HABEAS CORPUS IN PREVENTIVE DETENTION CASES: DELAYS, DEFERENCE, AND THE REAL-WORLD EROSION OF LIBERTY

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ABSTRACT

Preventive detention has been made an exception to the normal criminal process in the constitutional framework of India. However, it is also a situation where the guarantee of habeas corpus gets the most strained. This paper is of the view that the existence of judicial review formally does not take away liberty very much. Rather it is the combination of two practical facets: deference and delay, that leads to a loss of freedom. One of the things that delay can bring about is at the time level. It includes, among others, the time taken to supply the materials after which they are relied upon, the time taken to translate and communicate the grounds, the time taken to consider the representations made under Article 22(5), and the time taken to list and decide on the habeas petitions. On the other hand, forms of deference can be found in the use of doctrinal language to refer to matters of subjective satisfaction, the sensitivity of strategic borders as well as the recurrent change of classification of ordinary criminality to public order. When these two forces come together, a positive result in habeas proceedings may turn out to be only a symbolic triumph when the major part of detention has already taken place. By referring to a doctrinal mapping of Supreme Court jurisprudence and limited verifiable public data, the article reveals how courts constantly change their decisions between strict procedural insistence and contextual restraint to produce a remedial gap in actual time. It additionally refers to the current case involving the preventive detention of Sonam Wangchuk to exemplify how translation disputes, narrative framing, and postponements can diminish the urgency that habeas corpus is intended to represent. The article ends with a reform-minded doctrinal suggestion which considers quickness as a fundamental security, changes listing and adjournment ways, and makes it clear what deference can truly mean without turning preventive detention into an almost unreviewable executive area.

Keywords: Habeas corpus, preventive detention, Article 22(5), subjective satisfaction, public order.

Introduction

Habeas corpus is generally referred to as the Constitution's quickest medication for illegal custody, but preventive detention brings out a rather unpleasant truth: a fix can be there in words but be deprived of its worth by the passage of time. In *A. K. Gopalan v. State of Madras*[1], the first-or chronicle encounter of the constitution with Article 21 and preventive detention decided a formal legal attitude which the later would have to change a bit because by relying only on formal legality one does not obtain meaningful liberty review. However, the contemporary challenge is beyond simply whether a court has the power to nullify a detention order. It is if it has the power to do so in sufficient time to make it effective. If detention periods are short and the court takes a long time, then the review of habeas via the judicial process will be after the fact it will be more like an explanation of what has already happened rather than being an efficient process of the restoration of liberty content.

Preventive detention is legally allowed under the constitution, but it is constitutionally mistrusted by its very structure, as it allows for imprisonment without trial on the grounds of future conduct which is only anticipated. *A. K. Roy v. Union of India*[2] is the case that is mainly referred to here since on the one hand, it upheld the National Security Act and on the other hand it stressed that it is not possible for detainees to lose their fundamental rights and therefore procedural safeguards must be given due importance. This kind of duality determines the pattern of Indian habeas practice: the judges consider detention as a very rare measure, still at the same time, they acknowledge that the executive decides on the basis of its own anticipation and claims to security. That is the point which raises the main question of this article, i.e., how does habeas corpus work if the law allows a kind of detention that is preventive in intent, secretive and is basically a matter of administrative simplification?

The speed in handling habeas is not an administrative convenience; rather, it forms part of the moral and constitutional reasoning behind the remedy. The Supreme Court of India, in *Kanu Sanyal v. District Magistrate*, *Darjeeling*[3], considered habeas corpus as a procedural writ dealing mainly with the issue of legality of detention at the time of return; thereby it indicated that the remedy is for present liberty, not for past vindication. Such a perspective entails that a whole day will find the constitutional value of the remedy diminishing with every day of

[1] 1950 SCR 88.
[2] (1982) 1 SCC 271.
[3] (1973) 2 SCC 674.

avoidable delay. Even if a detention order has finally been overturned after months of custody, the court may have put things right on paper but it is considered to have failed the remedial promise especially in the case where one's detention period is limited to a maximum and the case is decided almost at the expiration of the detention cycle.

The post-Maneka Gandhi reading of Article 21 is such that the word "procedure" cannot be separated from the concept of fairness, and in the context of preventive detention, fairness is most of the time equated with the giving of a timely and meaningful opportunity to respond. The case of *Justice K. S. Puttaswamy (Retd) v. Union of India*[4] is relevant here as it rejects the notion that fundamental rights can be set aside whenever the State claims an extraordinary situation, thus re-establishing freedom as a constitutional structural commitment. In that situation, delay and deference as two factors do not appear to be just factors which are neutral by their nature in the institutional framework; instead, it seems that they are exactly the ways to which an astonishing power is being made ordinary. Therefore, the paper perceives the weakening of law as a genuine happening in people's life and not simply a legal jargon.

