

**EMPIRICAL STUDY: DELAY AT THE MADRAS HIGH COURT IN PREVENTIVE DETENTION
CASES**

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I. Introduction

This paper concerns the speed with which the Madras High Court decides *habeas corpus* petitions in preventive detention cases. In the following paragraphs, I explain the meaning and significance of ‘preventive detention’ and ‘*habeas corpus*’, provide a brief background of (including the reasons for) a study of this nature, indicating why the Madras High Court was chosen. Thereafter, the structure of the paper is laid out.

A. ‘Preventive Detention’ and ‘Habeas Corpus’

Existing scholarship extensively discusses the unique, draconian nature of preventive detention.¹ As the name suggests, the State subjects a person to ‘preventive’ detention when it feels that she is likely to commit an offence in the near future. But no judicial inquiry or trial occurs before the detention. The combined effect of these two factors— i.e., dependence on the State’s apprehension and the absence of judicial application of mind— makes preventive detention--a grave threat to personal liberty.

Yet, the Indian Constitution authorizes preventive detention.² But it prescribes some safeguards. Given how preventive detention threatens personal liberty, these safeguards assume immense significance. One of these safeguards is an outer limit on the period for which a person (called ‘detenu’) can be kept in preventive detention. The Constitution says the limit is three months, unless Parliament makes a law prescribing “the circumstances under which,

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¹ See Pradyumna K. Tripathi, ‘Preventive Detention: The Indian Experience’ (1960) 9(2) American Journal of Comparative Law 219; David H. Bayley, ‘The Indian Experience with Preventive Detention’ (1962) 35(2) Pacific Affairs 99; Charles Henry Alexandrowicz, ‘Personal Liberty and Preventive Detention’ (1961) 3(4) Journal of the Indian Law Institute 445; Derek P. Jinks, ‘The Anatomy of an Institutionalised Emergency: Preventive Detention and Personal Liberty in India’ (2001) 22 Michigan Journal of International Law 311; Niloufer Bhagwat, ‘Institutionalising Detention without Trial’ (1978) 13(11) Economic and Political Weekly 510.

² The Constitution of India 1950, art 22.

and the class or classes of cases in which, a person may be detained for a period longer than three months.³

Crucially, only Parliament can prescribe a longer period.⁴ Apparently in ignorance of this, many States have passed laws authorizing preventive detentions for as long as one year, such as the ‘Goonda’ acts of Maharashtra (1981),⁵ Tamil Nadu (1982),⁶ Karnataka (1985),⁷ Andhra Pradesh (1986),⁸ and Telangana (1986).⁹ The validity of these legislations is, therefore, suspect. This issue is, however, outside the scope of this paper.

To challenge their detention, detenus file *habeas corpus* petitions before the Supreme Court (under Article 32 of the Constitution) or the respective High Court (under Article 226). Since preventive detention, even if illegal, can only be for a maximum period of one year under most laws, the judiciary must act with alacrity in deciding *habeas corpus* petitions. A handful of adjournments can make the detenu’s petition meaningless. It is, therefore, important to ask whether the courts are moving with alacrity in these matters.

B. Background: The study about the Supreme Court

In 2020, I had conducted an empirical study of the Indian Supreme Court’s alacrity in deciding *habeas corpus* petitions arising out of preventive detention cases.¹⁰ All reported *habeas corpus* judgments of the Supreme Court in the twenty-year period from 2000 to 2019 were studied through a Boolean search on the ‘SCC Online’ research tool. Based on the dates available from

³ *ibid* art 22(7).

⁴ *ibid* art 22(4) read with art 22(7).

⁵ Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons and Video Pirates Act, 1981.

⁶ The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum- Grabbers, Act, 1982.

⁷ The Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video or Audio Pirates Act, 1985.

⁸ The Andhra Pradesh Prevention of Dangerous Activities of Boot-Leggars Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986.

⁹ The Telangana Prevention of Dangerous Activities of Boot-Leggars, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders Land-Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act, 1986.

¹⁰ Shrutanjaya Bhardwaj, ‘Preventive Detention, Habeas Corpus and Delay at the Apex Court: An Empirical Study’ (2020) 13 NUJS Law Review 2<<http://nujlawreview.org/wp-content/uploads/2020/08/13.2-Bhardwaj-Preventive-Detention-3.pdf>> last accessed 10 September 2022.

these judgments, i.e., date of issuance of preventive detention order, dates of actual detention, date of filing of the *habeas corpus* petition (in case of Article 32 petitions) or of the special leave petition (in case of Article 226 petitions) in the Supreme Court, and date of final disposal by the Supreme Court, the following time periods were calculated:

- i. Time lapsed from the date of detention to the date of final disposal;
- ii. Time taken by the Supreme Court in disposing of the *habeas corpus* petition; and
- iii. Time spent in actual detention till the Supreme Court disposed of the petition.

