CHANAKYA LAW REVIEW (CLR)

Vol. II Issue II, July-Dec 2021, pp. 75-87

IS JUSTICE DELAYED, JUSTICE DENIED? ANALYSING THE CONSTITUTIONALITY AND RIGHT TO A SPEEDY TRIAL

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ABSTRACT

India, a country with many ideologies, religions, dialects, castes, and terrain, represents unity and integrity. The right to a speedy trial and other rights based on the "Justice Delayed, Justice Denied" principle are aimed to speed up the judicial system since it is unjust for the victim to have to suffer harm with little possibility of redress. Both legal professionals and the public have been aware for some years that court delays are growing more regular. As a result, the court system faces a considerable duty in ensuring that justice is delivered by providing the necessary competent legal instruments. In this context, the purpose of this article is to represent the legality of reservation and to critically assess whether the existing laws are competent enough to satisfy the current requirement. Following the famous quote, "Justice delayed is justice denied," the following article critically examines India's problem with providing Right to Speedy Justice, how it affects the lives of the accused, India's steps to address the issue, including various legal provisions, and whether these steps have been strictly implemented.

INTRODUCTION

Human rights are necessary for human life. Living in a civilized society based on well-developed laws and a good system makes it all the more important to ensure that every person lives a reasonably decent life, and one such critical component to ensuring this is the widely recognized human RIGHT TO A SPEEDY TRIAL. It is a notion dealing with the expeditious

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resolution of cases to improve the efficiency and trustworthiness of the judicature. The primary purpose of this right is to ensure that justice prevails in society.

The right to a Speedy trial was addressed in the 'Magna Carta', a foundational text of English Law, for the first time. Although the Indian Constitution was first reticent to openly acknowledge and give this privilege, the judicial interpretation of several constitutional articles has changed significantly since then. The fast trial became a fundamental right because of the literal reading of Article 21 of Constitution of India.[2] It was widely held that the fast trials is the only way to ensure that there is no miscarriage of justice and that a fair and just decision has been pronounced.

SITUATION IN INDIA

All non-convicted offenders who are now undergoing or will shortly begin the trial process are referred to as "undertrial." It's worth noting that undertrial detainees account for about 70% of India's entire jailed population.[3] In Babu Singh v. State of Uttar Pradesh,[4] Justice Krishna Iyer ruled on a bail plea that, "Even in serious situations, our judicial system suffers from slow motion syndrome, which is fatal to a fair trial, regardless of the final judgment. Because the community cares about the criminal being treated with dignity and eventually punished within a fair time frame, and the innocent being spared from the disproportionate anguish of criminal processes, speedy justice is a component of social justice." The basic purpose of any state's judicial system is to guarantee that justice is served and that victims are compensated. The institution of an independent judiciary, the provision of fundamental rights, and the guiding principles of government policy are all examples of the Indian constitution's vision and devotion to the people. However, given the current position that India is in, the court system and all of its administrators have been viewed as ineffective, even after all conceivable measures have been taken, due to the glacially delayed adjudication of issues. For a country that aims to be a leading democratic power in the new millennium, this starts to shake things up a little, and it creates a reasonable doubt in the mind, making it seem impossible to achieve

[2] The Constitution of India 1950, s 21.
[3] Jayanth K. Krishnan and C. Raj Kumar, Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective.
[4] *Babu Singh v. State of UP* [1978] AIR 527.

this goal when the right to fast trials for accused and an prominent justice system in general—all the pillars of democracy—remain so unrealized in everyday practice. Various committees and Law Commission papers have also highlighted the deplorable state of things in which the Indian judiciary is delaying the resolution of cases. The right to a fast trial is a right that applies to all phases of the criminal justice system, including investigation, inquiry, trial, appeal, revision, and retry.

THE EMERGENCE OF RIGHT TO SPEEDY TRIAL IN INDIA

The right to a quick trial was not specifically stated when the Indian constitution was written. Even yet, the Indian Supreme Court explored the issue of incarcerating undertrial criminals for long periods of time as early as 1952, although in an unexpected fashion. Even while the Court set a bar for prosecutors to meet to explain their decision to keep undertrial convicts in custody for lengthier periods, it wasn't enough. The Courts did not appear to place much emphasis on the time spent by the undertrial detainees.

