

Legal Representation for Undertrials in Maharashtra

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PROJECT 39A
EQUAL JUSTICE
EQUAL OPPORTUNITY



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Legal Representation for Undertrials in Maharashtra

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Executive Summary

Azim Premji Foundation (Foundation) has instituted a programme in collaboration with Government of Maharashtra (GoM) with the objective of demonstrating a successful working model for providing quality legal representation to undertrial prisoners across prisons in Maharashtra (Programme).

For the purpose of carrying out the Programme in Maharashtra, the Foundation identified Prayas, a field action project of the Centre for Criminology and Justice, School of Social Work, Tata Institute of Social Sciences (Prayas) and The Fair Trial Fellowship Program, instituted by National Law University Delhi under Project 39A (FTF), as 'Implementing Partners' of the Foundation.

This report is an attempt to reflect on-the-ground experiences of the Programme and convey the learnings towards identifying issues within the criminal justice system that need to be addressed.

What was the Programme trying to achieve?

Pre-trial detention or under-trial detention refers to the confinement of persons, accused of offences, whose guilt is yet to be established by the court. A large section of the undertrial prisoners come from poor and marginalized backgrounds and constitute the majority of the prison population. This is despite the fact that incarceration is not the preferred legal option, and all offenders are eligible for bail.¹ Furthermore, the Indian judiciary through creative interpretation of the rights to equality and life enshrined under the Indian Constitution has made free legal aid a fundamental right.²

The Prison Statistics Report of India, 2020 (PSI Report) published by National Crime Records Bureau (NCRB), highlights that as on December 31, 2020, prisons in India had an average occupancy rate of 118% and undertrials comprised 76.1% of the total inmate population³. As on December 31, 2021, Maharashtra has a total prison population of 36,828 prisoners with an average occupancy rate of 149% and average undertrials population of 86%⁴.

The reasons for the consistently high proportion of undertrials in India links to the lack of awareness on bail law and procedure, quality legal aid services for undertrials, the financial system of bail, and the long time taken to complete the trial process.⁵

The Programme aims to ensure that quality legal aid and bail support is available to undertrial prisoners, as in the absence of this support, undertrials spend prolonged periods of time in

¹ All offences are divided into two categories – bailable and non-bailable. Generally serious offences are categorized as non bailable offences whereas bailable offences are considered less serious in nature. If a person is arrested for committing a bailable offences, they have the right to seek release on bail at the time of their arrest at the police station. In non-bailable offences, an arrested person cannot avail bail at the police station. However, even in the case of non bailable offences, an arrested person may file a bail application before the courts and courts have discretionary powers to grant bail and allow their release subject to conditions (like furnishing cash security, personal bond, solvency certificate, surety bond etc).

² *M.H. Hoskot v State of Maharashtra*, AIR 1978 SC 1548

³ Prison Statistics India 2020, National Crime Records Bureau, Ministry of Home Affairs, Govt. of India; <https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>. Accessed on January 27, 2022

⁴ http://mahaprison.gov.in/Uploads/pdf_GR/3b3a6c7f-4906-4326-bd77-c22ad80ef5fa2021.pdf. Accessed on January 21, 2022

⁵ Vijay Raghavan, 'Undertrial Prisoners in India – Long Wait for Justice' (2016) 51 Economic and Political Weekly 17

detention pushing them deeper into poverty and increasing their vulnerability. The Programme does not replace the state's responsibility but looks to supplement the existing state-sponsored legal aid provided to undertrials by the National Legal Services Authority (NALSA) and its subsidiaries like the State Legal Services Authority, and District Legal Services Authority (collectively LSAs). The Programme does this by placing trained lawyers and social workers within prisons and LSAs to provide socio-legal support to undertrials and help them in navigating the criminal justice system.

Identifying key challenges to legal representation for undertrials

- **Lack of confidence in legal aid leading to poor utilisation of the service by undertrials**

Data on utilisation of legal aid over a period of four years, between 2016 and 2019, reveals that only 7.91% of the undertrials admitted into prisons utilised the legal aid services they were entitled to.⁶ While the current data on utilisation is not capable of attributing reasons behind the underutilisation, lack of quality legal services is presumed to be the main reason.

- **Exacerbation of socio-economic vulnerabilities of undertrials**

PSI Report indicates that a typical undertrial prisoner in an Indian prison is illiterate, young and socio-economically disadvantaged. They end up spending more time than they should in prison, because of their poor awareness of procedures and the inability to access quality legal services.

- **Lack of coordination amongst criminal justice institutions**

Undertrials face major hurdles in implementation due to lack of coordination amongst multiple agencies in the criminal justice system, i.e., the LSA, the police, the courts and the prison.

- **Unavailability of relevant data to assess needs and efficacy of the legal aid system**

There currently exists very little public data to assess the cause and effect of the various issues relating to undertrials and their right to legal representation. For example, there is nearly no data available on utilisation of resources within the LSA to provide a base for any analysis of the systems.

Imagining innovations to address the challenges

- **Offering legal aid services proactively inside prisons**

The Programme's interventions are designed based on the understanding that there exists a need to proactively offer legal services to undertrials in prison. The Programme design envisages regular prison visits by Fellows as per a fixed weekly schedule, in order to visit barracks and interact with undertrials.

⁶ Anup Surendranath and Gale Andrew, State legal aid and undertrials: are there no takers?, Indian Law Review; <https://www.project39a.com/op-eds/contradictions-of-the-penal-system-and-pains-of-imprisonment-new-evidence-from-india-ciznw-79d5d>

- Social work as an integral part of legal aid in the criminal justice system**

Legal representation for undertrials often involves understanding multiple layers of vulnerability faced by the prisoners and addressing those issues to ensure that the outcome of the legal process is relevant to the prisoner’s reality. The Programme visualises trained social workers and lawyers as equal stakeholders in driving the pre-trial (bail) and trial process and divides the work between relevant skill sets.
- Professional assistance to institutional stakeholders towards innovating, reforming and strengthening legal aid institutions in the criminal justice system**

In addition to the tangible outcome of providing legal support to undertrials on a case-to-case basis, engagement with institutional stakeholders was a key area of focus towards ensuring the fulfilment of the broader objectives of the Programme, i.e., innovating, strengthening and streamlining the functioning of prisons, courts and LSAs by offering the learnings from the Programme.
- Generation, recording and analysis of data towards legal aid policymaking driven by empiricism**

The Programme imagines use of empirical data for informing and driving systemic change as a crucial outcome of its interventions.

How did the Programme approach this?

Key elements of Programme design

- Institutional collaborations**

For the purpose of smooth Programme implementation, the Implementing Partners have entered into collaborations with the Maharashtra State Prison Department and the Maharashtra State Legal Services Authority. This collaboration with the state was crucial both for facilitating interventions under the Programme as well as to establish the implementers’ credibility as bona fide partners of the state machinery. The Programme was implemented across eight prisons in Maharashtra, namely Mumbai Central Jail, Thane Central Jail, Pune Central Jail, Nagpur Central Jail, Byculla District Jail, Latur District Jail, Taloja District Jail and Kalyan District Jail.
- Fellowship model**

Young advocates and social workers were appointed as Legal and Social Work Fellows (“Fellows”) under the Programme to carry out interventions towards achieving the Programme objectives and to create trained professionals at local level. The Fellows work in collaboration with prison authorities, District and Taluk Legal Services Authority, and Panel Advocates to strengthen legal aid services.

- **Effective coordination between prison, LSAs, Panel Advocates, courts and families of clients in providing legal services**

Through the Fellows, the Programme primarily caters to prisoners in need of legal representation through the LSAs (Detailed Intervention cases). In these cases, services provided are in the nature of facilitating appointment of Panel Advocates, socio-legal counselling, case updates, assisting Panel Advocates towards filing and compliance of bail conditions and following up on trial process. In doing so, the Programme also strengthens the response of the LSAs and Panel Advocates. The Programme continues to engage with a large number of its clients even post-release to support their reintegration in society and arrange for their basic needs (travel, shelter, livelihood etc.). In case of prisoners released on bail, the Programme also works to ensure their presence in courts during trials.

There is also a significant number of prisoners who do not seek legal representation through the LSAs but approach the Programme for other services. The Programme also provides support to such prisoners (as One Time Interventions) which maybe in the nature of case updates, writing personal bond applications, contacting private lawyers, contacting prisoners families, referral for bail sponsorship, medical and family related support services amongst others.

- **Emphasis on quality of legal services provided by LSAs**

The interventions under the Programme put equal emphasis on quality of legal services and access to legal services.

- **Development of an MIS to generate, process and analyse demographic and case-related data**

As per the Programme design, demographic and case related information for all clients who seek legal representation through the Programme is collected at the time of case intake and maintained in a customised MIS, allowing system-level analysis and reflection on issues of criminal justice and providing empirical basis for driving policy changes.

- **Strategic engagements with stakeholders**

The Implementing Partners constantly engage with stakeholders and decision-makers in the sphere of criminal justice towards driving policy and procedure changes in line with the Programme's objectives.

What did the Programme achieve?

Broader impact of the Programme

- Undertrials have a higher degree of confidence in state legal aid. Eventually, in more than fifty percent of the cases received by the Programme, the inmate had a private lawyer but wanted to seek legal representation through the LSAs.
- Reducing timeline and improving documentation and record-keeping for LSA processes. Timely and effective implementation of LSA processes. LSA allocation process was completed within a week in majority of the cases under the Programme.

- Higher responsiveness of Panel Advocates due to assistance on matters by Fellows and trainings provided by the Implementing Partners. It has been observed that in more than 80 percent cases under the Programme, the Panel Advocates have been active and taking the assistance offered by the Fellows.
- Better adjudication, more equitable and practical conditions in bail orders, leading to more undertrials being released from prison.
- Higher probability of compliance of bail conditions by working with multiple parties like the undertrials' family, employer, community members, other civil society organisations, other government authorities (such as municipalities and civic bodies) and court authorities to ensure financial and documentary requirements and also coordinating for bail sponsorship where possible.
- Huge improvement in the last-mile coordination required between courts and prisons to ensure compliance of bail conditions and release.
- Prison authorities have recognized the need for, and importance of role played by the Fellows in securing the rights of the undertrials.

Story with numbers

Prison remained the most common point of access to the Programme. The demographic profile of clients confirmed that the Programme was catering to undertrials who had minimal support for pursuing their rights of fair trial. It is important to highlight that the Programme had a high proportion of young clients with over 15 percent clients under the age of 20 and 86 percent clients under the age of 40. Furthermore, a total of 75 percent clients had not completed matriculation (Grade 10).

During the period of this report, the Programme's services were accessed by 9,570 undertrials. 4,237 undertrials were released by filing of bail/modification applications compliance processes. The Implementing Partners forwarded applications to the LSA in 4,355 cases seeking allocation of Panel Advocate. Out of these, Panel Advocates were appointed in 3,161. Bail was filed in total of 1,430 cases through the LSA out of which favourable orders were obtained in 1,230 cases.

Support on bail emerged as a focus area for interventions under the Programme at the outset. In 35.22% cases received by the Programme, the inmate had not engaged any lawyer at the time of case intake while the remaining 64.78% approached for change of lawyer/ support with their existing lawyer. Majority of these clients (77.85%) needed support with either for filing for bail or for compliance of bail conditions imposed by the court for release.

Another fact that has emerged during the implementation of the Programme is that despite an undertrial securing bail, they may not be able to leave the prison unless they are able to comply with the conditions of bail imposed by the court. Thus, advocacy with the judiciary filings for modification of bail conditions, linkages with bail sponsorship organizations and working with prisoners' families to ensure bail compliance has been a significant part of the work undertaken by the Fellows. Notably, bail compliance was done in 1,876 undertrials (other than cases where bail was filed by the Programme).

Most cases in the Programme (89.87%) were for non-bailable offences⁷. Theft and burglary constituted the highest proportion (39%) of cases under the Programme. Cases punishable beyond seven years formed the largest category of cases for which services were sought under the Programme – 39.45 percent. Cases punishable with less than three years as punishment were the next largest category - 26.79 percent.

While the application for a lawyer under the LSA allocation process was pending, approximately 41% cases received in the Programme had to be closed due to reasons like the client being unresponsive, choosing to work with a private lawyer or pleading guilty etc. Further, around 5.7 % of the undertrials also switched to private advocates after the allocation of a Panel Advocate.

TOTAL OUTREACH

Total undertrials reached	9570
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Total released	4504
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Break up below (A+B+C+D+E+F)

LEGAL INTERVENTION THROUGH LSAs (BAIL)

Applications for appointment of panel advocates forwarded to LSAs	4355
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Panel advocates appointed	3161
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Bail+ modification applications filed	1430
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Total bails and modifications granted	1234
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Released through bails and modifications (A)	921
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LEGAL INTERVENTION THROUGH LSAs (TRIAL)

Release on acquittal, discharge, compounding/withdrawal (B)	267
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SOCIO-LEGAL INTERVENTION

Released through assistance for personal bond applications (C)	448
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Released under HPC guidelines (D)	252
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Released through private lawyers (E)	740
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Released through bail compliance (F)	1876
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⁷ See foot note number 1.

What we learnt and what we need to do?

Learnings

Way forward

Lack of consistent data on undertrials, bail status and utilisation of legal aid

- Access to comprehensive prison-level data to develop deep empirical understanding of the profile of prisoners, case status and legal services needed by them.
- Present empirical data and experiential learning from the ground to decision-makers in NALSA and SLA towards catalysing systemic change.

Need to improve access to legal aid inside prison and creating structures resilient to outsider access issues

- Activating Jail Legal Aid Clinics for improving access to legal aid in prisons.
- Training of convicts as PLVs.
- Creating clinical legal courses and creating avenues for engaging law students as PLVs in prison in coordination with legal aid clinics in law schools.

Need to activate multiple points of access to legal aid for persons in custody

- Strengthening points of access to legal aid at police stations and remand courts.
- Developing capacities of communities/localities with high criminalisation in seeking legal aid through LSAs.

Lack of use of technology for case tracking, coordination and information sharing

- Increasing use of technology for allocation, tracking and updates of cases across a common platform for prisons, LSAs and courts and accessible to prisoners.
- Digitising allocation process at LSAs to reduce need for constant physical follow-up of cases.

Need to focus on quality of legal services delivered to undertrials

- Working towards improving capacities of Panel Advocates and PLVs. along with creating support structures for better response to cases.
- Institutionalising the role of social workers within LSAs and recognising social work interventions as an integral part of legal services.
- Streamlining systems of payment of honorarium and reimbursements to Panel Advocates.

Lack of accountability of Panel Advocates for the progress and outcome of cases allocated and attrition of clients

- Creating institutional mechanisms of monitoring by the LSA.

Non-uniform rationale of bail orders, onerous bail conditions and reluctance to modify bail conditions by judges

- Restatement of the law on bail towards ensuring consistent decision making by courts.
- Advocating for reform of bail law through engagement with the judiciary.

Socio-economic conditions impede getting bail/ bail compliance

- Formal recognition of the personal bond as the primary condition for grant of bail and deviation only in exceptional circumstances.
- Developing a network of organisations for support services to undertrials.

Clients pleading guilty due to undue pressures of the system to induce the clients to plead guilty

- Procedural protections for 'plead guilty' cases.

Rearrest of clients/those designated as 'habitual offenders'

- Creating safeguards in law against profiling as habitual offenders and arrest under Section 110 of CrPC.

Legal Representation for Undertrials in Maharashtra - Reflections and Learnings

The Azim Premji Foundation (Foundation) has instituted a model programme in collaboration with Government of Maharashtra (GoM) with the objective of demonstrating a successful working model for providing quality legal representation in prisons (Programme). For the purpose of carrying out work under the Programme in Maharashtra, the Foundation identified Prayas, a field action project of the Centre for Criminology and Justice, School of Social Work, Tata Institute of Social Sciences (Prayas) and The Fair Trial Fellowship Program, instituted by National Law University Delhi under Project 39A (FTF), as 'Implementing Partners' of the Foundation.

The Programme seeks to ensure legal aid and bail support to counter criminalisation and marginalisation of the vulnerable undertrials. Under this project, social work and legal fellows have been appointed to work in prisons and also attached to the District Legal Service Authorities (DLSA). The fellows identify undertrials in need of legal aid and facilitate their access to legal aid and release on bail, with the help of lawyers appointed through the DLSA. The fellows work in collaboration with prison authorities and DLSA to strengthen legal aid services and provide socio-legal support to reconstruct the lives of undertrials.

1. What was the programme trying to address?

1.1 Overcrowding of prisons and large proportion of undertrials

The Prison Statistics Report of India, 2020 (PSI) highlights that as on December 31, 2020, prisons in India had an average occupancy rate of 118% and undertrials comprised 76.1% of the total inmate population⁸. As per this report, Maharashtra reported an average undertrial population of 82.2%.

As on December 31, 2021, Maharashtra has a total prison population of 36,828 prisoners with an average occupancy rate of 149 % and average undertrials population of 86%⁹. The table below indicates rates of crowding in the prisons where the Programme is carrying interventions.

⁸ Prison Statistics India 2020, National Crime Records Bureau, Ministry of Home Affairs, Govt. of India; <https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>. Accessed on January 27, 2022

⁹ http://mahaprison.gov.in/Uploads/pdf_GR/3b3a6c7f-4906-4326-bd77-c22ad80ef5fa2021.pdf. Accessed on January 21, 2022

Prison name	Prison Capacity	Actual Population	Occupancy Rate ¹⁰	Percentage of Undertrials ¹¹
Nagpur	1840	2468	134.13	77.47
Yerwada	2449	5966	243.61	84.95
Mumbai	804	3417	425.00	97.75
Thane	1105	4471	404.62	96.06
Taloja	2124	2819	132.72	96.95
Byculla	200	353	176.50	76.20
Latur	500	423	84.60	99.29
Kalyan	540	1949	360.93	96.51
Mumbai Women section (Byculla)	262	294	112.21	97.62

The Supreme Court of India (SC) remarked¹² how the issue of overcrowding in jails continues to persist in spite of several orders passed from time to time. The SC also pointed out that the percentage of undertrials in Indian prisons (67% at the time) was unacceptably high and that a large number of undertrials were in custody only because they were unable to comply with bail conditions¹³ imposed on them due to poverty.

Incarceration of undertrials goes against the basic tenets of established criminal law principles that *a person accused of crime is entitled to remain free until adjudged guilty*.¹⁴ Arbitrary incarceration of a person accused of an offence is inimical to every notion of fair administration and any bail practice that results in the incarceration of the accused person without meaningful consideration to ability to pay, alternative methods of ensuring appearance at a trial and the nature of the crime is violative of the rights of the accused.¹⁵

¹⁰ The occupancy rate of the prisons in India is calculated as the percentage of the ratio of inmate population to total capacity in prisons. An occupancy rate of more than 100% implies that the prisons are overcrowded and if it is below 100%, it means that the prisons are not yet filled to their capacity.

¹¹ Ratio of no of Undertrials to the total prison population

¹² *In Re: Inhuman Conditions in 1382 Prisons* AIR2016SC 993

¹³ At the time of granting bail order for release of a person, courts have the discretion to impose pre-conditions for their release as a means to ensure the released persons attendance in court during the trial process. These pre-conditions usually require the accused person and/or their family members to deposit cash amount, produce sureties, solvency certificates or proof of property ownership. Accused persons will be entitled to release from prison only upon complying with such conditions of bail imposed on them.

¹⁴ Report 78, Law Commission of India; <https://lawcommissionofindia.nic.in/51-100/Report78.pdf> @pg

¹⁵ Report 268, Law Commission of India; <https://lawcommissionofindia.nic.in/reports/Report268.pdf>@pg

The reasons for the consistently high proportion of undertrials in India links to the lack of quality legal aid services for undertrials, the financial system of bail, and the long time taken to complete the trial process.¹⁶ In the case of Supreme Court Legal Aid Committee Representing Undertrial Prisoners,¹⁷ the SC held that unduly long periods of undertrial incarceration violates Articles 14 and 21 of the Constitution.

1.2 Poor utilisation of legal aid by undertrials

In December 2021, Justice UU Lalit, the sitting chairperson of the National Legal Services Authority (NALSA), while speaking on the state of legal services (state-funded legal aid) in the country acknowledged that out of all cases pending in courts, just about 1% are under the belt of legal services.

Data on utilisation of legal aid over a period of four years, between 2016 and 2019, reveals that only 7.91% of the undertrials in prisons utilised the legal aid services they were entitled to¹⁸. While the current data on utilisation is not capable of attributing reasons behind the underutilisation, lack of quality of services is presumed to be the main reason, based on anecdotal information.

1.3 Quality of legal aid in the criminal justice system

The SC in the case of *Mohd Hussein v. State (NCT of Delhi)*¹⁹, held that a trial in which the legal assistance cannot be said to be ‘effective and substantial’ could not be considered just, fair, and reasonable. Hence, it caused prejudice by depriving the accused of the right to a fair trial. Similarly in the case of *Anokhilal v. State of Madhya Pradesh*²⁰, the SC set aside the conviction and sentence and directed for retrial because the nature of the legal aid provided could not be said to be ‘real and meaningful’. While courts have acknowledged the element of effective legal aid as essential to the right to legal aid, there seems to be little guidance on what constitutes “effective legal aid”.

The idea of effective legal aid and its monitoring is also missing from the framework of the NALSA.

1.4 Undertrials and exacerbation of socio-economic vulnerabilities

As per the PSI, from amongst the undertrial prisoners, around 16% were illiterate and 49 percent studied up to Grade 10, indicating that they belong to economically backward sections of the society who are mostly unable to afford bail fees; 44 percent of them are in the age group of 18-30 years. *Thus, a typical undertrial prisoner in an Indian prison is illiterate, young and socio-economically backward.* They end up spending more time in prison than they should because of their poor awareness of procedures and the inability to access quality legal services.

¹⁶ Vijay Raghavan, ‘Undertrial Prisoners in India – Long Wait for Justice’ (2016) 51 Economic and Political Weekly 17

¹⁷ *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. UOI*(1994) 6 SCC 731

¹⁸ Anup Surendranath and Gale Andrew, State legal aid and undertrials: are there no takers?, Indian Law Review; <https://www.project39a.com/op-eds/contradictions-of-the-penal-system-andpains-of-imprisonmentnew-evidence-from-india-cjznw-79d5d>

¹⁹ *Mohd. Hussain (I) v. State (Govt. of NCT of Delhi)*, (2012) 2 SCC 584

²⁰ *AIR 2020 SC 232*

The Law Commission of India noted that “It has become a norm than an aberration in most jurisdictions including India that the powerful, rich and influential obtain bail promptly and with ease, whereas the mass/ common / the poor languishes in jails.²¹”

The existing bail system presumes the fear of forfeiting property as the only guarantee for securing an individual’s availability in court. As a result, people who do not possess even minimal property become unequal before the law.²²

Findings in a study conducted by the Tata Institute of Social Sciences²³ indicated that 52% of undertrials in Mumbai Central and Thane Central prisons were Muslims while their overall population in the country was 13.4%. A similar report²⁴ released by the National Centre for Dalit Human Rights shows that Dalits and Adivasis make up for 34 percent of prisoners in the country even when constitute up to about 24.2 percent of India’s population

1.5 Lack of co-ordination amongst criminal justice institutions

The key stakeholders within the criminal justice system, i.e., the LSA, the police, the courts and the prison form parts of different administrative departments and are governed by different sets of regulations. Lack of consistent procedures and coordination amongst these agencies create major hurdles in providing effective legal aid to undertrials. A need was felt to innovate and explore possible solutions to address these issues.

1.6 Need for data driven diagnosis and solutions

There is little data to assess the cause and effect of the various issues relating to undertrials and their right to legal representation.

Currently, the PSI published by the NCRB is the primary source of data on undertrial prisoners. Maharashtra also publishes a separate statistical report annually. However, both these reports are based on stock survey of undertrials as on a specific date²⁵ and do not accurately reflect data on the flow of prisoners in the system. This method ends up excluding data for undertrials who enter and exit the prison in the period between January 1 to December 30.

With regard to information on utilisation and limitations within the LSA, there is nearly no data available to provide a base for any analysis of the systems.

Any re-imagination of the legal aid system or designing correction in the extant framework cannot be efficiently executed without appropriate analysis of empirical data and on-ground experience.

²¹ Jason Gilbert, “Blame our bail system for overcrowded Ottawa jail” The Ottawa Sun (Jan. 14, 2016) available at: <http://www.ottawasun.com/2016/01/14/blame-our-bailsystem-for-overcrowded-ottawa-jail> (last visited on Jan. 25, 2017) as quoted in *supra* 5 @pg4..

²² Karnam and Nanda, Condition of Undertrials in India - Problems and Solutions, Economic and Political Weekly, Vol. LI No. 13, March 26, 2016

²³ A Study of the SocioEconomic Profile and Rehabilitation Needs of Muslim Community in Prisons in Maharashtra (2011), Raghavan V and Nair R; <https://hrsjm.org/wp-content/uploads/2017/03/Prisons-Muslims-study-maharashtra-2011.pdf>

²⁴ Criminal Justice in the Shadow of Caste (2019), Singh R; http://www.annihilatecaste.in/uploads/downloads/data_190118030229_21000.pdf

²⁵ December 31 for PSI and March 31 for Maharashtra Statistics Report

2. Legal and Institutional context of the intervention

2.1 Constitutional provisions

Every accused has the right to be represented by a lawyer of his/her/their choice under Article 22 (1) of the Constitution of India. To further strengthen the implementation of this fundamental right, the right to legal aid at the state's expense was introduced as a directive principle of state policy under Article 39A by a constitutional amendment in 1976. Though the right to legal aid is an unenforceable directive principle, the judiciary has responded to the needs of the poor through creative interpretation of the rights to equality and life (Articles 14 and 21) by making the right to legal aid a fundamental right.²⁶

2.2 Statutory provisions

Section 41D of the Criminal Procedure Code, 1973 (CrPC) entitles any person who is arrested and is being interrogated by the police to meet an advocate of their choice during such interrogation (though not throughout the interrogation).

