

PRISONS, COURTS & LEGAL AID

EXPERIENCE OF THE FAIR TRIAL PROGRAMME IN MAHARASHTRA

EXECUTIVE SUMMARY



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**Project 39A, Fair Trial Fellowship,
National Law University Delhi.**

The Fair Trial Fellowship Programme (Programme) is an initiative instituted by the National Law University (University) under Project 39A for providing legal representation to undertrial prisoners in Pune (Yerwada) and Nagpur Central Prisons. The Programme seeks to strengthen existing mechanisms of state-sponsored legal aid service delivery and support advocates empanelled (Panel Advocates) with the District Legal Services Authorities / Taluka Legal Services Committee (DLSA/TLSC and collectively referred as LSAs) in their efforts to provide quality legal representation to undertrial prisoners.

This report (Report) presents the learnings and reflections of the Programme from its work during January 2019 to March 2021. The data used in the Report is based on details and information of cases with the Programme, as captured by the Fair Trial Fellows (Fellows) in a customized data system (MIS System). The analysis presented aims to demonstrate empirically verifiable trends which have emerged from the Programme and reflect on them to draw lessons for improving legal aid service delivery through the LSAs

Right to legal aid has been constitutionally recognized as a fundamental right and an essential ingredient of the guarantee to right to life. To further strengthen the implementation of this right, the modalities of the State's obligation to provide free legal representation to the underprivileged sections of the society (including all

persons in custody) has been set out under the framework of National Legal Services Authority Act, 1987 (NALSA Act).

A functioning legal aid system is likely to reduce the period of pre-trial incarceration, number of wrongful convictions, reoffending, revictimization and incidents of custodial violence.

While incarceration in itself is a form of oppression - restricting individuals of their liberties and access to the outside world, the socio-economic background of the prisoners further exacerbates these vulnerabilities. This often renders legal remedies beyond the physical and financial reach of the undertrial prisoners.

An effective legal aid mechanism is therefore crucial to ensure an individual's right to fair trial.

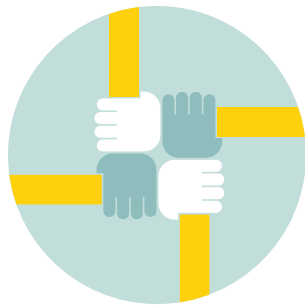
Despite the above, the status of utilization of state-sponsored legal aid and the quality of service delivery have been a matter of continuing concern. The impact of these deficiencies on the undertrial population have been acknowledged by the Supreme Court of India and corroborated by findings from various academic studies and experiential narratives. It was in this context that the need for strengthening the mechanism of legal representation in criminal trials emerged as a specific interest area for the University and a programme to implement the above vision was imagined as part of the University's initiative under Project 39A.

"While incarceration in itself is a form of oppression-restricting individuals of their liberties and access to the outside world, the socio-economic background of the prisoners further exacerbates these vulnerabilities. This often renders legal remedies beyond the physical and financial reach of the undertrial prisoners."

Core Objectives



Providing quality legal representation to undertrial prisoners



Strengthening response of the legal service authorities towards providing quality legal services



Creating a cadre of trained professionals (lawyers and social workers) for providing quality legal representation to undertrial prisoners



Using data for research and publication on issues relating to criminal justice and legal aid and driving systemic changes

THE FAIR TRIAL FELLOWSHIP



Providing Quality Legal Representation

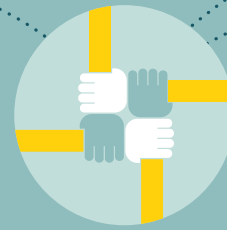
WORK WITH UNDERTRIAL PRISONERS

- Challenge illegal arrest/detention
- Support for bail
- Pro-active response and regular update
- Address special psycho-social needs
- Co-ordinate with multiple stakeholders
- Mitigation support

SOCIO-LEGAL CASEWORK

Responsibilities of Social Work Fellows (8 SWFs)

- Visiting prisons and identifying undertrial prisoners who need legal representation
- Being the link between undertrial prisoners and Panel Advocates
- Handholding undertrial prisoners through legal proceedings
- Identifying undertrial prisoners entitled for bail/ early release
- Identifying undertrial prisoners with special needs
- Meeting family members of the undertrial and other persons to gather information and documents relevant to the case



Strengthening response of LSAs

WORK WITH PANEL ADVOCATES AND LSAs

- Link between LSA and prison
- Assisting Panel Advocates in court and otherwise
- Timely completion of legal aid processes
- Link between Panel Advocates and undertrial prisoners

