

Report on Preventive Detentions under the Tamil Nadu Prevention Of Dangerous Activities Of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum-Grabbers And Video Pirates Act, 1982

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I. Introduction & Methodology

“Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law.”²

Despite the Indian Supreme Court’s observation to this effect, there has been no serious challenge to the framework of preventive detention laws in the country. This is because the Constitution of India explicitly refers to preventive detention and provides for a framework for such laws to operate. The Constitution empowers the Parliament to legislate for matters relating to “preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India, persons subjected to such detention”³ and vests authority with the Centre and State legislature concurrently to legislate on “preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention”⁴. Article 22 of the Constitution relaxes crucial procedural safeguards, such as the right to be defended by a legal practitioner of one’s choice and that no person can be detained for more than 24 hours without being produced before a judicial magistrate, in cases of preventive detention. Article 22(4) replaces judicial review of detentions with limited scrutiny of an Advisory Board. The existence of Article 22, intended as a safeguard to limit the powers of the State, serves to legitimate the exercise of preventive detention itself. Because its legality cannot be questioned, there is implicit acceptance that preventive detention is necessary and legitimate.⁵

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² *Rekha v. State of Tamil Nadu*, (2011) 5 SCC 244.

³ Entry 9, List I, Seventh Schedule, Constitution of India 1950.

⁴ Entry 3 List III, Seventh Schedule, Constitution of India 1950.

⁵ Abhinav Sekhri, “Article 22- Calling Time on Preventive Detention”, 9 *Indian Journal of Constitutional Law* 173 (2020).

There are a multitude of preventive detention laws enacted by the Centre and States. The Central laws are: the National Security Act 1980, Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988, Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974, Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act 1980. Most States have enacted preventive detention laws for 'maintenance of public order'. One such is the Tamil Nadu Prevention Of Dangerous Activities Of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum-Grabbers And Video Pirates Act, 1982 ("TN Goondas Act") which is the subject matter of this research paper.

Tamil Nadu has the dubious privilege of having the highest number of preventive detentions in India despite relatively low levels of public order disturbances. Most detentions are under the TN Goondas Act; other preventive detention laws are invoked less frequently.

A note on methodology

The object of this research project is to understand the use of TN Goondas Act and preventive detention thereunder. Since little official data was available in the public domain, one of the main aims of this research project was to unearth and compile data to better understand the ground-level working of the law and then make a critique of the same from the perspective of civil liberties.

Statistical data in the report are obtained from analysis of the *Prisons in India* report published by the National Crime Records Bureau, *Crime Review* published by the Tamil Nadu State Crime Records Bureau both of which are available online. Further data on detentions under the TN Goondas Act, including district-wise detentions and category-wise detentions, which are not available in the public domain was obtained directly from the TN SCRB (included in the Annexure). Substantial information on processes followed by the State and the Advisory Board was received through the queries made under the Right to Information Act.

Judgments of the Madras High Court (both the Principal Bench and Madurai Bench) have been analysed to understand trends in detention under Goondas Act and the nature of judicial review/scrutiny over administrative detention. Interviews with advocates and activists were invaluable in understanding the reality of the law.

II. TN Goondas Act: An Overview

Enacted in 1982, the TN Goondas Act authorises the State government to preventively detain Bootleggers⁶, Drug Offenders⁷,

⁶ Section 2(b) defines "bootlegger" as "a person, who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Tamil Nadu Prohibition Act, 1937 (Tamil Nadu Act X of 1937) and the rules, notifications and orders made there under, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the above mentioned things by or through any other person, or who abets in any other manner the doing of any such thing".

⁷ Section 2(e) defines "drug-offender" as "a person, who manufactures, stocks, imports, exports, sells or distributes any drug or cultivates any plant or does any other thing in contravention of any of the provisions of the Drugs and Cosmetics Act, 1940 (Central Act XXIII of 1940) or the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985) and the rules, notification and orders made under either Act, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money in furtherance or support of

Goondas⁸,
Immoral Traffic Offenders⁹ and
Slum Grabbers¹⁰

for “preventing their dangerous activities prejudicial to the maintenance of public order”¹¹ for a period of up to one year¹². Since its enactment, the Act was amended to extend its application to Forest Offenders¹³ (1988), Video Pirates¹⁴ (2004), Sand Offenders¹⁵ (2006), Cyber Law Offenders¹⁶ (2014) and Sexual Offenders¹⁷ (2014).

Acting in a manner which affects or is likely to adversely affect the ‘maintenance of public order’ is a condition precedent for detaining a person under the Act. Prejudicial impact to maintenance of public order is deemed to have taken place where any of the above mentioned categories of persons act in a manner that “directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health or ecological system”.¹⁸ Localised law and order disturbances cannot be said to affect ‘public order’. It is sufficient that the detaining authority arrives at a ‘subjective satisfaction’ that preventive detention of a person is necessary for maintenance of public order.

Preventive detentions under this Act are not subject to conventional judicial review, but are reviewed by an Advisory Board.¹⁹ Members of the Advisory Board are sitting or retired

the doing of any of the above mentioned things by or through any other person, or who abets in any other manner the doing of any such things”.

⁸ Section 2(f) in its present form defines “goonda” as “a person who either by himself or as a member of or leader of a gang, commits, or attempts to commit or abets the commission of offences punishable under section 153 or section 153-A under chapter VIII or under Chapter XVI other than sections 354, 376, 376-A, 376-B, 376-C, 376-D, and 377 or Chapter XVII or Chapter XXII of the Indian Penal Code 1860 (Central Act XLV of 1860) or punishable under section 3 or section 4 or section 5 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 (Tamil Nadu Act 59 of 1992)”. At the time of its enactment, ‘goonda’ was defined as a person who ‘habitually’ committed acts mentioned hereinabove. The phrase ‘habitually’ was omitted in 2014 enabling first-time law and order offenders to also be detained preventively under this category.

⁹ Section 2(g) defines “immoral traffic offender” as “a person who commits or abets the commission of, any offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956)”.

¹⁰ Section 2(h) defines “slum-grabber” as “a person, who illegally takes possession of any land (whether belonging to Government, local authority or any other person) or enters into, or creates illegal tenancies or leave and licence agreements or any other agreement in respect of such lands; or who constructs unauthorised structures thereon for sale or hire, or gives such lands to any person on rental or leave and licence basis for construction or use and occupation of unauthorised structures or who knowingly gives financial aid to any person for taking illegal possession of such lands, or for construction of unauthorised structures thereon, or who collects or attempts to collect from any occupier of such lands, rent compensation or other charges by criminal intimidation or who evicts or attempts to evict any such occupier by force without resorting to the lawful procedure; or who abets in any manner the doing of any of the above mentioned things”.

¹¹ Preamble, TN Goondas Act (14 of 1982)

¹² Section 13, TN Goondas Act 1982

¹³ Section 2(ee) defines “forest-offender” as “a person, who commits or attempts to commit or abet the commission of offences, punishable under Chapter II or Chapter III or Chapter V or Chapter VI-B or Chapter VII of the Tamil Nadu Forest Act, 1882 (Tamil Nadu Act V of 1882) or under Chapter VI of the Wild Life (Protection) Act, 1972 (Central Act 53 of 1972)”.

¹⁴ Section 2(j) defines “video pirate” as “a person, who commits or attempts to commit or abets the commission of offences of infringement of copy right in relation to a cinematograph film or a record embodying any part of sound track associated with the film, punishable under the Copy Right Act, 1957 (Central Act XIV of 1957)”.

¹⁵ Section 2(gg) defines “sand-offender” as “a person who commits or attempts to commit or abets the commission of offences in respect of ordinary sand punishable under the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957) or under the Tamil Nadu Minor Mineral Concession Rules, 1959”.

¹⁶ Section 2(bb) defines “cyber law offender” as “a person, who commits or attempts to commit or abets the commission of any offence, punishable under Chapter XI of the Information Technology Act, 2000 (Central Act 21 of 2000)”.

¹⁷ Section 2(ggg) defines “sexual-offender” as “a person who commits or attempts to commit or abets the commission of any offence punishable under sections 354, 376, 376-A, 376-B, 376-C, 376-D or 377 of the Indian Penal Code (Central Act XLV of 1860) or the Tamil Nadu Prohibition of Harassment of Women Act, 1998 (Tamil Nadu Act of 44 of 1998) or the Protection of Children from Sexual Offences Act, 2012 (Central Act 32 of 2012)”.

¹⁸ Explanation to Section 2, TN Goondas Act 1982

¹⁹ Section 10, TN Goondas Act 1982

judges of any High Court or those qualified to be High Court judges.²⁰ If the Advisory Board finds that there are sufficient grounds for detention, such orders are confirmed by the State government. Where the grounds are found insufficient, the State government is bound to revoke the detention order and release the detenu.²¹

The detenu is allowed an opportunity to make representations to the State and the Advisory Board.²² However, the Act specifically provides that detenu is not entitled to be represented by a legal practitioner in the enquiry/proceedings before the Advisory Board.²³ The State government may release detained persons temporarily, with or without conditions.²⁴

III. Brief legislative history

The Act was first enacted as an Ordinance and later passed by the Legislative Assembly. The Bill was introduced by the All India Anna Dravidar Munnetra Kazhagam government led by Chief Minister M.G.Ramachandran in 1982. The original Bill was met with fierce opposition as witnessed by the debates at the Assembly. Opposition political parties including the Dravidar Munnetra Kazhagam and Communist Party of India (Marxist) raised concerns that this preventive detention law could be used by the ruling political party to stifle dissent and persecute opposition political parties.

Several legislators pointed out that existing provisions of ordinary criminal law (Indian Penal Code etc.) are sufficient to deal with public order and a special law to detain persons preventively is not warranted. Mr. Umanath (CPI(M)) noted that the National Security Act 1980 had been used by the Central government to curb the labour movement and raised apprehensions that the Goondas Act could similarly be used for political reasons. He also expressed his concern that this Act could concentrate more power in the hands of the police which would increase corruption and abuse of process. Further concerns were raised that this law could be 'anti-poor'; protecting the affluent landlords who indulged in land-grabbing and encroachments whilst acting against slum-dwellers.

Mr. A.Rahman Khan (DMK) opposed the Bill on the grounds that the power to declare any person as an offender was vested with the police, rather than the judiciary and that it does away with important protections available under general law. He referred to the history of police brutality and excesses such as 'encounter' killings which would caution against vesting the police with unbridled, arbitrary powers. The Bill deprived a person of judicial review, and he expressed scepticism about the fairness of the Advisory Board process since its members would be hand-picked and the Board would reflect the interests of the government and there is no right to legal representation. He opined that this Bill was enacted to circumvent the National Security Act which requires the assent of the Centre for use by the State government. He also stated that any form or mode of preventive detention should be opposed.

Other legislators pointed out that under this Act, the complainant is the judge and that wrongful detention would cause severe impact on individuals, particularly women who are detained for prostitution.

²⁰ Section 9, TN Goondas Act 1982

²¹ Section 12, TN Goondas Act 1982

²² Section 8(1), Section 11(1), TN Goondas Act 1982

²³ Section 11(5), TN Goondas Act 1982

²⁴ Section 15, TN Goondas Act 1982

Law Minister C.Ponniayan defended the Bill and the bar on legal representation before the Advisory Board by arguing that Article 22(3) of the Constitution prohibits advocates from representing persons in preventive detention. There was no pushback or objection to this interpretation of the Constitution provided by the Minister. The government defended the need for this preventive detention law citing that citizens are harassed and feel insecurity due to bootlegging, slum-grabbing and prostitution etc. and that this law is necessary to protect the common man. He argued that prosecution for these offences such as bootlegging takes around 3 years and preventive detention is more efficacious in dealing with the same.

The Act was amended in 1988 to include ‘forest offenders’ and authorise preventive detention of persons engaged in the same. When the amendment Bill was discussed in 1987, again fundamental objections to preventive detention – that it affects fundamental rights of persons and that it skews the separation of powers by removing judicial scrutiny and allowing police to decide on whether a person is an offender and whether they need to be detained – were raised. Possible misuse of the law was also cited as a reason for opposing the amendment. Legislators also demanded review of the implementation of the law to assess whether it is being abused.

Despite opposing the law in its initial years, opposition political parties embraced the TN Goondas Act when they came to power and used it liberally as it was found convenient for the ruling dispensation. The Act was amended in 2004 to include ‘video pirates’ in its ambit. The amendment was passed without any opposition in the Legislative Assembly. The government did not justify how video pirates affected maintenance of public order; speeches made by the legislators only referred to how the film industry in the State was facing economic losses due to video piracy. Given the nexus between cinema and politics in Tamil Nadu,²⁵ it was not surprising that all political parties supported this amendment.

Subsequent amendments to the Goondas Act: adding sand offenders²⁶, sexual offenders²⁷ and cyber law offenders²⁸ to the laundry list of categories under the Act, and amendment to the definition of ‘goonda’ that even first-time law and order offenders can be detained preventively²⁹, have been passed without any substantial opposition or even discussion. The lack of legislative debates indicates resignation, or even enthused acceptance of the preventive detention framework under the TN Goondas Act. The approach of the State, which went unchallenged, was that since the underlying offences such as sand smuggling, sexual assaults and cyber crimes, are serious in nature, preventive detention is warranted. There was no deliberate effort to justify how these categories of offences particularly affect public order.

IV. Ubiquity of Preventive Detention in Tamil Nadu: Some Statistics

Tamil Nadu is responsible for the most number of preventive detentions in any State of the country. Other States that use preventive detention laws in a significant manner include

²⁵ Robert L Hardgrave, “Politics and the Film in Tamilnadu: The Stars and the DMK”, Asian Survey Vol.13, No.3 (March 1973), available at

<https://repositories.lib.utexas.edu/bitstream/handle/2152/34387/politicsandthefilm.pdf?sequence=1>; Karthikeyan Damodaran, “In Tamil Nadu, can there be politics without cinema?”, <https://thewire.in/politics/tamil-nadu-politics-cinema>

²⁶ Act 16 of 2006

²⁷ Act 20 of 2014

²⁸ Act 19 of 2014

²⁹ Act 19 of 2014

Gujarat, Telangana and Jammu and Kashmir (as it were, before 2019). It is interesting to note that Tamil Nadu is peaceful, not prone to serious conflict and is considered to perform high on good governance and law and order indices relative to other States/regions in the country. Given this context, it would be relevant to ask if such high numbers of detentions are warranted.

A.Profile of Detenus in Tamil Nadu

Prisons in India, an annual report published by the National Crime Records Bureau provides substantial data, is a useful resource to understand preventive detentions in the country. Whilst there is no data readily available on the total number of preventive detentions in India, it provides a snapshot of number of persons lodged in jail as detenus on 31st December of each year and details about their demographics.

The following is the number of detenus (detained under various State and Central preventive detention laws) lodged in prisons in India at the end of each year. Tamil Nadu consistently tops the list in number of preventive detenus lodged in prisons by a large margin.

Detenus in Tamil Nadu vs other States (as on 31st December)

Year	2020	2019	2018	2017	2016
Total number of detenus	3590	3223	2,384	2,136	3,089
Tamil Nadu	1430	1240	741	810	1481
Gujarat	1169 (32.6%)	698 (21.7%)	452 (19%)	345 (16.2%)	NA (Not in top 3)
Kashmir	NA	404 (12.5%)	NA (not in top 3)	212 (9.9%)	432 (14%)
TN (% of all detenus in India)	39.8%	38.5%	31.1%	37.9%	47.9%

Demographics of detenus in Tamil Nadu

Age profile of detenus in Tamil Nadu (as on 31st December)

Year	2020	2019	2018	2017	2016
Age 18-30	666	557	325	370	641
30-50	637	531	363	385	734
50 & above	127	152	53	55	106
Total	1430	1240	741	810	1481

Education profile of detenus in Tamil Nadu (as on 31st December)

Year	2020	2019	2018	2017	2016
Illiterate	527 (36.8%)	402 (32.4%)	231 (31.1%)	301 (37.1%)	453 (30.5%)
Below Class X	549 (38.3%)	445 (35.8%)	252 (34%)	293 (35.8%)	598 (40.3%)

Class X & above below graduation	236	219	171	154	321
Graduate	49	124	54	41	62
Tech degree or diploma	34	31	16	9	18
Post graduate	35	19	17	12	29
Total	1430	1240	741	810	1481

Caste profile of detenus in Tamil Nadu (as on 31st December)

Year	2020	2019	2018	2017	2016
SC	539 (37.6%)	349 (28.1%)	282 (38%)	272 (33.5%)	NA
ST	50	41	28	31	
OBC	812 (56.7%)	839 (67.6%)	384 (51.8%)	507 (62.5%)	
Others	29	11	47	0	
Total	1430	1240	741	810	

Religion of detenus in Tamil Nadu (as on 31st December)

Year	2020	2019	2018	2017	2016
Hindu	1023	983	512	590	NA
Muslim	211	140	98	119	
Sikh	0	1	0	0	
Christian	196	116	131	101	
Others	0	0	0	0	
Total	1430	1240	741	810	

In attempting to draw a demographic profile of detenus in Tamil Nadu, it can be seen that an large number of them are around 18-50 years, illiterate or less than high school education and belong to backward caste.

