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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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PREVENTIVE DETENTION AND THE WRIT OF HABEAS CORPUS: BALANCING INDIVIDUAL LIBERTY AND STATE SECURITY UNDER THE INDIAN CONSTITUTION

AUTHORED BY - SUBASHREE S & BALASARANYA K

BBA.; LL.B (Hons) 2nd YEAR

Sastra School of Law

ABSTRACT:

The law of writs, as mandated under the Indian Constitution, serves as a cornerstone in protecting and enforcing the fundamental rights of citizens. Empowered through Articles 32¹ and 226², the Supreme Court and High Courts act as the ultimate guardians of personal liberty, ensuring effective remedies against violations of legal, constitutional, and human rights. Among the five writs, the writ of *Habeas Corpus* holds a pre-eminent position as the most potent instrument for securing personal liberty and preventing unlawful detention. This research article critically examines the scope, procedure, and judicial interpretation of *Habeas Corpus* in India, tracing its evolution and assessing the role of the judiciary in expanding its ambit. Particular attention is given to its application in cases of arbitrary detention, preventive detention, custodial violence, and abuse of executive power. Landmark judgments, including *ADM Jabalpur v. Shivkant Shukla* (1976)³ and *Maneka Gandhi v. Union of India* (1978)⁴, illustrate the judiciary's journey from restraint to activism, reaffirming the writ as a living instrument of justice. The study further highlights the delicate balance maintained between individual liberty and state security, underscoring the enduring relevance of *Habeas Corpus* as a vital pillar of constitutional governance and the rule of law in India.

KEYWORDS

Habeas Corpus, Preventive Detention, Article 32, Article 226

¹ <https://indiankanoon.org/doc/981147/>

² <https://indiankanoon.org/doc/1712542/>

³ AIR 1976 SC 1207

⁴ AIR 1978 SC 597

INTRODUCTION

The writ of *Habeas Corpus*, meaning “to have the body,”⁵ is one of the most powerful remedies for protecting personal liberty and preventing unlawful detention. In India, the Supreme Court and High Courts are empowered under Articles 32 and 226 of the Constitution to issue this writ, ensuring that no individual is deprived of freedom except according to the procedure established by law.

While *Habeas Corpus* traditionally addresses arbitrary detention and custodial excesses, its role becomes especially critical in cases of **preventive detention**⁶, where a person may be detained not for a committed offence but to prevent potential threats to public order or national security. Preventive detention laws, though constitutionally permitted, challenge the balance between state security and individual liberty, making judicial oversight essential.

Over time, the Indian judiciary has played a significant role in shaping the scope and application of *Habeas Corpus* in preventive detention cases. The controversial *ADM Jabalpur* decision during the Emergency demonstrated judicial restraint, effectively limiting the writ’s protective function. However, subsequent rulings, such as *Maneka Gandhi v. Union of India* and *A.K. Roy v. Union of India*, reaffirmed the judiciary’s commitment to fundamental rights, emphasizing fairness, reasonableness, and due process in preventive detention.

This research article explores the judicial use of *Habeas Corpus* in preventive detention cases, examining constitutional provisions, statutory frameworks, and landmark judgments. The study evaluates how the writ functions as a check on executive power, ensures protection of individual liberty, and maintains the delicate balance between personal freedom and public security in India.

HISTORICAL BACKGROUND OF HABEAS CORPUS

The writ of *Habeas Corpus*—Latin for “you shall have the body”—is a judicial order requiring a detainee to be brought before a court to examine the legality of their detention. Its primary purpose is to protect individuals from unlawful arrest, imprisonment, or detention under

⁵ <https://www.merriam-webster.com/dictionary/habeas%20corpus>

⁶ <https://indiankanoon.org/doc/581566/>

relevant laws or constitutional provisions. While it originated in the Anglo-American legal system, its principles have been widely recognized globally, including in India.

