



**Undertrials:
Providing Dignity,
Hope And Organised
Assistance To People
Forgotten By The State**



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1. Systemic Injustice

The contents outlined in the links below detail how the authorities (the Judiciary and the Ministry of Home Affairs), as well as the larger public represented by researchers and Human Rights organisations have recognised the injustice that is meted out to Undertrials. And these documents show, despite the well-meaning efforts, words and judgements contained therein, how Undertrials continue to be mired in systemic injustice.

When a person is arrested for a crime, the Police have 90 days to file a charge sheet and/or release the Undertrial on bail. Yet, because of poverty, poor education and knowledge, the absence of a societal standing, as well as a simple inability to make sense of the myriad rules and procedures that surround them, an Undertrial is often deprived of his/her constitutional right to freedom, while their families suffer far beyond the social stigma that an arrest creates, as their breadwinner is locked up, and families run from police station to the courts without an understanding of how to work the system.

This period, which in some cases is longer than the sentence they would have served if they had been found guilty, is one of quiet despair, as the very State that a citizen reposes faith in becomes unaccountable and they are forced into a grey area where they become non-persons, where their citizenship is effectively suspended, and the State blinds itself to its responsibilities to them.

And as non-persons, these Undertrials suffer neglect, indifference and a total disregard of their rights, in silence.

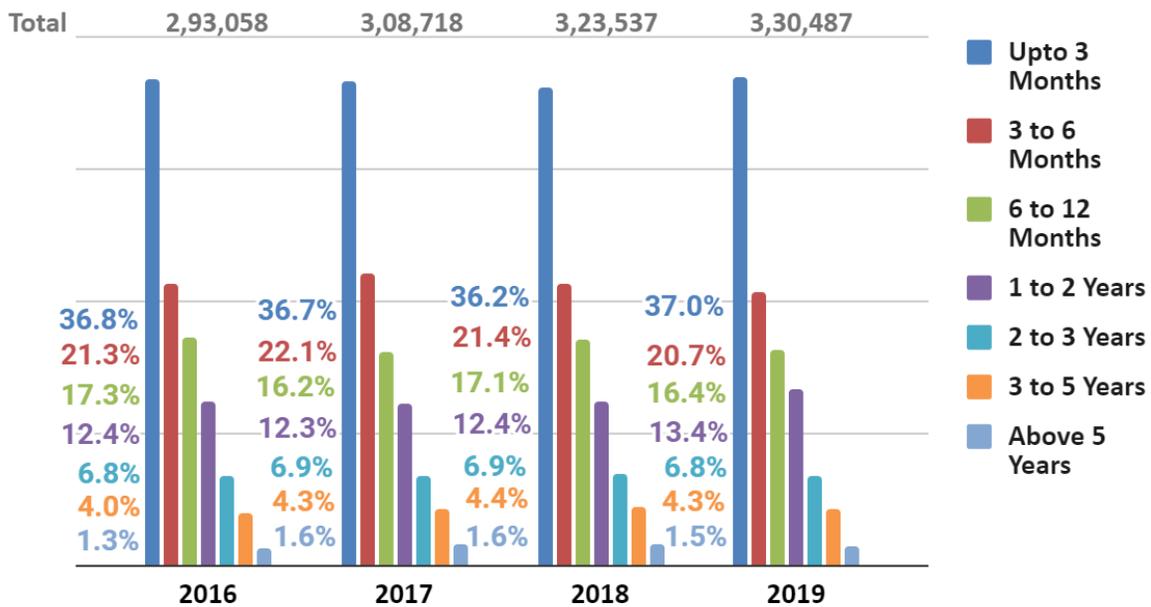
- o In the landmark 1979 case of [Hussainara Khatoon v. State of Bihar](#), a petition brought before the Supreme Court revealed that an alarmingly large number of people were in prison for years awaiting trial.
- o As a result of the 2005 Amendment to the CrPC, a PIL was filed regarding the effective implementation of Section 436A (<https://indianexpress.com/article/opinion/columns/on-trial-the-criminal-justice-system/>)
- o In 2018, A Division Bench of the Supreme Court addressed [a petition concerning overcrowding of prisons in India](#).
- o In [Katri v. State of Bihar](#), the Supreme Court directed Magistrates and Sessions Judges to inform accused persons about their right to free legal representation.
- o The Ministry of Home Affairs issued [a set of directives to reduce overcrowding of prisons](#) by ensuring that States conduct periodic monitoring to identify undertrials eligible for release under section 436A.
- o <https://www.legalbites.in/human-rights-of-under-trial-prisoners/>
- o <https://www.thehindu.com/data/data-70-prisoners-in-india-are-undertrials/article32569643.ece>
- o <https://www.hrw.org/sites/default/files/reports/INDIA914.pdf>
- o <https://criminallawstudiesnluj.wordpress.com/2020/10/25/the-state-of-undertrial-incarceration-in-india/amp/>
- o https://www.humanrightsinitiative.org/publications/prisons/UndertrialsPRCReport_2013.pdf
- o <https://www.humanrightsinitiative.org/download/1457162682Undertrial%20Prisoners%20and%20the%20Criminal%20Justice%20System.pdf>
- o <http://www.legalservicesindia.com/article/1280/The-Problems-of-Undertrials.html>
- o <https://nhrc.nic.in/press-release/human-rights-and-custody-management-undertrials>
- o <https://www.legalshala.com/post/1585>
- o https://www.hindustantimes.com/india/release-undertrials-who-served-half-term-sc/story-89tAJGywuM6MkDf3XyDOnO_amp.html
- o <https://www.deccanherald.com/content/622577/undertrial-population-among-highest-indian.html>
- o <https://www.genderit.org/feminist-talk/disappearing-rights-undertrials-and-prisoners-during-lockdown>
- o <https://www.bloombergquint.com/politics/indias-jail-stats-7-in-10-undertrials-1-in-3-dalitadivasi>



