

# Undertrial Prisoners in the Bastar Division

Jagdapur Legal Aid Group

# Jails in the Bastar Division

- Jagdalpur Central Jail
- Dantewada District Jail
- Kanker District Jail

# Overcrowding in Jails (2013)

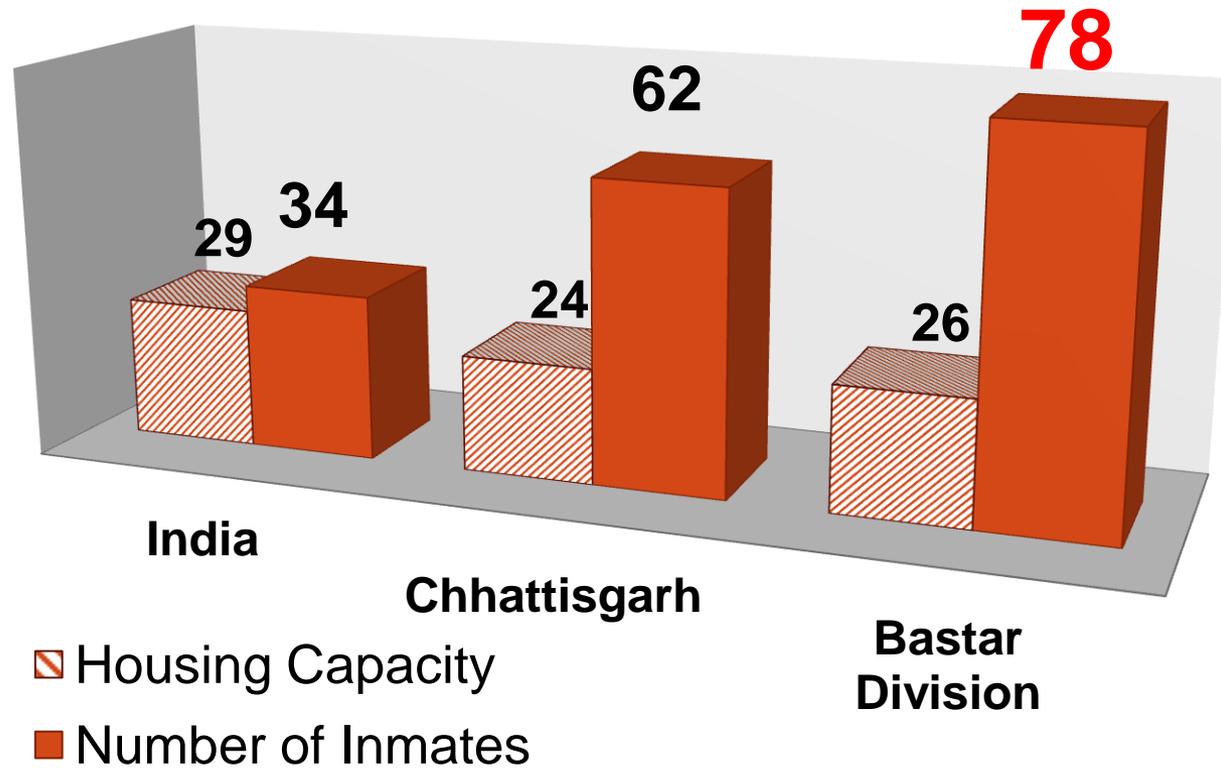
- Of all the states in India, Chhattisgarh has had the highest rate of overcrowding in Jails for the past 6 years.

	Capacity of Jails	Actual Occupancy	Occupancy Rate
INDIA	347,859	411,992	118%
CHHATTISGARH	6,070	15,840	261%
Kanker Dist. Jail*	65	278	<b>428%</b>
Dantewada Dist. Jail	150	557	<b>371%</b>
Jagdalpur Central Jail	579	1,508	<b>260%</b>

\*On 19.6.2014, Kanker jail had a total of 405 inmates, of which 3 were convicts, bringing the occupancy rate to **623%**.

