
PREVENTIVE DETENTION AND THE NORMALISATION OF EXECUTIVE POWER IN INDIA: A CONSTITUTIONAL AND HUMAN RIGHTS ANALYSIS WITH SPECIAL REFERENCE TO TAMIL NADU

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ABSTRACT

Preventive detention represents one of the most exceptional powers available to the executive in a constitutional democracy. Though constitutionally permitted in India, it was intended to operate only under extraordinary circumstances involving threats to public order or national security. In recent years, however, preventive detention has increasingly been employed as a routine policing mechanism rather than an exceptional measure. This article examines the contemporary use of preventive detention laws in India, with special reference to Tamil Nadu, and analyses their compatibility with constitutional safeguards under Articles 21 and 22 and international human rights standards under the International Covenant on Civil and Political Rights. It argues that the routine and mechanical invocation of preventive detention reflects a troubling normalisation of executive power, resulting in erosion of personal liberty, dilution of procedural safeguards, and weakening of judicial oversight. The article concludes that preventive detention, as presently practiced, poses a serious constitutional and human rights challenge requiring urgent recalibration.

Keywords: Preventive Detention; Personal Liberty; Article 21; Article 22; ICCPR; Goondas Act; Tamil Nadu; Executive Power; Criminal Law Reform.

I. INTRODUCTION: PREVENTIVE DETENTION IN A CONSTITUTIONAL DEMOCRACY

Preventive detention occupies a paradoxical position in Indian constitutional law. On the one hand, it is expressly permitted under the Constitution; on the other, it authorises deprivation of liberty without trial, contradicting the foundational principles of due process and presumption of innocence. The framers of the Constitution envisaged preventive detention as an **exceptional mechanism**, to be invoked only when ordinary criminal law proved inadequate to address grave threats to public order or national security.

Contemporary practice reveals a stark departure from this constitutional vision. Preventive detention is increasingly used as a routine tool of policing, particularly at the state level. Tamil Nadu presents a striking case study, where detention laws are frequently invoked for ordinary criminal allegations, leading to repeated judicial intervention by the Madras High Court. This paper contends that such routine use reflects a deeper constitutional crisis in which executive convenience is prioritised over personal liberty.

II. SCOPE OF THE STUDY

This study examines preventive detention as a **constitutional power, administrative practice, and human rights issue**. It analyses the doctrinal evolution of Articles 21 and 22, judicial control over detention, and India's obligations under international human rights law. Tamil Nadu is adopted as a focused case study to demonstrate that preventive detention abuse is **structural rather than exceptional**, even within relatively advanced states.¹

III. OBJECT OF THE STUDY

The objectives of this article are:

1. To analyse preventive detention as an exceptional constitutional power.
2. To examine its contemporary normalisation in executive practice.
3. To assess compliance with Articles 21 and 22 of the Constitution.
4. To evaluate compatibility with international human rights law.
5. To examine Tamil Nadu's preventive detention regime as a case study.

IV. METHODOLOGY (DOCTRINAL RESEARCH)

This study adopts a **purely doctrinal research methodology**. It relies on constitutional provisions, judicial precedents of the Supreme Court and High Courts, preventive detention statutes, Law Commission reports, and international human rights instruments, particularly the ICCPR. No empirical or field-based methods are employed.

The analysis is interpretative, normative, and critical.

V. HYPOTHESIS

H₁: Preventive detention is constitutionally intended to operate only as an exceptional measure and not as a substitute for ordinary criminal law.

H₂: The routine invocation of preventive detention reflects a normalisation of executive power that erodes procedural safeguards under Articles 21 and 22.

H₃: The persistent use of preventive detention in Tamil Nadu demonstrates structural executive overreach rather than isolated administrative error.

VI. CONSTITUTIONAL FRAMEWORK OF PREVENTIVE DETENTION

A. Articles 21 and 22: Liberty and Its Exceptions

Article 21 guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law. Judicial interpretation has transformed this guarantee into a substantive due process requirement encompassing dignity, fairness, and proportionality. Article 22 carves out a limited exception by permitting preventive detention, subject to procedural safeguards such as communication of grounds and review by an Advisory Board. The Supreme Court has consistently held that preventive detention must remain an **exception** and cannot replace ordinary criminal law.

B. Preventive Detention as an Exceptional Power

The constitutional design reflects deep distrust of detention without trial. Strict timelines, periodic review, and judicial scrutiny were intended to restrain executive excess. Any routine or mechanical use undermines this constitutional balance.