2. The National Picture

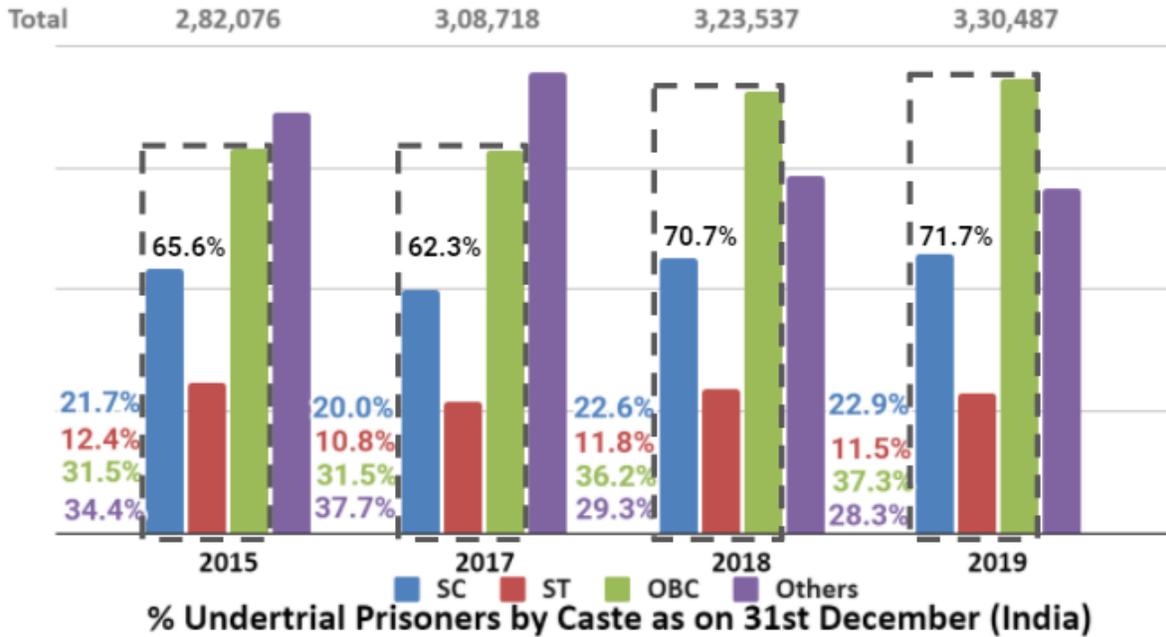
The indice for time served demonstrates how and to what extent the human rights of these Undertrials have been violated.

The indices for education and caste clearly show that it is the less educated and those of the lower castes who form the majority of the Undertrials. Their human rights violations are compounded by generational and cultural poverty and discrimination.

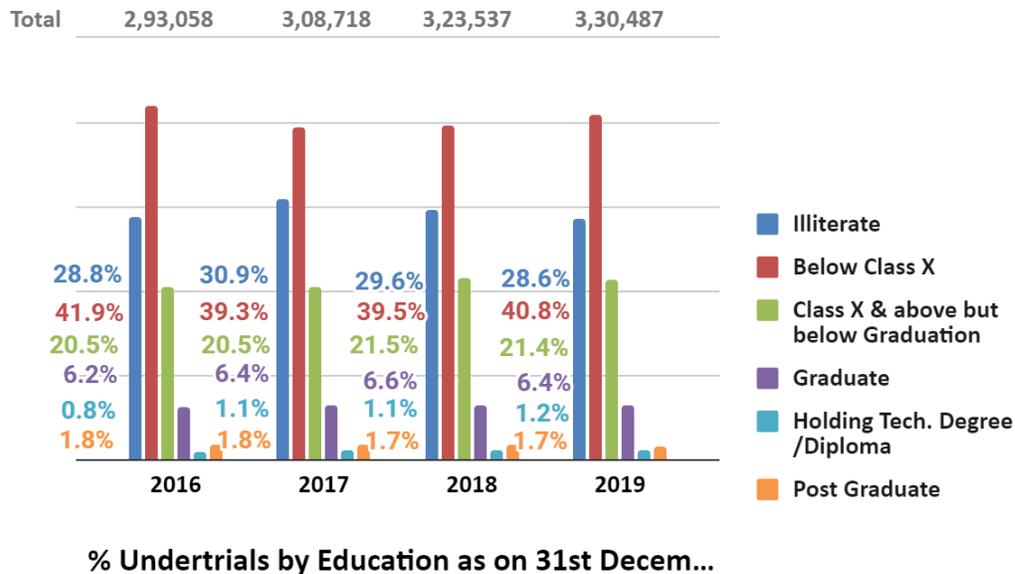


% Undertrial Prisoners by Duration of Confinement a...