Constitutional and Statutory Framework

Preventive detention ultimately draws its juridical power from a constitutional compromise that allows a deviation from the normal criminal process but still requires the minimum safeguards against arbitrary custody. The enabling laws and Article 22 form the tool that freedom is not a matter of power given, but of power being exercised strictly in procedural limitation.[5]

The National Security Act and Preventive Detention Power

The National Security Act, 1980 is a classic example of a preventive detention law, authorizing detention practice to prevent trouble to security, public order, or essential supplies and services, and at the same time, establishing a layered process of approval and review. The features of the statute, however, seem to push the safeguards outside of the substantive ones and into timelines and procedural steps. The statute's effects on habeas practice are twofold: first, the litigations frequently revolve around procedural errors rather than the real predictive

[4] (2017) 10 SCC 1.

[5] Preventive Detention and National Security Act, 1980, *available at:* https://www.drishtiias.com/daily-updates/daily-news-analysis/preventive-detention-and-national-security-act%2C-1980 (last visited on March 6, 2026).

evaluation; secondly, time turns out to be the most important factor since the statute's limits on maximum duration and confirmation levels form a moving window during which a timely judicial intervention has to take place to be of a valid influence. Hence, the habeas court proceedings become a competition between the administrative consolidation and the judicial scheduling.[6]

COFEPOSA and the Compliance Driven Nature of Review

Although COFEPOSA is a sector-specific law, its case law has had an impact on the entire preventive detention doctrine as it often compels courts to determine what effective representation really means. The act when applied to smuggling and foreign exchange cases has given rise to many disputes about the supply of documents to which one party refers, the clarity of the grounds, and whether the proper authority has considered the representations immediately. These are not mere technicalities in a case of personal liberty; rather, they represent the major instrument of the detainee's power to challenge the narrative of the State. Hence, the COFEPOSA case line can be quite helpful in preventive detention habeas in general because it demonstrates how courts at times resort to procedural demands as a stand-in for substantive rights when substantive review is in theory impossible.[7]

Advisory Boards and the Structural Limits of Internal Review

Advisory Boards have constitutional and statutory importance, but they cannot replace judicial review because they are within the preventive detention framework and do not act against it. The early Supreme Court warning in *State of Bombay v. Atma Ram Sridhar Vaidya*[8] case regarding vague grounds and the requirement to provide enough material for representation is very helpful because it points out a problem that has been there all along: if grounds are imprecise or the material that supports them is not given, the Board's process may be just a formality rather than an effective check. In habeas proceedings, this is very important because a court, most of the time, has to decide if the procedural safeguards were genuine or just the way they were performed. Boards presence is invoked at times as a proof of fairness, but habeas doctrine requires that fairness be measured, not assumed.

[6] The National Security Act, 1980 (Act 65 of 1980).
[7] Pradyumna K. Tripathi, "Preventive Detention: The Indian Experience", 9 *American Journal of Comparative Law* 219 (1960).
[8] 1951 SCR 167.

Subjective Satisfaction and Reviewable Legality

Preventive detention is often justified in terms of subjective satisfaction, but the concept does not provide a jurisdictional defense. The Supreme Court in *Khudiram Das v. State of West Bengal*[9], explained how detention orders are still open to be reviewed, for instance, if the mind was not applied, if there was reliance on irrelevant material, and other legality defects. The court, however, like the executive, is refused to substitute its own satisfaction. This results in a unique habeas landscape: the court is not expected to determine if the person is "dangerous" in the criminal trial sense but whether the decision-making process complies with constitutional and statutory limitations. The real challenge is that the element of deference may be pushed beyond its doctrinal limits, especially when the record is incomplete or the security framing is treated as self-justifying, thus narrowing the space for a thorough examination.

Doctrinal Trajectory: from "Public Order" to Deference

Judicial review and preventive detention really focus on the limits of legitimate prevention and the point of too much executive power. Going from the point of checking the public order very carefully to giving more room for administrative judgment shows that legal categories can become less strict over time, thus, the extraordinary detention can work with less resistance.[10]

Public Order as a Gateway Concept

The "public order" threshold is the main doctrinal entry point for many preventive detention orders, and therefore its boundary policing is central to habeas. In *Dr Ram Manohar Lohia v. State of Bihar*[11], the Supreme Court distinguished law and order from public order, holding that not every breach of law results in a community-wide ripple necessary to justify preventive detention. However, in reality, this distinction is quite easily broken when affidavits of the executive describe a single incident as a wider threat, especially if the case is politically sensitive. The habeas review should be the venue where such expansions of the narrative are challenged. The challenge is strong only to the extent that the court is willing to treat closeness, seriousness, and public impact as legal requirements rather than rhetorical claims.

