PREVENTIVE DETENTION, *HABEAS CORPUS* AND DELAY AT THE APEX COURT: AN EMPIRICAL STUDY

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Based on a study of all reported habeas corpus judgments of the Supreme Court in the twenty-year period from 2000 to 2019, this article presents an empirical analysis of the delay in adjudication of habeas corpus petitions in preventive detention cases. Three indicators are used for the study: first, the total time spent between the date of detention order and the date of final disposal by the Supreme Court; second, the time spent at the Supreme Court level alone; and third, the time spent in actual detention till the matter was finally disposed of by the Supreme Court (including an analysis of the extent to which Supreme Court was responsible for the delay). A more sharpened analysis of only 'successful' habeas corpus petitions – i.e. the twenty cases where the Supreme Court was the relief-granting court – is also presented. It is suggested that habeas corpus is reduced to a meaningless remedy in many cases.

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I. INTRODUCTION

Empirically speaking, for an individual placed under illegal preventive detention, is it a meaningful remedy to move the Supreme Court under Article 32 of the Constitution for a writ of *habeas corpus*? This is the broad question that this article seeks to answer. Based on a study of all reported *habeas corpus* judgments of the Supreme Court in preventive detention cases in the twenty-year period from 2000 to 2019, this article suggests that the long delay in deciding *habeas corpus* petitions renders the great writ close to meaningless, and that the Supreme Court is responsible for a significant part of the delay.

Aim and Scope

This study was motivated by my experiences at the Supreme Court, both as an advocate participating in *habeas corpus* cases concerning preventive detention and as an observer in other ongoing matters of a similar nature. It appeared that the Court was not acting with the swiftness that matters of this nature demand (see Parts II and III below). Sometimes, adjournments would be granted for the asking. Sometimes, the period of adjournment would be several weeks. On other occasions, many weeks would be granted to the government to complete pleadings. This lack of a sense of urgency ran contrary to the importance traditionally placed on the writ of *habeas corpus* (see Parts II and III below).

That preliminary and inconclusive observation paved the way for this (relatively more systematic) study. The primary aim behind this study was to understand whether the lack of swiftness alluded to above is an aberration or the norm as far as the Supreme Court is concerned. The choice of the Supreme Court for this study, therefore, was not a normative one – it was a product of my proximity to the Court and my personal academic interest in understanding its institutional behaviour. Accordingly, that choice should not be taken to suggest that it is more important to study the Supreme Court's record with *habeas corpus* cases than that of the High Courts.

Methodology

Legal research engine SCC Online and Supreme Court's official website https://sci.gov.in were used to conduct this research.

A Boolean search with the query "*habeas corpus*" was run on SCC Online. A time filter of 2000-2019 was placed. All 286 Supreme Court judgments that appeared in the search results were read. Of the judgments that appeared in search results, sixty-five pertained to preventive detention. Of these sixty-five, one constitution bench judgment was excluded from the purview of this paper because the facts of that case pertained to the year 1989 and the detenu had been released in that year itself.[2] The remaining sixty-four cases were analysed for the purposes of this study. A full list of these sixty-four judgments is annexed as **Annexure-1**.

On the side, the Supreme Court's website https://sci.gov.in was used to ascertain the dates on which matters were filed in the Supreme Court.

Structure of the Paper

Part II of the article discusses the concept of preventive detention. Some questions it addresses are: What is preventive detention, and why does it have special

[2] *See* Sunil Fulchand Shah v. Union of India, (2000) 3 SCC 409.

implications for personal liberty? Does preventive detention have constitutional sanction, and are there attached safeguards? What are the laws in India that allow governments to preventively detain individuals? Part III, then, gives a brief overview of the writ of *habeas corpus* and its importance, both generally as well as in the specific context of preventive detention. It also explains why delay in adjudication of *habeas corpus* petitions in preventive detention cases would render the remedy illusory.

Part IV discusses empirical findings drawn from all the sixty-four cases studied for the purposes of this article. Then, Part V discusses empirical findings only in respect of those cases – twenty in number – where the Supreme Court was the first and only court to grant relief against unlawful preventive detention. Part VI briefly explores possible remedies that may make the writ of *habeas corpus* more meaningful. Part VII concludes with some observations on the need to reflect to find where the error lies.

II. PREVENTIVE DETENTION

As the name signifies, 'preventive' detention implies detaining an individual not because she has committed an offence, but because, in the State's view, she is about to.[3] No trial or judicial inquiry is conducted before a person is taken into preventive detention.[4] In fact, no judicial body is involved in the process of authorisation of the detention.[5] That process is dominated by the executive.[6] The order of detention is issuable by an executive authority, and later required to be confirmed by an 'Advisory Board' which is also an executive body.[7] Before issuing a detention order, the only prerequisite is that the issuing authority is subjectively satisfied that the detention of the concerned individual is necessary for the purpose(s) mentioned in the law under which the order is passed, such as national security, prevention of currency smuggling, preventing of black marketing, maintenance of law and order, etc. The Advisory Board steps in only after a specified time period to determine whether continued detention is necessary.[8] No additional layer of review is involved. Judicial oversight, therefore, is totally absent from this process, which gives a free reign to the executive of the day and renders the power of preventive detention susceptible to abuse.

Article 22 of the Constitution recognises the power of preventive detention.[9] But given that preventive detention involves deprivation of personal liberty without trial, and given the paramount importance of the right of personal liberty, Article 22 also provides for some strict procedural safeguards: (1) every preventive detention order must be confirmed by an advisory board within three months of detention,[10] unless Parliament prescribes a longer period by law;[11] (2) the detaining authority must furnish to the detenu the grounds on which

[3] For a historical analysis of preventive detention in India, *See* Pradyumna K. Tripathi, *Preventive Detention: The Indian Experience*, 9(2) AM. J. COMP. LAW 219 (1960); David H. Bayley, *The Indian Experience with Preventive Detention*, 35(2) PACIFIC AFFAIRS 99 (1962); Charles Henry Alexandrowicz, *Personal Liberty and Preventive Detention*, 3(4) JILI 445 (1961).

[4] For focused discussions on this aspect, *See* Derek P. Jinks, *The Anatomy of an Institutionalised Emergency: Preventive Detention and Personal Liberty in India*, 22 MICH. J. INTL L. 311 (2001); Niloufer Bhagwat, *Institutionalising Detention without Trial*, 13(11) EPW 510 (1978).

[5] Article 22(3) of the Constitution specifically states that the requirement that an individual taken into custody must be produced before the nearest magistrate within 24 hours shall not apply to preventive detention cases.

[6] For an analysis of this review process, see Derek P. Jinks, *The Anatomy of an Institutionalised Emergency: Preventive Detention and Personal Liberty in India*, 22 MICH. J. INTL L. 311 (2001).

[7] The Constitution of India, 1950, Art. 22(4).

[8] *Id*.

[9] The Constitution of India, 1950, Art. 22.

[10] The Constitution of India, 1950, Art. 22(4).

[11] The Constitution of India, 1950, Art. 22(7)(a).

the detention order has been made;[12] (3) the detenu must be given an opportunity to make a representation against the detention order;[13] and (4) the detention must not last longer than the maximum period provided for the same under Parliamentary law.[14]

The last safeguard listed above is specifically relevant to this article. Parliament has framed multiple laws authorising preventive detention in accordance with Article 22. Some examples are Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ('COFEPOSA') which provides for preventive detention when it is necessary to prevent smuggling,[15] the National Security Act, 1980 which provides for preventive detention to secure the defence of India, national security and friendly relations with foreign states,[16] the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ('Blackmarketing Act') which authorises preventive detention of persons who are likely to disrupt the maintenance of supplies of essential commodities to the community,[17] the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons and Video Pirates Act, 1981 which authorises preventive detention for the maintenance of public order,[18] and the 'Goondas' Acts of Tamil Nadu (1982),[19] Karnataka (1985),[20] Andhra Pradesh (1986),[21] and Telangana (1986) which also authorise preventive detention for the maintenance of public order.[22] Most of these laws specify one year as the maximum period of preventive detention. The Blackmarketing Act is an exception and carries a maximum period of six months.[23]

Hence, preventive detention is temporary and the process is time-bound. Crucially, whether the preventive detention is legal or illegal (grounds not furnished, opportunity of representation not provided, etc.), the detenu would have to be released after a period of six months or one year, as the case may be. This maximum time limit is used in this study as a reference point against which the meaningfulness of the *habeas corpus* process in preventive detention cases at the Supreme Court can be measured.

The next section discusses the writ of *habeas corpus*, the sole judicial remedy against illegal preventive detention orders – which is where the Supreme Court enters the scene.

[12] The Constitution of India, 1950, Art. 22(5).
[13] *Id*.
[14] The Constitution of India, 1950, Art. 22(7)(b).
[15] The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.
[16] National Security Act, 1980.
[17] Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980.
[18] Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons and Video Pirates Act, 1981.
[19] The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum- Grabbers, Act, 1982.
[20] The Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video or Audio Pirates Act, 1985.
[21] The Andhra Pradesh Prevention of Dangerous Activities of Boot-Leggers Decoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986.
[22] The Telangana Prevention of Dangerous Activities of Boot-Leggers, 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.
[23] Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, §13.