LEGAL CASEWORK

Responsibilities of Legal Fellows (16 LFs)

- Provide legal representation to undertrial prisoners who do not have a lawyer
- Coordination for allocation of Panel Advocates
- Briefing Panel Advocates about the case
- Mulaqats with inmates for case discussion and legal counselling
- Devising legal strategy for cases in collaboration with Panel Advocates
- Drafting & filing legal documents



Train Young Professionals

MENTOR LEGAL & SOCIAL WORK FELLOWS

- Induction training and field immersion
- On job mentoring and supervision by Legal Strategy Co-ordinators
- Periodic capacity and knowledge enhancement sessions
- Monitoring of casework progress and outcomes



Drive Systemic Changes


ENGAGEMENT WITH STATE AUTHORITIES, JUDICIARY AND LSAS

- Publication on various issues related to criminal justice system
- Analysing Programme data and generating empirical trends
- Enhancing capacity of Panel Advocates and Paralegal Volunteers


01

Fundamentals of Programme Design





Documenting demographics, case details and progress of work to allow assessment of work and providing empirical trends



Support to LSAs and Panel Advocates towards providing quality representation to undertrial prisoners

02

Intervention Model

Social work fellows (SWFs) visit prison barracks to identify undertrial prisoners in need of legal representation and provide them preliminary information on their case and legal procedure.

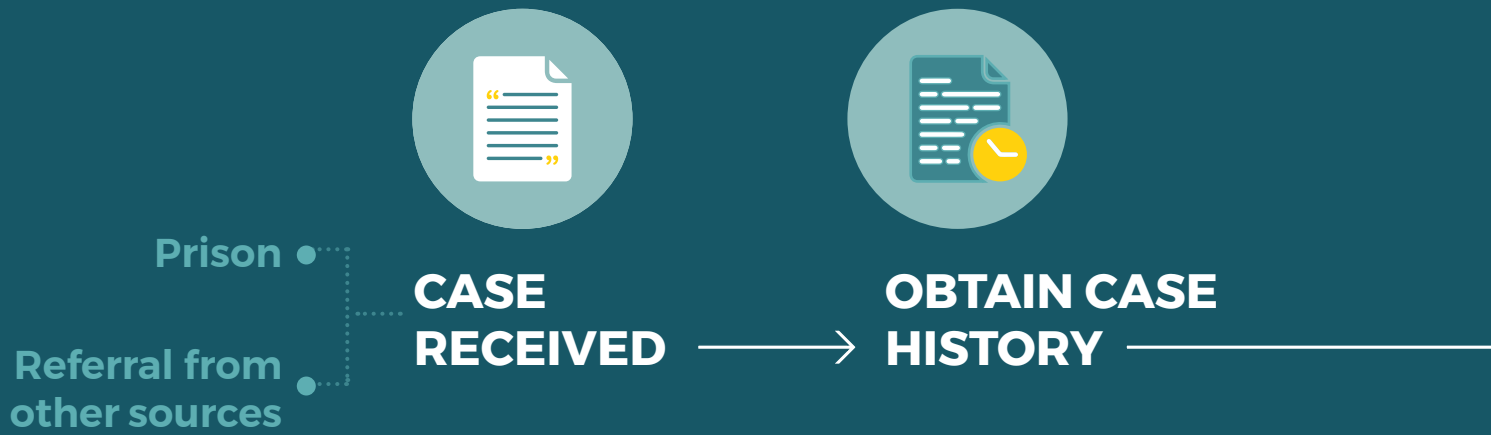
Fellows ascertain case details for the undertrial prisoners seeking legal representation and facilitate process of allocation of Panel Advocate through the LSAs.

Upon allocation of Panel Advocates, Legal fellows (LFs) assist them in both pre-trial (bail and remand) and trial procedures. The assistance provided may be in the nature of assisting in drafting and filing of bail and other applications, providing research briefs on point of law, assisting during court hearings, co-ordinating with prison authorities for implementation of court orders or release of inmates, meeting with inmates in prison to seek instructions, liaising with family to obtain necessary documents etc.

SWFs continue to provide regular updates to clients in prison on progress of their case, undertake home visits, build linkages with their family and where required, refer them to other organisations for services like bail sponsorship, mental health facilities, livelihood training, post release shelter etc.

In cases of FTF clients who have been released on bail, Fellows continue post-release follow-ups for ensuring compliance with bail conditions and attendance on court dates.