[9] (1975) 2 SCC 81.
[10] Charles Henry Alexandrowicz, "Personal Liberty and Preventive Detention", 3 *Journal of the Indian Law Institute* 445 (1961).
[11] AIR 1966 SC 740.

Granularity and the Problem of "Ordinary Crime" Being Escalated

The Supreme Court's doctrine in *Arun Ghosh v. State of West Bengal*[12] offers a detailed way of questioning the effect on public order of an act; it lays emphasis on the level and extent of the disorder caused rather than on the act's immorality. Such detailedness is crucial for 'habeas' as the preventive detention gets frequently referred to the State's view of the normal criminal justice system as slow or uncertain, for instance, when bail has been granted or trial is pending. If the public order investigation is turned into a mere label rather than a legal threshold, 'habeas' courts may end up allowing a structural workaround in which preventive detention substitutes for bail cancellation, witness protection, or expedited trial. The State here perceptibly gets a direct route to custody, while the detainee suffers for the standard that is being used in an elastic way rather than legally.

Parallel Prosecution and the Temptation of Preventive Custody

In the case of *Haradhan Saha v. State of West Bengal*[13], the Court held that preventive detention must be separated from prosecution, but the separation carries a risk: the executive might always choose detention as the easier option over the discipline of proof. Hence, a habeas review should examine if the detention is actually preventive, i.e., if it is preventive of the future harm and justified by the current necessity or if it is punitive in nature, that is, the person is being incapacitated because they do not wish to be prosecuted. The situation becomes more dangerous if the State, without deliberating on the factors such as detainee's recency, current conduct or changed circumstances, uses a person's previous cases as an indicator that he is a threat in the future. The more the courts give their assent to the State's statements about the future, the more they turn a constitutionally limited instrument into a second criminal justice process which, thus, escapes the evidentiary requirement that the fairness principles of Article 21 demand.

The Modern Insistence That Exception Remain Exceptional

The Supreme Court's statement in *Rekha v. State of Tamil Nadu through Secretary to Government*[14] that preventive detention is contrary to democratic ideas and, therefore, should

[12] (1970) 1 SCC 98.
[13] (1975) 3 SCC 198.
[14] (2011) 5 SCC 244.

be used sparingly is not a mere figure of speech; it is a doctrinal guide on how courts should show deference. If detention is the exception, then unclear facts and speculative chains should not be decided in favor of detention by default. Such a stance also suggests that "security" cannot be used as a magic word to exempt scrutiny, especially when the legislature has already allowed the executive confidentiality privileges for sensitive materials. The importance of Rekha in habeas is that it connects the authority of the power to the stringency of the judicial enforcement, i.e., the effectiveness of the remedy is actually what restrains the exception from becoming the rule.

Delays and Procedural Dilution

If some safeguard in preventive detention is delayed till the stage of the next custody period, it loses its value entirely. Delays in communication representation supply of documents, hearing not only make feebler a procedure; they change the very nature of liberty allowing detention to run before legality is tested.[15]

Representation Delays as a Constitutional Breach

Delay is especially obvious in the implementation of representations under Article 22(5), where the expression "as soon as may be" functions as a constitutional pace, setting instruction. The Supreme Court, in the case of *K. M. Abdulla Kunhi v. Union of India*[16], has raised the immediacy of dealing with representations to the status of a constitutional obligation and has made a strong warning about the consequences of the non, performance, indifference, and callousness. This issue is important because a representation is the only formal channel of a detainee to question the detention lawfully outside the court and it also makes the record that the courts later examine. The case when the State puts off the decision is that the detainee will be deprived of his time and the court will be given the case when the harm has been done. In a situation where the maximum duration of detention is generally a few months, even small unaccounted for periods of time can have a very big effect on one's freedom because arrest is not a mere procedural defect but it is the being in custody.

[15] Mahendra P. Singh, *V. N. Shukla's Constitution of India* 97 (Eastern Book Company, Lucknow, 14th edn., 2022).
[16] (1991) 1 SCC 476.

The Burden to Explain Time and the Logic of Accountability

Indian habeas courts have, time and again, emphasized that the State must explain delay, as liberty cannot be sacrificed on the altar of administrative convenience. The Supreme Court in *Rajammal v. State of Tamil Nadu*[17] observed that the continued detention without any explanation for the delay, especially when caused by indifference or negligence, is one of the ways the law is violated. The law in this case has teeth since it puts the State under an obligation to give the details of the journey of the representation, segment by segment, from jail to the department to the ministerial decision. Interestingly, the same court has not hesitated to undermine this principle when it has accepted vague explanations or treated the workload of institutions as being of the nature of an excuse at the same time. The issue is not that administrations are confronted with administrative challenges, but that the Constitution places liberty as a right that takes precedence over all other rights. In the light of the above, the courts performing habeas review should consider delay explanations in the light of seriousness and not simply as an account of the bureaucratic process.