B. Analysis of data on detention under TN Goondas Act

Total number of Preventive detentions in Tamil Nadu

(as per *Crime Review*: Annual publication of the TN State Crime Records Bureau available online)

Year	2020	2019	2018	2017	2016
National Security Act	18	2	15	0	8
TN Goondas Act	2466	2603	2963	2633	2960
Others	442	305	NA	NA	NA

As per *Crime Review*, detentions under TN Goondas Act contributed to 84.2% of all detentions in 2020 and 89.5% of all preventive detentions in 2019.

Analysis of data received from TN SCRB

Further data received directly from the TN SCRB reveals higher numbers of detentions under the TN Goondas Act than those mentioned in the *Crime Review* publication.³⁰ For example, whilst *Crime Review* reported 2603 detentions under TN Goondas Act in 2019, data received directly from SCRB reports 3204 detentions. Though there are discrepancies in the statistical numbers reported by the State, it is apparent that most detentions in the State are under the aegis of the TN Goondas Act.

Breakup provided by the TN SCRB shows that detention of law and order offenders under the category of ‘goondas’ is most common followed by bootlegging offenders.³¹ It may be noted that after amendment to section 2(f) of the Act in 2014, even a first-time offender can be branded as a ‘goonda’. The earlier requirement that only those ‘habitually’ committing certain offences under the Indian Penal Code has been removed. It may be noted that data received from the TN SCRB did not include number of detentions of cyber law offenders or sexual offenders though a study of news reports and judgments of the High Court reveal that persons have been detained under those categories.

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Year	Boot Legging	Drug Offence	Forest Offenders	Goondas	Sand Offenders	Slum grabbers	Land grabbers	Video Pirates	Immoral Traffic	Total
2009	476	0	0	1690	0	-	-	-	-	2166
2010	284	0	0	1781	0	-	-	-	-	2065
2011	224	0	0	1364	0	-	-	-	-	1588
2012	247	22	0	1896	10	0	1	16	20	2212
2013	233	35	2	3125	39	0	14	20	25	3493
2014	312	43	1	3423	51	0	25	18	29	3902
2015	314	70	0	2885	74	0	2	21	33	3399
2016	259	59	0	2701	18	2	0	4	20	3063
2017	154	94	0	2105	34	3	3	21	27	2441
2018	288	144	0	2605	60	0	1	9	22	3129
2019	248	188	23	2584	130	2	0	0	29	3204
2020 (oct)	248	224	2	1712	101	0	0	0	29	2316

- Data received from SCRB does not include cyber offences or sexual offenders

An analysis of the data shows that TN Goondas Act is predominantly used in cities. Seven urban districts in the State have police Commissionerates and these jurisdictions account for over 40% of all detentions under the Act. (2020 data is incomplete and therefore not considered).

There are several reasons attributed to this concentration of detention in urban areas: that the Act is used to prevent law and order (rather than public order) disturbances and urban centres have higher levels of law and order situations. One possible reason alluded to, in the course of interviews with activists and advocates, was that it was administratively convenient for the police to use the Act in districts having police Commissionerates. Since the detaining authority is the Commissioner of Police, passing of detention order fundamentally is an intra-department exercise. The Act, in such cases, is invoked more often at the behest of the local police as an aid in criminal investigation – to avoid statutory bail when final report is not filed etc. In other areas, the District Magistrate is the competent detaining authority empowered to pass the detention order and the sponsoring police

³⁰ Communication from SCRB available with the author.

³¹ Data pertaining to number of cyber law offenders or sexual offenders were not available and therefore not included.

authority is more inhibited in seeking detention for the purposes of aiding of criminal investigation.

Year	No. of detention in 7 cities (Chennai, Coimbatore, Madurai, Trichy, Salem, Tirunelveli & Tiruppur)	Total number of detentions in TN	%
2009	991	2166	45.75%
2010	1218	2065	58.98%
2011	1003	1588	65.05%
2012	1334	2212	60.3%
2013	2541	3493	72.74%
2014	2702	3902	69.24%
2015	1852	3399	54.48%
2016	1670	3063	54.52%
2017	1189	2441	48.70%
2018	1551	3129	49.56%
2019	1373	3204	42.85%
2020 (upto Oct)	771	2316	33.29%

Detailed district-wise distribution of detentions from the years of 2009 till October, 2020 is appended with this Report as Annexure. Chennai city has the most number of detentions amongst all districts, excepting in 2012.

Women account for around 2-4% of preventive detentions under TN Goondas Act for bootlegging, drug offences, immoral trafficking and as 'goonda' for law and order offences.

Year	No. of women in detention	Total number of detentions in TN	%
2009	90	2166	4.15%
2010	96	2065	4.64%
2011	49	1588	3.08%
2012	55	2212	2.48%
2013	119	3493	3.40%
2014	92	3902	2.35%
2015	93	3399	2.73%
2016	99	3063	3.23%
2017	33	2441	1.35%
2018	75	3129	2.39%
2019	70	3204	2.18%
2020 (upto Oct)	52	2316	2.24%

V. TN Goondas Act in action: Process & Protections

Procedure contemplated under the Act

As per Section 3 of the TN Goondas Act, detention orders may be passed by the District Magistrate or Commissioner of Police of the district where they are satisfied that preventive detention of a person is necessary for maintenance of public order. Such detention orders can be passed based on their knowledge or based on materials provided by 'sponsoring' authority who is typically a police official of the rank of Sub-Inspector or Inspector of Police. The detaining authority also prepares grounds of detention which elaborates how they arrived at subjective satisfaction that detention is necessary: reasons for detention and

materials based on which such conclusion has been made. Whereas the grounds of detention and materials relied upon should be provided to the detenu, Section 8(2) of the Act states that the authority need not “disclose facts which it considers to be against the public interest to disclose”. Thus, where the detaining authority is subjectively satisfied that certain crucial materials cannot be disclosed in ‘public interest’, it is withheld from the detenu.

This detention order cannot remain in force for more than 12 days after its making unless it is approved by the State government in the meantime. During this 12-day period, the detenu has a right to make a representation to the detaining authority (District Magistrate/Commissioner of Police) directly. The detenu can also make a representation against the detention order to the State government addressed to the Secretary to Government, Home, Prohibition and Excise Department.

Communication to the detenu

The detention order and the grounds of detention is to be informed to the detenu expeditiously- and within 5 days from the date of detention.³² In practice, mostly persons who are arrested and remanded in jail are detained under TN Goondas Act and the detention order is served on the detenu through the prison authorities (Superintendent of the concerned prison). Each page of the detention order and grounds/materials is dated and signed by the detenu and the prison personnel with the endorsement which translates into English as “I have received a copy which is legible and understandable. I was explained and I understood the contents.” The prison authorities are also tasked with forwarding representations made by the detenu to the appropriate authorities.

The grounds of detention provides details as to the procedure involved in making representations to the detaining authority, State and the Advisory Board. Through this documents, the detenu is informed that he is entitled to be heard in person. However, personal hearing is provided only if the detenu specifically makes a written request to the Secretary to Government. The detenu is also informed that they are permitted to have the assistance of a friend/relative at the time of personal hearing by the Advisory Board provided that the friend/relative is not an Advocate. The detenu has to make their own arrangement to get the said friend/relative to be present at the time of the personal hearing.

In addition, a ‘Booklet’ consisting of all materials relied on by the detaining authority is also provided to the detenu including copies of FIRs against the detenu, details of bail applications, arrest memo, other materials relied on by the detaining authority.

Confirmation by the State government

The State government has three Undersecretaries to Government at the Home, Prohibition & Excise department dealing with matters relating to Preventive Detention designated as PD-I to III. The State government seeks response from detaining/sponsoring authority to representations made by detenus and passes a confirmation order.

Reference to the Advisory Board

Every detention order should be referred to the Advisory Board within three weeks of the date of detention.³³ The following materials are placed before the Advisory Board:

³² Section 8(1), TN Goondas Act 1982.

³³ Section 10, TN Goondas Act 1982.

detaining order passed by the detaining authority, Government Order confirming the detention of the detenu; representations made by the detenu and their relatives.³⁴

The Advisory Board considers these materials and hears the detenu personally (if specifically sought for) and decides whether there are sufficient grounds for preventive detention. The State is represented by the sponsoring authority (police) during the proceedings. As stated in the earlier section, though the grounds and materials relied by the detaining authority is provided to the detenu, information/materials can be withheld from the detenu if its disclosure is considered by the detaining authority to be against public interest.³⁵ The detenu then is handicapped because they do not have access to the entirety of grounds or materials based on which detention was made.

There is no right to personal hearing before the Advisory Board; it is provided only if the detenu makes an express written request to the Secretary/State authority to that effect. In one instance, the Madras High Court granted interim bail to a detenu on the ground that he was not provided personal hearing before the Advisory Board. The Court held that “unless and until the detenu has clearly and candidly given up his right of personal appearance, no adverse inference can be drawn against the detenu” and that a personal hearing should have been afforded to the detenu even when he did not expressly make such written request. However, the Court recalled its own order after about 3 months upon an application made by the State. The Court relied on Supreme Court decisions in *S.K.Hasan Ali v. State of West Bengal*³⁶ and *State of Punjab v. Sukhpal Singh*³⁷ and held that where the grounds of detention specified that personal hearing should be sought in writing, it was upto the detenu to make use of such opportunity. If the detenu does not expressly seek personal hearing, they cannot claim that a fair opportunity was not provided.³⁸ There is, therefore, only a limited right to seek personal hearing and it is not provided by default. Proceedings and report of the Board are confidential “excepting for the part of the report in which the opinion of the Advisory Board is specified”.³⁹

Temporary release

The State government may release detenus temporarily upon application made by detenus, though this does not appear to be used often. According to RTI response received from the Home, Prohibition & Excise department, a total of 27 applications for temporary release were made by detenus between the years 2010 and 2020, out of which 4 applications were allowed.

VI. Advisory Board

Tamil Nadu has a single Advisory Board consisting of three members for preventive detentions under the National Security Act and the TN Goondas Act. The State has a separate advisory board under COFEPOSA comprising of sitting judges of the High Court.

The Advisory Board under TN Goondas Act comprises of retired judges of the High Court. Though the Act states that any person qualified to be a judge of the High Court may be appointed as a member, as per data received from queries made under the Right to

³⁴ RTI response dated 25.02.2021 received from the Home, Prohibition & Excise department.

³⁵ Section 8(2), TN Goondas Act 1982.

³⁶ (1973) SCC (Cri) 73

³⁷ 1990 SCC (Cri) 1

³⁸ *The Govt of TN v. S.Indramoorthy*, Order of the Madras High Court dated 29.09.2020 in Crl MP 5340 of 2020 in Crl.M.P.No.3983 of 2020 in H.C.P.No.747 of 2020.

³⁹ Section 11(4), TN Goondas Act 1982.

Information Act, only former judges of the High Court have been appointed as members. There is no fixed tenure of the Advisory Board and it has been reconstituted periodically. It is notable that only a handful of retired judges have been appointed and re-appointed as members of the Advisory Board since 2006.

GO Number constituting the Advisory Board	Date	Names of members and Chairperson of the Advisory Board
GO Ms No 7	16.01.2006	Mr. Justice S.S.Subramani (Chairman) Mr. Justice Malai Subramanian Mr. Justice S. Thangaraj
GO Ms 48	27.07.2006	Mr. Justice KM Nararajan (Chairman) Mr. Justice SM Sidickk Mr. Justice M. Maruthamuthu
GO Ms 25	26.04.2011	Mr. Justice KM Nararajan (Chairman) Mr. Justice SM Sidickk Mr. Justice P Shanmugam
GO Ms 41	28.07.2011	Mr. Justice A Raman (Chairman) Mr. Justice TV Masilamani Mr. Justice R Regupathi
GO Ms 33	17.09.2019	Mr. Justice Malai Subramanian (Chairman) Mr. Justice TV Masilamani Mr. Justice R Regupathi

Through RTI queries, it was found that the Advisory Board considered 2662 cases in the year 2019, 2809 cases in 2020 and 2405 cases in 2021 (as on 27.10.2021) of detentions under the TN Goondas Act. Budgetary allocation for the year 2020-21 for the Advisory Board is Rs.36,78,000. The members of the Advisory Board do not hold full-time positions and may hold additional responsibilities/office of profit. Each member is paid Rs.9,000/- per sitting. The Advisory Board held 156 meetings in the years of 2018, 2019 and 2020. In the year 2021, 117 meetings were held upto September 2021.

In *A.K.Roy v. Union of India*, the Supreme Court held that though there is no fundamental right to consult a legal practitioner in preventive detention by virtue of Article 22, it is “necessary for the procedure prescribed by law for the proceedings before the Advisory Board must be fair, just and reasonable.”⁴⁰ In *State of A.P. v. Balajangam Subbarajamma*⁴¹, the Supreme Court held that there should be an equal treatment by the Advisory Board in considering rival representations of the detenu and the State. Where high-ranking officials represented the State, an opportunity should have been provided for the detenu to be represented “though not by a lawyer at least by someone equally competent like those who appeared for the State”. It further observed that “it is the duty of the Advisory Board to see

⁴⁰ (1982) 2 SCR 272

⁴¹ 1989 (1) SCC 193

that the case of detenu is not adversely affected by the procedure it adopts. It must be ensured that the detenu is not handicapped by the unequal representation or refusal of access to a friend to represent his case.”

The Advisory Board under the TN Goondas Act has not formulated any standard procedural rules which is made available to the public or to the detenus. No review of the functioning of the Advisory Board has been carried out by the State.

VII. Role of Courts in preventive detention under TN Goondas Act

Preventive detention is known as the ‘jurisdiction of suspicion’.⁴² Considerable deference is given to subjective satisfaction of the detaining authority and appeal against orders of preventive detention is not available. However, jurisdiction of the Courts are not completely ousted. Whilst no authority or court can sit in judgment over the decision of the detaining authority- on whether the detaining authority should have appreciated the materials in a different manner and whether they could have arrived at a different conclusion, Courts of law can and do adjudicate on the procedural aspects of detention.

Courts have acknowledged that since preventive detention demands deprivation of individual liberty for the sake of the public good, it should be construed narrowly⁴³ and procedural safeguards available in law should be observed meticulously.⁴⁴

There is limited scope for judicial review in the form of habeas corpus petitions where legality of the detention order under TN Goondas Act may be challenged. The Habeas Corpus jurisdiction of the Madras High Court is routinely invoked seeking release of the detenu by quashing of detention orders. Following the Supreme Court, the Madras High Court has developed a jurisprudence that requires strict adherence to procedural aspects of detention. Detention orders are quashed and detenus are set free because of procedural defects such as delay in considering representation, non-production of relevant documents, providing illegible copy of documents, not providing translation of documents etc.

Study of habeas corpus petitions of the Madras High Court

A total of 4872 habeas corpus cases decided by the Madras High Court were analysed during the course of this research project.⁴⁵ It was found that in most habeas corpus cases, detention orders were quashed for technical/procedural infirmities and detenus were released from prisons.