The origins of *Habeas Corpus* are difficult to trace precisely. Before the Magna Carta of 1215⁷, various writs performed functions similar to *Habeas Corpus*. During the Middle Ages, such writs allowed cases from inferior tribunals to be brought before the king's courts. The modern use of the writ as a device for protecting personal liberty against official authority began under Henry VII (1485–1509), particularly to safeguard persons imprisoned by the Privy Council. By the 17th century, under Charles I, *Habeas Corpus* was fully established as the appropriate process to check illegal imprisonment by inferior courts or public officials. The Habeas Corpus Act of 1679 further strengthened its effectiveness by authorizing judges to issue writs even when courts were in recess and imposing strict penalties for non-compliance. Its scope was expanded in the 19th century to cover detention under private authority, and later legislative reforms further limited circumstances in which the writ could be denied.

The writ gained prominence in British colonies, including North America, as a fundamental protection of individual liberty. The U.S. Constitution enshrines the privilege, allowing suspension only during rebellion or invasion, though President Abraham Lincoln controversially suspended it during the Civil War—a move challenged in *Ex parte Merryman*⁸ by Chief Justice Roger Taney. In the modern United States, *Habeas Corpus* has been used by prisoners to challenge convictions, by detainees in police custody to demand release or fair bail, and in civil matters such as custody disputes or mental health confinement. Landmark cases such as *Rasul v. Bush* (2004)⁹ and *Boumediene v. Bush*¹⁰ (2008) extended the writ's application to foreign detainees held under U.S. military authority.

In India, the principle of *Habeas Corpus* was inherited from the British legal system and has evolved as a cornerstone of constitutional governance. The Constitution of India empowers the Supreme Court under Article 32 and High Courts under Article 226 to issue writs, including *Habeas Corpus*, to protect personal liberty. Historically, the writ has been instrumental in safeguarding individuals from arbitrary arrest, preventive detention, and custodial excesses.

⁷ <https://www.britannica.com/topic/Magna-Carta>

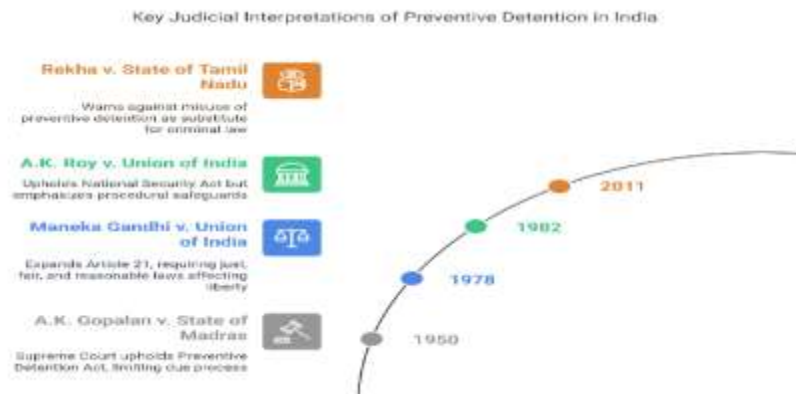
⁸ <https://www.casebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-brest/are-we-a-nation-the-jacksonian-era-to-the-civil-war-1835-1865/ex-parte-merryman/>

⁹ 542 U.S. 466 (2004)

¹⁰ 553 U.S. 723 (2008)

Landmark Indian cases, such as *ADM Jabalpur v. Shivkant Shukla* (1976) and *Maneka Gandhi v. Union of India* (1978), illustrate the judiciary's role in balancing individual liberty with state authority, highlighting the evolution of *Habeas Corpus* as a living instrument of justice.

Thus, from its medieval English origins to its constitutional recognition in India, *Habeas Corpus* has continually evolved as a vital safeguard of personal liberty, ensuring that no individual is unlawfully deprived of freedom by state or private authorities.



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Recent Trends in Preventive Detention and Habeas Corpus in India

1. Judicial Scrutiny and Procedural Safeguards

In recent years, Indian courts have increasingly emphasized the necessity of stringent procedural safeguards in preventive detention cases. Preventive detention is considered an extraordinary power of the state and must be exercised sparingly. Courts have consistently held that detention orders must comply with constitutional safeguards, including the right to be informed of the grounds of detention and the opportunity to make a representation. Failure to provide relevant documents or to conduct a fair hearing has often led courts to quash detention orders. This judicial oversight underscores the role of the judiciary in protecting individual liberty against arbitrary state action.¹²