The following average figures were found for the above 3 aspects respectively:¹¹

- i. 953 days,
- ii. 528 days, and
- iii. 344 days, of which the Supreme Court was seized of the matter for 111 days.

Since preventive detention laws permit the government to detain persons for a maximum period of one year in most laws, the delay on part of the Supreme Court is dismaying.¹²

Further, the 2020 study found twenty cases in which the Supreme Court was the first relief-granting court, i.e., the first court to quash the detention order. In these twenty cases, the time spent by the detenu in illegal preventive detention is depicted in the table below:¹³

Period spent in illegal detention	No. of cases
More than 6 months	16
350-366 days	5
More than 366 days	4

¹¹ *ibid* p 12.

¹² *ibid* p 14.

¹³ *ibid* p 14-15.



On an average, in these twenty cases, a detenu spent 278 days (9 months) in illegal detention before the Supreme Court granted relief,¹⁴ of which ninety-five days (>3 months) were spent agitating the matter at the Supreme Court level.¹⁵

C. The Madras High Court

But what of the High Courts? Most *habeas corpus* petitions are presumably filed in High Courts and not the Supreme Court. A preliminary SCC Online search for High Court judgments from 2000 till January 2022 revealed approximately 14,500 results for the keyword '*habeas corpus*' used conjunctively with '*detention*'/ '*detained*' (as opposed to ~two hundred fifty results for Supreme Court). Hence, for a fuller picture of judicial alacrity in preventive detention matters, the trends at the High Court-level must also be studied. Of the aforesaid 14,500 results, an overwhelming majority, over eight thousand and five hundred, pertained to the Madras High Court alone. Therefore, the Madras High Court (hereinafter "the Court") was an obvious first choice to replicate the Supreme Court study. *Annexure-A* explains the methodology used for the research.

The structure of this paper is as follow. Part II presents a bird's eye view of the preliminary data, including the year-wise, statute-wise, and outcome-wise distribution of the cases under study. Part III discusses the data pertaining to the time taken by the Court in deciding *habeas corpus* petitions in preventive detention matters generally. Part IV narrows the discussion and focuses only on the time taken in deciding 'successful' petitions, i.e., those which result in the detention being set aside. Part V discusses the rare few (though critical) cases where the period of preventive detention, one year or six months, depending on the statute involved—lapsed while the Court was seized of the petition. Part VI discusses the interesting category of cases in which the government 'revoked' the detention orders a few weeks or months after issuance, thus rendering the detenu's challenge before the Court infructuous.

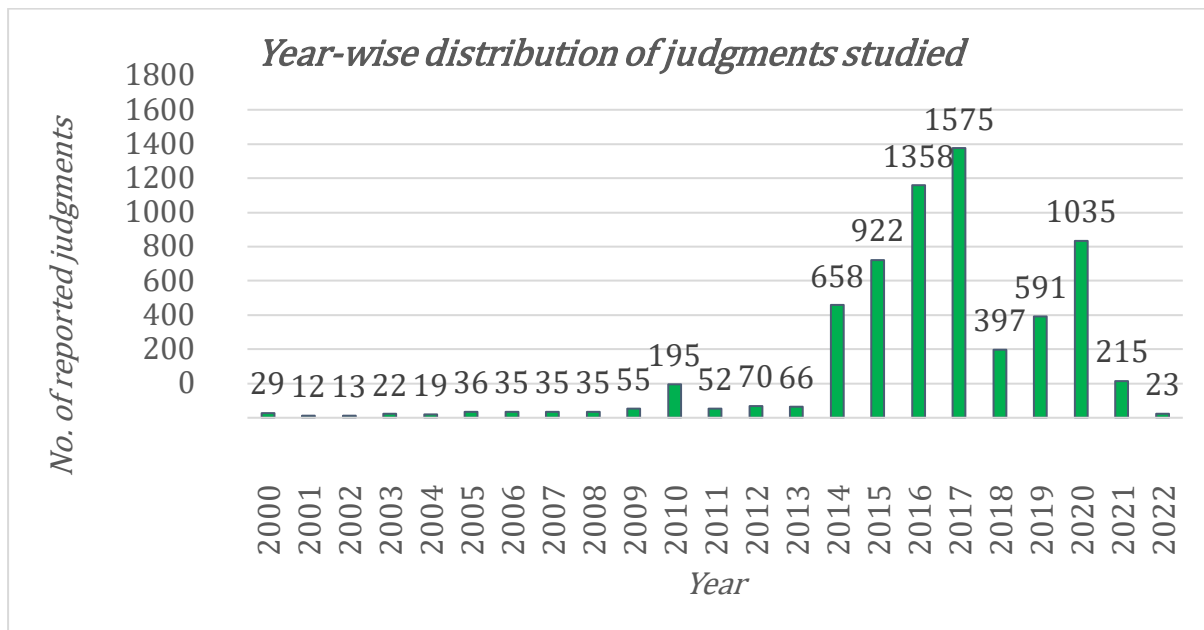
¹⁴ *ibid.*

¹⁵ *ibid* p 16.