III. THE WRIT OF HABEAS CORPUS

The Latin words *habeas corpus* translate as "produce the body".[24] The writ of *habeas corpus* – one of the five main writs that the Supreme Court has the power to issue under Article 32 of the Constitution – is issued when the court finds that an individual has been placed under wrongful or unlawful confinement, and implies a command that the detained individual shall be produced before the court immediately. The writ hence has a close connection with personal liberty. On account of this close connection, the Supreme Court treats *habeas corpus* as a special writ:

> "[T]o protect individual liberty the Judges owe a duty to safeguard the liberty not only of the citizens but also of all persons within the territory of India. The most effective way of doing the same is by way of exercise of power by the Court by issuing a writ of habeas corpus. This facet of the writ of habeas corpus makes it a writ of the highest constitutional importance being a remedy available to the lowliest citizen against the most powerful authority".[25]

Consistently with this sentiment, the Court has adopted much more liberal and flexible procedural rules in the context of *habeas corpus* as compared to other writs. Two examples of this liberal attitude deserve mention. First, the Court has treated *habeas corpus* as an exception to the rule that writs – which are public law remedies – are not readily issued to private individuals.[26] For instance, the writ of *mandamus* can only be issued against public authorities: "Such an order is made against a person directing him to do some particular thing… which appertains to his office and is in the nature of a public duty."[27] But the court has taken a much more liberal stance in the context of *habeas corpus*: "The writ of habeas corpus issues not only for release from detention by the State but also for release from private detention."[28] As a result, *habeas corpus* petitions are also filed in private disputes such as those concerning child custody or abduction.[29]

Second, the court has repeatedly held that technical objections will not come in the way of *habeas corpus* litigants.[30] Some instances of this principle may be considered. A *habeas corpus* petition cannot be dismissed on the ground of imperfect pleadings, despite the well-settled proposition that a party in a writ petition cannot be permitted to raise additional grounds at the hearing over and above what is stated on affidavit.[31] Equally, failure on part of the detenu to claim the appropriate relief in her petition would not preclude consideration on merits.[32] Likewise, where a new ground (which was not raised before the High Court) was raised for the first time before the Supreme Court, the court refused to remand the proceedings to the High Court for the agitation of the new ground; instead, it

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[24] Merriam-Webster, *Habeas Corpus*, available at https://www.merriam-webster.com/dictionary/habeas corpus (Last visited on May 6, 2020).
[25] Ummu Sabeena v. State of Kerala, (2011) 10 SCC 781, ¶¶15-16.
[26] Real Estate Agencies v. State of Goa, (2012) 12 SCC 170, ¶16.
[27] Sohan Lal v. Union of India, 1957 SCR 738, ¶7; Praga Tools Corpn. v. C.A. Imanual, (1969) 1 SCC 585, ¶6; K.K. Saksena v. International Commission on Irrigation & Drainage, (2015) 4 SCC 670, ¶39.
[28] Mohd. Ikram Hussain v. State of U.P., (1964) 5 SCR 86, ¶12.
[29] E.g. Nirmaljit Kaur (2) v. State of Punjab, (2006) 9 SCC 364; Rashmi Ajay Kumar Kesharwani v. Ajay Kumar Kesharwani, (2012) 11 SCC 190; Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari, (2019) 7 SCC 42.
[30] Ummu Sabeena v. State of Kerala, (2011) 10 SCC 781, ¶17; Cherukuri Mani v. State of A.P., (2015) 13 SCC 722, ¶6; Jagisha Arora v. State of U.P., (2019) 6 SCC 619, ¶6.
[31] Mohinuddin v. D.M., (1987) 4 SCC 58, ¶4; Abdul Nasar Adam Ismail v. State of Maharashtra, (2013) 4 SCC 435, ¶5.
[32] Cherukuri Mani v. State of A.P., (2015) 13 SCC 722, ¶6.

proceeded to quash the preventive detention order to avoid unnecessary prolongment of the proceedings.[33]

It is therefore not disputed that *habeas corpus* is an exceptionally important remedy. I suggest, however, that the importance of *habeas corpus* can be realised only if it is a meaningful rather than illusory remedy. In the specific context of preventive detention, one aspect of meaningfulness is timely adjudication.

We have seen above that most laws permit preventive detention for a period of one year. Whether the detention is legal or illegal, therefore, the detenu would have to be released after a period of one year. In this backdrop, if the writ of *habeas corpus* is to have any meaning for a detenu who has been preventively detained illegally – i.e. in violation of the law or Article 22 of the Constitution – it must be issued soon enough to ensure that the detenu does not have to go through a substantial portion of the intended detention period.

Consider an illustration. If a detenu is illegally detained for an intended period of one year, it would make little sense for a writ of *habeas corpus* to be issued after the expiry of eleven months (say). This is not to suggest that one month of gained freedom is worth nothing, but rather that eleven months of lost freedom – contrary to law, on governmental whim, and without trial – reflect badly on any system that cherishes personal liberty. The 'guarantee' under Article 32 of the Constitution would be rendered illusory if the Court allowed a substantial part of the illegal detention to complete its course before issuing the writ of *habeas corpus*.

What, then, is the ideal period within which the Court must act? We can imagine this on a spectrum. If the writ is issued (almost or actually) after the expiry of one year, it is virtually meaningless because the detenu stands to gain nothing from it. On the other hand, if the writ is issued promptly – say on the very date of moving the Court – the writ would be extremely meaningful for the detenu. Between these two extremes lies a wide timeline. It is tough to put one's finger on the exact point on this scale at which the writ starts to become meaningless. Perhaps it is better to frame the question differently and ask: what is the minimum time that the Court reasonably needs to process a *habeas corpus* petition? Answers could range from 'no time' to 'a couple of weeks' (more on this in Part VI). At the very least, however, it is clear that the writ should be issued sooner rather than later.

We can take this inquiry one step further and analyse this from a systemic viewpoint. What if delay of this kind becomes the norm? If the government knows that illegal preventive detention orders are immune to judicial review for the most part, would it have any incentive to comply with the legal and constitutional requirements on preventive detention? In that sense, strictness and swiftness of judicial review is extremely important to signal to the government that it cannot get away with illegal and arbitrary action. Conversely, judicial laxity and lenience would send the message that the government can do what it wants without worrying about due process of law.

The Supreme Court itself has advocated for an attitude of swiftness in *habeas corpus* matters concerning preventive detention. In the Court's words, "the whole object of proceedings for a writ of *habeas corpus* is to make them expeditious.[...] 'The incalculable value of *habeas corpus* is that it enables the immediate determination of the right to the appellant's freedom' (Lord Wright)."[34] Two facets of the Court's advocacy are central to this

[33] Ummu Sabeena v. State of Kerala, (2011) 10 SCC 781, ¶17.
[34] Ranjit Singh v. State of Pepsu, 1959 Supp (2) SCR 727, ¶4, *citing* Greene v. Home Secretary, (1942) AC 284.

paper, for they demonstrate that the Court treats urgency as not only desirable but also imperative.

First, urgency has been demanded from governments and Advisory Boards in deciding representations made by detenus, such that a delay in deciding the representation would be fatal to continued detention. For instance, in *Rajammal* v. *State of Tamil Nadu* ('Rajammal')[35] the court directed immediate release of the detenu because there was an unexplained delay of just five days on part of the appropriate government in deciding upon his representation.[36] The Court held: "It is not enough to say that the delay was very short. […] [T]he test is not the duration or range of delay, but how it is explained by the authority concerned."[37] The detention was quashed on the sole ground that the concerned officials had been lax in dealing with the detenu's personal liberty.[38]

Second, delays committed by high courts in deciding *habeas corpus* petitions have also been criticised. In *Baby Devassy Chully* v. *Union of India* ('Baby Devassy Chully'),[39] the Court concluded its judgment with this observation: "[W]e remind all the High Courts that in a matter of this nature affecting the personal liberty of a citizen, it is the duty of the courts to take all endeavours and efforts for an early decision."[40] In *Kamlesh Tiwari* v. *Union of India* ('Kamlesh Tiwari'),[41] the court went one step further and, noting that the date of expiration of the preventive detention was near, directed the High Court to decide the petition and deliver its judgment within four weeks.[42] Hence, the Court has felt it proper to command its fellow writ courts to decide *habeas corpus* petitions expeditiously.

The two takeaways from the above discussion are these. First, owing to the time-bound nature of preventive detention, it is imperative that the Supreme Court's judicial process in *habeas corpus* petitions be swift. Second, the Court itself has recognised and advocated for a need to decide such petitions urgently. The Court's advocacy is internally consistent, of course. The question is whether the Court practices what it preaches. In the next part, I discuss empirical findings about the swiftness with which the Court deals with *habeas corpus* petitions.

IV. EMPIRICAL FINDINGS: 2000-2019

This part of the article contains the findings of the study and the inferences that may be drawn therefrom. To reiterate, this research covers all those reported judgments of the Supreme Court from 2000 to 2019 which deal with *habeas corpus* in the context of preventive detention (sixty-four in total). Other habeas corpus cases such as those involving parental abduction, kidnapping of minors, or other similar cases involving illegal violations of personal liberty have not been included in the findings. This is because of the unique nature of preventive detention – here, as already discussed, the proceedings are time-sensitive because of outer limits prescribed by law.

The data collected is analysed below against the following indicators: (i) total time between the date of detention order and the date of final disposal by the Supreme Court; (ii) total time taken by the Supreme Court in disposing of the *habeas corpus* petition

[35] Rajammal v. State of T.N., (1999) 1 SCC 417.
[36] *Id.,* ¶11.
[37] *Id.,* ¶8.
[38] *Id.,* ¶11.
[39] Baby Devassy Chully v. Union of India, (2013) 4 SCC 531.
[40] *Id.,* ¶23.
[41] Kamlesh Tiwari v. Union of India, (2016) 9 SCC 363.
[42] *Id.,* ¶2.

(measured from the date of filing of the petition in the Supreme Court); and (iii) time spent in detention till the matter was finally disposed of by the Supreme Court. Indicators (i) and (iii) are different because detenus in some cases may be released – on account of expiry of the maximum period of detention, or owing to a writ of habeas corpus having been issued by the High Court – before the petition is disposed of one way or the other. Indicator (i), therefore, gives a general overview of the sense of urgency shown by the Supreme Court in deciding *habeas corpus* petitions irrespective of whether the detenu remained in detention throughout the litigation process. Indicator (iii) is more focussed on the time in fact spent in detention by the detenu before the case is finally disposed of by the Supreme Court, and will include a separate analysis of how much of that time was spent at the Supreme Court level.

A. INDICATOR (I): TOTAL TIME SPENT BETWEEN DETENTION ORDER AND SUPREME COURT DECISION

The first indicator is the total time period that has lapsed until the case is finally disposed of by the Supreme Court, beginning from the date of detention order or the date of actual detention, whichever is earlier. This indicator would demonstrate the utility (or futility) of the process of challenging preventive detention orders all the way up to the Supreme Court.

