

PRISONS, COURTS & LEGAL AID

EXPERIENCE OF THE FAIR TRIAL PROGRAMME IN MAHARASHTRA



...cause prisons are...
we are moving towards progress
as a society, why do we need new
jails? We should be closing down
existing ones," the President said.

Speaking at the valedictory
session of the Law Day celebra-
tions organised by the Supreme
Court, Murmu said, "I am leaving
this issue to the judges here, and
the Law Minister. I am not saying
anything more. I hope you under-
stand what I have said. What I
refrained from saying..."

Stressing that she had
389 members of the Constitu-
tion Assembly included 15 women,
Murmu also said, "When some of
the leading nations in the West
still have no women judges,
we have women judges in the
highest courts of the country."

Minister Kiren Rijiju said
the Government is committed to
transparency in judicial appoint-
ment matters of appoint-
ment. He said, "The Government
has committed to social di-
versity. It has been requesting
the highest courts to pro-
vide a list of candidates for
appointment of judges."

President Droupadi Murmu with CJI Justice DY Chandrachud
during Constitution Day celebrations in New Delhi. PTI

Chief Justice, Rijiju said much more needs
to be done by the judiciary.

"Over the last seven decades
of India's journey as an independ-
ent nation, representation of
women as judges has increased.

However, much distance needs to
be travelled to address the need
of providing diversity in high-level
judiciary, and to meet the expec-
tation of the cross-section of the
population," he said.

Chief Justice of India, Justice D.Y. Chandrachud
emphasised that the Constitution
is uniquely Indian even in its func-
tioning. He said, "Despite the fact that some
of its provisions were inspired
from other countries, it is a better and
more robust one. We should
recall that India is one of the few
nations where the Constitution
was written by her people," he
said. "Unlike in many countries
that achieved independence from
the British, we forged our own
Constitution."

"The only remnant of colon-
ialism past in the court is
the lawyer opening his mouth
to speak."

Lord'. He said after what follows
is a very Indian style of advo-
cacy. It is a mix of advo-
cacy, interspersed
with English words and a few
phrases," he said.

Emphasising the con-
stitutional ideal of unity in di-
versity, Chandrachud said
this Constitution accounts
for the diversity of the
Indian people.

The Constitution is the
source of rights and freedoms
of its citizens. He said,
"Rather, it includes
cultural, social and reli-
gious diversity in its
journey to become a
democratic society."

The CJI said that
the legal scholar Granville
Llewellyn would have referred
to it as the "principle of accom-
modation is different
promises, which in-
cludes..."

CJI Chandrachud
at the Supreme Court

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FOREWORD

India has been witnessing an expansion of a carceral state that ends up disproportionately targeting people from marginalised communities. Prisons are overcrowded and more than three-fourth of the prisoners are undertrials. Our political and popular culture perpetuates an infantile view that those accused of crimes should be left languishing in jails resulting in systemic apathy towards the plight of undertrial prisoners. Without adequate support structures, many undertrial prisoners are languishing in prison for longer than they should. When we incarcerate individuals in such large numbers to deal with crimes, we should confront the structural biases within the criminal justice system that fails the undertrial prisoners at multiple levels and deprives them of fair trial rights.

The Fair Trial Fellowship is an effort to not only provide legal aid to the undertrial prisoners unable to access legal representation but also to address the social inequities by providing them requisite social-legal support by putting their needs at the centre. It looks beyond a unidimensional clinical approach and engages in a model of action research which involves systematic observations and data collection for reflection and development of more effective strategies to address systemic issues.

This report is a culmination of the learnings and unlearnings in the process of providing socio-legal aid to the undertrial prisoners in the districts of Pune and Nagpur. Before the journey started, there was an understanding that there are some deep-rooted issues plaguing the functioning of delivery of legal aid to the undertrial prisoners but the understanding was limited by lack of rigorous empirical analysis. The report fills in this gap by providing an empirical account of the state of legal aid in the districts of Pune and Nagpur. It is an urgent and critical requirement that our diagnosis of issues plaguing the legal aid system and the design of solutions are informed by rigorous quantitative and qualitative empiricism.

The report could not have been completed without the exceptional efforts of the Legal Fellows and Social Work Fellows in not only providing the socio-legal interventions but also documenting their interventions in the customised database. Azim Premji Foundation ensured that there is no dearth of financial or logistical support in helping them carry out the interventions. We are further thankful to the National Legal Services Authority without their support this process would not have commenced. Maharashtra Legal Services Authority, the District Legal Services Authorities and the Prison authorities in Pune and Nagpur were extremely cooperative throughout the journey and fostered with us an effective collaboration in providing legal aid to undertrial prisoners.

Given the stakes involved, it is of paramount importance that legal aid interventions combine service delivery along with rigorous data collection and analysis. Both these approaches have tremendous learning to offer for the future directions of legal aid in our criminal justice system.

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INTRODUCTION

The Fair Trial Fellowship Programme (FTF or Programme) is an initiative instituted by the National Law University, Delhi (University) under Project 39A for providing legal representation to undertrials in Pune (Yerwada) and Nagpur Central Prisons. The initiative seeks to support advocates empanelled with the state legal services authorities in their efforts to provide quality legal representation to undertrial prisoners and strengthen existing mechanisms of legal aid delivery by the state.

The Programme works in collaboration with the Department of Home, Government of Maharashtra (through its funding partner Azim Premji Foundation) and the District Legal Services Authorities (DLSAs) in the said districts.

This Report presents the learnings and reflections of the Programme from its work during the period of January 1st, 2019 to March 31st, 2021 (Reporting Period). The data used in the Report is based on case details and information on progress of cases captured by the Fair Trial Fellows in the programme's customized management information system (MIS). The analysis reflects the trends of the cases with the Programme and does not necessarily reflect trends from the overall undertrial population in the prisons concerned. However, given a significant outreach, the figures may be considered a reasonable representation from the universe of undertrial prisoners in Pune and Nagpur.

Chapter 1 and 2 of the Report describe the general framework of the Programme as it has been conceived and designed to be implemented. Chapter 3 and beyond, the Report sets out the experiences of the Programme for the Reporting Period. Chapter 3 and 4 provides a glimpse into the profile of cases that the Programme received and the clients who approached the programme respectively. A detailed analysis of work done during the Reporting Period and outcome of the Programme's intervention have been set out in Chapter 5, 6 and 7. The onset of the pandemic and consequential lockdown had a substantial impact on the Programme's implementation. But this period also exposed the limitations of the criminal justice system and provided significant lessons for institution building. A separate part within Chapter 7 captures the challenges faced during the pandemic. Chapter 8 is a reflection on the journey of the Programme so far and the Programme's learnings are summarized under Chapter 9.

The report aims to demonstrate empirically verifiable trends which have emerged from its work and reflect on them to draw lessons for improving the functioning of the legal aid system. On many accounts, findings in this report provide on ground confirmation of structural barriers within the criminal justice system and the limitations of the state sponsored legal aid system which have long been part of anecdotal narratives.

01

**DESIGN AND
STRUCTURE
OF THE
FAIR TRIAL
FELLOWSHIP
PROGRAMME**

"Though the right to legal aid is an unenforceable directive principle, the judiciary responded to the needs of the poor through creative interpretation of the right to equality and the right to life and made the right to legal aid a fundamental right by reading it into the right to life."

Incarceration of undertrial prisoners goes against the basic tenets of established criminal law principles that *a person accused of a crime is entitled to remain free until adjudged guilty*.¹ 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 prisoners² further exacerbates these vulnerabilities. This often renders legal remedies beyond the physical and financial reach of the undertrial prisoners. The double whammy of incarceration and socio-economic vulnerabilities of the undertrial prisoners necessitate legal aid to ensure fair trial for undertrial prisoners. A functioning legal aid system is likely to reduce the period of pre-trial incarceration, several wrongful convictions, reoffending, revictimization and incidents of custodial violence.³ An effective legal aid mechanism is therefore crucial to ensure an individual's right to fair trial.

The Constitution of India recognizes the right of every accused to be represented by a lawyer of their choice⁴. 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 responded to the needs of the poor through creative interpretation of the right to equality⁵ and the right to life⁶ and made the right to legal aid a fundamental right by reading it into the right to life⁷. The right to free legal aid is implemented under the statutory framework of the National Legal Services Authority Act, 1987 (NALSA Act) which sets out the State's obligation to provide free legal representation to the underprivileged sections of the society including all persons in custody.⁸

Despite the above constitutional and statutory protections, the status of legal service delivery especially within the criminal justice system has remained a cause of concern. The limitations of the extant legal aid system and its impact on the undertrial population have been acknowledged by the Supreme Court in its observation in *In Re: Inhuman Conditions in 1382 Prisons*.⁹ Lack of quality legal aid services has been identified as one of the major factors contributing to the consistently high proportion of undertrial prisoners in India.¹⁰ This has also been corroborated by findings from academic studies and experiential narratives¹¹ which raised fundamental concerns on the status of delivery of legal aid in India.

¹ Law Commission of India, Report 78, (Oct. 31, 2022), <https://lawcommissionofindia.nic.in/51-100/Report78.pdf>.

² Adv. Rahul Singh, *Criminal Justice in the Shadow of Caste: Study on Discrimination Against Dalit and Adivasi Prisoners & Victims of Police Excesses* NDMJ-NCDHR (2018); Sabah Gurmat, *Prison Statistics India 2020: 76 percent of prisoners are undertrial prisoners; the number of Muslims, Sikhs, SCs and STs among them disproportionate to their population*, The Leaflet <https://theleaflet.in/prison-statistics-india-2020-76-per-cent-of-prisoners-are-undertrial-prisoners-the-number-of-muslims-sikhs-scs-and-sts-among-them-disproportionate-to-their-population/> (Oct 31, 2022); Vijay Raghavan and Roshni Nair, *Over-Representation of Muslims: The Prisons of Maharashtra*, *Economic and Political Weekly* Vol. 48, Issue No. 11, 16 Mar, 2013 pp 12-17 (2013).

³ United Nations Office on Drugs and Crime, *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (Oct 31, 2022), https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf.

⁴ INDIA CONST. art 22, cl. 1. ⁵ INDIA CONST. art 14. ⁶ INDIA CONST. art 21. ⁷ *M.H. Hoskot v State of Maharashtra*, AIR 1978 SC 1548.

⁸ National Legal Services Authority Act, 1987 s. 12(e). ⁹ *In Re: Inhuman Conditions in 1382 Prisons*, AIR 2016 SC 993.

¹⁰ Vijay Raghavan, *Undertrial Prisoners in India – Long Wait for Justice* 51 *Economic and Political Weekly* 17 (2016).

¹¹ Amnesty International India, *Justice under Trial: A Study of Pre-Trial Detention in India* (2017), [https://www.amnesty.nl/content/uploads/2017/07/JT_Final.pdf?x79902#:~:text=amnesty%20international%20india%20seeks%20to,and%20the%20constitution%20of%20india;Smita%20Chakraborty,Prisons%20of%20Bihar%20\(Status%20Report%20-2015\)](https://www.amnesty.nl/content/uploads/2017/07/JT_Final.pdf?x79902#:~:text=amnesty%20international%20india%20seeks%20to,and%20the%20constitution%20of%20india;Smita%20Chakraborty,Prisons%20of%20Bihar%20(Status%20Report%20-2015))

Academic endeavours of the University in various areas of criminal justice also pointed to similar concerns around the delivery of legal aid services. As a result, the interface between legal aid and criminal justice emerged as an area of significant interest for further engagement by the University. 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. The crucial element of the idea of this programme included:

- Developing and demonstrating an initiative which would work towards improving the quality of legal representation provided through the state legal aid institutions to undertrial prisoners, restoring the credibility of these institutions to its intended beneficiaries and improving utilisation of the legal aid services.
- Creating an adjunct system which bolsters and improves upon the existing state legal aid institutions by assisting in terms of qualified personnel and technical resources to support advocates empanelled by legal aid institutions (Panel Advocates) in ensuring the best possible legal representation for undertrial prisoners.
- Meticulously recording data as part of casework and strategically using it for formulating overall case strategy, understanding systemic challenges faced during criminal proceedings and suggesting reforms in the existing legal aid mechanism.
- Combining the services of lawyers and social workers for a well-rounded socio-legal response to cases. This becomes particularly relevant in cases of undertrial prisoners seeking representation through state legal aid institutions since they are likely to be from marginalised backgrounds.
- Working in collaboration with the government, prisons and state legal aid institutions (and not building a parallel system) to demonstrate the various elements of an effective legal aid system that is responsive to lessons that emerge from data and working towards institutionalisation of the demonstrated model.
- Working on a fellowship model to create a cadre of professionals trained to work within the criminal justice system at the trial court level with the vision that these professionals will contribute to improving standards of representation in criminal proceedings within their jurisdiction of practice.

1.1 PROGRAMME OBJECTIVES

Based on the above core ideas, the University instituted the Programme under Project 39A to support empanelled Panel Advocates under the DLSA/ Taluka Legal Services Committee (TLSC) in their efforts to provide legal representation to undertrial prisoners in Pune (Yerwada) and Nagpur Central Prisons. The Programme commenced operations from August 2018 with funding from the Azim Premji Foundation (APF).

The main objectives of the Programme are:

- Providing quality legal representation to undertrial prisoners
- Strengthening the state legal aid institutions towards providing quality legal representation to undertrial prisoners
- Improving capacities of local criminal lawyers (including FTF fellows) in the district
- Using data for research and publication on issues relating to criminal justice and legal aid and driving systemic changes.

1.2 ELEMENTS OF PROGRAMME DESIGN

1.2.1 Focus on Quality of Legal Representation

Providing legal representation to undertrial prisoners is the central idea of the Programme. As mentioned above, previous experiences indicate that the quality of legal representation available to undertrial prisoners at both trial and pre-trial levels leaves much to be desired. This situation persists irrespective of the undertrial being represented by the Panel Advocates or private lawyers. The Programme design envisages reaching out to undertrial prisoners, identifying their needs for legal representation, providing them with legal representation through the Legal Service Authorities and supporting the Panel Advocates allocated on the matter to ensure quality legal representation for the undertrial prisoners.

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 undertrial prisoners and their families, following up on the matter in court, coordinating with the Panel Advocates to ensure preparation for casework including subject matter research, multi-agency coordination related to casework and providing regular updates to the undertrial prisoners proactively.

Providing good quality and competent legal representation to undertrial prisoners at early stages of their trial or the pre-trial stage goes a

long way in ensuring their right to fair trial. To some extent, it gives them relief from getting caught in the realisation of rights and protections inbuilt into the law, 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. We, therefore, strongly believe that there is a connection between quality legal representation and a burgeoning undertrial population.

1.2.2 Implementing the Fellowship Model

The Programme is conceived as a fellowship model where young professionals (lawyers and social workers) are appointed as fellows under the Programme (Fellows) to carry out interventions towards achieving the objectives of the Programme set out in Point 1.1 above (Programme Objectives).

In keeping with the Programme Objectives of capacity building at the local level, the selection procedure for the Fellows gives preference to professionals who are likely to continue working at the trial court level in Maharashtra. For the first cohort, the Programme envisaged recruiting a team of 10 Legal Fellows (LFs) and 5 Social Work Fellows (SWFs) for working in each location. Fellows in both categories have an average work experience of about two and a half years in their respective fields.

There are two kinds of training envisaged in the initiative: (a) an initial intensive training to reacquaint Fellows with first principles and to

ease them into actual practice; and (b) periodic training, which acts as a refresher course.

The training curriculum is designed to include elements of both substantive learning and skill building for the Fellows and is custom-made to equip them to work on cases of undertrial prisoners within the intervention framework of the Programme. The need for developing different skill sets for lawyers and social workers is also factored into the training design. The training design also includes modules on capacity building on the use of computer systems and software along with skills for use of online resources and research databases. In addition to these, adequate orientation on issues of marginalisation and familiarisation with issues faced by specific marginalised groups is also built in as part of the training curriculum.