Who Must Consider the Representation and Why IT Matters

Delay gets compounded if there is doubt about who has the proper authority to consider the representation, or when there are several authorities capable of revoking but only one meaningfully acts. The Constitution Bench decision in *Kamleshkumar Ishwardas Patel v. Union of India*[18] shed light on the duties of consideration of representations in case of preventive detention orders passed by empowered officers, thus stating that the right of representation is not a hollow formality and the appropriate authority must genuinely and promptly consider it. With regard to habeas corpus this is significant because the court quite often has to decide if the representation was correctly routed, if it was decided by the competent authority, and if procedural compliance was substantive or merely sequential. Thus, when the representation is regarded as a file that needs to be sent around rather than a right that needs to be respected, time becomes a tool of gradual disappearance.

Non-supply of Documents and the Practical Impossibility of Rebuttal

A person under detention cannot effectively make a representation against their detention if

[17] (1999) 1 SCC 417.
[18] (1995) 4 SCC 51.

they are not given access to the main materials that the authorities have used to issue the detention order. In the case of *Icchu Devi Choraria v. Union of India*[19], the Supreme Court demanded adherence to the safeguards, especially insisted on the supply of grounds and documents supporting the detention order as the main basis for the detainees Article 22(5) rights. On the ground, struggling over document supply often gets mixed up with delay, because if the detainee is not given the right annexures, gets illegible pages, or untranslated material, then he has to guess what the States case is. The situation is damaging in two ways, in theory and in practice: in theory, the States story that was based on the prediction (of detainees actions) is not only the one that the detainee has to disprove but, in practice, the detainees communication with the lawyer is either too late or just on the surface, and after that, the State may say that the lawyer was there even if they were not effectively working with the detainee. The highest court (habeas corpus) should see the provision of documents as a measure of speed and not as the passing of a technical point in a list only.

Recent Reinforcement That Delays and Non-Supply Are Jointly Fatal

The Supreme Court in *Jaseela Shaji v. Union of India and Others*[20] has shown that sometimes the courts resort to a very strict sense of procedure when the practice of detention is going on so casually. The Court remarked that not giving the persons the documents on which the authorities are basing their decisions and also delaying the decision on the representation can even be a violation of Article 22(5). The Court did not treat these things as simple errors but as major breakdowns of the system that disallowed the legality of the detention. This is significant as it connects two usual ways of deterioration that have altogether led to one constitutional violation implying that the detainee cannot be expected to run a race without shoes while the clock continues to tick. Besides, the case reflects a wider tendency: when the substantive review is restricted by the doctrine of subjective satisfaction, the procedural enforcement becomes the main judicial weapon to stop preventive detention from being an unreviewable administrative decision.

Figure 1 contains the number of year-wise habeas corpus petitions filed in the Supreme Court, and the subset of those filed as writ petitions under Article 32. The figures are appropriate for a stacked bar chart showing the composition of writ petitions and other case types, and for a

[19] (1980) 4 SCC 531.
[20] Criminal Appeal No 3083 of 2024, Judgment (Supreme Court of India, 12 September 2024).

line chart displaying the trend of the total volume over time.[21]