The necessary facts for this analysis were available for sixty-three out of the sixty-four cases.[43] A detailed table containing the names of the cases along with the total time taken till the disposal of the case by the Supreme Court is annexed as **Annexure-2**. The findings are recorded in the table below:

S. No.	Head	Data
1	Total number of cases studied (from 2000 till date)	63
2	Longest total time taken till final disposal	6040 days[44]
3	Shortest total time taken till final disposal	63 days[45]
4	Average total time taken till final disposal	953 days[46]
5	Median time taken till final disposal	478 days
6	Number of cases where the total time taken exceeded the maximum period of detention under the relevant law (6 months or 1 year, as the case may be)	40
7	%Percentage of cases where the total time taken exceeded the maximum period of detention under the relevant law (6 months or 1 year, as the case may be)	63.49 percent

At least two disappointing inferences can be drawn from this data. First, the average time spent in a *habeas corpus* petition in a preventive detention case is more than

[43] From the reported judgment in State of T.N. v. E. Thalaimalai, (2000) 9 SCC 751, neither the date of detention order nor the date of detention is clear. Hence, it was not possible to precisely calculate the total time.
[44] State of T.N. v. Kethiyan Perumal, (2004) 8 SCC 780.
[45] Rupesh Kantilal Savla v. State of Gujarat, (2000) 9 SCC 201.
[46] These unusually large numbers should not be taken to imply that the detenu was also in custody for these many days. This is so for three reasons. First, to re-emphasise, the maximum period of detention is one year under most preventive detention laws, so it should be presumed that the detenu was released after that period. Second, though rarely, some detention orders are challenged at the pre-execution stage without the proposed detenu having surrendered to the authorities. [*See* State of Maharashtra v. Bhaurao Punjabrao Gawande, (2008) 3 SCC 613; Union of India v. Vidya Bagaria, (2004) 5 SCC 577; Union of India v. Muneesh Suneja, (2001) 3 SCC 92] There is no detention in such cases. Third, even within one year, detainees are sometimes released on account of either (i) shorter dates specified in their detention orders or (ii) court orders directing their release, e.g. where the High Court allows the petition of habeas corpus directing immediate release of the detenu, and the Supreme Court hears an appeal against the High Court order without staying it.

two years and seven months, while the median time spent is close to one year and four months. Second, in 63.49 percent of the cases (i.e. 40 out of 63 cases), the time spent in the challenge was more than one year. Given that the detention order would itself lapse in one year (or earlier), writ proceedings in the Supreme Court appear to be a futile exercise for the redressal of wrongful detention – to a detainee who remained in detention throughout the period prescribed in her detention order (one year or less), the outcome of the *habeas corpus* petition would make no material difference to her. This is so even if the Supreme Court eventually quashed the detention order as illegal, because she would have already served the whole period required under that illegal detention order. '[T]he whole object' behind *habeas corpus* proceedings, i.e. 'to make them expeditious',[47] seems to have been lost somewhere.

But this analysis tells us only that the overall system of preventive detention and associated remedies is inadequate. While that is undoubtedly an important finding, it does not follow that the fault (or any fault) lies with the Supreme Court. Time could have been lost by (i) the detenu or her lawyers through lax behaviour causing delays in the filing or planning processes, (ii) the advisory board and/or the government in not promptly confirming or nullifying the detention order when a representation is made by the detenu, and (iii) the High Courts, where *habeas corpus* petitions are often first filed. To understand the precise role played by the Supreme Court in this systemic problem, therefore, let us only look at how much time was spent at the Supreme Court level alone in these cases.

B. INDICATOR (II): TIME SPENT AT THE SUPREME COURT

For this examination, the relevant dates are (A) the date on which the Supreme Court was moved (either in a fresh habeas corpus writ petition or in appeal against a High Court judgment) and (B) the date on which the Supreme Court decided the appeal/petition. A detailed table containing the full list of the sixty-three cases analysed along with the time taken at the Supreme Court level alone is annexed as **Annexure-3**. The findings from this study are recorded in the table below:

S. No.	Head	Data
1	Total number of cases studied (from 2000 till date)	63[48]
2	Longest time taken at the Supreme Court	3732 days[49]
3	Shortest total time at the Supreme Court	34 days[50]
4	Average total time taken at the Supreme Court	528 days
5	Median total time taken at the Supreme Court	197 days
6	Number of cases where number of days spent at the Supreme Court exceeded the maximum period of detention under the relevant law (6 months or 1 year, as the case may be)	23
7	%Percentage of cases where number of days spent at the Supreme Court exceeded the maximum period of detention under the relevant law (6 months or 1 year, as the case may be)	36.51 percent

On an average, the court took one year and five months to decide a *habeas corpus* case in preventive detention matters. The median figure is close to seven months. In three or four out of every ten cases – 36.51percent of the total cases, to be precise – the time taken at the Supreme Court level was greater than the maximum period of preventive

[47] Ranjit Singh v. State of Pepsu, 1959 Supp (2) SCR 727, ¶4, *citing* Greene v. Home Secretary, (1942) AC 284.
[48] For D. Anuradha v. Jt. Secy., (2006) 5 SCC 142 (Criminal Appeal No. 178 of 1997), the Supreme Court website does not mention the date on which the Supreme Court was moved.
[49] Chandra Kumar Jain v. Union of India, (2015) 11 SCC 427. The detenu died during the pendency of the petition.
[50] Ummu Sabeena v. State of Kerala, (2011) 10 SCC 781.

detention prescribed in the relevant law, which frustrates the very point of the appeal/petition. In other words, at least 36 percent of the cases would in any event have been rendered infructuous before the court delivered its judgment. It can hence safely be said that the Supreme Court has played a significant role in rendering *habeas corpus* proceedings meaningless.

As already discussed,[51] these large figures and inferences do not show that the detenus were in detention for the entire period of one year. Hence, to draw inferences regarding the practical impact of this institutional delay on personal liberty, it is crucial to study a third set of figures.

C. INDICATOR (III): TIME SPENT IN DETENTION TILL SUPREME COURT DECISION

This third analysis asks: how long did the detenus in fact spend in detention before their cases were finally decided by the Supreme Court? This analysis is important because it reveals the overall meaningfulness of the judicial process for the detenu. A list of the 59 cases studied along with the relevant data is annexed as **Annexure-4**. The inferences drawn from the data are given in the table below.[52]

S. No.	Head	Data
1	Total number of cases studied (from 2000 till date)	59[53]
2	Most time spent in detention till Supreme Court decision	3846 days[54]
3	Least time spent in detention till Supreme Court decision	58 days[55]
4	Average time spent in detention [Note: If the two cases where the maximum permissible detention period was 6 months – *Bhupendra* v. *State of Maharashtra*, (2008) 17 SCC 165 (183 days) and *Rupesh Kantilal Savla* v. *State of Gujarat*, (2000) 9 SCC 201 (63 days) – are excluded, i.e. if only the '1-year'[56] cases are considered for this calculation, the average time spent in detention in the other 57 cases comes to 352 days.]	344 days
5	Median time spent in detention [Note: If only the "1-year" cases are considered for this calculation (like in S. No. 4 above), the median time spent in detention in the remaining 57 cases comes to 326 days.]	322 days
5	Number of cases where number of days spent in detention exceeded or equaled the maximum period of detention under the relevant law (6 months or 1 year, as the case may be)	18 "1-year": 17 "6-month": 1
6	%Percentage of cases where number of days spent in detention exceeded or equaled the maximum period of detention under the relevant law (6 months or 1 year, as the case may be) [Note: If calculated only for '1-year' cases, this figure is 29.82 percent.]	30.51 percent

[51] *Supra* note 45.

[52] For all cases which were decided after a total period of one year, it has been assumed that the detenu was in custody for 366 days (unless the judgment indicates otherwise). There are 14 such cases. Where the judgment states that the detenu remained in custody for a shorter or longer period, that correct period has been used.

[53] Four cases – Deepak Bajaj v. State of Maharashtra, (2008) 16 SCC 14; State of Maharashtra v. Bhaurao Punjabrao Gawande, (2008) 3 SCC 613; Union of India v. Vidya Bagaria, (2004) 5 SCC 577; and Union of India v. Muneesh Suneja, (2001) 3 SCC 92 – concerned a pre-execution challenge to the detention order. Hence, there was no detention involved in these cases.

[54] State of T.N. v. Kethiyan Perumal, (2004) 8 SCC 780.

[55] Commr. of Police v. C. Anita, (2004) 7 SCC 467.

[56] This phrase is used loosely to signify cases where the maximum period of detention prescribed under the relevant law was 1 year. The phrase "6-month" cases is used later in a similar connotation.

7	Average time spent in detention in the '1-year' cases not covered at S. No. 5, i.e. cases where the maximum period of detention was 1 year but time actually spent in detention was less than 1 year.[57]	255 days

On an average, detenus in the '1-year' cases spent 352 days – 96 percent of the one-year maximum period – in custody before the petition was disposed of by the court. In nearly three out of every ten cases, detenus completed their full term of detention before their petition was disposed of, and in the remaining seven cases, they spent 255 days – nearly 70 percent of the one-year maximum period – before the Supreme Court gave its judgment.[58]

All of this delay, however, is not attributable to the Supreme Court. The table above only demonstrates the total time spent in detention by the detenu before the final decision on her habeas corpus petition by the Supreme Court. It is possible that much of that time was lost before the Supreme Court was even moved. To track the Supreme Court's contribution to this delay, then, it is important to sharpen this data.

Of the 59 cases discussed in the table above, the detenus in twenty-two cases[59] were released[60] before the Supreme Court was moved. No part of the prolonged detention in those cases, therefore, can fairly be attributed to the Court. In addition, the date of moving the Supreme Court could not be ascertained in one case.[61] Of the remaining thirty-six cases, in some cases detenus were released during the pendency of the *habeas corpus* matter in the Supreme Court, whereas in other cases they remained in custody at least until the date of decision by the Supreme Court. An analysis of the said thirty-six cases reveals the following:

S. No.	Head	Data
1	Total number of cases studied (from 2000 till date)	36
2	Most detention time attributable to Supreme Court	301 days[62]
3	Least detention time attributable to Supreme Court	20 days[63]
4	Average detention time attributable to Supreme Court	111 days
5	Median detention time attributable to Supreme Court	102.5 days [64]

Hence, in the cases where the detenu was in preventive detention as on the date on which the Supreme Court was moved, 111 days of custody on an average (and 103 days as a median value) could be attributed to the Supreme Court before the *habeas corpus*