The induction training is conducted by a panel of experts comprising trial court lawyers, senior lawyers and social work practitioners from Delhi and Maharashtra to reorient the Fellows to principles of criminal law and train them in research, drafting, practice in trial courts and strategies to be adopted in particular scenarios.

The induction training is to be followed up by field placement/orientation to familiarise Fellows with local practices in trial courts and prisons. Fellows under the Programme start with case intake and interventions only after completion of field placement.

The Programme design also includes provisions for periodic refresher trainings which are designed based on the needs of the Fellows.

THE FAIR TRIAL FELLOWSHIP



Providing Quality Legal Representation

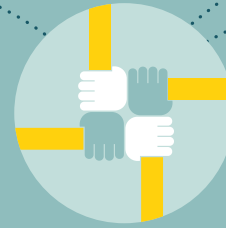
WORK WITH UNDERTRIAL PRISONERS

- 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

These trainings also includes a component where the LFs can discuss their cases and strategies for them. The refresher course would also be open for Panel Advocates.

1.2.3 Combining Legal and Social Work Interventions

The Programme combines legal and social work interventions as part of the overall casework process. Legal representation for undertrial prisoners 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 trial process and divides the work between relevant skill sets.

SWFs make regular prison visits, interact closely with the undertrial prisoners and identify those who need legal representation. They are the link between the undertrial prisoners, their families and other stakeholders for purposes of case updates, bail compliance, mitigation and attending special needs. LFs assist in DLSA and TLSC (collectively LSAs) allocation procedure, case follow-up, legal research, drafting and attending court proceedings.

1.2.4 Support to the LSAs and Panel Lawyers

The LFs follow up on cases of undertrial prisoners who are seeking legal aid through LSAs. The LFs work with LSAs to ensure the

allocation of panel lawyers for applications received from prison immediately. In addition to this, since currently there is no means to ensure the attendance of Panel Advocates in court, the LFs also follow up with the Panel Advocates to appear on designated dates for the matter. LFs also provide additional support on drafting, research, and *mulaqat*¹² with the undertrial prisoners as may be required by the Panel Advocates in the case. The LFs also provide updates to the nodal officer appointed in each prison on the status of cases and orders obtained in cases and where necessary facilitate in obtaining copies of orders passed by courts for the prison concerned. The Programme model does not envisage creating a parallel structure of legal representation but rather focuses on supporting and strengthening existing mechanisms within state legal aid institutions.

1.2.5 Forging Collaborations with State Institutions

A memorandum of understanding (MOU) was executed between APF and the Government of Maharashtra (GoM) on June 28th, 2018, to collaborate towards improving access to justice and legal aid for undertrial prisoners in Maharashtra. Based on the terms of the MoU, the University obtained permissions from the office of the Inspector General of Prisons and Correctional Services, Maharashtra for prison entry of Programme personnel.

Pursuant to the above permission, in Nagpur, both male and female SWFs have access to the

¹² In-prison meeting with the clients by the advocates.

male section and have been given an earmarked space in the open area of the main circle (Badi gol) in the prison to sit and interact with the undertrial prisoners. As regards the women's section in Nagpur Prison, only female SWFs are permitted to enter. In Pune, only male SWFs have access to the male section and female SWFs have access to the female section. Fellows in both cities have access to barracks for case intake.

The University (upon application through National Legal Services Authority) has also received permission from the Hon'ble Member Secretary, Maharashtra State Legal Services Authority (MSLSA) to work in collaboration with DLSAs in Pune and Nagpur vide letter dated April 10th, 2018 for the Programme implementation.

These collaborations with state institutions were crucial for facilitating interventions under the Programme as well as to establish the Programme's credibility as a bona fide partner of the state machinery.

1.2.6 Monitoring and Supervision of Interventions

A Legal Strategy Coordinator (LSC) is appointed in each location to monitor and handhold the activities of both SWFs and LFs on a day-to-day basis and coordinate with various stakeholders.

Coordination for tracking the progress of work done in both locations, achievement of Programme Objectives and overall monitoring of work in both offices in Pune and Nagpur is done by the Programme Director. Review of work and time-to-time course correction, as required, is done in consultation with the Programme Advisor and the Executive Director, Project 39A, who is a full-time faculty member of the University.

For ease of monitoring and coordination, the Programme envisages the following reporting structure for the Programme.



1.2.7 Capacity Building of Panel Advocates and Other Local Lawyers

The Programme design envisages constant engagement with the members of the local bar especially Panel Advocates on issues of criminal law towards capacity building of professionals at the local level. Organising training and consultations on contemporary issues relevant to criminal trials are therefore crucial to achieving the objectives of the Programme. Expertise within the Project 39A team on issues like forensics, mitigation, sentencing and mental health qualitatively contributes towards conceptualising and delivering training programmes at the district level.

Training are held on a regular basis so that the lawyers can gradually become self-reliant, rather than look for other experienced lawyers for assistance. Lawyers identified with the help of the LSAs would also be part of these training as the training will also add to their own approach towards litigation. The training is tailored according to the local conventions and practices of each district and do not follow a one size fits all paradigm.

1.2.8 Research and Documentation

At the initial stages of conception, the Programme faced challenges owing to a lack of baseline data which would aid in assessing needs at the ground level and identifying the most crucial areas for intervention. Most information

on the functioning and challenges within the criminal justice system was anecdotal. Most of these narratives had no empirical basis to support a case for procedural and substantive reforms. Since driving systemic change was a core objective of the Programme, evidence-based research emerged as a crucial element of the Programme design.

The Programme design includes elements of action-oriented research where the information collected in the process of interventions is used for further analysis of issues encountered, formulating case strategies and demonstrating lacunae in the existing framework.

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. Data on the MIS is maintained under three modules for each case i.e. Undertrial Details,¹³ Case Details¹⁴ and Intervention Details¹⁵. For every active case in the Programme, Fellows working on the case are required to regularly update information about the progress and court status of the case, interventions done and any other relevant information which was received subsequent to the intake.

The information documented in the MIS is extracted in the form of reports for assessing the

¹³ Demographic and special needs of the undertrial prisoners are documented under the Undertrial Details module.

¹⁴ Court-record details of the case like case number, relevant sections, court jurisdictions, category of offences etc. are documented under the Case Details module.

¹⁵ The Intervention Details module documents the progress of case and recording of work done.

amount of work done and the outcome/impact of such work. It also provides for information to enable the monitoring of Programmatic work at multiple layers and strategy formulation.

The Programme relies on the MIS to aggregate individual case-level data and provides a macro-level understanding of challenges within the criminal justice and legal aid system. Data from the MIS is also used as the basis of research on substantive issues within the criminal justice system and related it to academic discourses on contemporary issues of criminal law. This ensures that policy prescriptions are backed by empirical evidence.

1.3 ANTICIPATED OUTCOME

- FTF's work will increase the number of undertrial prisoners represented through the DLSA/TLSC. This will indirectly indicate their confidence in the quality of representation provided through DLSA/TLSC.
- Coordination by Fellows will reduce the average time taken for the allocation of Panel Advocates.
- The Programme also anticipates a reduction in the number of undertrial prisoners:
 1. without legal representation/abandoned by the lawyer on record
 2. charged with bailable offences¹⁶
 3. with favourable bail order/eligible for default bail or release under Sec 436A of Criminal Procedure Code (CrPC)¹⁷.
 4. in prison with claims of juvenility or mental illness
 5. pleading guilty during the pendency of the trial
- The Fellowship model will create a cadre of professionals trained to work within the criminal justice system across Maharashtra. These professionals will contribute to improving standards of representation in criminal proceedings within the state.
- Assisting Panel Advocates on case research and legal strategy is an opportunity to engage and introduce jurisprudence on concepts like forensics, medical evidence, mitigation and sentencing, which are usually not appropriately addressed during trials.

¹⁶ 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).

¹⁷ 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.

- This model can be replicated across districts and states towards demonstrating mechanisms for the effective functioning of state legal aid. We imagine that a successful demonstration of this model will nudge the state to adopt this design.

The ultimate beneficiaries of the initiative will be undertrial prisoners in Pune and Nagpur. As our legal intervention will be through the DLSA and the legal aid system, we hope that our assistance will benefit individual Panel Advocates and will be able to illustrate the ideal way legal aid should be modelled. ■

“Providing good quality and competent legal representation to undertrial prisoners at early stages of their trial or the pre-trial stage goes a long way in ensuring their right to fair trial.”

02

**INTERVENTION
MODEL
UNDER THE
PROGRAMME**

“The Programme model works on reaching out to undertrial prisoners seeking legal representation through state legal aid institutions, facilitating the process of providing them legal aid through the LSAs and supporting the Panel Advocates in following up on the cases.”

Keeping in mind the objectives of the Programme, an intervention model under the Programme was designed. This chapter provides the specifics of the intervention model and details the case intake process, the description of services provided by the Programme, the specific roles and responsibilities of the different players in the Programme and the accountability mechanism designed to monitor the interventions under the Programme. For better clarity, the intervention model under the Programme has also been mapped on pages 25-30 of the Report.

2.1 CASE INTAKE PROCESS

The Programme design envisages the process of intervention in individual cases of undertrial prisoners as an opportunity for engaging with various stakeholders 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 the course of working on individual cases. Thus, in addition to the tangible outcome of providing legal support to an undertrial prisoner in need of representation, the intake of cases of undertrial prisoners becomes a crucial function towards ensuring the fulfilment of the broader objectives of the Programme.

The Programme model works on reaching out to undertrial prisoners seeking legal representation through state legal aid institutions, facilitating the process of providing them legal aid through the LSAs and supporting the Panel Advocates in following up on the cases.

2.1.1 Undertrial prisoners in prison

In the context of outreach to undertrial prisoners for providing legal aid, the prison provides the largest pool of clients for outreach and case intake. Thus, regular visits to prison for case intake and providing updates to clients is an essential component of the intervention model. From the Reporting Period, almost 77.29% of the cases with the Programme are received directly from undertrial prisoners.

Case intake and recording of clients' is the primary responsibility of the SWFs. Currently, SWFs in both cities visit the prisons at least thrice a week to interact with the undertrial prisoners, identify undertrial prisoners in need of legal representation, provide them with basic legal information on their case and receive their applications for seeking legal representation through the state legal aid institutions.

Upon approaching the SWF in the prison, the undertrial prisoners are first required to fill in an application format, addressed to the Jail Superintendent seeking support from the Programme. SWFs assist the undertrial prisoners in filling up this application. This application (FTF Application)¹⁸ serves as the primary document indicating engagement of the Programme's services by the undertrial prisoner through the prison authorities. For programmatic purposes, an undertrial prisoner submitting the FTF Application is considered a client of the Programme ("FTF Client"). At this stage of intake and receiving the FTF application, the SWFs interact with the FTF Client to obtain case history in the Facesheet¹⁹.

¹⁸ Please refer to Annexure A. ¹⁹ Please refer to Annexure B.

They assess the needs (including special needs like juvenility claims, need for mental health services etc.) of the undertrial prisoner and the nature of services that they may require from the Programme and/or the state legal aid institutions. Since the focus of the Programme is to cater to undertrial prisoners seeking legal representation through the state legal aid system, in most cases, the application seeking services of a lawyer through the DLSA/TLSC (Legal Aid Application²⁰) is also taken from the FTF Client at the stage of intake. In addition to the direct interaction with the clients, the process of obtaining case history also involves review of the Undertrial Register²¹ in the judicial section of the prison by the SWF to collate as well as cross-verify information provided by the client. Moreover, the LF conducts an independent online and physical search of case records in the court concerned to ascertain the current stage and bail status of the case and to check whether the undertrial is already being represented by another lawyer.

2.1.2 Case Referrals from Other Sources

In addition to the case intake in prison, the Programme receives cases from sources other than prisons. These include cases assigned to Fellows in courts directly by judges, cases referred to the Programme by the LSA member secretaries, by Panel Advocates seeking the assistance of the Fellows and by other organisations working in prisons.

Programmatically, an increase in the number of referrals of cases from the above sources is an indicator of the growing visibility of the Programme and the acceptance of the services provided under the Programme by the stakeholders.

In all the above scenarios, the Fellows are usually provided with basic case details in the matter. Based on these details, the SWF identifies the concerned undertrial prisoner in the prison, reaches out to them to introduce the Programme and its services and initiates the process of intake as mentioned in point 2.1 above. This is followed up with a *mulaqat* by the LF allocated on the matter either in court or in the prison. The process of first communication between the undertrial and the Fellows is an integral part of the intervention design in the Programme and is not merely to identify new cases. This ensures the client's 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.

2.1.3 Outreach outside prison through community-based organisations

Another important source of case intake for undertrial prisoners is to identify communities/localities with high criminalisation of population like commercial sex workers²², Notified and De-notified tribe (NT&DNT)²³ and to reach out to community-based organisations working with

²⁰ Please refer to Annexure C. ²¹ A register maintained in the judicial section of the prison.

²² Aarshi Pai, Laxmi Murthy and Meena Saraswati Seshu, In Its Haste To Rescue Sex Workers, Anti-Trafficking Is Increasing Their Vulnerability, Economic and Political Weekly Volume 53, Issue 28 (Jul. 14, 2018), <https://www.epw.in/node/152222/pdf>.

²³ National Commission for Denotified and Semi-Nomadic Tribes, Genesis of Criminal Tribes- Criminal Acts, Policies and Beyond (2017) <https://socialjustice.gov.in/writereaddata/UploadFile/ldate%20Commission.pdf>; Criminal Justice and Police Accountability Project, Drunk on Power: Excise Policing in Madhya Pradesh (Aug. 14, 2021), <https://cpaproject.in/wp-content/uploads/2021/08/Drunk-on-Power-A-study-of-Excise-Policing-in-Madhya-Pradesh-CPA-Project-14-Aug-2021-1.pdf> (While there is no national level disaggregated data on de-notified tribes to establish excessive criminality, the report by National Commission for De-notified and Semi-Nomadic Tribes traces the history of 'criminality' of the De-notified tribes and the report by Criminal Justice and Police Accountability Project establishes that there is over-representation of de-notified tribes in the total number of arrested people under the excise laws of Madhya Pradesh.)

such groups to receive cases of persons from such groups currently in custody as undertrial prisoners. However, during the Reporting Period, intake through the community had not yet been started.