With regard to defence in a criminal trial, Section 303 of the CrPC provides that any person accused of an offence has a right to be defended by a lawyer of his choice. Where an accused remains unrepresented in a trial before a Sessions Court, the court is obligated to assign a lawyer for their defence at the state's expense under the provisions of Section 304 of the CrPC. This provision, however, does not extend to an accused facing trial in a magistrate's court.

The state's obligation to provide free legal aid services to the underprivileged sections of the society is set out under the National Legal Services Authority (NALSA) Act 1987. As per the framework of the NALSA Act, all persons in the state's custody²⁷ are entitled to legal services to file and defend their case.

2.3 Judicial precedents

The Supreme Court of India (SC) has held that the right to free legal services is an essential ingredient of an individual's right to life under Article 21 of the Constitution.²⁸ It is settled law that free legal assistance at state cost is a fundamental right of a person accused of an offence.²⁹ Through various judgments of the SC, it has been established that the state's constitutional obligation to provide free legal services is not limited to the stage of trial but also extends to any accused person under circumstances of near custodial interrogation³⁰ and at the stage of remand when he/she is first produced before the magistrate.³¹

²⁶ *M.H. Hoskot v State of Maharashtra*, AIR 1978 SC 1548

²⁷ Section 12 (e) of the National Legal Services Authority Act, 1987

²⁸ *Hussainara Khatoon (IV) v. State of Bihar*

²⁹ *Suk Das v Union Territory of Arunachal Pradesh* (1986) 2 SCC 401.

³⁰ *Nandini Satpathy v P.L. Dani* (1978) 2 SCC 424

³¹ *Khatri (II) v State of Bihar* (1981) 1 SCC 627

2.4 Schemes by the National Legal Services Authority/State legal Services Authority

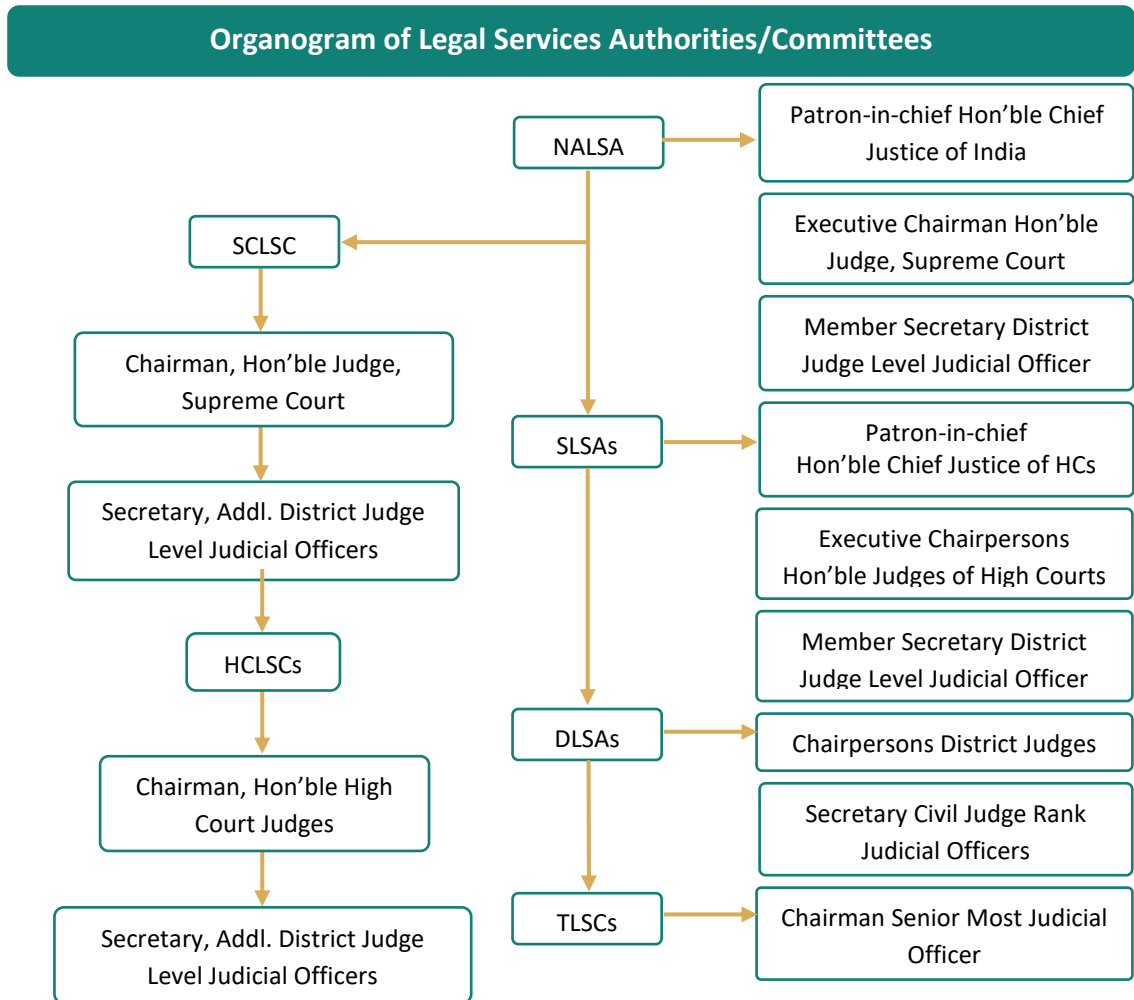
The NALSA guidelines on Early Access to Justice at Pre-Arrest, Arrest and Remand Stage (Early Access Guidelines) set out obligations for the DLSA and the Taluka Legal Services Committee (TLSC) to provide legal services to persons in custody at police stations and remand courts.³²

For access to legal aid for inmates in prison, the National Legal Services Authority (Legal Aid Clinics) Regulations 2011 (Jail Clinic Regulations) read with the provisions of the NALSA Standard Operating Procedure for Representation of Persons in Custody (the SOP), mandate setting up of legal services clinics with clearly demarcated space in prisons (Jail Clinics). The Jail Clinics should have two or more para-legal volunteers (PLVs) available during working hours to interact with the inmates. PLVs, from amongst the convicts serving long sentences, should be identified and trained for this purpose. In addition to this, some lawyers from amongst the panel lawyers should be designated as jail-visiting lawyers who collectively visit the jail at least twice every week. The jail-visiting lawyers are responsible for regularly interacting with the inmates to assess if they need legal representation and help them in seeking legal representation through the LSA mechanism.

2.5 Administrative setup of the Legal Services Authority

The mandate under the NALSA Act is implemented through the National Legal Services Authority (NALSA) and its subsidiary agencies - the State Legal Aid Services Authority (SLSA), the DLSA and the TLSC (collectively, the LSAs) which function under its supervision at the state, district- and taluka-level respectively. At the High Court- and the SC-level, legal services are offered by the High Court Legal Services Committee (HCLSC) and the Supreme Court Legal Services Committee (SCLSC).

³² 'Remand Court' is a court of magistrate which conducts preliminary or partial hearing to decide whether an arrested person is to be released or sent to judicial custody (in prison) or to police custody (for further investigation) until the trial is completed.



In addition to the designated staff appointed under the Maharashtra State Legal Services Authority Rules 1998, the DLSA offices in both districts have a group of empanelled DLSA lawyers³³ (Panel Advocates), Retainer Counsels³⁴ and PLVs to work on the cases.

Monitoring:

As per the provisions of the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 (Free and Competent Legal Services Guidelines), LSAs are required to set up a monitoring committee for close monitoring of the court-based legal services rendered by Panel Advocates and the progress of the cases in legal aid matters.

Honorarium:

The rates for honorarium payable to the Panel Advocates in Maharashtra are specified under the Schedule to Maharashtra State Legal Services Authority Regulations 1998 (Maharashtra

³³ As per Para 8 of the Free and Competent Legal Services Guidelines, every LSA constitutes a panel of lawyers empaneling lawyers with three years or more of experience at the bar.

³⁴ Selected legal practitioners from among the panel lawyers are designated as Retainers by the LSAs. Retainers are required to devote their time exclusively for legal aid work and always be available to deal with legal aid cases and to man the front office or consultation office in the respective LSA. [Para 8(8) and 8(10) of the Free and Competent Legal Services Guidelines.

Regulations). The current rates³⁵ for subordinate courts applicable to criminal cases are as follows:

Category of work	Honorarium prescribed
Drafting of miscellaneous applications such as bail, exemption, stay, etc.	<ul style="list-style-type: none"> • INR 400 per application subject to maximum of INR 800 for all applications
Court appearance in cases	<ul style="list-style-type: none"> • INR 750 for effective hearing and INR500 for non-effective hearing subject to a maximum of INR7,500 per case.
Retainer Lawyers	<ul style="list-style-type: none"> • INR 5,000 per month at District Court • INR 3,000 per month at Taluka Court
Remand Advocate	<ul style="list-style-type: none"> • INR 600 per day in Mumbai and INR 500 per day in all other places
Panel Lawyers visiting jail, observation home, mental hospitals, police stations and all other places on the LSAs' directions	<ul style="list-style-type: none"> • INR 600 per day in Mumbai and INR 500 per day in all other places including transport
Remuneration to PLV in police stations or visiting other places on the LSAs' directions	<ul style="list-style-type: none"> • INR 450 per day in Mumbai and INR 350 per day in all other places; inclusive of transport

Under the Maharashtra Regulations, Panel Advocates can claim honorarium upon completing work on a case. The regulations stipulate that if the matter is disposed of in less than five effective hearings, the fee payable shall be half of the prescribed fee. Panel advocates are required to submit a statement showing the honorarium due to them to the Member Secretary of the LSA. The Member Secretary is responsible for the scrutiny of claims and the disbursement of payments to the Panel Advocates. The Panel Advocates may waive the honorarium payable to them in whole or in part.

³⁵ As notified under Notification No. MSLSA/2016/1431 dated September 6,2016 issued by Maharashtra State Legal Services Authority

3. Rationales driving the intervention

3.1 Institutional coordination towards securing bail and bail compliance

Given the gap between the state of bail law and practice and the high number of undertrials languishing in prison, the need for securing bail emerges as a core area of intervention under the Programme. Interventions towards this involve both support in individual cases, as well as engagement with prisons, courts and LSAs towards identifying categories/groups of undertrials eligible for release.

Institutional engagement towards securing bail involves regular follow-ups with prison, LSA, Panel Advocates and courts to seek information on categories/groups of individuals who may be eligible for release, such as undertrials with bail compliance pending, undertrials eligible for release under the Under Trial Review Committee (UTRC)³⁶/High Powered Committee (HPC)³⁷ guidelines, etc.

Efforts in individual cases include working on identifying bail-related needs of undertrials and providing services from assisting Panel Advocates in filing of bail application to ensuring compliance of bail order, modification of order where required and ensuring release of the undertrial (including arranging cash bail where possible). As part of this process, Fellows work with the LSA, Panel Advocates, families, bail sponsorship organisations, other government authorities (such as municipalities and civic bodies), courts and prisons.

3.2 Institutional coordination towards securing bail and bail compliance

The Programme's interventions are designed based on the understanding that there exists a need to proactively offer legal services to undertrials in prisons. The Programme design envisages regular prison visits by Fellows as per a fixed weekly schedule to visit barracks and interact with undertrial prisoners.

The interventions under the Programme, work towards the following anticipated outcomes:

- Increasing the number of undertrials represented through the LSA. This will indirectly indicate their confidence in the quality of representation provided.
- Reducing the average time taken for allocation of DLSA panel lawyers.
- Reduction in number of undertrials:
 - a) without legal representation/abandoned by the lawyer on record.
 - b) charged with bailable offences.

³⁶ UTRC is a district level committee constituted by the Supreme Court and headed by the District & Sessions Judge, with District Magistrate and Superintendent of Police and Secretary, District Legal Services Authority as members. The UTRC is required to convene quarterly to look at the conditions of prisoners and recommend early release for certain category of prisoners who have had undue long incarceration.

³⁷ The HPC is a body constituted by the State Government under guidelines of the Supreme Court comprising the Chairman of the SLSA, the Principal Secretary/Chief Secretary (Home/Prison) and the Director General of Prisons to determine the category of prisoners eligible to be released on parole or interim bail to address the risk of transmission of COVID-19 especially due to overcrowding in prisons.

- c) with favourable bail order/eligible for default bail or release under Sec 436A of CrPC³⁸;
- d) in prison with claims of juvenility or mental illness, and
- e) pleading guilty during pendency of trial

3.3 Social work as an integral part of legal aid in the criminal justice system

Legal representation for undertrials often involves understanding multiple layers of vulnerability faced by the client and addressing those issues to ensure that the outcome of the legal process is relevant to the client's reality. The Programme therefore visualises trained social workers and lawyers as equal stakeholders in driving the pre-trial (bail) and trial process and divides the work between relevant skill sets. Having a social worker on the team helps in following leads and establishing rapport with the families and other people from the prisoner's community and ensure post-release support to undertrials for rehabilitation and reintegration into the family and society.

3.4 Professional assistance to institutional stakeholders

The process of intervention in individual cases of undertrial prisoners is an opportunity for engaging with various stakeholders towards innovating, reforming and strengthening legal aid institutions in the criminal justice system. Experiences of working on individual cases are also collated and used to develop a macro-level understanding of the various issues that arise in course of working on individual cases. Thus, in addition to the tangible outcome of providing legal support to undertrials, engagement with institutional stakeholders becomes a crucial function towards ensuring the fulfilment of the broader objectives of the Programme, i.e., to strengthen and streamline the functioning of prisons, courts and LSAs by offering the learnings from the Programme.

3.5 Legal aid policy making driven by empiricism

Demographic and case-related information for all clients who seek legal representation through the Programme is collected at the time of case intake and maintained in a customised MIS allowing generation, recording and analysis of this data. Information documented in the MIS is extracted in the form of reports for assessing the amount of work done and the outcome/impact of such work. It also provides information to enable monitoring of Programmatic work at multiple layers and strategy formulation.

³⁸ Section 436-A of the CrPC states that a person who has undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for the alleged offence, (except for offences punishable by death), during the period of investigation, inquiry or trial, **shall** be released by the Court on his personal bond with or without sureties.

4. Broad objectives of the programme

- Institutionalise good practices, use demonstrable experience and empirical data to strengthen existing systems and catalyse changes in the delivery of legal aid to undertrials in the criminal justice system
- Capacity building of Panel Advocates and other local lawyers in representing undertrials
- Explore and demonstrate the value of alternative models in the delivery of legal aid to undertrials

5. Key elements of programme design

5.1 Institutional collaborations and arrangements

5.1.1 Nature of collaboration and its significance for access, legitimacy and institutional buy-in

For the purpose of Programme implementation, the Foundation entered into a memorandum of understanding (MoU) with the Government of Maharashtra (GoM) on 28 June 2018, to collaborate towards improving access to justice and legal aid for undertrials in Maharashtra and fulfilling the above objectives.

This collaboration with the state was crucial both for facilitating interventions under the Programme as well as to establish the implementers' credibility as bona fide partners of the state machinery.

Based on these conditions, the Implementing Partners obtained permissions from the office of the Inspector General of Prisons and Correctional Services, Maharashtra, for prison entry of their programme personnel. Both Implementing Partners also obtained permission from the Maharashtra State Legal Services Authority to work in collaboration with the DLSA in the districts concerned for the purpose of Programme implementation.

5.1.2 Implementing Partners and locations of intervention

For the purpose of carrying out work under the Programme in Maharashtra, the Foundation identified Prayas, a field action project of the Centre for Criminology and Justice, School of Social Work, Tata Institute of Social Sciences (Prayas) and The Fair Trial Fellowship Program, instituted by National Law University Delhi under Project 39A (FTF), as 'Implementing Partners'.

About Prayas, TISS

Prayas is a social work demonstration project working with custodial populations (including undertrials) towards facilitating their access to legal aid and rehabilitation since more than three decades in select prisons in Maharashtra and Gujarat. Prayas's focus is on service delivery, networking, training, research and documentation, and policy change with respect to the custodial/institutional rights and rehabilitation of socioeconomically vulnerable individuals and groups, who are excluded from mainstream public facilities and welfare, and are at greater risk of being criminalised, or exposed to trafficking for sexual exploitation.

Based on the grant received from the Foundation, Prayas started working on legal aid interventions under this project from May 2018 by seeking to support Panel Advocates under the DLSA in their efforts to provide legal representation to undertrials in Central and District prisons namely Mumbai, Thane, Taloja, Byculla, Kalyan and Latur. Legal and Social Work Fellows under the project were appointed in November 2018 and they began their intervention in December 2018.

About FTF, Project 39A NLUD

FTF is a field intervention project under Project 39A to provide legal representation to undertrials. Project 39A draws inspiration from Article 39A in the Indian Constitution on equal justice and works on the broad area of criminal justice system in India. The work of the team spans from litigation, research and outreach relating to forensics, torture, legal aid, mental health and criminal justice, and death penalty.

FTF started field interventions from January 2019 and seeks to support empanelled legal aid lawyers under the DLSA in their efforts to provide legal representation to undertrials in Pune (Yerwada) and Nagpur Central prisons.

The programme is currently being implemented by the two implementing partners across eight prisons in Maharashtra in the following manner.

Name of prison	Implementing partner
Mumbai Central Prison	Prayas (TISS)
Byculla District Prison (both male and female sections)	Prayas (TISS)
Thane Central Prison (both male and female sections)	Prayas (TISS)
Kalyan District Prison (both male and female sections)	Prayas (TISS)
Taloja Central Prison	Prayas (TISS)
Latur District Prison	Prayas (TISS)
Yerwada Central Prison (both male and female sections)	Fair Trial Fellowship (NLU Delhi)
Nagpur Central Prison (both male and female sections)	Fair Trial Fellowship (NLU Delhi)

5.2 Fellowship Model comprising Legal and Social Work Fellows

5.2.1 Fellowship structure

Young advocates and social workers were appointed as Legal and Social Work Fellows (Fellows) under the Programme to carry out interventions towards achieving the Programme objectives and to create trained professionals at local level.

The first batch of Fellows comprised of 17 legal fellows (advocates) and 9 social work fellows (trained social workers) working with FTF and 11 legal fellows and 9 social work fellows working with Prayas. Fellows in both categories had an average work experience of about two and a half years in their respective fields.

5.2.2 Roles and responsibilities of Fellows

As per the current design of the Programme, the Fellows had the following responsibilities amongst other:

Social Work Fellows

- Visit the prisons, interact with undertrial prisoners, identify individuals who need legal aid from the DLSA and support them in writing applications to DLSA.
- Identify undertrial prisoners entitled for bail/early release and refer such cases to the DLSA and the Prison Authorities.
- Socio-legal case work interventions and handholding undertrial prisoners through the legal proceedings at both pre-trial and trial stage.
- Counsel and guide families of prisoners in gathering information/documents relevant to their case through phone calls and home visits.
- Travel as required to meet and communicate with family members/employers of undertrial prisoners and other persons who may have oral and documentary information relevant for mitigation of the prisoners, bail compliance (surety bail) using the tools and techniques for communication and obtaining information devised.
- Coordinate with other authorities if required for gathering relevant documents like age proof, address proof, medical certificates, etc. (panchayat office/local corporator/Aadhaar centre/work site)
- Assist family members including children in meeting undertrials through regular channels such as *mulaqat*, *galabhet* and special meetings with children
- Coordinate with PLVs of the DLSA for case intake and allocation.
- Work with other organisations for sponsorship for compliance of bail conditions.
- Identify special needs of undertrials including pregnancy, claims for juvenility, disability, terminal illnesses, mental health issues, etc.
- Coordinate with Legal Fellows and provide relevant socio-legal inputs in individual cases.
- Post-release support to undertrials including referrals for livelihood, shelter, education, financial claims, special needs and socio-legal support through trial process.

Legal Fellows:

- Assist undertrials in forwarding legal aid applications to the DLSA and following up the applications with the DLSA to ensure Panel Advocates are appointed at the earliest.
- Brief and assist Panel Advocates assigned on a case during court hearings at both pre-trial and trial stages.
- Regular prison visits to seek instructions from undertrial client on behalf of the Panel Advocates.
- Assist the Panel Advocates in drafting and filing of legal documents/applications to be submitted at both pre-trial and trial stages such as bail applications, modification applications, exemption applications, etc.
- Review documents brought on record in a case, provide research inputs and devise legal strategy in consultation with the Panel Advocate concerned.
- Follow-up ongoing cases in court and update the client (undertrial) and/or the family members concerned
- Coordinate for bail compliance, obtain release memo and coordinate for release of undertrial prisoners upon grant of a favourable order.

5.2.3 Recruitment, mentoring and capacity building of Fellows

Each Implementing Partner conducted rigorous classroom based induction training (refer to Annexure 1 for details on training curriculum) for all its Fellows. This was followed up by field placement/orientation and visits to stakeholders to observe and understand the working of the criminal justice system and the need for intervention. The Programme design also included periodic refresher trainings.

5.3 Integration of interventions with prisons and legal services authorities

The Programme's point of intervention in providing legal aid to undertrial prisoners runs parallel to the existing points of intake under the NALSA regulations. However, it operates as a supplementary system to the existent framework by

- (a) catering to a higher case load for the Panel Advocates with more frequent visits to the prison, and
- (b) improving the quality of representation on cases with regular case updates, follow-up and linkages with multiple stakeholders in the case.

This includes follow-up on cases referred to the Implementing Partners through various other sources including LSA office or Panel Advocates. In this process, the presence of Social Work Fellows in prison barracks became cardinal in ensuring last-mile coordination with the undertrial prisoners and improving response of the LSA.

As per data shared with us, DLSA in Nagpur received applications from 111 undertrials during the six-month period between July and December 2018. However, there was a significant increase in requests for legal representation through the DLSA since the start of the FTF programme. In Nagpur, the DLSA received 763 cases in 2019 while intake in 529 cases during

this period was through FTF. We do not have access to similar figures in other locations prior to the implementation of the Programme. However, in 2019 DLSA Pune had dealt with 590 cases and FTF data shows a list of 550 cases being referred by FTF.

Based on the understanding that Panel Advocates struggled with heavy caseloads and limited infrastructure to facilitate hands-on work, FTF had initially proposed that Fellows could accompany jail-visiting lawyers and support them in the process of legal counselling, providing case updates and also in identifying undertrials in need of legal representation. However, in the absence of clear written orders from the DLSA (which they did not agree to issue), this arrangement was entirely dependent on the willingness of the jail-visiting lawyers to seek support from the Fellows. A few Fellows in Nagpur had started making such visits with jail-visiting lawyers just before the onset of the pandemic in March 2020. This had to be discontinued subsequently due to the restriction on prison visit.

Fellows have however, continued to engage with these lawyers and the PLV in trying to explore ways of working with them and offering our support in follow up of cases. The Fellows have healthy working relationships at least in part with jail visiting advocates across all the districts where it operates. Relationship building with jail-visiting lawyers and PLVs were of vital importance as far as facilitating communications were concerned during the peak of the pandemic, especially in Latur and Pune.

Mediator and Link

Implementing partners are the link between under trials and key players in the eco system (external and internal)

Key Players

- Prison Authorities
- Judiciary
- DLSA Staff
- DLSA Advocates
- Private Advocates
- Police
- Para legal Volunteers
- Family, Relatives, Employers, Friends
- Prayas Social Worker
- NGOs
- Hospitals/Institutions
- School/College
- Panchayat office/Local Corporator



5.4 Proactively offering legal services with a high degree of responsiveness

5.4.1 Intake process

Regular visits to prison for the purpose of case intake and providing updates to clients is an essential element in the casework process under the Programme. The possibility of direct interaction with a large pool of undertrials makes prisons a crucial site of intervention. Fellows are the primary interface between the Programme and the undertrials in prisons.

Fellows visit the prison barracks to interact with undertrial prisoners, identify undertrials in need of legal representation, provide basic legal information on their case and forward their applications to the LSAs. Fellows also frequently accompany the prison superintendents on their daily rounds to identify undertrials who need legal representation. On some occasions, Fellows accompany the Member Secretary of the DLSA and other members of the judiciary to assist them in identifying cases that need attention.

At this stage of case intake, Fellows obtain case history, assess special needs of the client (such as juvenility claims, need for mental health services, etc.) and the nature of services that they may require (refer to Annexure 2). Fellows also ascertain availability of documents relevant for the client's case

This process of first communication between the inmate and the Fellows is an integral part of the intervention design in the Programme and is not merely for the purpose of identifying new cases. This ensures the clients familiarity with the Fellows and the Programme's connectivity with clients who did not initiate their engagement with the Programme but were referred by other sources.

5.4.2 Services provided to clients

From the pool of cases identified from the prison, Fellows conduct a physical case search in prison judicial registers and court records in specific courtrooms prior to forwarding applications to the LSA. Such case searches are necessitated due to the undertrial's inability to provide complete case details and the need to ascertain the case status to avoid conflict with lawyers who may be representing the client (*for details on search of court records, refer point 7.1 below*). For all clients with no lawyer on record, the LSA applications are forwarded to the LSA concerned for allocation of panel lawyer. (*Refer to point 5.5.1 on allocation process below.*)

Once the allocation process from DLSA is completed, Fellows start work on the case as per the needs of the client and the requirements in the case. Fellows are involved in providing assistance at both pre-trial and trial stages of the case and, in some cases, continue to support the client post-release on bail or acquittal. Fellows also provide one-time as well as detailed support to clients who want to continue with private lawyers through regular follow-ups. Throughout this process, Fellows continuously reach out to the clients in the prison and the court as well as their families to update and explain the legal steps being taken and keep them apprised of the developments in the case. They also maintain contact with the clients who are released on bail and remind them of the court dates to ensure the presence of the clients in the court.

For cases with existing private lawyers, the Fellows reach out to the private lawyer and communicate any request in relation to the case made by the inmate.