INTERVENTION MODEL





ASSESS NEEDS/ CASE DETAILS + LAWYER'S STATUS

Doesn't need
Legal Aid - OTI

Work with
Panel Advocate

Court
follow up

Bail

Filing

- Compliance
- Modification

Post release

Trial

Reading Chargesheet +
Discussing with Client

Recording of Evidence /
Cross examination

Mitigation / Sentencing

Work with family / others

Post release

Work with family

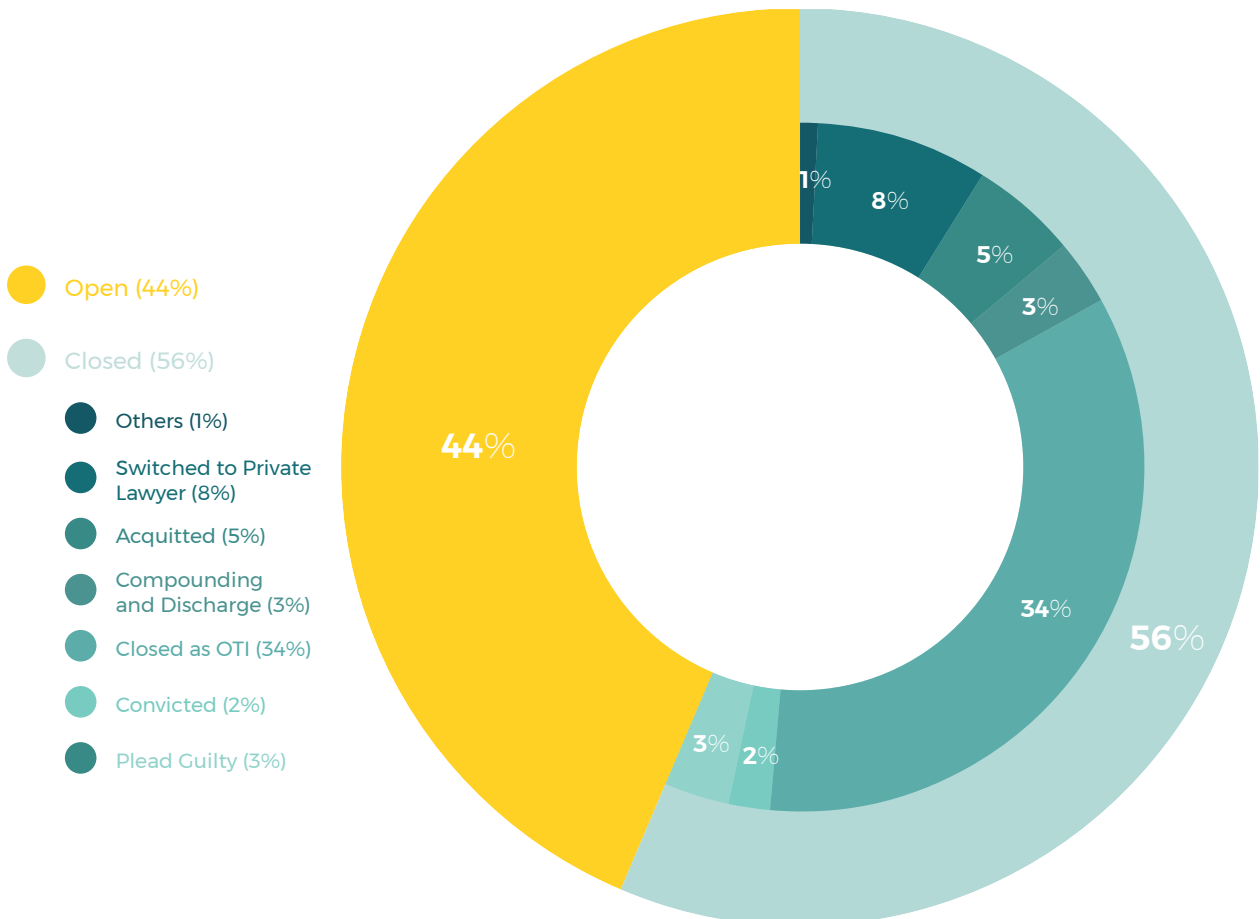
Updating client + family

03

Outcomes

Overall case status

From amongst the Detailed Intervention cases (2100), work has been concluded in 57% of the cases and 43% cases remain open with ongoing interventions. From amongst the concluded cases, 8% cases were closed due to the client switching to private lawyer, 5% cases had acquittals, 3% cases were compounded or discharged, 2% were convictions, 3% cases had the accused plead guilty, and 34 % cases had to be closed as One Time Interventions (OTI).