Across the 4 years of data, the average number of Undertrials in Prisons was 313,950. Of these, 36.7% were resident upto 3 months. 63.3% were above this. Effectively, the rights of 198,840 Undertrials were violated in this period.



Across the 4 years of data, the average number of Undertrials in Prisons was 311,205. Of these, 67.5% or 210,205 belonged to SC/ST and OBC groups.



Across the 4 years of data, the average number of Undertrials in Prisons was 313,950. Of these, 29.5% Illiterate while 40.4% had below Class X schooling, adding up to 69.9% or 219,328 of Undertrials with no/lo education.

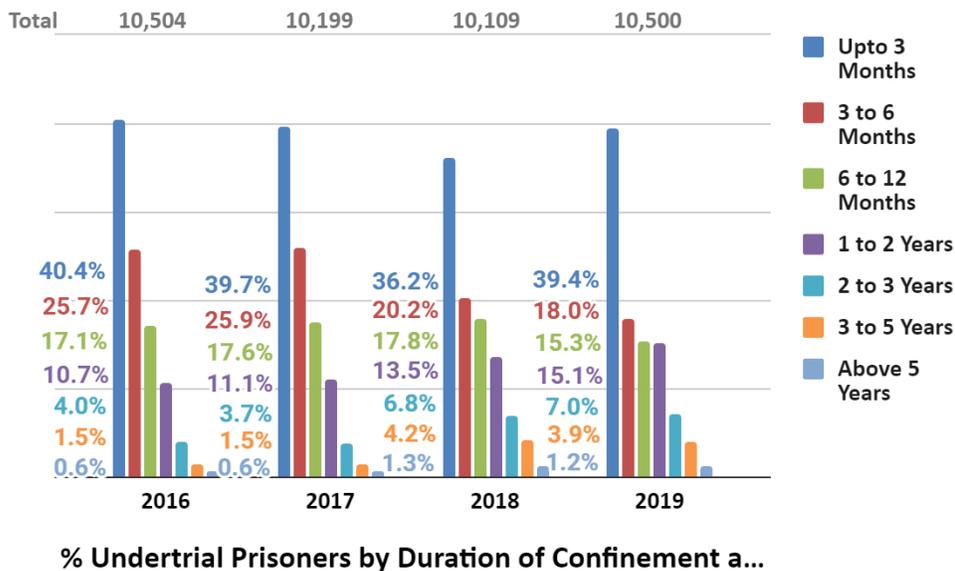


3. State of Undertrials in Karnataka

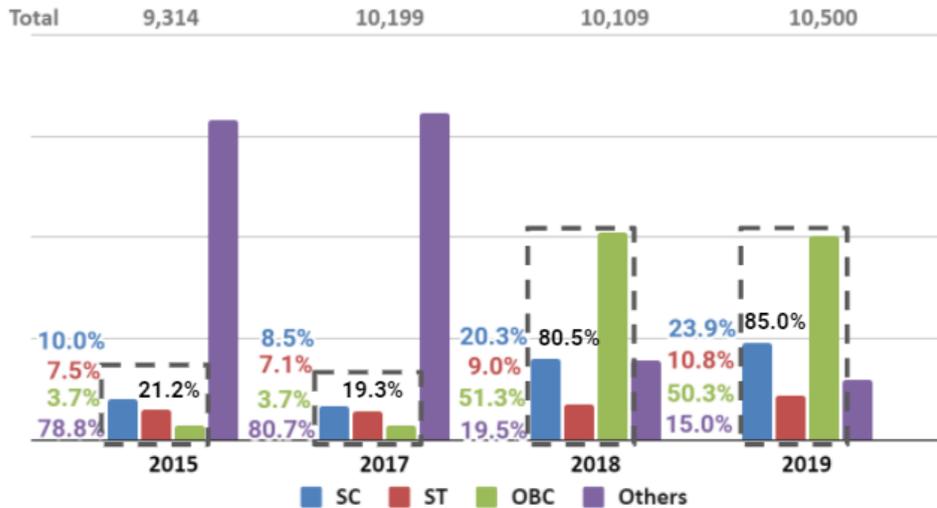
The indice for time served demonstrates a violation at the State level that is on par with the national treatment.

While the numbers are reversed for caste in the first two years, the total data show that over 50% of inmates were SC, ST and OBC, against the national figure of two thirds of the inmates belonging to these three groups.

In education the number at the State level increases from the National 69.9% to 73.6%.