VII. PREVENTIVE DETENTION LAWS IN INDIA

India operates a layered preventive detention regime comprising central and state legislation. While central laws focus on national security, state laws often employ vague categories such as “habitual offender” or “dangerous person.” This breadth creates scope for misuse. Courts have repeatedly cautioned against vague grounds, non-application of mind, and mechanical detention orders.

VIII. PREVENTIVE DETENTION IN TAMIL NADU: A CASE STUDY

A. The Goondas Act and Its Application

Tamil Nadu frequently invokes the Tamil Nadu Prevention of Dangerous Activities Act (Goondas Act). Though intended to address serious threats to public order, it is often applied to routine criminal cases, including minor offences and pending prosecutions.

B. Judicial Response of the Madras High Court

The Madras High Court has repeatedly quashed detention orders on grounds of non-application of mind, lack of necessity, and misuse to bypass bail. Despite this, the persistence of such detentions indicates systemic administrative failure.

IX. PREVENTIVE DETENTION AND INTERNATIONAL HUMAN RIGHTS LAW

India is a party to the ICCPR. Article 9 prohibits arbitrary detention and requires legality, necessity, and proportionality. International human rights jurisprudence treats preventive detention with extreme caution, permitting it only in strictly limited circumstances. Routine detention without meaningful judicial scrutiny violates human dignity and State obligations.

X. CONTEMPORARY SITUATION AND CRIMINAL LAW TRANSITION

India has replaced the IPC, CrPC, and Evidence Act with the **Bharatiya Nyaya Sanhita (BNS)**, **Bharatiya Nagarik Suraksha Sanhita (BNSS)**, and **Bharatiya Sakshya Adhinyam (BSA)**. These laws expand offences, strengthen investigative powers, and modernise evidentiary rules.

This transition raises a critical question: **when ordinary criminal law becomes broader and more efficient, why does preventive detention persist?**

XI. PREVENTIVE DETENTION UNDER IPC CrPC REGIME

Under the IPC–CrPC framework, deprivation of liberty followed arrest, investigation, judicial remand, bail, and trial. Preventive detention was constitutionally tolerated only when criminal prosecution was genuinely insufficient. Courts insisted that detention could not compensate for weak investigation or inconvenience.

XII. THE BNS–BNSS–BSA REGIME AND PREVENTIVE DETENTION

The new criminal law regime significantly expands executive power in investigation and prosecution. Doctrinally, this **weakens the justification for preventive detention**. When criminal law is broader and technologically equipped, detention without trial signals executive preference rather than necessity.

XIII. COMPARATIVE ANALYSIS

Aspect	IPC–CrPC–Evidence	BNS–BNSS–BSA
Scope of offences	Limited & defined	Expanded & consolidated
Investigation	Judicially supervised	Enhanced executive powers
Evidence	Traditional	Digital & electronic
Liberty safeguards	Bail-centric	Procedural tightening
Need for detention	Exceptional	Constitutionally weaker

XIV. EMPIRICAL TRENDS: PREVENTIVE DETENTION IN INDIA (2005–2023)

A. NATIONAL PREVENTIVE DETENTION TRENDS (NCRB DATA)

Empirical data published by the National Crime Records Bureau (NCRB) demonstrates a marked increase in the use of preventive detention in recent years. According to the *Crime in India* reports, the number of persons placed under preventive detention in India rose from

67,084 in 2017 to 110,683 in 2021 an increase of approximately 65 percent within a four-year period.¹ The trajectory is not linear but clearly expansionary. Detentions rose sharply between 2017 and 2018, continued increasing in 2019, declined in 2020 (likely attributable to pandemic-related enforcement disruptions), and rebounded significantly in 2021.² The 2021 figure represents the highest level of preventive detention recorded in the available **NCRB** series.

This data directly challenges the constitutional premise that preventive detention is an exceptional power to be invoked sparingly. A sustained rise in detentions at the national level indicates systemic administrative reliance rather than extraordinary invocation. When tens of thousands of individuals are subjected annually to detention without trial, the practice ceases to function as a constitutional exception and begins to resemble a structural feature of governance.

The empirical record thus supports the central hypothesis of this article: preventive detention in India has undergone normalisation within executive practice.

B. TAMIL NADU'S PREVENTIVE DETENTION REGIME

Tamil Nadu provides a particularly revealing case study. The *Crime Review 2021* published by the Tamil Nadu State Crime Records Bureau reports that 3,194 persons were detained under preventive detention laws in the state in 2021.³ Of these, 2,843 detentions—approximately 89 percent were effected under the Tamil Nadu Prevention of Dangerous Activities Act, 1982 (commonly known as the Goondas Act).