5.5 Effective coordination between prison, LSAs, Panel Advocates, courts and families of clients in providing legal services

5.5.1 Coordination for allocation of Panel Advocate

For all clients with no lawyer on record, the LSA applications are forwarded to the LSA concerned for allocation of Panel Advocate. For courts under DLSAs, applications are submitted at the office of the DLSA. Applications for cases in courts at the taluka level are submitted directly in the court before the Chief Judicial Magistrate and the allocation of the panel lawyer is usually done at the same time in the court room.

The application and allocation procedure at the LSAs is manual and entirely through physical documents. Tracking of allocation of lawyers (specifically by the beneficiaries) can only be done by physical visits to the DLSA/TLSC office concerned.

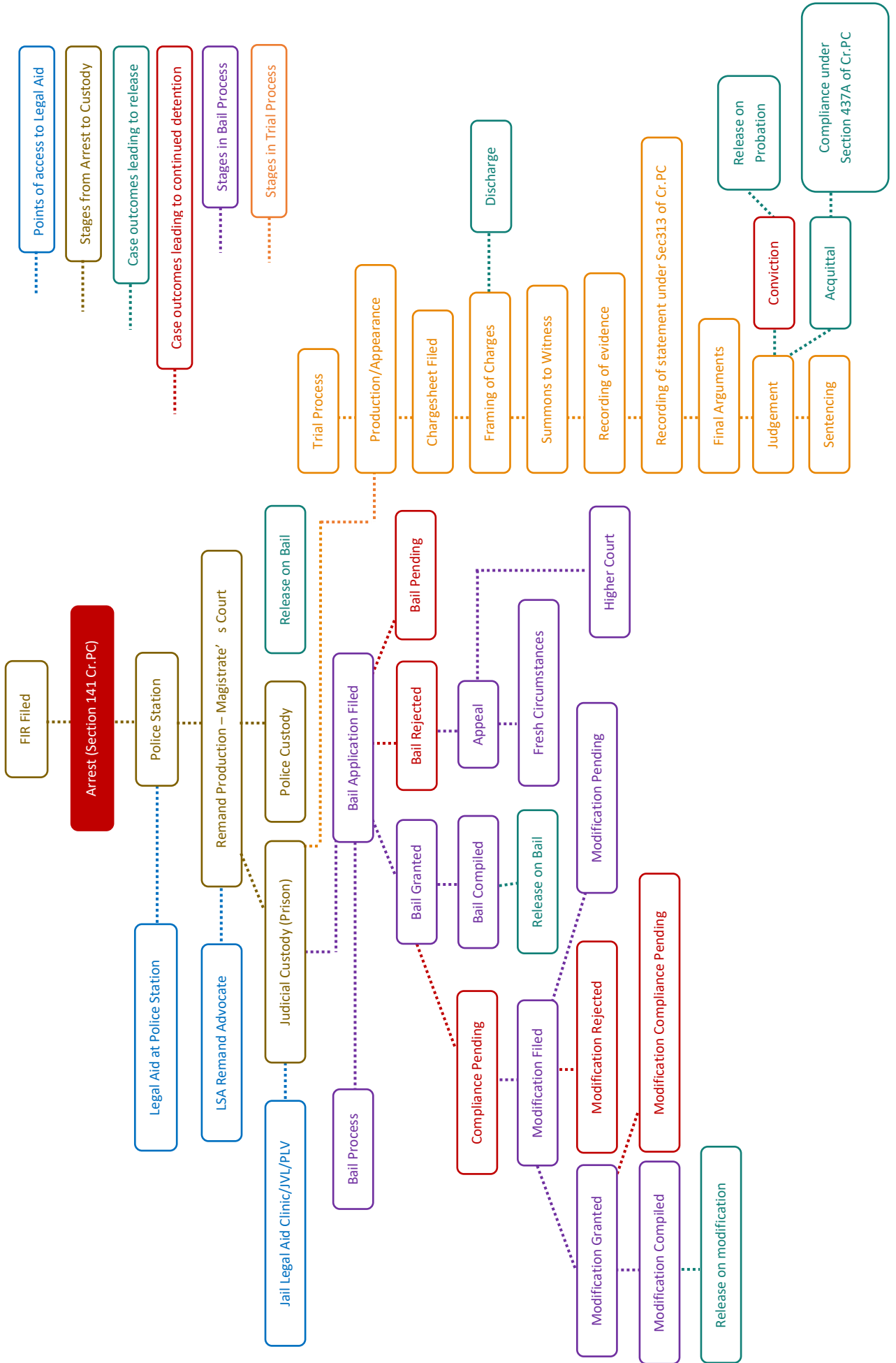
Fellows coordinate with the DLSA/TLSC office for allocation of lawyers on the cases. Once a Panel Advocate is appointed, Fellows collect the allocation order and coordinate with the allocated Panel Advocate for the process of getting the vakalatnama signed by the undertrials in prison and the Panel advocate and filing it in court.

5.5.2 Assistance to Panel Advocates in applying for bail, and trials

Fellow assists the Panel Advocate in pursuing the case.

Most clients seek support in bail-related processes in their case. Fellows assist Panel Advocates in drafting and filing of bail and other applications, provide research briefs on point of law, assist during court hearings, coordinate with prison authorities for implementation of court orders or release of inmates, meet inmates in prison to seek instructions and liaise with undertrials' families to obtain necessary documents, etc.

Fellows are also involved in providing assistance to the Panel Advocates during the trial of cases. The nature of assistance provided includes attending court dates, assistance in recording of evidence, taking notes of the proceedings and preparing written arguments, research on points of law relevant to the trial process, assistance in preparing arguments of sentencing and collating mitigating circumstances for reduction of sentence.



5.5.3 Working with families/relatives/employers and other organisations for compliance of bail conditions

If the client is unable to comply with bail conditions, Fellows try to trace family/friends/employers of the client and assess their willingness to comply with the bail conditions. In cases where the family of the inmate is not reachable/traceable on phone, Fellows make home visits and support the inmate for compliance of bail conditions.

If the client's family is unwilling or reluctant to comply with bail conditions, Fellows engage with them to understand the reasons behind such reluctance and convince them to support the client in his/her best interest. In situations where the family is unable to comply with bail conditions due to unavailability of documents such as identity proof, tax receipts, solvency certificates, etc., Fellows also work with the family for arranging such documents.

If all efforts for compliance through family members fail due to lack of resources, Fellows also explore options for seeking bail sponsorship through other organisations.

5.5.4 Equal emphasis on quality of legal services and access to legal services

Programmatic understanding of 'quality' of legal services

The Programme was based on the core understanding that limitations in the quality of legal representation available to the undertrials had a direct correlation with the burgeoning undertrial population.

In addition to improving access to legal aid for undertrials, the Programme also aspired to demonstrate an initiative which would work towards improving the quality of legal representation provided through the LSAs towards restoring the credibility of the LSAs to its intended beneficiaries and improving utilisation of the Legal Aid Services.

The Programme sets parameters for quality of representation in terms of the amount of time and preparation put by an advocate towards a case. This includes regular interaction with the inmate and their families, following up the matter in court, coordinating with the panel lawyers to ensure preparation for casework, including subject matter research, multi-agency coordination related to case work and providing regular updates to the inmates proactively. Providing good quality and competent legal representation to undertrial prisoners at the early stages of their trial or at the pre-trial stage goes a long way in ensuring their Right to Fair Trial. To some extent, this gives them relief from getting trapped in processes meant for realisation of rights, such as the application for and grant of bail, which go unchallenged and unchecked, ultimately leading to the incarceration of prisoners who should not be caught in the penitentiary system.

Processes for monitoring and supervision of interventions

Mentoring of Fellows and monitoring of their performance is a crucial ingredient of the Programme Design. The Programme design envisages coordinators at each location to monitor and handhold the activities of the Fellows on a day-to-day basis and coordinate with various stakeholders.

The responsibilities of the coordinator include:

- a) Developing and implementing litigation strategies for cases of undertrials and coordinating the work of the Fellows in each office.
- b) Reviewing progress of individual cases assigned to Legal Fellows in the respective offices.
- c) Coordinating and liaising with DLSA, Panel Advocates, prison authorities, police system, criminal law experts and other stakeholders to ensure effective implementation of the Programme.
- d) Writing reports and compiling data extensively, as may be required for the purposes of Programme documentation, monitoring and evaluation.

5.5.5 Development of an MIS to generate, process and analyse data on demographic profile of clients, procedural elements of interventions in individual cases and outcomes

As per the Programme design, demographic and case-related information for all clients who seek legal representation through the Programme is collected at the time of case intake and maintained in a customised MIS, allowing system-level analysis. Data on the MIS is maintained under three modules for each case, i.e., Undertrial Details, Case Details and Intervention Details. For every active case in the Programme, Fellows working on the case are required to regularly update information in relation to the progress and court status of the case, interventions done, and any other relevant information received subsequent to the intake.

Information documented in the MIS is extracted in the form of reports for assessing client needs, the amount of work done and the outcome/impact of such work. It also provides for information to enable monitoring of Programmatic work at multiple layers and strategy formulation.

5.5.6 Strategic engagements towards Programme objectives

Intervention Application in Supreme Court:

As a member of the National Forum on Prison Reforms (an alliance of prison-based organisations), Prayas filed an intervention application in the SC in the Suo Moto Writ Petition (Civil) No 1 of 2020 (COVID Contagion and Prisoners), making several suggestions to maintain healthcare and hygiene in prisons, release of prisoners who need special care and ensure the safe transportation of released prisoners. From the many suggestions made, two were accepted and reflected in the court order passed by the SC in March and May 2020, namely directing regular weekly meeting of Undertrial Review Committee (UTRC) and reiterating to follow up the directions in SC's judgment in *Arnesh Kumar v. State of Bihar & Anr*³⁹, i.e., all undertrials arrested in offences with maximum sentence of seven years or less must not be arrested by police.

Assistance to Bombay High Court in Suo Moto PIL No. 1 of 2021 on Prisons and the COVID situation:

Prayas and FTF submitted a note to the Bombay High Court in Suo Moto PIL on Prisons and the COVID situation and have raised important issues such as vaccination of prisoners who do not have ID-proof documents and review of cases in which undertrials can be released on bail by the UTRC at the district level. The Court passed orders (based on these suggestions) directing the UTRCs to meet every week and identify prisoners who can be released on bail or personal bond, and also directed the HPC to meet and review release of prisoners on bail and parole, in

³⁹ AIR 2014 SC 2756

order to reduce overcrowding of prisons. The court has also passed orders asking the government to find ways to vaccinate prisoners irrespective of whether or not they have ID proof documents. On the basis of the HC's directions and Prayas's follow-up with the HPC and MSLSA, the Bombay High Court has issued directions to all judicial officers in Maharashtra to ensure compliance with the provisions of Sections 3, 4 and 6⁴⁰ of Probation of Offenders Act, 1958 (Probation Act).

Meetings with Additional Chief Secretary, Home Department and Chairperson, MSLSA:

Prayas met with Additional Chief Secretary ("ACS") of the Home Department and Chairperson of MSLSA to discuss ways to improve delivery of legal aid in prisons. Based on the suggestions made in this meeting by Prayas, the MSLSA issued circular No. No.Rule/P.1604/2021/305 dated October 4, 2021, directing courts in Maharashtra to accept memo of appearance instead of vakalatnama in the criminal proceedings from any Panel Advocate appointed by LSA.

Assistance to the Odisha High Court in WP (Civil) no 6610 of 2006 and WP (Civil) 3368 of 2014 on overcrowding of prisons:

Based on invitation by the amicus curiae in the case of *Krishna Prasad Sahoo v. State of Odisha and Others*, Prayas submitted suggestions relating to the functioning of UTRC, UTRC's consideration of 14 categories eligible for release of undertrials as per NALSA-SOP (and conducting meetings regarding the same), implementation of the Arnesh Kumar judgment and suggestions with regards to children of prisoners left outside. Based on these suggestions, the government has come up with support scheme for children of prisoners and the department of prison has taken suggestions from Prayas, which have been considered in final scheme. The bench is yet to hear the suggestions with regards to the increase for payment of honorarium of Panel Advocate and filling up of vacancy (staff in prison department).

Submitted suggestions to revise the Maharashtra Prison Manual 1971:

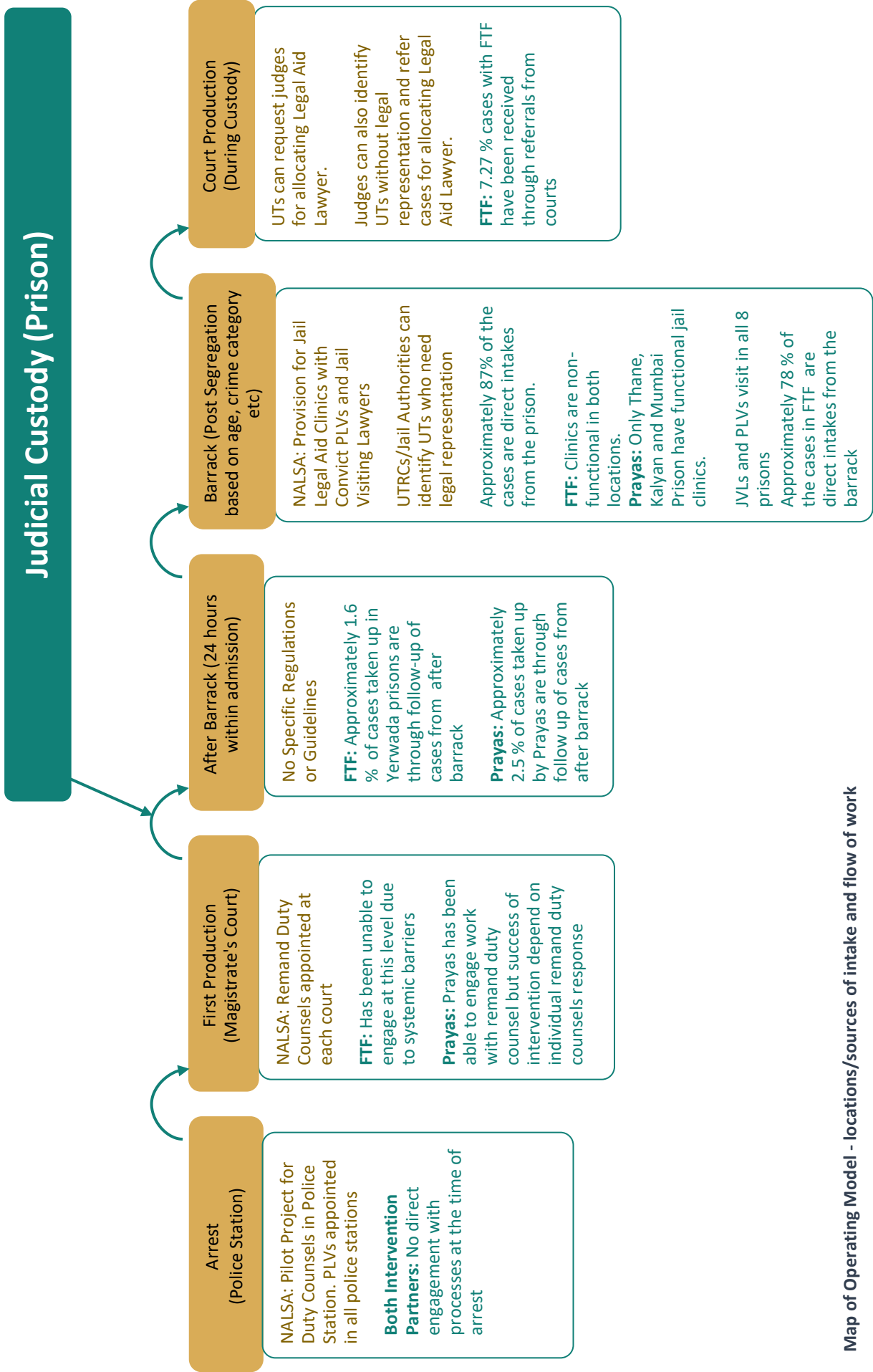
The Maharashtra Prison Department has constituted a committee to revise the Maharashtra Prison Manual 1971 in line with the Model Prison Manual 2016. Prayas is a member of this committee and has submitted its list of suggestions, namely inserting new chapter on women prisoners, children of prisoners and legal aid. The revised manual is yet to be finalised.

Based upon Prayas's suggestions, the GoM has increased the budget of the grant-in-aid to released prisoners from INR 12 lakh to INR 1 crore for the financial year 2020-21.

5.5.7 Training, capacity building & legal awareness

The Implementing Partners have engaged with the LSAs, Panel Advocates, prison authorities and police in conducting training and awareness programmes both for the functionaries in the said departments and for undertrial prisoners as beneficiaries of the Programme. Details of the programmes conducted can be found in Annexure 3 below.

⁴⁰ Section 3 of the Probation Act grants powers to the courts to release an offender with a firm warning or reprimand. Section 4 grants powers to the courts to release an offender on the basis of good conduct and Section 6 lays down that offenders under 21 years of age should not be sent to prison upon conviction unless they are charged with offences punishable by life imprisonment or death penalty.



Map of Operating Model - locations/sources of intake and flow of work

6. Story of the intervention through numbers

As part of its interventions, Fellows collected relevant information for all cases under the Programme. This included demographic details, case details and information on progress of the case across stages in pre-trial and trial process. Entry of this data in MIS system facilitated use of the information for Programme-level analysis of data and understanding of issues in the criminal justice system based on empirical evidence. The numbers below reflect the trends presented by the MIS for all cases under the Programme.

The Programme’s services were accessed by 9,570 undertrials during the ‘current cycle of implementation. As had been anticipated in the Programme design, the prisons remained the most common point of access to the Programme. Approximately 81 percent of the applications received by FTF and 92 percent of the application received by Prayas were taken directly from the prison. In addition to this, FTF also received over 12 percent cases through referrals from the LSA and another 3 percent cases from sitting judges directly in court.

The broad demographic profile of clients was consistent with general patterns of marginalisation of prisoners as reflected in the PSI. The demographic profile of clients also confirmed that the Programme was catering to undertrials who had minimal support for pursuing their rights of fair trial.

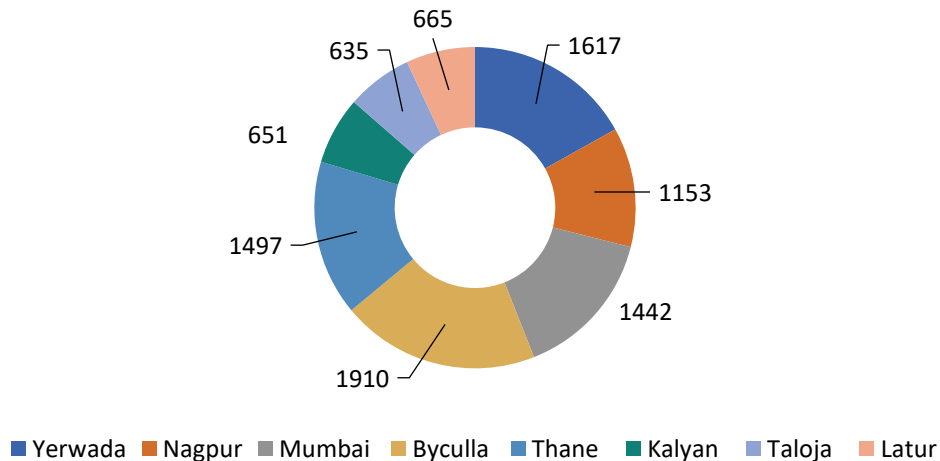
Approximately 39 percent of the cases under the Programme were charged with theft or burglary. Most of these cases (approximately 90 percent) were received at the pre-trial stage (94.65 percent cases for Prayas and 82.67 percent cases for FTF) and support for bail filing/compliance emerged as the primary need in majority (77.85 percent) of the cases received.

6.1 Outreach in prison

6.1.1 General outreach data

Prayas reached out to 6,800 undertrials in six prisons and FTF reached out to 2,770 undertrials in two prisons.

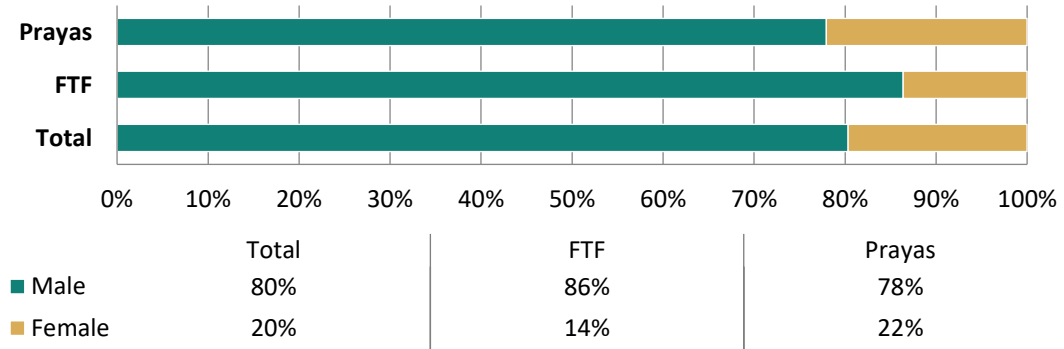
Prisonwise Breakup of Total Outreach



6.1.2 Demographic profile

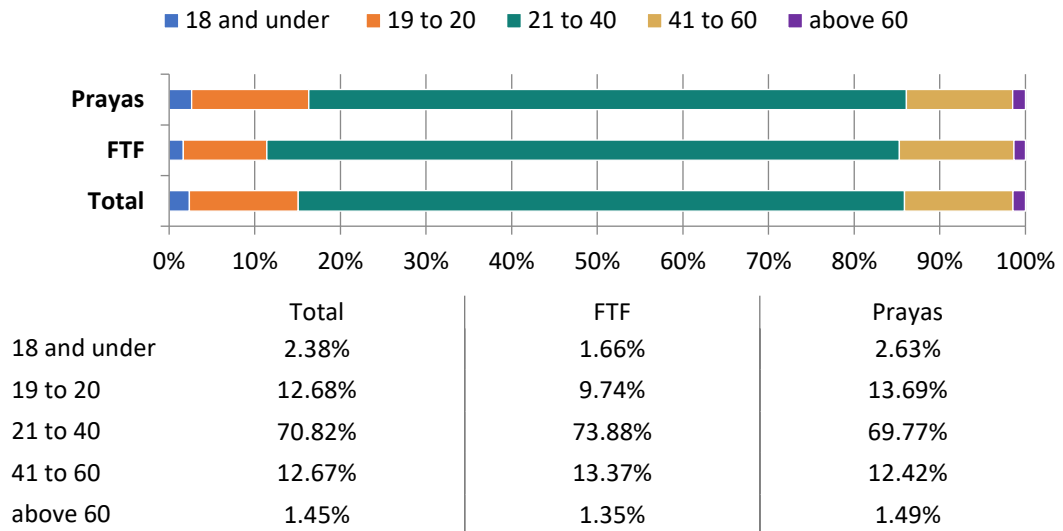
While women constituted an average of 4 percent of prison population, the Programme had an average of 20 percent women clients (22 [percent clients for Prayas and 14 percent clients for FTF).

Gender Distribution



This was indicative of the Programme’s focus to work with women who face multiple vulnerabilities within the system on account of poor socioeconomic indicators linked to gender, such as lack of education, means of livelihood, low rate of asset ownership and general lack of social support.⁴¹ Prayas represented eight clients and FTF represented two clients from the third gender.

Age Distribution

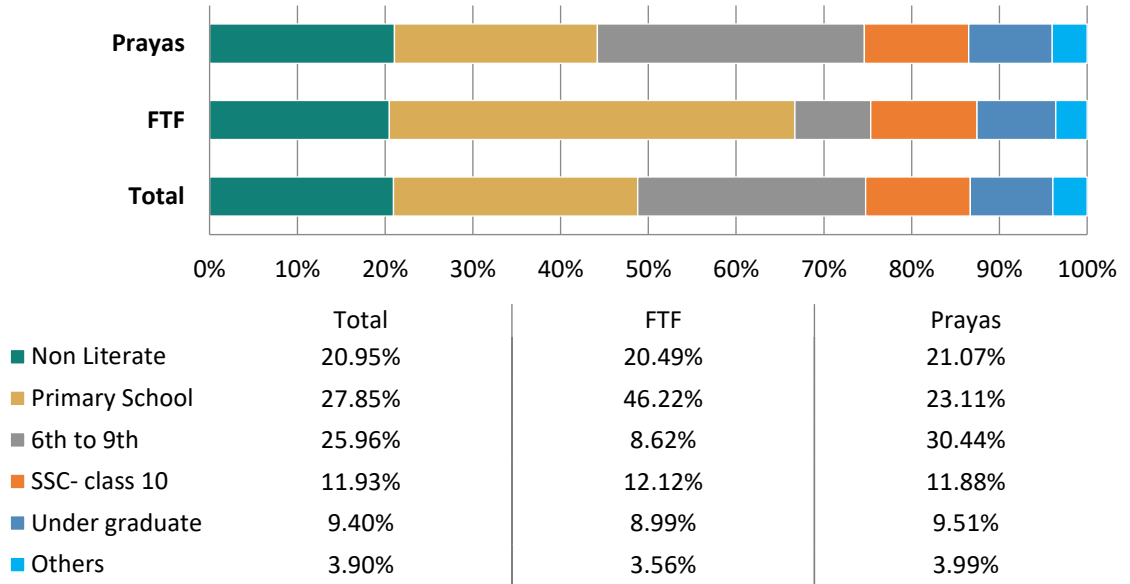


The Programme had a high proportion of young clients with over 15 percent clients under the age of 20. A total of 86 percent clients under the Programme were under 40 years of age.