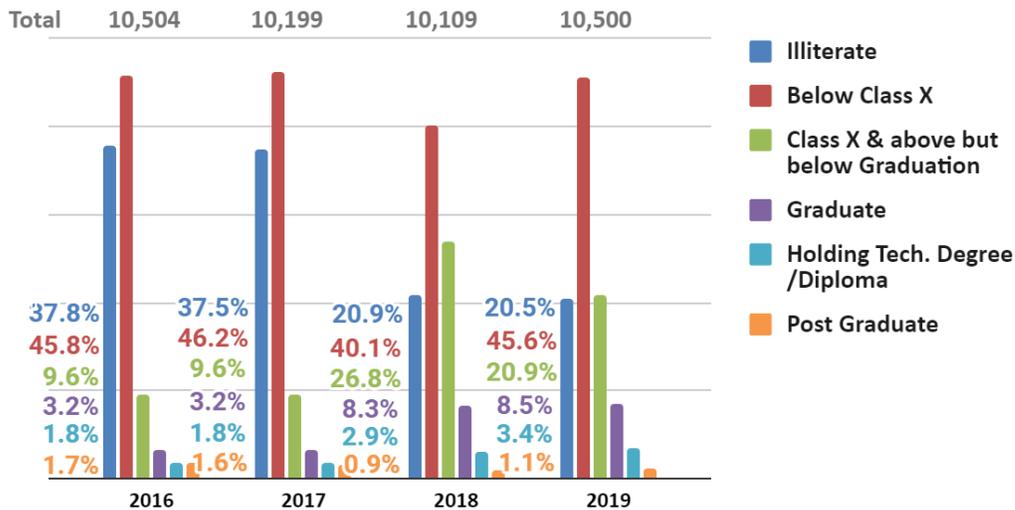


Across the 4 years of data, the average number of Undertrials in Prisons was 10,328. Of these, 38.9% were resident upto 3 months. 61.1% were above this. Effectively, the rights of 6,308 Undertrials were violated in this period.



% Undertrial Prisoners by Caste as on 31st December (Karnataka)

Across the 4 years of data, the average number of Undertrials in Prisons was 10,031. Of these, 51.5% or 5,166 belonged to SC/ST and OBC groups.



% Undertrial Prisoners by Education Profile as...

Across the 4 years of data, the average number of Undertrials in Prisons was 10,328. Of these, 29.2% Illiterate while 44.4% had below Class X schooling, adding up to 73.6% or 7,604 of Undertrials with no/lo education.



4. Effect on the families of Undertrials

While the above statistics clearly hold both the State and Society complicit for the State of the Undertrials, responsibility for the State of the families of the Undertrials is less clear, since this area is even further hidden.

Those imprisoned are unable to look after their families. In the absence of the main breadwinner, the family is many a time forced into destitution with children going astray. This combined with the social stigmatization that they face, leads to circumstances propelling children towards delinquency and exploitation by others. It is an inexorable circle. The problems become acute when they belong to the socio-economically marginalized and exploited sections of the society. The dominant class does not fail nor lose time in taking advantage of this situation to exploit the remaining family members to the fullest possible extent. This can take the form of rape or forced prostitution of the prisoner's wife and or his daughters.

The case of women Undertrials and those mentally ill in the prisons is worse.

While the case of Undertrials from other countries is compounded by issues of language, culture and further rules and procedures.

	2016	2017	2018	2019
Women Undertrials as on 31st December (Karnataka)	356	359	341	388
Number of Women Prisoners with Children as on 31st December (Karnataka)	12	12	26	30
Types of Undertrials Suffering from Mental Illness as on 31st December (Karnataka)	191	179	367	211



5. Foreign Undertrials as on 31st December (Karnataka)

	2016	2017	2018	2019
Male	68	124	121	115
Female	2	6	13	22
Total	70	130	134	137
Bangladeshis	36	67	50	43
Nepalese	9	42	24	32
Nigerians	10	8	27	17
Africans (other than Nigerians)	5	12	14	15
Pakistanis	3	0	2	2
Myanmar	0	0	0	5
Chinese	0	0	0	1
Maldivians	0	0	1	0
South East Asian Countries	1	1	1	0
Middle East Countries	3	0	0	15
South American Countries	0	0	6	1
Other Foreign Nationals	3	0	9	6



6. THE PROMOTION OF WORK WITH UNDERTRIALS AS A NEGLECTED AREA OF HUMAN RIGHTS WORK

Prof YJ Rajendra

Prof Rajendra teaches Social Work at St Joseph's College, Bengaluru. He is also President of PUCL-K (People's Union for Civil Liberties, Karnataka).

Prof Rajendra has been a social worker himself for the past 40 years. His work has ranged from organising rag pickers to leading a bilateral project for slum dwellers in Bengaluru City to leading a district initiative for mass literacy in the integrated Raichur district to organising Devadasis in Koppal district and Manual Scavengers across 4 districts of Karnataka.

In all these initiatives, Prof Rajendra has worked to convert beneficiaries into owners of their own development processes by organising them into groups, and helping them to work as groups.