[57] Analogous figures for the "6-month" cases are deliberately avoided because there are only two such cases.
[58] Analogous figures for the "6-month" cases are deliberately avoided because there are only two such cases.
[59] Khaja Bilal Ahmed v. State of Telangana (2019) SCC OnLine SC 1657; Union of India v. Saleena, (2016) 3 SCC 437; State of T.N. v. Nabila, (2015) 12 SCC 127; Chandra Kumar Jain v. Union of India, (2015) 11 SCC 427; State of T.N. v. Abdullah Kadher Batcha, (2009) 1 SCC 333; Union of India v. Ranu Bhandari, (2008) 17 SCC 348; State of T.N. v. R. Sasikumar, (2008) 13 SCC 751; Bhupendra v. State of Maharashtra, (2008) 17 SCC 165; Chandrakant Baddi v. ADM & Police Commr., (2008) 17 SCC 290; Collector v. S. Sultan, (2008) 15 SCC 191; Union of India v. Laishram Lincola Singh, (2008) 5 SCC 490; Union of India v. Yumnam Anand M., (2007) 10 SCC 190; Mukesh Tikaji Bora v. Union of India, (2007) 9 SCC 28; Alpesh Navinchandra Shah v. State of Maharashtra, (2007) 2 SCC 777; Union of India v. Chaya Ghoshal, (2005) 10 SCC 97; State of T.N. v. Kethiyan Perumal, (2004) 8 SCC 780; T.P. Moideen Koya v. Govt. of Kerala, (2004) 8 SCC 106; State of U.P. v. Sanjai Pratap Gupta, (2004) 8 SCC 591; Commr. of Police v. C. Anita, (2004) 7 SCC 467; Union of India v. Sneha Khemka, (2004) 2 SCC 570; Union of India v. Paul Manickam, (2003) 8 SCC 342; State of T.N. v. Balasubramaniam, (2001) 3 SCC 123.
[60] Where no specific date of release was found mentioned in the judgment, it was assumed that the detenu would have been released from custody after the maximum period of detention specified in the relevant law expired.
[61] D. Anuradha v. Jt. Secy., (2006) 5 SCC 142.
[62] A. Geetha v. State of T.N., (2006) 7 SCC 603.
[63] Baby Devassy Chully v. Union of India, (2013) 4 SCC 531.
[64] A. Maimoona v. State of T.N., (2006) 1 SCC 515 (102 days) and R. Keshava v. M.B. Prakash, (2001) 2 SCC 145 (103 days).

petition was decided one way or the other. In other words, the detenu remained in custody for approximately four months while the case remained pending with the Supreme Court. Seen in light of the average detention figure of 344 days discussed above, it would appear that the Supreme Court is anyway not in a position to help with the bigger part of the average detention period. Yet, it is significant that the Court takes as long as four months on an average on a *habeas corpus* matter while the detenu remains in custody. As we shall discuss later (see Part VI below), there is no reason for the Court to take such a long time in deciding these matters.

The findings of the three analyses conducted above can now be summarised:

i. On an average, the Supreme Court gave its decision after a period of 953 days calculated from the date of detention order or actual detention (whichever is earlier),
ii. On an average, the Supreme Court gave its decision after the detenu spent a period of 528 days agitating the *habeas corpus* petition at the Supreme Court level alone, and
iii. On an average, the Supreme Court gave its decision after the detenu spent a period of 344 days in detention, of which 111 were attributable to the Supreme Court.

This, I suggest, raises serious concerns about the Supreme Court's institutional handling of *habeas corpus* petitions in preventive detention cases. It shows that the Supreme Court has not walked the talk on preserving personal liberty; to the contrary, it has not treated these matters as urgent and requiring swift action.

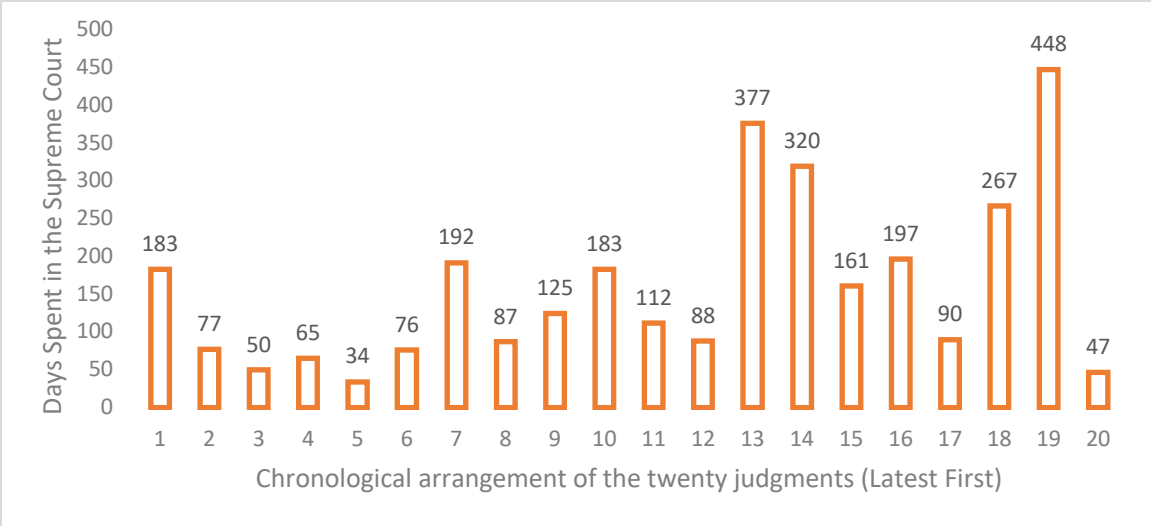
V. 'SUCCESSFUL' HABEAS CORPUS PETITIONS

This part of the article is dedicated to examining only those *habeas corpus* petitions – total twenty in number – where the Supreme Court issued the writ of *habeas corpus* and was the first court to grant relief. This is where (i) the *habeas corpus* petition was filed in the Supreme Court under Article 32 and allowed, or (ii) the petition was filed in the High Court under Article 226, but because the High Court refused to grant relief, the detenu appealed to the Supreme Court which reversed the High Court's decision. These cases are being analysed separately because it is here that the Supreme Court made the most material difference to the detenu's fate.

Like the analysis conducted in the previous section, this analysis will be conducted on two indicators: (I) time spent at the Supreme Court level alone before the Supreme Court granted relief, and (II) time spent in detention before the Supreme Court granted relief (and the detention time attributable to the Supreme Court). A full list of these twenty cases along with data on the said indicators is annexed as **Annexure-5**.

A. INDICATOR I: DAYS SPENT AT THE SUPREME COURT LEVEL IN THE 20 CASES WHERE THE SUPREME COURT GRANTED THE FIRST RELIEF IN HABEAS CORPUS PROCEEDINGS

For the twenty successful cases, the following chart depicts the total number of days spent at the Supreme Court level alone before the matter was finally disposed of:

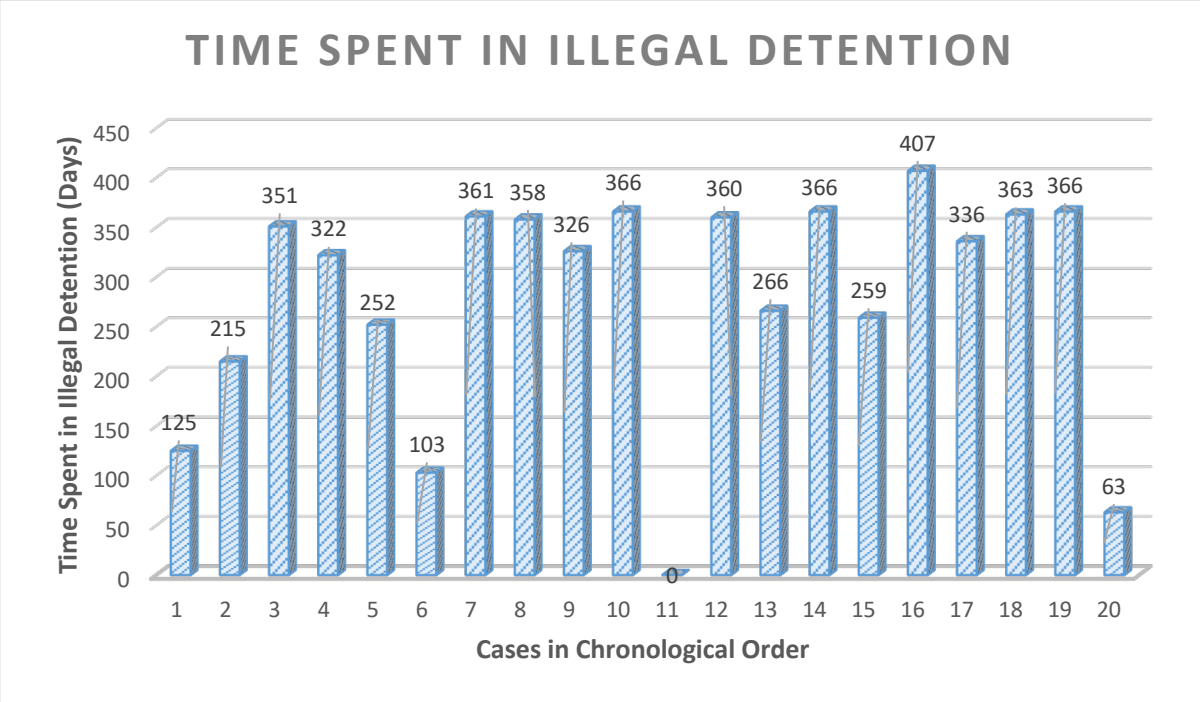


On an average, 159 days were spent at the Supreme Court level alone (out of the 386 days spent in total since the date of detention order) in deciding these twenty cases. The corresponding median figure is 118.5 days. In two cases,[65] the Supreme Court itself took longer than one year to decide the petition (448 and 377 days respectively). To ascertain the impact of this laxity on the personal liberty of detenus, it may be worthwhile to study the number of days for which the detenus languished in illegal preventive detention before the Supreme Court granted relief in their respective cases, and how much of that delay could be attributed to the Supreme Court.

[65] K.S. Nagamuthu v. State of T.N., (2006) 4 SCC 792; Chandrakant Baddi v. ADM & Police Commr., (2008) 17 SCC 290.

B. INDICATOR II: DAYS SPENT IN DETENTION IN THE 20 CASES WHERE THE SUPREME COURT GRANTED THE FIRST RELIEF IN HABEAS CORPUS PROCEEDINGS

The following chart depicts the total time spent in detention by the detenu before his/her release was ordered by the Supreme Court in the abovementioned twenty cases: [66]



To re-emphasise, these charts and figures must be seen in context of the fact that most laws prescribes a maximum period of one year for preventive detention. This is true of nineteen out of the twenty cases depicted in the charts above. The laws involved are the COFEPOSA,[67] the National Security Act,[68] and the 'Goondas' Acts of Andhra Pradesh,[69] Karnataka,[70] Telangana,[71] and Tamil Nadu.[72] The sole exception is Case No. Twenty, concerning the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, which prescribes a maximum period of 6 months.[73]

As evident, in four out of the twenty cases (20 percent), relief came from the Supreme Court after the one-year period of detention under an illegal order had already

[66] The case depicted at S. No. 11 – Deepak Bajaj v. State of Maharashtra, (2008) 16 SCC 14 – was a case of pre-execution challenge. Hence, no detention was involved.
[67] The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, §13.
[68] National Security Act, 1980, §13.
[69] The Andhra Pradesh Prevention of Dangerous Activities of Boot-Leggers Decoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, §13.
[70] The Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video or Audio Pirates Act, 1985, §13.
[71] The Telangana Prevention of Dangerous Activities of Boot-Leggers, 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, §13.
[72] The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum- Grabbers, Act, 1982, §13.
[73] Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, §13.

passed. Further, in at least five others, the figure was so close to 366 (351, 358, 360, 361, 363) that these cases can fairly be clubbed with the aforementioned four thus taking the total number of futile cases up to nice (forty-five percent of the total twenty). If the bracket were to be further expanded to include all cases where six months (i.e. half of the detention period) or more were spent in detention before relief came, the figure would increase to sixteen out of twenty (eighty-five percent) cases. On an average, detenus spent 278 days (i.e. nine months) in wrongful detention before relief came from the Supreme Court.