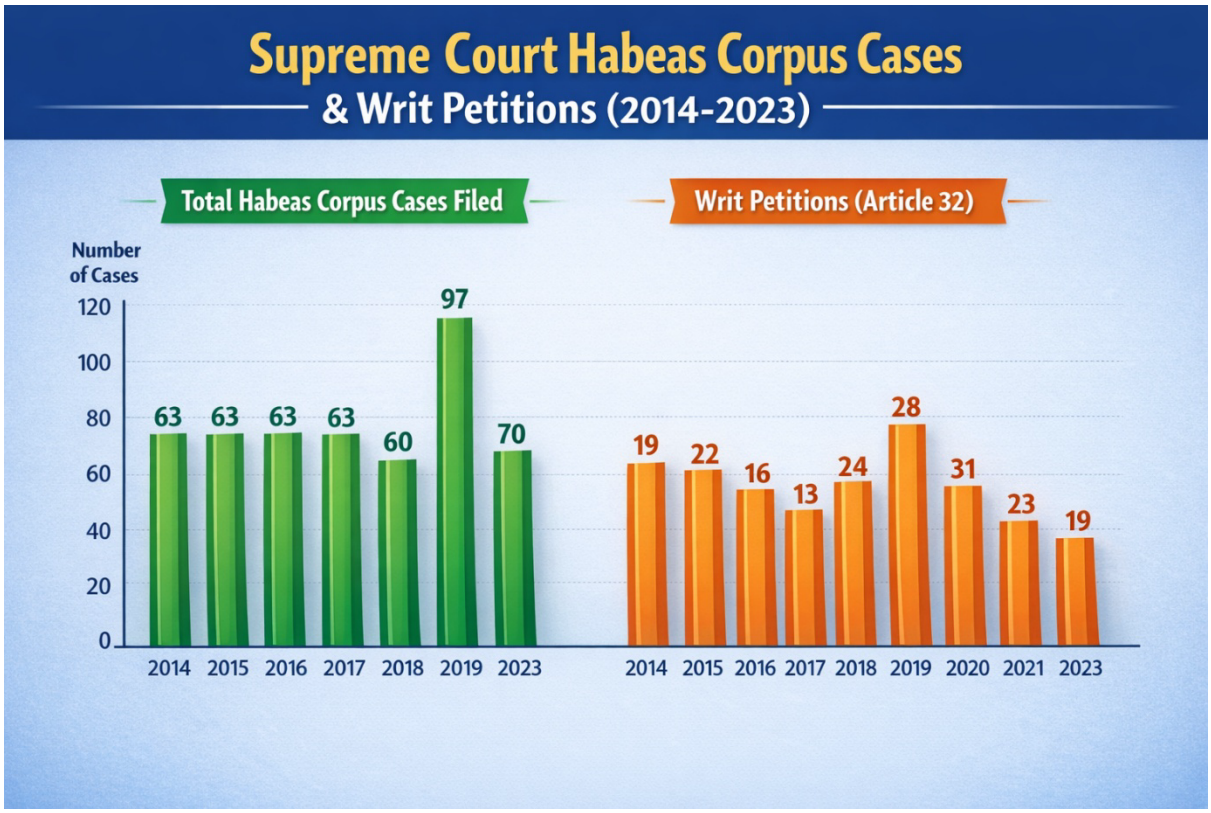

Figure 1: Supreme Court year-wise habeas corpus filings and writ petitions[22]

Figure 2 is an RTI-based snapshot showing the Supreme Court backlog and disposal of habeas corpus and preventive detention cases within a fixed window. This can be transformed into a pie chart of pending versus disposed, or a bar chart for quick proportional comparison of backlog against throughput.[23]

[21] Shrutanjaya Bhardwaj, "Habeas Corpus in the Supreme Court's Docket", 11 *Indian Journal of Constitutional Law* 59 (2024).

[22] Punjab Justifies Amritpal's NSA Detention, Cites Intel Inputs, Storming of Ajnala Police Station, *available at:* https://timesofindia.indiatimes.com/city/chandigarh/punjab-justifies-amritpals-nsa-detention-cites-intel-inputs-storming-of-ajnala-police-station/articleshow/126857334.cms (last visited on March 6, 2026).

[23] Gold Smuggling Case: Centre Defends Ranya's Detention, *available at:* https://timesofindia.indiatimes.com/city/bengaluru/gold-smuggling-case-centre-defends-ranyas-detention/articleshow/125282401.cms (last visited on March 4, 2026).