# Rate of Incarceration (2013)

Prisoners per lakh of population

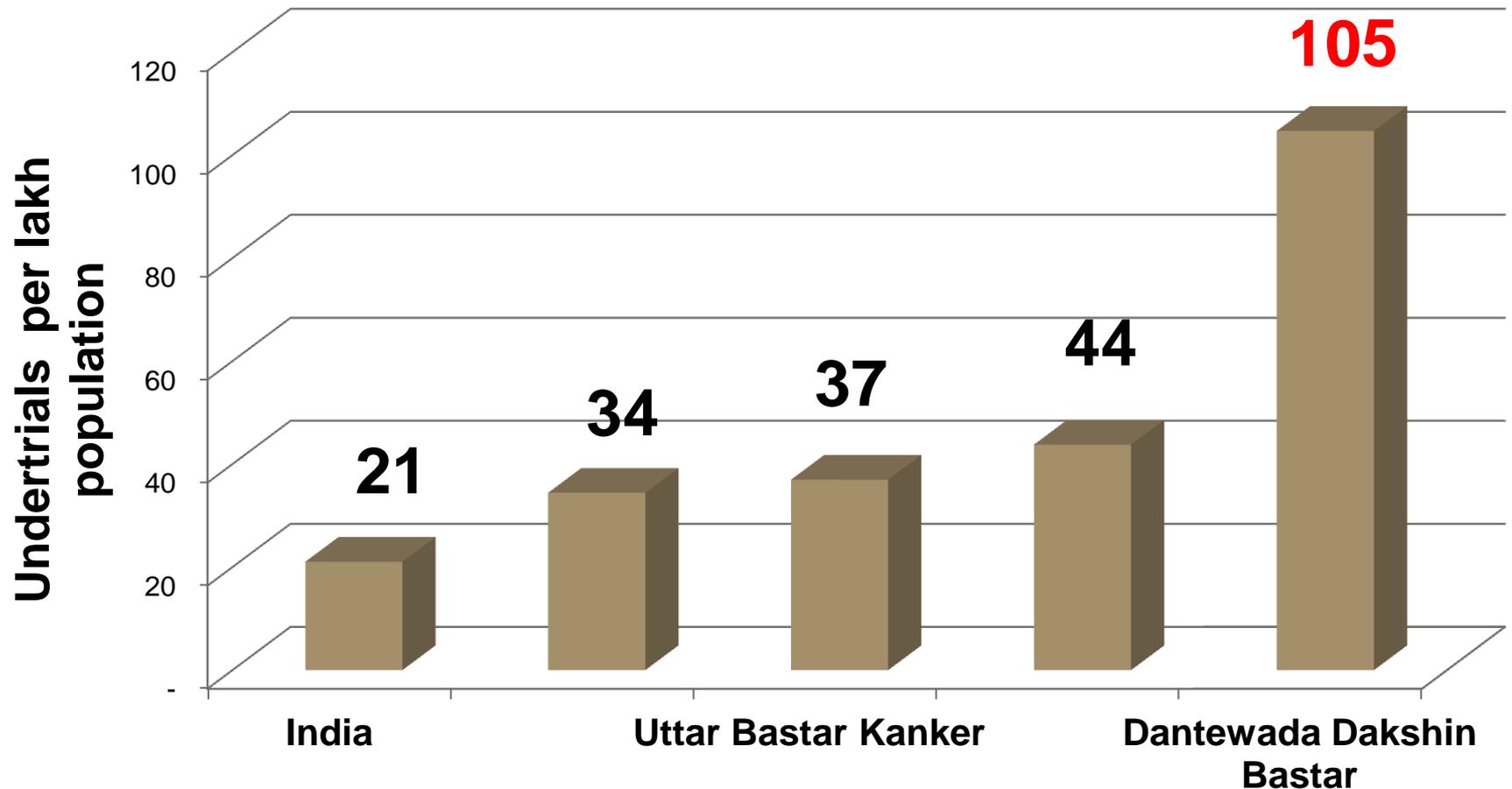


# Description of Prisoners

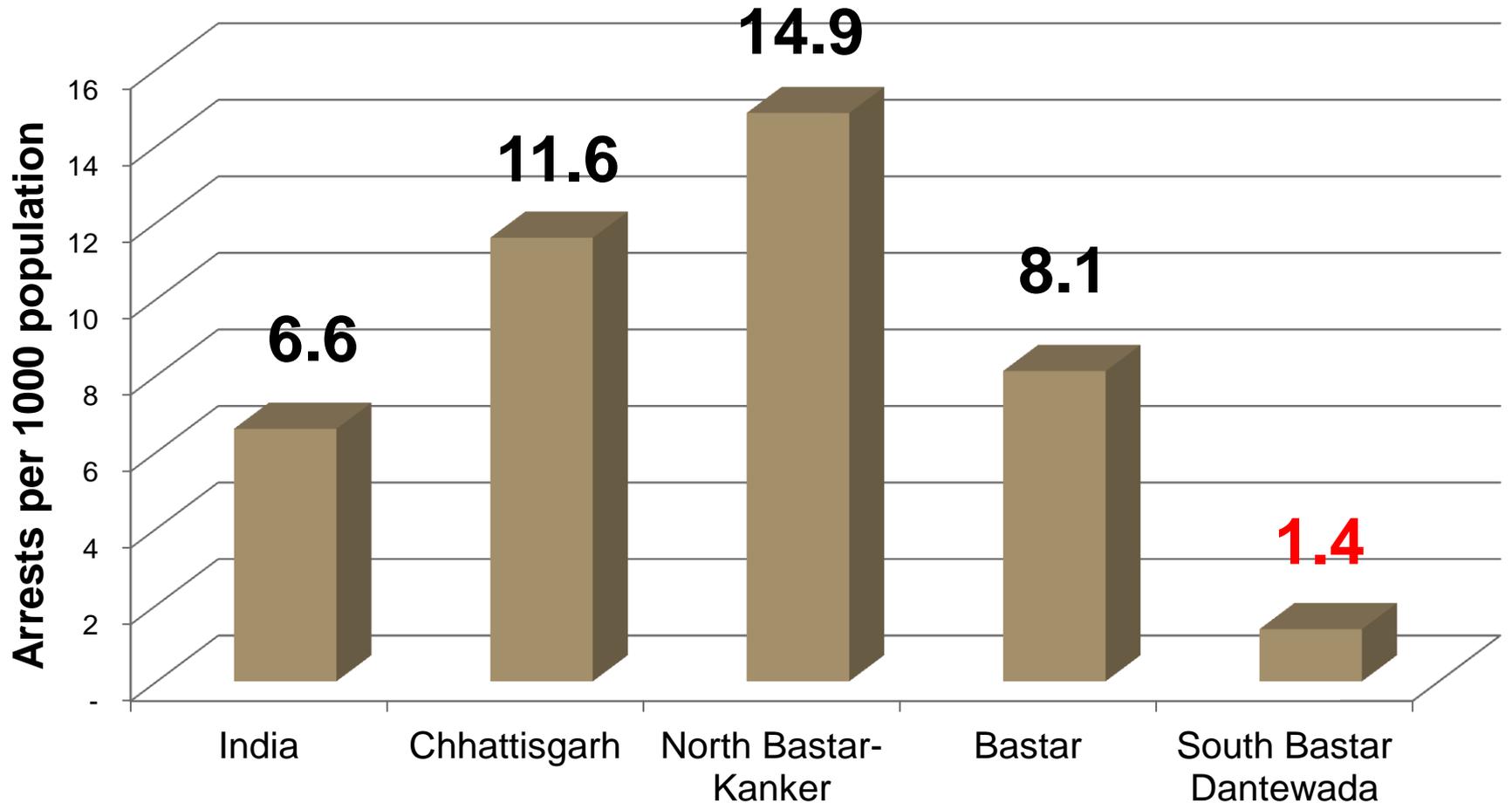
A majority of prisoners are illiterate *adivasi* men between ages of 18-30 years. The vast majority are undertrials.

	Undertrials	Convicts	% Undertrials	% Convicts
India	278,503	129,608	67.6%	31.5%
Chhattisgarh	9,241	5,964	58.3%	41.6%
Kanker Dist. Jail	336	12	<b>96.6%</b>	<b>3.4%</b>
Dantewada Dist. Jail	546	11	<b>98.0%</b>	<b>2.0%</b>
Jagdalpur Central Jail	835	673	55.4%	44.6%