II. Bird's eye view

Of the ~8,500 search results pertaining to the Madras High Court, 7,448 cases were found relevant for the purpose of this study. A list of these 7,448 judgments with corresponding information is annexed as *Annexure-B*.

The year-wise distribution¹⁶ of these judgments is reflected in the chart below:¹⁷



Nearly all the 7,448 cases involved preventive detention under one of the following five laws:

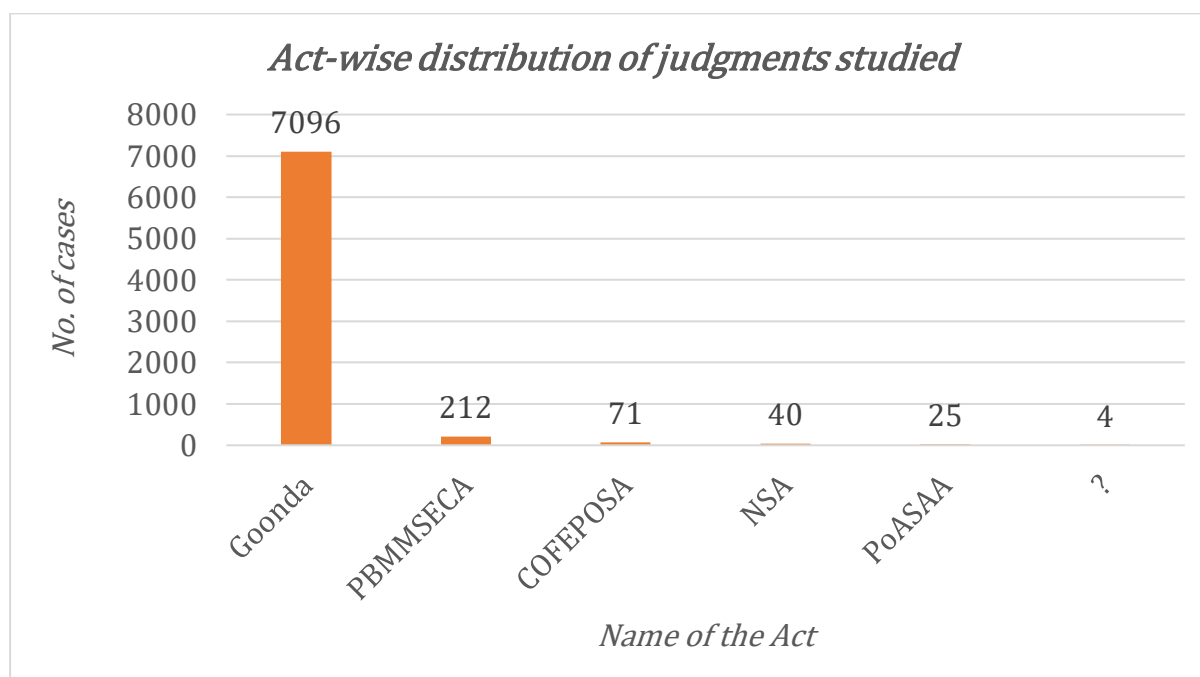
1. The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982 ('Goonda Act');
2. The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ('PBMMSECA');
3. Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ('COFEPOSA');
4. National Security Act, 1980 ('NSA'); and

¹⁶ For the year 2022, data was only collected for the month of January.

¹⁷ No reason could be ascertained for the spike in the number of cases during 2014-17 and in 2020.

5. Puducherry Prevention of Anti-Social Activities Act, 2008 ('PoASAA').

Additionally, for four cases, the judgments did not specify the name of the law under which preventive detention powers were exercised. The Act-wise distribution of cases is shown in the chart below:



Two aspects may be noted at this juncture. First, the invocation of the Goonda Act on which more than 95% of these cases are based—is evidently overwhelming. (Akila R.S. has extensively studied this phenomenon in her recent study and has concluded that given the wide definitions under the Act that have given unfettered discretion to the State to detain virtually anyone for virtually anything, there is “hardly any application of mind” before a person is detained under this Act.¹⁸) Second, these laws authorise different periods of preventive detention. This is important to ascertain as to what proportion of the total period of detention is being spent in agitating *habeas corpus* proceedings. The table below shows the periods of detention under the five aforesaid laws:

S. No.	Act	Maximum period of detention
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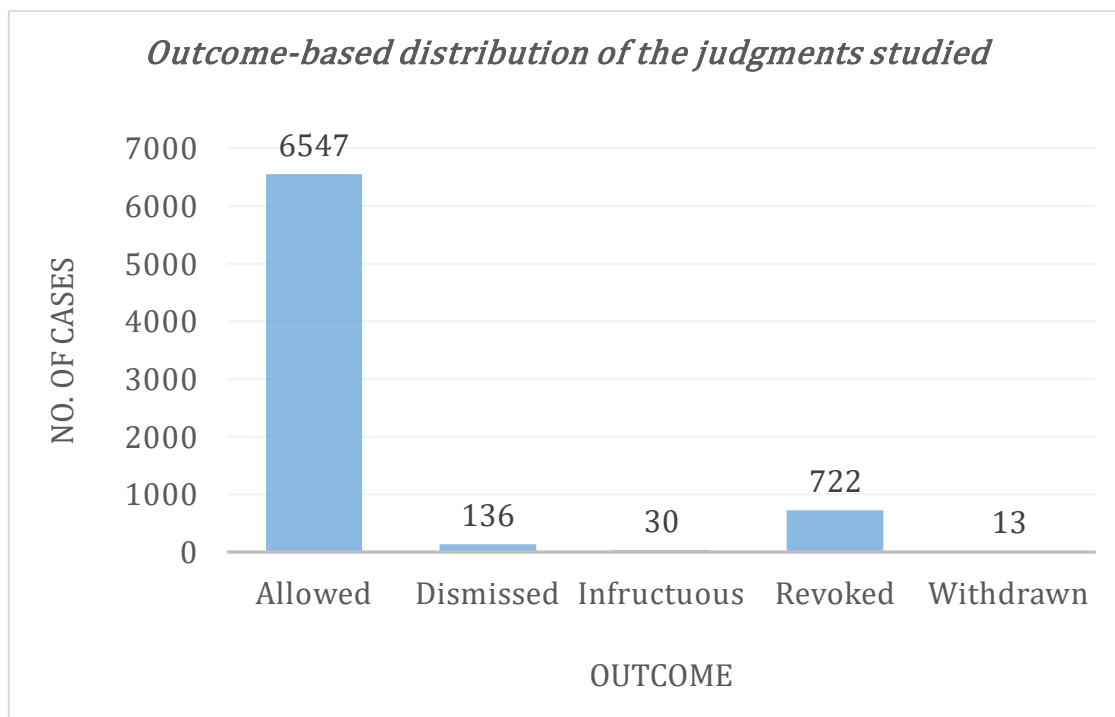
¹⁸ For a detailed study on the extensive abuse of the Goonda Act in Tamil Nadu, see Akila R.S., ‘Report on Preventive Detentions under the Tamil Nadu Prevention of Dangerous Activities Of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum-Grabbers And Video Pirates Act, 1982’, (*The Thakur Family Foundation) <<https://bit.ly/3JsEPDX>> last accessed 7 March 2023.



1.	Goonda Act, 1982	Twelve months (S.13)
2.	PBMMSECA, 1980	Six months (S.13)
3.	COFEPOSA, 1974	One year or two years, depending on the allegations (S.10)
4.	NSA, 1980	Twelve months (S.13)
5.	PoASAA, 2008	One year (S.14)

In terms of outcomes, the studied cases are not evenly distributed. The Court allowed an overwhelming majority (87.9%) of the petitions by declaring the detention illegal. Only 1.8% of the petitions were dismissed on merits. A rare few petitions were withdrawn by the petitioners (for reasons unknown) and were, hence, dismissed by the Court as “*not pressed*”. Intriguingly, 9.7% of the cases were disposed of on the ground that the detention orders were “revoked” by the appropriate government before the Court could decide the case on merits.

The chart below shows the distribution of the 7,448 cases based on their outcomes:



Assuming that the studied sample is representative of the larger data set, these figures indicate an abuse of preventive detention powers by governments across the years. They reflect poorly on the Executive and, as we shall see below, on the Court.