In 1979, *Hussainara Khatoon v. Home Ministry*[5] brought about a major change to this. This case established a defendant's fundamental right to a speedy trial under Article 21 of the Indian Constitution for the first time. Because of the delays in the legal system and the deplorable circumstances in various jails, Justice Bhagwati ordered a major overhaul of how the state should handle the prison population. The Court ordered that more people have access to bail, that living standards be improved, and that substantive due process of law be explicitly recognised as a fundamental part of the right under Article 21 of the Indian Constitution.

ARTICLE 21 OF THE INDIAN CONSTITUTION

This right is enshrined in the constitution's articles 14, 19(1) (a), and 21, as well as the CPC. The government has a fundamental obligation to create and implement processes that enable swift trials. The Supreme Court is a stately institution that must protect citizens' fundamental rights.

PURPOSE OF CRIMINAL JUSTICE

The major goal of quick trials is to protect the innocent from being wrongfully convicted. Due

[5] *Hussainara Khatoon v. Home Ministry* [1979] 3 SCR 169.

to the large number of cases waiting in the court, proceedings are frequently mishandled, causing plaintiffs mental and financial hardship. It was also pointed out in the case that holding an acquitted person in custody for longer than the authorized period would be a violation of his Article 21 rights.

The accused has the right to request bail if the trial is delayed unnecessarily. Sections 482 and 483 of the Code of Criminal Procedure (CrPC) clearly state that every reasonable effort must be made to resolve a matter within six months and that no adjournments shall be allowed unless the situations are beyond the power of the judiciary.[6] The judiciary is responsible for keeping tabs on under-trial detainees and bringing them to trial. The deprivation of a person's liberty should not be based on overcrowding in the courts or financial constraints. The efficiency and capacity of a judicial system are determined by the time it takes for a court to resolve a case. A well-functioning judicial system will promptly resolve a matter, and while this is not simple, it is vital to accomplish proper social justice.

EFFECTS OF THE DELAY IN JUSTICE

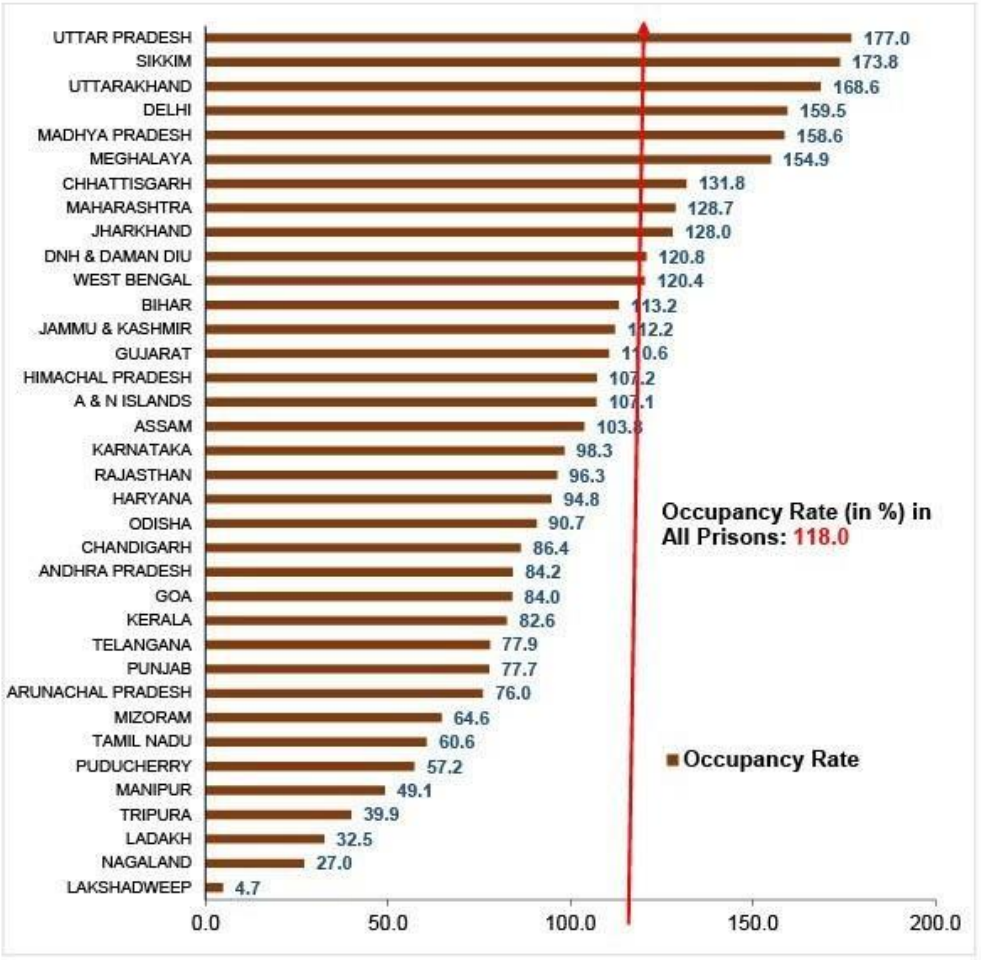
It's vital to remember that stories of inmates slaving away behind cells for years, if not decades, waiting for their day in court are not unusual. It's no surprise, that many of our Indian jails are 100 percent to 200 percent over-capacity in which Uttar Pradesh has the highest occupancy rate of 177.0 followed by Sikkim (173.8), Uttarakhand (168.6), New Delhi (159.5), and so on collaborating the total occupancy rate of Indian Prisons more than 100 % with extremely unsanitary and intolerable circumstances, with many of the weaker inmates fearing real physical injury according to Prison Statistics Report 2020.[7] Thousands upon thousands of accused have languished in prisons for far longer than a proper sentence would have provided. Having a chance at justice is like shooting in the dark to these folks.