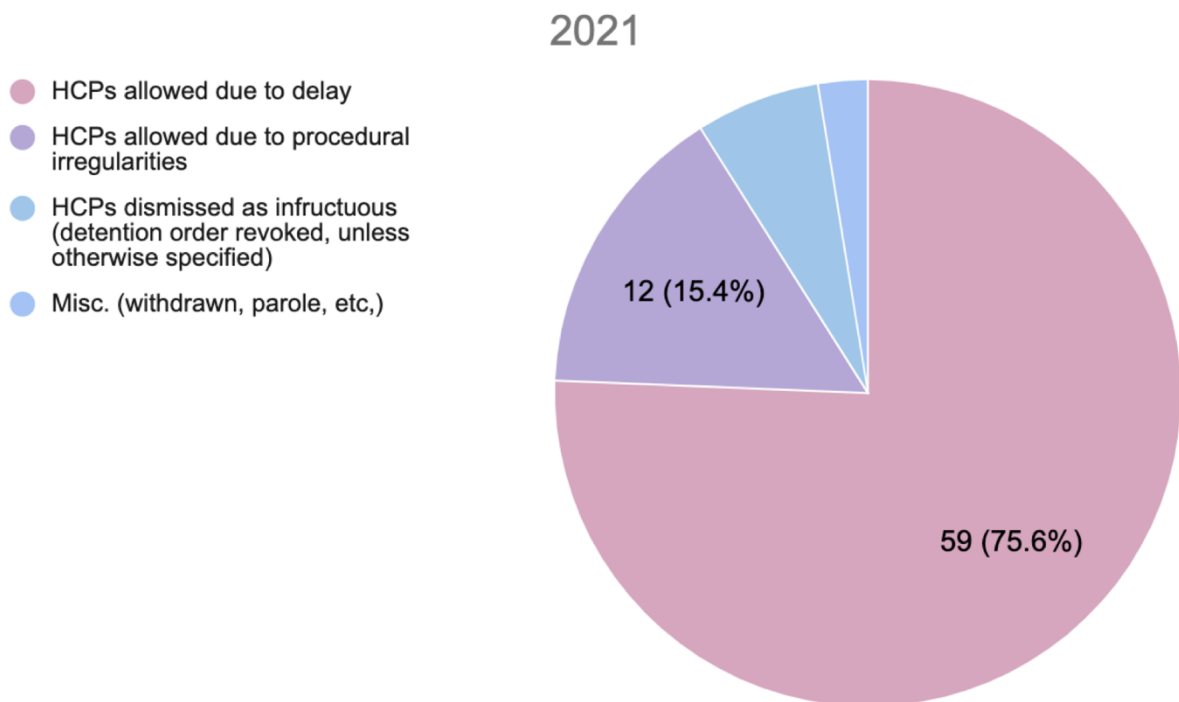
⁴² State of Maharashtra v. Bhaurao Punjabrao Gawande, (2008) 3 SCC 613, Banka Sneha Sheela v. State of Telengana, 2021 SCCOnline SC 530

⁴³ Rekha v. State of Tamil Nadu, (2011) 5 SCC 244. The Court observed “Preventive detention is by nature repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal, but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous, historic struggles.”

⁴⁴ Id. “Procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.” (*para 36*) “It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law.” (*para 39*)

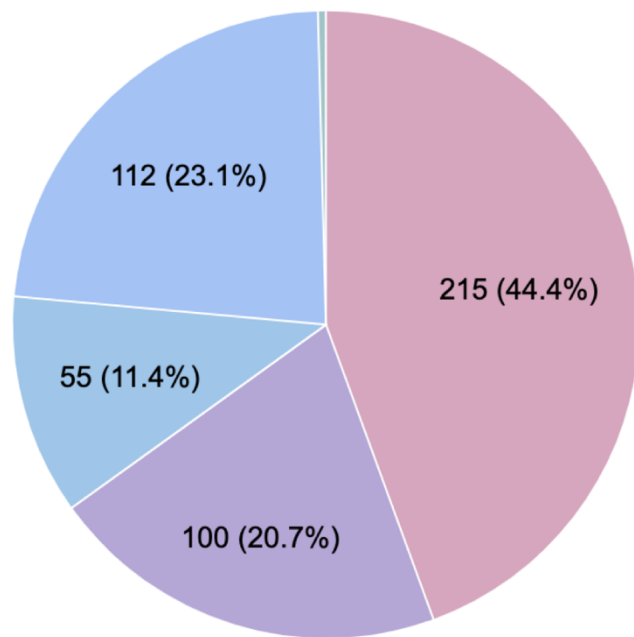
⁴⁵ Cases were chosen at random from SCC Online. The main focus of the study was to study the decisions of the Madras High Court between 2016 and 2020. A smaller sampling of cases from earlier years (2011 onwards) were also studied and analysed for better understanding of the jurisprudence and patterns in adjudication.

Year	Delay	Procedural irregularities	Non-application of mind	Dismissed as infructuous/detention order revoked	Misc (parole, withdrawn, etc.)	Total
2021	59	12	0	5	2	78
2020	215	100	55	112	2	484
2019	179	67	133	76	1	456
2018	197	6	62	28	2	295
2017	730	81	262	147	9	1229
2016	324	175	403	112	0	1014
2015	126	371	81	16	1	595
2014	194	177	218	5	1	595
2013	11	6	21	0	3	41
2012	16	14	12	0	3	45
2011	15	8	15	0	2	40



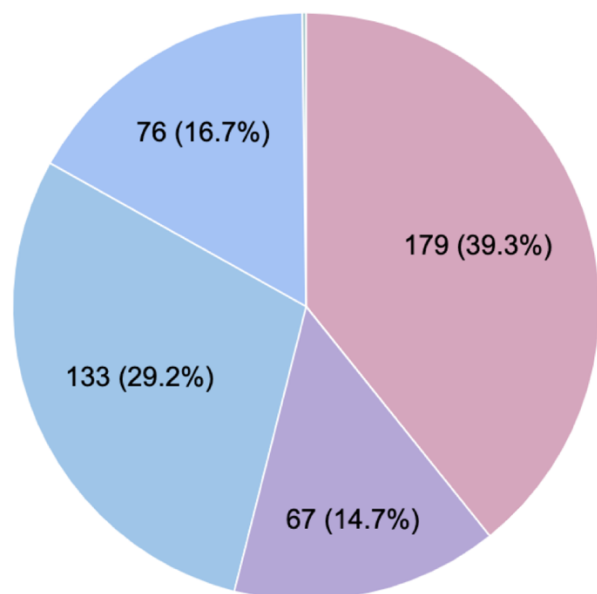
2020

- HCPs allowed due to delay
- HCPs allowed due to procedural irregularities
- HCPs allowed due to non-application of mind
- HCPs dismissed as infructuous (detention order revoked, unless otherwise specified)
- Misc. (withdrawn, parole, etc.)



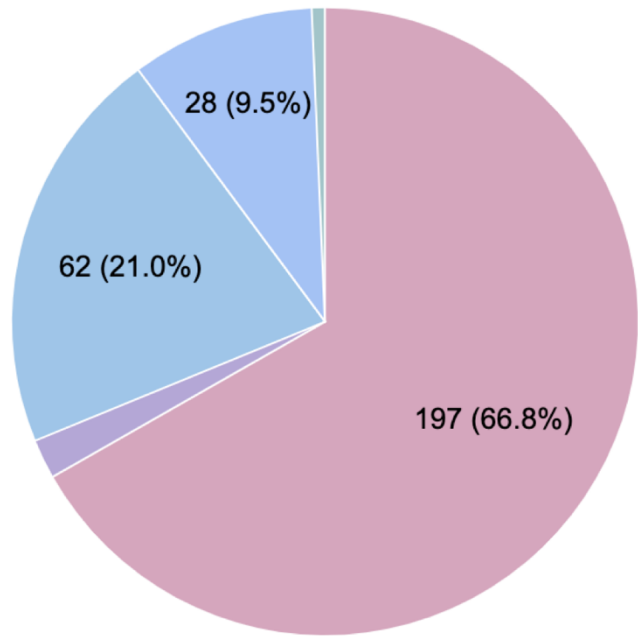
2019

- HCPs allowed due to delay
- HCPs allowed due to procedural irregularities
- HCPs allowed due to non-application of mind
- HCPs dismissed as infructuous (detention order revoked, unless otherwise specified)
- Misc. (withdrawn, parole, etc.)



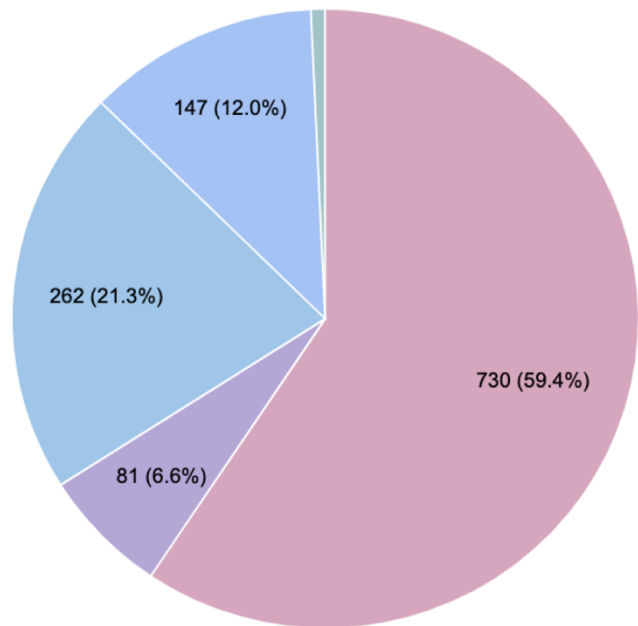
2018

- HCPs allowed due to delay
- HCPs allowed due to procedural irregularities
- HCPs allowed due to non-application of mind
- HCPs dismissed as infructuous (detention order revoked, unless otherwise specified)
- Misc. (withdrawn, parole, etc.)

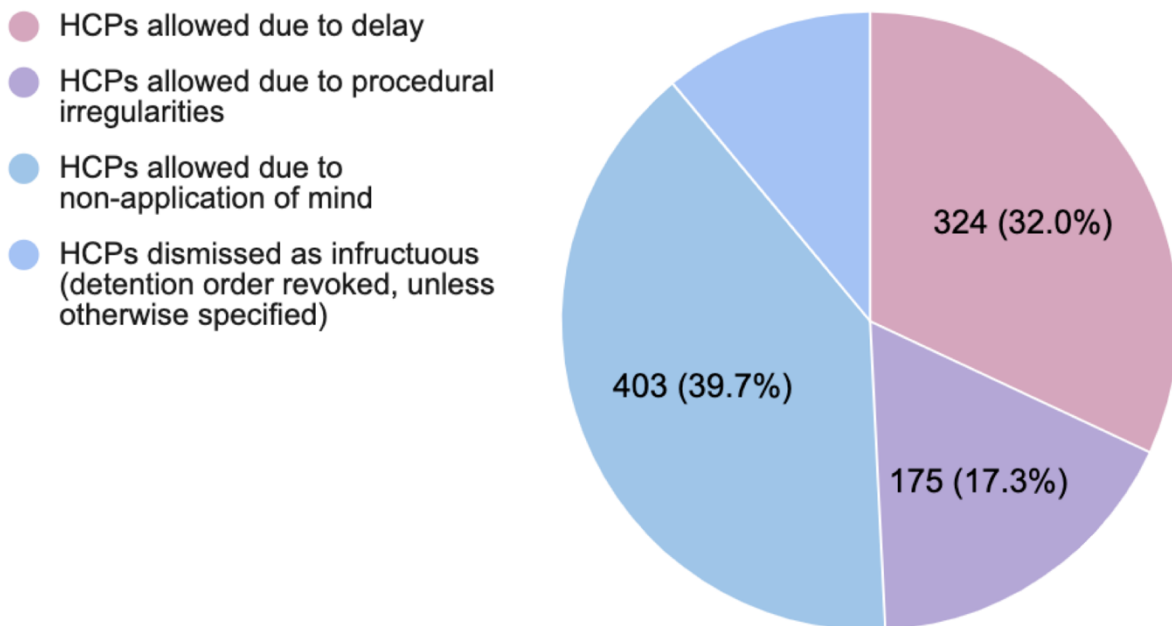


2017

- HCPs allowed due to delay
- HCPs allowed due to procedural irregularities
- HCPs allowed due to non-application of mind
- HCPs dismissed as infructuous (detention order revoked, unless otherwise specified)
- Misc. (withdrawn, parole, etc.)



2016



‘Delay’ includes:

- i. any delay in considering or forwarding the detenu’s representation by the relevant authorities (Advisory Board, Detaining Authority/officers authorized by the State Government in this behalf, etc.);
- ii. any delay on the part of the authorities in submitting remarks regarding the grounds of detention, as well as any delay with no plausible or tenable explanation;
- iii. delays violating the proviso of S. 3(2) of the Act.

Unexplained delay of even three days is considered excessive and detention orders have been quashed on this ground.⁴⁶

‘Non-application of mind’ includes:

- i. any instance in which the detenu’s bail application, in the ground case or an adverse case, was pending, dismissed, or not filed, negating the probability of imminent release⁴⁷;

⁴⁶ Sumaiya v. Secretary to the Government, Order of the Madras High Court dated 22.08.2007. The Court observed: “In the case on hand, the impugned order of detention came to be passed on 7.4.2007. A representation was made to the detaining authority on 14.4.2007 and the detaining authority received the same on 16.4.2007. Parawar remarks were called for from the Sponsoring Authority on 17.4.2007. Remarks were received from the Sponsoring Authority on 18.4.2007. Report sent to the Government on 21.4.2007, which was received on 23.4.2007. The Under Secretary dealt with the file on 26.4.2007 and the concerned Minister dealt with the file on 27.4.2007. Even though the rejection letter was prepared on 2.5.2007 and sent on 2.5.2007, the same was served on the detenu only on 7.5.2007. The delay in serving the rejection letter, viz., between 2.5.2007 and 7.5.2007 - a period of five days, was highlighted by the learned counsel for the petitioner. Even though 5.5.2007 and 6.5.2007 happened to be public holidays, there is no convincing reply on behalf of the State for the delay in serving the rejection order on the detenu. We find some force as well as substance in this contention. We fail to understand as to why the matter was delayed for three days (excluding Saturday and Sunday), between 2.5.2007 and 7.5.2007. There is absolutely no explanation for this delay.... In the instant case, there is delay of three days in considering the representation, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention.”

⁴⁷ In Regina v. District Collector, Order of the Madras High Court dated 21.12.2018, the detaining authority had stated that there is real possibility that the detenu there is an imminent possibility that the detenu could be released on bail since in similar case bails are granted by the appropriate courts. However, the detenu had not filed any bail application which was pending before any court. Therefore, the Court concluded that the impugned order suffered from non application of mind and is liable to be set aside.

- ii. when a dissimilar case is relied upon by the detaining authority while passing the detention order⁴⁸;
- iii. any instance in which the subjective satisfaction of the detaining authority is vitiated or warrants interference;
- iv. any other circumstances in which the order of detention or grounds have been passed mechanically.⁴⁹

‘Irregularity’ in the context of this report⁵⁰ includes:

- i. any circumstance in which a detention order and/or the documents it relies upon are not supplied to the detenu⁵¹, preventing the detenu from making an effective representation (e.g. when copies of the materials are not provided to the detenu, when such copies are illegible⁵², or when documents are not properly translated⁵³);
- ii. when there is any aberration in the procedure of intimating the detenu’s family/next friend of the arrest, such as when the booklet furnished in court indicates that authorities only made a mere endorsement that the arrest intimation reached a detenu’s relatives through SMS, without further substantiating that the intimation was per the relevant procedure.⁵⁴

‘Dismissed as infructuous’ refers to any instance where the detention order was revoked by the State either by itself, or pursuant to finding of the Advisory Board that there are insufficient grounds for detention prior to the disposal of the habeas corpus petition.

Though substantial grounds that the detention order was not warranted because the acts of the detenu do not affect ‘public order’ are raised in habeas corpus applications, during arguments such grounds are not seriously pressed. Both advocates representing detenus and the Court prefer instead to focus on technical grounds relying on well-entrenched precedents that take a strict approach regarding procedural discrepancies.

⁴⁸ For example, in *Sarasu v. Secretary to the Government*, Order of the Madras High Court dated 05.08.2020, the habeas corpus petition was allowed because “The case referred to in the detention order was not similar in nature, and the Post Mortem Certificate had not been properly translated and supplied to the detenu in the booklet furnished to him, which vitiates the detention order”.

⁴⁹ In *P Bagyam v. Principal Secretary to the Government*, Order of the Madras High Court dated 09.04.2019, the original English version of the detention orders recorded that no external injuries had been noted; this translation was missing in the vernacular version. Further the vernacular version stated that information of arrest was passed on to the detenus' family; this was missing in the original English version. The Detaining Authority did not seek clarification from the Sponsoring Authority about these vital discrepancies which indicates non-application of mind and the detention order was quashed on this ground.

⁵⁰ ‘Irregularity,’ as used by the courts in the context of habeas corpus writs, is an umbrella term which may simultaneously include in its ambit the various grounds of quashing mentioned above. However, within this report, ‘irregularity’ has been used subsequently to specify instances in which the detenu’s right to representation has been violated directly by the non-communication of the arrest and/or materials of the detention to the detenu or members of their family (4(i) and (ii) as above), in order to quantify instances in which procedural irregularity has been the sole or primary ground of quashing. References to orders below which have been set aside on the basis of ‘irregularity’ indicate that the detention order was quashed due to a procedural irregularity other than delay, non-application of mind, or subjective satisfaction being vitiated.