Two features are significant:

First, preventive detention in Tamil Nadu is overwhelmingly driven by state legislation rather than central security statutes. The Goondas Act has evolved into the principal preventive detention mechanism within the state.

Second, the scale of detention relative to the state's population and ordinary criminal justice capacity raises serious proportionality concerns. Preventive detention was constitutionally tolerated as a measure of last resort—intended to address imminent threats to public order when ordinary criminal law mechanisms were demonstrably insufficient. Yet the high volume of detentions suggests that preventive detention functions in practice as a parallel enforcement system. This pattern becomes constitutionally troubling when viewed alongside

the expansion of ordinary criminal law under the **Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam**. If ordinary criminal law has been broadened and technologically strengthened, the continued large-scale use of preventive detention signals administrative preference rather than legal necessity.

Empirically, therefore, Tamil Nadu exemplifies the broader national shift from exceptional use to institutionalised reliance. The data does not merely illustrate enforcement activity; it evidences the transformation of preventive detention from constitutional safeguard to routine executive instrument.

XV. APPENDIX A

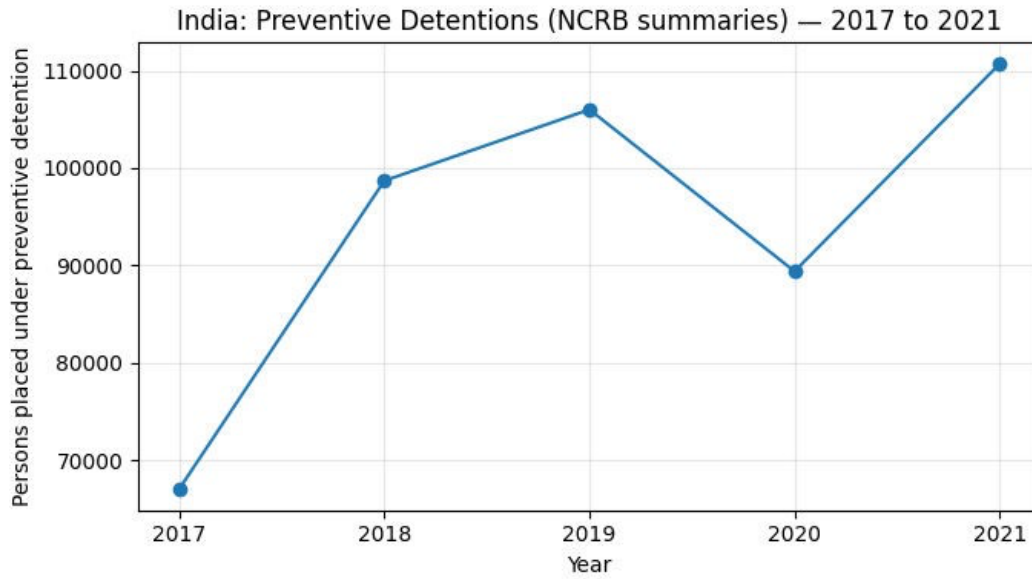
PREVENTIVE DETENTION DATA (2005–2023)

Figure 1. Persons Placed Under Preventive Detention in India (2017–2021).

Annual number of individuals reported as placed under preventive detention in India, as published in the National Crime Records Bureau’s *Crime in India* reports (2017–2021). The data reflects total persons detained under preventive detention laws across all states and union territories. Figures for 2020 show a temporary decline relative to 2019, followed by a significant increase in 2021.

Year	Persons Detained (India)
2017	67,084
2018	98,700
2019	106,000
2020	89,405
2021	110,683

(NCRB Crime in India Reports)