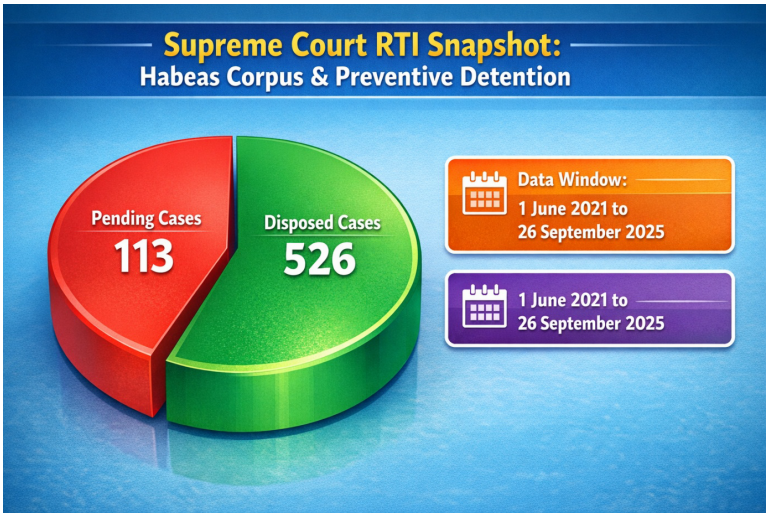

Figure 2: Supreme Court RTI snapshot for habeas corpus and preventive detention

Court Listing Delays and the Remedial Gap

Even if detainees are prompt in approaching the courts, the usefulness of a habeas remedy still depends on dockets, adjournment discipline, and how courts perceive the relationship between Article 32 and Article 226. The case of *Union of India v. Paul Manickam*[24] is frequently cited for the point that the Supreme Court might dissuade direct Article 32 petitions if there are remedies in the High Court. However, in cases of preventive detention, the main issue is time rather than the forum choice. If a petitioner is redirected after weeks of waiting, or if the counter-affidavit and repeated adjournments cycles take up the detention period, the constitutional role of the remedy is undermined. The real worry is that the institution is: a liberty remedy which is worked out through the pace of normal civil litigation is not only slow; it alters the right by permitting detention to be completed before legality is tested. That is why habeas practice ought to have speed-sensitive procedural design in addition to the correct doctrine.

Deference, Security Framing, and a Live Illustration

The greatest threat to the writ of habeas corpus comes from security-related claims being dealt with by the courts with restraint exactly when the need for urgency is most pressing. In such a situation, deference and adjournment collaborate in such a way that the disputed narratives of the executive dominate the detainee's status whilst the assurance of instant scrutiny gradually

[24] (2003) 8 SCC 342.

fades away.[25]

Deference in Doctrine and the "Public Order" Narrowing Tool

Deference is not necessarily in your face; most of the time, it comes through the court's willingness to accept a statement by the executive that the activity in question is prejudicial to public order, especially when the State uses strategic contexts or contagion effects. *Nenavath Bujji Etc. v. State of Telangana and Others*[26] is a useful case in point as it reminds the court that the real question is whether the activities are prejudicial to public order, and that law and order is a broader concept while public order is a narrower one. This doctrinal distinction is the courts chief instrument to restrain preventive detention from being used lavishly, but it only remains effective if courts demand proof of widespread societal disruption rather than simply buying a danger narrative which is linked to the detainee's identity or previous allegations. In a scenario where deference is swollen, the public order test is not used as a threshold but rather as a conclusion, and habeas becomes an exercise in confirming the executive description instead of questioning legality.

Recent Tightening Through "Ordinary Process First" Logic

A current trend in judicial thinking aimed at curbing over-reliance on executive discretion is that preventive detention should be considered as an illegitimate action if ordinary criminal law tools are available and sufficient. The case of *Ameena Begum v. State of Telangana and Others*[27] is a good example of this line of reasoning in the context of preventive detention in Telangana. It does so by raising the question whether the alleged acts really affect public order and whether the authorities have genuinely taken into account the relevant circumstances. Here the point of departure is not that the executive is prohibited to anticipate harm, but rather that such a prediction must be connected to a legally recognizable category and the supporting material must be up-to-date and relevant. Hence, habeas review turns into an opportunity to challenge the executive's prerogative of converting ordinary criminal charges into preventive detention just because the prosecution is uncertain. The question of deference is given a different form: the courts do not dub security as a policy goal, but they do question whether

[25] Richa Kaur, "Preventive Detention Vis-À-Vis Rule of Law in India: A Critical Study", 10 *Journal of Legal Studies and Research* 123 (2024).
[26] Criminal Appeal Nos 1738–39 of 2024, Judgment (Supreme Court of India, 21 March 2024).
[27] 2023(9) SCC 587.

detention is a legally justified means within the Constitutions exception framework.

Preventive Detention as a Substitute for Bail Cancellation and Prosecution Discipline

An allied anti-erosion theme is the refrain that preventive detention should not be used as a cover of the ordinary criminal justice process, particularly bail cancellation or trial management. The Supreme Court in *Dhanya M v. State of Kerala*[28] observed that preventive detention cannot be a norm and hence, the State, in normal circumstances, should resort to the use of criminal law provisions, rather than resorting to preventive incarceration. This is important for habeas in that it redirects the focus from the detainees alleged danger to the States willingness to offer different kinds of solutions. If the State skips the ordinary tools without demonstrating why they are not sufficient, habeas courts may view the detention as an abuse of the exceptional power. The idea is that deference cannot be taken as surrender; it should be taken as the executive domain being respected within the boundaries that the courts enforce, especially when liberty is at stake.

