

When Presumption of Guilt Meets Indefinite Detention: India's Anti-Terror Law Dilemma

by [Bhavya Johari](#) | Mar 5, 2026



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Can a constitutional democracy legitimise exceptional liberty burdens by declaration? India's Supreme Court recently grappled with this question in a landmark ruling that exposes fault lines between counter-terrorism imperatives and fundamental rights, particularly when prolonged pre-trial detention transforms the presumption of innocence into years without conviction. On December 11, 2025, the Court delivered its judgment in [Central Bureau of Investigation \(CBI\) v. Dayamoy Mahato](#): eighteen accused in the [2010 Jnaneshwari Express derailment case](#) (148 fatalities) had spent over twelve years in pre-trial detention while proceedings stalled. The Calcutta High Court granted bail between 2022 and 2023. While declining the prosecution's appeal, the Supreme Court articulated a framework that could reshape India's anti-terrorism jurisprudence.

The Reverse Burden Problem

Section 43E of [India's Unlawful Activities \(Prevention\) Act, 1967](#) (UAPA), applicable to terrorist act prosecutions under Section 15, alters the foundational principle of criminal law. Instead of the state proving guilt beyond a reasonable doubt, accused persons must rebut a statutory presumption of culpability. This creates a fundamental imbalance, particularly devastating for socio-economically disadvantaged accused, lacking access to state-controlled evidence.

The judgment's critical innovation imposes affirmative state obligations on accused persons to enable them to challenge presumed guilt. This shifts constitutional inquiry from whether reverse burdens are permissible to whether their implementation satisfies substantive due process. Unlike the restrictive approach in [National Investigation Agency \(NIA\) v. Zahoor Ahmad Shah Watali \(2019\)](#), which deferred to Section 43D(5)'s requirement to deny bail if accusations appear prima facie true and held that prosecution materials must prevail until contradicted, *Dayamoy Mahato* demands systemic support mechanisms.

This aligns with the UN Human Rights Committee's (HRC) [General Comment No. 32](#) on the [International Covenant on Civil and Political Rights](#) (ICCPR), which affirms the prosecution's

burden to prove the charges beyond a reasonable doubt. While the HRC hasn't articulated dedicated proportionality tests for reverse burdens, [domestic courts and human rights bodies](#) in ICCPR State Parties assess them against standards of [reasonableness, necessity, and proportionality](#), particularly given [India's ICCPR ratification](#).

When Time Becomes Punishment

The judgment's temporal analysis breaks new ground: delay assumes heightened constitutional significance when accused persons face procedural burden inversion and systemic adjournments. This extends beyond the speedy trial rights recognised in [Hussainara Khatoun v. State of Bihar \(1979\)](#) to acknowledge detention itself as a form of anticipatory punishment.

According to the [Crime in India Report \(2023\)](#) by the National Crime Records Bureau, [3,949 pending UAPA trials and 4,794 investigations](#) remained pending. The Court warned that the presumption hardens into an irreversible verdict when liberty becomes hostage to clogged dockets, overworked judges, lax prosecution, and repeated adjournments, compounding the constitutional injury.

This analysis aligns with the [European Court of Human Rights' guidance](#) and the [United Nations standards](#) on the right to liberty and security, emphasising that pre-trial detention must be exceptional, reasonable, necessary, and proportionate. While terrorism cases may warrant heightened security, these standards require time-limited detention based on individualised reasons and subject to periodic judicial review with special prosecution diligence.

Structural Remedies, Not Just Individual Relief

Perhaps most innovative are the Court's systemic directives requiring High Courts to examine pending cases under reverse burden legislation, assess the adequacy of special courts and judicial officers, ensure legal aid assignment, and prioritise cases pending beyond five years for day-to-day hearings.

The judgment transforms judicial oversight from episodic intervention to structural accountability, acknowledging that constitutional violations from reverse burden regimes are systemic rather than individual. The Court identified specific burdens: limited evidence and witness access for incarcerated accused; state monopoly over investigative materials; socio-economic disadvantage from inadequate legal aid; the pre-trial requirement to rebut presumptive guilt; and systemic delay. Such burdens without institutional support undermine constitutional legitimacy.

These directives align with HRC General Comment No. 32's emphasis that fair trial rights require both individual fairness and systemic conditions enabling their exercise.

The National Security Caveat

Yet the judgment contains a troubling tension. While acknowledging constitutional protections of liberty, the Court articulated a balancing framework that permits national security considerations to override individual rights. This risks undermining the judgment's progressive framework of affirmative state obligations and systemic accountability.

This echoes [Human Rights Watch's](#) critique that prolonged UAPA pre-trial detention facilitates abuse with minimal judicial scrutiny, contrary to Indian criminal law and international standards. This subordination of rights contradicts the Court's recognition that constitutional democracy requires safeguarding the rights of suspected wrongdoers. [Empirical analysis](#) reveals that this doctrinal instability produces uneven outcomes across benches, undermining legal certainty.

What Comes Next?

Dayamoy Mahato represents significant progress toward constitutional scrutiny of India's anti-terror framework, but whether this judgment ultimately achieves substantive reform or remains symbolic depends on sustained judicial commitment to implementation.