Prof Rajendra has identified Undertrials as a group whose human rights violations have long been neglected.

Prof Rajendra believes that the long term solution with Undertrials lies in organising Undertrials, both current and past, and their family members to identify issues, and work to resolve these. Undertrials will also be assisted by small teams of social workers, community organisers and lawyers.



7. STRATEGIES

That Undertrials live in controlled environments, with their rights already curtailed because they have been found to be in violation of a law or more. As a result, any development intervention will function in an environment which is less democratic, and which will need to adhere to external rules and regulations that provide limited recognition of the rights of the Undertrials.

To overcome these limitations, the intervention will be based on the following strategies:

- a. It will follow a Bottom Up approach in planning, implementation and monitoring to ensure the participation of Undertrials and their families.
- b. It will formulate Need based / problem focused interventions.
- c. It will use development communication strategies such as periodical meetings, consultations, study circles, online workshops, webinars, opinion studies and surveys, amongst others.
- d. It will establish a network with Civil Society Organizations, Workers unions and Human rights organizations to ensure support and solidarity.
- e. It will establish linkage with concerned government departments / Boards / Missions, and others for mobilization of resources.
- f. It will establish linkage and network with the Legal Aid Board, Police Complaint Authority, HR, SC/ST, Minorities, Backward Classes, Women's and Child Rights Commissions including Law Colleges and Advocates Associations.
- g. It will work towards the collectivization of the families of Undertrial prisoners to both defend the rights of the Undertrials; and to raise a voice to protect the rights of the families and their members.



8. LONG TERM POLICY GOALS

With these strategies in place, this intervention will work to influence public policy by addressing the following long term goals:

1. To create a separate institution for lodging Undertrials.
2. To ensure that the courts are sited close to, or at these institutions where Undertrials are lodged.
3. To ensure that the Police strictly follow the mandated (Sec 167 CrPC) time limit to file charge sheets or that bail is granted automatically with personal surety.
4. To appeal to the higher judiciary to instruct the subordinate Courts to prevent violation of the Constitutional provisions under Article 21 by not granting time extension to police beyond the mandated period.
5. To urge the higher judiciary to introduce Video Conferencing (VC) between jails and courts to both speed up trials at all levels and to dispose of cases expeditiously.
6. To pursue the State government / Police department to constitute SITs (special investigation teams) to complete investigations within stipulated time.

9. Project Goal: Empower Undertrials and their families to minimise the violation of their rights, while helping them to evolve coping strategies to protect their lives & livelihoods that have been worsened by the continuing Covid pandemic.

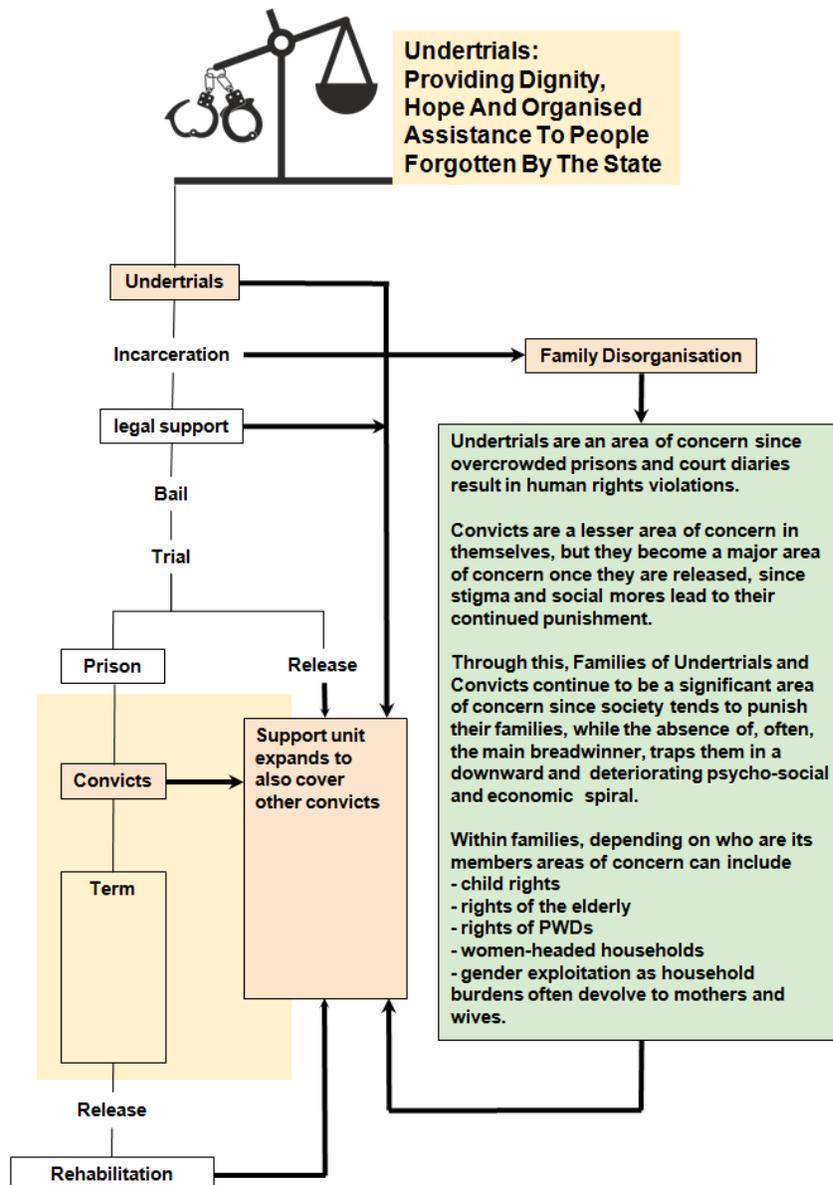
10. Project Objectives:

- 1) To understand the needs and problems of the families of Undertrials, and within this subsets of women, the mentally ill and foreign Undertrials, and the coping mechanisms they have adopted to face their challenges;
- 2) To identify and prioritize the deprivation / denials with regard to health, lives and livelihoods affected due to the COVID pandemic and to prepare action plans based on this understanding.
- 3) To establish a collective of representatives of affected families, acquitted, Undertrials on bail, and to enhance their strength to claim resources as a matter of right.
- 4) To explore new options and opportunities and evolve alternative strategies to find solutions to their problems



- 5) To mobilize resources from government, civil society organizations and the larger community to cope with the challenges.
- 6) To coordinate and extend legal help and assistance available to Undertrials from Legal Aid Board and CSOs to challenge cases filed against them to get them released or obtain bail and fight the case.
- 7) To challenge the violation of rights of prisoners, exploitation inside and outside the prisons, delay in disposing the cases within the stipulated period by filing complaints, Writ and Public Interest Litigation, etc

11. Conceptual Framework for Intervention and upscaling the work to naturally cover all Convicts





12. Immediate interventions related to protection of the Rights of Undertrials and their families

1. Help families to seek bail. Establish organized contacts with families of Undertrials, especially from Muslim, Dalit and tribal communities; assess the status of case pending and extend legal support for bail with the help of Alternative Law Forum.
2. Prevent post bail harassment of Undertrials by police. Establish organized contacts with families of Undertrials who have obtained bail to get an insight into the violation of their rights and its impact on their families; prevent post release harassment by police with the help of social action groups and Alternative Law Forum.
3. Conduct comprehensive study on the condition of family members of Undertrials, specially their children; their needs, problems and the nature and extent of deprivation and violation of rights.
4. Use social media for creating awareness on their rights and encourage them to approach concerned authorities to seek remedy.
5. Prepare families to access benefits under government schemes to prevent / minimize deprivation or exploitation.
6. Provide information and guidance for children to pursue education by linking them with scholarships, hostel families, loan facilities to higher education under various government schemes.
7. Organize interventions for educated youth to develop plan for their future by connecting and exposing them to existing vocational / technical training for jobs, job placement and self employment opportunities by ensuring career guidance and counseling; ensure continuous flow of job information through Whatsapp and other means.
8. Ensure families access free Legal Aid by preparing a directory of free legal assistance schemes for eligible families who cannot afford to pay for legal intervention expenses; explore ways and means of availing such benefits.
9. Study the condition of Women Undertrials and their children in prison, especially the impact of prison on the children.



10. Maintain a database of Undertrials: especially from vulnerable sections and socially backward communities including women and their children, the mentally ill and foreigners.
11. File complaints against violation of rights of prisoners with monitoring bodies constituted by State and central governments such as State Human Rights Commission, SC Commission, Women's Commission, Minority Commission, Backward Classes Commission and Child Rights Commission for seeking their interventions for protection of rights of Undertrials in Prisons.
12. Virtual / online eNewsletter for sharing information involving the Undertrials and their families (private circulation) for sharing information, challenges, emerging trends and developments related to their rights and lives. The newsletter will also serve as a tool to access information related to their COVID status, lives and livelihoods.
13. Approach Legal Services Authority to avail free legal services and lawyers to fight against delay in disposal cases according to laws; to draw the attention of judiciary towards the incidents of violation in the process of implementation of schemes for Undertrials and their rights in prisons; reach the higher judiciary through Legal Services authority to seek direction on the issues related to policy matter in respect of rights of all prisoners; pursue Legal Services Authority to convene consultation meetings involving police, prison staff, penal advocates, social activists and others to ensure that the criminal justice system work in accordance with the law.
14. Pursue the State government to implement guidelines issued by Ministry of Home Affairs, GOI, in respect of Undertrials
15. Draw the attention of the Undertrials District Review Committees chaired by Dist Judge, DC and SP constituted under MHA, GOI to hold periodical meetings by seeking information under RTI.
16. Place all Undertrial cases where they have completed more than $\frac{1}{4}$ of their maximum sentence and place it before the District Review Committee; ensure that all eligible Undertrials apply for bail; and through this make the Prison Superintendent's actions accountable and transparent.
17. Urge the District Legal Services Committee, as per Supreme Court direction, to engage Lawyers to ensure the release of Undertrials; ensure competent lawyers are empanelled.