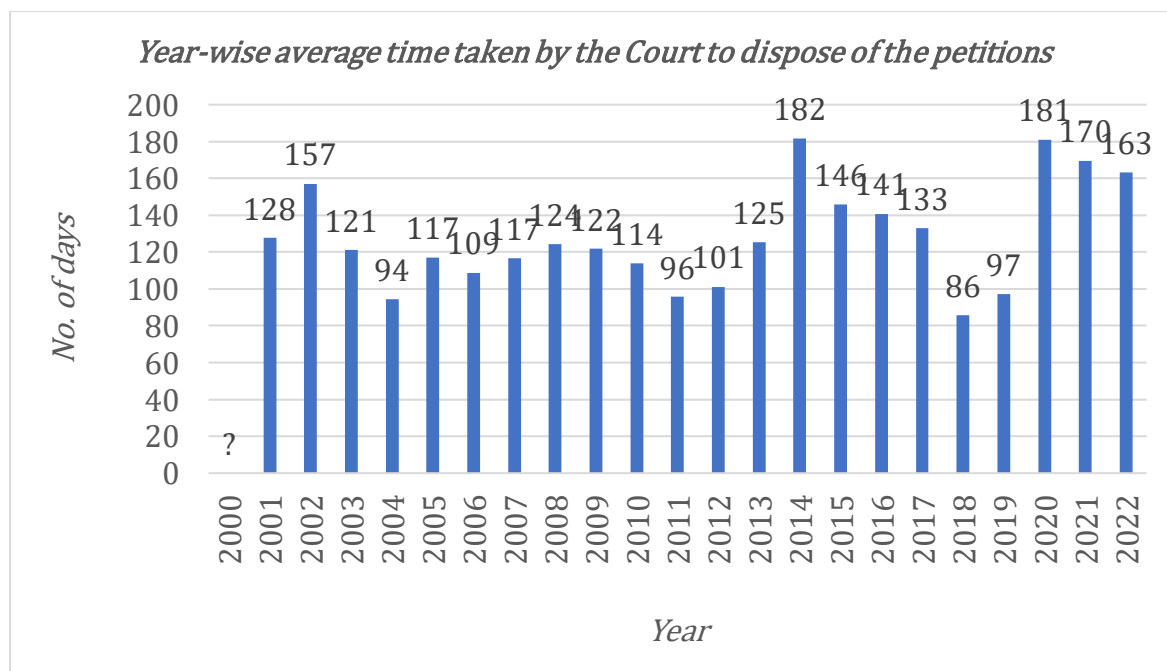
III. Evaluating the Court's speed

The alacrity (or otherwise) shown by the Court in disposing of *habeas corpus* petitions can be evaluated on two parameters:

- i. The number of days spent from the date of filing of the *habeas corpus* petition in the Court till the date on which the Court disposes it off.
- ii. The actual period spent by the detenu in preventive detention before the *habeas corpus* petition is disposed of by the Court.

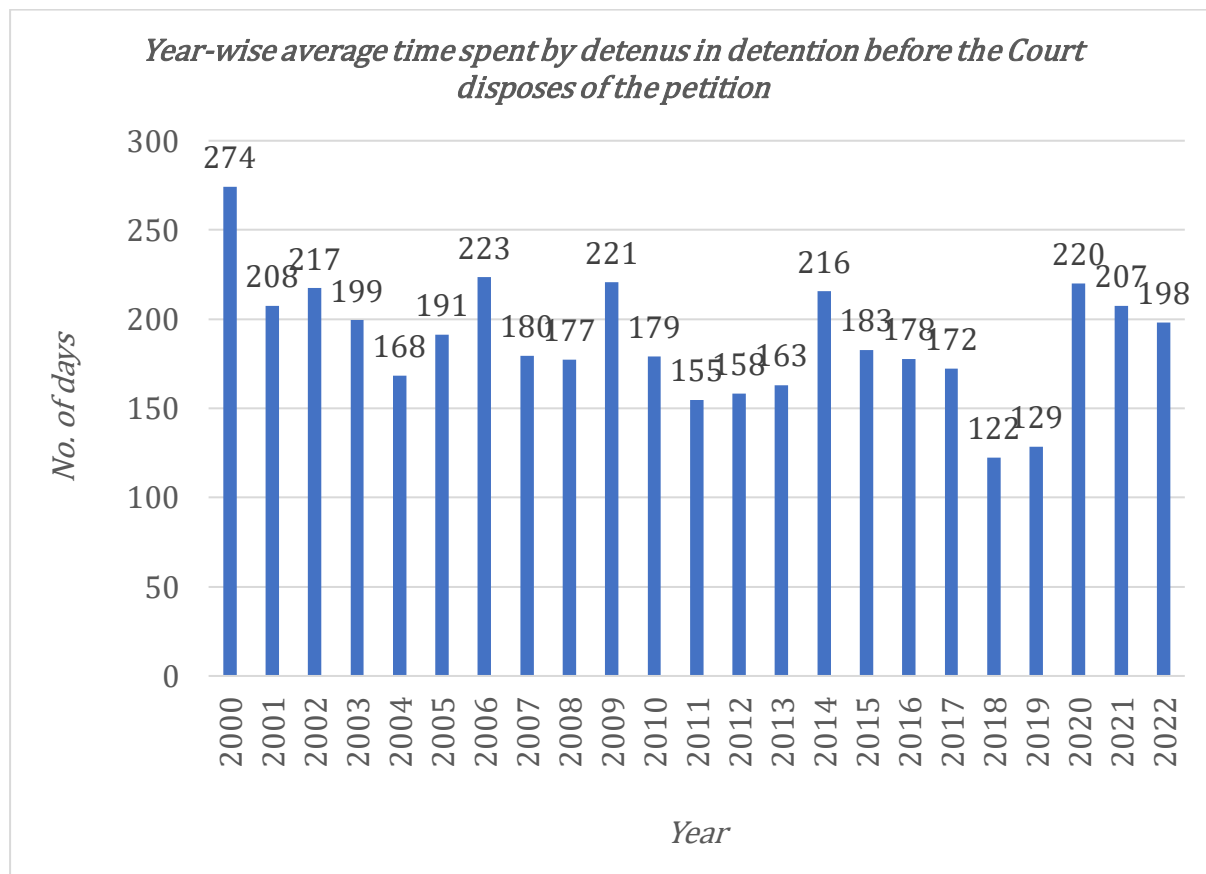
Both parameters should be seen in the context of the maximum period of detention prescribed in the five laws involved in these cases. This is because the detaining authority must compulsorily release the detenu after the expiry of the maximum period regardless of whether the initial detention was lawful. Hence, for the judicial process to not be reduced to an exercise in futility, the Court must swiftly decide the petition challenging the detention.