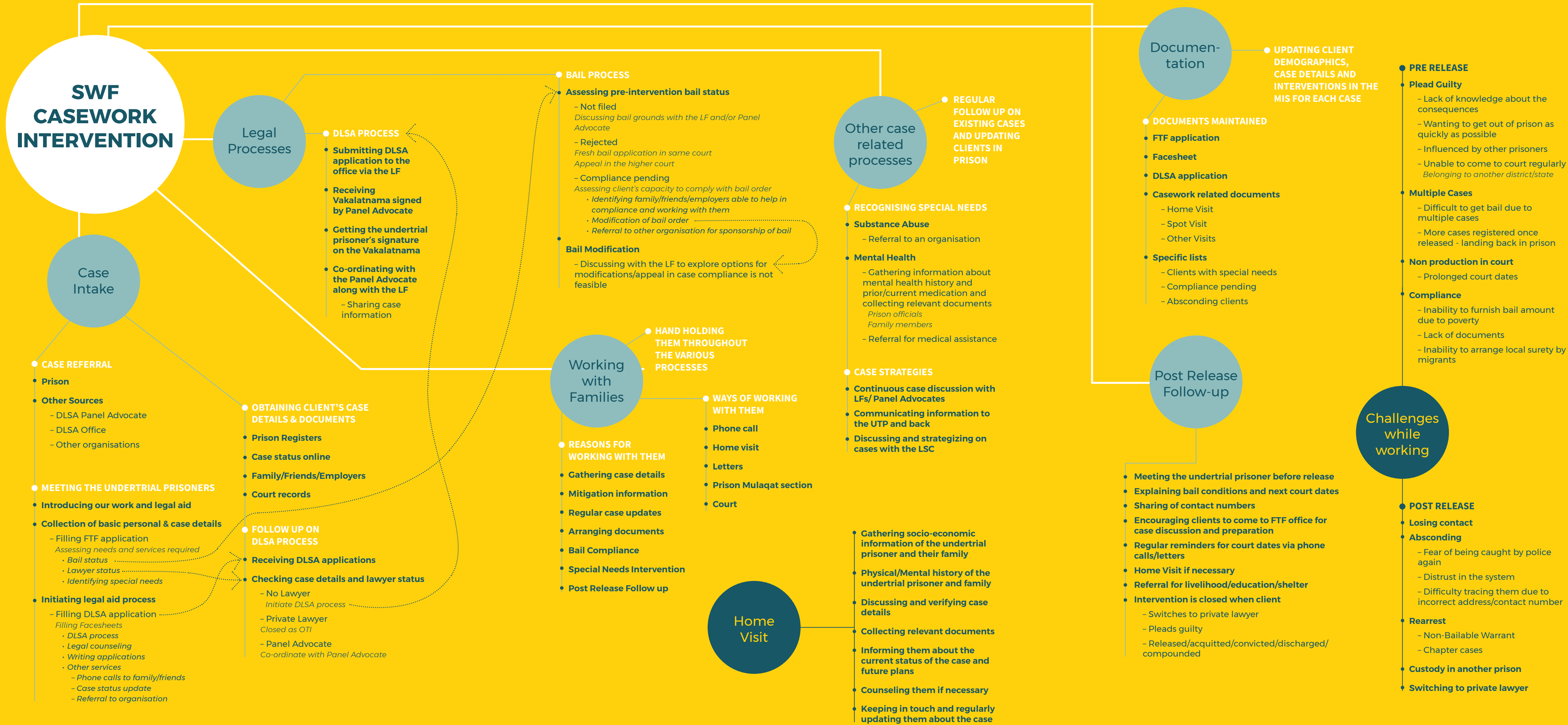
2.2 DESCRIPTION OF SERVICES

Once the intake process is completed, Fellows follow up on the allocation of Panel Advocates and start working on the case as per the needs of the FTF Client and the requirements in the case. Fellows are involved in providing assistance at both the pre-trial and trial stages of the case and in some cases continue to support the FTF Client post-release on bail or acquittal. The cases wherein legal services are provided by the DLSA are termed as “Detailed Intervention” and those where the client either does not want the same or drops out prior to the vakalatnama being filed in the court or any legal steps being taken in the court are considered as “One Time Intervention (OTIs)”. Fellows also provide one-time support to FTF Clients who want to continue with private lawyers. Throughout this process, the Fellows, both the SWFs as well as LFs, continuously reach out to the clients in the prison and the court as well as their families, update and explain the legal steps being taken and keep them apprised of the developments in the case and the stage of proceedings. 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 court.

2.2.1 Support for allocation of Panel Advocate

Coordination for the allocation of Panel Advocates involves regular following up with the DLSA/ TLSC office. After the Fellows ascertain that the FTF Client does not have a lawyer representing them as per court records, the Legal Aid Application is forwarded to the DLSA/TLSC concerned for the appointment of a Panel Advocate. The LF allocated to the case coordinates with the DLSA/TLSC office for the process of allocation of Panel Advocate to the FTF Client and works to ensure that the allocations are done as earliest as possible.

In case the records indicate that the FTF Client is already being represented by another Panel Advocate/ private lawyer, the FTF Client is given an update on the case status and asked if they want to change the lawyer. If the FTF Client wants to change the lawyer, their application is forwarded to the DLSA/TLSC concerned. Where FTF Clients choose to continue with the existing lawyer, the LFs reach out and offer assistance to the Panel Advocate appointed in the case. For cases with existing private lawyers, the SWFs reach out to the private lawyer and communicate any request about the case made by the FTF Clients. Once these processes are completed, the LF reaches out to the FTF Client in person either through a *mulaqat* in prison or in court to introduce themselves and provide updates on the matter.



SWF CASEWORK INTERVENTION

Case Intake

- CASE REFERRAL
 - Prison
 - Other Sources
 - DLSA Panel Advocate
 - DLSA Office
 - Other organisations

- MEETING THE UNDERTRIAL PRISONERS
 - Introducing our work and legal aid
 - Collection of basic personal & case details
 - Filling FTF application
 - Assessing needs and services required
 - Bail status
 - Lawyer status
 - Identifying special needs

- Initiating legal aid process
 - Filling DLSA application
 - Filling Facesheets
 - DLSA process
 - Legal counseling
 - Writing applications
 - Other services
 - Phone calls to family/friends
 - Case status update
 - Referral to organisation

- OBTAINING CLIENT'S CASE DETAILS & DOCUMENTS
 - Prison Registers
 - Case status online
 - Family/Friends/Employers
 - Court records

- FOLLOW UP ON DLSA PROCESS
 - Receiving DLSA applications
 - Checking case details and lawyer status
 - No Lawyer
 - Initiate DLSA process
 - Private Lawyer
 - Closed as OTI
 - Panel Advocate
 - Co-ordinate with Panel Advocate

Legal Processes

- DLSA PROCESS
 - Submitting DLSA application to the office via the LF
 - Receiving Vakalatnama signed by Panel Advocate
 - Getting the undertrial prisoner's signature on the Vakalatnama
 - Co-ordinating with the Panel Advocate along with the LF
 - Sharing case information

Working with Families

- REASONS FOR WORKING WITH THEM
 - Gathering case details
 - Mitigation information
 - Regular case updates
 - Arranging documents
 - Bail Compliance
 - Special Needs Intervention
 - Post Release Follow up

HAND HOLDING THEM THROUGHOUT THE VARIOUS PROCESSES

- BAIL PROCESS
 - Assessing pre-intervention bail status
 - Not filed
 - Discussing bail grounds with the LF and/or Panel Advocate
 - Rejected
 - Fresh bail application in same court
 - Appeal in the higher court
 - Compliance pending
 - Assessing client's capacity to comply with bail order
 - Identifying family/friends/employers able to help in compliance and working with them
 - Modification of bail order
 - Referral to other organisation for sponsorship of bail
 - Bail Modification
 - Discussing with the LF to explore options for modifications/appeal in case compliance is not feasible

Home Visit

- Gathering socio-economic information of the undertrial prisoner and their family
- Physical/Mental history of the undertrial prisoner and family
- Discussing and verifying case details
- Collecting relevant documents
- Informing them about the current status of the case and future plans
- Counseling them if necessary
- Keeping in touch and regularly updating them about the case

- WAYS OF WORKING WITH THEM
 - Phone call
 - Home visit
 - Letters
 - Prison Mulaqat section
 - Court

Other case related processes

- REGULAR FOLLOW UP ON EXISTING CASES AND UPDATING CLIENTS IN PRISON
- RECOGNISING SPECIAL NEEDS
 - Substance Abuse
 - Referral to an organisation
 - Mental Health
 - Gathering information about mental health history and prior/current medication and collecting relevant documents
 - Prison officials
 - Family members
 - Referral for medical assistance
- CASE STRATEGIES
 - Continuous case discussion with LFs/ Panel Advocates
 - Communicating information to the UTP and back
 - Discussing and strategizing on cases with the LSC

Documentation

- UPDATING CLIENT DEMOGRAPHICS, CASE DETAILS AND INTERVENTIONS IN THE MIS FOR EACH CASE
- DOCUMENTS MAINTAINED
 - FTF application
 - Facesheet
 - DLSA application
 - Casework related documents
 - Home Visit
 - Spot Visit
 - Other Visits
 - Specific lists
 - Clients with special needs
 - Compliance pending
 - Absconding clients

Post Release Follow-up

- Meeting the undertrial prisoner before release
- Explaining bail conditions and next court dates
- Sharing of contact numbers
- Encouraging clients to come to FTF office for case discussion and preparation
- Regular reminders for court dates via phone calls/letters
- Home Visit if necessary
- Referral for livelihood/education/shelter
- Intervention is closed when client
 - Switches to private lawyer
 - Pleads guilty
 - Released/acquitted/convicted/discharged/compounded

Challenges while working

- PRE RELEASE
 - Plead Guilty
 - Lack of knowledge about the consequences
 - Wanting to get out of prison as quickly as possible
 - Influenced by other prisoners
 - Unable to come to court regularly
 - Belonging to another district/state
 - Multiple Cases
 - Difficult to get bail due to multiple cases
 - More cases registered once released - landing back in prison
 - Non production in court
 - Prolonged court dates
 - Compliance
 - Inability to furnish bail amount due to poverty
 - Lack of documents
 - Inability to arrange local surety by migrants
- POST RELEASE
 - Losing contact
 - Absconding
 - Fear of being caught by police again
 - Distrust in the system
 - Difficulty tracing them due to incorrect address/contact number
 - Rearrest
 - Non-Bailable Warrant
 - Chapter cases
 - Custody in another prison
 - Switching to private lawyer

LF CASEWORK INTERVENTION

Case Intake

Legal Processes

Other case related processes

Documentation

Post Release follow up

- CASE REFERRAL**
 - Prison
 - Via SWF
after being allocated by LSC
 - Other sources
 - Sitting Judge
 - Panel Advocate
 - DLSA office

Informing the LSC and asking SWFs to get DLSA applications in case of no lawyer

- INITIATING LEGAL AID PROCESS**
- OBTAINING CLIENT'S CASE DETAILS AND DOCUMENTS**
 - Talking to the SWFs
 - Case status online
 - Court records

- FOLLOW UP ON DLSA PROCESS**
 - Receiving DLSA application
 - Checking case details and lawyer status
 - No lawyer
Initiate DLSA process
 - Private lawyer
Closed as OTI
 - Panel Advocate
Co-ordinate with DLSA process
Panel Advocate not wanting to continue
- Change of Panel Advocate

- DLSA PROCESS**
 - Submitting DLSA application in the DLSA office
 - Collecting DLSA order after appointment of lawyer
 - Contacting the Panel Advocate to give them case details
 - Getting the *vakalatnama* signed by the Panel Advocate and giving to the SWF to get the undertrial prisoner's signature
 - Filing *vakalatnama* in court

- BAIL PROCESS**
 - Assessing pre-intervention bail status
 - Not filed
Discuss bail grounds with Panel Advocate and SWF
Draft bail application and discuss with LSC and SWF
 - Rejected
Strategising further steps with the LSC and Panel Advocate
Fresh bail application in same court post chargesheet
Appeal in the higher court
 - Compliance pending
Assessing client's capacity to comply with bail order
 - Identifying family/ friends/ employers able to help in compliance and working with them via SWF
 - Modification of bail order
 - Referral to other organisation for sponsorship of bail themselves via SWF
 - Proceeding with trial

- Bail Modification**
 - Exploring options with the SWF for modification/appeal in case compliance is not feasible

- STUDYING THE CHARGESHEET**
 - Studying the chargesheet and discussing with the Panel Advocate, LSC and SWF
 - Where no case is made out against the client, move for discharge
 - Where case is made out, prepare for trial

- TRIAL PROCESS**
 - Preparing a fact sheet
 - Preparing for cross examination with the Panel Advocate
 - Research and study case laws related to the case
 - Talking to the client and SWF for further inputs
 - Undertaking spot visit, if required
 - Filing appropriate applications on behalf of the client including expedition, production and exemption as required
 - Appearing and assisting in the trial
 - Preparing the accused for statement u/s 313 Cr. PC
 - Preparing arguments

- JAIL COURTS**
 - Takes place once a week besides the prison premises
 - Referred cases by the judge coming there
 - Getting client's DLSA application filled
 - Conducting bail hearings then and there
 - Following up on compliance/probation

- CASE STRATEGIES**
 - Discussing minute facts of the case along with relevant laws and legal definitions with the LSC and fellow LFs
 - Talking to various experts in the field and strategizing with the SWF and LSC while dealing with special needs cases such as mental health, disability, suspected juvenility

- GOING FOR HOME VISITS WITH THE SWFs**

- REGULAR CASE UPDATES TO THE SWFs TO INFORM THE UNDERTRIAL PRISONERS**

- MEETING THE UNDERTRIAL PRISONERS IN PRISON**
 - Direct Barrack visit
 - Mulaqat section

- DOCUMENTS MAINTAINED**
 - DLSA order
 - Photocopy of Vakalatnama
 - Copy of Bail application
 - Chargesheet
 - Copy of FIR
 - Copy of client's identity documents
 - Other medical documents
 - List of bails and modifications filed
- UPDATING CLIENT DEMOGRAPHICS, CASE DETAILS AND INTERVENTIONS IN THE MIS FOR EACH CASE**

- UPDATING CLIENTS ABOUT BAIL CONDITIONS AND NEXT COURT DATES DIRECTLY OR VIA SWF**
- SHARING OF CONTACT NUMBERS**
- REGULAR CONTACT WITH THE CLIENT IN OFFICE, COURT OR VIA PHONE**
- INTERVENTION IS CLOSED WHEN CLIENT**
 - Switches to private lawyer
 - Pleads guilty
 - Released/acquitted/convicted/discharged/compounded

Challenges while working

- PRE RELEASE**
 - Plead Guilty
 - Multiple Cases
 - Difficult to get bail due to multiple cases
 - More cases registered once released - landing back in prison
 - Compliance
 - Inability to furnish bail amount due to poverty
 - Lack of documents
 - Inability to arrange local surety by migrants

- OTHER**
 - Panel Advocate not co-operative
 - Client not traceable after release on bail
 - Client's failure to disclose material facts
 - Family members not cooperative

- POST RELEASE**
 - Losing contact
 - Absconding
 - Fear of being caught by police again
 - Distrust in the system
 - Difficulty tracing them due to incorrect address/contact number
 - Rearrest
 - Non-Bailable Warrant
 - Chapter cases
 - Custody in another prison
 - Switching to private lawyer

2.1.1 Assistance at the Pre-Trial Stage

The intervention model places substantial emphasis on providing support for undertrial prisoners' bail related needs. This approach was further validated with the experience from the Reporting Period. The nature of assistance provided in bail matters includes drafting and filing of fresh bail applications, applications for modification of bail conditions²⁴, discharge applications and other applications in court. It further includes appearance and arguments in court for hearing on such applications, research on case laws for use in arguments, providing support to the FTF Client for compliance of bail conditions both through family and bail sponsors²⁵ and providing support in writing applications and submitting directly to court/prison/any other authorities (e.g. application for release on PR Bond²⁶).

The SWFs also undertake home visits and build linkages with the family of the undertrial prisoners for issues relating to the court case like supporting in compliance of bail conditions, arranging document for age proof/identity proof, identifying issues regarding the undertrial's socio-economic status which may be relevant to point out to the court etc.

2.1.2 Assistance in Criminal Trial

Fellows are involved in assisting the Panel Advocate during the trial of cases. The nature

of assistance provided includes attending court dates, assistance in the recording of evidence and cross-examination during the trial, supporting the FTF Client in preparing for the recording of statement under Section 313 of the CrPC (Power to examine the accused), taking notes of the proceedings and preparing written arguments, researching on points of law relevant to the trial process and briefing the legal aid lawyer, assistance in preparing arguments of sentencing and collating mitigating circumstances for reduction of sentence. Fellows also counsel clients on the importance of undergoing the trial process and not pleading guilty. It is particularly important because some clients are advised by the jail authorities or judges to do so as a means of early release. This is especially the case with outstation clients, those unable to avail of bail and those with multiple petty cases. In such a situation, the legal and socio-economic repercussions of pleading guilty are explained to the clients by the LFs and SFWs.

Socio-Legal Counselling

Socio-legal counselling is done by the SWFs to identify and assess the socio-psychological needs of the clients and utilise such factors in providing legal solutions to the clients. It also entails briefing the clients on the nuances of the legal proceedings in a language that could be easily understood by the clients.