The Sonam Wangchuk Proceedings and the Mechanics of Real-Time Dilution

The preventive detention proceedings regarding Sonam Wangchuk provide a fresh insight into how delay and deference may be understood to be working together, rather than as separate doctrinal themes. The report about the Supreme Court's deliberations mentions the judges' inquiry into whether the Union might have misunderstood the speeches and whether the supposed connection with violence and public disorder was blown out of proportion. This is a direct challenge to the idea of public order as the threshold and the risk of narrative inflation. The case also brings out a practical theme: translation and transcript disputes in a time when clips and excerpts circulate rapidly, thus, potentially, shaping administrative satisfaction and subsequent judicial framing. The habeas court’s role becomes more than determining legality; it also requires reliable material as the basis for a liberty deprivation decision. In such cases, deference to security framing must be balanced with evidence integrity, otherwise, the framing itself will be the driving force of detention.[29]

[28] Criminal Appeal No 2897 of 2025, Judgment (Supreme Court of India, 6 June 2025).
[29] Gurdev Singh v. Union of India and Ors., *available at:* https://www.casemine.com/judgement/in/56090aede4b0149711173622 (last visited on March 2, 2026).

Hearing and the Persistence of Delay as the Decisive Fact

The major reason why the Sonam Wangchuk case is an example of erosion is that the procedural time, rather than formal legal doctrine, can be the one determining the result. On 23 February 2026, it has been reported that the Supreme Court postponed the hearing of the habeas corpus petition from 23 February 2026 to 26 February 2026 due to the unavailability of the Solicitor General. The fundamental doctrinal issues regarding grounds, nexus, and proportionality remain, but the experienced effect of adjournment in a liberty case is that detention continues without any interruption while the court decides the case later. This is in line with the main argument of the article: without any doctrinal rollback, habeas corpus can be undermined through ordinary institutional practices such as leniency in adjournments. When courts consider scheduling to be neutral, they are in danger of turning the fast remedy into a remedy of eventual correctness which is constitutionally inadequate where the right is to immediate liberty and not only to future vindication.[30]

Figures 3 and 4 show the data released by Parliament regarding the General Diary entries recorded under the National Security Act from 2018 to 2022, which include all-India totals and the 2022 state-wise distribution. Such data can be illustrated through a line graph showing the trend and a pie chart displaying the share of the different states.[31]

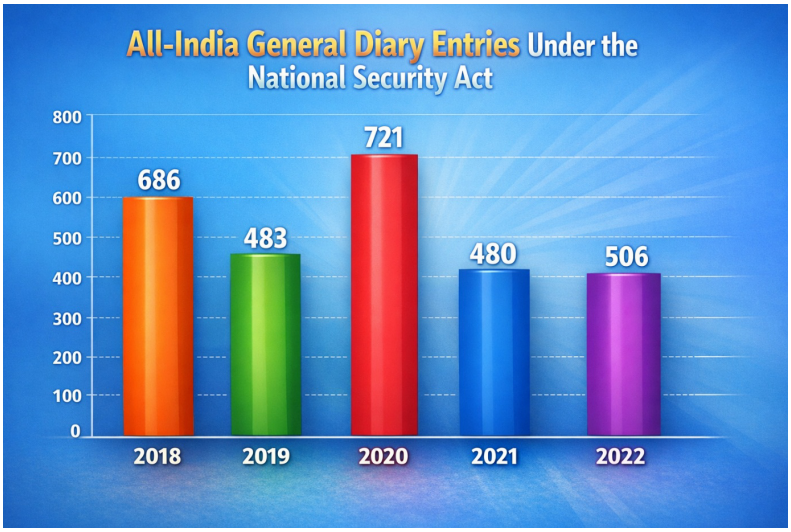

Figure 3: All-India General Diary entries recorded under the National Security Act

[30] Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* 174 (HarperCollins Publishers India, Noida, 1st edn., 2019).
[31] Shilpa Jain, *Right to Life and Personal Liberty* 136 (Satyam Law International, New Delhi, 1st edn., 2017).

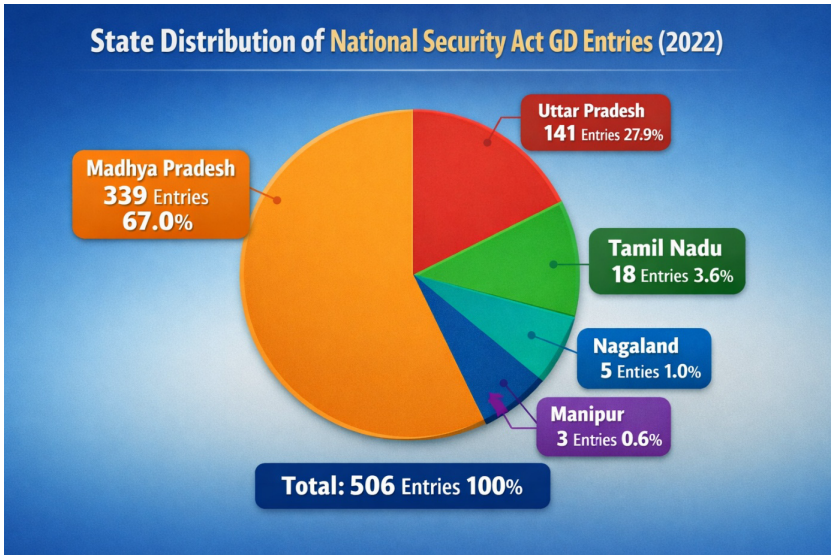

Figure 4: State distribution of National Security Act GD entries (2022)