⁴¹ *Supra* 1

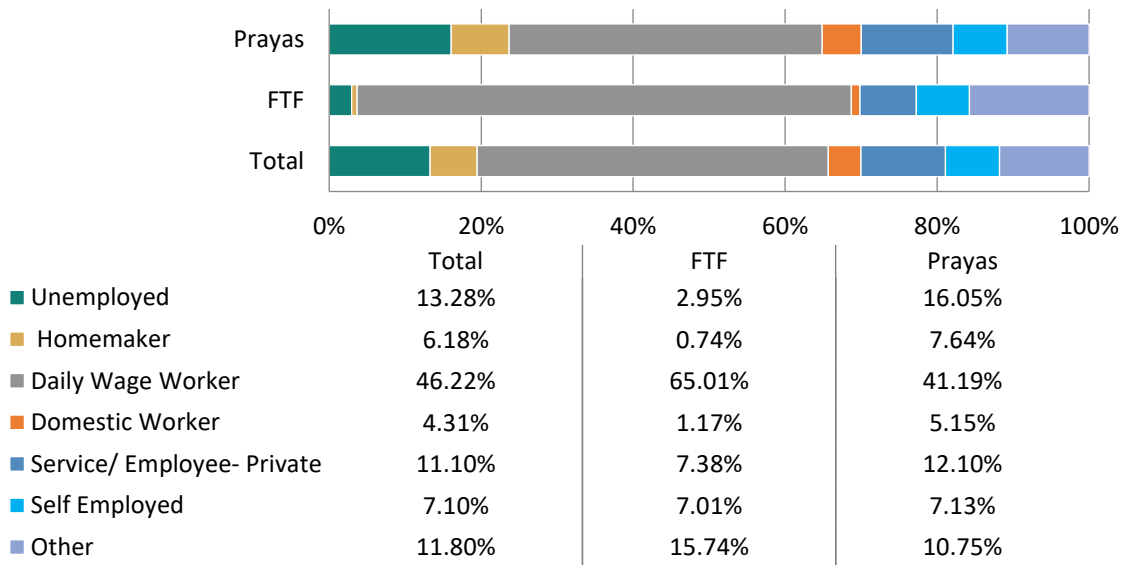
In terms of education of the clients, 21 percent clients were illiterate, and a total of 75 percent clients had not completed matriculation (Grade 10).

Educational Background



22.41 percent clients in the Programme (27.89 percent for Prayas and 4.43 percent for FTF) had no source of income. A total of 72.85 percent (69.20 percent for Prayas and 84.86 percent for FTF) clients earned less than INR 1.2 lakh per annum.

Occupation Profile

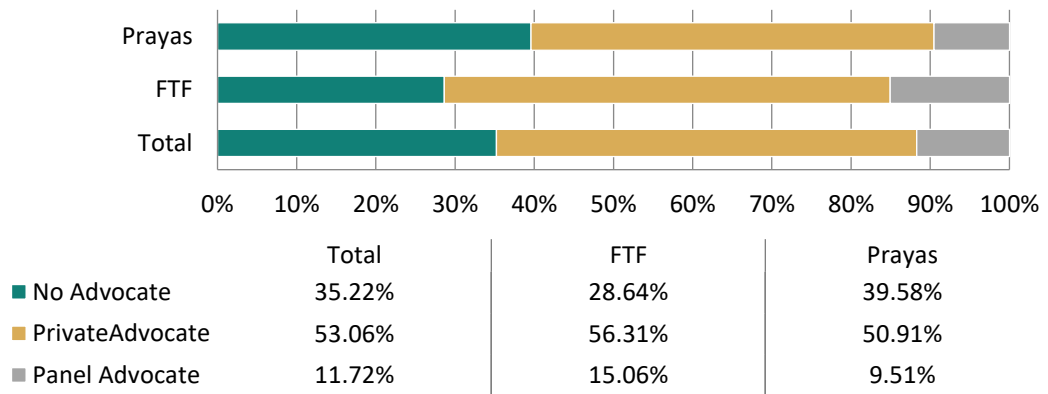


6.1.3 Client needs at intake

In 35.22 percent cases received by the Programme (39.58 percent Prayas cases and 28.64 percent FTF cases), the inmate did not have a lawyer at the time of case intake and in 53.06 percent cases received by the Programme (50.91 percent Prayas cases and 56.31 percent FTF cases), the inmate had a private lawyer but wanted to seek legal representation through the LSAs. This was either because they were not satisfied with the services of the private lawyer or were unable to afford their services.

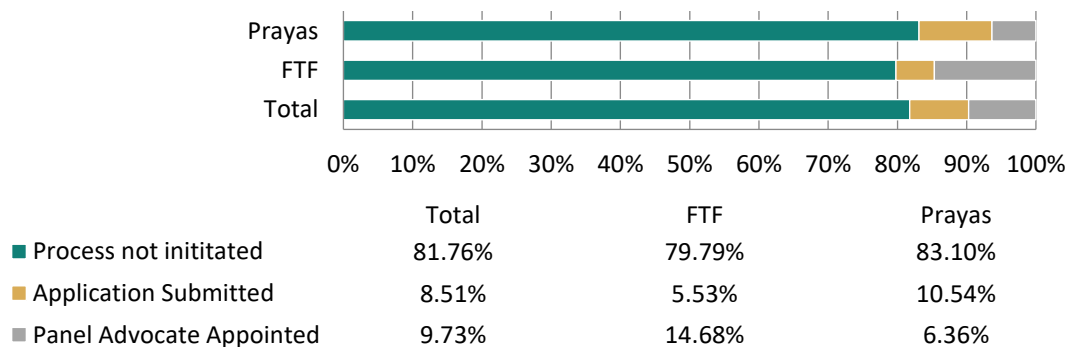
11.72 percent of the cases received (9.51 percent Prayas cases and 15.06 percent FTF cases) also had a Panel Advocate allocated at the time of intake and in most of these cases, the undertrial requested for further follow-up and updates from the Fellows.

Advocate Status at Intake



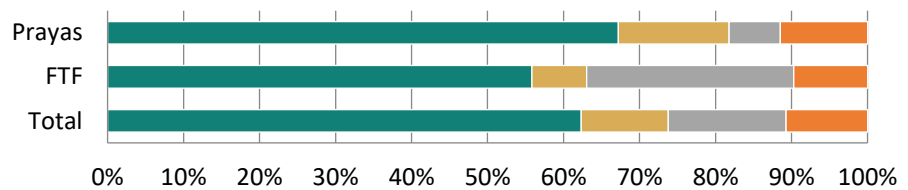
The Programme data also indicated that the LSA process had not been initiated in 81.76 percent (83.1 percent for Prayas and 79.79 percent for FTF) cases at the time of intake. In 8.51 percent cases (10.54 percent for Prayas and 5.53 percent for FTF), the clients had approached the Programme after submitting application for allocation of Panel Advocate and in 9.73 percent cases (6.36 percent for Prayas and 14.68 percent for FTF), the client already had a panel Advocate at the time of intake.

DLSA Status at Intake



At the time of approaching the Programme, 62.34 percent of the cases received (67.20 percent for Prayas and 55.82 percent for FTF) did not have a bail application filed. 15.51 percent of the cases received (6.74 percent Prayas cases and 27.25 percent FTF cases) had orders granting bail but compliance with the conditions was pending due to undertrials’ inability to comply with bail conditions⁴² (for more details on compliance of bail conditions refer to para 7.1.3 below). Support on filing of bail and compliance of bail conditions therefore emerged as a focus area for interventions under the Programme.

Bail Status at Intake

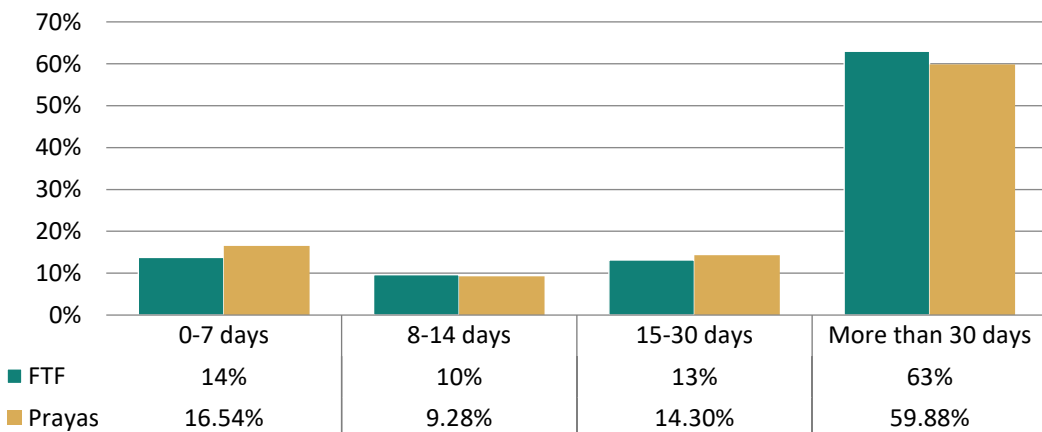


	Total	FTF	Prayas
■ Bail not filed	62.34%	55.82%	67.20%
■ Bail filed	11.45%	7.24%	14.59%
■ Bail Compliance Pending	15.51%	27.25%	6.74%
■ Bail Rejected	10.71%	9.69%	11.47%

6.1.4 Timeline between arrest and intake

Most clients (60 percent for Prayas and 63 percent for FTF) first approached the Programme for support after 30 days of arrest. Correlation of this data to the data on advocate status and status of LSA application at the time of intake indicates the likelihood that even undertrials without legal representation may have a time lag before they access the LSA mechanisms.

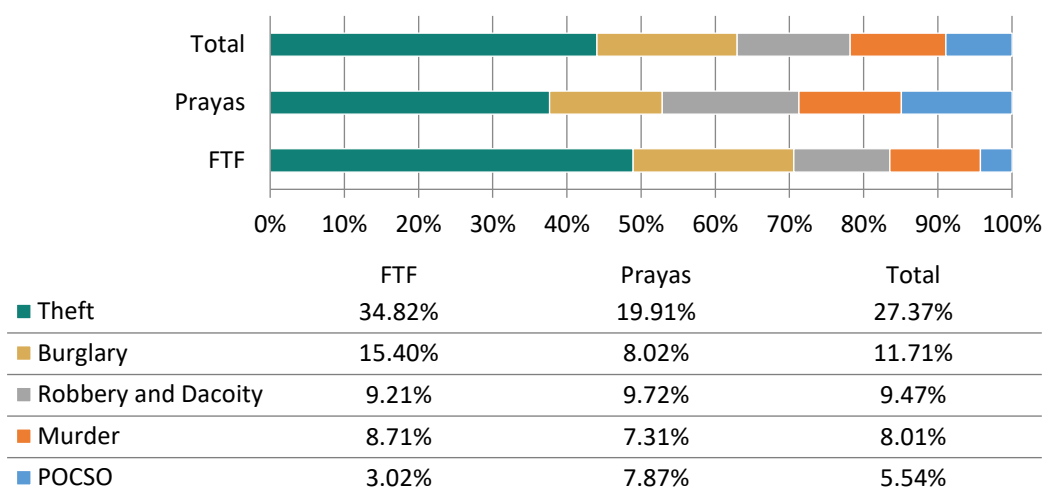
Time Spent in Jail at Case intake



⁴² For note on bail conditions, refer to note in *supra* 6 above

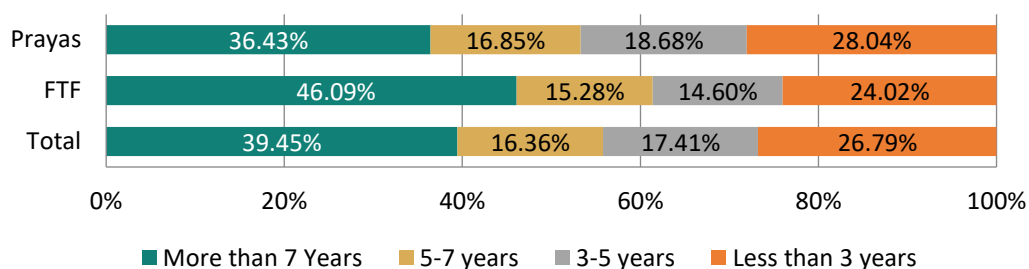
6.2 Case details

Offencewise Categorisation of Cases



Theft constituted the highest proportion (27.37 percent) of cases under the Programme. This was in contrast to the overall trends as reported in the PSI where only 7 percent (2020) and 10.48 percent (2019) undertrials in Maharashtra were charged with theft. A possible explanation for this could be the gaps due to the report being based on stock data⁴³ as on 31 December 2020.

Case categorisation- maximum punishment

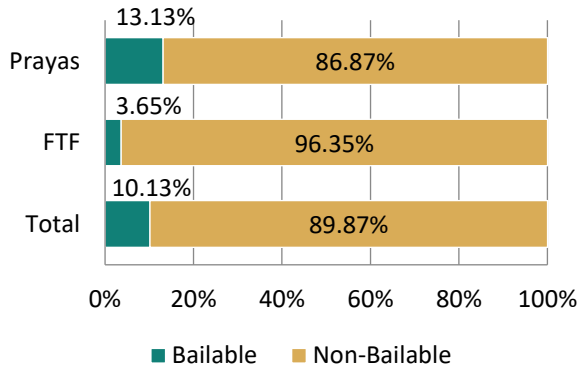


Cases punishable beyond seven years formed the largest category of cases for which services were sought under the Programme – 39.45 percent in the Programme (36.43 percent cases of Prayas and 46.09 percent cases of FTF). Cases punishable with less than three years as punishment were the next largest category - 26.79 percent cases under the Programme (28.04 percent cases of Prayas and 24.02 percent cases of FTF).

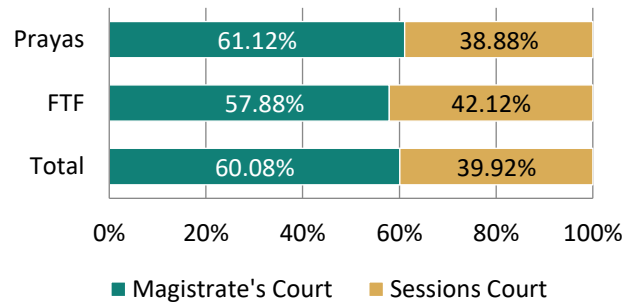
Most cases in the Programme (89.87 percent) were for non-bailable offences. In terms of pecuniary jurisdiction, 60.08 percent cases were triable by Magistrates while 39.92 percent cases were triable by the Court of Sessions.

⁴³ In our context, stock data refers to the number of prisoners incarcerated at a particular moment in time. The flow data in prison refers to the numbers of prisoners incarcerated over a specified period of time.

Case categorization - bail



Case categorisation - court jurisdiction

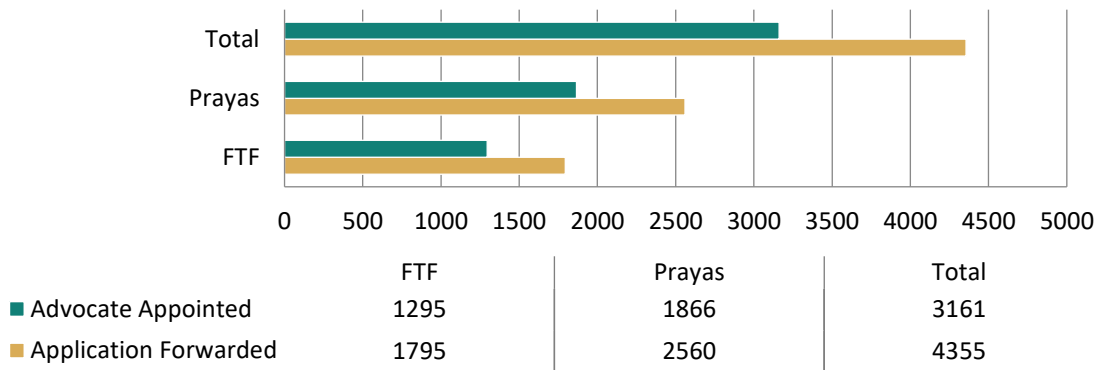


6.3 Work with LSA

6.3.1 Applications received and Panel Advocates appointed

The Implementing Partners forwarded applications to the DLSA in 4,355 cases (2,560 for Prayas and 1,795 for FTF) seeking allocation of Panel Advocate. Out of these, Panel Advocates were appointed in 3,161 cases (1,866 for Prayas and 1,295 for FTF).

LSA allocations



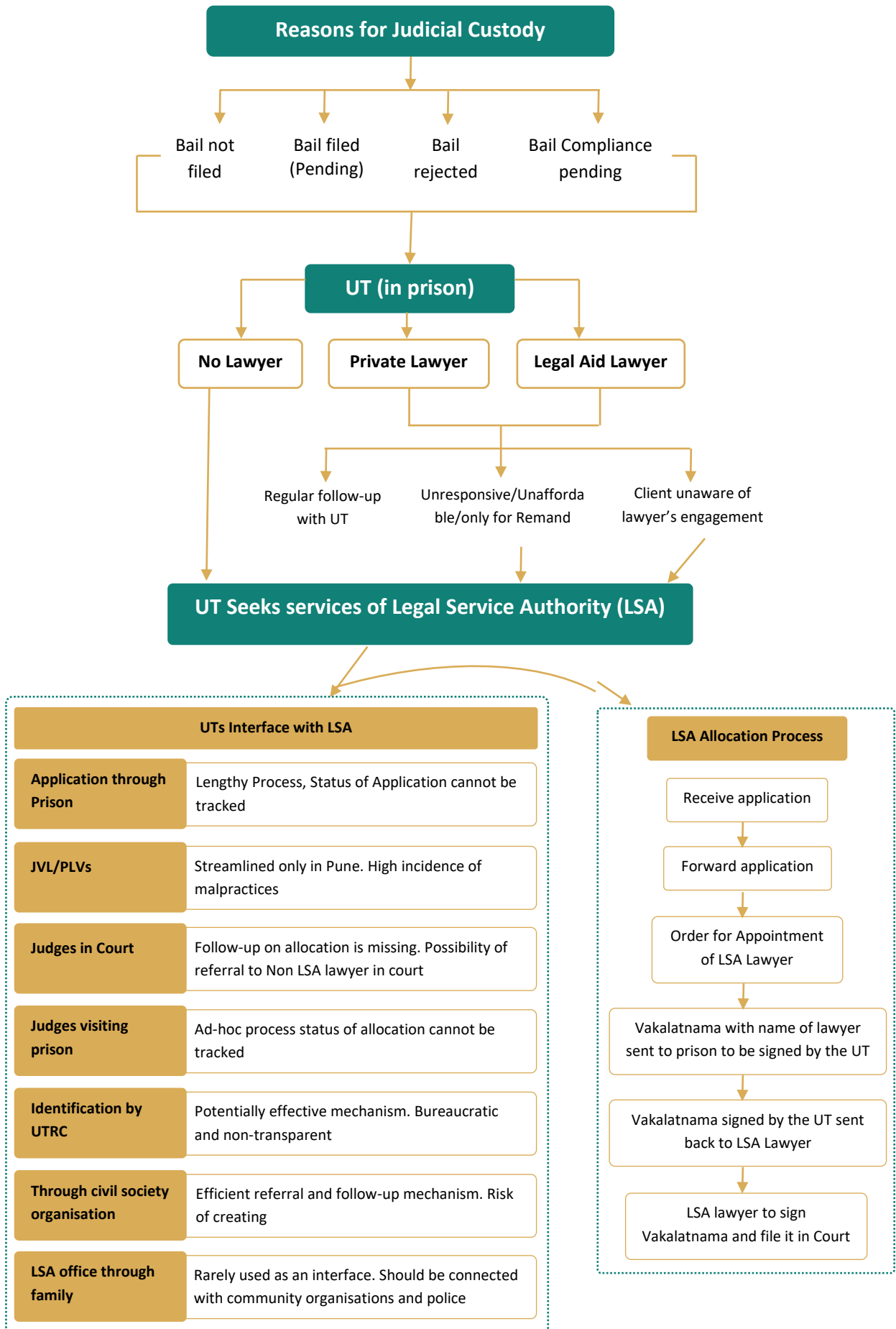
6.3.2 Attrition of clients – pre- and post-allocation

Approximately 40 percent cases of FTF and 42 percent cases of Prayas were closed as One Time Intervention (OTI) while the allocation process was pending.

Multiple reasons may be attributed to the closing of cases as OTI – a significant number of attritions due to delay in allocation of Panel Advocate and submission of their vakalatnama in court stands as a major reason for cases closing as OTIs. Cases are also closed as OTIs where preliminary case search by Fellows indicated engagement of a private lawyer who was continuing to work on the matter or in cases where the client is released and cannot be traced before the allocation process is completed.

Around 6 percent of the undertrials for Prayas and 5.4 percent undertrials for FTF have also switched to private advocates after the allocation of a Panel Advocate and submission of the vakalatnama in court.

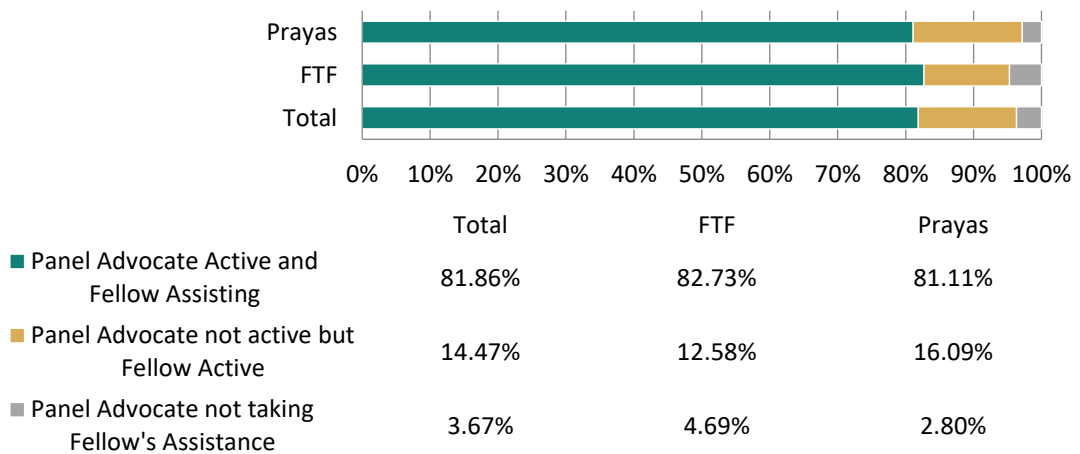
Mapping Undertrial Prisoner’s Interface with Legal Services Authority



6.3.3 Lawyer engagement status

Fellows have been working closely with Panel Advocates on cases received by the Programme. Given that legal aid panel lawyers also have their own practice, it was observed that in more than 80 percent cases under the Programme, the Panel Advocates were keen to take the assistance of the Fellows in preparing and arguing cases. This resulted in faster and more effective follow-up in cases.

Panel advocate engagement status



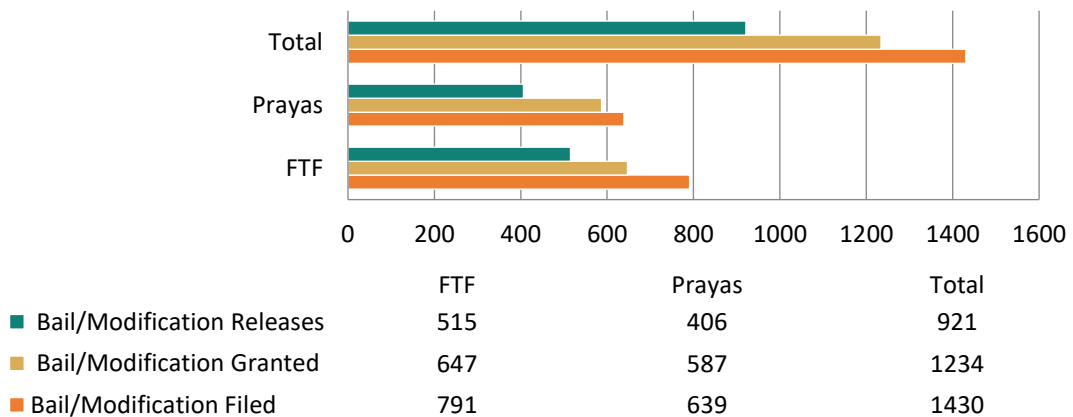
6.4 Work in courts

6.4.1. Bail/modifications application filed/granted/rejected/released/compliance pending

As mentioned above, intervention on bail remained a key focus of the Programme and a total of 4,237 undertrials were released by filing of bail/modification applications and working on their compliance.

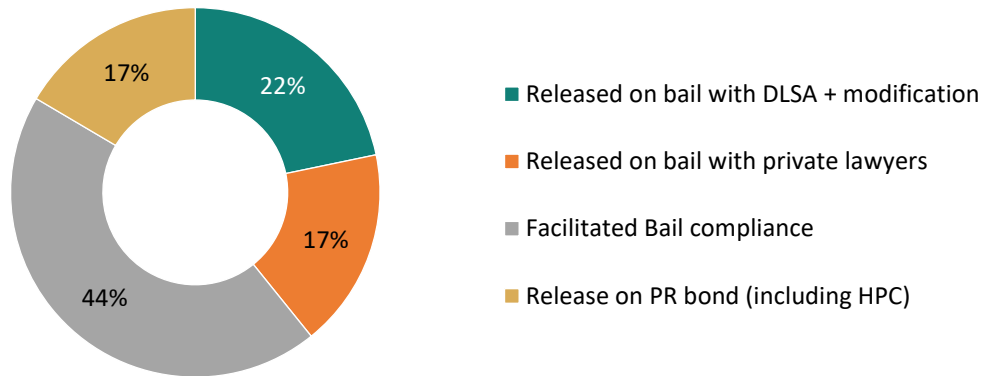
Bail was filed in total of 1,430 cases through the LSA out of which favourable orders were obtained in 1,230 cases and total of 921 undertrials (406 for Prayas and 515 for FTF) were released on these orders.

Bail/modification outcomes



In addition to bail filing through LSA, interventions with private lawyers by Prayas resulted in release of 740 undertrials. Bail compliance (other than cases where bail was filed by the Programme) was done in 1,827 undertrials by Prayas and 49 cases by FTF. 344 clients of Prayas and 356 clients of FTF were released on PR bond (including HPC releases).