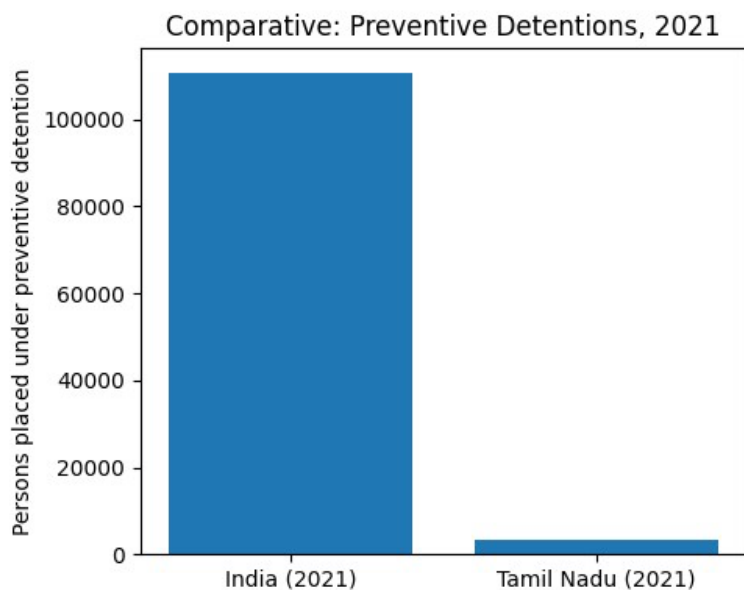


Source: NAT'L CRIME RECORDS BUREAU, MINISTRY OF HOME AFFAIRS, GOV'T OF INDIA, *CRIME IN INDIA* (2017–2021).

COMPARATIVE PREVENTIVE DETENTIONS: INDIA AND TAMIL NADU (2021).

Figure 2. Comparative Preventive Detentions: India and Tamil Nadu (2021). Comparison of total persons placed under preventive detention nationally (110,683) and in Tamil Nadu (3,194) for the year 2021. Tamil Nadu figures include detentions under state preventive detention statutes, primarily the Tamil Nadu Prevention of Dangerous Activities Act, 1982 (Goondas Act).

Year	Total Preventive Detentions (TN)	Detentions under Goondas Act
2021	3,194	2,843



Source: TAMIL NADU STATE CRIME RECORDS BUREAU, TAMIL NADU POLICE, *CRIME REVIEW 2021* (2022).

XVI. IMPLICATIONS FOR TAMIL NADU

Despite the expanded criminal law framework, Tamil Nadu continues to rely heavily on preventive detention under the Goondas Act. Detention orders often rely on pending cases rather than imminent threats, effectively converting preventive detention into **pre-trial punishment**.

XVII. NORMALISATION OF EXECUTIVE POWER

The most troubling aspect of contemporary practice is normalisation. Preventive detention has shifted from constitutional exception to administrative routine. Liberty is treated as contingent on executive satisfaction rather than as an inherent right.

XVIII. VULNERABLE GROUPS AND DISCRIMINATORY IMPACT

Preventive detention disproportionately affects the poor and marginalised. Such patterns raise concerns of indirect discrimination and violation of substantive equality.

XIX. JUDICIAL OVERSIGHT AND ITS LIMITATIONS

Judicial review is often post-facto. Advisory Boards function largely as formalities.

Structural enforcement deficits persist despite strong judicial doctrine.

XX. RECOMMENDATIONS

- Preventive detention must be a last resort
- Clear distinction between public order and law and order
- Mandatory pre-detention judicial scrutiny
- Compensation for illegal detention
- Periodic legislative review

XXI. CONCLUSION

Preventive detention, when routinely employed, transforms constitutional democracy into an executive-dominated system where liberty becomes contingent rather than inherent. The experience of Tamil Nadu illustrates how exceptional powers become normalised despite expanded criminal law mechanisms. Reasserting the exceptional nature of preventive detention is essential to preserving the rule of law, personal liberty, and constitutional morality in India.

XXII. STATEMENT OF CONTRIBUTION & ORIGINALITY

This article makes an original doctrinal contribution by analysing preventive detention through the lens of **normalisation of executive power**, particularly in the context of India's new criminal law regime. By demonstrating that preventive detention persists despite expanded ordinary criminal law mechanisms, the article challenges prevailing justifications and situates preventive detention as a continuing constitutional and human rights concern.

ENDNOTES:

INTRODUCTION & CONSTITUTIONAL FRAMEWORK

1. *INDIA CONST. art. 22, cls. (3)–(7).*
2. *A.K. Gopalan v. State of Madras, A.I.R. 1950 S.C. 27.*
3. *Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248.*
4. *Id. at 281–82.*
5. *Khudiram Das v. State of W.B., (1975) 2 S.C.C. 81, 94.*
6. *Rekha v. State of T.N., (2011) 5 S.C.C. 244, 252–53.*
7. *A.K. Roy v. Union of India, (1982) 1 S.C.C. 271, 313.*
8. *INDIA CONST. art. 21.*
9. *INDIA CONST. art. 22, cl. (5).*