The Court's performance on this count has been dismaying. On an average, over the twenty-two years, the Court took 141 days (a little less than five months) to decide a case, calculated from the date of filing of the petition. The year-wise averages range from 86 days (lowest) to 182 days, i.e., six months (highest) and are shown in the chart below:





Further, the average detenu spent 181 days (six months) in detention by the time his petition was decided. Given that the maximum detention period is one year under most laws, the average detenu spent half of the maximum period in detention while agitating his challenge before the Court. The year-wise averages range from 122 days (lowest) to 274 days, i.e., nine months (highest) and are shown in the chart below:



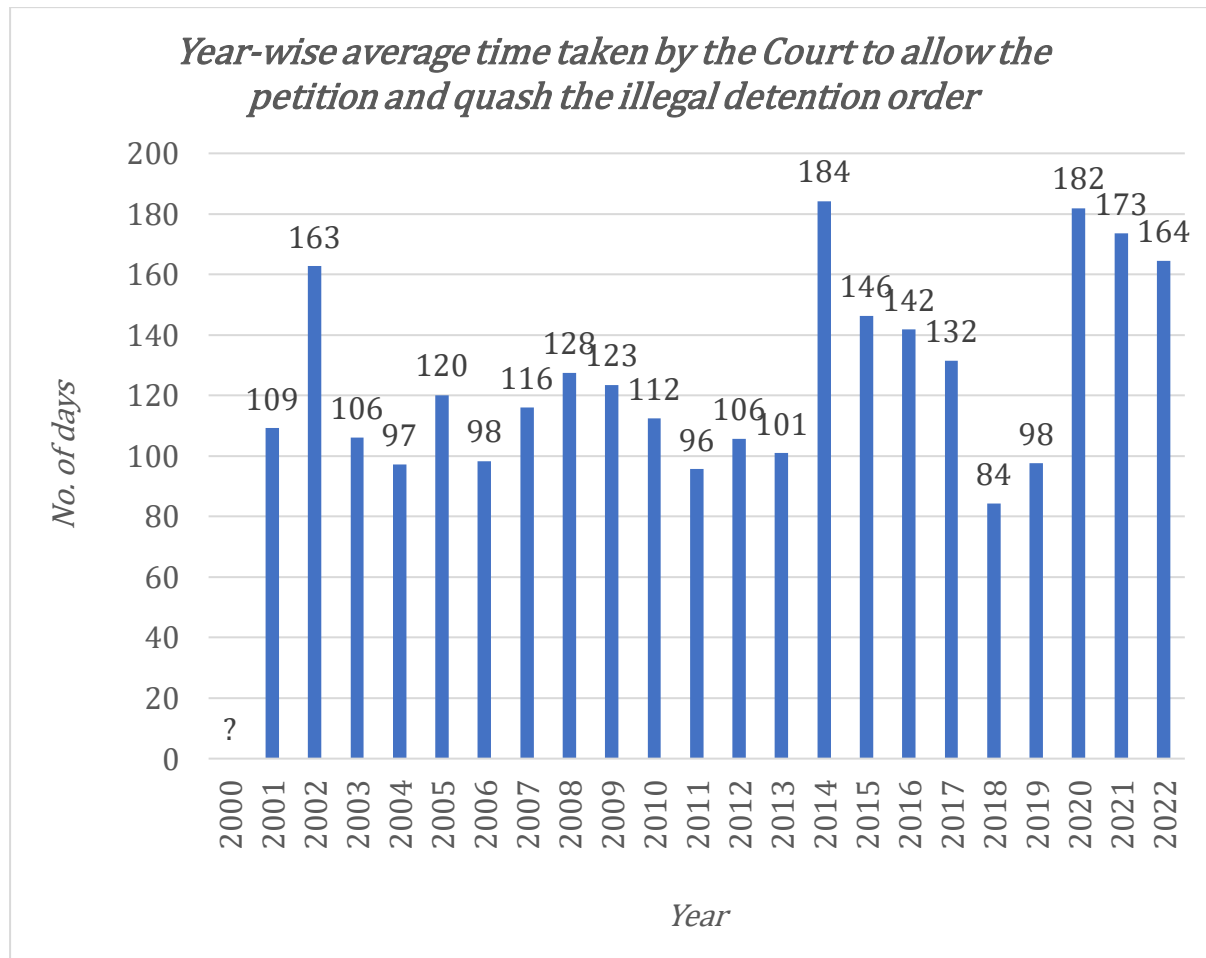
This delay is worrying by itself, but its real impact on personal liberty is better understood by studying only the “*successful*” cases, i.e., cases where the Court allowed the petition by quashing the detention order, because the delay in those cases has in fact resulted in continued deprivation of the detenu’s personal liberty without lawful justification.