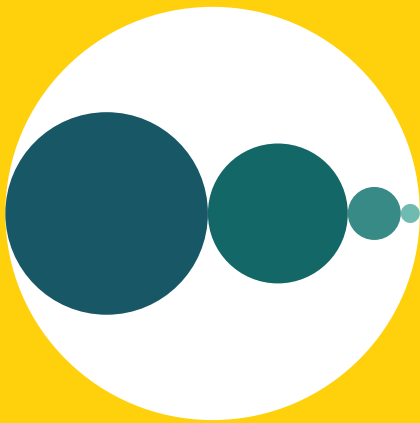


OVERALL OUTCOMES OF THE PROGRAMME

Overall outcomes of the Programme's interventions were summarized below

2313 **1027** Total number of Detailed Intervention clients
1286 Total number of OTI clients

TOTAL OUTREACH TO UNDERTRIAL PRISONERS



1022

TOTAL UNDERTRIAL PRISONERS RELEASED

501

Release on bail/
modification

343

Release on
PR Bond

47

Release through
compliance of bail
conditions

131

Released on acquittal,
discharge, compounding/
withdrawal

46 CONVICTIONS

71 PLEAD GUILTY

749

BAIL+MODIFICATION FILED

618

BAIL+MODIFICATION GRANTED

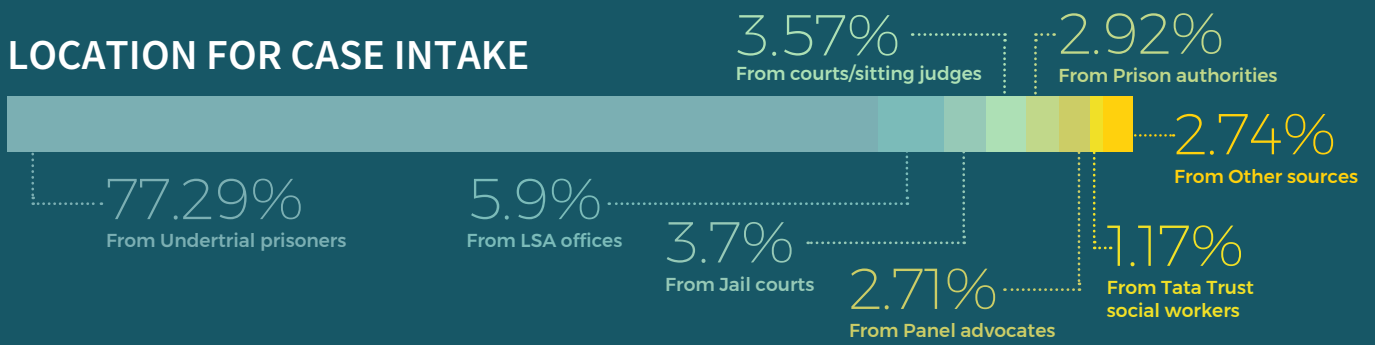


04

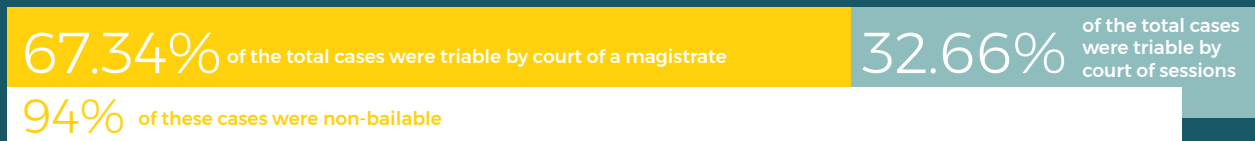
Cases with the Programme

1. Maximum number of cases under the Programme (77.29%) were received directly from the undertrial prisoners in prison and prison emerged as the primary location for case intake. The other sources of referrals were LSA offices (5.9%), jail courts (3.7%), courts/ sitting judges(3.57%) prison authorities (2.92%), Panel Advocates (2.71%), Tata Trust social workers (1.17%).
2. Majority of the cases received under the Programme (67.34%) were triable by court of a magistrate. However, 94% of the cases received were non-bailable. This indicates that the Programme had majority cases which were of petty offences but non-bailable in nature.
3. In terms of specific categories, cases of theft constituted the highest proportion of cases (34.82%) under the Programme. The other crime categories with high number of cases were Robbery and Dacoity (9.21%), Theft with house break-in/Burglary (10.65%) and Murder (8.71%).
4. Cases received under the Programme are spread across 80 police stations in Pune district and 63 police stations in Nagpur. In terms of outreach to courts, 21% cases in Pune and 14% cases in Nagpur were in courts in talukas outside municipal limits.
5. Clients sought support through the LSA mechanism in 2100 cases. Of these, 710 cases had to be closed as OTIs due to multiple reasons.