2. Expansion of Habeas Corpus Jurisprudence

The writ of *Habeas Corpus* continues to be a primary remedy for challenging preventive detention orders. Courts actively examine the legality of such detentions,

¹¹https://www.researchgate.net/publication/392519981_PREVENTIVE_DETENTION_IN_INDIA_HISTORICAL_BACKGROUND_AND_CONTEMPORARY_ISSUES

¹²<https://cjp.org.in/supreme-court-observes-preventive-detention-laws-to-have-a-colonial-legacy-with-a-high-potential-for-abuse-and-misuse/?utm>

ensuring that no individual is deprived of liberty without due process. Recent cases have demonstrated the judiciary's willingness to intervene when detention orders are procedurally flawed or substantively unjustified. For example, the Bombay High Court annulled a preventive detention order under the Maharashtra Prevention of Dangerous Activities (MPDA) Act, directing the state to compensate the detainee for unlawful detention.

3. Judicial Activism in High-Profile Cases

There has been a noticeable trend of judicial activism in high-profile preventive detention cases. In Jammu & Kashmir, the High Court quashed the preventive detention of Mohammad Rafi, a close aide of an MLA, under the Public Safety Act (PSA), reinforcing the judiciary's role in protecting individual freedoms from arbitrary executive action¹³. Such cases illustrate that courts are willing to scrutinize preventive detention even in politically sensitive contexts, highlighting a balance between personal liberty and state security.

4. Concerns Over Misuse of Preventive Detention Laws

Despite constitutional safeguards, concerns persist regarding the misuse of preventive detention laws such as the National Security Act (NSA) and COFEPOSA. Critics argue that these laws are sometimes invoked inappropriately, targeting individuals in peacetime or disproportionately affecting marginalized communities. Such trends underline the ongoing tension between state authority and individual liberty, emphasizing the need for vigilant judicial oversight.

5. Delays in Adjudication of Habeas Corpus Petitions

Although courts have actively used *Habeas Corpus* to check executive excess, delays in adjudicating petitions remain a concern. Prolonged delays can reduce the effectiveness of the remedy, particularly when detainees have already spent considerable time in preventive detention. Ensuring timely hearings is therefore crucial to maintain the writ's role as an effective safeguard of liberty.

SOLUTION AND RECOMMENDATIONS:

To address the challenges associated with preventive detention and the use of *Habeas Corpus*, a combination of judicial, legislative, and administrative reforms is necessary. These measures can help strengthen safeguards for individual liberty while ensuring national security.

¹³ <https://www.tribuneindia.com/news/j-k/hc-quashes-detention-order-of-mlas-close-aide>

1. *Stricter Judicial Oversight*

Courts should continue to adopt a proactive approach in reviewing preventive detention orders. Judicial vigilance must ensure that detention orders comply with constitutional provisions, including the requirement to provide grounds of detention and an opportunity to make representations. Expedited hearings for habeas corpus petitions can prevent prolonged deprivation of liberty and reinforce public confidence in the judiciary.

2. *Legislative Clarity and Restriction of Executive Discretion*

Preventive detention laws should be reviewed and amended to reduce ambiguity and restrict excessive executive discretion. Clear guidelines on the circumstances under which preventive detention can be invoked, maximum duration, and procedural safeguards will reduce arbitrary use and ensure proportionality in the exercise of state power.

3. *Enhanced Access to Legal Remedies*

Detainees should be provided access to legal counsel promptly, including in remote or conflict-prone areas. Legal aid services and awareness campaigns can empower individuals to effectively invoke habeas corpus and other constitutional remedies, strengthening the protective framework for personal liberty.

4. *Monitoring and Accountability Mechanisms*

Independent oversight bodies should be established to periodically review preventive detention cases. Regular audits and accountability mechanisms will ensure that detention powers are not misused and that state authorities adhere to constitutional standards.

5. *Balance Between Security and Liberty*

A careful balance between national security and individual freedom should be maintained. Courts can adopt proportionality tests to assess whether preventive detention is necessary in a given case. Sensitive information should be protected, but detainees must still be afforded meaningful legal recourse to challenge detention.