Releases on bail



Compliance of bail conditions was pending in 63 cases of Prayas where bail/modification had been granted. FTF reported compliance of bail conditions pending in 117 cases where bail/modification had been granted.

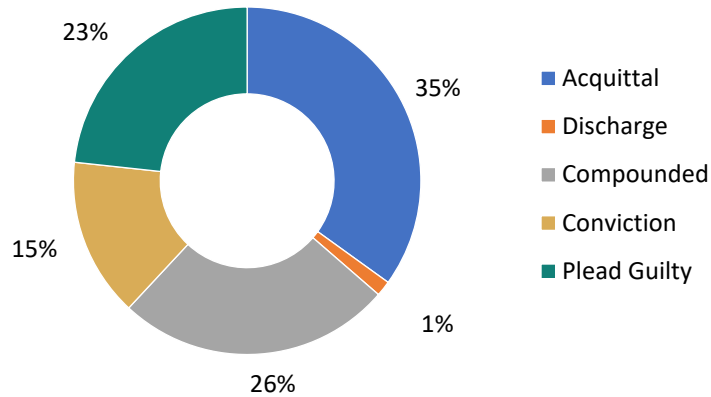
6.4.2 Work on Trial – acquittal, conviction, plead guilty, compounding , discharge, releases

Total of 267 undertrials (101 clients of Prayas and 166 clients of FTF) were released upon acquittal/discharge/ compounding of cases under the Programme.

In a slight variation of the operating model, upon the release of clients on bail, Prayas focused on interventions on post-release rehabilitation but continued to follow up with Panel Advocates for case updates during trials for some of its cases. FTF on the other hand actively participated in trials by assisting Panel Advocates through the trial process in cases both pre- and post-release as required.

FTF completed trial in 353 cases (of a total of 1,592 detailed intervention cases). An analysis of outcomes in these cases reflects that 34.84 percent cases resulted in acquittal, 25.5 percent cases were compounded/withdrawn and clients were discharged in 1.42 percent cases. In 23.23 percent cases, clients pleaded guilty while the trial was pending and conviction was granted in 14.73 percent cases.

Trial outcome for closed cases - FTF



For cases being followed by Prayas, 98 undertrials were released upon acquittal, one undertrial was discharged, cases for two undertrials resulted in compounding, 570 undertrials pleaded guilty and 134 undertrials were released post-conviction.

6.4.3 Jail court

FTF engaged actively with Jail Court in Pune and was working on 141 cases before the Jail Court. 66 cases, i.e., 47 percent of the cases resulted in acquittals. Clients pleaded guilty only in 10 cases, i.e., 7 percent of the total cases and 13 percent cases ended in convictions.

Jail Court was facilitated by Prayas Fellows in Raigad, Navi Mumbai (Taloja Central Prison) based on request of the prison staff. Three Jail Courts were conducted for inmates from CST Railway Court and Kalyan Railway Court. Other than that, on a regular basis, Fellows engaged in Jail Court in Mumbai (Byculla District Prison). A total of 386 clients pleaded guilty through Jail Courts.

6.4.4 Coordination for release and post-release follow up

As mentioned above, intensive efforts were needed for coordinating release of clients, continuing their trials post release and ensuring their well-being post release. The figures below are indicative of the nature/quantum of interventions that Implementing Partners had to undertake towards this.

Intervention for release and post-release follow-up (ftf)	Number of cases
Home visits and other collateral visits	302 (visits)
Contact family	1235
Follow up post-release	370

Prayas's intensive efforts in post-release follow-up are reflected below:

Intervention for release and post-release follow-up (prayas)	Number of cases
Counselling (socio-legal support)	5909
Home visits	1068
Number of phone calls to family/advocates/police stations	18147
Visit to meet Panel/Private Advocate-	2211
Visits to police stations	367
Visits to government homes/institutions	119
Visits to schools/colleges	22
Visits to workplace	127
Visits to meet local corporator	7
Visits to NGOs	315
Follow-up post release	370

6.5 Work on rehabilitation and livelihood support to released undertrials

6.5.1 Data on rehabilitation and livelihood support

Initiatives can be viewed within the framework of the social work intervention in the criminal justice system, also known as criminal justice social work, with a focus on rehabilitation of marginalised groups coming in contact with the criminal justice system.

During imprisonment, undertrials experience further isolation (due to stigma) and marginalisation from families and communities. This compounds their vulnerability to criminogenic associations within the prison. Therefore, interventions attempt to facilitate support to reconstruct their lives – in a way that distances them from exploitation, crime and other vulnerabilities such as addictions, homelessness, and destitution.

Upon their release from custodial institutions, they are in need of a socially conducive environment for development of social and technical skills necessary for economic and social upgradation. Services such as emergency assistance, temporary and stable shelter, medical relief, sponsorship of education of children and vocational training help them rebuild their lives.

Case Study: Response Through Sustainable Rehabilitation Support

A woman with mental health issues, arrested in a kidnapping case, was bailed out. Unfortunately, she had no family support. With Prayas’s efforts, she was admitted to a shelter home where she became violent due to lack of treatment. Consequently, with great difficulty, she was shifted to the Thane Mental Hospital for treatment. After treatment, she was certified fit for discharge. In the meantime, Prayas traced her house, which was sealed by the police, got it unlocked and took her to her house. Prayas continues to stay in touch with her.

Intervention for rehabilitation and livelihood support (prayas)	Undertrials supported
Shelter support	53
Education support	18
Emergency support	436
Cases referred for rehabilitation and repatriation	276

6.6 Working during COVID

During the period of lockdown starting from mid-March 2020, most prisons stopped entry of all visitors, including the Fellows under the Programme. This absolute lockdown in prisons meant that the undertrials were completely isolated from any face-to-face contact with their families or meetings with their advocates. These restrictions on prison visit during the pandemic adversely impacted the case intake process and the number of cases in the Programme during the pandemic decreased.

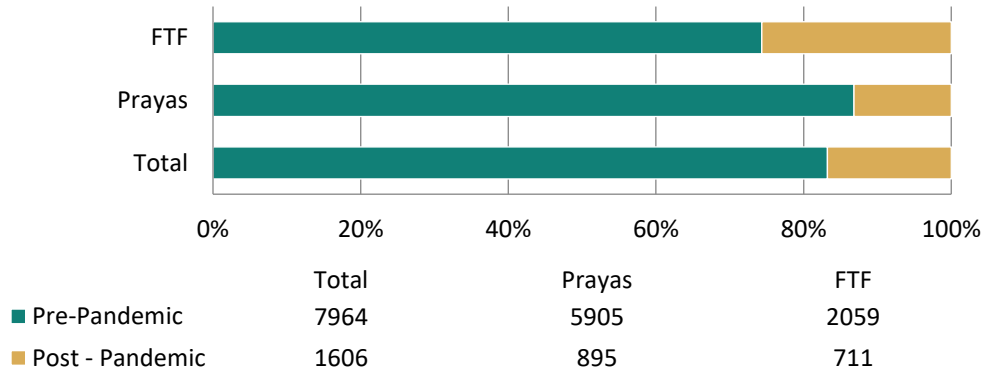
6.6.1 Impact on outreach

Prayas received applications from 5,905 undertrials in the pre-pandemic period⁴⁴ and applications from only 895 undertrials in the post-pandemic⁴⁵ period. Similarly, FTF received applications from 2,059 undertrials in the pre-pandemic period but received applications from only 711 undertrials in the post pandemic period.

⁴⁴ Period between May 1 2018 to March 31 2020 for Prayas and period between January 1 2019 to March 31 2020 for FTF. The difference in time periods is since FTF commenced interventions only in January 2019.

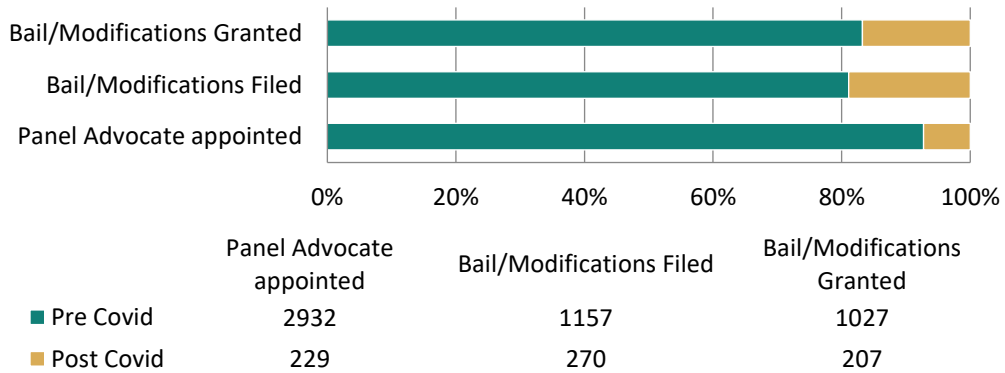
⁴⁵ Period between April 1 2020 to October 31 2021

Comparison of undertrial outreach



6.6.2 Impact on court intervention

Comparison of outcomes



Challenges relating to continuity of work during the pandemic were further aggravated with the limited functioning of the courts and the LSAs. A comparative figure below indicates that over 85 percent of the Programme’s outcome is from the pre-pandemic period.

7. Challenges

7.1 Institutional challenges

7.1.1 Lack of common data platforms and data sharing between prison, courts and LSA

A large proportion of undertrials were unable to provide any case identification details at the time of requesting legal aid. This resulted in a highly significant investment of time by Fellows in physically tracking case files in record rooms in district courts. An obvious gap was that the undertrial number⁴⁶ provided by the prison was not linked to court records; as a result, even Panel Advocates find it difficult to track files. The prison's system of changing undertrial numbers annually further aggravates the issue. This linking of the number to records in court is a necessary process for which a technological solution is required.

While the obvious suggestion for data linking across prison, courts and LSAs seems like a simple technological solution, on-ground implementation of this proposition will be resource-intensive and time-taking due to the form and manner in which data across the three institutions are maintained.

7.1.2 Administrative and procedural obstacles due to bureaucratic changes in prison and LSAs

The effectiveness of the Programme's intervention design is highly dependent on Fellow's direct access to the undertrials. However, despite the prison permissions, continued access to inmates is often subject to security concerns, restrictions and perceptions of the authorities at the local prison level. This creates disruptions in work and impacts continuity of interventions. Transfer of prison staff also results in change in work protocols inside prisons and Fellows have to take time in understanding and adjusting to new rules every time authorities change.

7.1.3 Limited infrastructure and human resource allocation in LSA offices

The infrastructure and human resources for implementing legal aid programmes by the DLSAs and TLSCs is not adequate. In many places, especially at taluka places, there is no separate office space for the DLSA/TLCS staff, furniture (table, chairs, cupboards, etc.), lack of computers, internet facility, toilets in court buildings, sitting spaces for the public, lack of bank accounts within TLSCs hence unable to receive funds etc.

7.1.4. Inadequate data management systems at LSA

The current state of management of data and records (both physical and online) in the LSA offices leave much to be desired. Even the maintenance of basic data on application/allocation of Panel Advocate is manual and not regularly updated. The LSA offices have no mechanisms of maintaining data on progress, status and outcome of cases which are with Panel advocates. Institutional mechanisms for data sharing across prisons, courts and other LSA offices also do not exist.

⁴⁶ Undertrial Number, popularly referred to as "UT No." is a unique identification number given to every undertrial upon admission in prison and is used to locate all records and documents related to the undertrial. This number changes every year.

7.1.5. Lack of coordination between prisons, LSAs and courts working across multiple districts and Taluka

The direct points of access to legal aid in prisons are limited only to jail-visiting lawyers/PLVs working within the municipal limits of where the prison is located. Thus, undertrials whose cases are listed in courts beyond the municipal limits face challenges in accessing services of the LSA concerned (located in a different taluka or district). The challenges in coordination also lead to delays in appointments of Panel Advocates and a disconnect between the undertrial and the Panel Advocate for follow-up of cases.

7.1.6. Challenges faced by Panel Advocates in claiming honorarium and reimbursement

The process of claiming honorarium from the LSAs is time-consuming and cumbersome for the panel lawyers and they frequently end up waiving their honorarium to avoid this process. While we do not have figures to substantiate this position, this may also be indicative of the Panel Advocates having received unauthorised payments from the clients' families.

The structure of the honorarium makes it more lucrative for the Panel Advocate to complete the trial and charge for the full trial rather than just be paid for bail hearing and run the risk of the trial not progressing if the client absconds or the trial drags out. Fellows observed that despite the pressing need of prioritising bail applications, Panel Advocates often choose to pursue the trial. The incapacity of undertrials to comply with bail conditions and the possibility of absconding while out on bail were cited as reasons for this practice.

7.1.7 Impact on court production due to lack of police escorts

Due to unavailability of police escorts, many inmates are not taken regularly to court on their respective court dates. While some attempts to ensure productions via video conferencing have been made through increase in infrastructure facilities. However, the means of production through video conferencing and the time and attention afforded to the undertrial in a production via video conferencing leaves much to be desired in terms of effective guaranteeing of constitutional protections.

7.2 Challenges in access to legal aid

7.2.1 Referrals to private advocates by police restricts access to legal aid at police station and remand courts

Despite guidelines of the NALSA on Early Access to Legal Aid at Police Stations, experience indicated the existence of an informal referral of cases of arrested persons to private lawyers by the local police station. This practice is problematic as it diverts eligible undertrials away from the usage of free legal aid on the one hand and on the other, jeopardises the possibility of raising concerns of custodial torture, illegal detention, etc. which can likely implicate the local police (since these private lawyers have a personal rapport with the police authorities referring the case to them). This nexus also indicates that the referral is done on quid pro quo basis and the arrestee is under a mistaken impression that going along with the referred private lawyer will benefit his case.

It has also been seen that if these private advocates do not receive any fees from the clients or their families, they refuse to represent them in the court. Thus, it becomes difficult to appoint a new lawyer (without NOC of the previous lawyer), which adds up to the confusion and delay

in the case. In such cases, the inmates are held at stake due to the clash between the private lawyers and the Panel Advocates in their cases.

7.2.2 Mechanisms for communication between police and LSA for ensuring legal aid at police stations are not followed

There seems to be little buy-in from the police for implementing provisions of legal aid at police stations. One of the Fellows was appointed as the Duty Counsel in Imamwada Police Station in Nagpur. This was part of a pilot implementation for a scheme of placing duty counsels in police stations by NALSA. Based on his experience, it was understood that there was considerable resistance against the scheme from the police authorities. The role of the duty counsels in effect seemed to be limited to providing support to victims of crimes, especially women and children, approaching the police station.

The Thane DLSA Secretary issued letters to all police stations of Thane district regarding establishing Legal Aid Clinics in police stations. However, Fellows did not come across any Legal Aid Clinics set up in police stations during their visit to police stations.⁴⁷

7.2.3 Ad-hoc allocation of matters to private advocates by judges during remand

Judges do not insist on the presence of Remand Advocates in Courts but rather allocate matters to other advocates present in the court ad-hoc. In most cases, even if the Remand Duty Counsels were absent, judges would allocate matters to other lawyers present in the court for the purposes of ensuring legal representation during remand hearing. Experiences shared by the Fellows and correlated with clients' needs at intake indicated that there was a high probability of lawyers abandoning clients beyond remand stage and that the lawyers allocated at remand stage were less likely to continue with the clients.

7.2.4 Clients abandoned by Remand Advocates/Panel Advocates/Private Advocates without any intimation

Fellows have also observed that some Remand Advocates take on cases initially and file their vakalatnamas in the matter only to abandon the clients later. In such cases, the Remand Advocates may even retain case papers including chargesheets, increasing the difficulty in replacing them and pursuing the case in court.

7.2.5 Attrition of clients due to the prevalent practice of converting legal aid matters into private by Remand Advocates and Jail-Visiting Advocates

Fellows have reported that some of the JVLs offer their private services to undertrials. Similar issues have been reported about the PLVs who visit the prisons. In our assessment, these practices result in reducing the overall number of requests seeking legal aid that formally reach the LSA. Such behaviour also adversely affects the goodwill of the Programme and contradicts the assertions by Fellows that state legal aid services are free. We also believe that such practices explain the JVLs' reluctance in working with the Fellows at the stage of case intake.

⁴⁷Directions have been issued by the Maharashtra Legal Services Authority to open Legal Aid Clinics in Juvenile Justice Boards, Prisons, Observation Homes, Child Welfare Centres and Police Stations; See circular bearing number MHALSA/2018/1956 Dated 4th October 2018. See circular bearing Outward No.352/2018 dated 3rd October 2018.

The experience of the Fellows with some Panel Advocates who are reluctant to work with them indicates that there is conversion of a DLSA case to a private case by the same Panel Advocates. Since the Panel Advocates are not dedicated to working solely for legal aid (unlike public prosecutors) and they are permitted to have private cases, there is a possibility for conversion or of diversion of the case to other friendly lawyers as private cases.

It is pertinent to note that LSA only maintain figures of cases of allocation and not of successful completion. There have also been both anecdotal evidence of unclaimed fees as well as the data of unspent money available in the public domain that indicate that the LSA do not monitor whether the allocated case is diverted to private practice. The numbers of conversion of cases from Detailed Intervention to OTIs under the Programme or of shifting to private lawyers also support this hypothesis.

7.2.6 Jail Legal Aid clinics are not functional

Barring three prisons, i.e., Mumbai Central, Thane Central and Kalyan District Prison, Legal Aid Clinics with separate designated spaces and infrastructure were not functional. The role of having a functional legal aid clinic with trained convict PLVs became even more crucial during the pandemic when limited support services were provided from outside due to restrictions on prison access.

7.2.7 Need for regular follow-up for LSA's application/allocation mechanism

The application and allocation procedure at the DLSA is manual and entirely through physical documents. Tracking of allocation of lawyers (specifically by the beneficiaries) can only be done by physical visits to the DLSA/TLSC office concerned. There are delays in the appointment of DLSA advocates, receiving appointment letters and signing of vakalatnama by the undertrial despite regular follow-up by Fellows.

7.2.8 Post allocation delay in signing and filing of vakalatnama

The process of signing of the vakalatnama by the clients involves stamping on the vakalatnama by the jail authorities, locating the inmate in circles/barracks and getting their signatures on it. At this stage, Fellows often have to work around delays in stamping on the vakalatnama by the jailor, challenges in locating inmates in circles/barracks and difficulty in obtaining vakalatnamas when dropped in the drop box in the prison premises.

Fellows also face reluctance from some Panel Advocates to commit to working on cases without meeting the inmates' family, which adds to the delay. Some courts/Panel Advocates also express reservations about permitting Fellows to co-sign vakalatnama, thereby reducing the scope of legal intervention by the Programme.

Time involved in this process has considerably reduced subsequent to a circular issued by Registrar (Inspection – I), High Court, dated 4 October 2021, which allows accepting memo of appearance instead of vakalatnama in the criminal proceedings from the Panel Advocate appointed by LSA.

7.2.9 Challenges in ascertaining legal aid needs of undertrials (multiple applications and appointments, non-disclosure of private advocates and bail details)

A considerable number of undertrials are incapable of providing accurate details of the status of their lawyer and bail details. This could be attributed to the undertrials difficulty in comprehending the legal procedures and lack of communication from advocates. In their desperate attempts to seek release, undertrials may approach for appointment of Panel Advocate despite having an active private lawyer working on their case. This leads to a conflict of work amongst the private lawyer and the allocated Panel Advocate. Fellows frequently come across multiple parallel requests for Panel Advocates from undertrials leading to multiple appointments at times. Such cases which may need to be closed due to an existing private lawyer or multiple requests also account for a portion of cases which are closed as OTI.

Fellows therefore make a substantial effort in ascertaining the legal aid needs of the undertrial on an individual case-to-case basis. Lack of accurate data on lawyer engagement and bail details in the prison records further add to the challenges of ascertaining this need.

7.2.10 Lack of accountability of Panel Advocates for the progress and outcome of cases allocated

Based on the Programme's experience and conversations with the Panel Advocates, it was evident that the LSA's role ends with the allocation of a Panel Advocate. Institutional mechanisms for the LSA to monitor progress and quality of representation in its own cases by all evidence seemed to be non-functional. This is a huge gap in the system currently and one that lies at the core of the perceived ineffectiveness of the legal aid system. Like with other effective legal aid systems in the world, there is a strong need to develop institutional mechanisms to review progress of legal aid cases and monitor quality.

7.2.11 Switch from legal aid to private advocates post allocation

As mentioned above, around 6 percent of the undertrials for Prayas and 5.4 percent undertrials for FTF have switched to private advocates.

7.3 Challenges relating to Criminal Procedure and Bail Practices

7.3.1 Reluctance to modify onerous bail conditions by judges

The bail system, as is administered by the criminal courts at present, is reliant on a few guiding principles while exercising its discretion. In the absence of any strict parameters, it is left to the sensitivity of individual judges to decide upon which principles to rely upon while deciding bail conditions. Judges often impose difficult bail conditions on the undertrial based on the notion that risk of financial loss is necessary to prevent the accused from absconding, in absolute disregard to the undertrials' capacity to comply with the bail conditions. Courts also show reluctance in modifying the bail conditions, which effectively results in redundant bail orders.

7.3.2 Difficulties in complying with bail conditions

Compliance with bail conditions for securing the release of undertrials was a significant challenge. Compliance of bail conditions involves continuous engagement by the Social Work Fellow with families, employers, community members, other civil society organisations, other government authorities (such as municipalities and civic bodies) and court authorities to ensure financial and documentary requirements and also coordinating for bail sponsorship where possible. Limited agencies and NGOs to furnish cash bail support adds up to the challenge.

Case study: bail in a case under mcoca⁴⁸

Raju (name changed), a 50-year-old client who was a resident of Bihar and did not have the use of both legs. He was arrested on the 25 January 2019 and approached the Social Work Fellow in Nagpur Central Prison for legal aid on 4 February 2019. He was illiterate, belonged to the Macchhimar community which falls under the Scheduled Tribes and begged for a living.

Raju was initially caught under the Arms Act and his bail application was filed by the legal fellow. The trial court rejected the plea. Further bail was filed in the Sessions Court, but due to the addition of the MCOCA Act against the client, his case got transferred to the Special MCOCA court. In this case, the client had no criminal antecedents but his co-accused had a criminal case filed against him and on that basis, he was accused of being part of an organised crime. Bail was filed again in the Special Court and was granted with the condition that a person stand surety for INR 50,000 along with solvency certificate. But the surety amount was unaffordable and his family back in Bihar were not able to furnish it. The client's mother died in Bihar and so a modification application was filed to enable him to go to his village. The modification order was rejected on the grounds that the inmate being a migrant and accused in such a serious offense is likely to abscond if released on bail without strict conditions.

The LF and SWF kept trying to obtain sureties for the client. After almost a year, one of the co-accused's family members was able to furnish bail for him and he was finally released. His bail was granted on 11 September 2019, and he was finally released on 31 August 2020. However, he had no money to go back home and had to stay at the Nagpur Railway Station for a night. The next morning, the Fellows provided him with a railway ticket to his hometown along with some money for food. Currently, a discharge has been filed in his case.

In this case, the court had specifically appreciated and mentioned the work of DLSA Lawyer and Secretary of the DLSA for providing quality legal aid to the prisoners in the order.

7.3.3 Clients pleading guilty and systemic push for clients pleading guilty

Undertrials charged under petty offences are constantly encouraged to plead guilty of the crimes they are charged with almost as a bargain for early release from prison. This practice is encouraged by the prison authorities, the courts and the LSAs alike without consideration to the serious repercussions that a conviction may have in the long run for the undertrials. Systemically, this is viewed as a means of speedy disposal of cases by courts, and of reducing undertrial population by the prisons; the option of early release on sentence undergone acts as a balancing factor for the interest of the undertrial.

⁴⁸ The Maharashtra Control Of Organised Crime Act, 1999

Case study: Pleading guilty

This 38-year-old client, a permanent resident of Ahmednagar, was caught for theft at his workplace in Nagpur. He got bail through FTF intervention and it was furnished by the Samta Foundation as he had no relatives in the city. Despite being released on bail from prison, he still decided to plead guilty on the next court date, because it was very difficult for him financially and physically to travel from Ahmednagar to Nagpur - almost 600 km apart.

7.3.4 Securing release of clients with multiple cases/designated as habitual offenders

There has been a trend of clients with multiple ongoing cases approaching the Programme, where release from prison for the inmate may be secured only upon obtaining favourable orders in several cases simultaneously. Clients have also faced rearrest under Section 110 of CrPC on the pretext of being “habitual offenders” or under unnamed FIRs by police. This group of undertrials get trapped in a cycle of criminalisation with multiple arrests and release, making it very difficult to get them off the radar of the criminal justice system. FTF has 287 clients with multiple cases and Prayas has 188 clients with multiple cases.

Case study: Multiple cases

A 34-year-old male undergraduate undertrial was working in the private sector and was a permanent resident of Hyderabad. He approached the FTF SWF in early January 2019 for legal aid in a theft case. He was arrested in October 2018 by the Pune Police in multiple cases of theft and robbery. It was on case search that the FTF fellows learnt that there were multiple cases against him. Bail had been granted through a private lawyer in some cases. Initially he approached for one case that required bail compliance and after the Fellows through the DLSA Lawyer moved for modification of bail and obtained favourable orders, he began referring more cases to the FTF. In all, 48 of his cases have been handled by FTF wherein orders have been obtained, including bail and acquittals where his cases were referred to the Jail Court.

The client informed the SWF that he was employed as a manager in a small restaurant where a group of policemen had come and refused to pay the bill. Thereafter, there was an exchange of words between the restaurant staff and the police party and this resulted in the police framing him and a colleague in multiple cases. Due to the large number of cases despite favourable orders, he was in custody. During the pandemic, he was released on PR bond as per the HPC guidelines. However, he was subsequently rearrested by the Hyderabad police.