LOCATION FOR CASE INTAKE



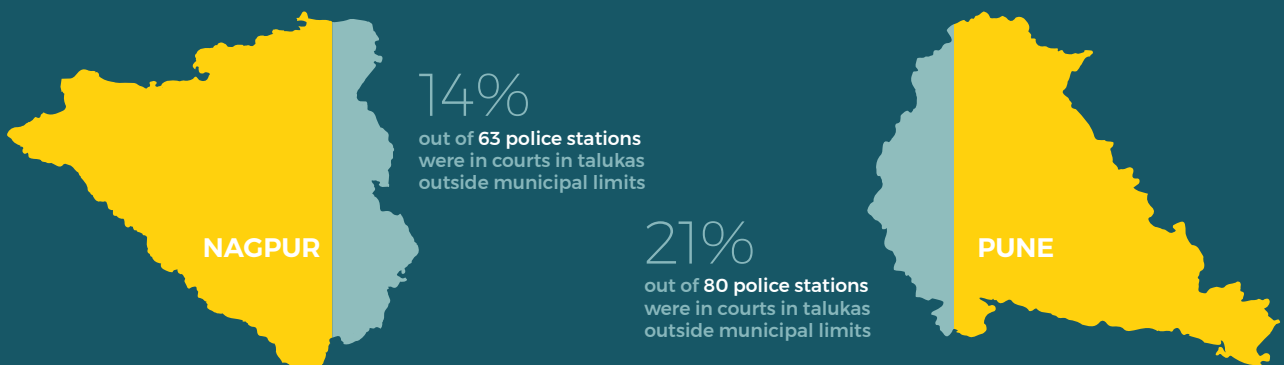
TRIAL BY COURT



CATEGORIES OF CASES



OUTREACH TO COURTS



SUPPORT THROUGH LSA



05

Demographic profile of FTF Clients

- 1. Proportion of women:** While women constitute 4.07% of the undertrial prisoners in India as per Prison Statistics of India 2020 (Prison Statistics), they constituted 15.78% of the FTF clients.
- 2. Age:** Majority of the FTF Clients (54%) were young and below 30 years of age. The average age of FTF clients was lower than the overall age of undertrial prisoners in India as per Prison Statistics where the number of undertrial prisoners below the age of 30 years was less than 50%.
- 3. Caste:** Dalits constitute 25.61% and Adivasis constituted 10.03% of the FTF clients. Almost 8% of the clients were from Notified Tribe and De-Notified Tribes (NT&DNT), and close to 5% were from Economically Backward Castes (EBCs). The largest caste group amongst clients whose caste identity could be ascertained were Mahars (118) comprising 14% of the FTF Clients.
- 4. Education:** Over three-fourths of the FTF clients were educated upto matriculation (76.1%) while less than 2% were graduates and professionals. This is also true of the overall prison population in India (67.68%).
- 5. Income and Employment:** On an average, 85.63% of the FTF clients earned less than INR 10000 per month and around 90% of the FTF clients were unemployed or precariously employed. 93.48% FTF clients did not own any assets.
- 6. Domicile:** A considerably high proportion of FTF clients do not have any contact with family (62.50%) and 18.50% of the FTF clients identified as migrants.

FTF CLIENTS

PROPORTION OF WOMEN

15.78%

BELOW 30 YEARS OF AGE

54%

EDUCATION UPTO Xth STANDARD

76.1%

UNDERTRIAL PRISONERS IN INDIA

PROPORTION OF WOMEN

4.07%

BELOW 30 YEARS OF AGE

50%

EDUCATION UPTO Xth STANDARD

67.68%

INCOME AND EMPLOYMENT

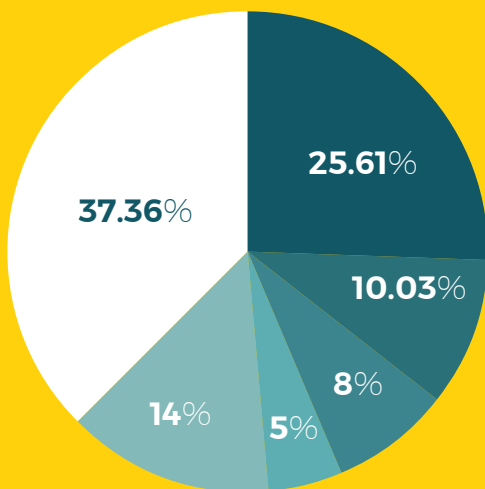
85.63% of the FTF clients earned less than INR 10000 per month