SWFs, being the primary interface between the

²⁴ Applications moved before the court to alter the original conditions of bail imposed by the court due to the applicant's inability to comply with bail conditions. Such applications usually seek more lenient conditions such as reduction in the amount of cash required to be furnished or seeking release on personal bond or reducing the number of persons required to stand surety.

²⁵ The Programme reaches out to organisations that could provide monetary assistance to the clients in complying with the conditions of the bail.

²⁶ PR Bond stands for Personal Recognizance Bond. In the PR Bond, the subject who is arrested/detained is released on his 'personal promise' of complying with any conditions which the court may impose.

client and the Programme, play a key role in communicating the client's version of the series of events leading up to their arrest and their expectations /the desired outcome from the Programme. The SWFs ensure that the court strategy in each case is allied with the client's expectations and realities. To this end, the SWFs engage in periodic discussions on case strategy with the LFs and the Panel Advocates and communicate all information obtained in the case from the client as well as from other sources like records in prison registers, medical records, family members, employers etc. which may be used in building defence strategy and/or mitigation.

SWFs also provide regular updates to FTF Clients on the progress of their cases. For this purpose, SWFs identify all cases where there may have been progress in the case either relating to the DLSA process, bail process and/or trial process, prior to every prison visit. Information related to progress on referrals to other organisations and any other support within the scope of the Programme, especially related to special needs of the undertrial also needs to be provided regularly to the client concerned. During the prison visit, SWFs call out for clients to whom the updates need to be provided and speak to them. In addition to regular updates on progress, SWFs are also required to provide periodic updates to clients whose cases have remained inactive for long durations and discuss the probable course of the case to ensure continued engagement and flow of information to such clients.

2.2.5 Working with Families (Home Visits/Phone Calls/Meetings with Families)

The families of undertrial prisoners are an important point of intervention. An important piece of information elicited at the time of intake is whether the client is in touch with the family. If so, the name, address and contact details of the members of the family with whom the client is in touch with are noted by the SWFs. Even in cases where the client is not in touch with the family, SWFs note down the details including the phone number and address of the key family members and attempt to contact them.

The family is an important source of information, including documentation, which is required for bail compliance. The family is also able to provide information which might be crucial for the defence including providing facts of the case and circumstances peculiar to the client. Therefore, the SWFs make home visits to the family of the client where they are within travelling distance and where a home visit is not possible, the SWF is in contact with the family through phone or letters. Where the SWF does not have the address or phone number of the family members, attempts are made to contact them through the Panchayat of the concerned village.

SWFs have in-depth and extensive multiple conversations with the key members of the family of the client and information regarding the background, education, employment,

relationships, special habits and needs, past history of criminal record and other issues specific to the client is discussed. The SWF accompanies the LF or interviews the family members after extensive discussions with the LF regarding issues where information is required for case preparation and trial.

The family is also important in compliance with bail as a family member can arrange for surety or cash. After the release of the client, the family is a point of contact with the client in cases where the client is not in direct contact with the SWF. Even in cases where the family is not in contact with the client, the SWF acts as a bridge between the two and persuades them to visit the client in prison and provide assistance to the client in securing their release and providing shelter and succour after their release.

In some cases, the client is supported by a friend or well-wisher who is in contact with them while in prison. The SWF notes the details of any such person who provides financial, emotional and other support to the client and contacts them for further intervention including getting documents and for assistance in bail or after the release of the client.

Another crucial role that the family plays is at times when a family member is a victim of the crime allegedly committed by the client. In such cases where the family is hostile, the SWF has to handle the situation with extreme sensitivity. The SWF tries and identifies the members who would be sympathetic to the client and provide them

with assistance. The SWF needs to keep in mind the nature of the offence that has been committed before deciding the nature of intervention with the family. In such cases, intervention with the family is done after a detailed discussion with the LSC and the LF.

2.2.6 Post-Release Follow Up

The Fellows continue to engage with the FTF Clients post-release, specifically in cases where the Client has been released on bail. At the time of release, at least one of the Fellows on the case meets the Client to explain the concept of release on bail (as against the concept of acquittal), the necessity of the Client's presence for all court hearings during the pendency of the trial, the consequences of non-appearance and the possibility of the court issuing a non-bailable warrant in case of their absence on court dates. This is followed up by trying to establish a means of communication with the client post their release from prison. The Fellow takes the clients' contact details and passes on their contact details to be able to create a two-way communication channel for case updates and follow-up. However, given the socio-economic profile of the clients under the Programme, a considerable number of Clients do not have access to phones for connectivity. In such cases, the SWF has to rely on home visits for local clients and writing letters/postcards for outstation clients to stay in touch with them.

In addition to post-release work relating to appearance in courts, Fellows also identify the needs of the Client at release and may refer them

to other organisations for continued support services like shelter, transport to home, training for livelihood, de-addiction, mental health services etc. to work towards ensuring that the Client does not end up getting pulled in a cycle of criminalisation.

2.2.7 One Time Intervention

As mentioned above, Fellows currently do not provide legal support to undertrial prisoners with private lawyers and work done in such cases is considered as OTI. However, as mentioned above, both LFs and SWFs may in some cases provide socio-legal support to Clients who have engaged private lawyers for legal representation, such services may include:

- Providing basic legal /procedural information to undertrial prisoners;
- Contacting family of undertrial prisoners (for reasons other than in connection with legal intervention);
- Contacting private lawyers and providing case updates;
- Financial/Medical/Livelihood/Family Related Help;
- Any other request for which referral is made to Tata Trust social workers/another organization;
- Providing support to undertrial in writing application for release on PR Bond;
- Referral to other organisations for sponsorship on bail.

However, in some cases it is possible that undertrial prisoners with private lawyers may

gradually choose to switch to services from the DLSA and at such stage, the OTI will be treated as a full case.

Providing support for OTIs to undertrial prisoners was included in the Programme Design primarily with the motive of increasing the Programme's visibility and referrals amongst undertrial prisoners. However, since the Programme received a fairly high number of applications for Detailed Interventions even in the initial months, responding to OTIs became a challenge for the Fellows. Given the high caseload and the need for intensive interventions in the Detailed Interventions, applications for OTIs barring a few exceptions have been discontinued from October 2019 to enable the SWFs to concentrate on Detailed Interventions.

2.3 ROLE OF THE SWFS AND THE LFS

The LFs are responsible for providing assistance in case follow-up, legal research and drafting to the Panel Advocate leading the case, while the SWFs focus on non-legal but equally crucial socio-legal interventions with families of undertrial prisoners and other stakeholders. A combination of lawyers as well as social workers in the Programme design helps in adopting a balanced and holistic approach to cases and neatly divides the work between relevant skill sets. The broad responsibilities of the Fellows are set out below:

2.3.1 Responsibilities of LFs

- Identifying persons needing legal aid at the stage of remand/ first production and providing necessary legal representation to such persons, as may be required
- Visiting prison with the jail visiting lawyers (JVLs) and providing legal counselling to undertrial prisoners requiring legal aid.
- Coordinating with LSA and authorities from Prison Department to ensure allocation of Panel Advocates for undertrial prisoners who do not have any legal representation.
- Briefing and assisting Panel Advocates assigned to a case during court hearings at both pre-trial and trial stages.
- Regular prison visits to seek instructions from undertrial clients on behalf of the Panel Advocates
- Reviewing documents brought on record in a case, providing research inputs and devising legal strategy in consultation with the Panel Advocate concerned.
- Assisting the Panel Advocate in drafting legal documents to be submitted at both the pre-trial and trial stages.
- Following-up ongoing cases in court and updating the client (undertrial) and/or the family members concerned
- Regularly communicating with prison authorities to obtain case-specific information and documents.
- Preparing the client for the recording of the statement under Section 313 of Cr.PC and where required, leading defence evidence.
- Preparing written arguments based on the evidence for the final submissions before the court.

2.3.1 Responsibilities of SWFs

- Visiting the prisons, interacting with undertrial prisoners, identifying individuals who need legal aid from the LSA and supporting them in writing applications to LSA.
- Identifying undertrial prisoners entitled to bail/early release and referring such cases to the LSA and the prison authorities.
- Socio-legal casework interventions and handholding undertrial prisoners through the legal proceedings at both pre-trial and trial stages.
- Home visits and working with families of undertrial prisoners in gathering information/documents relevant to their case.
- Coordinating with other authorities, if required, for gathering relevant documents like age proof, address proof, medical certificates etc.
- Identifying special needs of undertrial prisoners including pregnancy, claims for juvenility, disability, terminal illnesses, mental health issues etc.
- Travelling as required to meet and communicate with family members of undertrial prisoners and other persons who may have oral and documentary information relevant to the mitigation of the prisoners, using the tools and techniques for communication and obtaining information devised.
- Coordinating with LFs and providing relevant socio-legal inputs in individual cases.

2.4 ROLE OF THE LSCs AND MONITORING OF WORK

The LSC in each location are responsible for monitoring and handholding the activities of both SWFs and LFs on a day-to-day basis and monitoring the progress of individual cases assigned to LFs. In addition, they also play the role of a mentor to the Fellows and guide them in developing and implementing strategies for cases of undertrial prisoners. The LSC is also the local point of contact for coordinating and liaising with DLSAs, Panel Advocates, prison authorities, the police system, criminal law experts and other stakeholders to ensure effective implementation of the Programme.

The responsibilities of the LSC include:

- Developing and implementing litigation strategies for cases of undertrial prisoners and coordinating the work of the LFs in each office.
- Reviewing the progress of individual cases assigned to LFs in the respective offices.
- Coordinating and liaising with DLSAs, Panel Advocates, prison authorities, police system, criminal law experts and other stakeholders to ensure effective implementation of the programme.
- Coordinating in their respective city, a 'needs assessment' research in the prison for planning and designing strategies for programme implementation.
- Managing the overall functioning, administration and coordination of the City Office.

- Writing reports and compiling data extensively, as may be required of programme documentation, monitoring and evaluation.
- Assisting the programme team in any other work that may be required for effective programme implementation.

The Programme Director is responsible for the overall progress of the work in both locations and the achievement of the Programme objectives and oversees the overall administration of the programme including coordination between two offices in Pune and Nagpur. Review of work and time-to-time course correction, as required will be done in consultation with the Executive Director, Project 39A.

Accordingly, the following reporting mechanisms are envisaged:

- Daily recording of work and details of cases will be done by each fellow which will be compiled into monthly reports and submitted to the LSC and the Programme Director. This information will be maintained in soft copy on the MIS and hard copy as well, and will be capable of further use as data.
- LSC to generate monthly reports for the respective location based on reports submitted by the Fellows.
- Monthly reports may be shared with Member Secretary DLSA and Prison Superintendent to indicate the progress of work. Prison authorities may nominate an officer of the rank of Senior Jailor as the

nodal officer who may be reported to with the progress of work of the Fellows and any hurdles faced.

- Programme Director to review monthly reports, assess progress and need for course corrections, report hurdles to prison and DLSA authorities, liaise with stakeholders and capacity building of Fellows. Actions in this regard are to be taken in consultation with the Executive Director.
- Six monthly reports to be prepared based on the above reflecting progress of work and fulfilment of Programme Objectives are submitted to the funding agency i.e. Azim Premji Foundation (APF).
- In addition to the above, the interventions of FTF will also fall under the monitoring mechanism envisaged for the larger APF programme under the terms of the MOU between GoM and APF dated June 28th, 2018. ■

The Programme design envisages the process of intervention in individual cases of undertrial prisoners as an opportunity for engaging with various stakeholders 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 the course of working on individual cases. Thus, in addition to the tangible outcome of providing legal support to an undertrial prisoner in need of representation, the intake of cases of undertrial prisoners becomes a crucial function towards ensuring the fulfilment of the broader objectives of the Programme.

03

OVERVIEW OF CASES

During the Reporting Period, the Programme's services were **accessed by 2313 undertrial prisoners which translated into 2915 cases**. A maximum number of these cases (77.29 %) were received directly from the undertrial prisoners in prison and prison emerged as the primary location for case intake.

The Programme had started interventions on the premise that utilisation of legal aid services in prison was low despite access to legal services due to the prevalent perception that legal representation through LSAs was of poor quality and ineffective. It was assumed that seeking legal representation through LSAs was not a preferred choice for undertrial prisoners. However, the **Programme received a high number of applications right from the initial stages of intervention**.

While there is no baseline data to gauge the increase in utilisation of legal aid services through the Programme's interventions, high demand for the Programme's services right from the inception indicate that there is **scope to improve access and utilisation of legal aid** by streamlining existing procedures of the LSAs.

21% of undertrial prisoners 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**.

The cases received under the Programme are spread across **72 police stations in the Pune district and 64 police stations in Nagpur**. Fellows under the Programme **worked directly with TLSCs and Panel Advocates in 10 talukas in Pune and 12 talukas in Nagpur**.

The **direct points of access to legal aid in prisons are limited only to JVLs/ PLVs working within the municipal limits of the city where the prison is located.** Thus, undertrial prisoners 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).

Majority of the cases under the Programme were petty offences but non-bailable in nature. In terms of specific categories, cases of theft constituted the highest proportion.

In **44% of cases, clients who approached FTF had no lawyer at the time of intake.** In many cases, lawyers were appointed only for representation during the first production and did not continue with the case thereafter. Interactions with the 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 the first production in courts. **35% of the clients who approached the Programme had a private lawyer at the stage of intake** but sought the appointment of a Panel Advocate for their case.

Data on bail needs at intake indicated a strong need for bail-related services **i.e. support for filing of bail in 61.65% of cases and compliance of bail in 24.32% of cases.** Figures on cases with bail compliance pending, correlated with the demographics of clients, also point to the inherent discrimination in the bail system against persons with socio-economic marginalisation.

At the stage of intake in the Programme, **over 80.93% of cases were at the pre-trial stage,** i.e. framing of charges was not complete in the cases.

The intervention under the Programme started on December 10th, 2018. However, the initial few weeks were spent in making space within the prison and the administrative structures of DLSA, and a regular flow of cases commenced only in January 2019.

As work commenced, Fellows simultaneously documented information collected as part of casework. The data used in this report is the information documented in the customised MIS by the Fellows and corresponds to the Reporting Period.

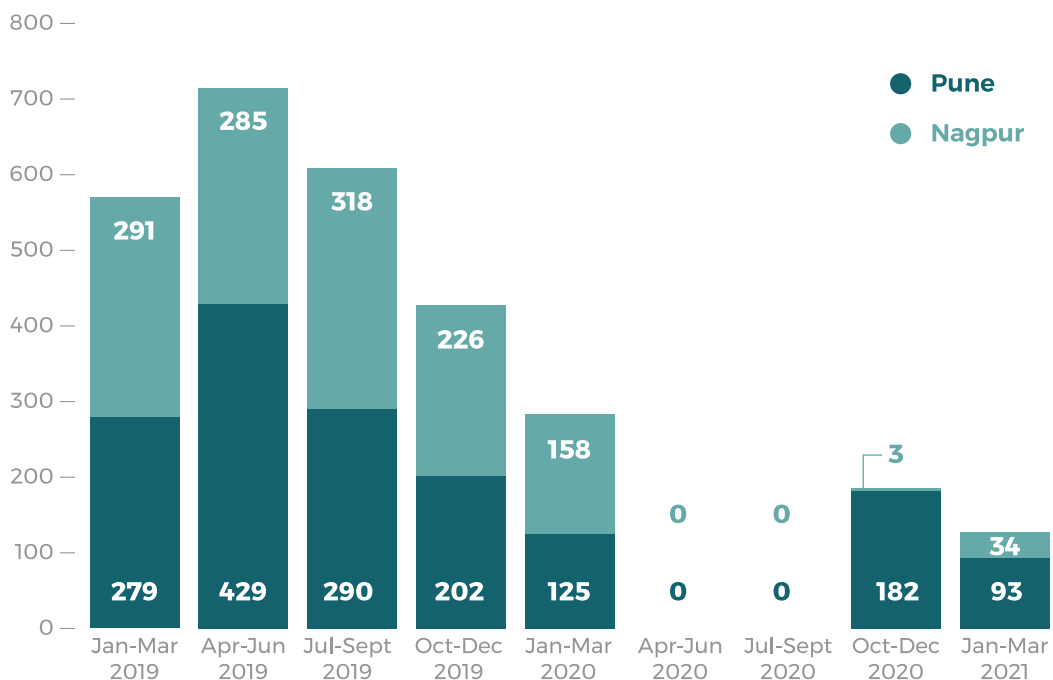
This chapter sets out an analysis of the profile and trend of cases received under the Programme, sources of case intake, the geographical spread of the Programme’s work, and client’s needs at intake.