Admittedly, not all of this delay is necessarily attributable to the Supreme Court. It is possible that much of the delay was caused prior to moving the Supreme Court. Yet, there is no reason why the Supreme Court should turn a blind eye to the period of preventive detention already undergone by the detenu. The fact that a detenu has already spent nine out of the twelve months in custody should prompt the Court to speed up the adjudicatory process – for if the detention is illegal, it deserves to be quashed at the earliest.

Nonetheless, for better visibility into the Supreme Court's contribution to this delay, let us map the period for which, on an average, a detenu was in custody at the time the matter was being agitated at the Supreme Court. In four out of the twenty cases,[74] the detenu was not in custody at the time the Supreme Court was moved. Data for the remaining sixteen cases is analysed in the table given below:

S. No.	Head	Data
1	Number of cases studied	16
2	Most detention time attributable to Supreme Court	202 days[75]
3	Least detention time attributable to Supreme Court	34 days[76]
4	Average detention time attributable to Supreme Court	95 days
5	Median detention time attributable to Supreme Court	76.5 days[77]

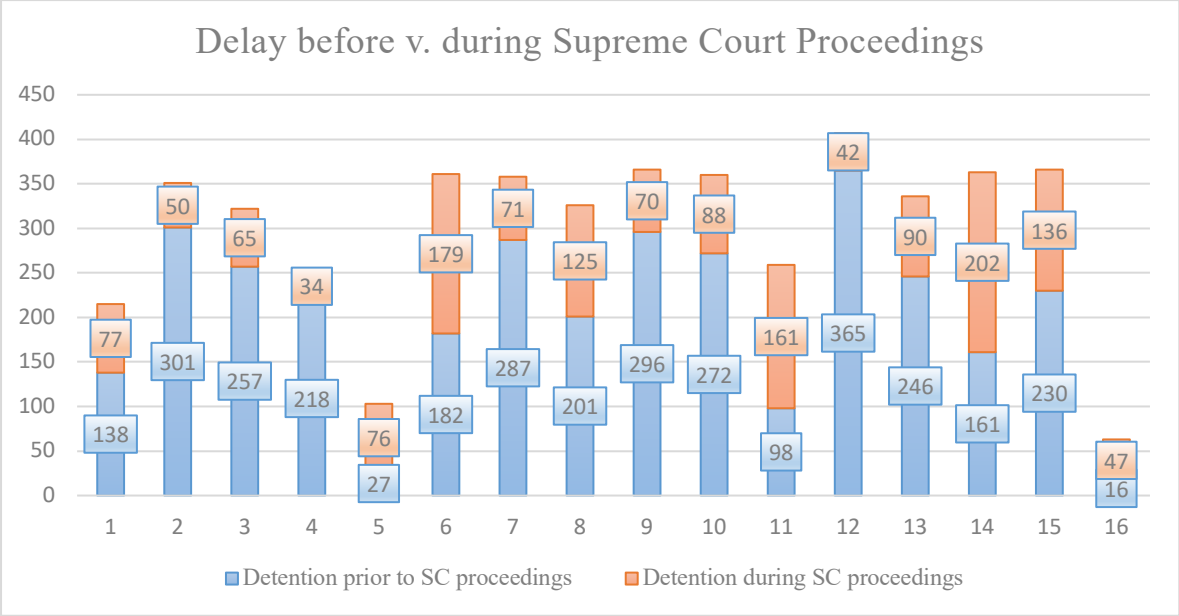
[74] Khaja Bilal Ahmed v. State of Telangana, 2019 SCC OnLine SC 1657; Deepak Bajaj v. State of Maharashtra, (2008) 16 SCC 14; Chandrakant Baddi v. ADM & Police Commr., (2008) 17 SCC 290; Alpesh Navinchandra Shah v. State of Maharashtra, (2007) 2 SCC 777.

[75] T.V. Sravanan v. State, (2006) 2 SCC 664.

[76] Ummu Sabeena v. State of Kerala, (2011) 10 SCC 781.

[77] Rekha v. State of T.N., (2011) 5 SCC 244 (76 days) and Cherukuri Mani v. State of A.P., (2015) 13 SCC 722 (77 days).

To view the detention time spent at the Supreme Court level as a component of the total time spent by the detenu in preventive detention, the graph given below would be useful. It should be noted that this comparison is not necessarily relevant in judging the Supreme Court's swiftness or laxity, which should be judged on its own terms. Nonetheless, the graph is being provided to present a fuller picture of the detention period as it appears to the detenu:



A few observations may be made at this point. In four out of the sixteen cases – depicted at serial numbers 5, 11, 14, and 16 – the time spent in detention while agitating the matter at the Supreme Court level was greater than the time spent in detention prior to moving the Supreme Court. In one case – depicted at serial number 6 – the time spent in detention prior to moving the Supreme Court (182 days) was almost equal to the detention time during Supreme Court proceedings (179 days). In at least these five cases, therefore, the Supreme Court's contribution to the delay is equally or more significant than delay caused at earlier levels.

One of these cases – the one at serial number 6 – deserves a special mention for the painful irony it depicts. In *Pebam Ningol Mikoi Devi* v. *State of Manipur* ('Pebam Ningol Mikoi Devi'),[78] the Supreme Court ordered release of the detenu after 361 days of unlawful custody on the ground that the detaining authority was unable to explain the delay of seven days in forwarding the detenu's representation to the Central Government.[79] No words of regret, however, came from the Supreme Court for the delay on its end – the Court took a total of 192 days to decide the matter, out of which the detenu remained in detention for a period of 179 days (six months).

The findings from the above analyses can be summed up as follows. Before an illegal order of preventive detention was quashed by the Supreme Court in *habeas corpus* proceedings, on an average, a detenu spent 159 days agitating the matter at the Supreme Court level. Further, a detenu spent 278 days in detention on an average, out of which ninety-five days (a little over three months) were spent while the matter was pending at the Supreme Court.

[78] Pebam Ningol Mikoi Devi v. State of Manipur, (2010) 9 SCC 618.
[79] *Id.*, ¶¶36-37.

VI. POSSIBLE REMEDIES

Should the Supreme Court's grandiloquence on the value of personal liberty be taken seriously at all? If a wrongful detention order can keep an individual behind bars for nine out of twelve months on an average without any real consequences, can it be said that the rule of law is intact? There is a dire need for the Supreme Court to reflect, as an institution, upon where the error lies – in insisting upon a counter-affidavit and granting several weeks to the Government for its preparation, in granting adjournments on ordinary grounds such as one specific law officer being "on his legs" in another courtroom, in not having dedicated benches to decide upon matters of personal liberty, in not prioritising *habeas corpus* matters over others (such as by placing them on top of the board),[80] or somewhere else.

A. THE COURT PROCESS

A detailed inquiry into possible remedies is beyond the aim of this paper. However, to facilitate the search for a remedy, it may be useful to think about the maximum time that the Supreme Court should ideally take in deciding a *habeas corpus* matter of this nature. An ordinary matter at the Supreme Court involves four broad stages after filing is complete. The first stage is the admission hearing, on which date the Court does not require the presence of the respondents and decides whether the petition or appeal *facially* has some merit. If the Court finds facial merit, it issues notice to the respondents and grants them time – ordinarily around four weeks – to file a response or counter-affidavit to the petition or appeal. The second stage is the filing of the counter-affidavit as permitted by the Court. The respondents may or may not file it within the prescribed time limit. Often, they do not, and obtain more time from the Court based on some or the other excuse. Once the counter-affidavit is filed, the registry of the Supreme Court processes the matter to be listed before the Court again. The third stage is the after-notice hearing, on which the Court may grant time – ordinarily around two to three weeks – to the petitioner to file a rejoinder to the counter-affidavit filed by the respondents. After the rejoinder is filed, the Court in the next hearing fixes a date for final arguments on the matter. Typically, a two to four-week gap can be expected before the final hearing takes place. The fourth stage is the final hearing on which arguments on merits take place. A minimum of around three months, therefore, can easily be expected to be spent in an ordinary matter. In practice, however, it is seen that cases go on for much longer, since each of the above stages may further involve their own peculiar delays, such as adjournments and time extensions – which might explain the unusually large numbers discussed in the findings above.

In this backdrop, if *habeas corpus* matters are to proceed with any speed, they must be treated as an exceptional category. A few preliminary observations can be made here in this respect, leaving details to be filled in by future research. First, the requirement for filing a counter-affidavit by the government in preventive detention matters should be re-assessed. It is settled law that the counter-affidavit cannot supplement or add to the grounds of detention already furnished to the detenu as per the provisions of Article 22.[81] Further, if the counter-affidavit discloses any new material which was not communicated to the detenu but relied upon for the detention, the detention would breach Article 22 and would have to be

[80] In an interview published last year, Justice (Retd.) Madan Lokur makes this point: "Habeas-corpus writs should be taken up on priority, and any exception should be treated as an aberration." The Caravan, *Interview with Justice (Retd.) Madan Lokur*, November 29, 2019, available at https://caravanmagazine.in/law/madan-lokur-interview-national-security-cannot-bar-adjudication-of-fundamental-rights (Last visited on May 6, 2020).