⁵¹ *Rekha v. State of Tamil Nadu*, Order of the Madras High Court dated 16.06.2015. In this case, the detenu was not furnished with copy of the bail applications in similar cases which were relied on by the detaining authority. Non-supply of vital documents vitiates the right of the detenu to make effective representation and the detention order was quashed.

⁵² For example, in *Chithra v. Secretary to the Government*, Order of the Madras High Court dated 01.09.2020, the detention order was quashed and detenu was released with the following observations: “It is seen from the records that the ground case details referred in the grounds of detention occurring in Page Numbers 96 to 98 of the booklet, supplied to the detenu is illegible and the same vitiates the detention order. Hence, this Petition has to be necessarily allowed.”

⁵³ See *supra*, *Sarasu v. Secretary to the Government*, Order of the Madras High Court dated 05.08.2020.

⁵⁴ *Padmavathi v. Secretary to the Government*, Order of the Madras High Court dated 09.03.2020. The High Court quashed the detention order because though the State claimed that the arrest was intimated through a text message, no proof of intimation of arrest to the detenu’s friend/family was produced.

Though habeas corpus petitions before the High Court are disposed of more promptly than other types of cases, delays are not uncommon. Of the cases disposed of in the year 2021: 67 of the 71 petitions were disposed of within approximately 4-9 months of the detention order being passed. In 4 habeas corpus petitions (in all of which the detention orders were quashed due to a delay in considering the detenus' representations), the period between the date of the detention order and the date of quashing was approximately 11 months, effectively rendering the relief illusory since the maximum duration of detention is 1 year. Thus, despite the illegality of the detention, the detenu was detained for nearly the maximum period of detention.

Taking Stock of the Habeas Corpus petitions

The Office of the Director General of Police issued a Circular Memorandum dated 10.03.2021 taking note of the fact that most detention orders are being quashed by the High Court on account of technical/procedural discrepancies and mistakes committed by Sponsoring and Detaining Authorities.⁵⁵ It lists the following (among others) as common reasons why habeas corpus petitions are allowed by the High Court:

- Detention Order, Grounds and Booklet are illegible, lack continuity where some pages or paragraphs are missing
- Delay in considering representation either pre- or post-detention
- Where arrest intimation is not made properly or acknowledgment of arrest intimation to friends/family is not proper
- Where detention order and grounds of detention are not served on the detenu within 5 days of detention
- Typographical error in crime numbers, sections, names, dates etc. in the detention order or grounds of detention
- Where translation of documents are not exact, and where copies not served on language known to the detenu
- Where Detention Order is passed belatedly (say, above 30 days) after the arrest
- FIR Number and Crime number not being in order
- Documents relied on at the time of passing detention order not furnished in the Booklet
- Where Crime Number is not mentioned in the Seizure Mahazar and Arrest Memo after registering FIR
- Discrepancy in the arrest time/seizure mahazar
- Failure to mention or enclose details of Bail application or chargesheet details of adverse case(s)
- Where 'similar case' referred to in the grounds of detention is an old case or refers to different sections and therefore is dissimilar from the ground case
- Where bail application was dismissed, non-submission of S.161 CrPC statement that steps are being taken by detenu to move for bail
- Where bail application is pending, wrong statement that no bail application was filed
- Where the public prosecutor had stated no objection to bail on the ground case and bail was granted by court
- Where detaining authority fails to mention about 'subjective satisfaction' or 'affecting public tranquility' while passing the order

⁵⁵ Rc No. 1006119/Crime 4(3)/2021.

- Where detention order is not approved within 12 days and where detention order, grounds, booklet are not forwarded (to the Advisory Board) within 3 weeks from the date of detention
- Copy of search or seizure mahazar not supplied
- Where grounds of detention does not mention that the detenu has a right to representation before the detaining authority before approval of the State, Secretary to the government and the Advisory Board or how such representation is to be made
- Where there is discrepancy in the volume of contraband stated and recovered and the volume of contraband stated as sent to the Laboratory
- Where quantity of the arrack samples reported exceeds the quantity of bottle in which it was collected
- Where remand is not extended by the court
- Discrepancy in medical records detailing injuries of the detenu
- Where the bail court is informed that the detenu is likely to be detained under Goondas Act even before sponsoring authority recommends detention, it amounts to pre-determination of mind
- Non-supply of report of the Revenue Official on the pre-detention representation
- Non-supply of evidence obtained through in-camera proceedings
- Unexplained long delay between registration of FIR and arrest of detenu

The Circular directs the district-level police officials to ‘sensitize’ investigating officers and give suitable instructions to avoid these mistakes, conduct quarterly review in respect of habeas corpus petitions which were allowed by the Court and also states that disciplinary action will be taken against those failing to adhere to these instructions.

VIII. Use and Abuse of TN Goondas Act

Detention orders under the Act now only make a nominal hat tip to ‘public order’ and carry standard phrases/sentences that activities of the detenu tend to affect public order. There is hardly any application of mind to actively relate the acts of the detenu to apprehension of public disorder. Instead, seriousness of the ground case or alleged offence is cited as being sufficient to cause public disorder. There are instances where the detaining authority has justified preventive detention for a single alleged instance of theft or robbery stating that the incident has caused/is likely to cause insecurity amongst public at large and disrupt public order. After the amendment to the definition of ‘goonda’, persons without any criminal antecedents can also be detained under the Act. Therefore, the Act can potentially be used against *any* person whom the detaining authority believes may attempt to commit an offence and disrupt public order.

During COVID-19 lockdown, the Chief Minister warned that TN Goondas Act would be invoked against persons hoarding and selling Remdesivir or oxygen cylinders in the black market.⁵⁶ 14 persons were detained under the Act for protesting against the burial of a medical doctor who succumbed to COVID-19.⁵⁷

⁵⁶ <https://indianexpress.com/article/cities/chennai/tamil-nadu-to-invoke-goondas-act-against-people-hoarding-remdesivir-oxygen-cylinders-7316457/> / <https://www.newindianexpress.com/states/tamil-nadu/2021/may/15/goondas-act-for-hoarders-of-remdesivir-oxygen-cylinders-tamil-nadu-cm-stalin-2302869.html> / <https://www.newindianexpress.com/states/tamil-nadu/2021/jun/08/mk-stalins-first-month-in-office-shows-his-govt-means-business-2313100.html>

⁵⁷ <https://www.indiatoday.in/india/story/goondas-act-slapped-against-14-for-violent-protest-against-burial-of-covid-19-victim-1673259-2020-05-01>

Persons accused of sexual offences are frequently booked under Goondas Act after their arrest in the ground case. In a slew of high-profile sexual assault cases in the State, accused were detained under TN Goondas Act even where they had no criminal antecedents. These detentions were later quashed for procedural discrepancies.⁵⁸ Coimbatore district authorities announced that they would invoke TN Goondas Act against all persons accused of rape and POCSO offences.⁵⁹ This explicates that preventive detention is used as a blanket policy for dealing with ‘law and order’ aspects and that the process intended in the Act - that detaining authorities should scrupulously examine materials in each case and arrive at subjective satisfaction - is not followed.

Due to the existence of broad, unfettered powers vested with the district authorities and the State coupled with absence of sufficient monitoring mechanisms (bar the Advisory Board and habeas corpus jurisdiction of the High Court), the Act is fraught with instances of abuse. The High Court has noted that the State casually invokes detention under TN Goondas Act and has deprecated such practice in particular cases.⁶⁰ Whilst the Act is most frequently used to detain persons involved in criminal cases in circumvention of the standard criminal procedure rules, on occasion, it has been used to silence and persecute political opponents.⁶¹

Case of Valarmathi

Valarmathi, a 23 year old, postgraduate university student and environmental activist was branded as a ‘goonda’ and detained under the Act. She was distributing pamphlets protesting against the hydrocarbon project in the Kaveri delta. The police had registered 7 FIRs against her (two FIRs registered in 2014 and five registered in 2017) under sections 294(b), 143, 447, 506(ii), etc. She was never convicted of any offence, nor was any final report had ever been filed in any of the criminal complaints. While so, she was arrested on 12.07.2017 on the ground that she was part of an unlawful assembly and that she raised slogans against the government, Detention order under the TN Goondas Act was passed on 17.07.2017. One of the grounds of her detention was that the pamphlets contained slogans that harmed “national interests”. There was considerable media and political outcry over her arrest and detention under the Goondas Act.⁶²

⁵⁸ For example, *Narayanan v. Inspector of Police*, Order of the Madras High Court dated 11.01.2019. The detention order was quashed because there was an inordinate delay of 51 days from the date of arrest in the ground case to the date of detention order. Consequently there was no “live link between the offence for which the detenu was arrested and the need for passing the order of detention towards avoiding further indulging in such wrongful activities.”

⁵⁹ <https://www.thehindu.com/news/cities/Coimbatore/man-detained-under-goondas-act/article36171433.ece/amp/>

⁶⁰ *M. Krishna Bothra v. Principal Secretary*, Order of the Madras High Court dated 22.11.2017. A financier who was indulging in usury had several cases pending against him. His detention as ‘goonda’ was quashed noting that all adverse cases against the detenu relate to civil transactions and that “the State must revisit these cases and not wantonly and casually use the provisions of Tamil Nadu Act 14 of 1982, to detain persons, who may have, otherwise, infringed non-penal provisions of law.” In a 2018 case, a housewife had a scuffle with a neighbour which resulted in an accidental death. She was detained under the Goondas Act despite having no prior criminal record. It was found that she had a family dispute with the Superintendent of Police who was a relative and that she may have been detained in vengeance over the feud with the police officer. The High Court directed the State to revoke the detention order. <https://www.thenewsminute.com/article/do-you-have-goondas-act-targets-meet-madras-hc-slams-tn-police-85279>

⁶¹ Another example is of Thirumurugan Gandhi, an activist who was detained under the TN Goondas Act for holding protest in support of the Sri Lankan Tamils in a public place (Marina Beach) where there was no permission to conduct public meetings. The detaining authority stated that he was subjectively satisfied that “there is always possibility of the protest becoming violent and posing serious threat” and passed the detention order. On behalf of the detenu, it was argued that the offences alleged to have been committed by the detenu are not prejudicial to public order. The Court held that this subjective satisfaction was sufficient and that the detenu could be branded ‘goonda’ given the nature of offences alleged against him. However, the detention was quashed because representations of the detenu were not disposed of within stipulated time period.

⁶² Questions were raised in the Legislative Assembly over Valarmathi’s detention. The Chief Minister is reported to have justified the detention that she did not “mend her ways” even after 6 cases were registered against her and that she was instigating the people against the Central government by distributing pamphlets.

Valarmathi's father filed a habeas corpus petition before the Madras High Court challenging the detention order. It was quashed on 05.09.2017 on the grounds that there was no intimation of her arrest and that there was a five day delay in considering her representation.⁶³ The order of the Court did not deal with any substantive aspects of the case. It missed a valuable opportunity to delve into abuse of preventive detention laws for political reasons.

Calls for expansion of the ambit of TN Goondas Act

It is trite to state that preventive detention can be authorised only for 'maintenance of public order' rather than for the purposes of addressing 'law and order' disturbances, investigation of crimes, or any other purpose, however laudable the goal may be. Due to its ubiquity, and in the absence of any serious or sustained challenge to the framework, preventive detention has gained acceptance as legitimate tool to attain public interest goals. Rather than zealously limiting preventive detentions, there are instances of demands for invoking TN Goondas Act in sensational cases and expanding it for various causes.

The Madras High Court has suggested that the State should consider amending the definition of 'goonda' in the Act to include polluters. In *Suo motu WP (MP) 17508 of 2020*, Justices Kirubakaran and Pugalendi opined that persons polluting water bodies, including Promoters, Directors, Partners and all connected with the polluting industries, should be deemed 'goonda' and detained under the TN Goondas Act. This was suggested as a 'stringent measure' to control pollution of water bodies. The slippery slope of expansion of Goondas Act is evident from the reasoning in this decision. The Court admitted that the suggestion may appear extreme, but "...there are examples in the past as the State Government, in order to safeguard the interest of the cinema industry, included the "video pirate", who commits or attempts to commit or abets the commission of offences of infringement of copyright in relation to a cinematograph film or a record embodying any part of sound track associated with the film, punishable under the Copyright Act, 1957, in the definition as 'Goonda' and amended the Tamil Nadu Act 14 of 1982, to punish 'video pirate' under the said Act. Similar steps have to be taken by the State Legislature at the earliest regarding the polluters' of water bodies in the State." In another case, Justice Kirubakaran asked the State to consider invoking TN Goondas Act against corrupt public officials, and if necessary even enact a separate preventive detention law to enable the same.⁶⁴

In the case of *Vediyammal v. State (HCP 188 of 2018)*, the Madras High Court directed the State to issue instructions to all law enforcement authorities stating that public servants who abet the commission of sand smuggling will be 'punished' under the TN Goondas Act and will also be liable for disciplinary action. In furtherance of this judgment, GO Ms 162 of 2018 was issued by the government. In September, 2021, the High Court directed the State to invoke preventive detention under the TN Goondas Act to protect temple-owned properties from encroachment.⁶⁵

<https://www.newindianexpress.com/states/tamil-nadu/2017/jul/20/tamil-nadu-cm-palaniswami-justifies-invoking-goondas-act-in-valarmathi-arrest-1631004.html>

⁶³ *Madhaiyan v. State*, Order of the Madras High Court dated 05.09.2017.

⁶⁴ <https://www.dailypioneer.com/2017/india/invoke-goondas-act-against-corrupt-officials.html>

⁶⁵ *N C Sridhar v. Secretary* (September 2021). The Court observed: "In extreme cases, the provisions of the Goondas Act is to be invoked by the Police based on the facts to facts basis. In such circumstances, the respondents shall not hesitate to invoke the provisions of the Goondas Act against such professional land grabbers and persons involved in encroachment and illegal activities in respect of the temple properties at large for personal and unjust gains"

The State government, in September 2021, has indicated that it would amend the Act to enable preventive detention of persons engaged in ‘bill trading’ activities to avail input tax credit as such activities cause revenue loss to the government.⁶⁶

Preventive detention as a “shield for defective policing and investigation”

Justice N. Anand Venkatesh rightly noted that the statistics [of the NCRB] “tellingly point to the callous and often indifferent manner in which the authorities have gone about resorting to the provisions of Act 14 of 1982 [*TN Goondas Act*]. Preventive Detention law has become a shield for shabby and defective policing. The very fact that Tamil Nadu has retained its unenviable first place in the number of detenus in all States would clearly show that law and order in this State is clearly resting on rickety foundations....”

TN Goondas Act, in practice, is not used for preventing public disorder but to circumvent procedural guarantees that exist in the Criminal Procedure Code and other laws. Most commonly, persons are booked under the Act when the police is not convinced that they can file a final report and prosecute a person successfully. The detention period of one year under the Act then becomes a substitute for conviction and punishment.

It is also invoked to defeat bail applications that may be filed by the accused and to extend the period of custody during criminal investigation. Under the CrPC, no person can be detained during investigation for a period beyond 60 or 90 days.⁶⁷ Unless the police files a final report, the accused is entitled to be released on mandatory/statutory bail after the said period. In order to extend timeline for custody and filing of final report, the police detention under TN Goondas Act. The Court has held that there should be proximity and live link between the time of detention order and the ground case. Therefore, in high profile cases such as sexual assault cases, shortly after arrest in the ground case, the State passes a detention order under the Goondas Act thereby extending timelines available in the CrPC and effectively curtailing protections available to the accused in ordinary criminal procedure.

IX. Conclusions

Weakens criminal justice system

Preventive detentions are used for reasons other than preventing public disorder: often to bypass protections and guarantees in criminal procedure laws, and even as a substitute to prosecution. Detention under TN Goondas Act is doled out as punishment as the State authorities find investigation and prosecution of offences onerous. It allows the State to detain persons for a period of upto one year, and this cycle may continue by passing another detention order on ‘fresh’ grounds. This creates a disincentive to undertake meticulous investigation using scientific methods and scrupulous adherence to criminal procedure and serves to ultimately weaken the criminal justice system.