In Dr. Rajesh Talwar and Another v Central Bureau of Investigation, 2013, In this case, the accused's daughter was discovered dead in her bedroom in May 2008. The parents of Aarushi were convicted and sentenced to life in jail in 2015 by a lower court based on circumstantial

[6] The Code of Criminal Procedure 1973, s 428 & 483.

[7] 166 Prison Statistics India 2020, National Crime Records Bureau, Government of India, available at https://ncrb.gov.in/sites/default/files/psi_table_and_chapter_report/Chapter-1-2020.pdf

evidence, but the Allahabad High Court exonerated them in 2017 after 9 years. The CBI filed an appeal in the High Court after missing the deadline for filing the appeal. The Talwars have been served with notice but justice has not been delivered so far.



- As per data provided by States/UTs.

Prisons Occupancy Rate in States/UTs as on 31st December, 2020

The released prisoners are still seen as criminals by society, which tries to isolate them since people don't like to consider the final sentence for someone who has spent half of his life in prison. Their family members' lives have become a living misery. Unnecessary delay not only hinders the accused's ability to defend himself but also depletes the resources of the appellant/prosecutor. They spend the majority of their resources pursuing a legal struggle that, even if they win in the end, deprives them of everything they own.

THE REASON BEHIND DELAY IN JUSTICE

Because most under-trials are poor, the amount of time they spend in jail is decided by their capacity, or lack thereof, to pay the bail or hire a good lawyer, not by the crime they are accused of committing. According to statistics on Indian jails, 68 percent of persons incarcerated in India have never been convicted of a crime by a court.[8] Many of them will have to wait years for their cases to be heard by the trial court.

As a result, many languish in prison for years, hoping for the day when their voices will be heard by a court, only to learn that it may be years before that happens. For example, as of November 14, 2019, 18,46,741 criminal cases were outstanding in India's lower courts for more than ten years, as well as 2,45,657 criminal cases pending in India's high courts for more than ten years.[9] It's worth debating whether these people are being detained in prison because they're guilty or because they can't pay bail and the courts don't have the time to try them.

However, there are some major reasons for the delay:

1. The first and most severe concern is the length of time it takes to resolve cases. The cases take years to resolve because they have been outstanding for so long, even though they should only take a few months.
2. Judge-to-population ratio — The number of judges available is today rather restricted, given the country's population and the amount of cases outstanding.
3. The lower court's infrastructure is woefully inadequate. The Supreme Court and the High Court have great facilities, while the other courts are in a different condition. It takes longer to resolve a case since the courts lack convenient premises and physical facilities. A decent library, acceptable furnishings, competent personnel, and adequate space are essential requirements for qualitative justice, all of which are absent in inferior courts.
4. Because of the autonomy of the legal executive, a few adjudicators accept they are not responsible to anybody, which can prompt appointed authorities looking for solace, obliviousness, and different variables that influence cases to be deferred.