[81] *See*, e.g., State of Bombay v. Atma Ram Sridhar Vaidya, 1951 SCR 167, Kania, C.J. (for himself and 2 others), at ¶9-10, ¶17; Ramveer Jatav v. State of U.P., (1986) 4 SCC 762, at ¶2.

struck down on that count alone.[82] The judicial review is therefore limited to examining whether (i) the grounds of detention were promptly communicated to the detenu,[83] (ii) the detenu was timely permitted to make a representation to the Advisory Board or the appropriate government against her detention;[84] (iii) the facts based on which the detenu is detained have a proximate nexus with the aim sought to be achieved by detaining her,[85] and (iv) any of the grounds stated in the detention order are vague or irrelevant.[86] Given that these aspects are usually well-documented and cannot be refuted by showing additional material – except perhaps (ii) which may admit of justifications for the delay – a counter-affidavit may not be relevant at all in most *habeas corpus* matters concerning preventive detention. The Court should therefore apply its mind to the documents produced by the petitioner on the very first hearing (admission stage), and if it finds that the well-settled rules of preventive detention have been breached by the respondent(s)-government(s), it should issue an ex-parte writ of *habeas corpus*. If required, the respondent(s) may be permitted to file a counter-affidavit once the detenu is released from custody. This suggestion would require the Court to depart from its previously held rule that an *ex parte* writ of *habeas corpus* should be issued only in exceptional cases of urgency.[87]

Second, even if the Court deems it proper to ask for a counter-affidavit before deciding on the detenu's release, it should not give more than one week to the respondents to file the same. Such time would be sufficient because all material required for the counter-affidavit is already available with the respondents. Third, in the same spirit, only a few days' time should be granted to the petitioner for filing a rejoinder if necessary, after which the matter must immediately be listed for final arguments. In this manner, the entire process can promptly be completed within a matter of two weeks instead of being stretched to many months. Fourth, the Court should be strict in ensuring that neither adjournments nor time extensions are granted at the government's request, unless unavoidable delay is shown.

B. CONSTITUTIONAL TORTS

There is also a need to explore meaningful remedies in cases where preventive detention orders are found to be manifestly unlawful. In the past, the court has not hesitated in granting monetary relief – which may be labelled as "compensation", "damages" or "costs" – upon finding a gross violation of fundamental rights. Indeed, the first known case where the court granted such a relief as a public law remedy under Article 32 was a *habeas corpus* petition.[88] Finding the continued detention of the petition even after his sentence period was over to be illegal, the court had held:[89]

> "Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate

[82] Sk. Hanif v. State of W.B., (1974) 1 SCC 637, at paras 11, 14; Sasthi Keot v. State of W.B., (1974) 4 SCC 131, at para 2; Fogla v. State of W.B., (1974) 4 SCC 501, at ¶3-4.
[83] The Constitution of India, 1950, Art. 22; Shalini Soni v. Union of India, (1980) 4 SCC 544.
[84] *Id.*
[85] Supdt., Central Prison v. Dr Ram Manohar Lohia, (1960) 2 SCR 821, at paras 13-14; Rameshwar Shaw v. District Magistrate, (1964) 4 SCR 921, at para 10.
[86] Mohd. Yousuf Rather v. State of J&K, (1979) 4 SCC 370, at ¶8, ¶10-12, ¶14; Prabhu Dayal v. Distt. Magistrate, Kamrup, (1974) 1 SCC 103, at ¶13.
[87] *See* Sebastian M. Hongray v. Union of India, (1984) 1 SCC 339, at ¶31.
[88] Rudul Sah v. State of Bihar, (1983) 4 SCC 141.
[89] *Id.,* ¶10.

> of Article 21 secured, is to mulct its violators in the payment of monetary compensation."

Ordinarily, grant of compensation is understood as a private law or tort law remedy to be agitated in civil courts. That is so even where civil claims are made against the state. The Supreme Court has held: "Every illegal detention irrespective of its duration, and every custodial violence, irrespective of its degree or magnitude, is outright condemnable and *per se* actionable."[90] Yet, constitutional courts may award compensation even under Articles 32 or 226 (as the case may be) – a concept more recently branded as "constitutional torts"[91] – where the claims of rights violation are 'patent and incontrovertible', 'gross', and 'of a magnitude to shock the conscience of the court',[92] or where malice[93] or gross abuse of power[94] by state officials is established. Indeed, Article 32 has been understood as casting an obligation on the Supreme Court to forge new tools, including monetary relief where necessary, to ensure the protection of fundamental rights.[95] It is submitted that the court should consider expanding the scope of constitutional torts in the context of preventive detention cases where the detenu's personal liberty is unlawfully infringed for a substantial period of time, whether because of delays at the hands of state officials or of constitutional courts themselves.

VII. CONCLUSION

The empirical findings of the study should be seen in view of the fact that most preventive detention laws prescribe one year as the maximum period of detention. The findings can be summed up under three heads. First, the total time spent from the date of detention order or actual detention till the date of final disposal by the Supreme Court is 953 days on an average and 478 days by median value (based on a study of 63 cases). In 63.49 percent of the cases studied, the total time taken exceeded the maximum period of detention under the relevant law (six months or one year, as the case may be). Second, out of the said total time, the time spent by the detenu in agitating the matter at the Supreme Court level alone is 528 days on an average and 197 days by median value (based on a study of sixty-three cases). In 36.51 percent of the cases studied, the number of days spent at the Supreme Court level alone exceeded the maximum period of detention under the relevant law (six months or one year, as the case may be). If we reduce the sample and consider only those twenty cases where the Supreme Court was the first Court to grant relief, i.e. only the 'successful' cases at the Supreme Court, the time spent in agitating the matter at the Supreme Court level alone is 159 days by a detenu on an average, and 119 days as a median value. *Third*, on an average, a detenu spent 344 days (over eleven months) in custody before the case was finally decided by the Supreme Court, of which 111 days (almost four months) lapsed while the matter was pending with the Supreme Court (based on a study of fifty-nine cases). If we reduce the sample size and consider only the 'successful' cases at the Supreme Court, then on an average, a detenu spent 278 days (over nine months) in illegal detention, of which ninety-five days (a little over three months) lapsed while the matter was pending at the Supreme Court.

This delay is unjustifiable because *habeas corpus* petitions can be decided summarily, i.e. within a period of two weeks from the date of filing. Further still, the filing of

[90] Sube Singh v. State of Haryana, (2006) 3 SCC 178, ¶47.
[91] *See generally* MCD v. Uphaar Tragedy Victims Assn., (2011) 14 SCC 481.
[92] Sube Singh v. State of Haryana, (2006) 3 SCC 178, ¶46.
[93] S. Nambi Narayanan v. Siby Mathews, (2018) 10 SCC 804, ¶40.
[94] N. Sengodan v. State of T.N., (2013) 8 SCC 664, ¶50.
[95] Nilabati Behera v. State of Orissa, (1993) 2 SCC 746, ¶20.

a counter-affidavit by the State serves no real purpose in a preventive detention proceeding. Hence, on the very first day (admission hearing), the Court should apply its mind to the facts disclosed in the petition and, if it finds the detention to be illegal, direct the detenu to be released under an *ex parte* writ of *habeas corpus*. The time wasted in filing and exchanging pleadings as well as through adjournments should be minimised. Finally, where the Court finds the detention to be illegal, it should consider invoking the concept of constitutional torts and granting monetary compensation to detenus for illegal deprivation of liberty.

The Supreme Court has performed poorly even when measured against its own rhetoric on the importance of the writ of *habeas corpus*. One sincerely hopes that through reflection and invention of new kinds of remedies, the institutional handling of matters of liberty at India's top constitutional court will soon – if not immediately – improve. If the only remedy against illegal preventive detention is a token declaration of illegality after the detention has already or almost finished its course, there is little meaning in calling it a 'remedy'. It is too little and too late.

Annexure-1: List of Cases Studied (in Alphabetical Order)

1. A. Geetha v. State of T.N., (2006) 7 SCC 603
2. A. Maimoona v. State of T.N., (2006) 1 SCC 515
3. A.C. Razia v. Govt. of Kerala, (2004) 2 SCC 621
4. Abdul Nasar Adam Ismail v. State of Maharashtra, (2013) 4 SCC 435
5. Adishwar Jain v. Union of India, (2006) 11 SCC 339
6. Alpesh Navinchandra Shah v. State of Maharashtra, (2007) 2 SCC 777
7. Baby Devassy Chully v. Union of India, (2013) 4 SCC 531
8. Bhupendra v. State of Maharashtra, (2008) 17 SCC 165
9. Chandra Kumar Jain v. Union of India, (2015) 11 SCC 427
10. Chandrakant Baddi v. ADM and Police Commr., (2008) 17 SCC 290
11. Cherukuri Mani v. State of A.P., (2015) 13 SCC 722
12. Choith Nanikram Harchandani v. State of Maharashtra, (2015) 17 SCC 688
13. Collector v. S. Sultan, (2008) 15 SCC 191
14. Commr. of Police v. C. Anita, (2004) 7 SCC 467
15. D. Anuradha v. Jt. Secy., (2006) 5 SCC 142
16. D.M. Nagaraja v. Govt. of Karnataka, (2011) 10 SCC 215
17. Deepak Bajaj v. State of Maharashtra, (2008) 16 SCC 14
18. Deepak Verma v. Union of India, WP Crl. 203/15
19. District Collector v. Sk. Hasmath Beebi, (2001) 5 SCC 401
20. G. Reddeiah v. Govt. of A. P., (2012) 2 SCC 389
21. Gautam Jain v. Union of India, (2017) 3 SCC 133
22. Gimik Piotr v. State of T.N., (2010) 1 SCC 609
23. Harshala Santosh Patil v. State of Maharashtra, (2006) 12 SCC 211
24. Huidrom Konungjao Singh v. State of Manipur, (2012) 7 SCC 181
25. Ibrahim Nazeer v. State of T.N., (2006) 6 SCC 64
26. K.K. Saravana Babu v. State of T.N., (2008) 9 SCC 89
27. K.S. Nagamuthu v. State of T.N., (2006) 4 SCC 792
28. Kalyani v. State of T.N., Crl. A. 692/2006
29. Khaja Bilal Ahmed v. State of Telangana 2019 SCC OnLine SC 1657
30. Mukesh Tikaji Bora v. Union of India, (2007) 9 SCC 28
31. Pebam Ningol Mikoi Devi v. State of Manipur, (2010) 9 SCC 618
32. Pooja Batra v. Union of India, (2009) 5 SCC 296
33. R. Kalavathi v. State of T.N., (2006) 6 SCC 14
34. R. Keshava v. M.B. Prakash, (2001) 2 SCC 145
35. Rekha v. State of T.N., (2011) 5 SCC 244
36. Rupesh Kantilal Savla v. State of Gujarat, (2000) 9 SCC 201
37. Senthamilselvi v. State of T.N., (2006) 5 SCC 676
38. Sheetal Manoj Gore v. State of Maharashtra, (2006) 7 SCC 560
39. Sri Anand Hanumathsa Katare v. ADM, (2006) 10 SCC 725
40. Srikant v. District Magistrate, Bijapur, (2007) 1 SCC 486
41. State of Maharashtra v. Bhaurao Punjabrao Gawande, (2008) 3 SCC 613
42. State of T.N. v. Abdullah Kadher Batcha, (2009) 1 SCC 333
43. State of T.N. v. Balasubramaniam, (2001) 3 SCC 123
44. State of T.N. v. E. Thalaimalai, (2000) 9 SCC 751
45. State of T.N. v. Kethiyan Perumal, (2004) 8 SCC 780
46. State of T.N. v. Nabila, (2015) 12 SCC 127
47. State of T.N. v. R. Sasikumar, (2008) 13 SCC 751
48. State of U.P. v. Sanjai Pratap Gupta, (2004) 8 SCC 591