18. Use proper channels to persuade criminal courts to exercise their powers under different sections of the CrPC to ensure the right to speedy trial; persuade the High Court to provide appropriate directions to deal with and prevent delay in disposing the cases.
19. Urge the High Court to direct the subordinate judiciary to hold Special Courts and Lok Adalats to hear the cases of Undertrials involved in petty offences; ensure these are held in all districts.
20. Draw the attention of the higher judiciary to consider payment of compensation to victims in the case of violation of any fundamental right of UT prisoner.
21. **Promote Alternative Systems** for protection of rights of Undertrials both imprisoned and on bail including but not restricted to the following:
 - a. Committee for Protection of Prisoners Rights (CPPR): Form committees consisting of members of Undertrials families, lawyers, civil society organizations, media persons, academicians, students, social and dalit activists to address various issues including the Rights of Undertrials and other prisoners in Jails / prisons. The committee will focus and intervene in matters related to unscientific policies, violation of rights of prisoners and family members under article 15, 17, 21 and 25, as well as non compliance of provisions of Prisons Act and Prison Manual. It will also protect the further harassment of UTs after seeking bail or acquittal, including exposing the illegal nexus between police and the lawyers.
 - b. An Association of affected families of Prisoners will be established consisting of Undertrials, both acquitted, on bail and imprisoned, and their family members for protection of their and the rights of other affected members of their families to fight for justice and to establish their share in welfare and development as a matter of constitutional rights and legislative provisions. The Association will be equipped with handling matters related to bail seeking through the interventions of the free Legal Aid Committee. In addition to this, they will be trained to take up matters of imprisonment beyond the prescribed period, as well as to raise the issues of violation of rights of members of family, including the expenses of Undertrials in prison which is an additional burden the families have to bear.
 - c. Organized network with People's Union for Civil Liberties (PUCL) Alternative Law Forum (ALF), Manthan Law (ML), Association for Protection Civil



Rights APCR), Centre for Law and Policy Research (CLPR) in handling incidents of human rights challenge the violation of Prisoners rights

13. Geographical Area of operation & target group

Initially, on an experimental basis, Prarambha proposes to work in Bengaluru covering underdeveloped areas, undeclared slums, with unorganized sector workers living in and around Bengaluru city under the threat of demolition / eviction.

Organized efforts will be made to reach those slums wherein number of Undertrials from nomadic tribes, sanitation workers, commercial sex workers, migrant workers from other States living in tents, huts and migrant and self employed workers in adjacent remote outskirts of the Bengaluru city are living. Undertrial families from other localities will also be covered under the project.

Following this, Prarambha will reach out to Undertrials across the State and then across India, through a network of Fellowships, drawn largely from amongst Undertrials and/or their family members.



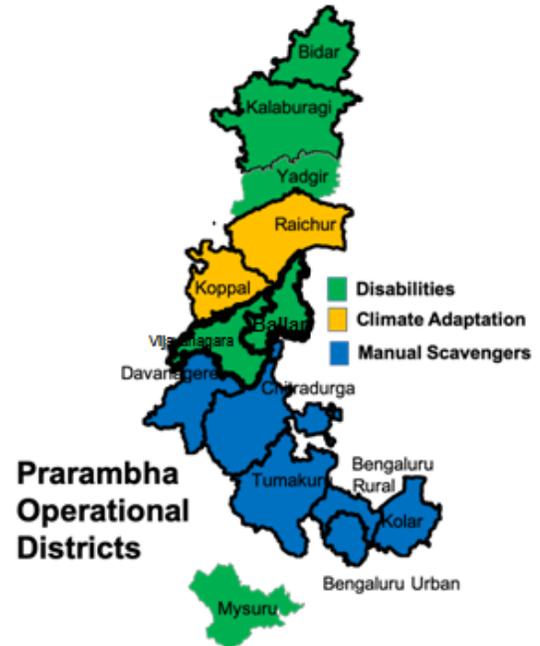
14. Prarambha: A Profile

Prarambha was founded in 1985. Its 12a, 80g and FCRA registrations are current. Apart from working with vulnerable communities on its own, Prarambha is also the Secretariat for Janara Network, a platform for Community based Organisations in Kalyana Karnataka.