3.1 CASES RECEIVED UNDER THE PROGRAMME

The legal framework within the NALSA provides for access to legal aid at multiple stages (i.e. police stations, remand court, prison and by family/community members through front office of LSAs). The Programme had started interventions on the premise that utilisation of legal aid services in prison was low despite access to legal services due to the prevalent perception that legal representation through the LSA was of poor quality and ineffective.²⁷ It was assumed that seeking legal representation through LSAs was not a preferred choice for undertrial prisoners.

However, the Programme received a high number of applications right from the initial

CHART 3.1 QUARTERLY CASE INTAKE (N=1295)



²⁷ Anup Surendranath and Gale Andrew, State legal aid and undertrial prisoners: are there no takers?, Indian Law Review; can be accessed at <https://www.project39a.com/op-eds/contradictions-of-the-penal-system-and-pains-of-imprisonment-new-evidence-from-india-cjznw-79d5d>.

stages of intervention. 279 cases in Pune and 291 cases in Nagpur were received in the first quarter i.e. January to March 2019 of intervention. Out of these, 149 cases from Pune and 143 cases from Nagpur continued as Detailed Intervention cases.

This trend clearly established a demand for legal services inside prison. The Programme had high numbers of intakes despite regular case intakes from prison by JVLs and para-legal volunteers (PLVs) of the LSAs.

Between January 2019 to March 2020 (pre-pandemic), the Programme received 2603 applications and a further 312 applications since the beginning of the pandemic (a total of 2915). Out of these, 2100 applications sought legal representation through the respective LSAs at the time of intake.

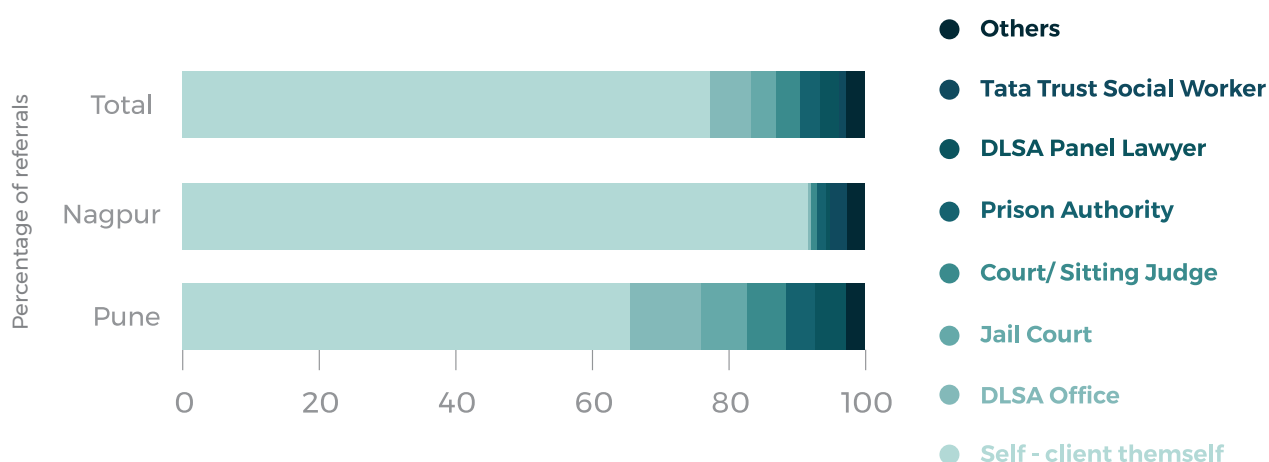
It was understood that the initial phase of the Programme would have to focus on increasing outreach to prisoners and demonstrating outcomes in cases to be able to increase outreach through word-of-mouth referrals. The Programme's experience with case intakes indicated otherwise as the data in the chapter would establish that there was a clear demand for access to legal services inside prison. During the Reporting Period, the Programme's services were accessed by 2313 undertrial prisoners which translated into 2915 cases.

3.1.1 Source of Referrals

Since prisons were the primary location for intervention under the Programme, the largest segment of cases under the Programme was where undertrial prisoners directly approached the SWF sitting inside the prison barracks. As mentioned above, the Programme had started on the assumption that it would have to rely on other sources for referral of cases and that undertrial prisoners would start approaching the Programme gradually, only once outcomes and responsiveness were demonstrated.

However, SWFs were approached directly by undertrial prisoners right from the initial days of intervention. In January 2019, undertrial prisoners directly approached the Fellows in prison for assistance in 113 out of 129 cases received in Pune and 128 out of 135 cases received in Nagpur.

Overall, during the Reporting Period, a 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.

CHART 3.2 CASE REFERRALS (N=2915)

Column1	Self - client themselves	DLSA Office	Jail Court	Court/Sitting Judge	Prison Authority	DLSA Panel Lawyer	Tata Trust Social Worker	Others
Total	77.29%	5.90%	3.70%	3.57%	2.92%	2.71%	1.17%	2.74%
Nagpur	91.63%	0.38%	0.00%	0.99%	1.29%	0.53%	2.43%	2.74%
Pune	65.50%	10.44%	6.75%	5.69%	4.25%	4.50%	0.13%	2.75%

Fellows' engagement with multiple stakeholders within the criminal justice system, especially in Pune also ensured referral of cases from other sources like the LSA Office (5.90%), Jail Courts²⁸ (3.70%), sitting judges (3.57%), prison authorities (2.92%), Panel Advocates (2.71%) and Tata Trust social workers (1.17%). Other minor sources of referral included referrals from clients and their families (1.47%), follow-up from after barrack and undertrial register in the prison (1.03%), LSA PLV and other organisations (0.24%)

In Pune, the Programme relied primarily on prisons for case intake in the first quarter of intervention, with 82.80% of cases coming in directly from clients in prisons. However, this proportion constantly decreased with the Programme receiving referrals from other sources. The Programme's engagement with

Jail courts reflected a steady increase in cases referred by Jail courts through the period starting with 1.43% of cases from January to March 2019 and going up to 19.35% of cases from January to March 2021. A dip in the percentage of direct intake from prison corresponded to an increase in referrals from other sources namely referrals from LSA Office (10.44%), Panel Advocates (5.69%), sitting judges (4.50%), prison authorities (4.25%) and the social workers follow up from After Barrack (1.31%)²⁹.

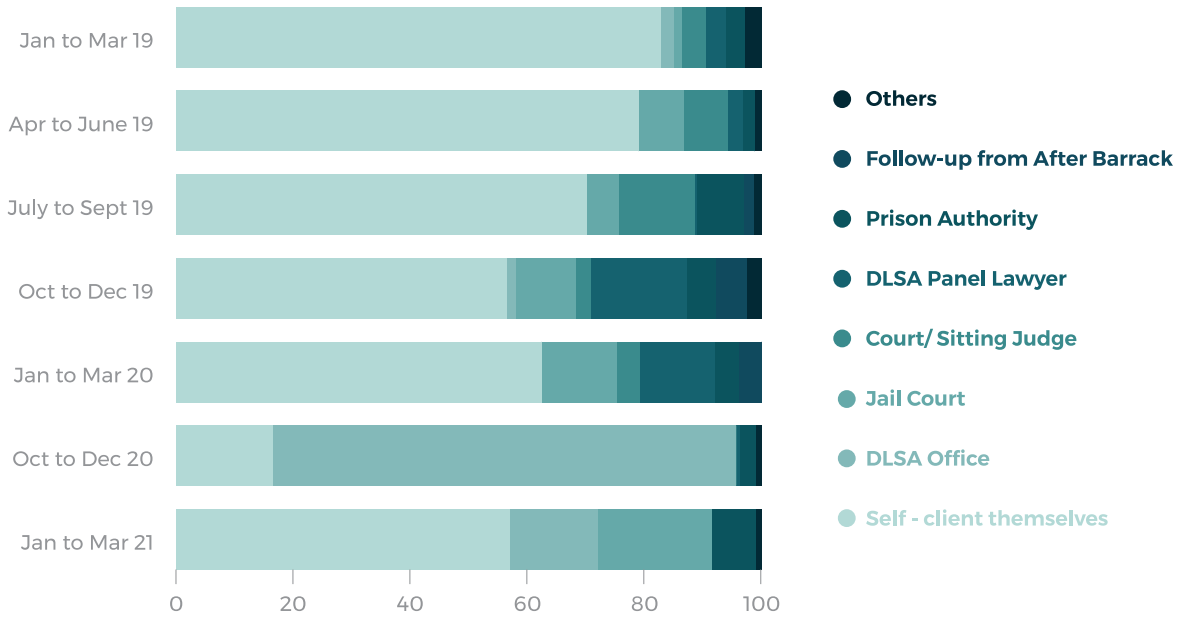
In Nagpur, direct intake from undertrial prisoners in prison was consistently the highest source of case intake. Notably, the Programme received referrals from social workers of Tata Trust's prison programme with as high as 10.62% cases referred in the quarter of October to December 2019. This indicated improved synergies between the two programmes.

²⁸ Jail Courts are courts set up within prison premises to conduct hearings in cases of petty offences punishable upto 3 years.

²⁹ After Barrack is the cell in which the prisoners are put in for a first few days before they are shifted to the main barrack.

CHART 3.3 CASE REFERRALS – PUNE (N=1600)

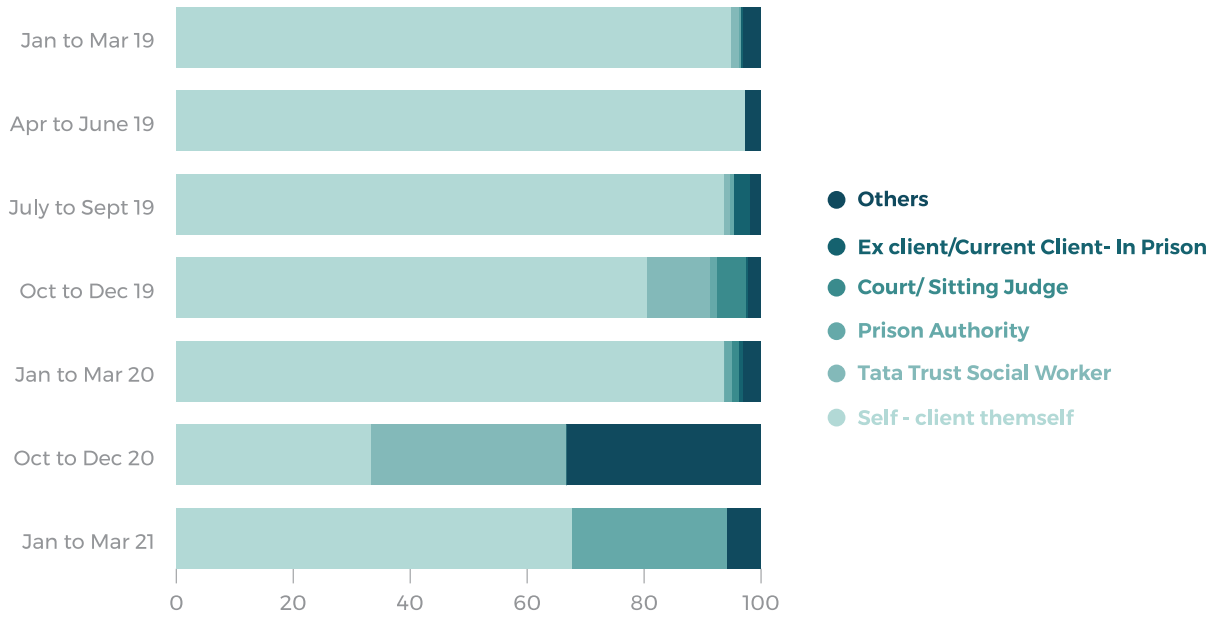
**(since there was no intake for Apr -Sep 2020 this time period is excluded)*



Quarter	Self - client themselves	DLSA Office	Jail Court	Court/ Sitting Judge	DLSA Panel Lawyer	Prison Authority	Follow-up from After Barrack	Others
Jan to Mar 19	82.80%	2.15%	1.43%	3.94%	3.58%	3.23%	0.00%	2.87%
Apr to June 19	79.02%	0.00%	7.69%	7.46%	2.56%	2.10%	0.00%	1.16%
July to Sept 19	70.00%	0.00%	5.52%	13.10%	0.34%	7.93%	1.72%	1.37%
Oct to Dec 19	56.44%	1.49%	10.40%	2.48%	16.34%	4.95%	5.45%	2.45%
Jan to Mar 20	62.40%	0.00%	12.80%	4.00%	12.80%	4.00%	4.00%	0.00%
Oct to Dec 20	16.48%	79.12%	0.00%	0.00%	0.55%	2.75%	0.00%	1.10%
Jan to Mar 21	56.99%	15.05%	19.35%	0.00%	0.00%	7.53%	0.00%	1.08%

CHART 3.4 CASE REFERRALS – NAGPUR (N=1315)

**(since there was no intake for Apr -Sep 2020 this time period is excluded)*



Quarter	Self - client themselves	Tata Trust Social Worker	Prison Authority	Court/ Sitting Judge	Ex client/ Current Client- In Prison	Others
Jan to Mar 19	94.85%	1.37%	0.34%	0.00%	0.34%	3.10%
Apr to June 19	97.19%	0.00%	0.00%	0.00%	0.00%	2.80%
July to Sept 19	93.71%	0.94%	0.63%	0.00%	2.83%	1.88%
Oct to Dec 19	80.53%	10.62%	1.33%	4.87%	0.44%	2.20%
Jan to Mar 20	93.67%	0.00%	1.27%	1.27%	0.63%	3.16%
Oct to Dec 20	33.33%	33.33%	0.00%	0.00%	0.00%	33.33%
Jan to Mar 21	67.65%	0.00%	26.47%	0.00%	0.00%	5.88%

3.1.2 Geographical Spread – Courts and Police Stations

The cases received under the Programme are spread across 72 police stations in the Pune district and 64 police stations³⁰ in Nagpur. In Pune, the highest number of cases in a single police station constituted 5.74% of the cases and the lowest was 0.13 % of cases. In Nagpur, the highest number of cases in a single police station constituted 6.66% of the cases and the lowest was 0.16% of cases. This represented a fair distribution of cases across police stations and reflected the Programme's outreach to undertrial prisoners.

Undertrial prisoners whose cases were in talukas outside municipal limits of Pune/ Nagpur had no access to the DLSA/ TLSCs concerned.

Fellows under the Programme worked directly with TLSCs and Panel Advocates in 10 talukas in Pune and 12 talukas in Nagpur³¹ to provide support to these undertrial prisoners. In terms of outreach to courts, 21% of cases in Pune and 14% of cases in Nagpur were in courts in

talukas outside municipal limits. This indicated that the Programme was able to cater to cases of undertrial prisoners who had limited or no access to services of the LSAs within prisons.

3.2 ANALYSIS OF THE PROFILE OF CASES UNDER THE PROGRAMME

3.2.1 Profile of cases

Around 70% of cases in Pune and 63% of cases in Nagpur under the Programme were triable by the magistrate and 28.4% in Pune and 31.4% were triable by Sessions Court. This indicates that the Programme received lesser cases of serious offences in both locations.

Data on the bailability of offences indicated that 96% of cases in Pune and 91.5% of cases were of offences which were non-bailable in nature. Co-relating this data with figures on court jurisdiction indicates that the Programme had the majority of cases which were petty offences³² but non-bailable in nature.