Unduly curtails personal liberty

In invoking this law, the State often conflates ‘law and order’ and ‘public order’. Where this distinction is not zealously guarded, preventive detention becomes the norm rather than the exception, which is the death knell of individual liberty. While there are grand judgments of the Supreme Court such as *Rekha v. State of Tamil Nadu* and *Banka Sneha*

⁶⁶ <https://www.dtnext.in/News/TopNews/2021/09/06193501/1316456/Tamil-Nadu-to-slap-Goondas-on-Bill-traders-fake-ITC-vpf>

⁶⁷ Section 167(2), Code of Criminal Procedure 1973

Sheela v. State of Telengana which acknowledge that preventive detention is inherently problematic and therefore the need to use it sparingly only where regular penal laws are inadequate to deal with the circumstances, the everyday reality of the law is markedly different. Most habeas corpus applications are allowed by the High Court, albeit on procedural grounds, and the detention orders are set aside. Whilst the High Court construes procedural requirements in a strict and seemingly pedantic manner, it defers to the State on ‘subjective satisfaction’ of the detaining authority and has shied away in a number of cases from deciding on substantive grounds raised on behalf of the detenu.

Need for review of the functioning of the Advisory Board

Though the Act does away with protections generally available in law such as right to be represented by a legal practitioner, open hearings etc. and therefore requires intense scrutiny, there has been no systematic evaluation or review of the working of the Advisory Board. The credibility of the preventive detention law and its procedure is derived from the belief and presumption that any proceedings before the Advisory Board will be fair merely owing to the qualification of its members, being former judges of the High Court. There is no data available as to how many detention orders were revoked on account of the finding of the Advisory Board that sufficient grounds for detention did not exist. Therefore, no definitive conclusion can be drawn about the amount of deference given to the State or the quality of review at the Advisory Board. That the working of the Board is shrouded in mystery and confidentiality is a compelling reason why it should be subjected to evaluation/review periodically.

Procedural (un)fairness

There is no equal treatment in the Advisory Board proceedings. The State is represented by the police, whereas detenus who, as seen from the demographic profile, are mostly uneducated and hail from underprivileged backgrounds. The right to consult and be represented by a legal practitioner which is a vital right is denied under the Act.

Article 22(4) is taken past its logical necessity: where the Constitution merely states that the protections in Article 22(1) and (2) do not apply to instances of preventive detention, and therefore *there is no fundamental right* to be represented by legal practitioner in preventive detentions; Section 11(5) of the TN Goondas Act states that there is no statutory right is entitled to appear through a legal practitioner; the grounds of detention state that no advocate even in the capacity of friend/relative can be present during the personal hearing before the Advisory Board. Such an interpretation is entirely unwarranted and unfairly prejudicial to the detenu. In contrast, the Kerala Anti-Social Activities (Prevention) Act 2007 provides the Advisory Board discretion to permit legal practitioners in cases where it deems fit.⁶⁸ The State has not justified why the detenu cannot be represented by a legal practitioner, except for providing a flawed interpretation of the Constitution during the initial debates in the Legislative Assembly that Article 22(4) *prohibits* the right to be represented by a legal practitioner.

⁶⁸ Proviso to Section 10(3), Kerala Anti-Social Activities (Prevention) Act 2007.

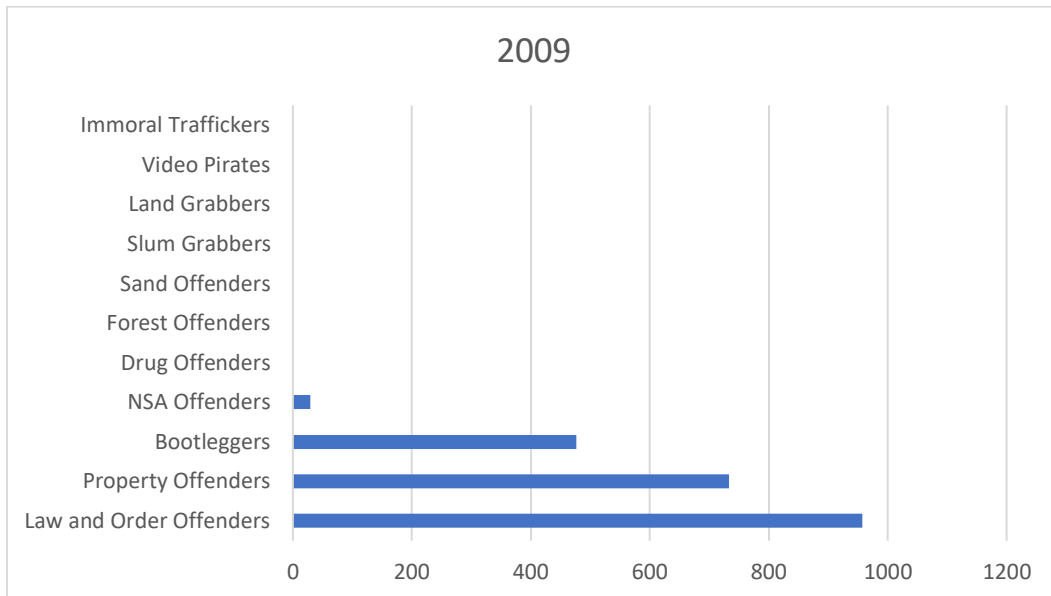
Tamil Nadu Detention Data

(as provided by the Tamil Nadu State Crime Records Bureau on 22 December 2020)

DETENTION ORDERS PASSED, OFFENCE-WISE (2009-2019)

2009

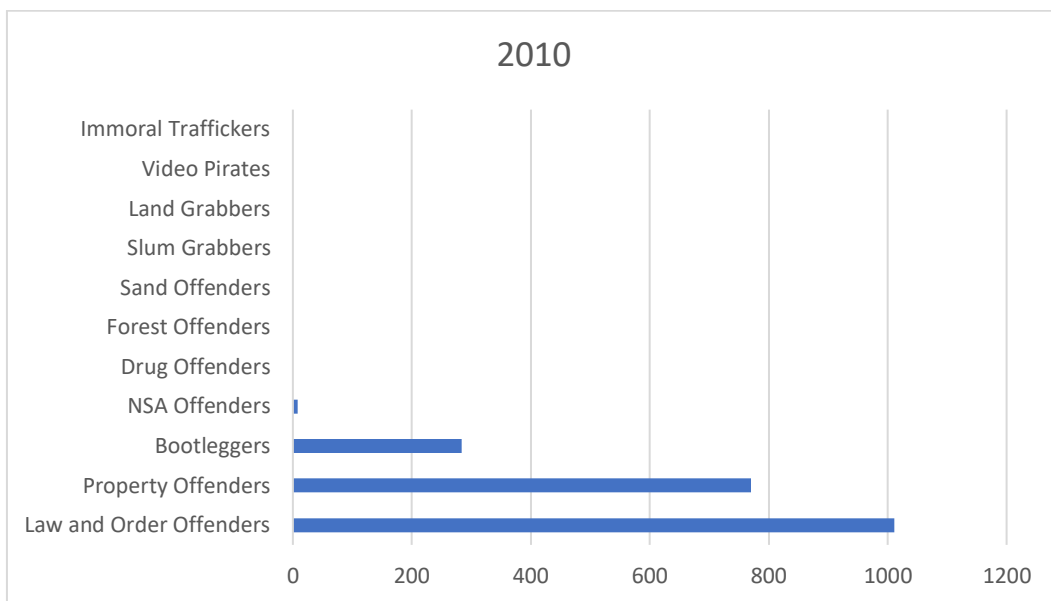
Law and Order Offenders	957
Property Offenders	733
Bootleggers	476
NSA Offenders	29
Drug Offenders	0
Forest Offenders	0
Sand Offenders	0
Slum Grabbers	0
Land Grabbers	0
Video Pirates	0
Immoral Traffickers	0



Total: 2195

2010

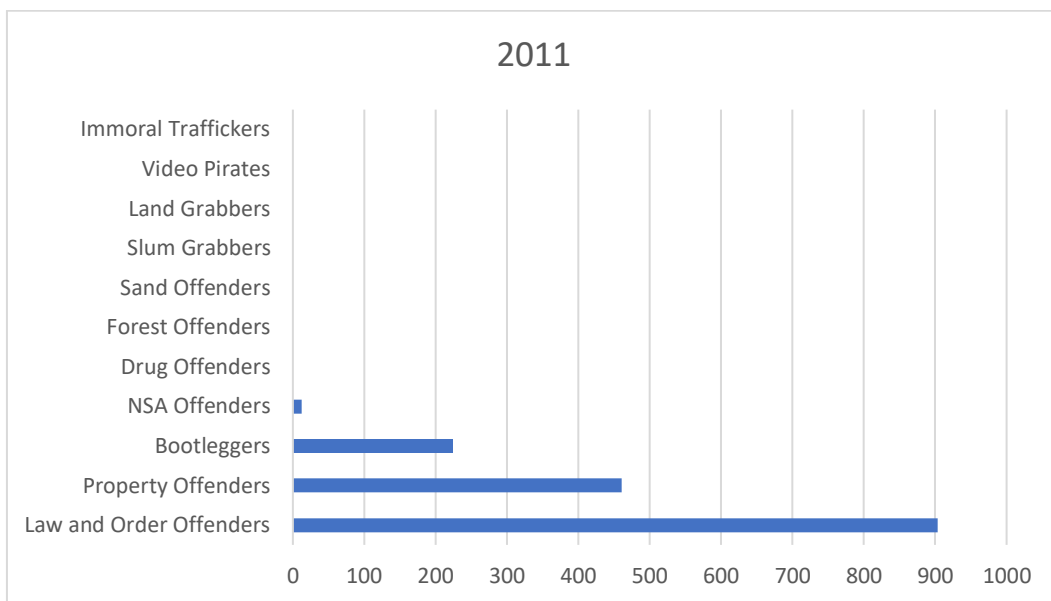
Law and Order Offenders	1011
Property Offenders	770
Bootleggers	284
NSA Offenders	8
Drug Offenders	0
Forest Offenders	0
Sand Offenders	0
Slum Grabbers	0
Land Grabbers	0
Video Pirates	0
Immoral Traffickers	0



Total: 2073

2011

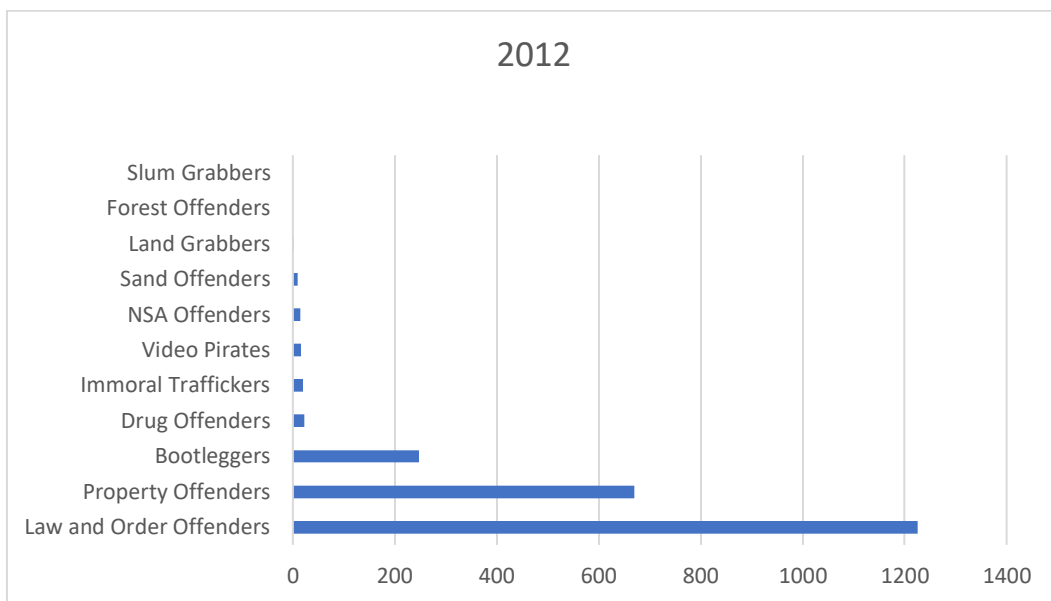
Law and Order Offenders	903
Property Offenders	461
Bootleggers	224
NSA Offenders	12
Drug Offenders	0
Forest Offenders	0
Sand Offenders	0
Slum Grabbers	0
Land Grabbers	0
Video Pirates	0
Immoral Traffickers	0



Total: 1600

2012

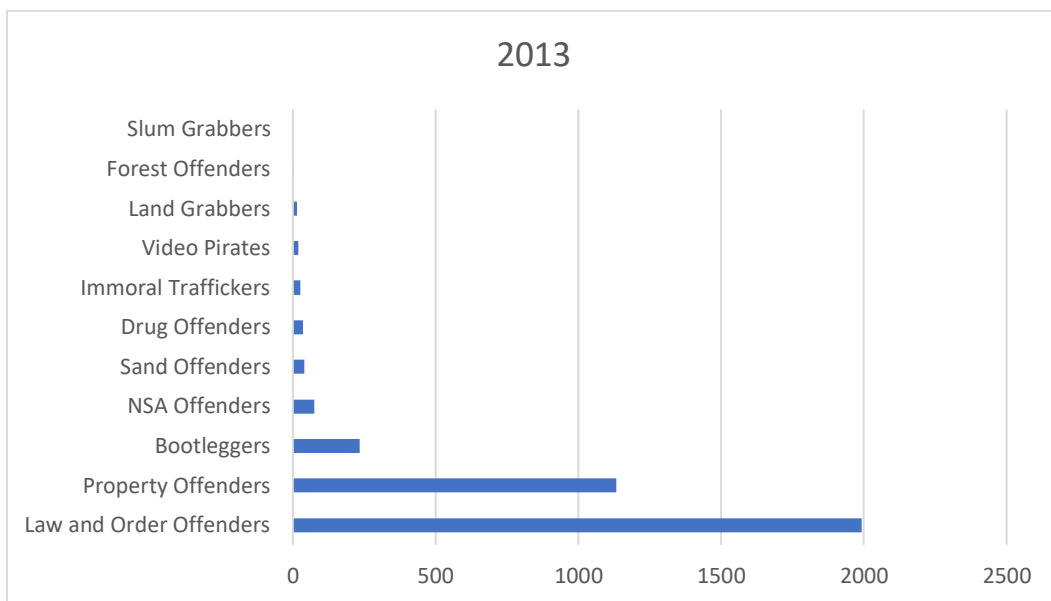
Law and Order Offenders	1226
Property Offenders	670
Bootleggers	247
Drug Offenders	22
Immoral Traffickers	20
Video Pirates	16
NSA Offenders	15
Sand Offenders	10
Land Grabbers	1
Forest Offenders	0
Slum Grabbers	0



Total: 2227

2013

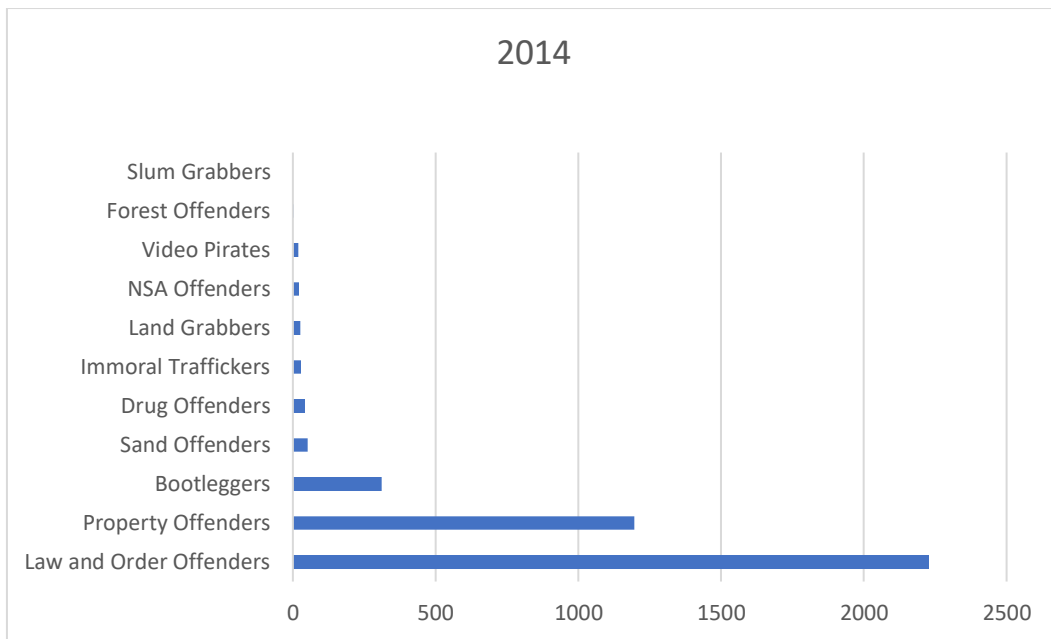
Law and Order Offenders	1992
Property Offenders	1133
Bootleggers	233
NSA Offenders	75
Sand Offenders	39
Drug Offenders	35
Immoral Traffickers	25
Video Pirates	20
Land Grabbers	14
Forest Offenders	2
Slum Grabbers	0



