPA.

The procedural features are worth setting out one by one. Section 43D(2) allows police custody of up to thirty days and gives ninety days to file a chargesheet, a period a court can stretch to one hundred and eighty days on the Public Prosecutor's report. Section 43D(4) switches off the Code's anticipatory bail provision, so someone who fears arrest cannot go to court beforehand. Finally, Section 43D(5) bars bail for anyone accused of offences under Chapters IV and VI if, on reading the case diary or the police report, the court finds reasonable grounds to think the accusation prima facie true.[9]

None of these is unusual in isolation. Longer custody periods exist elsewhere in Indian law, and several statutes restrict anticipatory bail. What stands out is the way they stack. A person is arrested, can be held for up to six months before the police must put their case on paper, and meanwhile has no realistic route to bail because the only test applied is whether the police version looks prima facie true. The court at that stage does not hear witnesses or weigh the defence. After the chargesheet, cases taken up by the National Investigation Agency (NIA) go to a special court set up under the NIA Act, 2008,[10] where charges have to be framed, discharge applications decided, and then a trial held that in the bigger cases can involve hundreds of witnesses. Section 43D(5) keeps operating through every one of those stages.

Two more features deserve a mention. A prosecution under the Act also needs sanction from the relevant government, given after an independent authority has reviewed the evidence, and a flawed sanction can bring down a case years into it, as happened in Professor G.N. Saibaba's first acquittal, discussed below. Likewise, because an individual can be notified as a terrorist,

[7] Ujjwal Kumar Singh, The State, Democracy and Anti-Terror Laws in India (2007).
[8] Kartar Singh v. State of Punjab, (1994) 3 S.C.C. 569 (India).
[9] UAPA, *supra* note 6, § 43D(2), (4)–(5).
[10] National Investigation Agency Act, 2008, No. 34 of 2008 (India).

a person may carry that label before any court has looked at the evidence, which is another way the process attaches consequences before the verdict.

The usual safety valves do not help much either. The rule that lets an undertrial go free after serving a set fraction of the longest possible sentence, now Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023, does not cover offences punishable with death or life imprisonment.[11] A good number of the Act's serious offences fall in that category. The design as a whole assumes the accused will stay in custody unless a court intervenes on constitutional grounds, which is why the case law that follows matters so much.

IV. THE COURTS ON UAPA BAIL

A. From Watali to Najeeb

The leading reading of Section 43D(5) comes from *National Investigation Agency v. Zahoor Ahmad Shah Watali* in 2019, a case about alleged funding of militancy in Kashmir. The Delhi High Court had granted bail. The Supreme Court reversed that, holding that at the bail stage a court must look at the totality of the material collected in the investigation and form a view on broad probabilities, without examining whether the evidence is admissible or reliable.[12] The inquiry was so light that, in practice, a chargesheet that disclosed an offence on its face was enough to keep a person in custody.

That approach was soon challenged. In *Union of India v. K.A. Najeeb* in 2021 a three-judge bench dealt with a man held for over five years in a Kerala case whose trial was nowhere near finished. The High Court had released him, and the Union appealed. The appeal failed. The Court held that although Section 43D(5) is valid, it leaves constitutional courts free to grant bail once delay turns continued detention into a breach of Article 21, and that the statutory bar loses some of its force as the chance of a timely trial fades.[13] *Najeeb* leaned on an older line of cases, including *Shaheen Welfare Association v. Union of India*, which had accepted that long-delayed TADA undertrials could be released despite that Act's bail restrictions.[14] So the idea

[11] Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 479 (India) (successor to Code of Criminal Procedure, 1973, § 436A).
[12] Nat'l Investigation Agency v. Zahoor Ahmad Shah Watali, (2019) 5 S.C.C. 1 (India).
[13] Union of India v. K.A. Najeeb, (2021) 3 S.C.C. 713 (India).
[14] Shaheen Welfare Ass'n v. Union of India, (1996) 2 S.C.C. 616 (India).

was not new. What *Najeeb* did was apply it to the UAPA in a form lower courts could cite.