The direct points of access to legal aid in prisons are limited only to JVLs/ PLVs working within the municipal limits of the city where the prison is located. Thus, undertrial prisoners 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). These undertrial prisoners had to therefore depend on DLSAs to make referrals to the DLSAs/ TLSCs concerned, which was a time-consuming and cumbersome process. 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.

³⁰ Please see Annexure D for the list of police stations in Pune and Nagpur.

³¹ Please see Annexure E to see the list of courts in Pune and Nagpur where the Programme has carried out its intervention.

³² Petty offences mean the criminal cases where the maximum punishment under the law is an imprisonment up to three years.

CHART 3.5 COURT JURISDICTION (N=1390)

**(Data only for Detailed Intervention cases)*

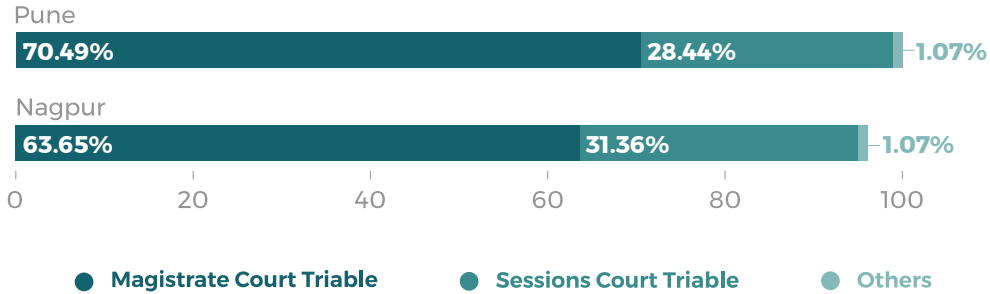
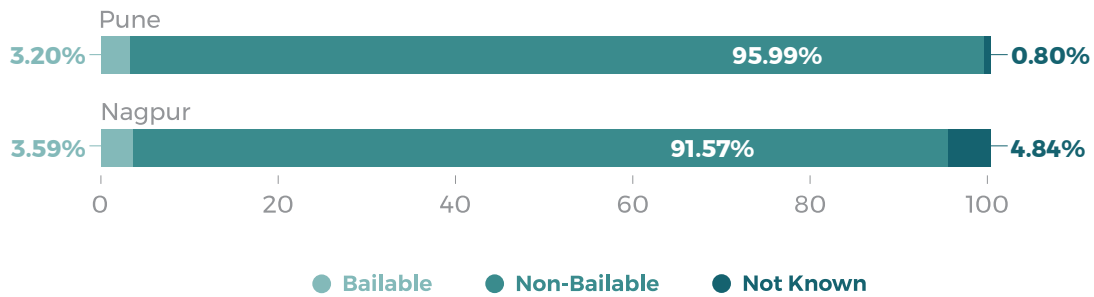


CHART 3.6 BAIL CATEGORIES (N=1390)

**(Data only for Detailed Intervention cases)*



3.2.2 Crime Categories

In terms of specific categories, cases of theft constituted the highest proportion of cases under the Programme both in Pune (35.91%) and Nagpur (33.54%). The other crime categories with a high number of clients were Robbery and Dacoity (11.62 % cases in Pune and 6.40 % cases in Nagpur), Theft with house break-in/Burglary (9.21% cases in Pune and 12.32% cases in Nagpur) and Murder (10.95 % cases in Pune and 6.08% cases in Nagpur).

In terms of looking at serious offences, of the 121 murder cases received, 82 (58%) and of the 128

robbery and dacoity cases received, 87 (68%) are in Pune. Whereas of the 73 rape cases (including rape of minors and rape and murder, 33 are in Pune and 39 are in Nagpur (53.4%) and 30 of the 41 cases are under the Arms Act, 1959 (Arms Act) in Nagpur (73%).

A comparison of the trend of the breakup of crime categories of cases indicated that the proportion of theft cases (34.82%) and burglary cases (15.40%) under the Programme were disproportionately high as compared to the overall proportion of undertrial prisoners in Maharashtra charged with these offences (7.05%³³ and 7.94%³⁴ for theft and 2.1%³⁵ and 2.74%³⁶ for burglary).

³³ National Crime Record Bureau, Prison Statistics of India 2020, available at https://ncrb.gov.in/sites/default/files/PSI_2020_as_on_27-12-2021_0.pdf

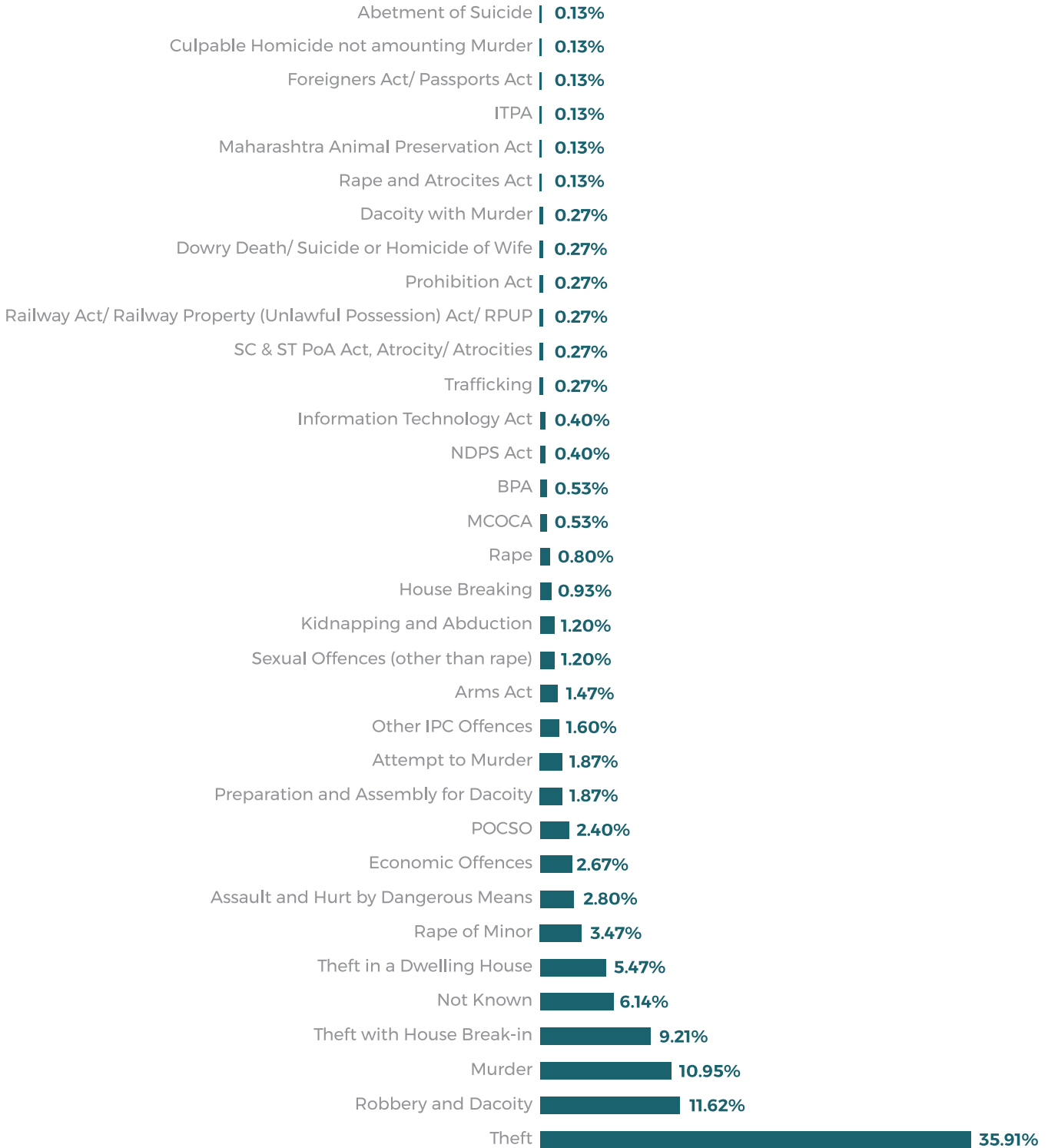
³⁴ Maharashtra Prison Department, Maharashtra Karagruh Sankhyiki at Table 5.2, available at http://mahaprison.gov.in/Uploads/pdf_GR/c67ed233-477c-4071-b45f-1115a64031d3Prison_Statics_Book_new.pdf.

³⁵ Supra, note 33. ³⁶ Supra, note 34

CHART 3.7 CRIME CLASSIFICATION

Pune (N=749)

**(Data only for Detailed Intervention cases)*



Nagpur (N=641)

**(Data only for Detailed Intervention cases)*

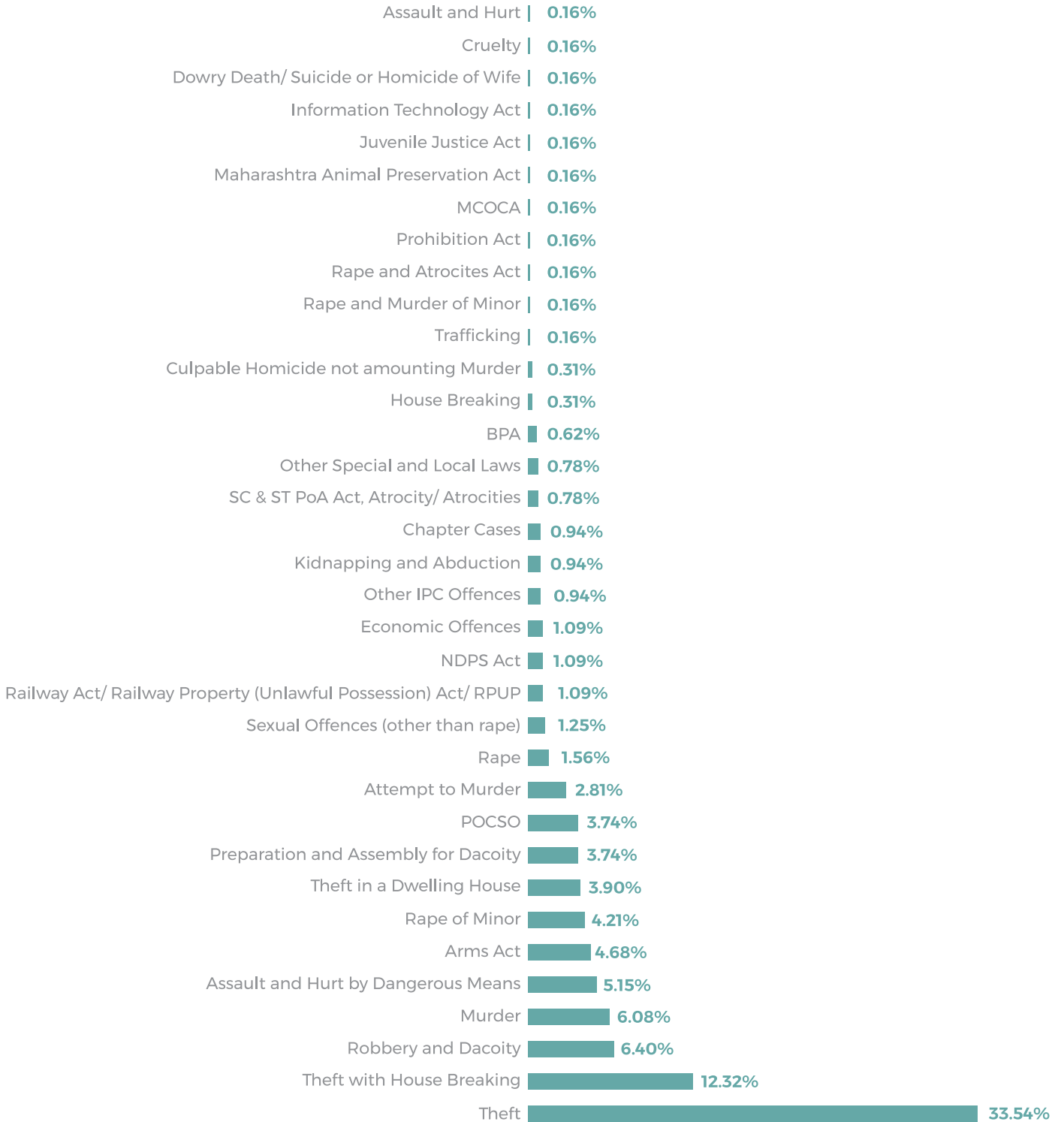
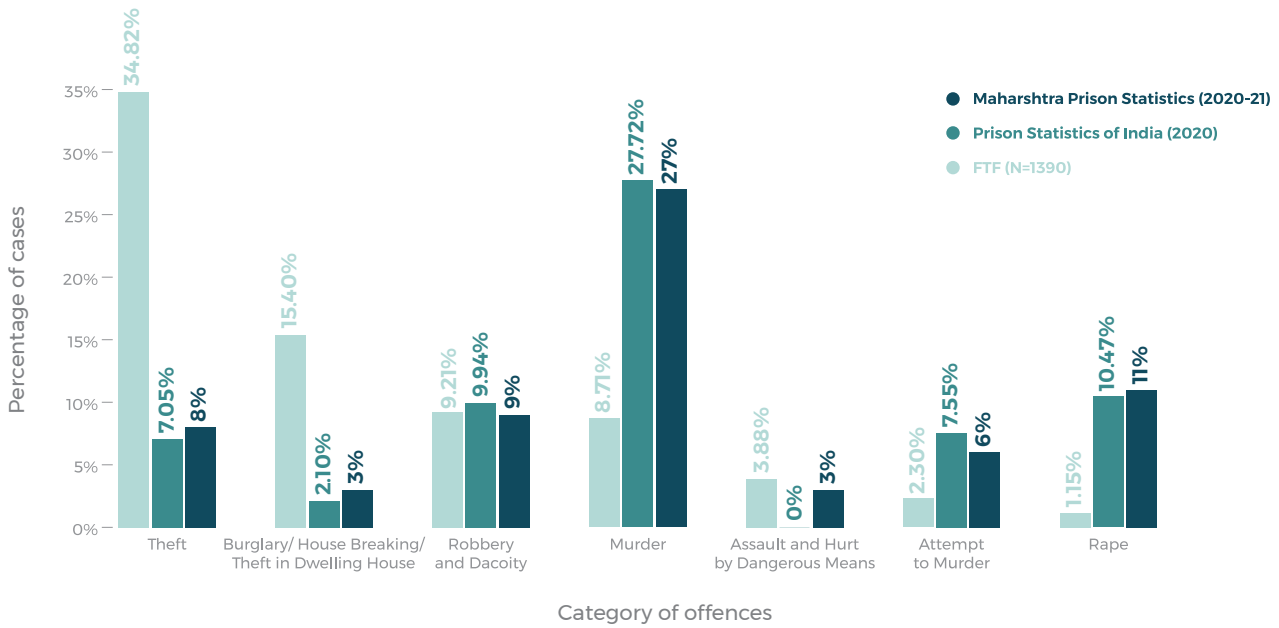


CHART 3.8 CRIME CATEGORY- COMPARISON WITH PRISON STATISTICS

For some crime categories like Robbery/Dacoity and Assault by dangerous means, the proportion of cases under the Programme (9.21% and 3.88% respectively) were comparable to the overall proportion of undertrial prisoners charged under these categories (i.e. 9.94%³⁷ and 8.98%³⁸ for robbery and dacoity and 4%³⁹ for Assault by dangerous means. On the other hand, the Programme had a lower percentage of cases of serious offences like murder (8.71%), rape

(1.15%) and attempt to murder (2.30%) which had overall high proportions amongst undertrial prisoners as per the prison statistics i.e. murder (27.72%⁴⁰ and 27.14%⁴¹), rape (10.47%⁴² and 10.67%⁴³) and attempt to murder (7.55%⁴⁴ and 6.11%⁴⁵).