90% of the FTF clients were unemployed

93.48% of the FTF clients did not own any assets



CASTE



SOCIAL ROOTS

62.5%

NO CONTACT WITH FAMILY

18.5%

MIGRANTS

06

Strategies for Steering Through

ACTIVE PRESENCE OF SWFS

SWFs routine visit to prison ensured clients had an accessible interface of the LSA within the barracks. This facilitated easy access to updates/information on their cases and provided them much needed assurance

of regular follow-ups in court. Presence of SWF as a bridge between the LSA, the Panel Advocate and the undertrial prisoners played a crucial role in establishing the Programme's credibility amongst clients

ACCOUNTABILITY TO THE CLIENTS AND THEIR FAMILIES

Interventions under the Programme were client- centric. Interventions were not merely limited to legal representation in courts but also to work towards ensuring that FTF clients and their families understand the developments and do not feel alienated in the process. The case work process focused on understanding the clients' needs and determined strategies based on their informed choice. LFs 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 undertrial prisoners 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. This approach worked well for developing the Fellows goodwill with the client.

ACCEPTANCE WITHIN PRISON

The Programme's focus towards integrating its interventions with the Prison systems processes worked well towards the Fellows acceptance within the prisons framework. Prison authorities have acknowledged the role of the Programme and the Fellows towards securing rights of the undertrial prisoners and view the Fellows as an extension of the LSA framework in doing so. Fellows worked in close coordination with prison staff and regularly

apprised them of outcomes and initiatives of the Programme. Fellows frequently accompanied prison staff in their rounds of the barracks and after-barracks to identify undertrial prisoners in need of legal assistance. In addition to this, authorities also referred clients with special needs such as terminal illness, mental illness, women with children, etc. to Fellows and sought their intervention in dealing with these cases.

ACCEPTANCE AMONG PANEL ADVOCATES

Initially, the lawyers were reluctant to work with the Fellows and some even refused to work. However, as they recognised the contribution of our Fellows, they became more willing to work with the Programme. In 81.35% of the cases, Panel Advocates actively

received Fellows' assistance. Panel Advocates have been more responsive on cases where Fellows have followed up and provided them with required assistance on matters. Constant support provided by Fellows to Panel Advocates has resulted in better handling of cases.

CUSTOMISED BAIL APPLICATIONS

Regular interaction with undertrial prisoners has resulted in better framing of bail/modifications applications which include greater detail on facts

of the case and clients' personal circumstances. This has resulted in better bail outcomes overall as compared to the practice of filing of proforma bail applications.

CONSTANT ENGAGEMENT WITH JUDICIARY RESULTED IN SUCCESSFUL MODIFICATION APPLICATIONS

In its endeavor to secure releases for the clients, 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. From the 258 modification applications filed by FTF Fellows, (85%) were granted, (14%) were rejected and (1%) were pending for orders.

HIGHER PROBABILITY OF COMPLIANCE BY WORKING WITH MULTIPLE PARTIES FOR BAIL COMPLIANCE

The Programme's approach to work with multiple stakeholders to ensure compliance with bail conditions resulted in ensuring release of undertrial prisoners even in cases where bail was not filed by FTF Fellows. Fellows

facilitated release in 213 cases by way of working with family members, employers, community members and bail sponsorship organizations towards fulfilling bail conditions.

LAST MILE CO-ORDINATION FOR RELEASE AND POST-RELEASE FOLLOW UP

Fellows continued efforts to follow up on FTF clients' release process from prison and support them on their journey post-release has also worked well towards ensuring goodwill and

continued communications with the client. This is crucial especially in cases of release on bail where court attendance and coordination for trial process is required.

07

Learnings and Reflections

TIME SPENT IN PRISON AT INTAKE

The maximum number of undertrial prisoners (21%) who approached the Programme had spent between one to three months in prison at the time

of case intake. Cumulatively, a considerable number of undertrial prisoners (42%) had spent more than three months in prison at the time of case intake.

NEED FOR LEGAL AID

A need for legal aid was felt amongst the undertrial prisoners as the Programme received a high number of applications (2100) from the very outset seeking legal representation through the LSAs at the time of intake. In 44% of the cases received, the clients had no lawyer at the time of case intake. Fellows have also observed that some advocates take on cases initially at first production and file their vakalatnamas in the matter only to abandon the clients later. These advocates may even

retain case papers including chargesheets, increasing the difficulty in replacing them and pursuing the case in court. Interactions with client at the stage of intake also revealed a significant number of clients being out of touch with lawyers who represented them at the stage of first production in courts. 35% of the clients who approached the Programme had a private lawyer at the stage of intake but sought appointment of a Panel Advocate for their case.