# Rate of Incarceration of Undertrials (2013)

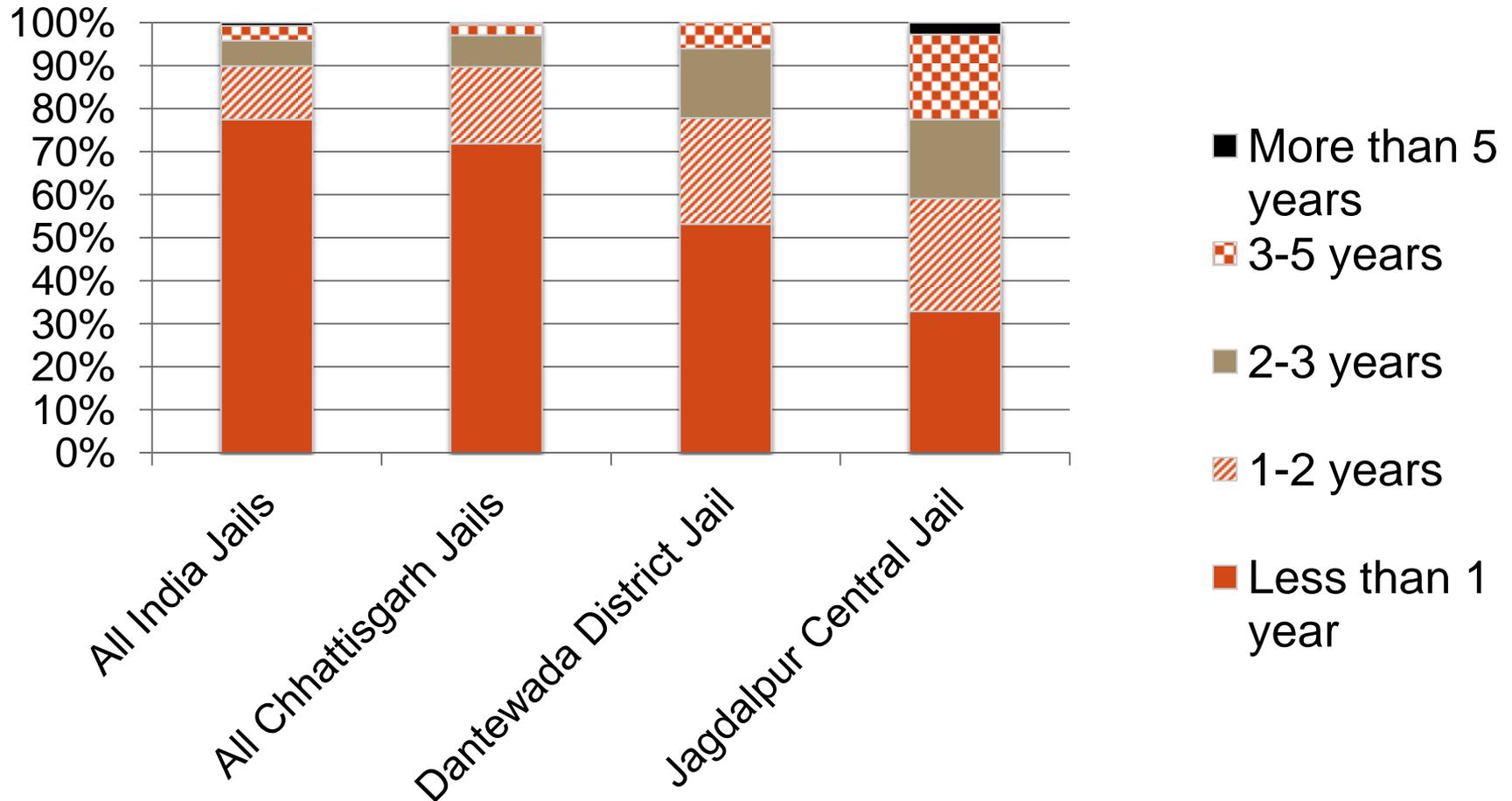


# Rate of Arrests (2013)



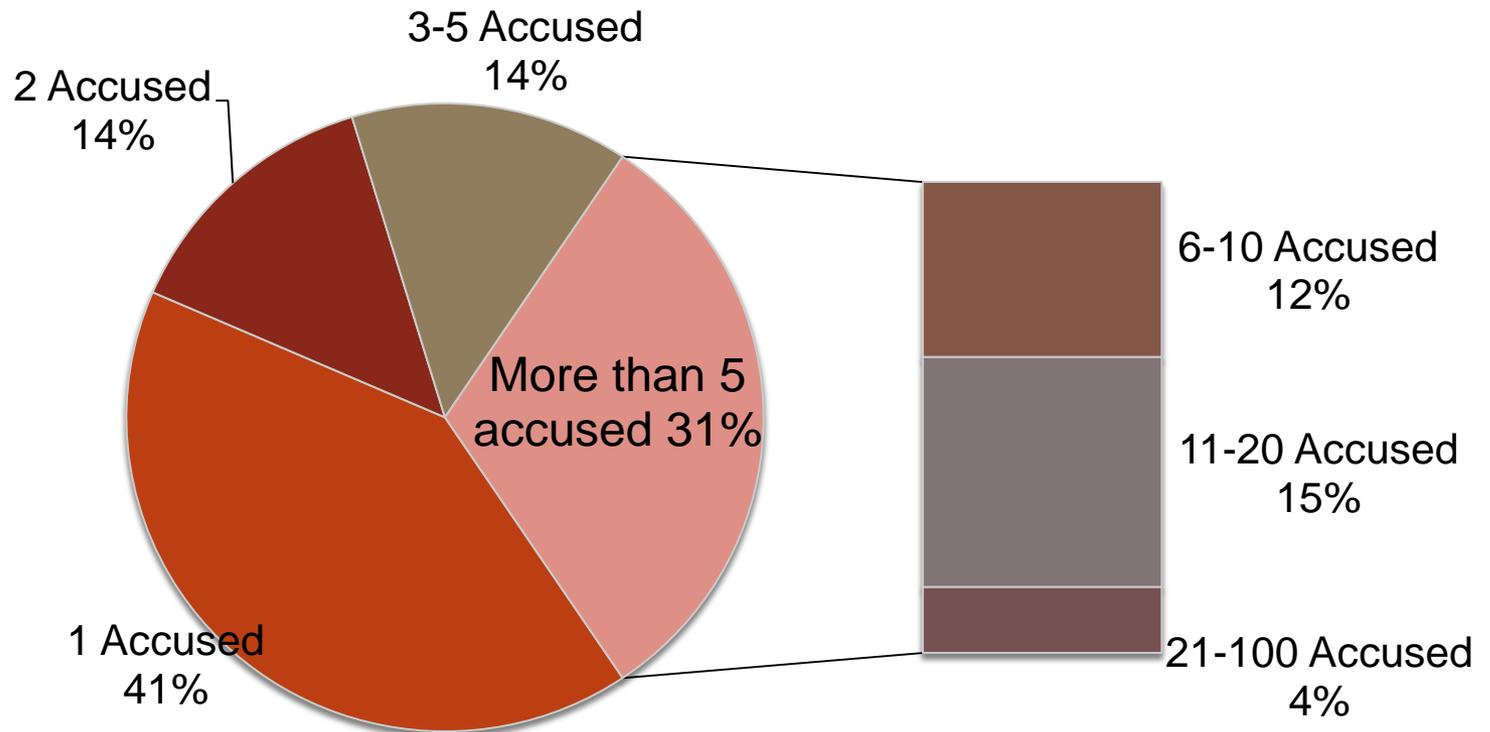
The size of the prison population has increased greatly but the rate of arrest has gone down, suggesting prolonged periods of incarceration

# Duration of Incarceration of Undertrials in Prison (2013)

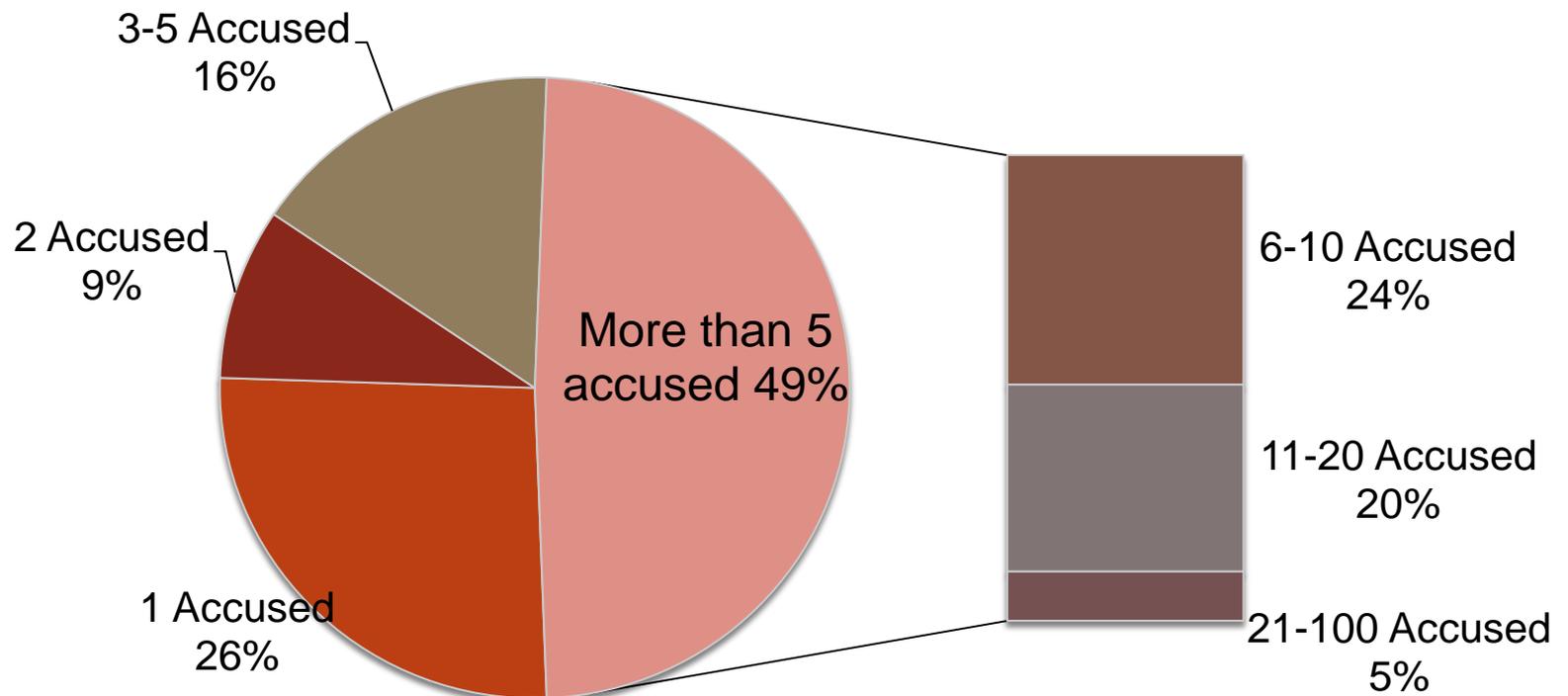


Bastar jails have a much higher percentage of prisoners imprisoned over longer times compared to all India and all Chattisgarh jails