Total: 3568

2014

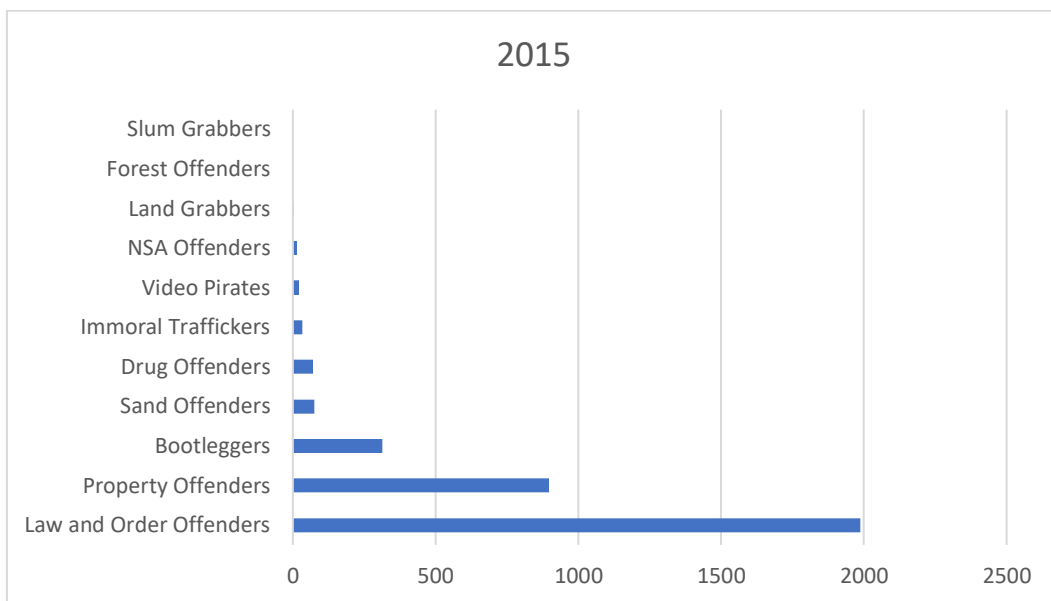
Law and Order Offenders	2228
Property Offenders	1195
Bootleggers	312
Sand Offenders	51
Drug Offenders	43
Immoral Traffickers	29
Land Grabbers	25
NSA Offenders	22
Video Pirates	18
Forest Offenders	1
Slum Grabbers	0



Total: 3924

2015

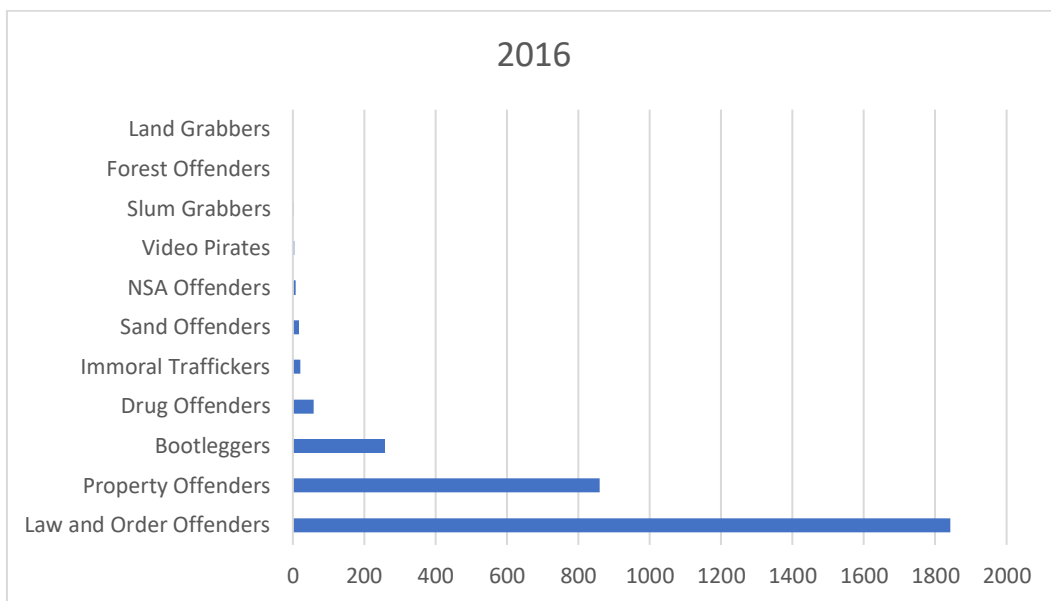
Law and Order Offenders	1987
Property Offenders	898
Bootleggers	314
Sand Offenders	74
Drug Offenders	70
Immoral Traffickers	33
Video Pirates	21
NSA Offenders	14
Land Grabbers	2
Forest Offenders	0
Slum Grabbers	0



Total: 3413

2016

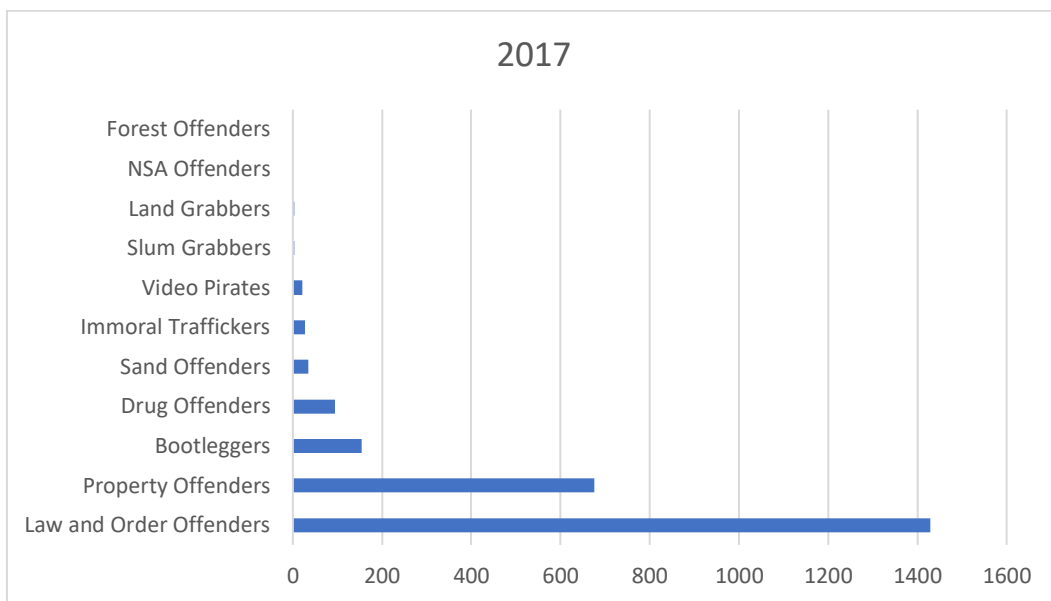
Law and Order Offenders	1842
Property Offenders	859
Bootleggers	259
Drug Offenders	59
Immoral Traffickers	20
Sand Offenders	18
NSA Offenders	8
Video Pirates	4
Slum Grabbers	2
Forest Offenders	0
Land Grabbers	0



Total: 3071

2017

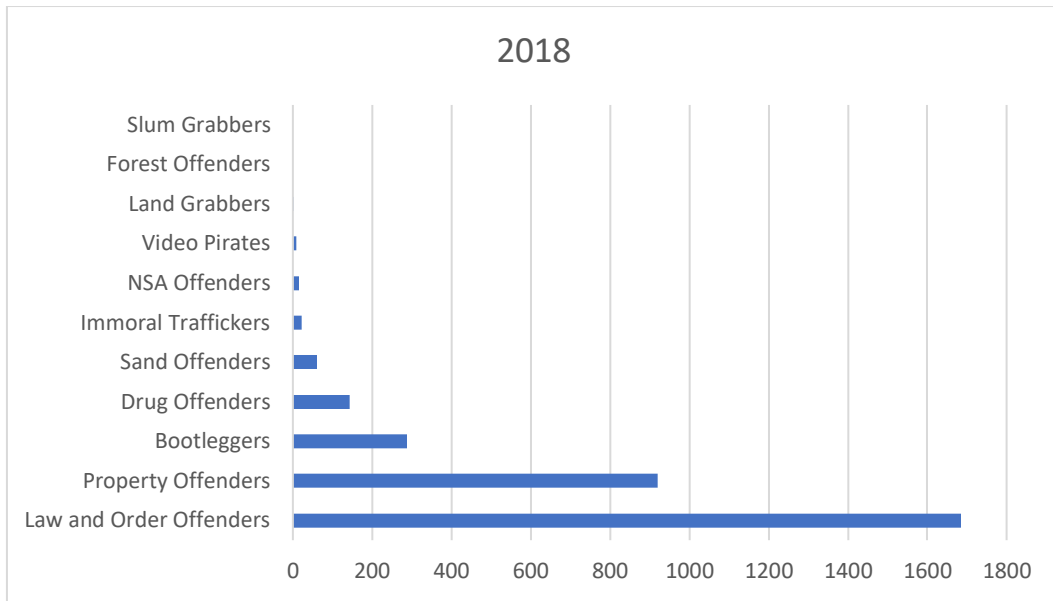
Law and Order Offenders	1429
Property Offenders	676
Bootleggers	154
Drug Offenders	94
Sand Offenders	34
Immoral Traffickers	27
Video Pirates	21
Slum Grabbers	3
Land Grabbers	3
NSA Offenders	0
Forest Offenders	0



Total: 2441

2018

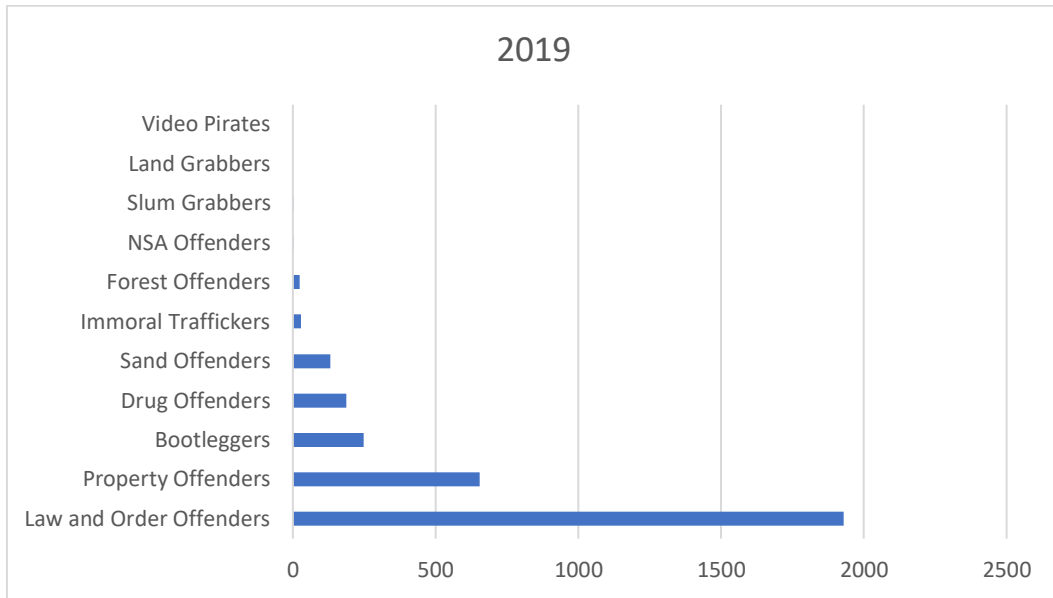
Law and Order Offenders	1685
Property Offenders	920
Bootleggers	288
Drug Offenders	144
Sand Offenders	60
Immoral Traffickers	22
NSA Offenders	15
Video Pirates	9
Land Grabbers	1
Forest Offenders	0
Slum Grabbers	0



Total: 3144

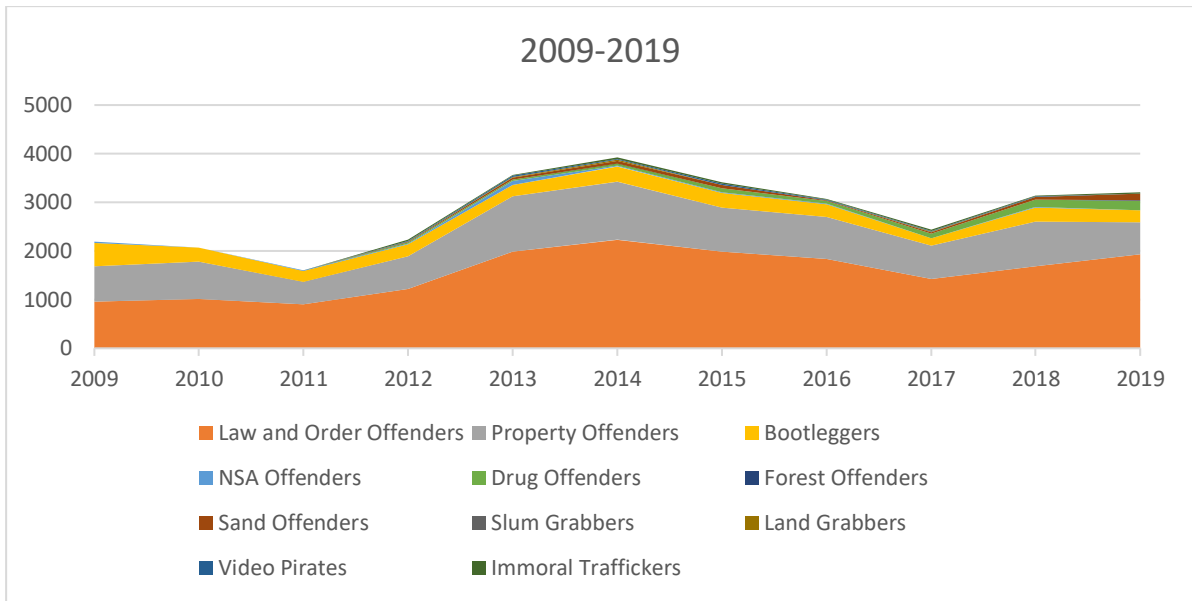
2019

Law and Order Offenders	1929
Property Offenders	655
Bootleggers	248
Drug Offenders	188
Sand Offenders	130
Immoral Traffickers	29
Forest Offenders	23
NSA Offenders	2
Slum Grabbers	2
Land Grabbers	0
Video Pirates	0