Conclusion

The core lesson of the article is that delay should not be seen as a mere external nuisance to habeas but rather as part of the constitutional harm because it essentially means that the preventive detention has become completed detention before the court's review. Studies on how courts decide preventive detention habeas petitions confirm the point that by the time the court hears the cases and makes decisions, most of the time the detainees have already served their sentences thus the writs traditional identity as a swift liberty remedy becomes very difficult to sustain in reality. Therefore, reform needs to view listing and adjournment discipline more as a rights-protective measure than court management preference. One practical method would be to ensure that preventive detention habeas petitions get top priority through specialized rosters, strict limits on adjournment, and early interim directions that require certified relied-upon documents and translations within very short timelines. From a doctrinal perspective, courts ought to consider unexplained time loss as presumptively liberty-violative, thus shifting the burden to the State for every delay segment with specificity and treating vague administrative explanations as constitutionally insufficient.[32]

Lastly, deference needs to be understood as disciplined self-restraint within constitutional boundaries that are enforceable, rather than as an attitude of institutional hesitation. Here

[32] Shrutanjaya Bhardwaj, "Empirical Study: Delay at the Madras High Court in Preventive Detention Cases", 35 *National Law School of India Review* 1 (2024).

constitutional memory is required: *Additional District Magistrate, Jabalpur v. Shivkant Shukla*[33] is a prime example of warning, a case that demonstrates what may be the consequences of the courts permitting the executive's exceptional claims to overrule their judicial duties in liberty cases. Preventive detention is not an Emergency power in pretense, but it can be made to resemble an Emergency by the courts if they allow executive narratives and institutional delay to become practical unreview-ability. A rights-consistent approach would require that public order thresholds be demonstrated by proximity and impact, that subjective satisfaction be reviewable for relevance and rational connection, and that security not be used as a reason for document opacity where liberty is taken without trial. The true test of habeas in preventive detention is not whether a court will eventually be able to write down the correct judgment, but whether it can stop illegal custody turning into a fait accompli.

Suggestions

Analyzing the preventive detention practice and how the habeas corpus review has been functioning lead us to the point of saying that a number of institutional and procedural reforms focused on the preventive detention system can definitely put it back on track as an expeditious protector of individual freedom.

1. Fix a 48, hour outer limit in legislation for giving the detainee all relied, on documents and the certified translation of the grounds. Article 22(5), NSA Section 8, and the Supreme Court’s recent case law consider timely communication and effective representation as the main safeguards.

2. Add a digital timestamp for every representation made from jail. This will reveal where delay occurred and it will be difficult for the files to stay unnoticed.

3. Constitution a daily habeas roster in both High Court and the Supreme Court. A liberty case should be prioritized for a first hearing within 72 hours of ordering a listing, not after the ordinary listing delays.

4. Ban continuing routine adjournments for the State in preventive, detention cases. If government counsel is not present, the court can still deal with the interim liberty issues

[33] (1976) 2 SCC 521.

the same day.

5. Have the detaining authority present a separate note justifying why neither normal criminal law nor bail conditions or prosecution were sufficient.

6. Mandate that each detention order be accompanied by a 1, page public order impact note. It should illustrate disruption on a community level rather than just repeated police allegations.

7. Treat untranslated speeches, videos, and transcripts as no, use files until certified copies are also provided to the detainee and the court. Only then can really speech, based detention cases be kept grounded in the reality of representation.

8. Have judges review the original detention file during their very first significant hearing. It was the Supreme Court itself that, in the Wangchuk case, requested the original file, which is an indication of why courts should not simply rely on summarized statements.

9. Reject detention as illegitimate if the State fails to account for each day of delay in serving the grounds, deciding the representation, or forwarding the case to the Advisory Board. Constitution and the NSA make the requirement for speed an element of legality.

10. Make public monthly court, wise statistics of preventive, detention habeas corpus cases, comprising of the dates of filing, first hearing, adjournments and disposal. It will be a reflection of what extent in time the habeas corpus is protecting liberty and not just on paper.

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