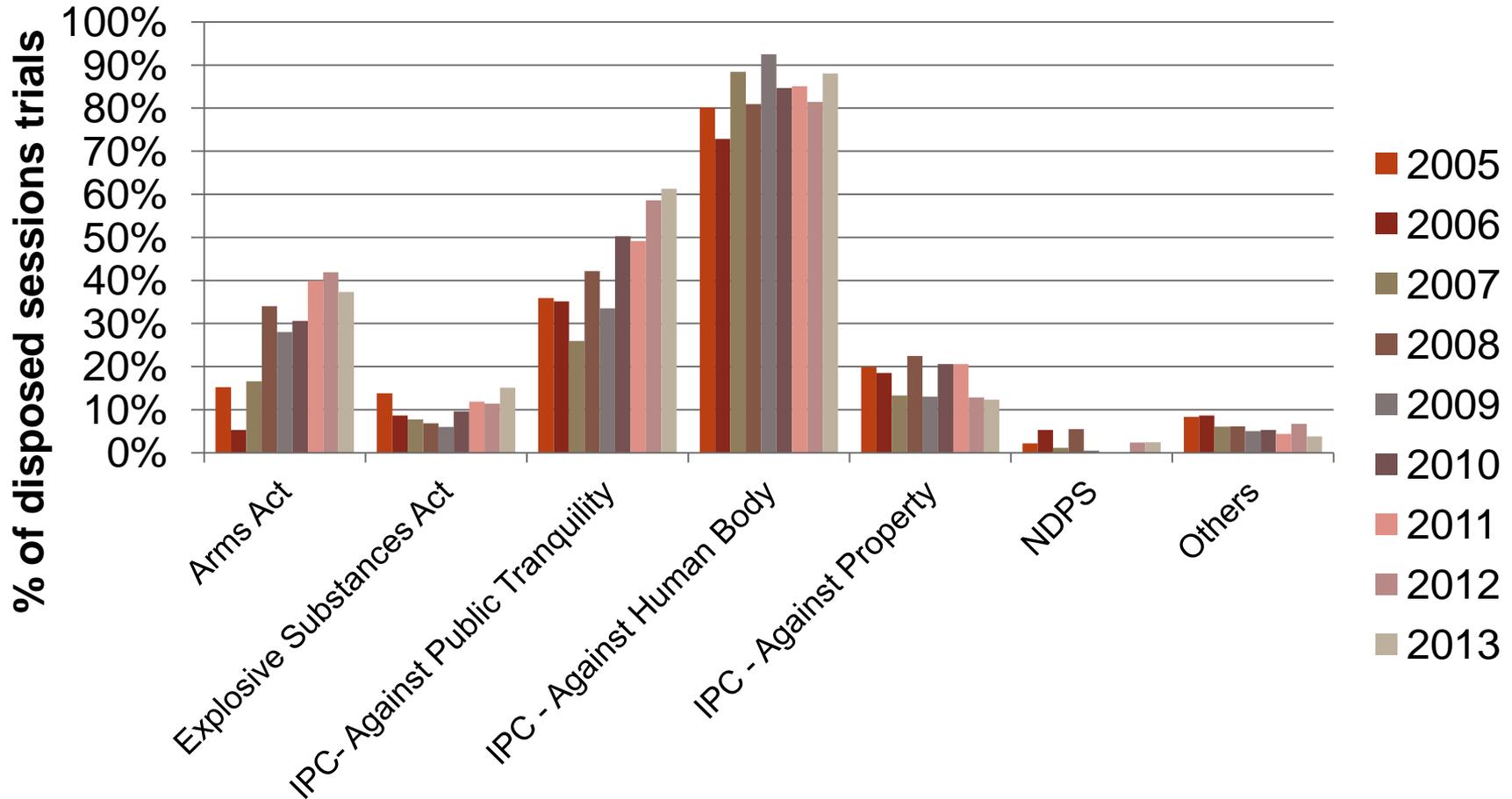
# Distribution of Sessions Trials by Number of Named Accused (2005)



# Distribution of Sessions Trials by Number of Named Accused (2013)

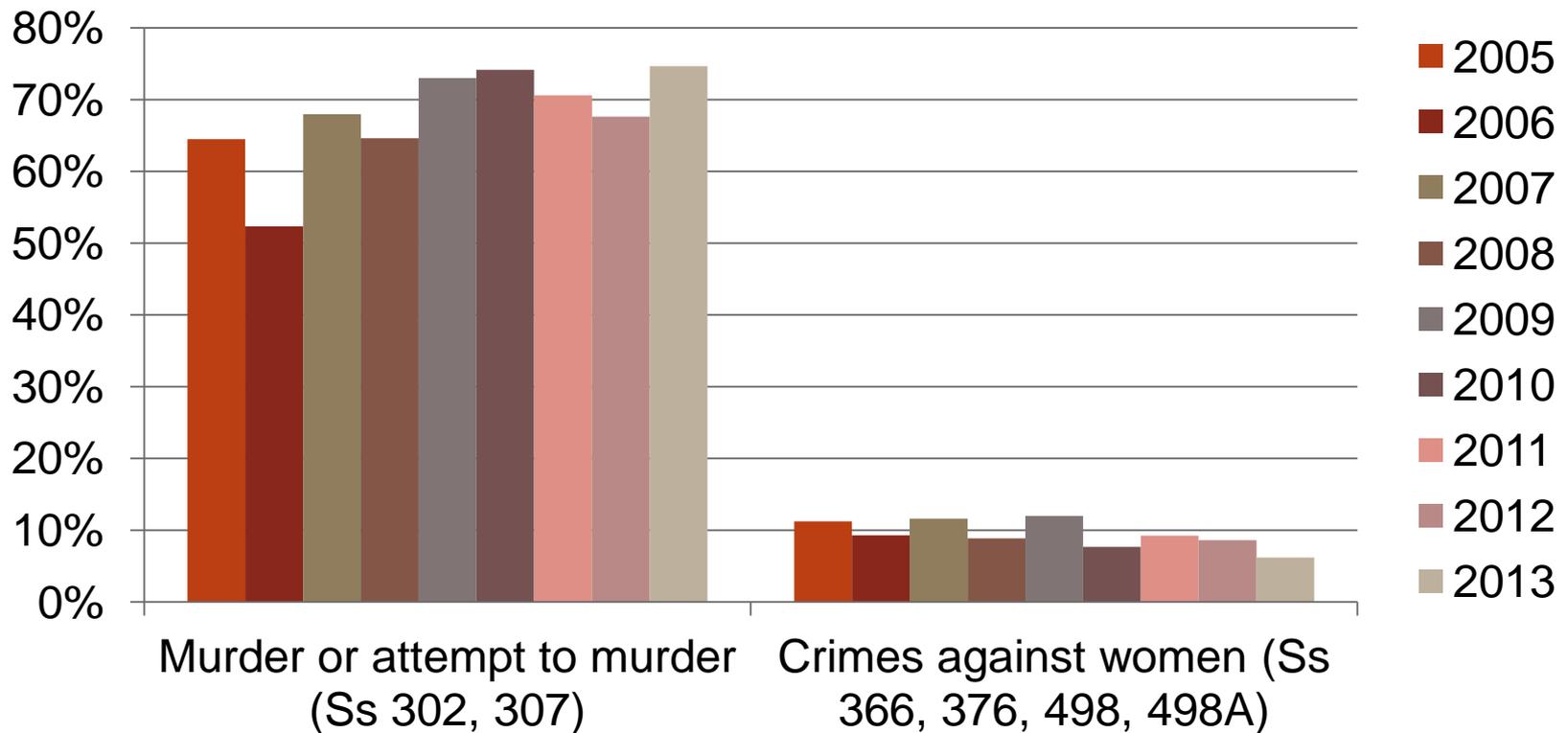


# Charges in Sessions Trials



Highest number of charges are under sections concerned with offences against the human body (i.e. murder, attempt to murder etc.), followed by those concerned with offences against public tranquility (rioting etc.). All these charges entail severe penalties, showing that usually severe charges are laid against the accused