Total: 3206

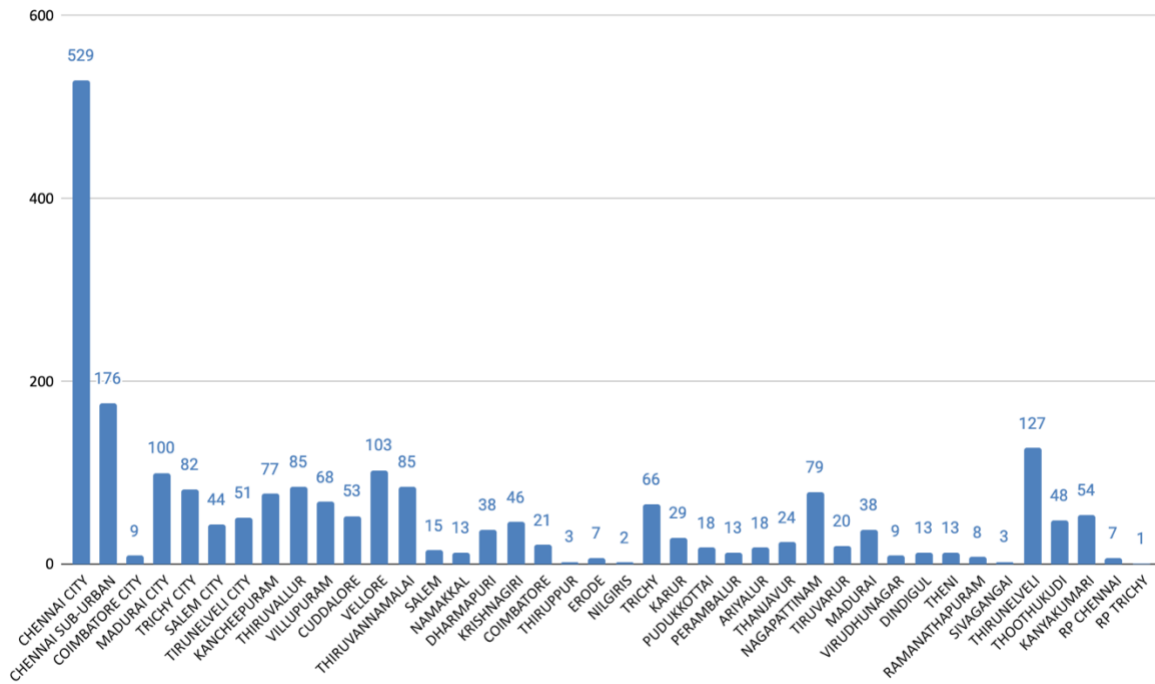
OVERALL TREND, OFFENCE-WISE



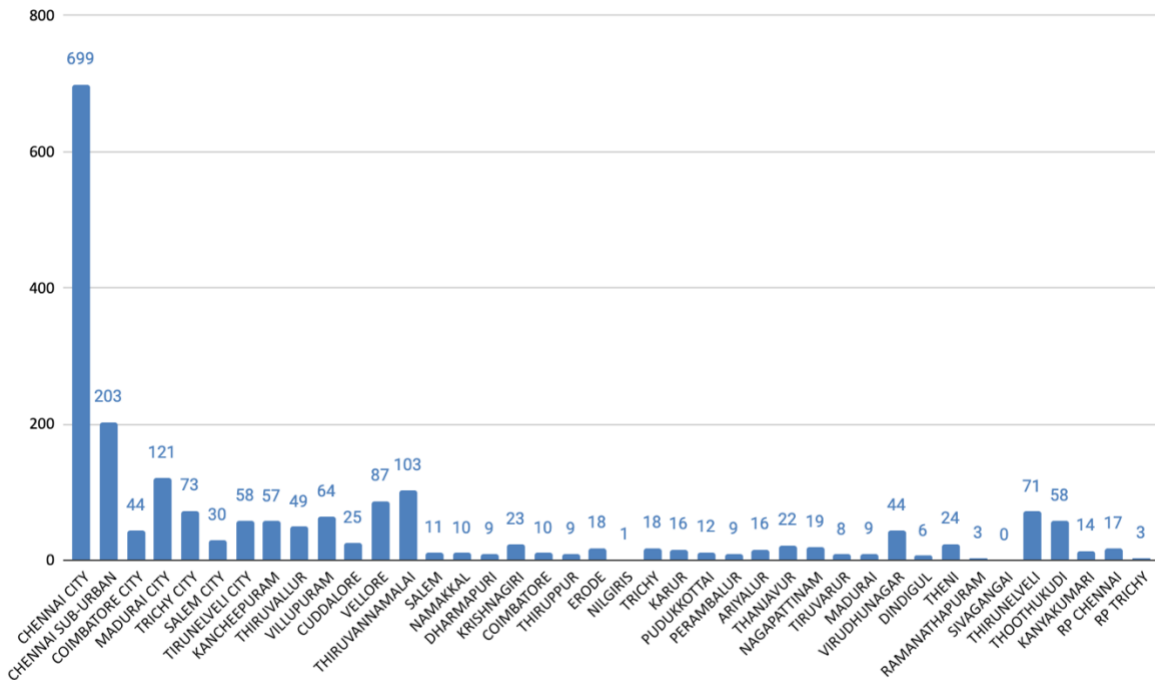
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Law and Order Offenders	957	1011	903	1226	1992	2228	1987	1842	1429	1685	1929
Property Offenders	733	770	461	670	1133	1195	898	859	676	920	655
Bootleggers	476	284	224	247	233	312	314	259	154	288	248
NSA Offenders	29	8	12	15	75	22	14	8	0	15	2
Drug Offenders	0	0	0	22	35	43	70	59	94	144	188
Forest Offenders	0	0	0	0	2	1	0	0	0	0	23
Sand Offenders	0	0	0	10	39	51	74	18	34	60	130
Slum Grabbers	0	0	0	0	0	0	0	2	3	0	2
Land Grabbers	0	0	0	1	14	25	2	0	3	1	0
Video Pirates	0	0	0	16	20	18	21	4	21	9	0
Immoral Traffickers	0	0	0	20	25	29	33	20	27	22	29
Total:	2195	2073	1600	2227	3568	3924	3413	3071	2441	3144	3206

DETENTION ORDERS PASSED, DISTRICT-WISE (2009-2019)