[8] Mukesh Rawat, Poor, young and illiterate: Why most Indian prisoners fight long lonely battles for justice, India Today, available at https://www.indiatoday.in/india/story/pakistan-terror-outfits-drop-weapons-via-drones-to-supply-in-kashmir-1723346-2020-09-19.
[9] Id.

5. Adjournment provision: The adjournment granted by the court on unjustified reasons is the primary cause of the cases' delays.
6. Court vacation: Furnishing courts with an excursion break has the potentially negative result of further postponing procedures, especially in a nation like India where there are countless forthcoming cases. There is no such provision in most countries, such as the United States and France.
7. It was noticed that the Bhopal gas leak tragedy brought about the passing of around 15000 people. Individuals have still endured altogether in a long time since the event, and no activity has been done against the episode's fundamental casualty. One of the latest instances of the Delay is the Babri Masjid case. Gopal Singh Visharad filed the first of the five title claims in the Ayodhya issue sixty years ago, demanding permission to perform Pooja at the disputed site. The verdict will be delivered on 24th September 2010 by a Division Bench of three Allahabad High Court judges.

INDIA'S APPROACH TO SOLVING THE ISSUE

A. Constitutional approach

Every individual has a fundamental right to receive prompt justice, as provided by the Indian Constitution. The Directive Principles of State Policy enshrined in Articles 38(1), 39, and 39-A of the Indian Constitution make this a constitutional requirement. Our Constitution's Preamble states that the state must offer social, economic, and political fairness to all of its citizens. It was in L. Babu Ram v. Raghunathji Maharaj,[10] where the Supreme Court held that 'social justice' includes 'legal justice', thus, effectively meaning that our justice system must be able to provide cheap, expeditious, and efficient justice to all the sections of people irrespective of their social, economic, or financial resources. It is under Article 39(A) that the provision of free legal aid is mandated.[11] It is from the consolidated perusing of Articles 14, 19, and 21 of the Constitution of India that the right to expedient equity impliedly starts.

B. Examination of Witnesses and Speedy Trial

The highly slow examination of witnesses during the trial of cases is another factor for the

[10] *L. Babu Ram v. Raghunathji Maharaj* [1976] AIR SC 1734.
[11] The Constitution of India 1950, s 39(A).

delays in criminal proceedings. The examination of witnesses must be maintained without interruption until all of the witnesses present have been interviewed, according to Section 309 of the CrPC. This is because the entire architecture of a criminal castle is based on the questioning of witnesses, which is a necessary since the accused cannot be judged guilty without proof.

C. Plea bargaining and pendency of cases:

Plea negotiation is important in ensuring that cases are resolved quickly. The prosecution and the accused agreed on a mutually beneficial resolution, which is subsequently approved by the court. In exchange for a reduced term than what would have been given if the allegations had been prosecuted differently, the offender generally admits to a lesser offence, or simply to one or a few of the accusations, or several accusations.

D. Legal Mechanism Identified For the Enforcement of the Right:

The CrPC has several sections that provide for the expeditious disposition of matters and the prompt administration of justice. According to Section 167 of the CrPC, all investigations must be completed within a certain time frame, failing which the accused will be granted bail.[12] Further, it was The Criminal Procedure (Amendment) Act, 2005,[13] that introduced Section 436A,[14] which specified that convicts held before preliminary might be held for something like portion of the most extreme season of detainment expressed for the supposed offense committed under that regulation, with the exception of offenses for which capital punishment is one of the possible punishments. As a result, the right to prompt justice can be maintained by using these clauses. The seven-judge constitutional panel has resolved the majority of the concerns raised by the application of the idea of rapid justice in Abdul Rehman Antulay,[15] concluding that setting an outer time limit for the end of proceedings is not advisable.

EFFORTS

It is past time to assess the problem of the case pending and take appropriate actions to address

[12] The Code of Criminal Procedure 1973, s 167.
[13] The Criminal Procedure (Amendment) Act 2005.
[14] The Code of Criminal Procedure 1973, s 436(A).
[15] *Abdul Rehman Antulay & Ors vs R.S. Nayak & Anr* [1992] AIR 1701.

it. The sensitivity of the legislature to providing effective justice is primarily expressed in two statutes.