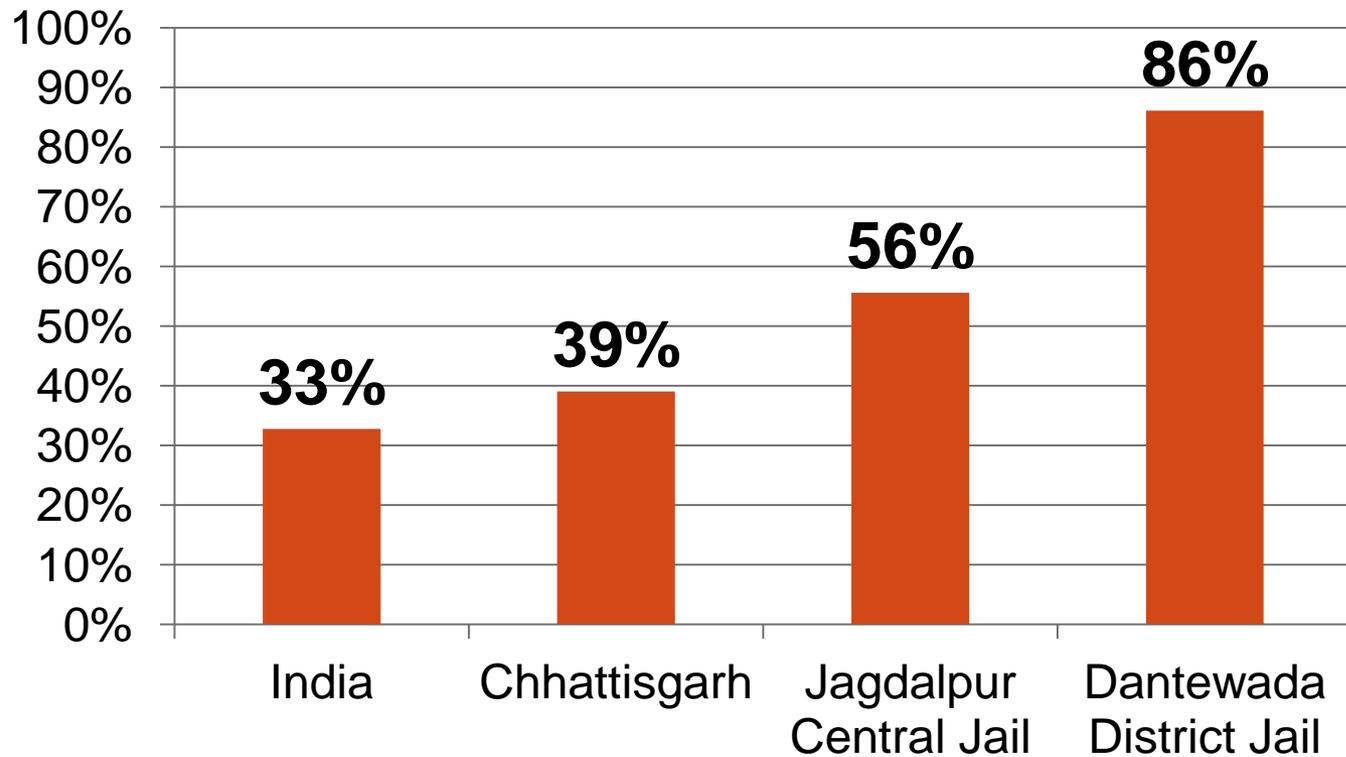
# Charges in Sessions Trials



There is a disproportionately high number of murder and attempt to murder charges, compared to other common offences such as crimes against women.