49. Subramanian v. State of T.N., (2012) 4 SCC 699
50. Sunila Jain v. Union of India, (2006) 3 SCC 321
51. T.P. Moideen Koya v. Govt. of Kerala, (2004) 8 SCC 106
52. T.V. Sravanan v. State, (2006) 2 SCC 664
53. Thahira Haris v. Govt. of Karnataka, (2009) 11 SCC 438
54. Ummu Sabeena v. State of Kerala, (2011) 10 SCC 781
55. Union of India v. Chaya Ghoshal, (2005) 10 SCC 97
56. Union of India v. Laishram Lincola Singh, (2008) 5 SCC 490
57. Union of India v. Muneesh Suneja, (2001) 3 SCC 92
58. Union of India v. Paul Manickam, (2003) 8 SCC 342
59. Union of India v. Ranu Bhandari, (2008) 17 SCC 348
60. Union of India v. Saleena, (2016) 3 SCC 437
61. Union of India v. Sneha Khemka, (2004) 2 SCC 570
62. Union of India v. Vidya Bagaria, (2004) 5 SCC 577
63. Union of India v. Yumnam Anand M., (2007) 10 SCC 190
64. Usha Agarwal v. Union of India, (2007) 1 SCC 295

Annexure-2: Total time taken from date of detention order or detention (whichever is earlier) till date of final disposal by the Supreme Court

S. No.	Case Name and Citation	No. of days
1	Khaja Bilal Ahmed v. State of Telangana 2019 SCC OnLine SC 1657	419
2	Gautam Jain v. Union of India, (2017) 3 SCC 133	1174
3	Deepak Verma v. Union of India, WP Crl. 203/15	618
4	Union of India v. Saleena, (2016) 3 SCC 437	1068
5	Choith Nanikram Harchandani v. State of Maharashtra, (2015) 17 SCC 688	214
6	State of T.N. v. Nabila, (2015) 12 SCC 127	815
7	Chandra Kumar Jain v. Union of India, (2015) 11 SCC 427	4261
8	Cherukuri Mani v. State of A.P., (2015) 13 SCC 722	215
9	Abdul Nasar Adam Ismail v. State of Maharashtra, (2013) 4 SCC 435	351
10	Baby Devassy Chully v. Union of India, (2013) 4 SCC 531	2719
11	Huidrom Konungjao Singh v. State of Manipur, (2012) 7 SCC 181	322
12	Subramanian v. State of T.N., (2012) 4 SCC 699	215
13	Ummu Sabeena v. State of Kerala, (2011) 10 SCC 781	252
14	D.M. Nagaraja v. Govt. of Karnataka, (2011) 10 SCC 215	362
15	G. Reddeiah v. Govt. of A. P., (2012) 2 SCC 389	301
16	Rekha v. State of T.N., (2011) 5 SCC 244	103
17	Pebam Ningol Mikoi Devi v. State of Manipur, (2010) 9 SCC 618	374
18	Gimik Piotr v. State of T.N., (2010) 1 SCC 609	374
19	Thahira Haris v. Govt. of Karnataka, (2009) 11 SCC 438	326
20	Pooja Batra v. Union of India, (2009) 5 SCC 296	478
21	State of T.N. v. Abdullah Kadher Batcha, (2009) 1 SCC 333	3381
22	Deepak Bajaj v. State of Maharashtra, (2008) 16 SCC 14	174
23	Union of India v. Ranu Bhandari, (2008) 17 SCC 348	1006
24	K.K. Saravana Babu v. State of T.N., (2008) 9 SCC 89	360

25	State of T.N. v. R. Sasikumar, (2008) 13 SCC 751	3288
26	Bhupendra v. State of Maharashtra, (2008) 17 SCC 165	387
27	Chandrakant Baddi v. ADM & Police Commr., (2008) 17 SCC 290	872
28	Collector v. S. Sultan, (2008) 15 SCC 191	742
29	Union of India v. Laishram Lincola Singh, (2008) 5 SCC 490	913
30	State of Maharashtra v. Bhaurao Punjabrao Gawande, (2008) 3 SCC 613	585
31	Union of India v. Yumnam Anand M., (2007) 10 SCC 190	586
32	Mukesh Tikaji Bora v. Union of India, (2007) 9 SCC 28	3149
33	Alpesh Navinchandra Shah v. State of Maharashtra, (2007) 2 SCC 777	775
34	Srikant v. District Magistrate, Bijapur, (2007) 1 SCC 486	545
35	Harshala Santosh Patil v. State of Maharashtra, (2006) 12 SCC 211	259
36	Usha Agarwal v. Union of India, (2007) 1 SCC 295	356
37	Sri Anand Hanumathsa Katare v. ADM, (2006) 10 SCC 725	377
38	Adishwar Jain v. Union of India, (2006) 11 SCC 339	562
39	A. Geetha v. State of T.N., (2006) 7 SCC 603	348
40	Sheetal Manoj Gore v. State of Maharashtra, (2006) 7 SCC 560	206
41	Ibrahim Nazeer v. State of T.N., (2006) 6 SCC 64	293
42	R. Kalavathi v. State of T.N., (2006) 6 SCC 14	336
43	Senthamilselvi v. State of T.N., (2006) 5 SCC 676	190
44	Kalyani v. State of T.N., Crl. A. 692/2006	190
45	D. Anuradha v. Jt. Secy., (2006) 5 SCC 142	3729
46	Sunila Jain v. Union of India, (2006) 3 SCC 321	988
47	T.V. Sravanan v. State, (2006) 2 SCC 664	428
48	A. Maimoona v. State of T.N., (2006) 1 SCC 515	184
49	K.S. Nagamuthu v. State of T.N., (2006) 4 SCC 792	677
50	Union of India v. Chaya Ghoshal, (2005) 10 SCC 97	727
51	State of T.N. v. Kethiyan Perumal, (2004) 8 SCC 780	6040
52	T.P. Moideen Koya v. Govt. of Kerala, (2004) 8 SCC 106	983

53	State of U.P. v. Sanjai Pratap Gupta, (2004) 8 SCC 591	637
54	Commr. of Police v. C. Anita, (2004) 7 SCC 467	405
55	Union of India v. Vidya Bagaria, (2004) 5 SCC 577	3060
56	Union of India v. Sneha Khemka, (2004) 2 SCC 570	3076
57	A.C. Razia v. Govt. of Kerala, (2004) 2 SCC 621	567
58	Union of India v. Paul Manickam, (2003) 8 SCC 342	1265
59	District Collector v. Sk. Hasmath Beebi, (2001) 5 SCC 401	443
60	State of T.N. v. Balasubramaniam, (2001) 3 SCC 123	685
61	Union of India v. Muneesh Suneja, (2001) 3 SCC 92	966
62	R. Keshava v. M.B. Prakash, (2001) 2 SCC 145	278
63	Rupesh Kantilal Savla v. State of Gujarat, (2000) 9 SCC 201	63

Annexure-3: Time spent at the Supreme Court level till date of final disposal

S. No.	Case Name and Citation	No. of days
1	Khaja Bilal Ahmed v. State of Telangana 2019 SCC OnLine SC 1657	183
2	Gautam Jain v. Union of India, (2017) 3 SCC 133	989
3	Deepak Verma v. Union of India, WP Crl. 203/15	392
4	Union of India v. Saleena, (2016) 3 SCC 437	595
5	Choith Nanikram Harchandani v. State of Maharashtra, (2015) 17 SCC 688	114
6	State of T.N. v. Nabila, (2015) 12 SCC 127	582
7	Chandra Kumar Jain v. Union of India, (2015) 11 SCC 427	3732
8	Cherukuri Mani v. State of A.P., (2015) 13 SCC 722	77
9	Abdul Nasar Adam Ismail v. State of Maharashtra, (2013) 4 SCC 435	50
10	Baby Devassy Chully v. Union of India, (2013) 4 SCC 531	2375
11	Huidrom Konungjao Singh v. State of Manipur, (2012) 7 SCC 181	65
12	Subramanian v. State of T.N., (2012) 4 SCC 699	68
13	Ummu Sabeena v. State of Kerala, (2011) 10 SCC 781	34
14	D.M. Nagaraja v. Govt. of Karnataka, (2011) 10 SCC 215	137
15	G. Reddeiah v. Govt. of A. P., (2012) 2 SCC 389	125
16	Rekha v. State of T.N., (2011) 5 SCC 244	76
17	Pebam Ningol Mikoi Devi v. State of Manipur, (2010) 9 SCC 618	192
18	Gimik Piotr v. State of T.N., (2010) 1 SCC 609	87
19	Thahira Haris v. Govt. of Karnataka, (2009) 11 SCC 438	125
20	Pooja Batra v. Union of India, (2009) 5 SCC 296	183
21	State of T.N. v. Abdullah Kadher Batcha, (2009) 1 SCC 333	3038
22	Deepak Bajaj v. State of Maharashtra, (2008) 16 SCC 14	112
23	Union of India v. Ranu Bhandari, (2008) 17 SCC 348	699
24	K.K. Saravana Babu v. State of T.N., (2008) 9 SCC 89	88
25	State of T.N. v. R. Sasikumar, (2008) 13 SCC 751	2900