(1) Arbitration and conciliation act, 1996

(2)) Civil procedure code

Assuming the court accepts that specific parts of a potential settlement are OK to the gatherings, the court might characterize the cut-off points for a potential settlement and allude the make a difference to discretion, placation, intercession, or legal settlement. Online ADR (Alternative Dispute Resolution) is getting some forward movement nowadays, but there is an absence of IT mindfulness among the general individuals, as well as a requirement for lawful and ADR aptitude, innovative issues, legitimate sacredness of cycles, industry support, etc. The government's policies, on the other hand, have severe problems. One of them, in my opinion, is the lack of a proper definition of what constitutes a lengthy period of time. The court has taken the approach of looking at each case separately and weighing all relevant factors. The Indian Supreme Court (SC) has moved toward authorizing article 14 (3) of the International Covenant on Civil and Political Rights, which specifies that criminal cases should be attempted immediately. Everyone has the right to a fast trial, according to Article 16 of the principles of equity in the administration of justice. SC held in Raghubir Singh v. State of Bihar[16] that Article 21 stipulates that a timely trial is one of the aspects of the fundamental right to life and liberty. In section 260 of the CrPC, the notion of a summary trial is introduced, whereby the court must dispose of the matter summarily if certain requirements are met.

WHAT HAS BEEN DONE? RECOMMENDATIONS AND REFORM INITIATIVES

Various solutions have been made thus far to alleviate the problem of the criminal trial backlog. The Indian Jails Committee of 1919–1920 conducted the first comprehensive assessment of jail issues. This report, which focused on under-trials, in particular, encouraged the Crown to first separate them from those who had already been convicted and then provide them with dates for preliminary hearings and timely justice. In 1979, a four-member governmental law panel was established (78th Law Commission Report)[17] also laid down several

[16] Raghubir Singh v. State of Bihar, AIR 149, 1986 SCR (3) 802

[17] Law Commission, *Congestion of Under-Trial prisoners in India* (Law Com No 78, 1979).

recommendations regarding the "congestion of undertrial prisoners in jails." The Mulla Committee, an administration charged board, then, at that point, devoted a whole part of their three-year investigation of Indian correctional facilities to the subject of "undertrials and other un-indicted detainees" in 1983. Besides, the Indian National Human Rights Commission, an administration made organization that endeavors to guarantee that all prisoners in care are dealt with empathetically and as per the law, has gone to different lengths to advance the circumstance of undertrials.

The following are some of the findings that have been common to all these aforesaid Government papers:

1. The number of judges should be increased to alleviate backlogs and reduce court overcrowding.
2. Technological and infrastructural changes are required for more efficient judicial processes, as well as urging police personnel to speed up investigation processes so that cases can be resolved quickly while also ensuring that evidence is not overlooked.
3. When the former presiding judge is moved to a different court in the middle of a case, cases are transferred from one judge to another more swiftly.
4. Reducing the number of unwarranted adjournments granted to the government by the courts.
5. Increasing the number of offenders eligible for bail for less serious crimes; and
6. Separation of pre-trial detainees from those who have already been found guilty.

Despite all of these good legal judgments, the question remains: Have these decisions resulted in tangible results?

Notwithstanding being more than once supported throughout the long term, some of these recommendations have neglected to convert into genuine strategy changes, featuring an absence of political will as well as an absence of assets to execute the essential changes, as well as the way that no uniform implementation of those couple of drives has been arranged. The Indian legal profession is well aware of these issues.

Even though India just celebrated its 73rd Independence Day, most of the country's industries are still plagued by corruption, which plays a major part in case delays. Even though India's judicial system is self-contained, cases might take years to resolve. Fast Track Courts, which

were made with the sole target of settling cases as fast as could really be expected, have moreover neglected to accomplish their main goal. The Indian legal system does not provide enough rehabilitation programs for acquitted criminals who have been held in prison for far longer than the legal maximum.