IV. The successful petitions

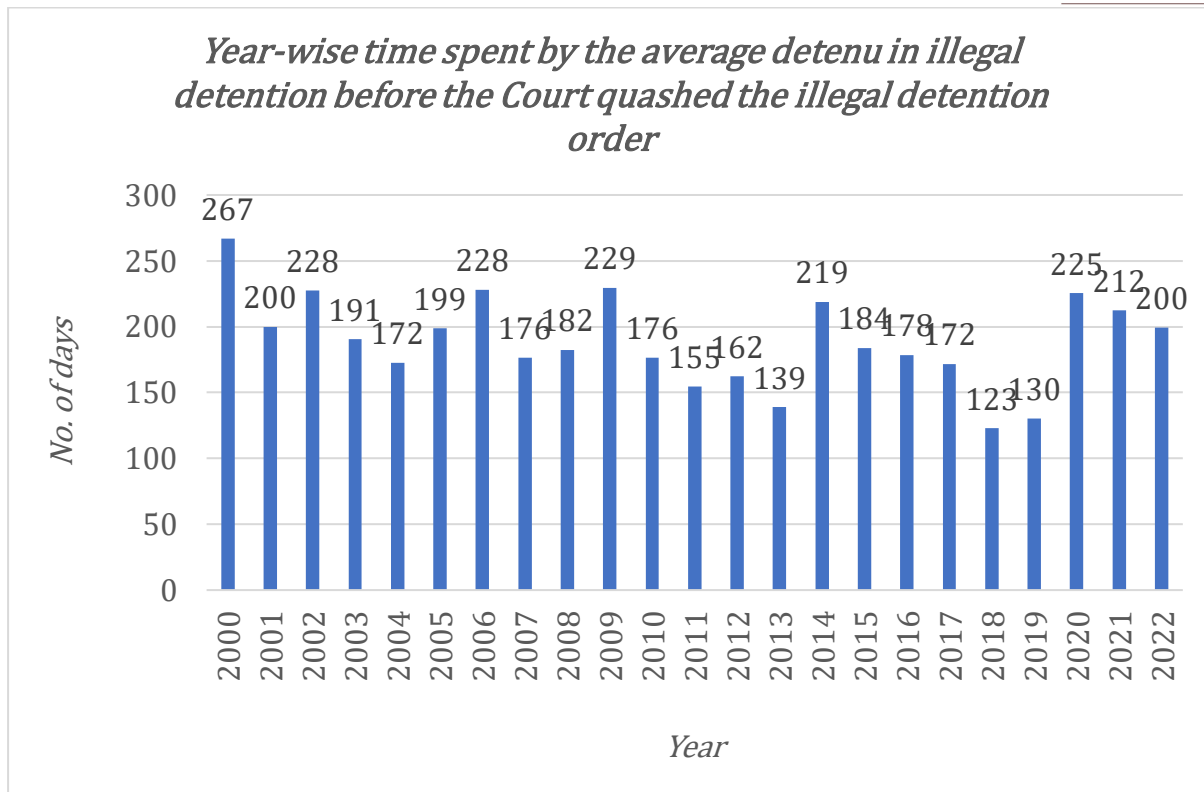
6,547 out of the 7,462 cases under study (87.9%) were ‘successful’ in the sense that the Court allowed the detenu’s challenge and set aside the detention. The average figures for the successful cases calculated over the twenty-two-year period are similar to those calculated for all the cases under study. On an average over the twenty-two years, the Court took 141 days (a



little less than five months) to decide a case, calculated from the date of filing of the petition. The year-wise averages range from 84 days (lowest) to 184 days, i.e., a little over six months (highest) and are shown in the chart below:



Further, the average detenu spent 182 days (a little over six months) in illegal detention before the Court issued the writ of *habeas corpus* and ordered his release, awarding no compensation for the gross violation of personal liberty. The year-wise averages range from 123 days, i.e., a little over four months (lowest) to 267 days, i.e., a little less than nine months (highest) and are shown in the chart below:



It deserves re-emphasis that the maximum period of detention under most laws is one year. Seen in this light, it is almost a mere lip service to allow a *habeas corpus* petition after the detenu has already undergone nine months of illegal detention.