The crime-wise distribution for undertrial prisoners in Yerwada⁴⁶ indicated a total number of 7% and 5% of undertrial prisoners charged with theft cases for the period April 2018 to March 2019 and April 2019 to March 2020 respectively. As compared to this, FTF received 23.49% and 43.77% cases of theft in the period between January to March 2019 and April 2019 to March 2020 respectively. Similarly, for undertrial prisoners in Nagpur Prison, the crime-wise distribution for undertrial prisoners⁴⁷ indicated a total number of 8% and 16% of undertrial prisoners charged with theft cases for the period April 2018 to March 2019 and April 2019 to March 2020 respectively. As compared to this, FTF received 41.96% and 32.39% cases of theft in the period between January to March 2019 and April 2019 to March 2020 respectively.

The overall trend of distribution of crime categories in cases under the Programme was not consistent with the trend of distribution of crime categories for undertrial prisoners as per Prison Statistics of India 2020 and Maharashtra Prison Statistics. Petty offences constituted the highest proportion of cases received under the Programme.

³⁷ Supra, note 33. ³⁸ Supra, note 34. ³⁹ Id. ⁴⁰ Supra, note 33. ⁴¹ Supra, note 34. ⁴² Supra, note 33. ⁴³ Supra, note 34.

⁴⁴ Supra, note 33. ⁴⁵ Supra, note 34. ⁴⁶ Id. ⁴⁷ Id.

While the above figures indicate that the Programme had a higher caseload of petty offences as compared to the overall share of petty offences, this needs to be contextualised with the fact that as per the Programme’s data undertrial prisoners charged with multiple cases have an higher percentage of theft (49 %), burglary (15%) and robbery/dacoity (9%) cases. This means that undertrial prisoners charged with theft, burglary and robbery are more likely to have multiple cases and consequently the proportion of these categories will be higher in the case count as per our client data.

A possible explanation for this could be that prison statistics are based on stock data on a given date as opposed to flow data which the Programme relies on.⁴⁸ It could also indicate at some level that a lesser number of people charged with serious offences are seeking legal representation through the LSA.

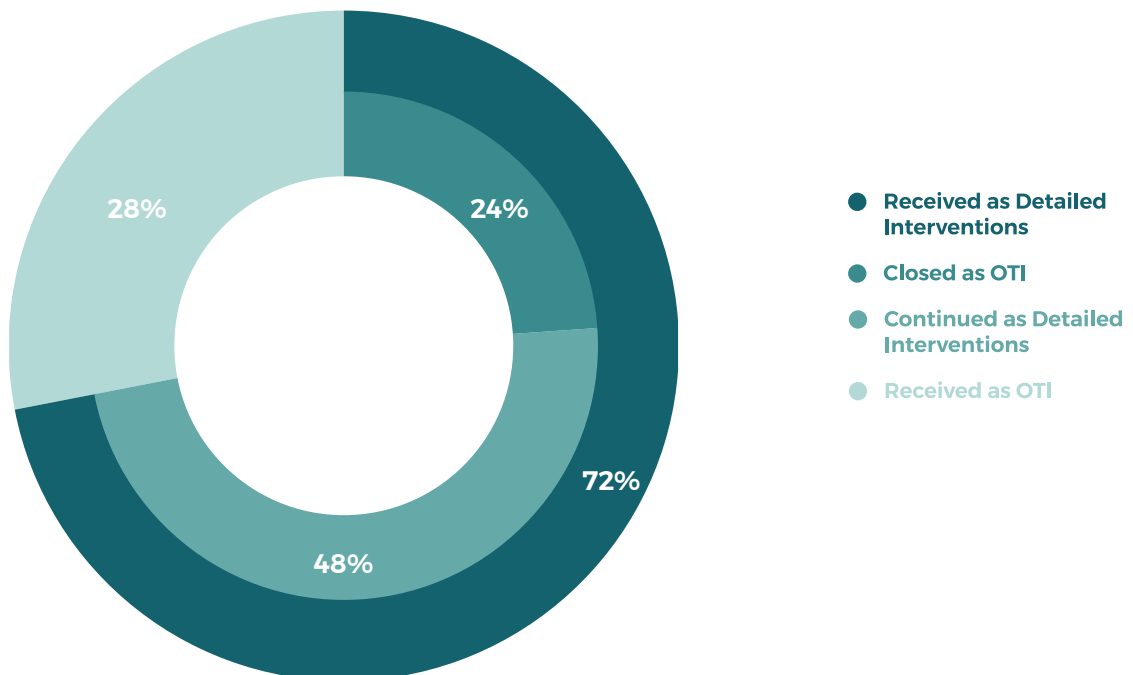
3.3 SERVICES NEEDED/ REQUESTED BY CLIENTS AT INTAKE

3.3.1 Detailed Intervention and OTI breakup - kind of services

Out of the 2915 applications received during the Reporting Period, a total of 2100 applications were requests for Detailed Interventions. These were requests from undertrial prisoners either seeking the appointment of Panel Advocates in their cases or seeking assistance in a case where a Panel Advocate was already appointed. This corresponded to a total of 1027 undertrial prisoners seeking Detailed Interventions and 1286 undertrial prisoners seeking OTI in their cases.

Of these 2100 applications, 710 cases had to be closed as OTI due to the client’s attrition while

CHART 3.9 APPLICATIONS RECEIVED FOR ASSISTANCE (N=2915)



⁴⁸ For example, if a particular prison had an undertrial population of 2000 prisoners on December 31st, 2018, it does not mean that only 2000 prisoners entered that prison in 2018. There could be, for example, 5000 prisoners that entered the prison at some point in 2018, but 3000 were released on bail or for other reasons by December 30st, 2018, leaving 2000 undertrial prisoners on 31st December of that year. Therefore, the figure in the prison statistics is a “stock” figure and not a “flow” figure. The undertrial population for that year that could have potentially accessed legal aid in that year corresponds to the “flow” of the undertrial population in the prison, meaning it includes any undertrial prisoner who was already in prison from previous years and those admitted into the prison in that year pending trial. (Anup Surendranath and Gale Andrew, State legal aid and undertrial prisoners: are there no takers?, Indian Law Review; can be accessed at <https://www.project39a.com/op-eds/contradictions-of-the-penal-system-and-pains-of-imprisonment-new-evidence-from-india-cjznw-79d5d>.)

the legal aid allocation process was pending. These attritions could be attributed to multiple reasons like the client already being represented by a private lawyer and being unaware of their engagement at the time of approaching the Programme, the client opting for a private lawyer, the client pleading guilty, the client being released on PR Bond and untraceable post-

release etc. 1390 cases continued as Detailed Interventions. The Programme also received 815 cases as requests for OTI.

The split for Detailed Intervention and OTI cases in both locations quarter-wise is in the diagram below:

CHART 3.10 SERVICES NEEDED AT INTAKE (PUNE) (N=1600)

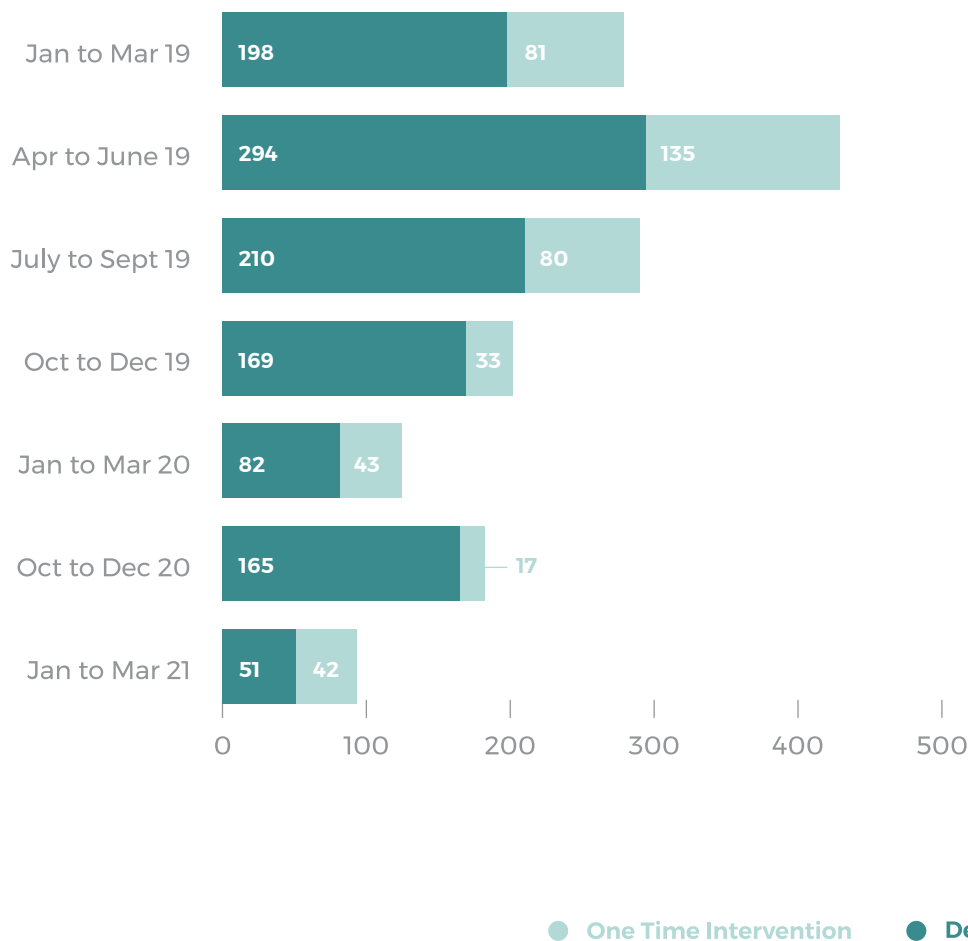
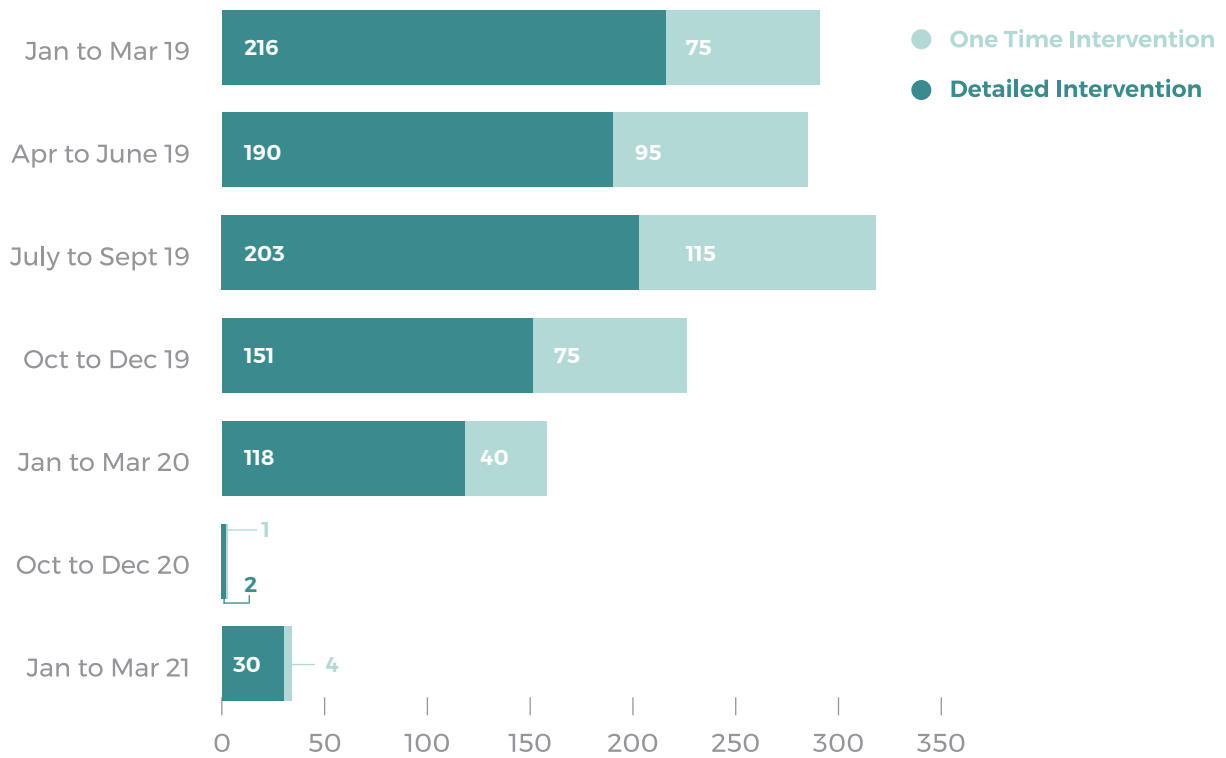
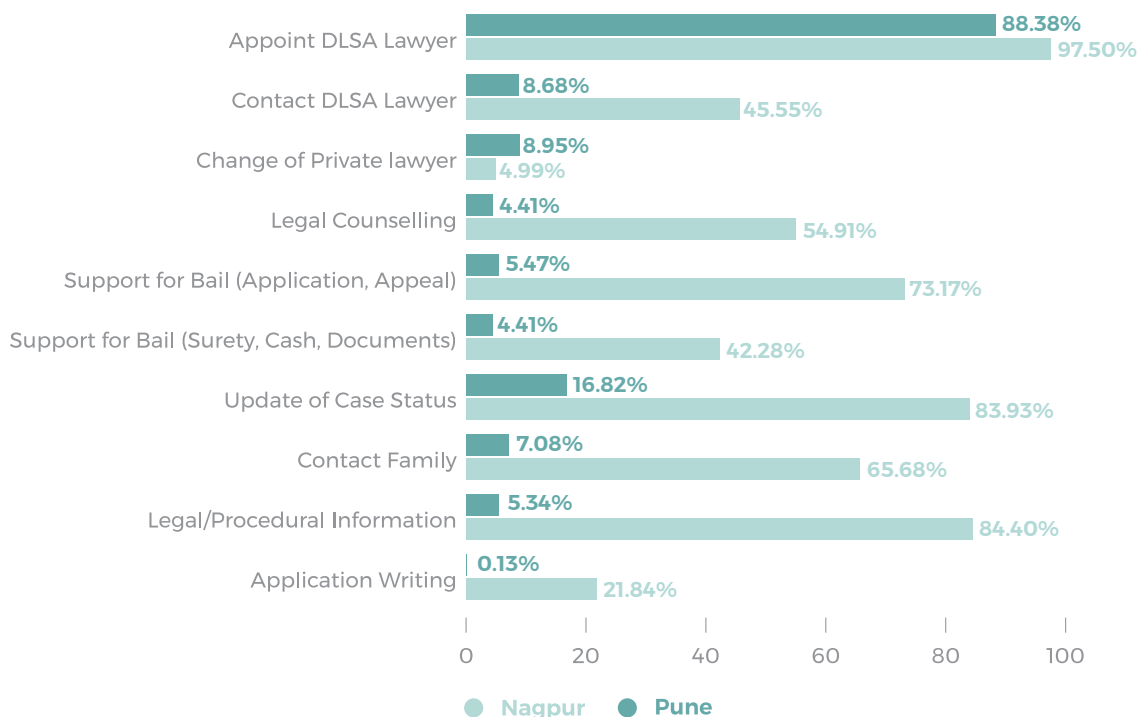


CHART 3.11 SERVICES NEEDED AT INTAKE (NAGPUR) (N=1315)



The below chart describes services required by clients in Detailed Intervention cases. Apart from the services listed below, clients sought assistance in obtaining documents and contacting private lawyers and 2 clients sought financial, medical, livelihood or family-related services and referrals to other organizations.