B. The 2026 divergence

For a few years after *Najeeb* the law looked settled enough, at least on paper. Then 2026 brought a sequence of decisions that do not sit comfortably together.

On 5 January, in *Gulfisha Fatima v. State (Government of NCT of Delhi)*, a two-judge bench released five accused in the Delhi riots "larger conspiracy" case on bail but refused Umar Khalid and Sharjeel Imam. The bench saw a prima facie case against these two, gave them a more central role than the rest, and treated long incarceration as one consideration among others in judging whether continued detention was still permissible. It further let the two reapply only once the protected witnesses had been examined or a year had passed, whichever happened first.[15]

On 18 May, in *Syed Iftikhar Andrabi v. National Investigation Agency*, a different bench released on bail a man from Jammu and Kashmir who had been in custody for nearly six years in a narco-terror case. It held that *Najeeb* is binding, that a smaller bench cannot dilute it, and that bail is the rule under the UAPA as well. It also expressed serious reservations about *Gulfisha Fatima* and relied on the conviction figures mentioned at the start of this paper.[16] Four days later, in *Tasleem Ahmed v. State Government of NCT of Delhi*, yet another two-judge bench took a different view. It said that a bench which doubts another's reading of a larger-bench ruling must refer the question and not criticise it in passing, defended *Gulfisha Fatima* as a faithful application of *Najeeb*, and described *Najeeb* as neither a charter for indefinite incarceration nor a rule of arithmetic under which time alone yields bail. The bench sent the question to the Chief Justice for a larger bench and meanwhile granted the two appellants before it interim bail for six months.[17]

On 30 September the Delhi High Court, bound by the conditions the Supreme Court had set in January, dismissed the bail appeals of Khalid and Imam, citing judicial discipline. A commentary published in mid-October noted that, as of 1 October, no publicly available order

[15] Gulfisha Fatima v. State (Gov't of NCT of Delhi), 2026 INSC 2 (India).
[16] Andrabi, 2026 INSC 503.
[17] Tasleem Ahmed v. State Gov't of NCT of Delhi, SLP (Crl.) Nos. 2867/2026 & 3867/2026 (May 22, 2026) (India).

showed that the larger bench had been constituted.[18] So the position, as I write, is that two readings of the same three-judge precedent are both in the law reports and nobody below the Supreme Court can be sure which to follow.

C. What the disagreement is really about

Reading all this as a quarrel between pro-liberty judges and pro-State judges would be a mistake. Both sides accept that Article 21 survives Section 43D(5), and the *Tasleem Ahmed* order says so in terms. The disagreement is about method. On the *Andrabi* reading of *Najeeb*, long custody without a realistic prospect of trial is the point at which the statutory bar has to yield, and it is for the State to explain why it should not. On the *Gulfisha Fatima* reading, delay is one circumstance among several, to be weighed against the accused's alleged role and the strength of the material. The first reading treats delay as a trigger. The second treats it as a factor.

The second view has a fair case behind it, and it deserves a hearing. Parliament chose a restrictive bail standard for offences it regards as threats to the security of the State, and *Kartar Singh* accepted that such choices are within its power. Conspiracy cases with many accused can take time for reasons that are not all the prosecution's fault, and a court cannot sensibly release everyone after a fixed number of years regardless of what they are alleged to have done. But they sit awkwardly with the process-as-punishment concern, because that concern is about what happens to the person while the system takes its time, whoever is responsible for the time.

V. WHAT THE PROCESS COSTS

Statutes are abstract. The costs they impose are not. A few cases from the public record show what the structure described above looks like when it runs its course. I use them as illustrations and not as a sample, and nothing here suggests that every UAPA prosecution looks like these.

G.N. Saibaba, a professor at Delhi University, was arrested in 2014 and convicted by a sessions court in Gadchiroli in 2017. In October 2022 the Bombay High Court set aside the conviction because the sanction required under the Act was invalid, the Supreme Court sent the matter back to be decided afresh by another bench, and on 5 March 2024 the High Court acquitted

[18] Nisha Verma, *Between Najeeb and Gulfisha: UAPA Bail Dilemma After Khalid and Imam*, LiveLaw (Oct. 18, 2026), https://www.livelaw.in/articles/between-najeeb-gulfisha-uapa-bail-dilemma-khalid-imam-555215.

him and his co-accused on the merits.[19] Saibaba died in October 2024, about seven months after his release. He had spent most of the decade between his arrest and his acquittal in custody. One of his co-accused, Pandu Narote, had died in custody in 2022 and was acquitted after his death.