6. *Use of Technology and Transparency Measures*

Digital systems can be employed to track detention cases, monitor compliance with statutory timelines, and ensure transparency in filing and adjudication of habeas corpus petitions. Timely reporting and public access to detention statistics can act as a deterrent against arbitrary detentions.

OBJECTIVE:

This study seeks to explore the role of preventive detention and the writ of *Habeas Corpus* in safeguarding individual liberty in India. At its core, the research aims to understand how the Constitution and various preventive detention laws, such as the National Security Act (NSA) and COFEPOSA, provide the legal framework for balancing public safety with personal freedom.

The study also focuses on the significance of *Habeas Corpus* as a vital tool to protect individuals from unlawful or arbitrary detention. Through a close examination of landmark judgments, including *ADM Jabalpur v. Shivkant Shukla*, *Maneka Gandhi v. Union of India*, and other recent cases, the research traces the evolution of judicial thinking on personal liberty, highlighting how courts have shaped and refined the scope of preventive detention over time. Another objective is to identify the practical challenges that arise in the implementation of preventive detention laws. This includes delays in adjudication, misuse of detention powers, and limited access to legal remedies for detainees, all of which can undermine the effectiveness of *Habeas Corpus*.

Finally, the research aims to propose practical recommendations to strengthen safeguards, improve judicial oversight, and maintain a fair balance between individual rights and the needs of the state. By analyzing contemporary trends, judicial practices, and statutory provisions, the study aspires to offer a clear understanding of how *Habeas Corpus* continues to serve as a cornerstone of justice and liberty in India.

RESEARCH QUESTIONS

Based on the objectives and the existing literature, this study seeks to address the following key questions:

1. What is the constitutional and legal framework governing preventive detention in India, and how does it relate to the writ of *Habeas Corpus*?

This question aims to explore the statutory provisions and constitutional safeguards designed to protect personal liberty, including Articles 22(3)–(7) of the Constitution and preventive detention laws such as the National Security Act (NSA) and COFEPOSA.

2. How has the judiciary interpreted and applied the writ of *Habeas Corpus* in preventive detention cases?

This question examines landmark cases, such as *ADM Jabalpur v. Shivkant Shukla* and *Maneka Gandhi v. Union of India*, as well as recent high-profile rulings, to understand how courts balance individual liberty with state security.

3. What are the key challenges in the implementation of preventive detention laws and the effective use of *Habeas Corpus* as a remedy?

This question seeks to identify practical, procedural, and systemic issues, including delays in adjudication, misuse of detention powers, and limited access to legal remedies.

4. How have recent trends in preventive detention impacted the use and effectiveness of *Habeas Corpus* petitions in India?

This question focuses on contemporary developments, including judicial activism, misuse of laws, and the evolving role of courts in safeguarding liberty.

5. What reforms or solutions can enhance the effectiveness of *Habeas Corpus* and prevent misuse of preventive detention powers?

This question aims to explore legislative, judicial, and administrative measures that can strengthen safeguards for individual liberty while maintaining public safety and national security.

LEGAL FRAMEWORK

The legal framework governing preventive detention in India is primarily rooted in the Constitution, supplemented by specific statutes enacted to maintain public order and national security. Preventive detention, by definition, allows the state to detain a person not for a committed offense, but to prevent potential harm to public order, national security, or the safety of the state. While such detention is an extraordinary measure, the Constitution provides safeguards to ensure that it is not exercised arbitrarily.

Constitutional Provisions

Article 22 of the Indian Constitution specifically deals with preventive detention. Articles 22(3)–(7) empower the state to detain individuals for preventive reasons but also mandate certain safeguards:

1. A person can be detained for up to three months without the approval of an Advisory Board consisting of judges of a High Court.