7.3.5. Process for release under Probation Act not followed

The number of Probation Officers⁴⁹ at the district level is highly inadequate in comparison to the prison population and therefore, courts do not refer sufficient number of cases to them for pre-sentence enquiry and for supervision of cases. Majority of the magistrates are not willing to give the benefit of probation to young offenders which would be helpful in their future rehabilitation. Due to this, many inmates have no choice left but to plead guilty. Even the Jail Court magistrates are reluctant to give the benefit of probation in the cases recommended by the Fellows.

7.3.6 Seizure of identity proof and other documents by police during arrest (muddemal) affects bail compliance

There is no proper system of maintaining the muddemal (personal belongings of the inmates taken into custody at the time of their arrest) at the police stations. Identity documents seized upon arrest are needed for completing documentation for release. Fellows often have to put in considerable efforts to obtain these documents from the police station. The police often ask for blood relatives of the undertrials to be present and refuse to provide the documents.

Case Study

Smita (name changed), aged 35 years, was an inmate of the Kalyan district prison. At the time of the arrest, her personal identity documents (PAN and Aadhaar) were kept at the taluka police station in Kalyan. Although her bail was granted and the sponsoring organisation agreed to post her bail, Prayas was not able to get her released due to the absence of her identity documents.

Although Prayas's social workers visited the police station twice, they could not procure her documents. Smita also wrote a request for documents from prison, yet the police refused and informed Prayas to provide an official letter from the prison.

Eventually, Smita was released after Prayas assured the sponsoring organisation that the documents would be provided post Smita's release. Upon release, a social worker accompanied Smita to the police station and procured the documents and handed them over to the sponsoring organisation.

7.3.7 Public prosecutor's delay in filing responses to bail applications

Courts often insist on obtaining a response from the prosecutor's office before granting a bail order. Fellows have experienced that there could be considerable delay in filing of this response by the Prosecutor, thereby prolonging the bail process.

⁴⁹The Probation Officers are appointed under the Probation of Offenders' Act, 1958, which provides for release of convicted offenders in the community on a bond of good behaviour or under the supervision of a probation officer for a period of one to three years in all offences except those where the maximum sentence does not amount to life imprisonment or death sentence. The magistrate/judge can refer cases to the probation officer and ask for a social enquiry report which looks at the socio-economic background of the convicted person, their antecedents, circumstances of commission of the offence, family situation, history of substance abuse, education and employment background and prospects for future rehabilitation. Based on the report submitted by the probation officer, the magistrate/judge may decide to release the person on probation for a period of one to three years, either on a bond of good behaviour or under supervision of a probation officer, instead of sentencing the person to imprisonment.

Apart from the public prosecutor, it is also observed that there is delay from the police in filing of their say in bail matters; in a small percentage of cases, even the medical officer from prison does not submit a timely response.

7.4 Socioeconomic conditions impede getting bail/bail compliance

7.4.1 Cross-border prisoners

Prayas has worked on 83 cases of cross-border prisoners. In Mumbai and Thane, Fellows have come across several clients who are arrested on charges of being a foreigner (generally from Bangladesh). Such clients face multiple marginalisations such as language barriers; lack of social support, inability to comply with bail conditions due to lack of documents, etc., and they often plead guilty. This is a major hurdle for intervention in such cases.

7.4.2 Issues of women prisoners

Women prisoners are socially isolated, without family support (both parental and marital), broken away from family ties and primarily shouldering the burden of their children (both inside prison up to age of six and outside placed under care and supervision of family and institutional care). Lack of family support, absence of identity documents and low rates of asset ownership amongst women account for major challenges in compliance of bail conditions for women undertrials. Lack of documents also affects the school admission procedure of the children.

Women prisoners are most vulnerable and marginalised in the prison population in terms of class, caste and gender. They mostly come from a poor socioeconomic background with low literacy rates (maximum have completed only basic primary schooling). Lack of emotional support from the family and community, financial support and employment opportunities make them more vulnerable to exploitative circumstances. Financial needs to run the house, pay rent and take care of the needs of the children compels them to take money on the higher interest rate, thus increasing their debt and entrapping them into debt bondage.

While in prison, women prisoners also find emotional support from other female prisoners. It is also observed that these female prisoners provide financial support to the vulnerable women prisoners to pay bail compliance amounts, only to exploit them later (post-release). It is also further observed that some women prisoners (especially in ITPA cases) lived a high standard of living before arrest; post-release, in order to maintain the same lifestyle, they often go back to trafficking for easy money. Some vulnerable women prisoners are also forced to get into trafficking in order to meet basic needs post-release.

7.4.3 Lack of contact between undertrial and family

73 percent clients of FTF and 56 percent clients of Prayas (women undertrials constituted 14.38 percent) were not in contact with their families.

Lack of contact with family members often leads to the undertrial having access to fragmented piece of information about their case progress. As a matter of practice, most private lawyers communicate with the undertrials only through the family members. As a result, inmates are often unaware of the status of their legal representation. Since the undertrials also have minimal contact with family, Fellows face considerable challenge in assessing whether the undertrial's family has appointed an advocate for them.

7.4.4 Challenges in home visits to aid bail compliance

Fellows have faced difficulty in locating the house of the inmates, due to the incomplete/wrong addresses given and remote locations. Fellows constantly have to work with families staying in rural areas far away from the city limits. Given the demographic of the clients, it is common for family members to not have access to a phone and communication has to be relayed through numbers of friends and neighbours.

Nagpur being a district bordering other states has a sizeable population of migrants from Madhya Pradesh and Chhattisgarh. Mumbai and Thane districts have a largest number of migrants from Uttar Pradesh, West Bengal and Bihar; similarly, Latur has a sizeable population from Karnataka. This poses significant challenges for Social Workers to work with families of undertrials. Even for clients in urban spaces, Fellows encountered challenges in locating families especially for clients who were pavement dwellers.

7.4.5 Challenges in post release follow up

Working with clients post-release to ensure their appearances in court and compliance with any bail conditions require constant efforts from the Fellows. The Programme has seen a high rate of clients becoming unresponsive post-release while their trial is pending, specifically for clients from outside the districts. Very frequently, clients fail to attend the court dates due to lack of understanding of the requirements in courts process or even due to fear of coming to court premises. However, experience indicates that clients are more likely to attend court proceedings and follow court directions when a Fellow handholds them through the procedures.

7.5 Pandemic-related challenges

During the period of lockdown from mid-March 2020, most prisons stopped entry of all visitors, including the Fellows under the Programme. This absolute lockdown in prisons meant that the undertrials were completely isolated from any face-to-face contact with their families or meetings with their advocates. These restrictions on prison visit during the pandemic adversely impacted the case intake process and the number of cases in the Programme during the pandemic decreased.

Prayas received applications from 5,905 undertrials in the pre-pandemic period⁵⁰ and applications from only 895 undertrials in the post-pandemic⁵¹ period. Similarly, FTF received applications from 2,059 undertrials in the pre-pandemic period but received applications from only 711 undertrials in the post pandemic period.

Based upon a request by Prayas during the pandemic, the ADG Prisons, Maharashtra issued a circular⁵² allowing phone calls between undertrials and their lawyers. The DWCD also issued circular⁵³ allowing children in institutions to make video calls to their incarcerated parents, due to stoppage of physical *mulaqat* during lockdown.

⁵⁰ Period between May 1 2018 to March 31 2020 for Prayas and period between January 1 2019 to March 31 2020 for FTF. The difference in time periods is since FTF commenced interventions only in January 2019.

⁵¹ Period between April 1 2020 to October 31 2021

⁵² Jud Dept/Corona-special provisions/Class-9(3)/2020/3066/Pune dated 27/5/2020

⁵³ WCD/CP/BV/Class-5/V.C.F./2020-21/2040 Dt.: 23/06/2020

Securing and tracking release of undertrials eligible under HPC guidelines

The onset of the COVID-19 pandemic in India also prompted the SC to initiate suo moto action⁵⁴ with the objective of *taking steps on an urgent basis to prevent the contagion of COVID-19 virus in (our) prison*. It was in this context that the SC issued directions to all States/Union Territory to constitute a High-Powered Committee which would determine the class of prisoners to be released on parole or an interim bail for an appropriate period. Given the risks of the spread of the virus due to crowding in prisons and these directions of the Supreme Court, local courts got actively involved in releasing inmates on conditional bail as per the recommendations of the Maharashtra High Powered Committee on Prisons (HPC). Fellows reached out to families of clients who were eligible for release as per the criteria prescribed by the HPC to offer assistance for their release.

To ensure that eligible inmates who were clients of the Programme are released as part of this process, Fellows prepared lists of undertrials who had been charged with offences punishable with imprisonment under three years, between three and five years and between five and seven years respectively. These lists were forwarded to the prison, to facilitate initiating the process of release, in accordance with the HPC guidelines.

Since neither the prison nor the DLSA compiled lists of released prisoners, it was difficult to ascertain how many inmates from the lists provided by Fellows were actually released from the prison (upon several requests, list was shared by the Prison Headquarters on 20 July 2020). Due to the fear of infection, physical visits to courts were discouraged for Fellows. Follow-up on telephone with prison and DLSA authorities for collecting information on the bail and release process was challenging and did not provide conclusive information. During this period, courts were also functioning on minimal capacity and coordination with clerks and officers for seeking records was not possible without physically visiting the court premises.

Thus, up to mid-July, the entire reliance on inflow of information was on informal sources, such as calls and emails to the prison and DLSA. The list of prisoners being released was not updated on any open platform; nor was it possible to get information about the persons kept in quarantine and new admissions in prison. Sharing of lists/information via email was ruled out by the prison staff. This lack of organised online resources and physical presence in prisons led to pockets of information being shared sporadically and haphazardly, relayed largely in estimates and severely lacking in particulars.

Fellows made their best efforts to get in touch with the relevant authorities in prison and DLSA, seeking updates on release of inmates, transportation and other prison-related matters. The Fellows were also in touch with the clerks at DLSA office and the Court Masters, to provide clarification and further information on cases under the Programme.

Since there was no list provided or updated on any fora listing inmates who had been released; it was difficult to track the same. The Fellows had to largely rely on clients/families that volunteered the information and seek information about other inmates who had been released from these clients.

7.5.1 Lack of access to clients and prison

⁵⁴ *In Re : Contagion of COVID - 19 Virus In Prisons*, Suo Moto Writ Petition (Civil) no.1 of 2020

During the lockdown from mid-March in 2020, prison visits in all prisons where the Programme was implemented, with the exception of Taloja and Latur, were stopped. Entry to Taloja and Latur prisons was regular due to the continued support from the prison superintendents. However, in May 2021, due to the increase in the number of COVID-19 patients in Latur district, the District Collector announced a lockdown and the visits in these prisons also stopped. Suspension of prison visits for Fellows had a major impact on intake of new cases as indicated under point 6.6.1 above. Limitations on access to undertrials impacted the quality of engagement that Fellows had with existing clients. Restrictions on mobility due to the pandemic affected interventions such as home visits, etc., where Fellows were working with families for gathering information on case or bail compliance. Upon relaxation of the lockdown norms in October 2021, prison authorities granted entry to Fellows inside prison but insisted on RT-PCR Test reports on a regular basis.

7.5.2 Increased anxiety amongst inmates – No mulaqat with family and children

Physical mulaqat was stopped by prison authorities in the pandemic situation and due to this, many undertrials lost contact with their families and children. It made them and their families anxious about each other's well-being. Due to closure of courts, undertrials had queries related to their cases and bail. Since the entry into the prisons was stopped, the Fellows and social workers could not go inside prison and counsel the inmates. However, they were able to follow up some of these cases in court and communicate the status of their bail applications to the undertrials through the prison staff.

7.5.3 Rejection of applications due to courts' discretion over HPC guidelines

The recommendations of the HPC concerning the release of prisoners on bail or PR Bond on account of the COVID-19 crisis were not being always followed by the magistrates and judges in deciding bail matters. The approach of the judiciary to grant bail even in minor offences was found to be rigid despite the HPC guidelines favouring their release.

In the meantime, Prayas's Legal Fellows were able to secure the chargesheet from Vashi Belapur Court and Salim's bail application was filed in the midst of the lockdown. At the hearing, the Panel Advocate appeared in the matter and passionately argued for release on bail. However, the bail application was rejected on 19 March 2020. Thereafter, as per

Case study: Efforts to bail out client during Pandemic

Salim (name changed) was an auto-rickshaw driver who did not have the required licence. A father of two, he lived in his in-laws' house. He was arrested with four accomplices on charges of dacoity.

The Taloja Legal Fellow submitted Salim's application for legal aid to the Thane DLSA, which was immediately processed by Prayas's Legal Fellow placed at the Thane DLSA and an advocate was appointed in December 2019. However, the advocate was not available for two months. Hence, a request was made to appoint a different advocate and the same was approved.

the directions issued by the SC to release prisoners on temporary bail during the pandemic, the Legal Fellow attempted to secure Salim interim bail through email (as was the procedure at the time).

Again, in the month of June 2020, in coordination with a relative of the client, the Legal Fellows filed and argued a second bail application submitting that Salim was entitled to interim bail as per the COVID guidelines of the apex court. In July 2020, the second bail application was also rejected.

Undeterred, the legal fellows filed an appeal before the Bombay High Court, on 2 September 2020. The matter was listed for a hearing on 4 September 2020 but could not be taken up. Thereafter, despite repeated reminders, the court did not take up the case for hearing. Finally, after one year, in October 2021, the matter was heard and the Court requested that bail application be amended from an HPC appeal to a regular bail. Finally, Bombay High Court granted bail in November 2021.

7.5.4 Panel Lawyer inactive

As courts did not function on regular basis, the income of lawyers was severely affected so they preferred private cases (and not DLSA matters). Also due to restrictions on public transport, lawyers could not attend court dates (due to reduced incomes, they did not have the resources for private transport). Lawyers were not allowed access to the courts in Latur, unless their names featured in the vakalatnama of the case concerned. Such restrictions not only presented logistical challenges but also genuine difficulties for advocates on record.

7.5.5 Limited functioning of courts and use of Video Conference Facilities

During the lockdown, the courts were working only half day and were hearing only remand and bail matters. Hearing on matters through video conference was also started but there were significant uncertainties regarding the process to be followed for video conferences. This coupled with the sparse usage of online resources to conduct hearings proved to be a major challenge in conducting regular court work by fellows who could not be physically present. Even though on paper, the video conference facility was made available, a number of glitches were faced in actual execution. Filings continued to be offline for a long time, resulting in lawyers having to go to court in person in any case. Courts followed 'file quarantine' for 72 hours, which further prolonged time for filling applications compared to regular court days. The process of generating login links were not streamlined, and the internet connectivity has been far from satisfactory to ensure smooth proceedings.

7.5.6 Impact on rehabilitated clients (post-release)

Many of the Prayas clients belong to low socioeconomic background with weak support systems and survived on daily wages. The lockdown announced in March 2020 impacted clients who were already coping with life's challenges, their daily earnings and pushing them back into exploitative circumstances and vulnerabilities again. They saw themselves back to square one as they were at the start of their post-release journey.

7.6 Programmatic challenges

7.6.1 Difficulties faced by Fellows in accessing files/records in court

Fellows face difficulties in accessing court records specifically when they do not have vakalatnamas in their name in a given case.

7.6.2 Ensuring appropriate distribution of workload

Prayas has worked on a total of 7,071 cases (3,590 Detailed Interventions and 3,481 OTI) and FTF has worked on 3,399 cases (1,592 Detailed Interventions and 1,807 OTI). The geographical spread of the interventions for FTF spans across 10 taluka courts in Pune and 12 taluka courts in Nagpur, in addition to the city courts within municipal limits. The geographical spread of Prayas encompasses Mumbai City Sessions Court and all its divisions in Mumbai and across 12 talukas of Thane, Palghar and the Panvel & Uran Courts of Raigad District and 19 talukas of Latur District.

This scale of work and heavy caseload demand constant review of the workload on the Fellows with a view to balancing the need for intensive efforts on cases with the Fellows individual capacities.

7.6.3 Need for intensive internal monitoring

A Programme with such heavy caseload requires constant supervision of case strategy, progress and outcomes. The Programme has developed a process of recording day to day developments in each case by the Fellows working on the case. This information is recorded online in an MIS, which is capable of generating reports by analysing these entries. Such machine-based analysis may be necessary to assess quality of work in cases with the LSA, given the heavy caseload that they deal with.

7.6.4 Ensuring data entry in MIS

The process of entering case-related data in the MIS is detail-oriented and time-consuming. The need to capture accurate data on case status requires dynamic data points, which have been regularly updated. Fellows need constant handholding towards ensuring accuracy and coherence of this data. Data entry in MIS is therefore another area which needs constant supervision and validation.

8. Learning

8.1 What we need to know but do not know?

8.1.1 Flow data of undertrials being brought in and released from prison through the year

The existing data on prisons captured under the PSI does not have accurate flow data on all prisoners being admitted into prisons in a year along with analysis of their demographic and case details. This information is essential to understand the actual prison population which is not reflected in the stock data captured currently.

8.1.2 Offence-wise slicing of flow data that also reflects undertrial incarceration durations

The flow data on prisoners should specifically indicate the offence-wise distribution for prisoners admitted in a year. This piece of information is crucial for designing systemic changes to address the gaps in the criminal justice system.

8.1.3 Consistent information on undertrials: a) who have not filed for bail, b) whose bail has been rejected, and c) who have bail orders pending for compliance

Comprehensive information on bail status of undertrials is currently not maintained in either court or prison records. In the absence of this information, it is near impossible to gauge bail-related needs of undertrial prisoners and consequently designing changes in the bail system.

8.1.4 Accurate number of applications received from undertrials and allocations made by each LSA

As indicated above, maintenance of data at the LSA offices is not streamlined. Current mechanisms of data recording on applications received by the LSAs is primarily based on self-declaration by the PLVs/JVLs who have collected the applications. There is no system of cross-checking number of applications received in prison as against the applications submitted in LSA offices. Thus, there seems to be a major gap in the actual number of applications received for allocation of Panel Advocate and the numbers being reflected in the LSA data.

8.1.5 Assessment of utilisation of legal services by undertrials

While there exists substantial narrative on the underutilisation of the state legal aid services, there is currently no assessment of utilisation of legal services by undertrials. This would essentially mean a comparison of flow data of undertrials brought into a prison with the number of undertrials who are being represented by LSAs. This information is core to any further analysis on the performance of the LSAs and identifying reasons for its underutilisation.

8.2 What has worked well?

8.2.1 Undertrials and families

- Higher degree of confidence in state legal aid: Fellows experiences have indicated that their periodic presence in the prison ecosystem impacts the undertrials dependability on the LSA mechanisms. Undertrials have shown higher degrees of trust on the LSA mechanism not necessarily based on the outcome of the cases but rather due to the regular presence of a Fellow within their access and accountable to them. The practice of proactively providing

regular updates on case status has gone a long way in establishing this confidence and increasing utilisation of the LSAs services.

For e.g., as per available data with the DLSA in Pune, allocations were made in total of 590 cases of undertrials while Programme data shows that 550 cases were forwarded to DLSA by FTF in Pune.

- The critical role of a social worker in building trust: The presence of a social worker as an extension of the LSA framework has been a critical factor in establishing trust between the Programme and the targeted beneficiaries. The social worker remains the primary interface between the undertrial and the outside world which includes the LSA, the Panel Advocate, the Courts and to some extent the undertrials family.

For example: Through social worker's interface, Prayas fellows facilitated the release of 845 undertrials through follow-up with families of prisoners, release of 103 undertrials through follow-up with organisations for cash bail support and release of 879 undertrials through follow-up with advocates to comply bail process.

Case Study: Role of Social Worker

Dia and Sonia (name changed) were two sisters, aged 20 and 21, respectively. Their mother had left their father as he was an alcoholic and had remarried. The girls were unhappy with this marriage and did not like their stepfather. Because of this, the girls did not spend much time at home and would wander out alone at night. They fell into bad company and began committing crimes. The girls were eventually arrested and sent to the Byculla District Prison.

In prison, the SWF approached Dia and Sonia to learn their story. Based on the information provided, the social worker took up their case and made several home visits. However, the mother was reluctant to talk to the Fellow and did not let her come in. She thought the Fellow was from the police or prison authorities. After several attempts, the mother finally agreed to speak with the Fellow at a nearby highway. Despite persuasion, the mother was adamant that she did not want to be associated with her daughters in any way, and she did not want to support them.

Alongside, the legal fellows met a Panel Advocate to file a bail application. The bail was granted with a condition that a person will stand surety of INR 15,000. As there were no supporting family members to stand as surety, an application was filed to convert the surety to a cash bail and the same was granted. To facilitate the cash bail, an NGO was contacted that agreed to pay the bail money for both the girls.

Despite the above successes, a final hurdle remained. - The girls did not have identity documents. To facilitate, the Fellows contact the corporator of the area. After explaining the situation to him, the corporator issued a letter saying that the girls and the mother

had been living in that district for the last five years, with his stamp and signature on the letterhead. The Fellows went to Vikhroli Court and submitted the letter as a valid ID document to the judge.

Despite securing release papers, an unexpected issue came up. Dia did not want to leave the prison because she did not want to live with her mother. Sonia was ready to be released. The Fellows convinced Dia to leave the prison and get admitted to a shelter and pursue vocational skills for employment. Finally, both the girls came out of prison and the SWF ensured that the mother was also present. When they saw each other, all their resentment and anger was forgotten. Through the intervention of the Fellows, not only was legal assistance given, but the girls were also reunited with their mother.

published an article about the missing case file and the same was tagged to the Bombay High Court. Thereafter, the Thane DLSA Secretary was contacted by the Bombay High Court authorities and informed to resolve the issue of the missing case file. Due to the pressure, the file was traced in two days.

On 7 October 2020, the Byculla Legal Fellow furnished the cash and obtained the memo which was deposited at Byculla District Prison after which Rinky was released from the prison.

- Introducing accountability to clients through regular mulaqat: Legal Fellows under the Programme regularly interact with the clients either through barrack visits or through the mulaqat route to discuss case progress, strategies and next steps. This practice gives the

Case Study: Coordination between Legal and Social Work Fellow

Rinky (name changed), aged 27 years, worked as a food delivery woman. She was in the female section of Byculla District Prison, while her court case was in the Vashi MM court. Rinky had a strained relationship with her family members. Rinky contacted the Prayas SWF to find out her daughter's whereabouts. During multiple home visits by the SWF, Prayas spoke to Rinky's father and appraised him of her situation. Rinky's father was a well-to-do person and he agreed to bail her out, hence Prayas did not feel the need to pursue the case any further.

In May 2020, at the height of the first lockdown, the SWF was contacted by the prison as Rinky had requested for their help. Through the E-Courts App, Prayas's Thane DLSA Legal Fellow found that on 7 September 2019, bail was granted with a condition that a person stand surety of INR 25000. Upon further enquiry, it was found that a subsequent application for conversion of surety into cash bail was also pending before the court, which eventually came to be rejected by the court. Prayas's Legal fellow helped Rinky by drafting an application for release on PR Bond. which was also rejected by the court. Thereafter, the Prayas Legal fellows applied for bail modification. On 18 September 2020, Rinky was ordered to furnish cash bail of INR 25000. As her father was stuck in Gujarat and was unable to help in bailing her out, Prayas approached Global Care Foundation and arranged INR 15000 and raised the rest.

Despite raising the cash bail amount, the Fellows were unable to furnish the cash as Rinky's case file was missing. The Fellows thereafter met the Principal Judge of the Thane Court who advised them to furnish the bail in the Vashi court as the matter was not committed to Thane Sessions Court. Thereafter, the Byculla Legal Fellow visited the police station and the court at Vashi and got to know that the case file was sent to the Thane Sessions Court in the month of January 2020. In the meantime, a reporter from The Wire approached Prayas to enquire about the developments in Rinky's case. Based on interviews with the Byculla Legal Fellow, they

undertrials a stake in their own cases and introduces the element of accountability towards the client which has mostly been absent from the standard practice of Panel Advocates.

- Higher probability of compliance by working with multiple parties for bail compliance: Coordinating with multiple stakeholders for compliance of bail conditions and consistent efforts towards bail compliance has resulted in higher number of releases both in cases where bail was filed by the Fellows and also in cases where clients had a bail order pending for compliance at intake.

8.2.2 Courts

- Consistent citing of precedents leading to more adjudicatory consistency and judicial acceptance of bail modification: Fellows have used legal research to constantly cite case laws on lesser followed principles on bail modification and release, which has led to regular practice of bail modifications.
- Regular interaction with undertrials has resulted in the move away from proforma bail applications and has moved towards individualized applications: Based on inputs about the situation of the undertrial and their family, and regular interaction with Panel Advocates and making available latest judgments on bail has helped in better framing of bail applications and modifications.
- A more thorough bail application process has in turn meant more equitable and practical bail conditions, leading to release from prison: Interventions in bail processes are consistent, well rounded and tailored to the needs of the client to ensure release on bail as far as possible.
- Increased judicial acceptance of enquiry reports filed by the Fellows that form the basis for increased judicial confidence in moving away from onerous bail conditions: Fellows along with Panel Advocates have made representations for modification of bail conditions and release on PR Bond in specific cases. Courts have asked for enquiry report from Fellows and relied on such reports before passing orders.
- Significant improvement in the last mile coordination required between courts and prisons to ensure compliance of bail conditions and release: Fellows as a matter of practice, ensure completion of formalities, coordination and paperwork required for release of the client from the prison.
- Focused attention on activating special procedures such as trials in Jail Courts, implementation of Probation Act, etc. have had positive outcomes: Engaging with courts to activate special procedures has also resulted in positive outcomes for clients as well as creating a precedent of using the special mechanisms.