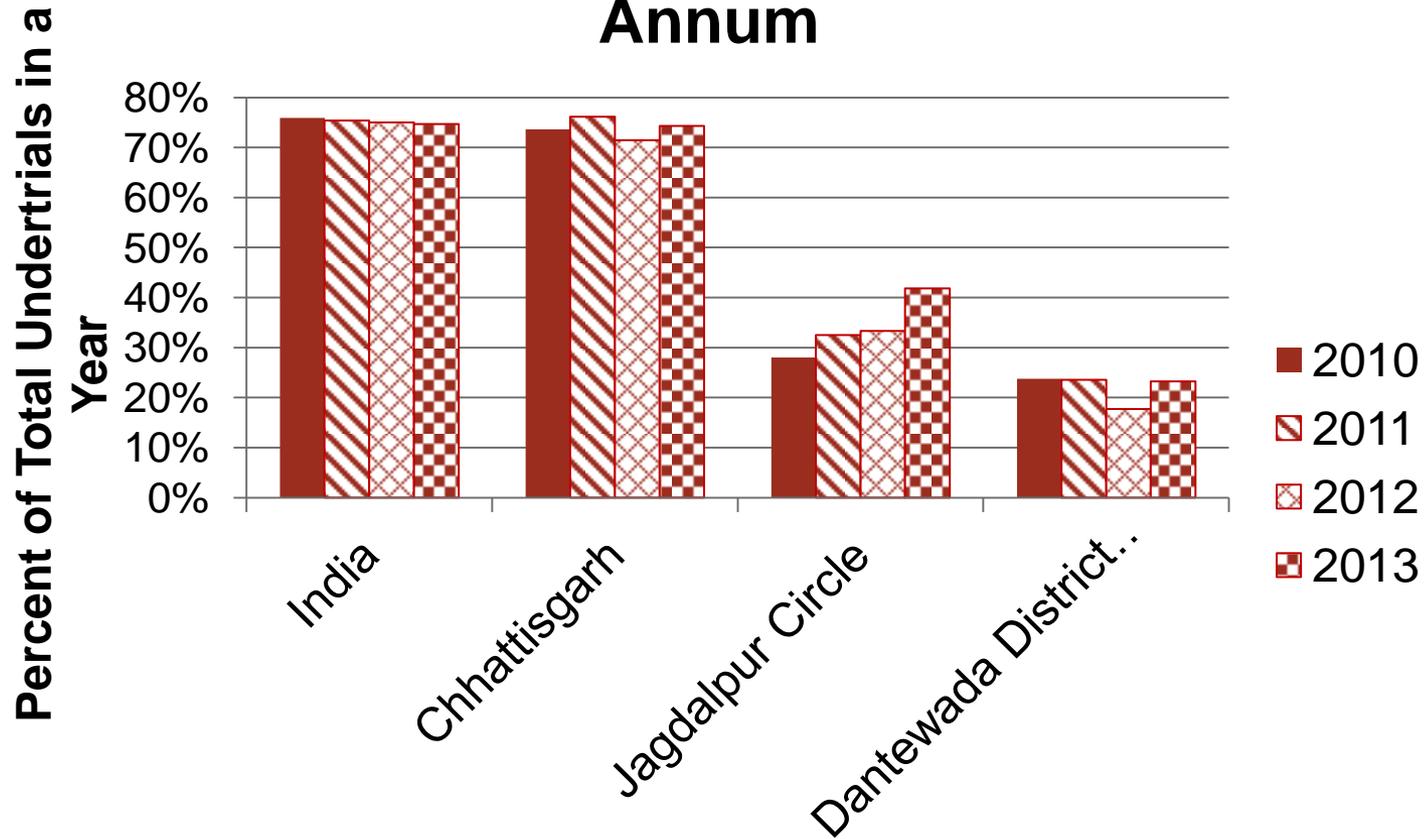
# Charges against Undertrials

## Percentage of Undertrials charged with Murder/ Attempt to Murder / CH (2013)

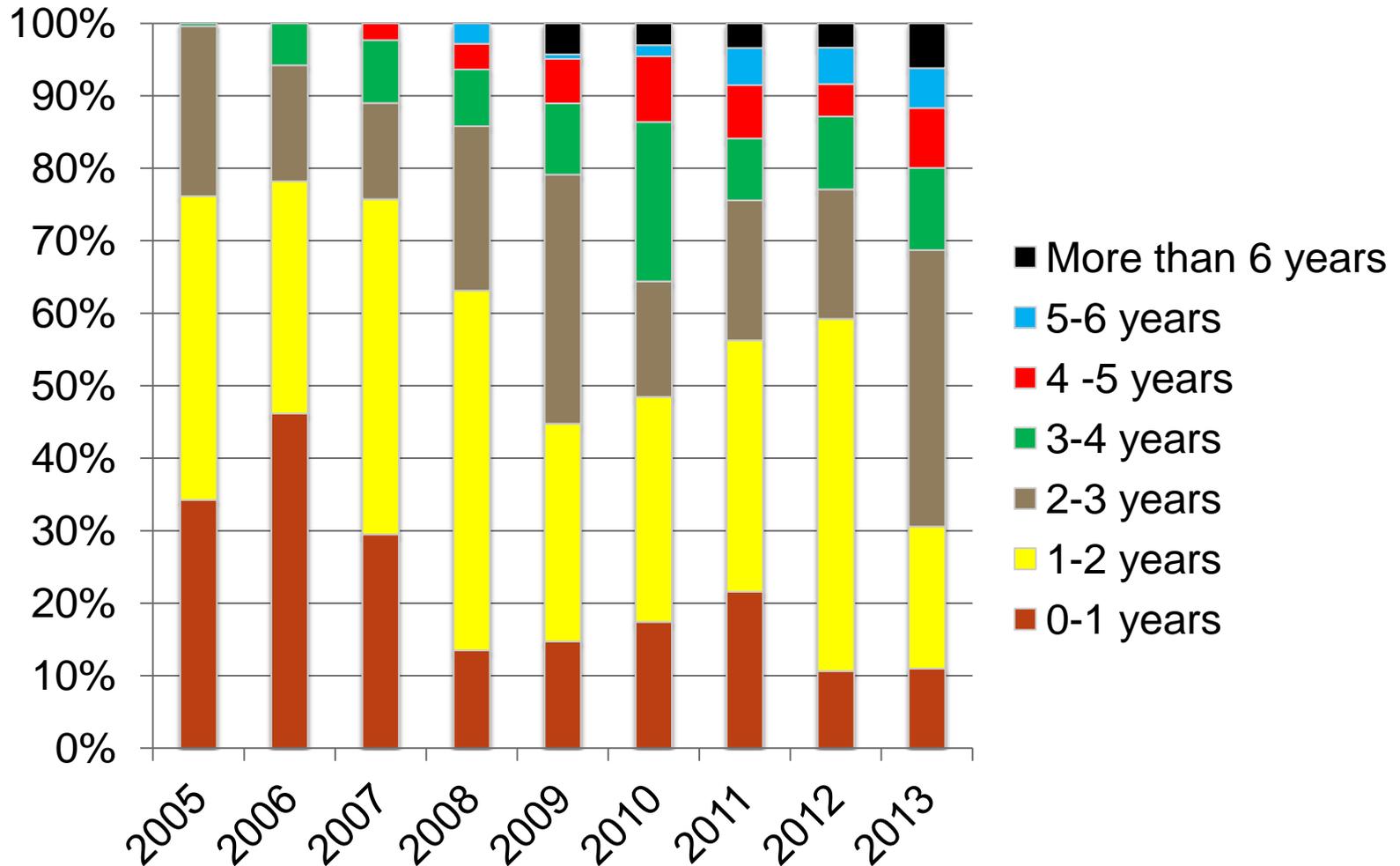


# Rate of Bail in Undertrials

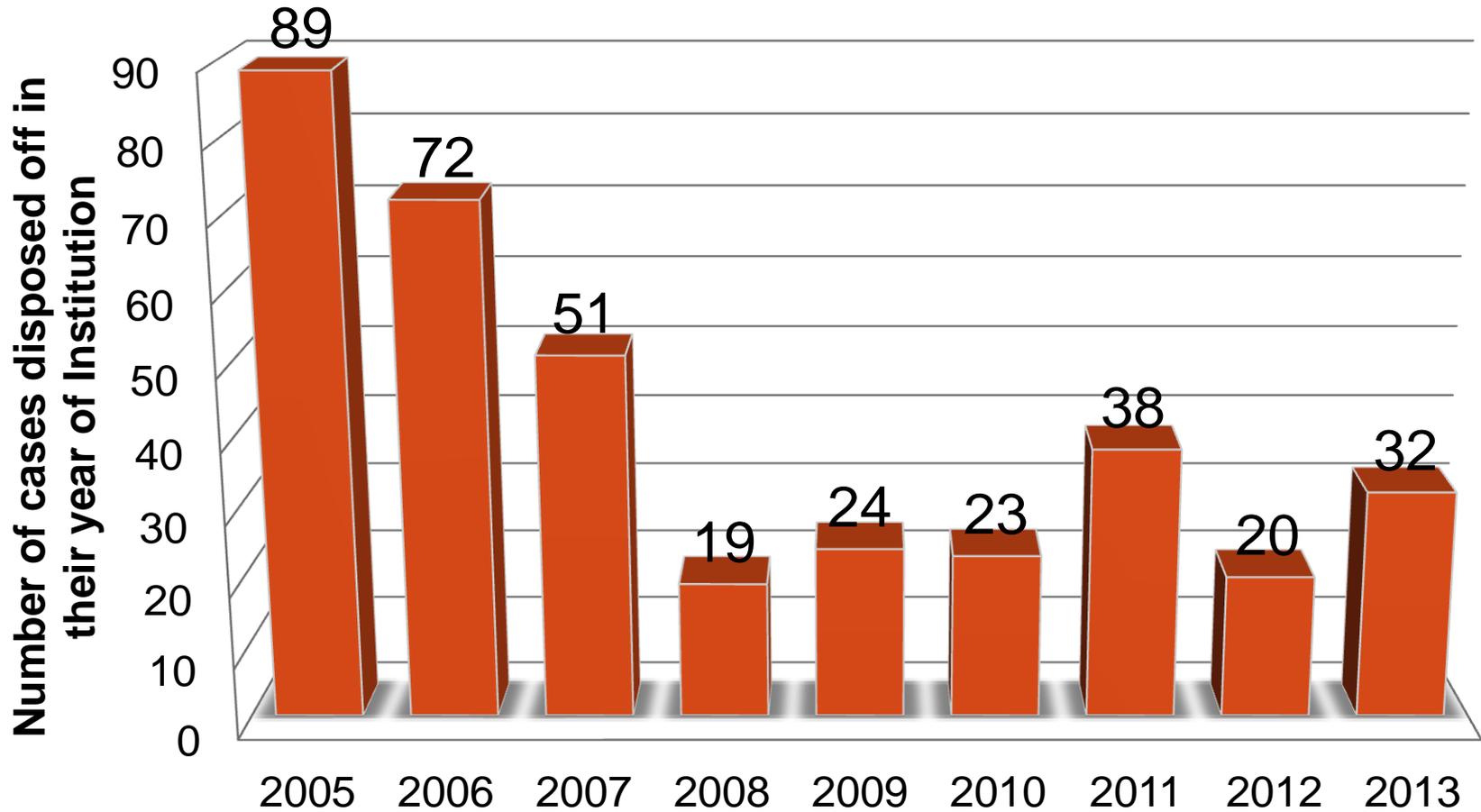
## Undertrials Released on Bail Per Annum