2. For detention exceeding three months, the approval of the Advisory Board is required.
3. Detention orders must be communicated to the detainee, stating the grounds of detention and providing an opportunity to make a representation.
4. The state is prohibited from detaining individuals beyond the maximum period specified without following due process.¹⁴

Preventive Detention Laws

Several statutes operationalize the preventive detention provisions:

1. ***National Security Act (NSA), 1980*** – The ***National Security Act (NSA), 1980*** empowers the Central and State Governments to detain individuals preventively if their actions threaten national security, public order, or the maintenance of essential supplies. It allows detention without trial for up to ***12 months***, subject to review by an ***Advisory Board*** of High Court judges. Though intended to protect the nation from threats, the Act has been widely ***criticized for misuse***, as it often curtails personal liberty and is seen as violating ***Articles 21 and 22*** of the Constitution¹⁵
2. ***Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974*** empowers the government to ***detain persons involved in smuggling or foreign exchange manipulation*** to prevent such activities in the future. It provides for ***preventive detention*** for up to ***one year*** to safeguard India's economic stability and foreign exchange reserves. The Act aims to curb economic offences affecting national interests but has faced ***criticism for enabling detention without trial*** and potential ***misuse of power***, raising concerns over individual liberty and constitutional rights..¹⁶
3. ***Maharashtra Prevention of Dangerous Activities (MPDA) Act*** – Provides for preventive detention of individuals deemed a threat to public order in the state.¹⁷
4. ***Public Safety Act (PSA), Jammu & Kashmir*** – A regional statute empowering preventive detention for maintaining law and order.¹⁸

¹⁴ <https://indiankanoon.org/doc/581566/>

¹⁵ https://www.mha.gov.in/sites/default/files/2022-08/ISdivII_NSAAct1980_20122018%5B1%5D.pdf

¹⁶ <https://www.indiacode.nic.in/bitstream/123456789/15382/1/the%20conservation%20of%20foreign%20exchange%20and.pdf>

¹⁷ https://www.thakur-foundation.org/upload/laws/1647954113_The%20Maharashtra%20Prevention%20Of%20Dangerous%20Activities%20Act.%201981.pdf

¹⁸ https://www.indiacode.nic.in/bitstream/123456789/16496/1/public_safety_act%2C_1978.pdf

Habeas Corpus under the Constitution

The writ of *Habeas Corpus* is enshrined in Articles 32 and 226 of the Constitution, empowering the Supreme Court and High Courts, respectively, to issue the writ as a remedy against unlawful detention. The writ ensures that any person deprived of personal liberty has the right to challenge the legality of their detention before the judiciary. Courts have emphasized that preventive detention, although permitted, must always be subjected to judicial scrutiny, and arbitrary or mala fide detention orders can be quashed.

Who Can File a Habeas Corpus Petition?

The writ of habeas corpus can be filed by:

The Detainee: The person who is unlawfully detained.

Family Members or Friends: On behalf of the detained person.

Organisations or Activists: Public-spirited individuals or NGOs acting on behalf of the detainee.

This makes the writ of habeas corpus a flexible legal remedy, allowing third parties to act in the best interest of the detainee. In cases where the detainee cannot approach the court due to physical restrictions, others can intervene.¹⁹

CASE LAWS

Judicial interpretation of preventive detention and the writ of *Habeas Corpus* has been shaped significantly by landmark cases in India. These cases illustrate the evolving balance between individual liberty and state security and provide critical guidance for courts in reviewing detention orders.

ADM Jabalpur v. Shivkant Shukla (1976)

This case arose during the Emergency (1975–1977) when the government suspended fundamental rights. The Supreme Court controversially held that during an Emergency, a citizen could not approach the court for enforcement of the right to life and personal liberty, effectively limiting the scope of *Habeas Corpus*. Although widely criticized, the judgment highlighted the tension between state authority and individual liberty during extraordinary circumstances.²⁰

¹⁹ <https://lawbhoomi.com/writ-of-habeas-corpus/>

²⁰ AIR 1976 SC 1207

Maneka Gandhi v. Union of India (1978)

This landmark judgment expanded the interpretation of Article 21 (Right to Life and Personal Liberty), emphasizing that any procedure depriving a person of liberty must be “just, fair, and reasonable.” The Supreme Court held that preventive detention orders are subject to judicial scrutiny and must adhere to the principles of natural justice. *Maneka Gandhi* set the foundation for protecting personal liberty even in cases of preventive detention.²¹

Kanu Sanyal v. District Magistrate, Darjeeling (1977)