26	Bhupendra v. State of Maharashtra, (2008) 17 SCC 165	193
27	Chandrakant Baddi v. ADM & Police Commr., (2008) 17 SCC 290	377
28	Collector v. S. Sultan, (2008) 15 SCC 191	453
29	Union of India v. Laishram Lincola Singh, (2008) 5 SCC 490	572
30	State of Maharashtra v. Bhaurao Punjabrao Gawande, (2008) 3 SCC 613	436
31	Union of India v. Yumnam Anand M., (2007) 10 SCC 190	209
32	Mukesh Tikaji Bora v. Union of India, (2007) 9 SCC 28	252
33	Alpesh Navinchandra Shah v. State of Maharashtra, (2007) 2 SCC 777	320
34	Srikant v. District Magistrate, Bijapur, (2007) 1 SCC 486	295
35	Harshala Santosh Patil v. State of Maharashtra, (2006) 12 SCC 211	161
36	Usha Agarwal v. Union of India, (2007) 1 SCC 295	149
37	Sri Anand Hanumathsa Katare v. ADM, (2006) 10 SCC 725	157
38	Adishwar Jain v. Union of India, (2006) 11 SCC 339	197
39	A. Geetha v. State of T.N., (2006) 7 SCC 603	301
40	Sheetal Manoj Gore v. State of Maharashtra, (2006) 7 SCC 560	188
41	Ibrahim Nazeer v. State of T.N., (2006) 6 SCC 64	131
42	R. Kalavathi v. State of T.N., (2006) 6 SCC 14	90
43	Senthamilselvi v. State of T.N., (2006) 5 SCC 676	60
44	Kalyani v. State of T.N., Crl. A. 692/2006	58
45	Sunila Jain v. Union of India, (2006) 3 SCC 321	688
46	T.V. Sravanan v. State, (2006) 2 SCC 664	267
47	A. Maimoona v. State of T.N., (2006) 1 SCC 515	102
48	K.S. Nagamuthu v. State of T.N., (2006) 4 SCC 792	448
49	Union of India v. Chaya Ghoshal, (2005) 10 SCC 97	263
50	State of T.N. v. Kethiyan Perumal, (2004) 8 SCC 780	2100
51	T.P. Moideen Koya v. Govt. of Kerala, (2004) 8 SCC 106	269
52	State of U.P. v. Sanjai Pratap Gupta, (2004) 8 SCC 591	403
53	Commr. of Police v. C. Anita, (2004) 7 SCC 467	250

54	Union of India v. Vidya Bagaria, (2004) 5 SCC 577	1982
55	Union of India v. Sneha Khemka, (2004) 2 SCC 570	2664
56	A.C. Razia v. Govt. of Kerala, (2004) 2 SCC 621	374
57	Union of India v. Paul Manickam, (2003) 8 SCC 342	796
58	District Collector v. Sk. Hasmath Beebi, (2001) 5 SCC 401	175
59	State of T.N. v. Balasubramaniam, (2001) 3 SCC 123	195
60	Union of India v. Muneesh Suneja, (2001) 3 SCC 92	439
61	R. Keshava v. M.B. Prakash, (2001) 2 SCC 145	103
62	Rupesh Kantilal Savla v. State of Gujarat, (2000) 9 SCC 201	47
63	State of T.N. v. E. Thalaimalai, (2000) 9 SCC 751	106

Annexure-4: Time spent in detention till date of final disposal by the Supreme Court

S. No.	Case Name and Citation	Total Detention	Detention while in SC
1	Khaja Bilal Ahmed v. State of Telangana 2019 SCC OnLine SC 1657	125	0
2	Gautam Jain v. Union of India, (2017) 3 SCC 133	366	180
3	Deepak Verma v. Union of India, WP Crl. 203/15	366	139
4	Union of India v. Saleena, (2016) 3 SCC 437	241	0
5	Choith Nanikram Harchandani v. State of Maharashtra, (2015) 17 SCC 688	214	114
6	State of T.N. v. Nabila, (2015) 12 SCC 127	223	0
7	Chandra Kumar Jain v. Union of India, (2015) 11 SCC 427	366	0
8	Cherukuri Mani v. State of A.P., (2015) 13 SCC 722	215	77
9	Abdul Nasar Adam Ismail v. State of Maharashtra, (2013) 4 SCC 435	351	50
10	Baby Devassy Chully v. Union of India, (2013) 4 SCC 531	364	20
11	Huidrom Konungjao Singh v. State of Manipur, (2012) 7 SCC 181	322	65
12	Subramanian v. State of T.N., (2012) 4 SCC 699	215	68
13	Ummu Sabeena v. State of Kerala, (2011) 10 SCC 781	252	34
14	D.M. Nagaraja v. Govt. of Karnataka, (2011) 10 SCC 215	362	137
15	G. Reddeiah v. Govt. of A. P., (2012) 2 SCC 389	301	125
16	Rekha v. State of T.N., (2011) 5 SCC 244	103	76
17	Pebam Ningol Mikoi Devi v. State of Manipur, (2010) 9 SCC 618	361	179
18	Gimik Piotr v. State of T.N., (2010) 1 SCC 609	358	71
19	Thahira Haris v. Govt. of Karnataka, (2009) 11 SCC 438	326	125
20	Pooja Batra v. Union of India, (2009) 5 SCC 296	366	70
21	State of T.N. v. Abdullah Kadher Batcha, (2009) 1 SCC 333	232	0
22	Union of India v. Ranu Bhandari, (2008) 17 SCC 348	250	0

23	K.K. Saravana Babu v. State of T.N., (2008) 9 SCC 89	360	88
24	State of T.N. v. R. Sasikumar, (2008) 13 SCC 751	259	0
25	Bhupendra v. State of Maharashtra, (2008) 17 SCC 165	366	0
26	Chandrakant Baddi v. ADM & Police Commr., (2008) 17 SCC 290	266	0
27	Collector v. S. Sultan, (2008) 15 SCC 191	177	0
28	Union of India v. Laishram Lincola Singh, (2008) 5 SCC 490	194	0
29	Union of India v. Yumnam Anand M., (2007) 10 SCC 190	214	0
30	Mukesh Tikaji Bora v. Union of India, (2007) 9 SCC 28	366	0
31	Alpesh Navinchandra Shah v. State of Maharashtra, (2007) 2 SCC 777	366	0
32	Srikant v. District Magistrate, Bijapur, (2007) 1 SCC 486	366	115
33	Harshala Santosh Patil v. State of Maharashtra, (2006) 12 SCC 211	259	161
34	Usha Agarwal v. Union of India, (2007) 1 SCC 295	356	149
35	Sri Anand Hanumathsa Katare v. ADM, (2006) 10 SCC 725	377	145
36	Adishwar Jain v. Union of India, (2006) 11 SCC 339	366	42
37	A. Geetha v. State of T.N., (2006) 7 SCC 603	348	301
38	Sheetal Manoj Gore v. State of Maharashtra, (2006) 7 SCC 560	206	188
39	Ibrahim Nazeer v. State of T.N., (2006) 6 SCC 64	293	131
40	R. Kalavathi v. State of T.N., (2006) 6 SCC 14	336	90
41	Senthamilselvi v. State of T.N., (2006) 5 SCC 676	190	60
42	Kalyani v. State of T.N., Crl. A. 692/2006	190	58
43	D. Anuradha v. Jt. Secy., (2006) 5 SCC 142	366	?
44	Sunila Jain v. Union of India, (2006) 3 SCC 321	988	65
45	T.V. Sravanan v. State, (2006) 2 SCC 664	363	202
46	A. Maimoona v. State of T.N., (2006) 1 SCC 515	184	102
47	K.S. Nagamuthu v. State of T.N., (2006) 4 SCC 792	677	136
48	Union of India v. Chaya Ghoshal, (2005) 10 SCC 97	248	0

49	State of T.N. v. Kethiyan Perumal, (2004) 8 SCC 780	3846	0
50	T.P. Moideen Koya v. Govt. of Kerala, (2004) 8 SCC 106	983	0
51	State of U.P. v. Sanjai Pratap Gupta, (2004) 8 SCC 591	144	0
52	Commr. of Police v. C. Anita, (2004) 7 SCC 467	58	0
53	Union of India v. Sneha Khemka, (2004) 2 SCC 570	119	0
54	A.C. Razia v. Govt. of Kerala, (2004) 2 SCC 621	567	172
55	Union of India v. Paul Manickam, (2003) 8 SCC 342	469	0
56	District Collector v. Sk. Hasmath Beebi, (2001) 5 SCC 401	366	98
57	State of T.N. v. Balasubramaniam, (2001) 3 SCC 123	338	0
58	R. Keshava v. M.B. Prakash, (2001) 2 SCC 145	278	103
59	Rupesh Kantilal Savla v. State of Gujarat, (2000) 9 SCC 201	63	47

Annexure-5: Cases in which Supreme Court was the relief-granting court

S. No.	Case Name	Time Spent at SC level	Total Detention	Detention while at SC
1	Khaja Bilal Ahmed v. State of Telangana 2019 SCC OnLine SC 1657	183	125	0
2	Cherukuri Mani v. State of A.P., (2015) 13 SCC 722	77	215	77
3	Abdul Nasar Adam Ismail v. State of Maharashtra, (2013) 4 SCC 435	50	351	50
4	Huidrom Konungjao Singh v. State of Manipur, (2012) 7 SCC 181	65	322	65
5	Ummu Sabeena v. State of Kerala, (2011) 10 SCC 781	34	252	34
6	Rekha v. State of T.N., (2011) 5 SCC 244	76	103	76
7	Pebam Ningol Mikoi Devi v. State of Manipur, (2010) 9 SCC 618	192	361	179
8	Gimik Piotr v. State of T.N., (2010) 1 SCC 609	87	358	71
9	Thahira Haris v. Govt. of Karnataka, (2009) 11 SCC 438	125	326	125
10	Pooja Batra v. Union of India, (2009) 5 SCC 296	183	366	70
11	Deepak Bajaj v. State of Maharashtra, (2008) 16 SCC 14	112	0 (Pre-Execution)	0
12	K.K. Saravana Babu v. State of T.N., (2008) 9 SCC 89	88	360	88
13	Chandrakant Baddi v. ADM & Police Commr., (2008) 17 SCC 290	377	266	0
14	Alpesh Navinchandra Shah v. State of Maharashtra, (2007) 2 SCC 777	320	366	0
15	Harshala Santosh Patil v. State of Maharashtra, (2006) 12 SCC 211	161	259	161
16	Adishwar Jain v. Union of India, (2006) 11 SCC 339	197	407	42
17	R. Kalavathi v. State of T.N., (2006) 6 SCC 14	90	336	90

18	T.V. Sravanan v. State, (2006) 2 SCC 664	267	363	202
19	K.S. Nagamuthu v. State of T.N., (2006) 4 SCC 792	448	366	136
20	Rupesh Kantilal Savla v. State of Gujarat, (2000) 9 SCC 201	47	63	47