8.2.3 LSA/Panel Advocates

- Timely and effective implementation of LSA processes due to regular follow-ups by the fellows: The work done with the LSAs has reduced the time for appointment of Panel Advocates. LSA office staff also take into account Fellows' suggestions on experience and qualification of Panel Advocates towards effective allocations. Prayas Fellows placed in LSA offices were able to peruse previous orders of allocation and address the problem of duplication of appointments.
- Higher responsiveness of Panel Advocates due to assistance on matters by Fellows: Panel Advocates have been more responsive on cases where Fellows have followed up and provided them with required assistance on matters.

- Better adjudication due to coordination and sharing of information between lawyers about court decisions on bail matters: Cross-sharing of information between Panel Advocates about court decisions on bail matters leading to better decision making by the courts.
- Regular engagement with DLSAs led to a significant role in institutional efforts to decongest prisons/ inform prisoners of their rights: LSAs rely on the Fellows from time-to-time for ensuring compliance of directions issued by Courts in relation to rights of undertrials/decongestion of prisons: Fellows have also assisted the LSAs in implementing various awareness campaigns/studies/surveys conducted in the prisons. Fellows have successfully facilitated setting up of legal aid clinics in Mumbai railway courts; however, it is not functional post pandemic. Post the pandemic, the fellows took efforts to reactivate Panel Advocates' network and facilitated appointment of new panel lawyers in Mumbai DLSA, 3 PLVs appointed in Sessions Court office and 2 PLVs in Dindoshi Sessions Court.
- Constant support provided by Fellows to Panel Advocates has resulted in better handling of cases: The quality of inputs and efforts on cases by the Panel Advocates has also drastically improved with Fellows complementing their roles, providing support with legal research, court processes as well as coordination with clients' families and other stakeholders. Improved capacities of panel lawyers by Constant engagements and capacity building efforts by the FTF/Prayas teams has also resulted in improved capacities of Panel Advocates.

8.2.4. Prison

- Acceptance and support of the Programme within prison since it reduces burden on the system by decongesting prisons'' Prison authorities view the Programme as a source of support in their efforts of prisoners' welfare and decongestion: Fellows frequently accompanied prison staff in their rounds of the barracks and after barracks to identify undertrials in need of legal assistance. In addition to this, authorities also refer clients with special needs such as terminal illness, mental illness, women with children, etc. to Fellows and seek their intervention in dealing with these cases.
- Recognition of the need and importance of interventions by prison authorities: Prison authorities have acknowledged the role of the Programme and the Fellows towards securing rights of the undertrials and view the Fellows as an extension of the LSA framework in doing so
- Interventions have substantially improved coordination between prison and LSA: Coordination between prison staff and LSA representatives have improved as a result of sustained intervention by Fellows. There is a better exchange of information between them with regard to referral of cases, receiving information about lawyers.

8.3 What have we learnt about the legal aid ecosystem?

8.3.1 Institutional mechanisms

- Need to connect databases of prison, courts and LSAs to facilitate easy tracking of allocation of legal aid and progress of cases from a single platform.
- Need to digitise the process of application/allocation at LSA to make it time- and resource-efficient as well as provide a platform inside prisons to track status of legal aid allocation.

- Need to establish institutional mechanisms resilient to individual/bureaucratic whims to ensure continuity and consistency of interventions.

8.3.2. Access to legal aid

- Most undertrials seeking legal aid under the Programme have marginalised identities.
- Potential legal aid applications get converted to private matters by jail visiting lawyers and PLVs.
- Support for bail-related services is the dominant need for undertrials seeking legal aid.
- A substantial portion of the time spent in the allocation of Panel Advocates is spent on ascertaining case details and status by the Fellows.

8.3.3. Monitoring and quality of legal aid

- There is no mechanism of tracking progress of cases by the LSA once the matter is allocated to a Panel Advocate - need for monitoring.
- Need for continuing legal education in substantive areas along with skills training in drafting/ oral arguments/ cross-examination.
- Improving quality of legal aid lawyering also needs building structural support structures for lawyers.

8.3.4. Criminal Procedure and Bail System

- The use of judicial discretion in deciding bail conditions and absolute lack of guiding principles in bail jurisprudence results in non-uniform rationale of bail orders passed by judges. It is therefore likely that different people are subject to different conditions for release on bail despite being charged for same offences.
- Need for engagement with judiciary on bail law and practice to convey on ground learnings and challenges.

9. Way Forward

9.1. Strategic stakeholder engagement

9.1.1. Access comprehensive prison-level data to develop deep empirical understanding of the flow of people

There is a need to engage with prison, judiciary and NALSA towards gaining access to the flow data of prisoners along with analysis of their demographics and case details towards creating a well-informed basis for designing future interventions for undertrials. The data captured as prison statistics currently reports only information of the stock population in prison as on 31 December of any year. This method ends up excluding data for all undertrials who come in and exit the prison in the period between 1 January 1 to 30 December.

9.1.2. Urgent need to understand the proportion of undertrials between: i) bail not applied, ii) bail rejected, and iii) bail compliance pending

As mentioned above, understanding bail related needs for undertrials is essential to any imagination for changes in bail law and practice. Efforts towards obtaining this data and creating mechanisms for periodic updates to the data are essential for the future course of the Programme.

9.1.3. Take empirical data and experiential learning from the ground to decision-makers in NALSA and SLSA

The depth and diversity of experience by having worked on over 10,000 cases, needs to present to the NALSA and the SLSA to contextualise on ground experiences against legal provisions.

9.2. Institutional reforms required

9.2.1. Increasing use of technology for allocation, tracking and updates of cases

The need of information technology to function efficiently is reiterated. There is a need -for online platforms to process online applications for appointment of advocates, change of advocates and appointment of advocates at appellate stages. This will go a long way in addressing attrition due to delays. Access to such technology should be imagined in terms of direct usability (in the form of kiosks, public computer terminals) for undertrials within prison either independently or through assistance of convict PLVs trained by the DLSA. Implementing access to legal aid and tracking status of applications through the NALSA portal for undertrials as is currently available on the website will also go a long way in improving accessibility to LSAs.

9.2.2. Creating institutional mechanisms of monitoring by the LSA

It was evident that the DLSA's role ends with the allocation of a panel lawyer. There is no institutional mechanism for the DLSA to monitor progress and quality of representation in its own cases. This is a gap in the system currently and one that lies at the core of the perceived ineffectiveness of the legal aid system. Like with other effective legal aid systems in the world, development of institutional mechanisms to review progress of legal aid cases and monitor quality can no longer be delayed. There is also no monitoring of diversion of cases from LSA to private practice by the Panel Advocates.

9.2.3. Streamlining systems of payment of honorarium and reimbursements to Panel Advocates

Honorarium payable to the advocates should be revised upwards in keeping with other states. In addition to the amounts of honorarium, a more efficient mechanism for timely and intermittent payments needs to be developed.

9.2.4. Need for creating institutional mechanisms resilient to individual bureaucratic whims

The success of the interventions in the current scheme of operation of the LSA, court and prison are highly dependent on the motivation of the individuals heading the institution. The broader learning therefore is to push for institutional mechanisms which are resilient to ensure a basic minimum functioning of the system.

9.3 Developing further good practices

9.3.1 Activating Jail Legal Aid Clinics for improving access inside prison and creating structures resilient to outsider access issues

Access to prisons and undertrials despite written permissions is highly dependent on the assessment of the local prison authorities with the constant risk of restrictions for outsiders in the name of prison security and safety. This leads to the need to strengthen the Legal Aid Clinics as envisaged under the NALSA scheme and train PLVs in prison to cater to situations where PLVs/jail visiting lawyers and other organisations are unable to visit prisons for service delivery.

9.3.2 Strengthening points of access to legal aid at police stations and remand courts

Concerted efforts towards creating more points of access for legal aid at early stages of arrest need to be made. Providing services of the Duty Lawyers and PLVs at police stations will require support and acceptance of the LSA's services by the police officials. This mechanism needs consultations with the police department.

Similarly, the role of Remand Advocates needs to be streamlined as currently, there is lack of clarity about their roles, in comparison to the role of other Panel Advocates.

9.3.3 Working towards improving capacities of Panel Advocates and PLVs along with creating support structures for better response to cases

In the current scheme of legal aid delivery, Panel Advocates are the primary service providers for legal services. Addressing the question of quality of legal services, therefore requires investment in developing capacities and creating support systems for Panel Advocates. This would at the foremost necessitate creating schemes for continuing legal education for Panel Advocates.

9.3.4 Developing a network of organizations for support services to undertrials

The prison currently lacks adequate support system to respond to special needs of undertrials such as mental health services, de-addiction, livelihood training, education, etc. which are crucial for post-release rehabilitation of the undertrial and to ensure that chances of committing an offence are reduced. Creating a network of institutions and organisations will go a long way in addressing these needs.

9.3.5 Developing capacities of communities/localities with high criminalisation in seeking legal aid through LSAs.

Continuing with efforts of creating more points of access for legal aid, training community based PLVs in localities with high criminalisation will also provide structures for access to legal aid complementary to the LSA and ensure legal aid at arrest and pre-arrest stages.

9.3.6 Creating clinical legal courses and creating avenues for engaging law students as PLVs in prison in coordination with legal aid clinics in law schools

To support sustainability and operability of the Jail Legal Aid Clinics, law students may be engaged as PLVs as part of a clinical legal course, which is anchored in a law school. These courses need to be imagined and designed to suit the specific role a student PLV will play in the Jail Clinic and may be implemented by the LSAs in collaboration with law schools.

9.4. Law reform

9.4.1 Advocating for reform of bail law through engagement with the judiciary

The Programme will continue to generate relevant research findings (both empirical and doctrinal) and compile resources to be shared with the judiciary and ensure constant engagement on the issues of bail, pleading guilty and charging with multiple offences. These initiatives will focus on presenting field experiences and challenges faced in the Programme, especially in the context of bail law and practice.

9.4.2 Creating provisions for sending copies of bail orders to the prison concerned by courts

As per the existing practice, prisons only receive a copy of the release order for undertrials once their bail compliance is completed. There are no mechanisms for prisons to know of bail orders granted to inmates and pending compliance. Creating a practice of sending copies of all bail orders to prisons will address this issue.

9.4.3 Procedural protections for 'plead guilty' cases

The current systemic push towards encouraging undertrials to plead guilty as a bargain for an early release is in contradiction to the constitutional protections for fair trial. There is a need to restrict this practice through introducing specific protections under procedural law for a person pleading guilty, so as to ensure that the act of pleading guilty is an informed and a well-reasoned choice for the undertrial rather than a trade-off for rights.

9.4.4 Restatement of the law on bail towards doctrinal coherence

The bail law as it stands today relies heavily on judicial discretion for relief. While the need for the element of discretion to achieve the ends of justice cannot be undermined, experience indicates that the use of discretion rather stringent and often onerous to the undertrial prisoners. It is therefore important to develop basic principles on bail law, which are consistent and set grounds for entitlement to release on bail.

9.4.5 Formal recognition of the PR bond as the default bail condition and deviation only in exceptional circumstances

There is a general reluctance amongst judges to release inmates on personal bond due to apprehensions of undertrials absconding after release. The reluctance to use personal bonds has been a historical reason for undertrials not being released on bail and thereby leading to a large undertrial population in prisons. Effective interventions in changing judicial attitudes towards personal bonds is a significant intervention that is required.

9.4.6 Institutionalising the role of Social Workers within LSAs and recognising social work intervention as integral part of legal services

The Programme's interventions have clearly demonstrated the impact of the presence of a social worker within the LSA framework. The current framework of the LSA does not envisage the importance of social work case work process and the role of the social worker in being the bridge between the legal system and the undertrial. This aspect of intervention needs to be built into the structures of the LSA and calls for institutionalising the role of a social worker with the LSA.

Annexure 1 – Training Curriculum

Part A1: Training Curriculum for FTF Legal Fellows

Date	Session Theme
Day 1	Introduction, Objectives, Vision, Work profile
	Structure and History of Project 39-A
	Ice Breakers, Orientation, Structure of training, Group norms, Facilities Available, Expectations during training, Assignments, Joining Formalities
Day 2	Crime and Criminality - Theories of Criminology and Punishment
	Legal Skills Clinic: Workshop on legal research/reading of case laws
Day 3	Internationally-recognised Facets of Fair Trial. Discussion on ICCPR
	Guest Lecture: Introduction to Criminal Justice System in India
Day 4	Right to Fair Trial in India - Constitutional Provisions
	Movie Screening and Discussion - All Rise for your honour
Day 5	Computer Skills
	Self-Reading time : Case Laws on Fair Trial
Day 6	Presentation and Discussion : Case Laws on Fair Trial - AR Antulay v. RS Nayak, DK Basu (1997), Hussainara Khatoon, Nilabati Behera, Jan Adalat, In Re: 1382 Prisons (Feb 2016)
	Guest Speaker: Right to Free Legal Aid and Speedy Trial as a facet of Right to Fair Trial
Day 7	Weekly Off
Day 8	History of the IPC and Punishment
	General Principles in Criminal Law
	Types of criminal liability, stages of crime, abetment, Conspiracy, Attempt, Common Intent and Common Object
Day 9	Discussion: State of Maharashtra v. Mayer Hans George, Difference between sections 34 and 149 IPC, Reading extracts of State of Tamil Nadu v. Nalini (2009 Supreme Court)
Day 10	General exceptions (Unsoundness of Mind, Infancy, Intoxication)
	Presentation and Discussion: Contrasting Dahyabhai's case and Shrikant Bhosale's case, State of Maharashtra v. Santosh Mane, sharing of field experiences by Fellows with experience on juvenile issues and with experience on addiction related issues

	<p>General Exceptions (Mistake, Accident, Necessity, Private Defence)</p> <p>Presentation and Discussion: Presentation of Darshan Singh v. State</p> <p>Movie Screening and Discussion - Locked Up and Forgotten: India's Mental Health Crisis and Titicut Follies</p> <p>Guest Speaker : Criminalisation of persons with mental illness</p> <p>Discussion: Discussion on Kumari Chandra @ Sati Lananani v. State of Rajasthan</p>
Day 11	<p>Judgment reading and Opinion writing - Writing the opinion of the third Judge in Somasundaram v. State</p> <p>Offences Against the Human Body- Murder & Culpable Homicide Not Amounting to Murder</p> <p>Discussion: Law related to Suicide, Justice DY Chandrachud's Opinion on Common Cause v. Union of India (passive euthanasia)</p>
Day 12	<p>Offences against the Human Body- Grievous Hurt, Hurt and Acid Attacks</p> <p>Discussion: Jashanmal Jhamatmal v. Brahmanand</p> <p>Offences against the Human Body- Kidnapping and Abduction</p> <p>Discussion: Vikram Singh v. State of Punjab</p> <p>Guest Speaker: Role of Legal Services Authority in ensuring Fair Trial for accused</p>
Day 13	<p>Weekly Off</p>
Day 14	<p>Sexual Offences</p> <p>Discussion: Extracts from Justice Verma Committee Report, Tukaram v. State of Maharashtra, Mahmood Farooqui v. State</p> <p>Guest Speaker: Discussion on Rape, Sexual Assault, Sexual Harassment with reference Criminal Amendment 2013</p>
Day 15	<p>Offences Affecting Human Life</p> <p>Offences Affecting Property</p> <p>Legal Skills Clinic: Using Legal Databases for research - Manupatra, SCC Online India Kanoon</p> <p>Self-Reading time: Case Laws on IPC</p>
Day 16	<p>Offences Affecting Property</p> <p>Offences Against the State, Offences against public tranquility, Criminal intimidation insult and annoyance</p> <p>Movie Screening and Discussion - Court</p>

Day 17	Working of the Criminal Justice System - Police Hierarchy and Jurisdiction, Prison System and Hierarchy, Structure and Hierarchy of Courts, Jurisdiction of Criminal Courts (Section 177 to 189), Special Courts, Fast Track Courts, Jail Adalat
	Guest Speaker: Criminalisation of Muslims
Day 18	Guest Speaker: Gender Workshop and discussion on criminalisation of women and persons with non-normative identities.
Day 19	CrPC: Cognisable and Non-cognisable Offences Bailable and Non-Bailable Offences Compoundable and Non-Compoundable Offences Types of Trial – Sessions, Warrant, Summons and Summary Trial.
	FIR - Form, Manner, Consequences of delay in filing of FIR
	Legal Skills Clinic: How to read an FIR
	Guest Speaker : Member Secretary, DLSA Kolhapur
Day 20	Arrest and Remand, Law on Bail and Bonds (Section 436-450 CrPC), Cases in which Bail may be granted (Section 436-A-Section 439), Bail in Default (Section 167(2) CrPC)
Day 21	Legal Skills Clinic: Drafting of Bail Applications, Reading Remand Application, Arrest Memo, Remand Order
	Movie Screening and Discussion – Shahid
Day 22	Weekly Off (Nagpur)/Experiential Learning (Pune)
Day 23	Weekly Off (Pune)/Experiential Learning (Nagpur)
Day 24	Anticipatory Bail, Modification of bail, Case laws on Bail
	Judgement Reading and Discussion: Motiram v. State of MP, Siddaram Satlingappa Mhetre v. State of Maharashtra
	Legal Skills Clinic: Drafting of Bail Applications
Day 25	What is Evidence, What is Fact, Relevancy of Facts, Circumstantial Evidence, Dying Declarations, Motive, Hearsay, Fact in Issue, Facts Which Need Not Be Proved, Presumptions
	Guest Speaker: Courtroom Practices experiences on Relevancy of Facts
	Movie Screening and Discussion - Ek Ruka Hua Faisla
Day 26	Judgement Reading and Discussion: Aghnoo Nagesia v. State of MP, Hari Singh Kurmi v. State of Bihar
	Movie Screening and Discussion - Rashomon
Day 27	Discussion: Fellows Responses to Problems on Relevancy, Admissibility of Evidence

	Investigation by Police - Different Types of Panchnamas, TI Parade, Statements of Witnesses under Section 161 and 164 CrPC, Correlation with Section 25, 26, 27 of Indian Evidence Act
Day 28	<p>Kinds of Evidence – Oral evidence (Direct/Circumstantial), Documentary, Electronic Evidence, Substantive/Corroborative value of evidence, Difference between primary and secondary evidence. Cases in which secondary evidence can be given. The Exclusion of Oral By Documentary Evidence</p> <p>Guest Speaker: Courtroom experiences on circumstantial evidence</p> <p>Law on Recovery/Discovery. Correlation with Sec 27 of Evidence Act</p>
Day 29	<p>Guest Speaker: Courtroom Experiences: Admission, Confession, Recording under Sec 164, Retracted Confession, Extra Judicial Confession, Confession of Co-Accused</p> <p>Legal Skills Clinic: Reading and use of Panchnama , Reading of Statements under Section 161 and 164 - Discussion on key strategy points</p>
Day 30	Weekly Off
Day 31	Forensic Evidence, Medical Evidence, Medical Jurisprudence, Human Anatomy, Cyber Forensics, DNA, Reading of Post Mortem
Day 32	Forensic Evidence, Medical Evidence, Medical Jurisprudence, Human Anatomy, Cyber Forensics, DNA, Reading of Post Mortem
Day 33	<p>Release under Sec 169 of CrPC, Discharge, Procedure of Compounding and Quashing of cases, Police Report/ Chargesheet – Section 173 of CrPC Framing of Charges</p> <p>Legal Skills Clinic: Reading of Chargesheet/ Drafting of discharge Application/ Application for Quashing of FIR/Chargesheet</p>
Day 34	Pleading Guilty – comparison for procedure in Sessions (Police Cases), Warrant (Police cases), Summons and Summary Trials, Consequences of Pleading Guilty and Conviction, Plea bargaining,
Day 35	Guest Speaker: Courtroom experiences on dealing with Fact in Issue, Facts Which Need Not Be Proved, Presumptions, Dying Declarations, Motive, Hearsay,
Day 36	Types of Witnesses
Day 37	Self -Reading time: Preparation on Mock Trial
Day 38	<p>Policy Advocacy in criminal justice - Identifying issues, Identifying advocacy methods, Identifying ‘friends’ and adversaries, Working with system</p> <p>Guest Lecture: Issues and Challenges in working with Undertrials - Social Context of working with Undertrials - Best Practices. Practical Challenges in working with the Criminal Justice System</p>
Day 39	Weekly Off

	Photo Session, Writing Profiles, Discussing Testimonials
Day 40	Law on Bail (continued)
	Recording Testimonial
	Arguments - Framing of Arguments
Day 41	Guest Speaker: Skills of Arguments in Trial Court
	Legal Skills Clinic: Preparing written Arguments, Closing Arguments
Day 42	Guest Lecture: Courtroom experiences on cross-examination with special focus on cases of Sexual Offences against women and children
	Listening and Client Counselling Skills
Day 43	Listening and Client Counselling Skills
	Self-Reading time: Case Files on Appeal, Revision
Day 44	Admissions and exhibiting of documents
	Recording of Evidence - Examination in Chief, Cross-Examination correlation with Section 145 of IEA, Re-Examination, Omissions and Contradictions
	Practices and Experience of Mitigation
Day 45	Presentation and Discussion : CHRI Report
	Self-Reading time: Case Files on Appeal, Revision
Day 46	Appeal, Review and Revision, Writ Jurisdiction, Commutation, Law on Pardon, Law on Probation
	Discussion: Sentencing and Death Penalty
Day 47	Self-Reading time: Case Files on Appeal, Revision, Chargesheet for Cross Examination
Day 48	Special Provisions as to accused persons of unsound mind (Chapter XXV of CrPC). Proceedings before Magistrate under Mental Health Act & S. 299 of CrPC, Irregularities in trial and proceedings vitiating the trial
	Legal Skills Clinic: Drafting of Applications, Important Documentation for working on cases of accused person with mental illness
Day 49	Weekly Off
Day 50	Self-Reading time: Case Files on Appeal, Revision, Chargesheet for Cross Examination
Day 51	Judgment and Sentencing - Judgments (Sec 353 – 365), Sentencing, Suspension of Sentence, Victim Protection and Compensation, Mitigating and Aggravating Circumstances
	Legal Skills Clinic: Reading of Court Orders and drafting of grounds of Appeal, Review and Revision

Day 52	Self-Reading time: Preparation for Mock Trial
Day 53	Orientation on Office Procedures Legal Skills Clinic: RTI Workshop
Day 54	Juvenile Justice Act POCSO
Day 55	Weekly Off: Heritage Walk at Humayun's Tomb with Sohail Hashmi
Day 56	Visit to Supreme Court and Supreme Court Museum
Day 57	Criminalisation of Dalits Follow-up Session on Forensics: Optional Session
Day 58	Criminalisation of Children - vulnerability within CJS, Best Practices with respect to adolescents/young accused during first production (in magistrate's courts), identifying cases of CCL which are within adult system, Children of Prisoners as CNCP Legal Skills Clinic: Drafting of application for transfer of cases of CCL to JJB Criminalisation of Tribals
Day 59	NDPS Act - Offences, Punishment and Deviation from standard criminal procedures Criminalisation of Homeless Persons and Persons in addiction
Day 60	Mock Trial - Trial
Day 61	
Day 62	Self-Reading time: Preparation for Arguments in Mock Trial Case management - Maintenance of Case Diary and notes, Maintaining meeting notes - instructions from clients and client's family Case discussion between Social Workers and Legal Fellows
Day 63	Self-Reading time: Preparation for Arguments in Mock Trial Criminalisation of Nomadic and De-Notified Tribes
Day 64	Presentations - Mock Trial Arguments

Part A2: Training Curriculum for FTF Social Work Fellows

Date	Session Theme
Day 1	Introduction, Objectives, Vision, Work profile
	Structure and History of Project 39-A
	Ice Breakers, Orientation, Structure of training, Group norms, Facilities Available, Expectations during training, Assignments, Joining Formalities
Day 2	Crime and Criminality - Theories of Criminology and Punishment
	Introduction to Indian Legal System
Day 3	Internationally-recognised Facets of Fair Trial.
	Guest Lecture: Introduction to Criminal Justice System in India
Day 4	Right to Fair Trial in India - Constitutional Provisions
	Movie Screening and Discussion - All Rise for your honour
Day 5	Computer Skills
	Legal Skills Clinic: Workshop on legal research/reading of case laws
Day 6	Presentation and Discussion : Case Laws on Fair Trial - AR Antulay v. RS Nayak, DK Basu (1997), Hussainara Khatoon, Nilabati Behera, Jan Adalat, In Re: 1382 Prisons (Feb 2016)
	Guest Speaker: Right to Free Legal Aid and Speedy Trial as a facet of Right to Fair Trial
Day 7	Weekly Off
Day 8	History of the IPC and Punishment
	General Principles in Criminal Law
	Types of criminal liability, stages of crime, abetment, Conspiracy, Attempt, Common Intent and Common Object
	Discussion: State of Maharashtra v. Mayer Hans George, Difference between sections 34 and 149 IPC, Reading extracts of State of Tamil Nadu v. Nalini (2009 Supreme Court)
Day 9	General exceptions (Unsoundness of Mind, Infancy, Intoxication)
	Presentation and Discussion: Contrasting Dahyabhai's case and Shrikant Bhosale's case, State of Maharashtra v. Santosh Mane, sharing of field experiences by Fellows with experience on juvenile issues and with experience on addiction related issues
	General Exceptions (Mistake, Accident, Necessity, Private Defence)