In this case, the Calcutta High Court quashed a preventive detention order under the Maintenance of Internal Security Act (MISA) for failure to provide proper grounds and an opportunity to make a representation. This case reinforced the importance of procedural safeguards and demonstrated the role of *Habeas Corpus* as an effective remedy against arbitrary detention.²²

Sheela Barse v. State of Maharashtra (1983):

Journalist and human rights activist **Sheela Barse** filed a petition highlighting the **custodial violence and ill-treatment of women prisoners** in Maharashtra jails. The **Supreme Court** held that a **third party**, such as a social activist, could file a writ petition on behalf of prisoners or detainees who are unable to approach the court themselves. This landmark judgment **expanded the concept of locus standi**, paving the way for **Public Interest Litigation (PIL)** and ensuring greater **judicial protection for vulnerable and voiceless groups** in society.²³

Rudul Shah v. State of Bihar 1983

The petitioner, **Rudul Shah**, was unlawfully detained for **14 years even after his acquittal** by the court. The **Supreme Court of India** held that his prolonged imprisonment violated his **fundamental right to life and personal liberty under Article 21** of the Constitution. The Court ordered the **State of Bihar to pay compensation** to Rudul Shah, marking a historic moment where **monetary compensation was recognized as a remedy for violation of fundamental rights**. This case established the principle of **State liability for unlawful detention** and reinforced the importance of **personal liberty** in a democratic society.²⁴

²¹ AIR 1978 SC 597

²² AIR 1973 SC 2684

²³ JT 1986 136, 1986 SCALE (2)230

²⁴ 1983 AIR 1086, 1983 SCR (3) 508

Nilabati Behera v. State of Orissa (1993)

The petitioner, **Nilabati Behera**, sought justice for the **custodial death of her son**, who died while in police custody. The **Supreme Court of India** held that the **State is liable to pay compensation** for violations of the **right to life under Article 21** of the Constitution. The Court emphasized that **public officials cannot escape accountability** for custodial violence or deaths and that compensation is a **public law remedy** distinct from private law remedies like tort claims. This landmark judgment reinforced the principle of **State responsibility for human rights violations** and strengthened constitutional protection against **custodial brutality**.²⁵

Recent High-Profile Cases

- 1. Bombay High Court, 2025:** Quashed a preventive detention order under the Maharashtra Prevention of Dangerous Activities (MPDA) Act, directing compensation for unlawful detention.
- 2. Calcutta High Court, 2025:** Declared preventive detention unconstitutional when used to extend custody for past offenses after bail had been granted, emphasizing the protection of personal liberty.
- 3. Jammu & Kashmir High Court, 2025:** Quashed detention of Mohammad Rafi under the Public Safety Act (PSA), underscoring judicial oversight in politically sensitive contexts.

CONCLUSION

The writ of *Habeas Corpus* occupies a vital place in India's constitutional framework as a guardian of personal liberty and fundamental rights. While preventive detention laws are designed to maintain public order and national security, they inherently involve restricting individual freedom, making judicial oversight indispensable. Through constitutional provisions, statutory safeguards, and landmark judicial interpretations, India has established a legal mechanism to ensure that preventive detention is exercised reasonably, proportionately, and with accountability.

Over the years, judicial intervention has played a critical role in protecting citizens from arbitrary or mala fide detention. Landmark cases like *Maneka Gandhi v. Union of India* have

²⁵ 1993 AIR 1960

reinforced the principle that any deprivation of liberty must follow just, fair, and reasonable procedures, while recent high-profile cases demonstrate the continued relevance of *Habeas Corpus* in checking executive excesses.

Despite these safeguards, challenges persist, including delays in adjudication, misuse of preventive detention laws, and limited access to remedies for vulnerable populations. Addressing these challenges requires not only vigilant judicial oversight but also legislative clarity, administrative accountability, and public awareness of legal rights.

In essence, *Habeas Corpus* remains a cornerstone of constitutional governance in India, striking a delicate balance between individual liberty and state security. Its continued evolution reflects the judiciary's commitment to upholding the rule of law, ensuring that preventive detention serves its intended purpose without undermining the fundamental rights of citizens. The study underscores the need for ongoing reforms, proactive judicial engagement, and strengthened safeguards to preserve the writ's significance in protecting freedom and justice for all.

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