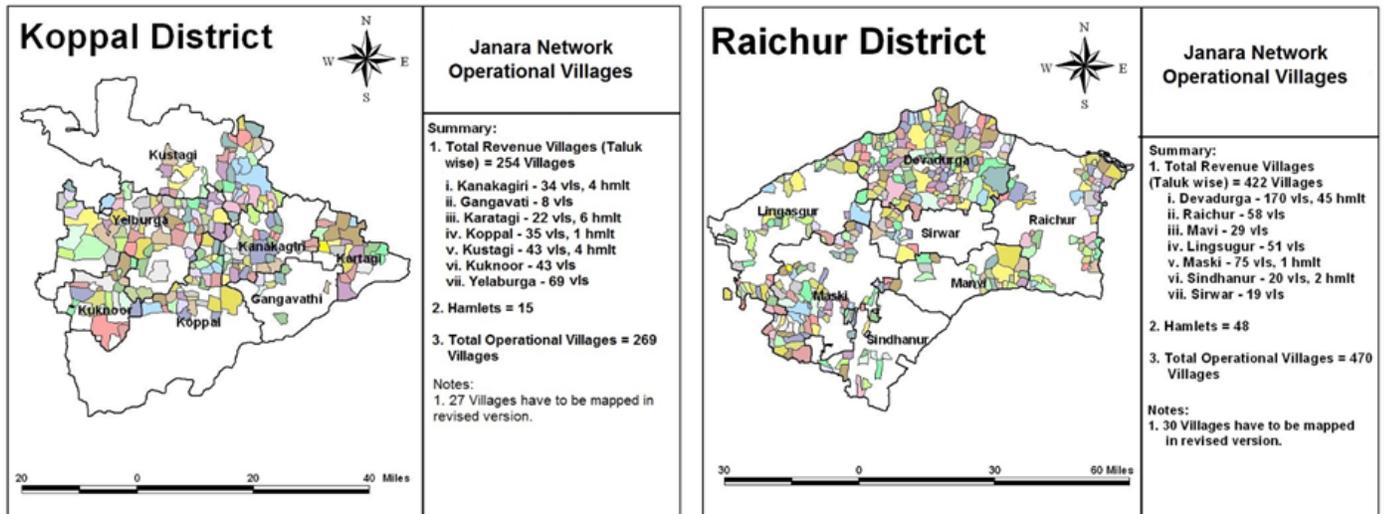
Janara Network was founded in Oct 2019.

The current members of Janara Network are:

1. MMVSSN Devadurga, as a Raichur district Souharda
2. MMVSSN Hasgal, as a Koppal district Souharda
3. Prathidwani, OPwD
4. The Vishwachetana Araikedarara Samsthe
5. NPM Paddy Farmers Apex Group, NRBC
6. MGNREGA Nela-Jala Samrakshana Samithi, Raichur District
7. MGNREGA Nela-Jala Samrakshana Samithi, Koppal District
8. Janara Samuha Mutual Benefit Trust
9. **Prarambha (Secretariat)**
10. Samarthyaa (Disability Resource Group)



The Janara Network Operational area currently covers:





Prarambha works with the following vulnerable people:

32,665 Women

1,406 PWDs

13,858 MGNREGA Labour

5,763 Dryland Farmers

464 NPM Paddy Farmers

Prarambha also works with communities with **distinct cultural identities: Devadasis and Manual Scavengers.**

Prarambha supports the following:

- 1. SHG Bank Linkages and Micro Entrepreneurs Support**
 - a. through the Devadurga and Hasgal Munjawu Mahila Vividoddesha Souhardha Sahakari Niyamit (MMVSSNs) as district thrift credit cooperatives
- 2. MGNREGA-based**
 - a. **Work Security**
 - b. **Climate Adaptation works** (Land Water Trees, and Horticulture)
 - c. **Development of Commons and Waterbodies**
 - i. through the Raichur and Koppal MGNREGA Nela-Jala Samrakshana Samithis
- 3. Water Conservation in Canal-irrigated Paddy fields**
- 4. NPM (non-pesticide management) Paddy**
 - a. through the NPM Paddy Farmers Apex Group, Narayanpur Right Bank Canal
- 5. Public Resources**
- 6. SDG-focused Integrated Village Development**
 - a. through the Janara Samuha Mutual Benefit Trust
- 7. The Devadasi Vedike, as well as**
- 8. Manual Scavengers with access to their Constitutional Rights.**

Prarambha will deep dive into people's experiences over the past 30 years to identify and implement **critical interventions** that will help people to cope with the debilitating stress of Covid-19, while addressing the looming perils of Climate Change.

- by helping communities to conserve over 3000 litres of water per day by fixing leaking taps and pipes
- by facilitating families to earn Rs 28,900 by forming MGNREGA Labour Groups to access their entitlement of 100 days of work
- by organising MGNREGA Farmer Groups to develop Land Water Trees on their private lands using MGNREGA resources
- By promoting **Water.Squared** Credits to help farmers sustain their canal-irrigated NPM (Non-Pesticide Management) Paddy cultivations by converting the 2 million liters of water they save every season into critical support
- by retailing NPM Rice and other produce to online families concerned about eating healthy



Undertrials:
Providing Dignity,
Hope And Organised
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Forgotten By The State

- by planting local trees as hedge crops and conserve our Commons
- by supporting community credit facilitators to support Self-help and Joint Liability Groups and Micro Entrepreneurs to access critical credit
- ...

Prarambha is helping vulnerable people and their communities with a focus on livelihoods, therapeutic services and by helping them access Public Resources in this difficult period of Covid-19.

**If you would like to help people,
pl contact:**

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Executive Trustee

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