SUGGESTIONS

Although circumstances have changed, little has changed in the predicament of undertrials in Indian prisons, which has only gotten worse as their numbers have grown. In 1978, undertrials made up 54 percent of detainees in jails; by 2017, that number had risen to 68 percent. Surprisingly, the majority of these undertrials' socioeconomic circumstances have remained unchanged over the years: they are young, illiterate, and destitute. As a result of most of them being poor, the length of time they spend in jail is dictated less by the seriousness of the crime they are accused of committing and more by their inability to afford bail and/or excellent lawyers. Presently, since they are devastated and uneducated, just a little level of them will understand and know about their basic privileges to a brief preliminary and independence from inconsistent detainment. The outcome is that a large portion of these individuals, significantly youthful, mope in correctional facilities for a really long time with next to zero possibility at equity. This perpetuating lethal situation was also reflected in the reports of the National Crime Records Bureau (NCRB),[18] showing that by the end of 2017, more than 3.08 lakh undertrial prisoners were admitted in the Indian jails, which is much higher than the number of convicts in India.[19]

The court system has been significantly dragging, even after multiple favorable cases and attempts to impart the right to a timely trial, and the situation does not appear to be improving anytime soon. Thus, these arrangements, which incorporate a more prominent utilization of innovation to assist with speeding up the procedures for these undertrial detainees, as well as the reception of court versatility, where judges can visit the prisons holding these undertrials to finish the pre-preliminary prerequisites, can come to work ponders in these shocking

[18] National Crime Records Bureau\ https://ncrb.gov.in/

[19] Mukesh Rawat, Poor, young and illiterate: Why most Indian prisoners fight long lonely battles for justice, India Today, available at https://www.indiatoday.in/india/story/pakistan-terror-outfits-drop-weapons-via-drones-to-supply-in-kashmir-1723346-2020-09-19.

conditions. Second, if meaningful progress is to be made, a more systematic approach to recognizing and fighting the various forms of corruption that plague our legal system must be established and implemented. Lastly, a major cultural and attitudinal transformation is required on the part of the society instead of their views with regards to these incarcerated individuals because it was in *Thana Singh v Central Bureau of Narcotics*,[20] that the Supreme Court had itself observed, "for the prisoner, imprisonment as an undertrial is as dishonorable as imprisonment for being a convict because the damning finger and opprobrious eyes of society draw no difference between the two".

OTHER SUGGESTIONS

The following suggestions may be made to ensure that justice is served promptly:

1. Since the ongoing examination office, the police, is one of the reasons for the law enforcement framework's disappointment, the circumstance might be adjusted in the event that the examination is taken care of by a legitimate master with skill.
2. A period limit should be laid out at each degree of criminal procedures, including examination, request, preliminary, allure, correction, and survey, with the goal that the state hardware might be considered responsible for delays at any phase of the lawbreaker case's goal.
3. Arrangements for witness wellbeing, sufficient friendliness toward witnesses, and repayment of uses paid by them for visiting court to give declaration ought to be consolidated in the CrPC for fast case attitude.
4. Plea bargaining is undeniably a technique for speeding up the legal system and minimizing case pending times. It can be efficiently implemented with certain revisions to the current requirements set out in Chapter XXI-A of the CrPC. These are:

a) An obligatory clause must be included requiring the Presiding Officer to tell the accused of the plea negotiating procedure before the trial begins.
b) Lawyers must also explain the plea bargaining process to their clients and, if required, file an affidavit with the appropriate court.
c) Legal mindfulness exercises will draw in Probation Officers, Welfare Officers, and Jail Superintendents, as well as authorities from the Legal Services Authority.

[20] Thana Singh v Central Bureau of Narcotics [2013] 2 SCC 603.

5. The sort of offenses that will be dealt with by unique courts, as well as the cycle for choosing which offenses will be arraigned by extraordinary courts, should be unequivocally expressed in the actual Act. The Government's optional powers to allude criminal procedures have been told by the Supreme Court of India.

CONCLUSION

According to the principle of "justice delayed is justice denied," if a legal remedy is available for a person that has been damaged but will not be supplied within a reasonable period, it's the equivalent of having no legal recourse at all. Because it is inequitable for a party, whether victim or accused, to suffer injury with little possibility of resolution, this concept supports the right to a quick trial, as well as other related rights aimed at speeding the judicial process. In such cases, the law frequently serves as a "transmitter of injustice," rendering the wounded party a powerless victim of the "callousness of the legal and judicial system."

It is critical, however, to finish with these important questions: "Can these undertrial detainees ever be compensated for the terrible difficulties they have endured?" "How will they be compensated for the substantial amount of time and mental clarity they have lost?" "Will society ever be ready to embrace these undertrial offenders, even if they are exonerated, after such a lengthy period in prison?" concludes the author. Many problems and moral dilemmas remain unresolved.

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