PREVENTIVE DETENTION LAWS – STRUCTURAL CONCERNS

10. *Rekha, (2011) 5 S.C.C. at 252.*
11. *Khudiram Das, (1975) 2 S.C.C. at 94.*
12. *A.K. Roy, (1982) 1 S.C.C. at 313.*
13. *The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, No. 14 of 1982 (Tamil Nadu).*
14. *Id. § 3.*

INTERNATIONAL HUMAN RIGHTS FRAMEWORK

15. *International Covenant on Civil and Political Rights art. 9, Dec. 16, 1966, 999 U.N.T.S. 171.*
16. *Id. art. 4.*
17. *U.N. Hum. Rts. Comm., General Comment No. 35: Article 9 (Liberty and Security of Person), ¶¶ 10–18, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014).*

18. *Universal Declaration of Human Rights art. 9, G.A. Res. 217 (III) A (Dec. 10, 1948).*

19. *ICCPR, supra note 15, art. 9(1).*

CRIMINAL LAW TRANSITION (IPC–CrPC to BNS–BNSS–BSA)

20. *Indian Penal Code, No. 45 of 1860, INDIA CODE (1860) (repealed 2023).*

21. *Code of Criminal Procedure, No. 2 of 1974, INDIA CODE (1974) (repealed 2023).*

22. *Indian Evidence Act, No. 1 of 1872, INDIA CODE (1872) (repealed 2023).*

23. *Bharatiya Nyaya Sanhita, No. 45 of 2023, INDIA CODE (2023).*

24. *Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, INDIA CODE (2023).*

25. *Bharatiya Sakshya Adhinyam, No. 47 of 2023, INDIA CODE (2023).*

26. *Rekha, (2011) 5 S.C.C. at 252 (preventive detention cannot substitute criminal prosecution).*

EMPIRICAL TRENDS – NCRB DATA

27. *NAT'L CRIME RECS. BUREAU, MINISTRY OF HOME AFFS., GOV'T OF INDIA, CRIME IN INDIA 2017 (2018).*

28. *NAT'L CRIME RECS. BUREAU, MINISTRY OF HOME AFFS., GOV'T OF INDIA, CRIME IN INDIA 2018 (2019).*

29. *NAT'L CRIME RECS. BUREAU, MINISTRY OF HOME AFFS., GOV'T OF INDIA, CRIME IN INDIA 2019 (2020).*

30. *NAT'L CRIME RECS. BUREAU, MINISTRY OF HOME AFFS., GOV'T OF INDIA, CRIME IN INDIA 2020 (2021).*

31. *NAT'L CRIME RECS. BUREAU, MINISTRY OF HOME AFFS., GOV'T OF INDIA, CRIME IN INDIA 2021 (2022).*

32. *Id.*

TAMIL NADU DATA

33. *TAMIL NADU STATE CRIME RECS. BUREAU, TAMIL NADU POLICE, CRIME REVIEW 2021 (2022).*

34. *Id.*

35. *Tamil Nadu Prevention of Dangerous Activities Act, supra note 13.*

LIBERTY, COMPENSATION & STRUCTURAL REVIEW

36. *Hussainara Khatoon v. State of Bihar, (1980) 1 S.C.C. 81.*

37. *Rudul Sah v. State of Bihar, (1983) 4 S.C.C. 141.*

38. *Maneka Gandhi, (1978) 1 S.C.C. at 281.*

39. *H.M. Seervai, CONSTITUTIONAL LAW OF INDIA (4th ed. 1996).*

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41. *Giorgio Agamben, STATE OF EXCEPTION (Kevin Attell trans., Univ. of Chicago Press 2005).*

42. *ICCPR, supra note 15, art. 9.*

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- Code of Criminal Procedure, 1973
- Indian Evidence Act, 1872
- Bharatiya Nyaya Sanhita, 2023
- Bharatiya Nagarik Suraksha Sanhita, 2023
- Bharatiya Sakshya Adhinyam, 2023
- Tamil Nadu Prevention of Dangerous Activities Act, 1982

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- *A.K. Gopalan v. State of Madras, A.I.R. 1950 S.C. 27*
- *Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248*

- *Khudiram Das v. State of West Bengal*, (1975) 2 S.C.C. 81
- *Rekha v. State of Tamil Nadu*, (2011) 5 S.C.C. 244
- *A.K. Roy v. Union of India*, (1982) 1 S.C.C. 271
- *Hussainara Khatoon v. State of Bihar*, (1980) 1 S.C.C. 81
- *Rudul Sah v. State of Bihar*, (1983) 4 S.C.C. 141

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- Giorgio Agamben, *State of Exception*