Stan Swamy, an 84-year-old Jesuit priest who worked with tribal communities in Jharkhand, was arrested in Ranchi in October 2020 in the Bhima Koregaon case. He had Parkinson's disease. A special court refused him bail in March 2021, and he died in judicial custody on 5 July 2021 with his bail matter still pending before the Bombay High Court and no trial having begun.[20]

For the other accused in that case the delay was long. Charges had still not been framed in early 2026, more than seven years after the first arrests, and in January the Bombay High Court released Sagar Gorkhe and Ramesh Gaichor on bail. In May it did the same for Surendra Gadling, the last of them, after more than eight years, noting that the trial had not begun; he remained in custody in a separate matter.[21] Of sixteen accused, one has died and the rest have now been released on bail or temporary relief of some kind. Whatever the eventual verdict, those years have already been spent.

The numbers say something similar at a larger scale, with a caveat. The Court's reading of the parliamentary figures suggests that very few completed UAPA trials end in conviction. But a conviction rate is calculated on trials that have finished, and many UAPA cases are nowhere near finishing. So the figure cannot tell us how likely a person who is arrested is to be convicted, and nobody should take it as proof that most accused were wrongly charged. Witnesses turn hostile, evidence goes missing, and a case can fail for reasons unrelated to innocence. What it does show is that long custody is routinely followed by no conviction, the very pattern Feeley described.

Nor is the problem limited to security cases. According to the NCRB's prison statistics for

[19] Manu Sebastian, *Professor GN Saibaba's Death Is a Wake-Up Call to Prevent Abuse of UAPA Against Dissenters*, LiveLaw (Oct. 13, 2024), https://livelaw.in/articles/professor-gn-saibabas-death-is-a-wake-up-call-to-prevent-abuse-of-uapa-against-dissenters-272292.

[20] *Bhima Koregaon: Bombay High Court Grants Bail to Sagar Gorkhe, Ramesh Gaichor*, Bar & Bench (Jan. 23, 2026), https://www.barandbench.com/news/bhima-koregaon-bombay-high-court-grants-bail-to-sagar-gorkhe-ramesh-gaichor.

[21] *Bhima Koregaon Case: Bombay HC Grants Bail to Surendra Gadling After Eight Years*, The Quint (May 2026), https://www.thequint.com/news/breaking-news/bombay-high-court-bail-surendra-gadling-eight-years.

2022, about 75.8 per cent of India's prisoners were undertrials.[22] The UAPA is the sharp end of a system in which pre-trial detention is already the norm.

Apply the three indicators from Part II. Is detention the default? Under Section 43D(5) as applied in *Watali*, yes, unless a court uses *Najeeb* to say otherwise, and the 2026 split shows that even that is unsettled. How long before a court tests the evidence? In the Bhima Koregaon case, years; in Saibaba's case a trial court took about three years from arrest to conviction and the appeals took another seven. How often does it end in conviction? Rarely, by the Court's own reading of the data. None of this proves wrongdoing by anyone in the system. It does show that the structure fits Feeley's description better than the textbook sequence.

VI. BEYOND THE UAPA: THE PMLA AND THE NATIONAL SECURITY ACT

The Supreme Court itself treats the UAPA as one of a family of laws. In *Satender Kumar Antil v. CBI* the Court grouped offences into categories for bail purposes and placed special statutes with stringent bail provisions, including the narcotics law, the UAPA and the PMLA, in one category.[23] That grouping is a useful way into the comparison.