STRONG NEED FOR BAIL AND COMPLIANCE RELATED SERVICES

Support for bail and compliance of bail conditions emerged as the most sought service by clients. In 61.65% of the cases received, bail application was not filed at the time of intake. Additionally, in 24.32% cases,

bail order was granted but the client was in custody due to non-compliance of bail conditions and wanted support in availing support for compliance of bail such as surety, documents or cash.

CHALLENGES IN ASCERTAINING LEGAL AID NEEDS OF UNDERTRIAL PRISONERS (MULTIPLE APPLICATIONS AND APPOINTMENTS, NON-DISCLOSURE OF PRIVATE ADVOCATES AND BAIL DETAILS)

A considerable number of undertrial prisoners were incapable of providing accurate details of the status of their lawyer and bail details. This could be attributed to the undertrial prisoners' difficulty in comprehending the legal procedures and lack of communication from advocates. In their desperate attempts to seek release, undertrial prisoners sometimes approached for appointment of Panel Advocate despite having an active private lawyer working on their case. This used to lead to a conflict

of work amongst the private lawyer and the allocated Panel Advocate. Fellows frequently came across multiple parallel requests for Panel Advocates from undertrial prisoners leading to multiple appointments at times. Such cases which might need to be closed due to an existing private lawyer or multiple requests also accounted for a portion of cases which were closed as OTIs. Fellows therefore made a substantial effort in ascertaining the legal aid needs of the undertrial on an individual case-to-case basis.

TIME TAKEN IN COMPLETION OF DLSA PROCESS

While allocation of Panel Advocate was completed within a week in majority of the cases (63%), there is definitely a scope of improving these timelines with digitizing of processes. The existing application and allocation procedure is entirely manual through physical documents. Tracking of

allocation of lawyers (specifically by the beneficiaries) could only be done by physical visits to the DLSA/ TLSC office concerned. There were delays in the appointment of Panel Advocates, receiving appointment letters and signing of vakalatnama by the undertrial despite regular follow-up by Fellows.

HIGH ATTRITION

While there were a high number of people approaching LSAs to access legal aid, there was also high attrition. 33.8% of the cases which had sought legal representation through LSAs had to be closed as OTI while the LSA process was pending. This was due to reasons like the clients being unresponsive, choosing

to work with a private lawyer or pleading guilty etc. In another 8% cases, clients switched to private lawyers after the Panel Advocate's vakalatnama was filed in the case. Fellows' experiences indicated that inefficiencies and delays in responding to the needs of the undertrial prisoners played a major role in attrition of clients.

LINK BETWEEN QUALITY OF LEGAL AID AND TRIAL OUTCOME

In the cases in which the Programme provided legal representation to the clients, the outcomes compared favourably (approximately 34.8% conviction) with the overall conviction rate

(57%) as per the Crimes in India 2021, a report published by National Crime Records Bureau (NCRB). This reflects the possibility of reducing wrongful convictions by providing well rounded legal representation.

ACCESS TO LEGAL AID FOR UNDERTRIAL PRISONERS WITH CASES IN TALUKA/ OTHER DISTRICTS

The direct points of access to legal aid in prisons were limited only to jail-visiting lawyers/para-legal volunteers (PLVs) working within the municipal limits of where the prison is located. Thus, undertrial prisoners whose cases were 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 prisoner and the Panel Advocate for follow-up of cases.

SPECIAL NEEDS

42.55% of clients had at least one special need. These special needs were in the nature of medical history (both physical and mental health); disability; ongoing education; child in prison (below 6 years); suspected juvenility; no contact with family; terminal illness and migrant. This points to a strong need for support services for undertrial prisoners not only from the lens of prison welfare but to ensure a

well-rounded criminal defence in their case. The Programme's experience indicates that working with clients with special needs often involves additional preparation for legal representation which may range from collating documents, connecting with other stakeholders for documenting case history and working with specialists like doctors/ mental health professionals.

NEEDS OF MARGINALIZED CLIENTS

The demographic profile of FTF clients reflects multiple socio-economic vulnerabilities and links to their limitations in navigating through the criminal justice system. It is therefore of utmost importance

that the legal aid delivery mechanism imagines support services through professional social workers/mental health professionals as an essential element to ensure quality legal representation.