# Duration of Sessions Trials in Dantewada

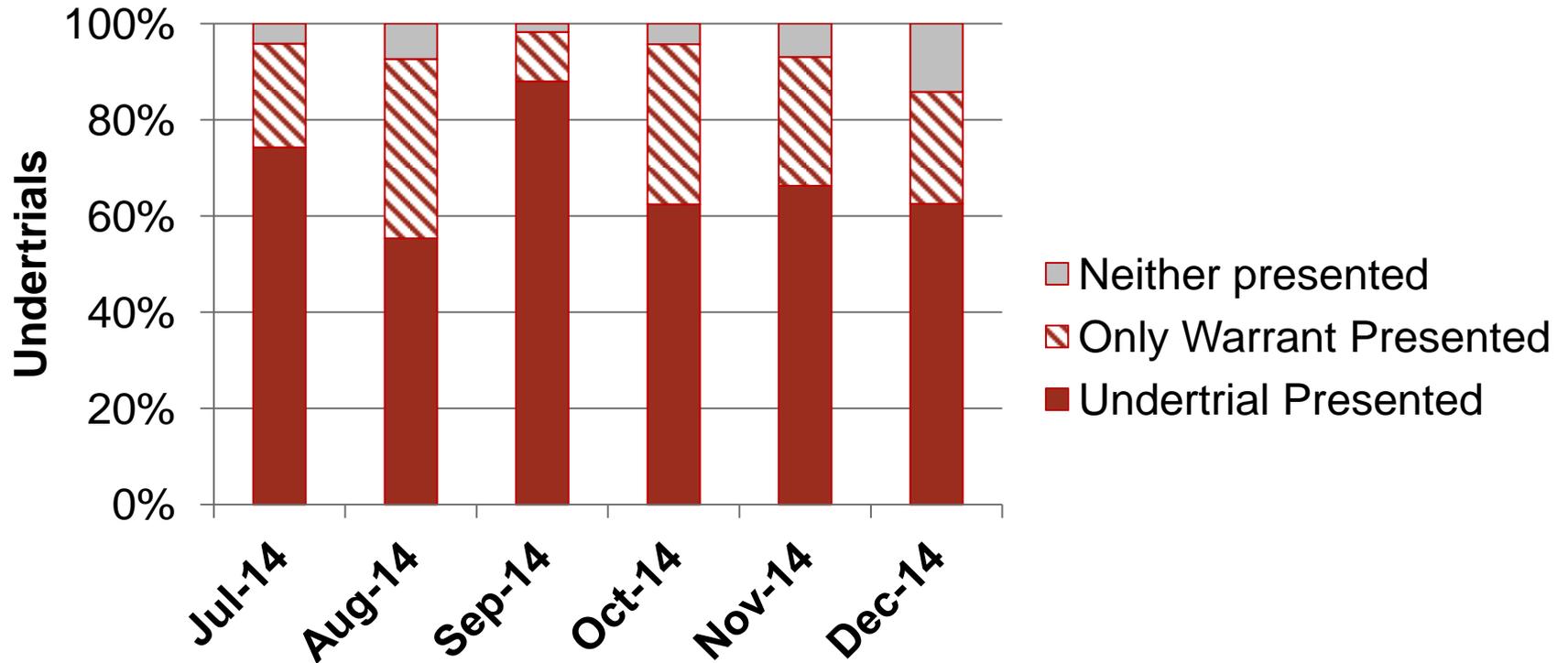


# Cases Disposed off in the First Year



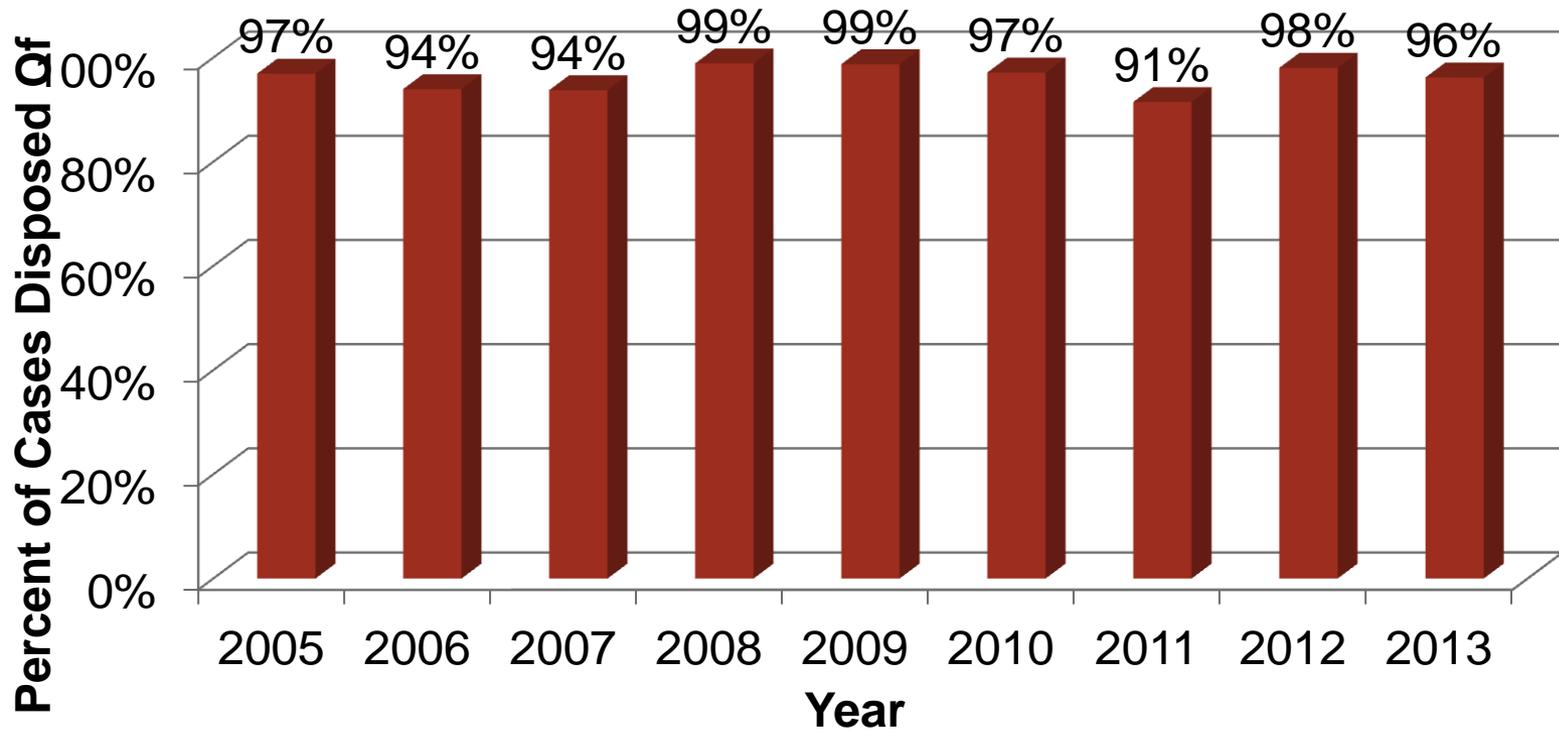
# Presentation of Undertrial Prisoners in Courts

## (Jagdalpur Central Jail)



# Disposal of Cases

## Rate of Complete Acquittals



# Conclusions

- Jails in Bastar have a severe problem with overcrowding
- The reason behind overcrowding is not lack of capacity, but excessive number of prisoners.
- In Dantewada South Bastar, excessive number of prisoners in jail results not from increased arrests, but longer durations of incarceration on undertrials
- In Dantewada South Bastar, many people are arrested in group crimes (>5 accused), charges put on them are severe, bail is rarely granted, but eventually most of the undertrials are acquitted.

# Undertrials in Bastar Division

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Some Case Studies

# Fabrication of Evidence

Many chargesheets clearly show that evidence has been fabricated against the accused:

- Improving memory with time -
  - State v. Joga, Jugal and Sudar – In 13 FIRs over 5 months, different complainants have named many different names of accused – none have mentioned Joga, Jugal and Sudar. In all 13 chargesheets, the same 13 complainants – a few days after the FIRs – have given police statements, in which they all add names of Joga, Jugal and Sudar to the names already present in the FIR.
  - State v. Kawasi Hidme – Policemen at the scene of encounter claim hearing Naxalites shout 50 names of each other, while attacking the police party. These 50 names are in the FIR and police statements taken right after the attack. Five months later, two policemen remember 53 names, and the remaining 3 are soon arrested.