Section 45 of the PMLA requires the court to be satisfied on two counts: that there is reason to believe the accused is not guilty, and that he will probably not offend again while on bail. In 2017 the Supreme Court struck down an earlier version of those twin conditions in *Nikesh Tarachand Shah v. Union of India*, Parliament re-enacted them by amendment, and in 2022 *Vijay Madanlal Choudhary v. Union of India* upheld them.[24] Then in *Manish Sisodia v. Directorate of Enforcement* in 2024, after seventeen months in custody and with no trial begun, the Court released the accused and repeated that bail is the rule and jail the exception even under the PMLA, adding that long pre-trial detention must not turn into punishment without trial.[25] The sequence resembles the UAPA's: a strict statute, a strict reading, and then a judicial correction based on delay.

The National Security Act, 1980 works on a different theory. It is a law of preventive detention. Someone can be held without any charge if the authorities consider it necessary to stop him

[22] Nat'l Crime Recs. Bureau, Ministry of Home Affairs, Prison Statistics India 2022 (2023).
[23] Satender Kumar Antil v. CBI, (2022) 10 S.C.C. 51 (India).
[24] Prevention of Money Laundering Act, 2002, No. 15 of 2003, § 45 (India); Nikesh Tarachand Shah v. Union of India, (2018) 11 S.C.C. 1 (India); Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929 (India).
[25] *See* Manish Sisodia v. Directorate of Enf't, 2024 SCC OnLine SC 1920, 2024 INSC 595 (India).

from acting in ways that threaten national security or public order. The maximum period under the Act is twelve months, an Advisory Board reviews the order, and the detained person has no right to be represented by a lawyer before the Board. A fresh order can follow on fresh facts once one expires, and the Supreme Court sustained the Act's validity in *A.K. Roy v. Union of India*.[26] Here the process cannot be called punishment in a legal sense, because the law says it is not punishment. In human terms the distinction is thin.

What the three statutes share is a sequence in which the decision to detain comes before any judicial test of the evidence, and the standard for getting out is harder than the standard for going in. They differ in their stated purposes, and those differences matter for how courts should treat each of them. But Feeley's question applies to all three. At what point does the cost of the process stop being a means of reaching a verdict and become the result?

VII. CONSTITUTIONAL AND INTERNATIONAL STANDARDS

Indian constitutional law has long treated pre-trial liberty as the starting point. *Hussainara Khatoon v. State of Bihar* held that the right to life and personal liberty under Article 21 includes a speedy trial, in a case where undertrials had been held longer than the sentences they could have received.[27] The bail cases of the late 1970s, *State of Rajasthan v. Balchand* and *Gudikanti Narasimhulu v. Public Prosecutor*, lay down that bail is the rule and refusal the exception. *Gurbaksh Singh Sibbia v. State of Punjab*, decided under the anticipatory bail provision, declined to read rigid limits into that power.[28] Section 43D(4) of the UAPA now removes that power altogether for accused persons under the Act.

The Constitution does not mention the presumption of innocence by name, but Indian courts treat it as a basic premise of criminal procedure and, in *Noor Aga v. State of Punjab*, as a human right that a statute may limit only by reasonable means.[29] A bail rule that asks whether the prosecution's story looks true, and gives the accused almost no chance to answer it, qualifies that presumption heavily at the very stage when the person is still unconvicted. Whether the qualification is reasonable depends partly on how long it lasts, which is why the question keeps

[26] National Security Act, 1980, No. 65 of 1980, §§ 3, 11(4), 13, 14(2) (India); A.K. Roy v. Union of India, (1982) 1 S.C.C. 271 (India).
[27] Hussainara Khatoon v. State of Bihar, (1980) 1 S.C.C. 81 (India).
[28] State of Rajasthan v. Balchand, (1977) 4 S.C.C. 308 (India); Gudikanti Narasimhulu v. Pub. Prosecutor, (1978) 1 S.C.C. 240 (India); Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 S.C.C. 565 (India).
[29] Noor Aga v. State of Punjab, (2008) 16 S.C.C. 417 (India).

returning to delay.

These were ordinary-law cases. The UAPA's answer is that Parliament may legitimately depart from them for offences against the security of the State, and both *Kartar Singh* and *Najeeb* accept that as a starting point. The constitutional tension is therefore not whether Parliament may restrict bail, but whether a restriction can be applied so as to extinguish the liberty guarantee itself. *Najeeb*'s answer is no, and the pending reference is really about the details of that answer.