NON-UNIFORM RATIONALE IN BAIL ORDERS

Judges often apply non-uniform and inconsistent principles in deciding bail applications. The element of discretion in the existing framework on bail law often works to the disadvantage of undertrial prisoners from marginalized socio-economic backgrounds. 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 undertrial prisoners' capacity to comply with the bail conditions. From

amongst the bail applications filed by the Programme, 15% applications were rejected while in 45% applications, the clients were unable to comply with the bail conditions imposed. Courts also showed reluctance in modifying the bail conditions, which effectively resulted in redundant bail orders. There is a flawed assumption in the property-based bail system that every accused must be having property or a propertied social connection and risk of financial loss necessarily secures compliance with bail conditions

CHALLENGES IN BAIL COMPLIANCE

In almost 35% cases where the client was granted bail, compliance was done after more than a month of the grant of bail order. The delay in compliance with bail conditions were linked directly to the inability of the undertrial prisoners in arranging for means to comply with the bail conditions. Compliance of bail conditions involved continuous engagement by the

SWFs with families, employers, community members, civil society organisations, government authorities (such as municipalities and civic bodies) and courts to ensure financial and documentary requirements. Substantial efforts were also invested in coordinating for furnishing cash bail through organisations providing bail sponsorship.

CHALLENGES IN RELEASE (MULTIPLE CASES/REARREST)

Multiple offences against the undertrial prisoners put a major hindrance has been a major hurdle in the process of securing release of undertrial prisoners. The cycle of criminalisation on account of being

charged with multiple offences including unnamed FIRs, traps the undertrial prisoners in a cycle of release and rearrest, exhausting their means to come out of the criminal justice system.

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.

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 undertrial prisoners 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 had 287 clients with multiple cases.

SYSTEMIC PUSH TO PLEAD GUILTY

Undertrial prisoners 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. FTF data reflects 71 clients plead guilty while trial was pending. 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 undertrial prisoners. 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 prisoners.

NEED FOR CAPTURING FLOW DATA ON UNDERTRIAL PRISONERS

The existing data on prisons captured by NCRB 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.

LOW UTILISATION OF LEGAL AID SERVICES

Despite multiple points of access to legal aid under the framework of the National Legal Service Authorities Act, 1987 and the efforts of the Programme, only around 8% undertrial prisoners were seeking legal representation through the LSA. 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 undertrial prisoners. This would essentially mean a comparison of flow data of undertrial prisoners brought into a prison with the number of undertrial prisoners 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.

LACK OF RELIABILITY AND COMPREHENSIVENESS OF DATA - NO CROSS-LINKAGE BETWEEN COURT, PRISON AND LSA DATA

A large proportion of undertrial prisoners 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 UT Number 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 UT numbers

annually further aggravates the issue. This linking of the UT 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

LACK OF CONSISTENT INFORMATION ON UNDERTRIAL PRISONERS

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 undertrial prisoners 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.

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.

LIMITED ROLE OF LSAS

The role of the LSAs in the process of legal representation usually ends with the allocation of the Panel Advocate. Institutional mechanisms for the LSA to monitor progress and quality of representation in its own cases seemed to be non-functional. There is also no mechanism for assessing attrition of clients from the

LSA and reasons behind such attrition. 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. The learnings from the Programme point to a strong need for regular mentoring and supervision of the Panel Advocates to ensure quality legal representation by them.



Way Forward

The Programme's experiences reflect that it is a labour and resource intensive initiative which is susceptible to the same slippages as state-sponsored legal aid without regular supervision and monitoring. This is a major learning towards proposing a systemic reform of legal aid. For a more robust and sustainable legal aid system, there should be dedicated lawyers working exclusively to provide legal aid to criminal defendants, similar to public defender system, with hierarchy and supervision including self-disclosure of the work done (uploading of orders, centralised allocation and monitoring) inbuilt in the system. The current scheme of Legal Aid Defence Counsel System (LADC) as rolled out by the NALSA, appears to be promising in its concept and structure with full time lawyers exclusively doing public defence. However, as per the Programme's learnings, the LADC scheme needs to develop an effective system of work allocation and monitoring, optimising the workload of the lawyers in the office. The Programme's learnings also make it imperative that the setup of the LADC office should not only have dedicated lawyers but also trained social workers who respond to the special needs of the clients, follow-up and be the bridge between the client and the system.

"A functioning legal aid system is likely to reduce the period of pre-trial incarceration, number of wrongful convictions, reoffending, revictimization, and incidents of custodial violence."



PROJECT 39A
EQUAL JUSTICE
EQUAL OPPORTUNITY



Fair Trial
Fellowship