	<p>Presentation and Discussion: Presentation of Darshan Singh v. State</p> <p>Movie Screening and Discussion - Locked Up and Forgotten: India's Mental Health Crisis and Titicut Follies</p> <p>Guest Speaker : Criminalisation of persons with mental illness</p> <p>Discussion: Discussion on Kumari Chandra @ Sati Lananani v. State of Rajasthan</p>
Day 10	<p>Exercise on Judgment reading and opinion writing - Writing the opinion of the third Judge in Somasundaram v. State</p> <p>Offences Against the Human Body- Murder & Culpable Homicide Not Amounting to Murder</p> <p>Discussion: Law related to Suicide, Justice DY Chandrachud's Opinion on Common Cause v. Union of India (passive euthanasia)</p>
Day 11	<p>Offences against the Human Body- Grievous Hurt, Hurt and Acid Attacks</p> <p>Discussion: Jashanmal Jhamatmal v. Brahmanand</p> <p>Offences against the Human Body- Kidnapping and Abduction</p> <p>Discussion: Vikram Singh v. State of Punjab</p>
Day 12	<p>Guest Speaker : Role of Legal Services Authority in ensuring Fair Trial for accused</p>
Day 13	
Day 14	Weekly Off
Day 15	<p>Sexual Offences</p> <p>Discussion : Extracts from Justice Verma Committee Report, Tukaram v. State of Maharashtra, Mahmood Farooqui v. State</p> <p>Guest Speaker : Discussion on Rape, Sexual Assault, Sexual Harrassment with reference Criminal Amendment 2013</p>
Day 16	<p>Offences Affecting Human Life</p> <p>Offences Affecting Property</p> <p>Legal Skills Clinic : Using Legal Databases for research - Manupatra, SCC Online India Kanon</p> <p>Self-Reading time : Case Laws on IPC</p>
Day 17	<p>Offences Affecting Property</p> <p>Offences Against the State, Offences against public tranquility, Criminal intimidation insult and annoyance</p> <p>Movie Screening and Discussion - Court</p>

Day 18	Working of the Criminal Justice System - Police Hierarchy and Jurisdiction, Prison System and Hierachy, Structure and Hierarchy of Courts , Jurisdiction of Criminal Courts (Section 177 to 189), Special Courts, Fast Track Courts, Jail Adalat
	Guest Speaker: Criminalisation of Muslims
Day 19	Guest Speaker: Gender Workshop and discussion on criminalisation of women and persons with non-normative identities.
Day 20	CrPC:Cognisable and Non Cognisable Offences Bailable and Non-Bailable Offences Compoundable and Non-Compoundable Offences Types of Trial – Sessions, Warrant, Summons and Summary Trial.
	FIR - Form, Manner, Consequences of delay in filing of FIR
	Legal Skills Clinic: How to read an FIR
	Guest Speaker : Member Secretary, DLSA Kolhapur
Day 21	Arrest and Remand, Law on Bail and Bonds (Section 436- 450 CrPC), Cases in which Bail may be granted (Section 436-A to Section 439), Bail in Default (Section 167(2)Cr.P.C)
Day 22	Legal Skills Clinic: Drafting of Bail Applications, Reading Remand Application, Arrest Memo, Remand Order
	Movie Screening and Discussion - Shahid
Day 23	Weekly Off (Nagpur)/ Experiential Learning (Pune)
Day 24	Weekly Off (Pune)/ Experiential Learning (Nagpur)
Day 25	Anticipatory Bail, Modification of bail, Case laws on Bail
	Legal Skills Clinic: Drafting of Bail Applications
Day 26	Law on Criminal Trial for Social Workers
	Law and Social Work - Constitution and Fundamental Rights
Day 27	Law on Criminal Trial for Social Workers
	Movie Screening and Discussion - Rashomon
Day 28	Law and Social Work - Constitution and Fundamental Rights
	Legal Skills Clinic: Reading of Chargesheet
Day 29	Guest Speaker : Women in Prison and Children of Prisoners
	Law and Social Work – Conclusion
Day 30	Discussion : Data from NCRB, Prison Statistics
	Self Reading Time : Maharashtra Prison Manual
Day 31	Weekly Off

Day 32	Counselling Skills
Day 33	Counselling Skills
Day 34	Guest Speaker Experience Sharing of working in Bihar Prisons
	Presentation and Discussion: Prison Manual
Day 35	Weekly Off
Day 36	Social Work Methods in CJS - Intervention Strategies, Working with Involuntary
Day 37	Clients, Challenges of working with Criminal Population, Countering sub-culture of violence
Day 38	Policy Advocacy in criminal justice, - Identifying issues, Identifying advocacy methods, Identifying 'friends' and adversaries, Working with system
	Guest Lecture: Issues and Challenges in working with Undertrials - Social Context of working with Undertrials - Best Practices. Practical Challenges in working with the Criminal Justice System
Day 39	Ethical Practice in Social Work, Precautions to be taken by social workers to avoid misuse of services by clients, Communication and behavior in the field (ethical challenges and etiquette in social work practice)
	Experience Sharing by Prayas Social Workers - Work in prison with male and female clients, youth, adolescents, involuntary clients and mentally ill clients, work with COP
Day 40	Family tracing, home visits, follow-up and implementation, working with families, availing citizenship rights documents and government schemes
	Skills Clinic: Case Studies and Role Plays
Day 41	Weekly Off
Day 42	Listening and Client Counselling Skills
Day 43	Listening and Client Counselling Skills
Day 44	Skills Workshop: Developing Resource Directory Format
	Self Reading Time: Hope Behind Bars - CHRI Reports on Legal Aid in Custody
Day 45	Practices and Experience of Mitigation
	Skills Clinic: Pre-Interview Planning, Documentation and strategy building
	Presentation and Discussion: CHRI Report
Day 46	Skills Clinic: Developing strategic partnerships in prisons, government departments, community organisations
Day 47	Special Provisions as to accused persons of unsound mind (Chapter XXV of CrPC). Proceedings before Magistrate under Mental Health Act & S. 299 of CrP, Irregularities in trial and proceedings vitiating the trial,

	Legal Skills Clinic: Drafting of Applications, Important Documentation for working on cases of accused person with Mental illness
Day 48	Weekly Off
Day 49	Self-Reading time: Preparation for Mock Trial
Day 50	Mental Health Act
Day 51	Judgement and Sentencing - Judgements (Section 353-365), Sentencing, Suspension of Sentence, Victim Protection and Compensation, Mitigating and Aggravating Circumstances
Day 52	Self-Reading time: Preparation for Mock Trial
Day 53	Self-Reading time: Preparation for Mock Trial
Day 54	Orientation on Office Procedures Legal Skills Clinic: RTI Workshop
Day 55	Juvenile Justice Act POCSO
Day 56	Weekly Off: Heritage Walk at Humayun's Tomb with Sohail Hashmi
Day 57	Visit to Supreme Court and Supreme Court Museum
Day 58	Criminalisation of Dalits Follow-p Session on Forensics: Optional Session
Day 59	Criminalisation of Children - vulnerability within CJS, Best Practices with respect to adolescents/young accused during first production (in magistrate's courts), identifying cases of CCL which are within adult system, Children of Prisoners as CNCP Legal Skills Clinic: Drafting of application for transfer of cases of CCL to JJB Criminalisation of Tribals
Day 60	NDPS Act - Offences, Punishment and Deviation from standard criminal procedures Criminalisation of Homeless Persons and Persons in addiction
Day 61	Mock Trial - Trial
Day 62	
Day 63	Recording workshop
Day 64	Self-Reading time: Preparation for Arguments in Mock Trial Criminalisation of Nomadic and De-Notified Tribes
Day 65	Presentations - Mock Trial Arguments

Part B: Training Curriculum for Prayas Fellows

Day I

Topic	Method
Inauguration - Concept of the project	
Ice breaking – Introduction of participants	Interactive game
Overview of the Indian Constitution and Criminal Justice System	Presentation and discussion
History and philosophy of social work in CJS (need for social work intervention)	Lecture-cum-discussion
Movie screening - Yerwada Central Prison, a documentary film	

Day II

Topic	Method
Basic concepts in IPC	Lecture-cum-discussion
Basic concepts in CrPC	Lecture-cum-discussion
Objective of Jail Court, Legal Aid Clinic and the Fellows' role	Lecture-cum-discussion
Prison Setting - Structure, issues and working with the system	Lecture-cum-discussion
Socioeconomic background of undertrial prisoners	Case studies and discussion

Day III

Topic	Method
Probation of Offenders' Act, 1958	Lecture-cum-discussion
Types of bail, problems in implementation of PR Bond, special provisions of bail for woman accused	Lecture-cum-discussion
Drafting applications and basic information required for pick-up of cases in the prison	Lecture cum discussion
Work with male and female undertrial prisoners	Panel discussion
Working in the CJS in rural setting	Panel discussion

Day IV

Topic	Method
General exceptions and defences in criminal law	Lecture-cum-discussion
Juvenile Justice Act, 2000 – basic framework and Children in Conflict with Law	Lecture-cum-discussion
Borstal School Act, 1929 - Issues & challenges	Lecture-cum-discussion
Importance of home visit while working with individuals in prison settings	Lecture-cum-discussion
Working with inmates through activities and programmes	Presentation and discussion
Library facilities in prison	Presentation and discussion

Day V

Topic	Method
Review of the previous day and suggestion	
Issues of Bangladeshi prisoners	Lecture-cum-discussion
Protection Of Children from Sexual Offences Act, 2012 (POCSO)	Lecture-cum- discussion
POCSO Act, 2012 (contd.)	Lecture-cum-discussion
Rehabilitation of male prisoners: Issues and challenges	Lecture-cum-discussion
Rehabilitation of women prisoners: Issues and challenges	Lecture-cum-discussion
Movie - Born Behind Bars – a film on Children of Prisoners by Malathy Iyer	Discussion after the film

Day VI

Topic	Method
Review of the previous day and suggestion	
Body and property offences	Lecture-cum-discussion
Different kinds of trial	Lecture-cum-discussion
Prison Manual & recommendations of various prison reform committees	Lecture-cum-discussion
Work with children of women prisoners in prison Work with children of prisoners left outside	Panel discussion
Movie - Ek tha Bachpan – film on Children in Conflict with Law by ICHRL	Discussion after the film
Working with Children in Conflict with Law	Lecture-cum-discussion

Day VII

Topic	Method
Review of the previous day and suggestion	
Bail and trial of mentally ill accused	Lecture-cum-discussion
Movie screening – Shoeshine – a film on street children caught in the CJS	Discussion after the film
Working with individuals in prison settings	Discussion
Working with groups in prison settings	Discussion
Feedback	Discussion

Day VIII

Topic	Method
Review of the previous day and suggestion	Lecture-cum-discussion
Mental Health Care Act, 2017	Lecture-cum-discussion
Chapter and externment proceedings	Lecture-cum-discussion
Viewing prison as a community	Lecture-cum-discussion
Basics of counseling skills	Lecture-cum-discussion
Feedback	Group discussion

Day IX

Topic	Method
Review of the previous day and suggestion	Lecture-cum-discussion
Revision, criminal writ and appeal	Lecture-cum-discussion
Theories of punishment, types of punishments, effectiveness of punishment, ideal punishment	Lecture-cum-discussion
Prisons Act, 1894 and prison reforms	Lecture-cum-discussion
Providing assistance in acquiring of citizenship rights documents and availing benefits of the various government schemes	Lecture-cum-discussion
"Work with the DLSA - Challenges faced"	Lecture-cum-discussion
Feedback	Discussion

Day X

Topic	Method
Rights at the time of arrest, Maharashtra Police Act, 1951 and duties of police, etc.	Lecture-cum-discussion
Railway Property (Unlawful Possession) Act, 1966 and Indian Railway Act, 1890	Lecture-cum-discussion
Landmark judgments of Apex Court and High Court on prisoners' rights	Lecture-cum-discussion
Journey of social work	
Mental health issues in prison and role of social worker	Lecture-cum-discussion
Feed back	Group discussion

Day XI

Topic	Method
Immoral Traffic (Prevention) Act, 1956 (ITPA)	Lecture-cum-discussion
Laws related to women	Lecture-cum-discussion
Role & responsibility of legal aid panel and its challenges	Lecture-cum-discussion
Working with victims of ITPA	Lecture-cum-discussion
Report writing	Discussion
District Inter-Departmental Sub-Committee on issues of under trial prisoners	Presentation and discussion

Day XII

Topic	Method
Review of the training sessions	
Challenges in the field of CJS	Open discussion
Ethical practices in social work	Presentation-cum-discussion
Valedictory Session	

Annexure 2 – Case Intake Sheet

Part A: Face Sheet for FTF

FTF CLIENT CODE:	DATE:
UT NO.:	PRISON:
REFERRED BY:	

A. PERSONAL INFORMATION		
CLIENT NAME:		
AGE:	GENDER:	
RELIGION:	CASTE & CATEGORY:	
EDUCATION:	OCCUPATION:	
INCOME:		
LIST OF ASSETS OWNED AND APPROXIMATE VALUE:		
TYPE	APPROXIMATE VALUE	IN THE NAME OF
PRESENT ADDRESS (STAYING SINCE):		
PERMANENT ADDRESS:		
AVAILABLE DOCUMENTARY PROOF:		
Age _____		
Identity _____		
Residence _____		
Income _____		
MEDICAL HISTORY (PHYSICAL & MENTAL)		
Ongoing/Past Medication _____		
Surgery _____		
Injury _____		
Accidents _____		
History of fits or attacks _____		
Any other observation _____		
HISTORY OF SUBSTANCE USE :	SPECIAL NEEDS :	

B. FAMILY INFORMATION				
PRIMARY CONTACT PERSON:				
RELATION WITH CLIENT:			CONTACT No.:	
DETAILS OF OTHER FAMILY MEMBERS				
Name	Relation with client	Age	Occupation	Whether Dependent

C. ADVOCATE'S INFORMATION		
PRIVATE	LEGAL AID	NO ADVOCATE
APPOINTED BY: Self / Family / Jail Clinic/Court/Police/ Other (Please Specify) _____		
ADVOCATE NAME & CONTACT: 		
CASES IN WHICH LEGAL AID IS SOUGHT: 		

D. ASSISTANCE SOUGHT BY CLIENT		
LEGAL		
Contact DLSA Lawyer	Appointment of DLSA Lawyer	Contact Private Lawyer
Change Private Lawyer	Update of Case status	Support for Bail – arranging surety, cash, bail documents, file bail application, bail appeal
Arranging Identity and Residence Proof /Case papers - from Court/ Police/ Lawyer/Any Other	Arranging Other Documents – Age Proof, Medical records, Educational/Occupational Records,	Any Other (Specify)
NON LEGAL		
Contact Family (Specify Reason)	Any Other Help – specify (financial, medical, child related, livelihood related)	Referral to Tata Trust Required (Y/N)

HISTORY OF LEGAL PROCEEDINGS		
PREVIOUS INCARCERATION – Yes/No		
Conviction	Acquittal	Pending Case (Bail)

CURRENTLY PENDING CASES										
FTF Case No	Cr. No	C.C. No. /R.A No.	Under Section	DOA	DOC	Last Production	Police Station	Court Name & No	Co Accused (B/C)	Stage of Proceedings

CURRENT STATUS OF ONGOING CASES:						
Case No.	Bail Application Filed (Y/N)	Court	DOC	Bail Status and date of last order	If granted, type and amount	Reason for custody

Part B: Face sheet for Prayas

Date : _____ Age : ____ Education.: _____ UT NO. :

Client name .: _____

Address.: _____

Family Contact Person : _____

Relation with Client : _____ Contact No. : _____

Police station.: _____ CR. No. : _____

Court Name/No. : _____ Court Case No. : _____

U/s.: _____

Date of Arrest.: _____ Date of JC .: _____ LCD.: _____ NCD.: _____

Identity proof.: Aadhaar Card/Election Card/ PAN card/ No/ Other _____

Residential Proof : Ration card/ Light Bill/ Not/ Other _____

Advocate Status : i] PRIVATE ii] Legal Aid iii] prayas panel iv] No Advocate

Advocate appoint by : Self / Family / Prayas /Jail Clinic/ Other _____

Advocate Name & Contact : _____

Bail Application file i] YES _____ ii] NO _____ iii] Process _____

Bail Application Status : i] Grant _____ ii] Reject _____ iii] Pending _ iv] Bail Appeal _____

Mode of Bail : i] Cash : _____ ii] Surety : _____ iii] Solvent : _____ iv] PR Bond v] other _____

Bail Furnish : Yes / No / Other _____ **Bail Not Furnish :** No cash / No Surety / Other _____

Co-Accused Bail status : i] Grant ii] Reject iii] Other _____

Chargesheet Status : i] File ii] Not File iii] Other _____

Family Information :

Sr. No	Name	Relation with client	Age	Occupation

No Of Children below 18 Years _____

Request:Family Phone Calls : Mulakat / Money Order / Clothes / Bail Status/ Case Status / Other _____
 No. of calls : _____ Dates : _____

Advocate: Bail Status / Case Status / Follow up / Other _____ /Dates : _____/No of Visit : _____

Court Visit: Bail Update/Case update / Judicial Staff / Other _____ / Dates : _____ /No of Visit :

Police Station Visit: Case Details / Document / Client History/Other _____ / Dates : _____/No of Visit : _____

Home Visit: Observation / Mulakat / Bail Status / Education / Children / Money Order / Documents / Cloths /Court Order/Shelter Support / Food / Informing imprisonment /Other _____
 Dates: _____ No. of Visit: _____

Children Assistance: Education / Health / Nutrition / Shelter / Special Mulakat / Other _____ No of Assistance: _____ Date : _____

Client Current Status: In Prison / On Bail / Convict / Acquittal / Other _____

Release Details: On Bail / Acquittal /Other _____ **Release Date :** _____

ANNEXURE 3 – TRAINING AND CAPACITY BUILDING PROGRAMMES

- Prayas has conducted trainings for the Panel Advocates and PLVs of the Mumbai DLSA and two trainings for the PLVs and Panel Advocates of the TLSCs.
- Prayas organised sessions for Panel Advocates of Belapur TLSC on 'Challenges and Experiences with regard to Under Trial Prisoners, Jail Court and Video-Conferencing, Legal Aid system, Rehabilitation and Reintegration of Prisoners'.
- Three programmes were organised by Prayas for Kalyan TLSC, Ulhasnagar TLSC and Panel advocates of Wada taluka court on Probation Act and guidance about legal aid.
- In collaboration with the DLSA, Thane, Prayas conducted a Seminar on International Disability Day for police personnel attached with police stations in Thane city, Panel advocates and trainee PLVs.
- Prayas and Vashi-Belapur TLSC jointly organised two programmes in Taloja Central Prison on legal aid and Probation Act.
- In collaboration with DLSA Mumbai, Thane, Kalyan and Vashi Belapur TLSC, Prayas facilitated and conducted legal awareness programmes on Protection of Women from Domestic Violence Act 2005 and alternate dispute resolution in 5 slum communities in Mumbai suburbs, a community in Kalyan, at Thane court premises, Yeoor tribal hamlet in Thane district and in the market area of Thane, and through street plays at three public places in Navi Mumbai, on the occasion of National legal Services Day and 'Azadi ka Amrit Mahotsav" initiated by NALSA, a pan-India awareness and outreach campaign on Legal Aid.
- Orientation programme on correctional justice for probation officers from Bihar Institute of Correctional Administration
Prayas conducted an orientation programme on correctional justice for probation officers from Bihar Institute of Correctional Administration organized by Centre for Criminology and Justice, School of Social Work, TISS and Prayas (16 November 2019), on the rehabilitation of prisoners and the role of probation officers in the process. Prayas shared their experiences in the field of criminal justice social work with the probation officers.
- National Webinar on 'Rehabilitation of Prisoners in the COVID-19 Context: Challenges and Way Forward' was organised by the Institute of Correctional Administration (ICA) and Prayas
The webinar was attended by prison officers and NGOs from Haryana, Punjab, Delhi, Himachal Pradesh, Rajasthan, Madhya Pradesh, Maharashtra and Karnataka. The suggestions and recommendations which emerged from the webinar have been shared with the respective state prison departments and the Ministry of Home Affairs.
- 5-day Webinar on 'Prison Reforms and Rehabilitation of Prisoners for Prison Staff of Haryana Prisons Department'
Thirty participants from the rank of Warden to Assistant Superintendent attended the webinar which was inaugurated by the DG (Prisons), Haryana Shri K. Selvaraj, IPS, who spoke about the need for rehabilitation services for prisoners. Shri Jagjit Singh, IG (Prisons), Haryana, highlighted the rehabilitation measures of the prison department. Dr Upneet Lalli, Dy. Director, Institute of Correctional Administration (ICA), concluded the session emphasising the role of prison staff in rehabilitation. Overall, the webinar received an excellent response from all the participants.

- 3-day Webinar on the ‘Legal Aid and Rehabilitation of Prisoners for Prison Officers of Bihar Prisons Department’
 More than 50 participants comprising prison Superintendents and Probation Officers attended the webinar which was inaugurated by the IG (Prisons), Bihar, Shri Mithilesh Mishra, IAS. He spoke about the need for rehabilitation services and thanked Prayas for organising the webinar. He also said that there was a need to appoint rehabilitation officers in prisons who need to be trained in working towards the rehabilitation of prisoners. The discussion revolved around good practices initiated by the prisons across the country, exploring the idea of initiating parks for children inside the prison premises and anganwadis in close proximity to the prison. And to take a step to understand the present situation of released prisoners.
- 3-day Webinar on ‘Rehabilitation of Prisoners’ for probation officers, Bihar (January 2021):
 The webinar was an online training programme exclusively designed for the Probation Officers functioning under Bihar Institute of Correctional Administration (BICA), Hajipur and Bihar Prisons, which was attended by 90 probation officers. The objective of this webinar was to primarily orient and motivate them to perform their role towards the rehabilitation of undertrials and released prisoners. Bihar IG (Prisons) took an aggressive approach towards the implementation where he stated that the probation officers should visit the youth barracks of the prisons to take up the cases, parole cases should be given proper attention, work with the cases of women prisoners and look into the needs of the children of prisoners and to network with local court, DLSA and organisations for the rehabilitation of the released prisoners
- Webinar on Probation Act in collaboration with the Department of Women & Child Development (DWCD), Government of Maharashtra
 To look at challenges faced by probation officers to work for the rehabilitation of prisoners during the COVID-19 crisis and the way forward. The webinar was chaired by Shri Rahul More, Divisional Dy. Commissioner - Konkan Division, DWCD, Maharashtra, and attended by a total 34 heads, which included Divisional Dy. Commissioner, Superintendent of Probation Department, two DWCD Officers from Mumbai Suburban, Thane and Raigad, seven district probation officers and four probation officers of Mumbai City, Mumbai Suburban, Sindhudurg, Palghar, Ratnagiri, Pune, Thane and Raigad, two administrative staff from the DWCD Commissionerate, Pune and Konkan divisions; and Prayas staff. This webinar will be repeated in other regions in Maharashtra. In the said webinar, Prayas brought to the attention of the audience that sanctioning powers for the grant-in-aid to released prisoners’ scheme are delegated to the DWCD Officers where Prayas obtained the subsequent GR and submitted it to the Divisional Dy. Commissioner, DWCD.
- Webinars on ‘Implementation of Probation Act’ in Maharashtra:
 Issues and Challenges for the Aurangabad (December 2020) Amravati and Nagpur Divisions (March 2021) were organised. Participants including district probation officers, probation officers, district women & child development officers, probation superintendent, Prayas staff and representatives of local NGOs attended the webinars. Various issues in the appropriate implementation of the Act were discussed, such as shortage of staff, additional responsibilities given to the district probation officers, vacant posts in the department, lack of support from the court and prison department, shortage of funds for rehabilitation, and lack of awareness amongst the laymen and even in the system about the spirit of this Act. A probation officer from Kerala presented the ‘Kerala Model of Probation’ and discussed the benefits for the inmates and released prisoners. The minutes of the webinars were shared with the State Probation Superintendent for the further follow-up

- The FTF team has provided support to the DLSA in organising several training/capacity building events for Panel Advocates. This included a four-day online workshop for Panel Advocates on Medical Evidence and Forensics, which was conducted by FTF in collaboration with DLSA in Nagpur and Pune.
- Four-day online workshop on medical evidence and forensics
A four-day webinar series titled 'Workshop on Medical and Forensic Evidence: Basic concepts and courtroom practice' on 12, 13, 18 and 20 September 2020 was organised in collaboration with DLSA Nagpur and Pune. More than 140 lawyers participated in the Programme out of which around 90 were panel lawyers of DLSA from Nagpur and Pune and also other districts such as Wardha, Chandrapur, Mumbai, Thane, Kalyan, Ratnagiri and Solapur. The sessions were conducted by Adv. Prashant Deshpande (Pune), Adv. Rahul Deshmukh (Pune) and Adv. Shreya Rastogi (Founder Member, Project 39A). The session outline for the workshop included concepts on post mortem (PM) and medico-legal case report (MLC), skills for examination of witnesses and experts in relation to PM and MLC and concepts on DNA and challenging a DNA report.
- Organising session with DLSA for Nagpur Rural Police:
DLSA Nagpur collaborated with the FTF team to conduct an awareness session for Nagpur Rural Police. The session was aimed at discussing provisions around arrest, remand and bail. The discussion centered around the mandate around arrests and remand, the need for adherence with guidelines laid down under DK Basu and Arnesh Kumar; the rights of the accused under the Constitution and CrPC. Shri Rajendra Rathi and Smt Surekha Borkute (Panel Advocates, DLSA Nagpur) were also present for the session along with Smt Ankita Sarkar (Legal Strategy Coordinator, Nagpur).
- Organising awareness programme for women inmates
DLSA Pune had invited the FTF team to conduct an awareness session for women prisoners in Yerwada Prison. Since the prison was reluctant to permit entry to resource persons, the session was conducted through video conference. The programme was chaired by Shri CP Bhagwat (member secretatry, DLSA Pune) and included sessions on guidelines and procedure for release under HPC guidelines and bail (delivered by FTF team) and women's property rights in light of the SC judgment in Vineeta Sharma v. Rajeev Sharma (delivered by Ms. Sujata Tambe, DLSA Panel Advocate)
- Presenting findings from the DLSA study at Maharashtra National Law University, Nagpur
On the basis of the information collated from the study in prisons, the Nagpur Legal Strategy Coordinator (LSC) put together a paper titled 'Special provisions for women under Criminal Procedure Code regarding incarceration and bail: Examining applicability through the undertrials at Nagpur Central Prison', which was presented at the one-day seminar on need for reforms in Indian criminal law, held on 9 February 2020 at the Maharashtra National Law University, Nagpur.