International law points the same way, though not decisively. Article 9(3) of the Covenant on Civil and Political Rights, to which India is party, says that holding people in custody while they await trial should not be the general rule.[30] Domestic courts are not bound by it in any simple sense, but it supplies a benchmark.

VIII. OBJECTIONS AND MODEST PROPOSALS

Anyone proposing change here has to answer an obvious objection. The offences are serious, the investigations are hard, and a court that releases the wrong person may cause real harm. The State's lawyers made versions of this argument in the 2026 cases, and the Supreme Court's own caution in *Tasleem Ahmed* that *Najeeb* is not a time-based formula reflects it. I accept the force of it. Nothing below would require releasing anyone against whom the material is strong. The proposals aim at the length and structure of the process, not at the seriousness with which terrorism is treated.

It is also worth remembering that release before trial is not release without conditions. The interim bail ordered in *Tasleem Ahmed* came with stringent conditions, and the order in *Andrabi* required the appellant to surrender his passport and report to the local police station every fortnight. Courts already have tools, such as reporting, travel restrictions and surrender of documents, that let them manage risk without keeping a person in jail for years.

Five modest proposals follow from all this.

The first is a time limit with teeth. The Code's release provision for undertrials excludes the offences that most need one. Parliament could adopt a separate rule for special statutes under

[30] International Covenant on Civil and Political Rights art. 9(3), Dec. 16, 1966, 999 U.N.T.S. 171.

which custody beyond a set period, say three years from arrest without the trial having substantially progressed, triggers an automatic judicial review in which the State must justify continued detention. The period is a policy choice, and a review is not a release. But it would turn *Najeeb* from a case that accused persons must fight for into a step the system takes on its own.

The second is a fuller look at the material at the bail stage. *Watali*'s light-touch test is the reason the prima facie standard bites as hard as it does. A larger bench, in the pending reference or another, could clarify that a court may ask whether the material, taken at its highest, can support the charge, without conducting a mini-trial. That would be a judicial correction and needs no amendment.

The third is a timetable for the early stages. The long gap between arrest and the framing of charges in the Bhima Koregaon case suggests that discharge applications and charge framing should carry time limits, with periodic reporting to the High Court.

The fourth is data. The debate currently leans on a single conviction rate. Stage-wise figures would be far more useful: how long between arrest and chargesheet, between chargesheet and framing of charges, and between framing of charges and verdict, together with bail and custody numbers. Without them the argument over whether the process punishes will remain an argument over anecdotes.

The fifth is a remedy for people acquitted after long custody. The Law Commission recommended a statutory scheme for compensating wrongful prosecution in 2018, and so far as I have been able to find, Parliament has not enacted one.[31]

IX. CONCLUSION

Feeley's phrase was a description and not a slogan. He wanted to say that if you look at what actually happens to people in a court, the costs fall before the verdict. The UAPA, read with its bail rules and the time its cases take to move, gives that description an unusual precision. The statute does not leave the process to informal discretion, as New Haven did. It writes it down.

The Supreme Court has not ignored the problem. *Najeeb* gave constitutional courts a way to

[31] Law Comm'n of India, Report No. 277, Wrongful Prosecution (Miscarriage of Justice): Legal Remedies (2018).

release a person when delay becomes unconscionable, and later decisions, *Andrabi* among them, have used it. But the 2026 disagreement shows how fragile that safeguard is when it depends on how each bench reads one precedent. The two accused whose January refusal started the argument were still in custody, after more than six years, when the Delhi High Court dismissed their appeals in September. Whoever is right on the law, that is not a rounding error.

None of this means the UAPA should be repealed, and this paper does not argue so. A paper of this length cannot settle what the larger bench will decide, and some of what is said here about 2026 may be overtaken by it. It means that a statute which makes detention the default needs a mechanism that makes review the default as well. The questions to ask of any such law are the ones used here: how long before a court tests the evidence, how hard is it to get out, and how often does the process end in conviction. If the answers are years, very, and rarely, then the punishment is being delivered by the process, and the verdict, when it arrives, adds little.