# Fabrication of Evidence

- Similar evidence - different crimes –

Chargesheet no.	24/2010, P.S. Kuakonda	26/2010, P.S. Kuakonda
<b>FIR No.</b>	13/10 P.S. Kuakonda	17/10 P.S. Kuakonda
<b>Witness Name</b>	Mundra Muchaki s/o Pisa 45 years Chote Bedma, Hidmapara P.S. Kuakonda	Sannu Muchaki s/o Madka Muchaki 38 years Chote Bedma, Hidmapara P.S. Kuakonda
<b>Testimony: Introductory Part</b>	I live in village Chote Bedma. <u>I am engaged in agriculture.</u> On 8.7.2010, on Thursday, <u>in the morning when I was going to my farm,</u> I saw that from the jungle some uniformed Naxalites were coming along with:	I live at the above address. <u>I am engaged in agriculture.</u> On 16.8.2010, <u>in the morning when I was going to my farm,</u> I saw that from the jungle some uniformed Naxalites, carrying guns, <u>were coming along with</u> some villagers:
<b>The list of the accused</b>	(1) Madkami Kosa (2) Madkami Deva (3) Madavi Budhra (4) Sodi Nanda (5) Madavi Budhra of Phoolpad (6) Ashram warden Soni Sodi of Jabeli, who were coming from the direction of the jungle, talking with the Naxalites.	(1) Madkami Kosa (2) Madkami Deva (3) Madavi Budhra (4) Sodi Nanda (5) Madavi Budhra s/o Bhima 28 years of Phoolpad (6) Jabeli's Ashram warden Soni Sodi, whom I recognized.
<b>The description of the crime</b>	Out of fear, I hid in the jungle and saw these people and also listened to the conversation of these people, that this time Avadhesh Gautam and people of the police station survived the attack. Next time, whenever we attack, not even one police man should survive and the police station should also be blown up in the bomb blast. Saying this they were walking towards the jungle.	Out of fear, I hid in the jungle and saw these people who were saying, that the older building of the Tehsil Office should also have been blown up, which we will blow up next time. And the documents should be blown up and destroyed. Saying this they were walking towards the jungle, which I heard.
<b>The description of the crime</b>	Later on I came to know that in the night the Naxalites along with the above-mentioned people attacked the police station and the police personnel in police station Kuakonda, and tried to loot the governments ammunition stored in the police station, and tried to kill the personnel in the attack. The above-mentioned people were seen walking towards the jungle with the Naxalites by me.	Later on I came to know that the Naxalites along with the above-mentioned people blasted the newly constructed Tehsil Bhavan, and destroyed it. The above people along with the Naxalites destroyed the Tehsil Bhawan in a blast.
<b>Concluding part.</b>	Because of fear, I have not told anyone, today I am speaking without fear. <Signed> 17.10.2010	Because of fear, I have not told anyone, today I am speaking without fear. <Signed> 17.10.2010

<b>Note</b>	<ol style="list-style-type: none"> <li>1. The identical phrasing in the above statements from different chargesheets is highlighted as underlined. The statements are essentially the same, with the only significant difference between the two accounts being the actual description of the crime, and the dates on which the reported incidents take place.</li> <li>2. The same accused are listed by both witnesses in an identical order.</li> <li>3. Each testimony speaks about the unfinished crime which must be completed.</li> <li>4. Even though the witnesses saw the said accused accompanying the naxalites 2-3 months ago, they are reporting this on the same day.</li> </ol>
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# Shoddy Chargesheets

Most chargesheets have little reason to proceed, yet discharges are rare:

- Accused's name is missing -
  - *State v. Irpa Narayan*: Two accused, Midiyam Lachu and Punem Bhima, are not mentioned anywhere in the chargesheet, except in a bland statement of the IO that during investigation, he found the two involved in the crime. They have been in jail for more than 6 years now.
  - *State v. Madkam Kosa and Ors*: 5 accused who were finally acquitted after 4 years, but all the witnesses in the chargesheet said that crime was committed by unknown Naxalites
- Secret Informer is the only source of information-
  - 5 cases against Bhima Kadati, where a “trusted secret informer” is the only source of information against the accused.

# Shoddy Chargesheets

## Arms Act used indiscriminately

- State v. Betti Buchi - 11 accused, all charged with Arms Act, based on their memorandums u/s 27 of the Indian Evidence Act which leads to discovery of the following dangerous weapons -
  - 4 are shown with one set of a bow with one arrow,
  - 4 are shown with kitchen knives,
  - 1 has a knife shaped like a sickle
  - 1 has a trowel
  - 1 is shown with a **large utensil**
- State v Chotu Markam - 7 accused who are booked under Arms Act
  - 2 have iron tangiyas (axes),
  - 2 have iron sabbals (shovels),
  - 2 have iron bandas (crowbars)
  - One has a favda (spade)

Court asks the question “क्या अभियुक्तगण ने उसी समय लोहे का धारदार बंडा, सब्बल एवं टंगिया को शासन की अधिसूचना के उल्लंघन में बिना किसी वैध अनुज्ञप्ति के अवैध रूप से अपने आधिपत्य में रखे हुए पाये गये?”
- Subsections never specified, making implementation of s436A of CrPC impossible.

# Multiple Trials

One person is often implicated in multiple trials, ensuring a long prison stay

- Bhima Kadati – a 19 year old boy, was implicated in 12 cases. These cases continued for about 4 years and though all of them resulted in acquittals, justice was never served to Bhima who died during the pendency of the cases due to medical negligence. He was acquitted only in 5 cases during his lifetime.
- Joga, Jugal and Sudar - In this case, three young men Joga, Jugal and Sudar were illegally detained before being produced in court and slapped with 13 cases. They were finally acquitted in all.
- (Madkam Kosa and others from Phoolpad): Charged in 19 cases. Acquitted in all after 5 years in jail.

# Deliberate Delays in Trials

Non-appearance of witnesses – usually policemen/ doctors – leads to delays of several years, as courts fail to close prosecution evidence.

- Acquittal - State v. Madkam Handa -
  - Prosecution produced a list of 9 witnesses, including 4 from the Naga battallion
  - Even after 40 summons and 4 years, the Naga witnesses didn't show up.
  - Eventually acquitted after 5 years due to lack of evidence
- Ongoing trials -
  - State v. Irpa Narayan and others - First witness (I.O.) arrives after 6 years of arrest. All witnesses are serving policemen. Bail repeatedly rejected. Application for closure of evidence dismissed.
  - State v. Kunjami Puska – Accused is more than 60 years old. Case ongoing since 2007. All witnesses except I.O. and Doctor examined by May 2010.
  - State v. Kawasi Hidme – Young girl in prison since 2008. Bail rejected. I.O and Doctor have not been examined even after 80 opportunities.

# Deliberate Delays in Trials

Special Acts (UAPA) used to extend pre-trial detention (in Bastar, Kondagaon and Kanker)

- State v. Joga, Jugal and Sudar

Dates in Chargesheet	Event
October 2011-February 2012	Occurrence of 13 events of Naxalite violence
21 June 2012	Three young men arrested and charged with UAPA in those 13 crimes
24 June 2012	By this date all police statements of witnesses, and all seizures have been concluded
5 December 2012	Sanction for prosecution under UAPA applied for
12 December 2012	Chargesheet presented in court

# Deaths in Judicial Custody

- State v Beko Bhima-
  - Case was initiated in 2008 and till September 2012 only four prosecution witnesses had testified before the court and 5 were yet to testify despite repeated summons.
  - Defense lawyer filed an application for closure of evidence on 3.9.2012, again in 24.9.2013 and again on 7.4.2014, all these application led several 'last opportunities' being granted. Finally, the Court decided to close evidence and listed the case for statement of the accused.
  - The undertrial's health was deteriorating and on 13.4.2014 the undertrial was transferred to Raipur hospital for treatment.
  - On 25.8.14, wireless message was transmitted to the court stating that the condition of the undertrial was very serious. Despite this, the judge refused to grant bail claiming that he needed a report on his health to be satisfied.
  - Beko Bhima succumbed to his ailments on 4.9.14.

# Reopening of Old Cases

- Avadhesh Gautam Case-

Attack on the house of the ex MLA Avadesh Gautam on the night between 7th and 8th July, 2010. The primary investigation in the case was initiated by a letter written by 'eye-witness' Gautam, wherein he had painstakingly listed out a total 67 people. The letter was later found to be inadmissible when Gautam admitted to writing the letter not based on what he had seen but what was narrated to him by one Bandi who had been brought by the police. Despite the court ruling out the evidentiary value of the letter, the same is being used by the police to re-arrest people in the same case.

- Noble Xalco case:

In September, 2010 Noble Xalco a police constable was fatally injured. Eyewitness Baman Ram mentioned 5 names during the police investigation, but later told the court that he was not at the scene. Yet, the case has been re-opened based on another statement of Baman Ram, after his court testimony, where he claims to have witness involvement of 3 other people in the crime.