V. Infructuous cases

The worst examples of delayed judicial action are cases which became 'infructuous' due to the expiry of the detention period before the Court disposes of the detenu's petition. Thirty such cases were found over the twenty-two-year period. The year-wise distribution of these cases is as under:

S. No.	Year	No. of "infructuous" cases
1.	2016	11
2.	2017	5
3.	2019	2
4.	2020	11
5.	2021	1



On an average, these cases were disposed of in 368 days (i.e., more than one year) per case after the date of the detention order. The Act-wise distribution of the 'infructuous' cases is as under:

Name of the Act	No. of infructuous cases	Maximum period of detention (days)	Average time taken from the date of filing of the petition till the date of disposal (days)	Average time lapsed since the date of detention till the date of disposal (days)
Goonda	24	365	232	384
PBMMSECA	4	182	140	221
PoASAA	1	365	206	458
?	1	?	325	485

Though only a minority of detenus had the misfortune of going through the entire period of detention without redressal, i.e., of having their cases rendered infructuous, these figures require urgent self-correction on the Court's part to ensure that no detenu faces a similar plight in the future.

VI. The "revocation" cases

An intriguing phenomenon seen in nearly 10% of the cases studied is the revocation of detention orders by the appropriate government a few weeks or months after issuance. There are two ways to see this.

One could see this positively. Revocation by the government means that the routine process of advisory boards and representations to the government under the preventive detention laws (in most cases, the Goonda Act) are not meaningless. Sometimes, the government does apply its mind and conclude that it made a mistake. And it does so sooner than the Madras High Court decides such cases, which makes the governmental route a better remedy for the detenu. This reflects well on the government.

But there is also a negative implication to this trend of revoking detention orders. The 'revocation' frustrates the judicial process by rendering the *habeas corpus* petition infructuous



before the Court can pronounce a judgment. Since the Court does not pronounce on the legality of these detentions, the government gets away with potentially-illegal detentions without accountability. Any possibility of an order of compensation, for instance, is foreclosed. Even more worrying is the prospect of the government deliberately taking advantage of the Court's slow pace—if it knows that the Court is unlikely to decide the petition for at least two months (say), it can detain virtually anyone for virtually anything for those two months and then revoke the detention order once the matter is ripe for hearing before the Court.

The table below shows the year-wise distribution of cases involving revocation of the detention order:

S. No.	Year	No. of cases rendered infructuous due to revocation of the detention order
1.	2012	4
2.	2013	1
3.	2014	36
4.	2015	36
5.	2016	139
6.	2017	124
7.	2018	35
8.	2019	104
9.	2020	214
10.	2021	28
11.	2022	1
	TOTAL	722

The date of revocation was available in 662 out of 722 cases. In these 662 cases, the average time spent by the detenu in potentially-illegal detention—calculated from the date of the detention order till the date of the revocation order—is 116 days, i.e., nearly four months. To recount, it was shown in the earlier sections that the average detenu spends six months in illegal detention before the Court orders his release. Year-wise, the lowest and highest averages were 4 to 4.5 months (lowest) and 8.5 to 9 months (highest).

This record, coupled with the Court's nonchalant disposal of the petition without taking any action against the erring officials, is particularly worrying as it leaves open a wide door for unaccounted abuse by the Executive.

Further, on an average, 136 days (4.5 months) had lapsed before the Court disposes of the petition as infructuous. This is relevant in determining judicial alacrity because the Court presumably had no knowledge of the revocation prior to the date on which the petition was eventually disposed of citing the revocation (otherwise the petition would have been disposed of on an earlier date).

VII. Conclusions

The data collected in respect of the Madras High Court can be summarised as under:

- i. On an average, the Court took 141 days to decide a *habeas corpus* petition (calculated from the date of filing of the petition). Even in the 6,547 'successful' cases (87.9% of the total 7,462), the time taken was 141 days.
- ii. The average detenu spent 181 days (6 months) in detention by the time his *habeas corpus* petition was decided. In the 6,547 'successful' cases, 182 days were spent in illegal detention before the Court set aside the detention.
- iii. In 30 cases, the maximum period of detention lapsed while the petition was pending before the Court. On an average, these cases were disposed of in 368 days (i.e., more than one year) per case after the date of the detention order.
- iv. In 772 cases, the Government 'revoked' the detention orders a few weeks or months after issuance. In the 662 cases for which the date of revocation was available, the average time spent by the detenu in potentially-illegal detention, calculated from the date of the detention order till the date of the revocation order—was 116 days, i.e., nearly four months. Further, on an average, 136 days (4.5 months) had lapsed before the Court disposed of the petition as infructuous.

These figures demand immediate course correction. The Court must fast-track *habeas corpus* cases and set up short timelines for completion of pleadings (if required). There must be a self-monitoring mechanism to keep a check on any delays. Further, while fixing the schedule for



hearing of the petition, the Court must be cognisant of the period already spent by the detenu-petitioner in preventive detention. And finally, to reiterate a point made in the Supreme Court study referred to above, the Court must grant compensation in cases of illegal detention and identify mechanisms to deter State authorities from abusing these extraordinary powers.

The task ahead is to undertake similar studies in respect of other High Courts and identify points of similarity and contrast.

Annexures

1. Research Methodology – Available [Here](#).
2. Data Set – Available [Here](#).