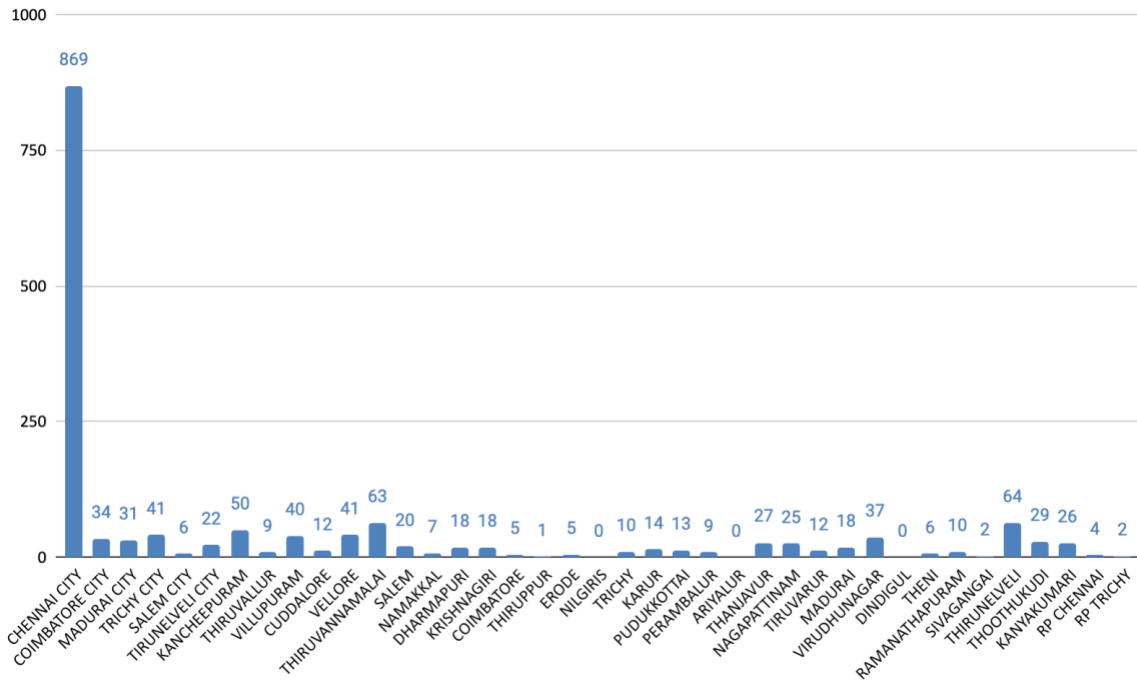
2009



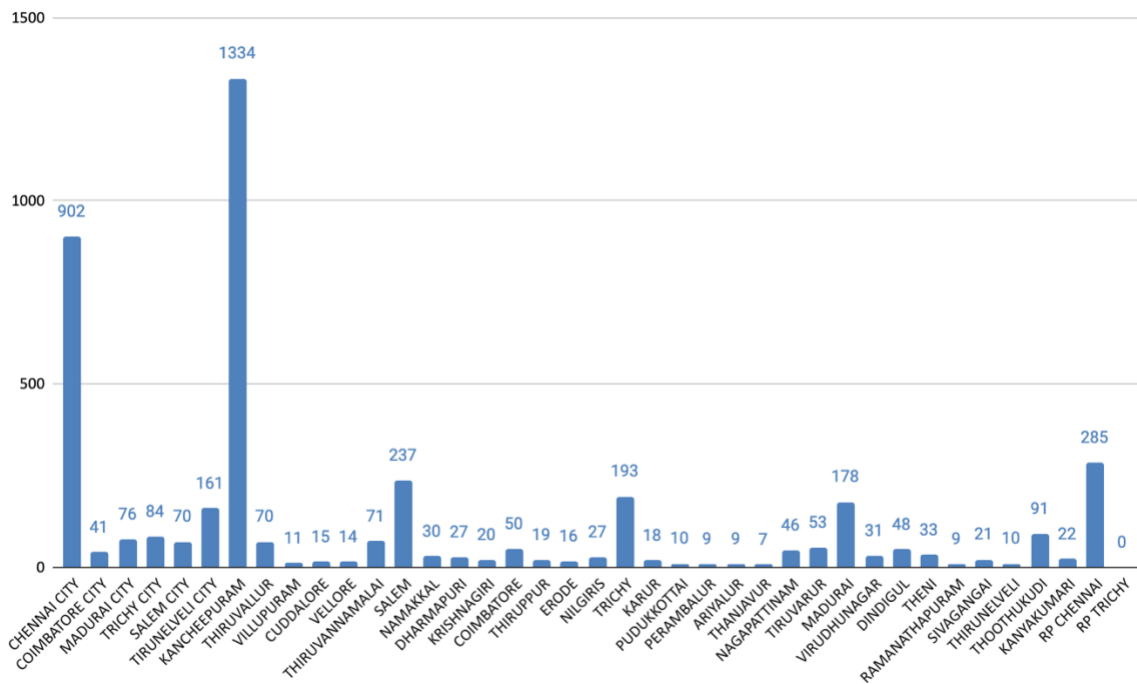
2010



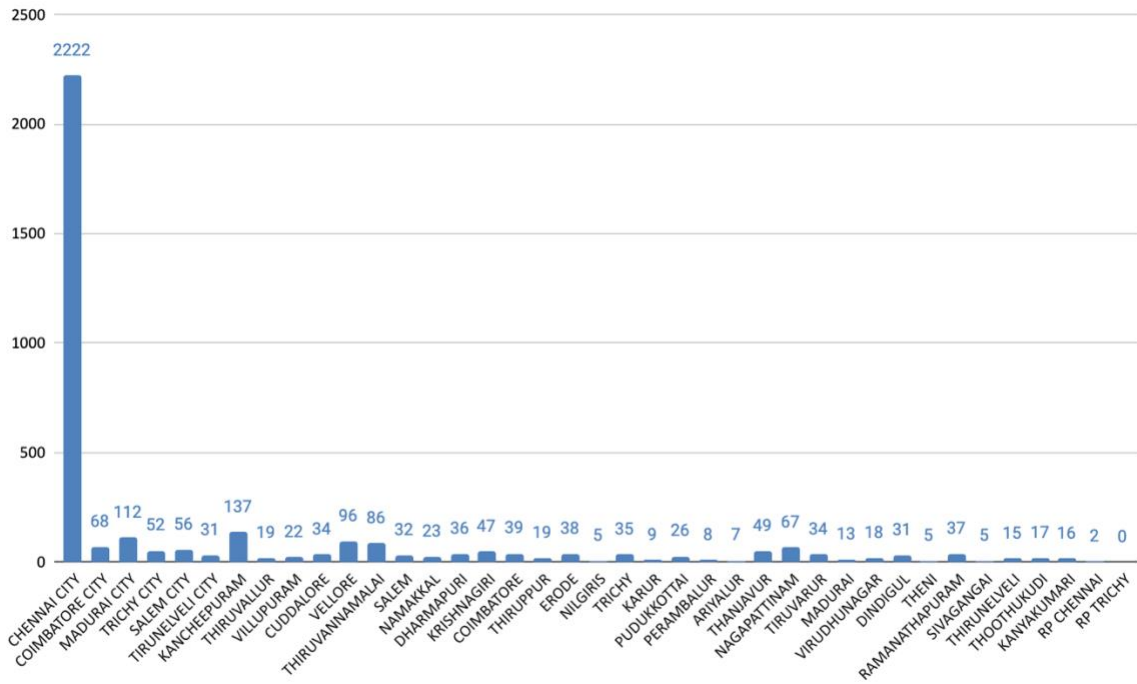
2011



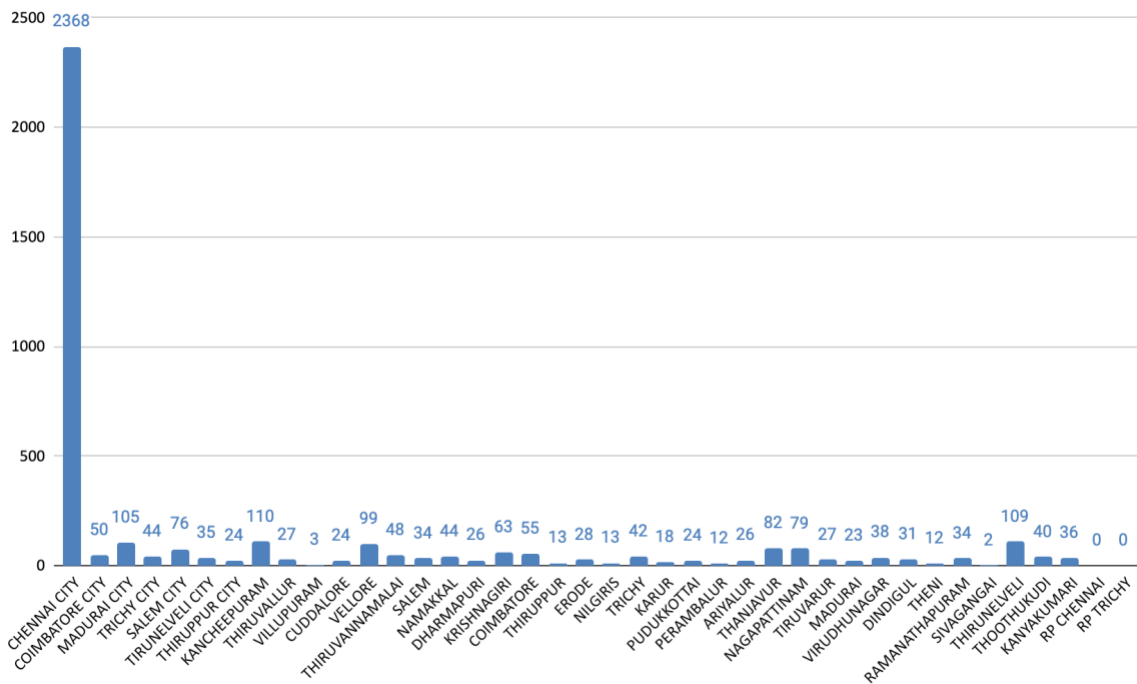
2012



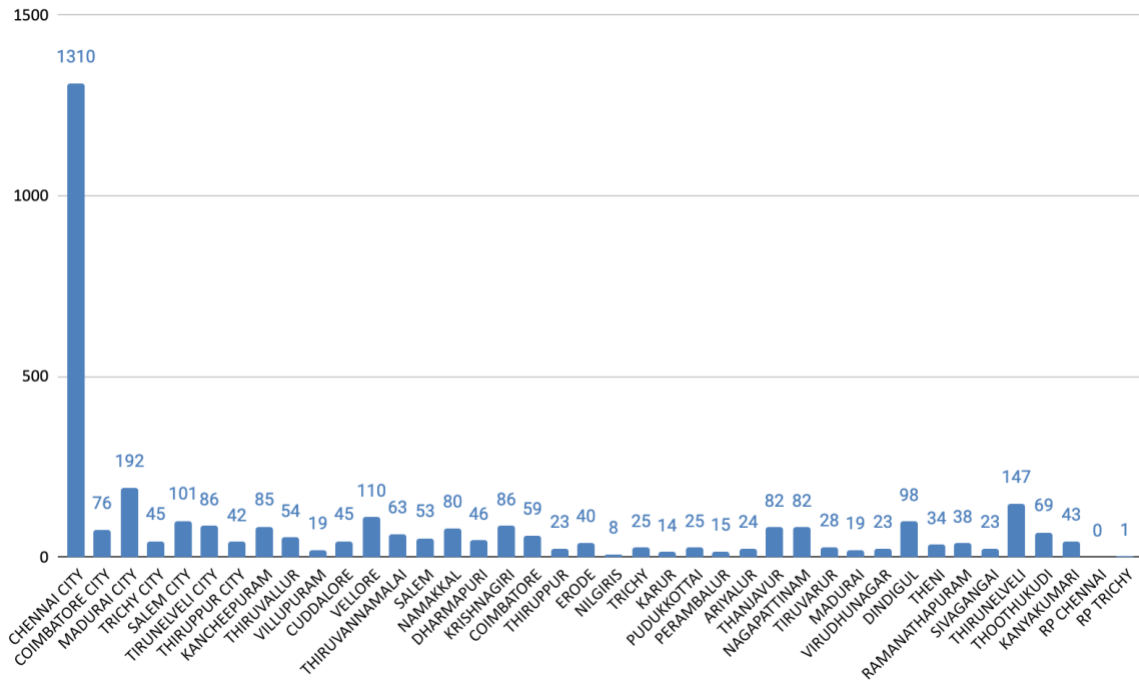
2013



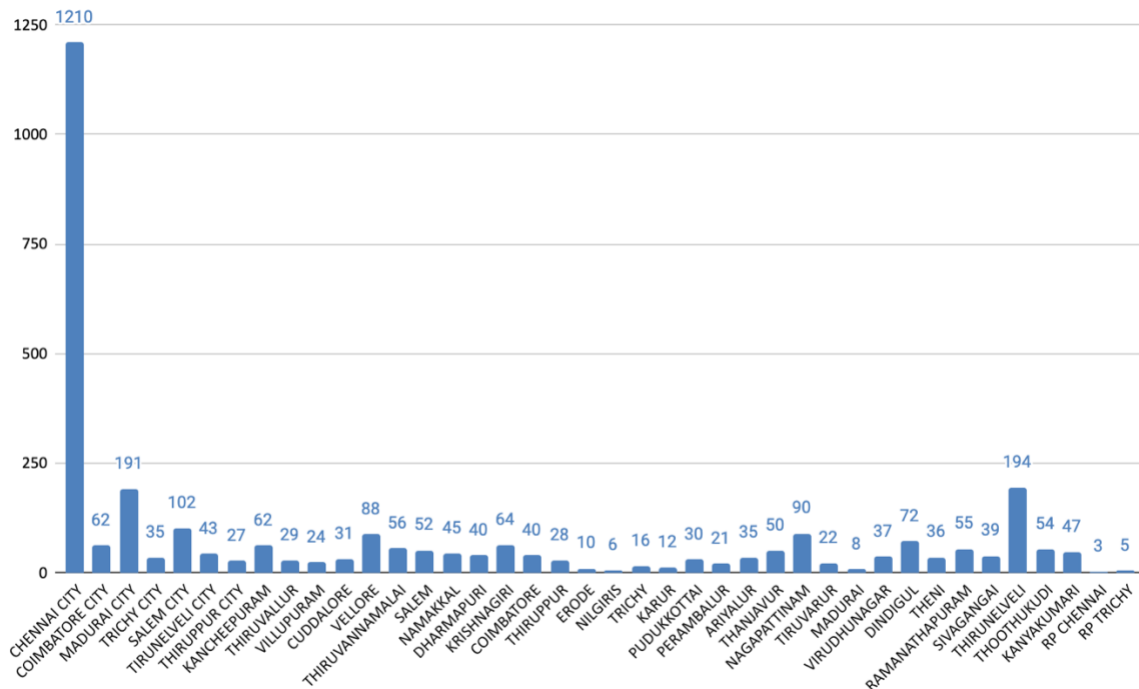
2014



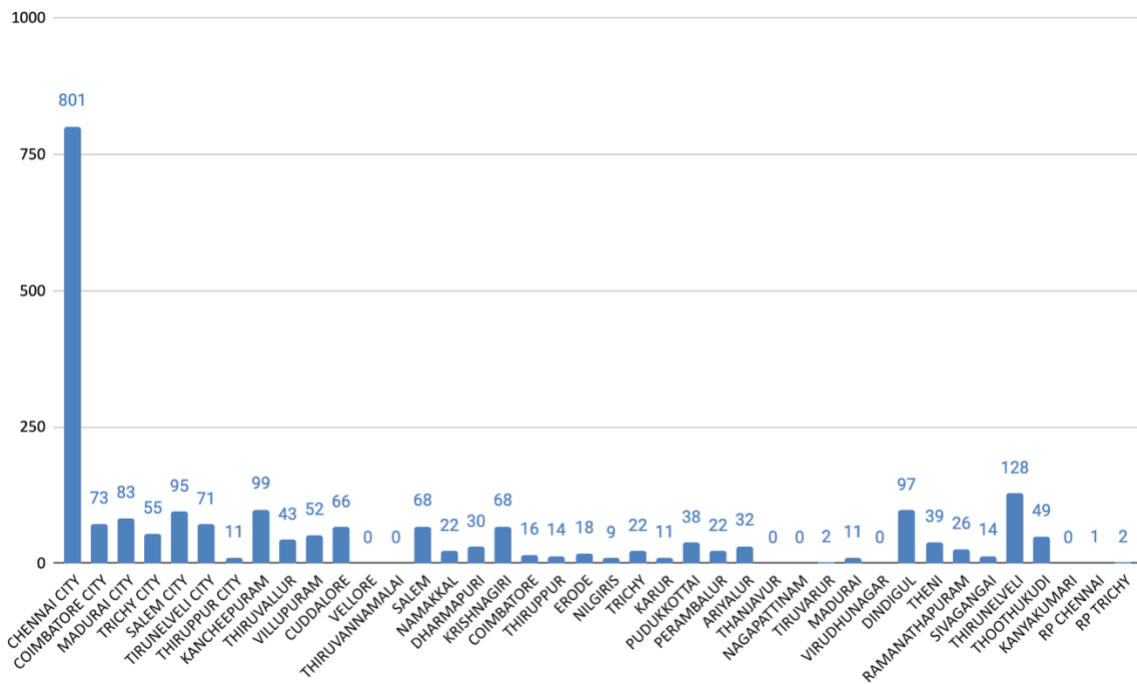
2015



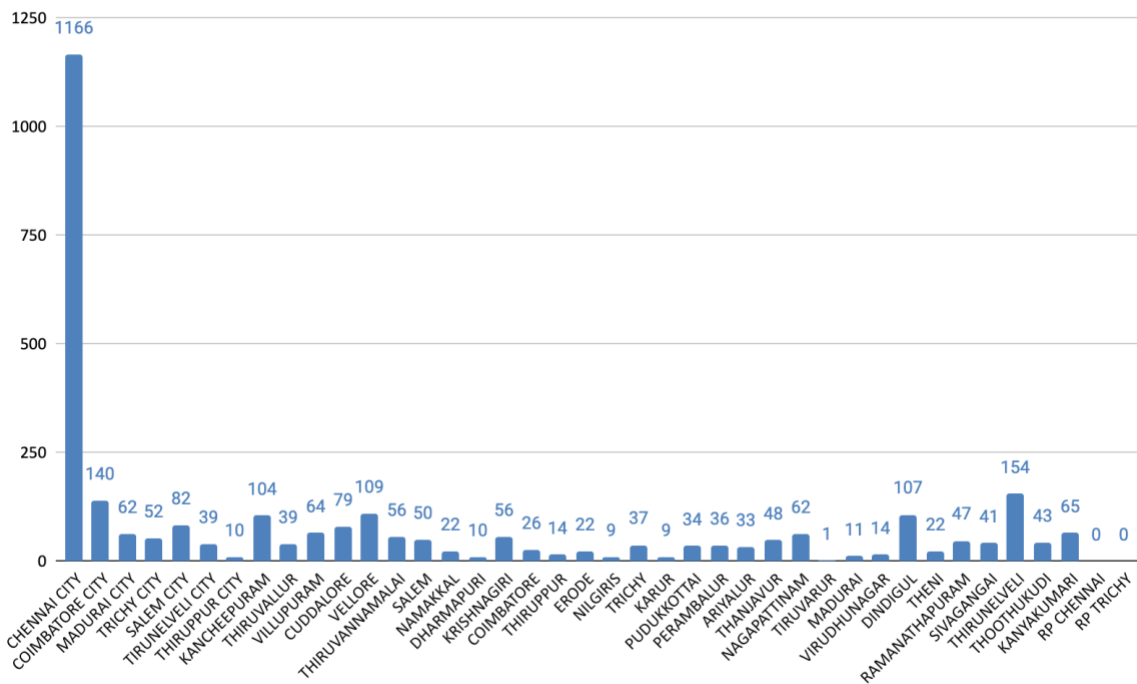
2016



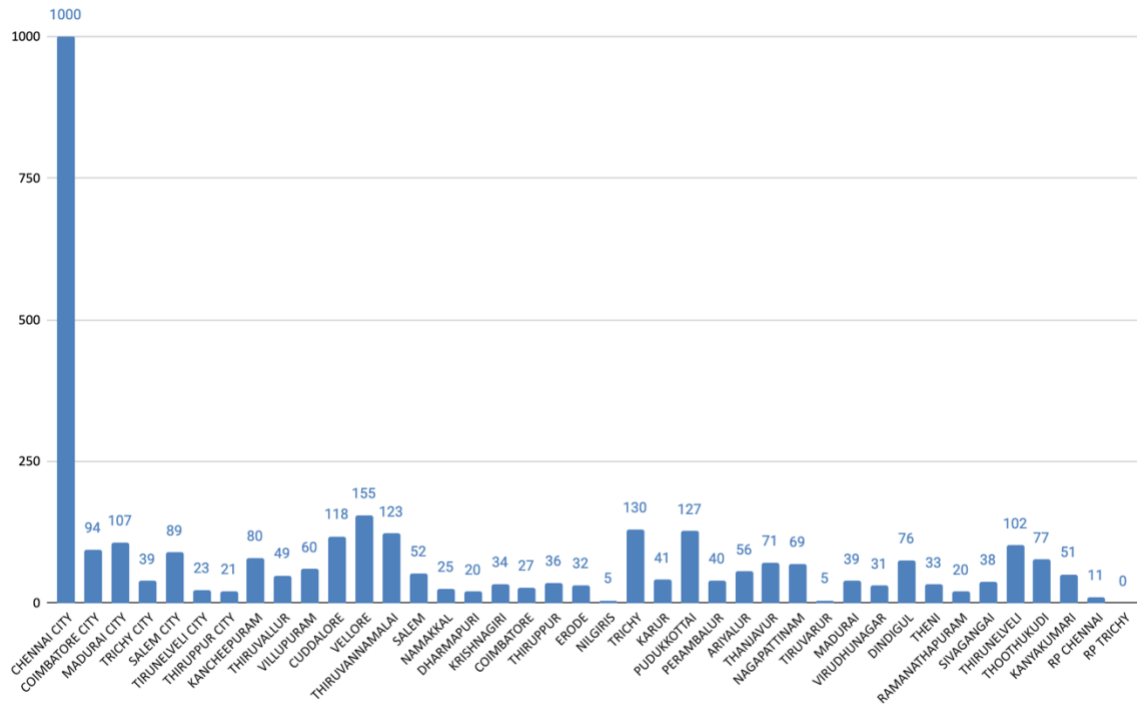
2017



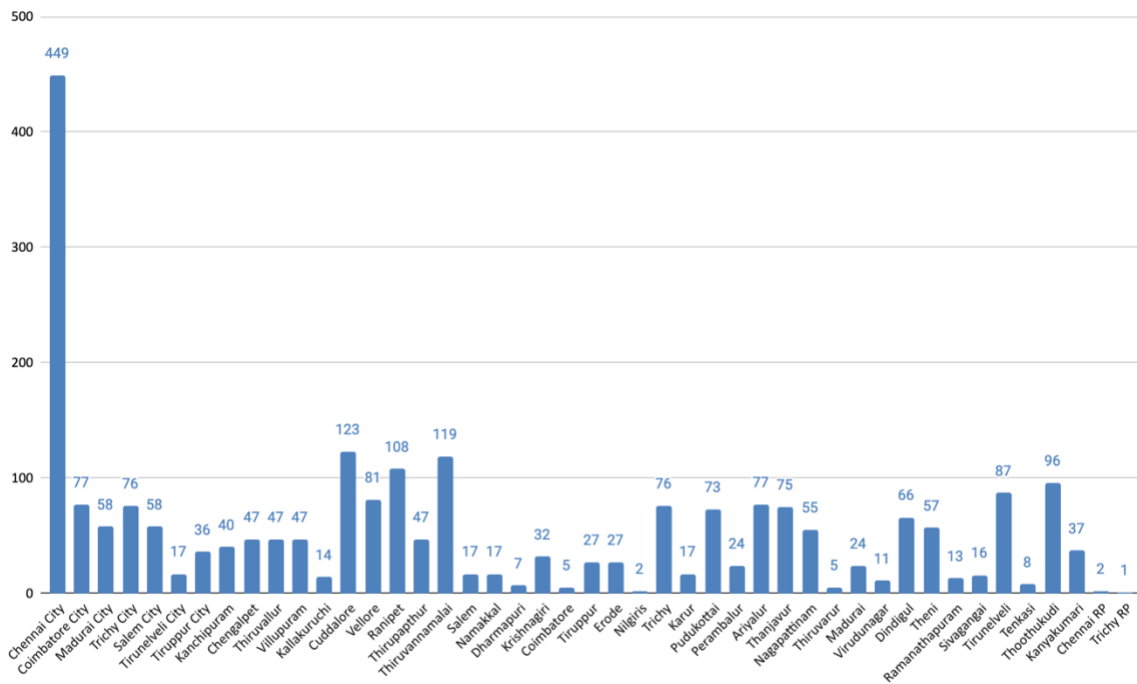
2018



2019

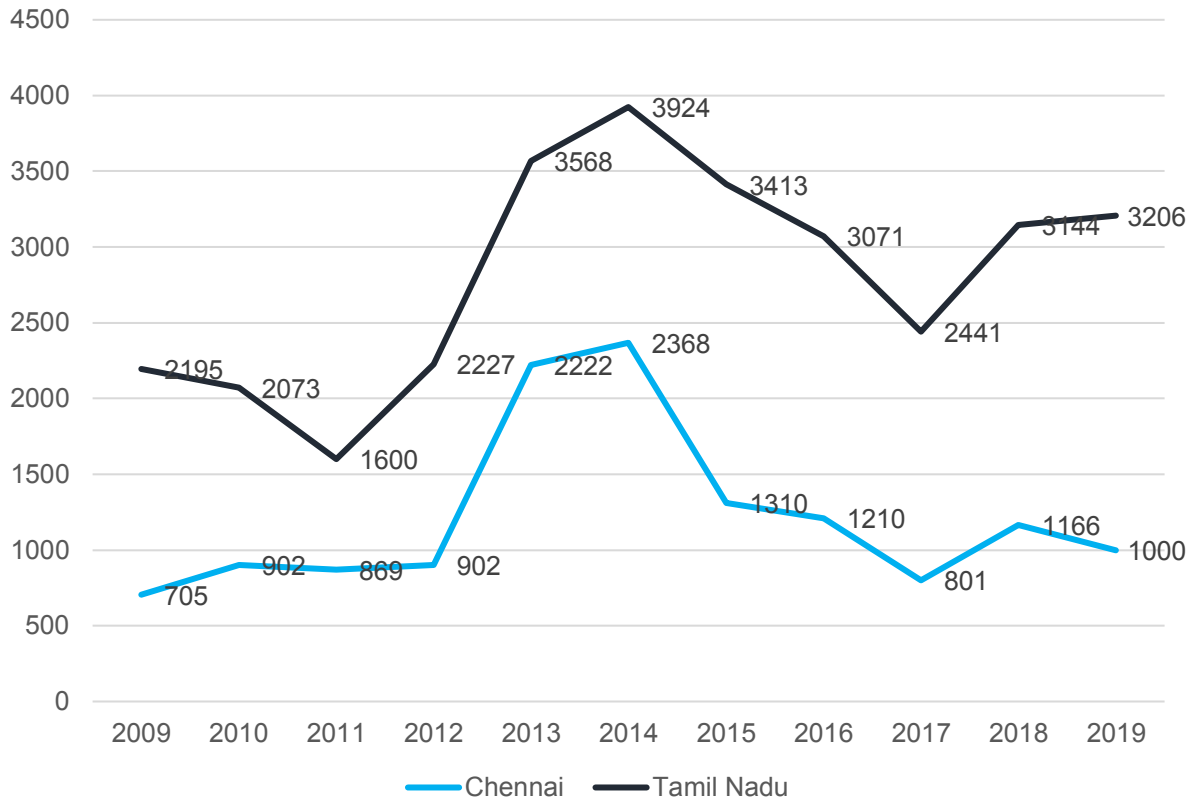


2020 (UP TO OCTOBER 2020)



OVERALL TRENDS, TAMIL NADU AND CHENNAI (2009-2019)

Total detention orders passed, year-wise:



	Chennai	Tamil Nadu
2009	705	2195
2010	902	2073
2011	869	1600
2012	902	2227
2013	2222	3568
2014	2368	3924
2015	1310	3413
2016	1210	3071
2017	801	2441
2018	1166	3144
2019	1000	3206