CHART 3.12 TYPE OF SERVICES REQUIRED (DETAILED INTERVENTION) (N=1390)

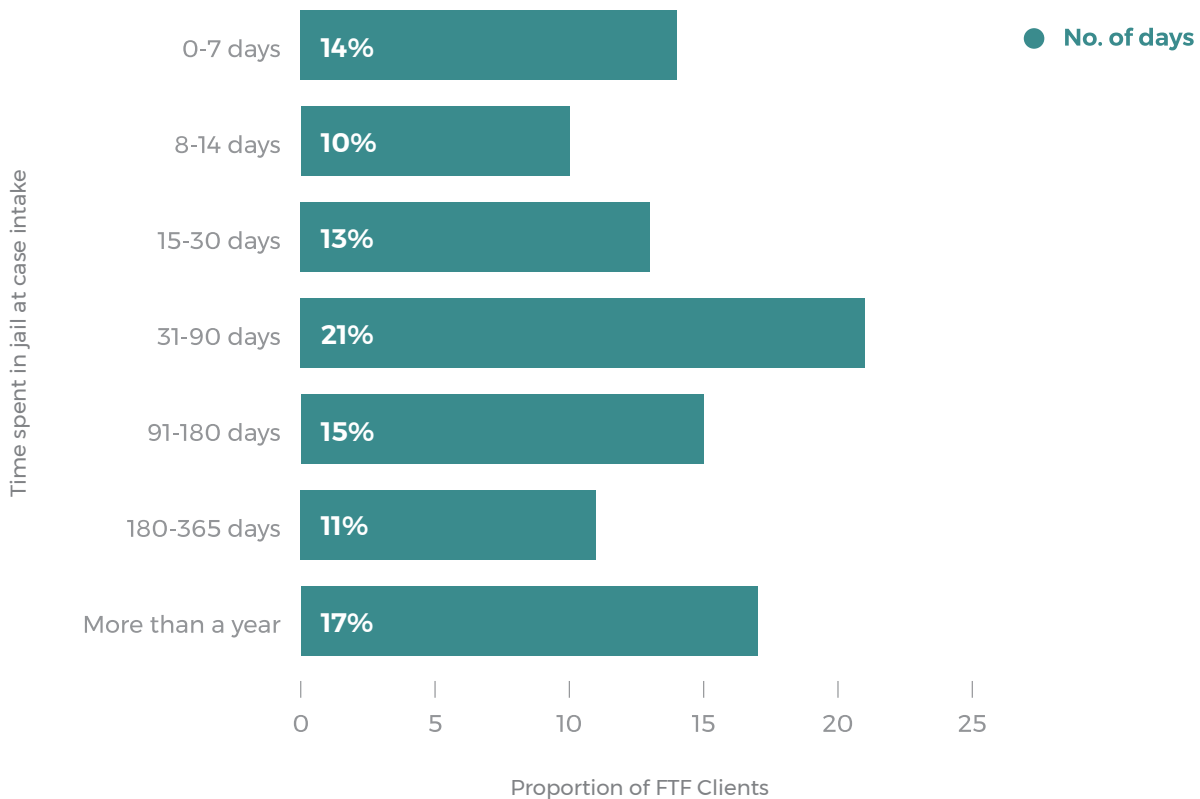


The services required by OTIs include mainly update of case status with close to three-fourths of the clients (74.5%) seeking this service, followed by approximately half (44.33%) wanting the SWF to contact family, a little over one-third (36.39%) seeking legal or procedural information and 9.9% asking for SWF to contact a private lawyer. 10 FTF clients (0.66%) sought referrals to other organizations and 8 (0.52%) requested financial, medical, livelihood or family-related services. Amongst women. 305 FTF Clients who had requested OTIs, 202 (66.23%) sought help in contacting family while 143 (46.88%) wanted case updates, 62 (20.32%) contact with a private lawyer, 35 (11.47%) wanted legal and procedural information and 3 requested financial, medical, livelihood or family related services. None of them wanted referrals to other organizations.

3.4 TIME SPENT IN JAIL AT INTAKE

An analysis of the Detailed Intervention cases reflects that 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.

CHART 3.13 TIME SPENT IN JAIL AT CASE INTAKE (N=1390)



3.5 PRE-INTERVENTION STATUS OF DETAILED INTERVENTION CASES

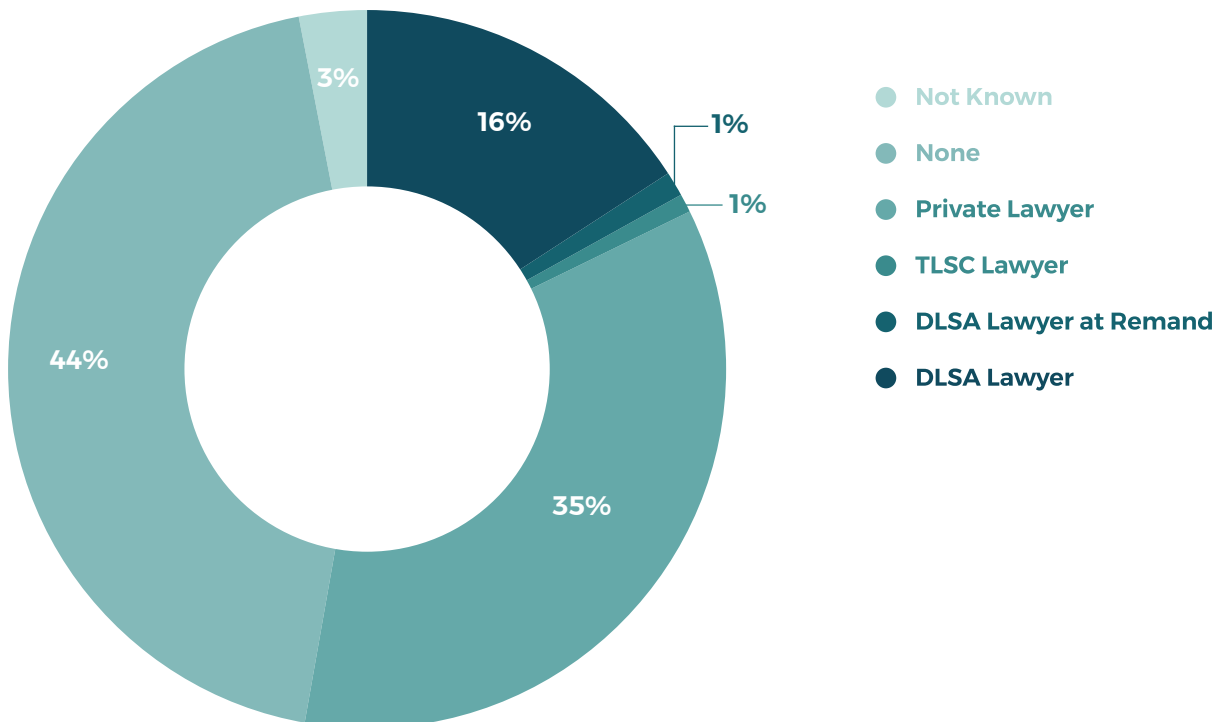
3.5.1 Pre-Intervention Advocate Status

At intake, 614 (44.17%) of the Detailed Intervention cases had no lawyer and 491 (35.32%) had private lawyers, while 242 (17.90%) had a DLSA/TLSC lawyer either at the remand stage or at the time of intake. The numbers with no lawyers are higher in Nagpur, with no legal assistance in 425 cases (66.30%), while in Pune there were no lawyers in 189 of the cases (25.23%). Similarly, the number of clients with a DLSA/TLSC lawyer at intake was lower in Nagpur (7.33%) compared to Pune (26.04%). This

corresponds to the frequency of visits by JVL/ PLVs in Pune and Nagpur. While Pune had at least a PLV/ JVL visiting the prison 6 days a week, the JVL visited the prison in Nagpur only once in two weeks. This data is based on the information which is collected by Fellows and verified from court records.

At the time of intake, in 1044 cases (75.11%) no DLSA process had been initiated, in 105 cases (7.6%) FTF Clients had initiated the DLSA process but were awaiting appointment of Panel Advocates and in 238 cases (17.12%) cases Panel Advocates were already appointed. Most cases with Panel Advocates at intake (83.61%) were in Pune. Many of these cases were referred to the Programme by courts, mainly the Jail Court.

CHART 3.14 PRE-INTERVENTION ADVOCATE STATUS (N=1390)



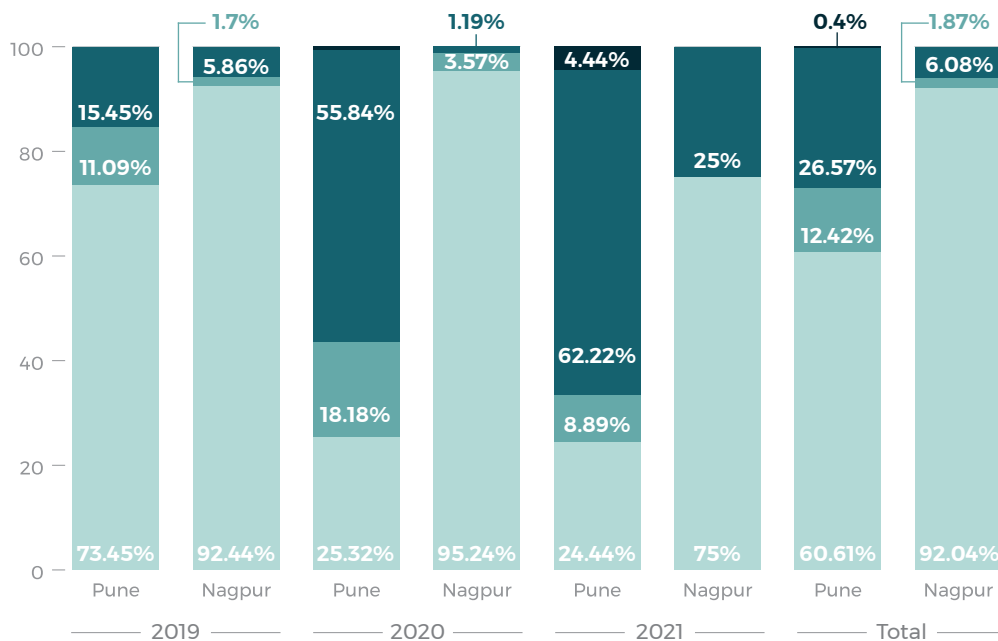
With courts not functioning during the pandemic and lawyers having limited access to court, the percentage and number of cases with private lawyers at intake in Pune decreased from approximately 55% in 2019 and 32.81% between January 2020 to March 2020 to 18.89% between October to December 2020 and a little under 25% between January 2021 to March 2021 when courts began functioning again. In Nagpur, cases with private lawyers were lower with a little over 22% in 2019, less than 20% from January 2020 to March 2020, none between April and December 2020 (when the intake was two new cases) and 19.05% of the cases between January to March 2021. The segregated data of intake up to March 2021 is presented in Chart 3.15.

The overall number of cases where Panel Advocates were already appointed at the time of intake increased post-pandemic between April 2020 to March 2021. A possible explanation of this could be referrals from DLSA Pune constituting the highest proportion of cases. Post-pandemic, over 70% of cases in Pune had a Panel Advocate appointed at intake (96 of the 131 cases), a substantial part of the 199 cases overall. Chart 3.16 traces the trend in DLSA status for both Nagpur and Pune. The cases where DLSA status was not known to have come post-pandemic when Fellows were unable to trace the status due to the lockdown.

CHART 3.15 ADVOCATE STATUS AT INTAKE-PUNE AND NAGPUR BREAK-UP YEAR-WISE (N=1390)



CHART 3.16 STATUS OF LEGAL AID-PUNE AND NAGPUR BREAK-UP YEAR-WISE (N=1390)



● Not Known ● DLSA lawyer appointed ● Filled form for DLSA lawyer appointment in jail ● No DLSA process initiated till now

Reflection on data on lawyer status and LSA status at intake indicated a strong need for lawyers amongst the clients who approached FTF with 44% of clients having no lawyer at intake. Interactions with the client at the stage of intake also revealed that a significant number of clients were not in touch with lawyers who represented them at the stage of the first production in courts. In many cases, lawyers were appointed only for the purpose of representation during the first production and did not continue with the case thereafter. 35% of the clients who approached the Programme had a private lawyer at the stage of intake but sought the appointment of a Panel Advocate for their case.

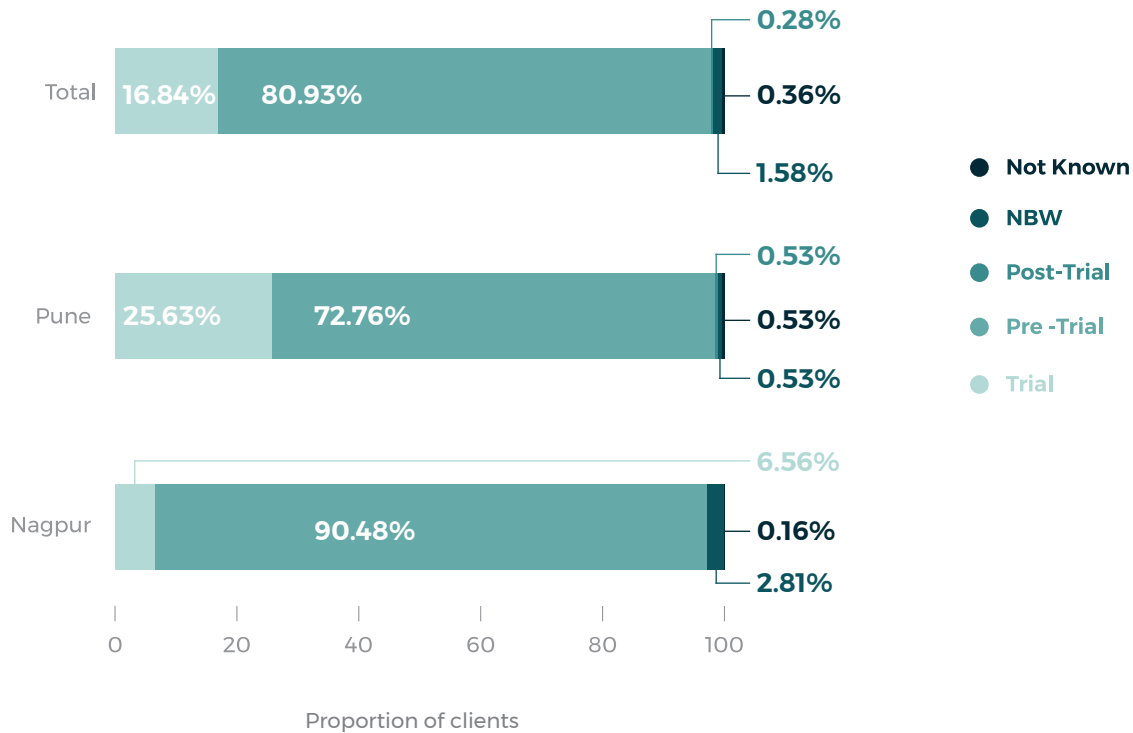
3.5.2 Pre-Intervention Case Status

At the stage of intake in the Programme, over 80.93% of cases were at the pre-trial stage, i.e. framing of charges was not complete in the cases while 16.84% were at the trial stage. Pune had 72.26% cases at the pre-trial stage whereas Nagpur had 90.48% cases at the pre-trial stage. A high number of cases at the pre-trial stage corroborated with high demand for bail-related services amongst FTF Clients.

The proportion of cases that came prior to evidence in Nagpur was over three-fourths, and in Pune, the numbers were approximately 45%. Less than 0.5% of cases were kept for judgment including one case of a plea of guilt and one of conviction. In 1.58% (22) cases, non-bailable warrants were issued against the client. In cases at the stage of recording of evidence, 13.38% (186) were where summons had to be issued to witnesses.

CHART 3.17 STAGE OF THE TRIAL AT INTAKE (N=1390)

**(Data only for Detailed Intervention cases)*



Another interesting trend emerging from this data set indicated that direct referrals from judges in Jail Courts and other courts were high in Pune which resulted in more cases at the trial stage being received in Pune.

Most cases were at the remand or production stage at intake followed by cases at the stage of recording of evidence.

3.5.3 Pre-Intervention Bail Status

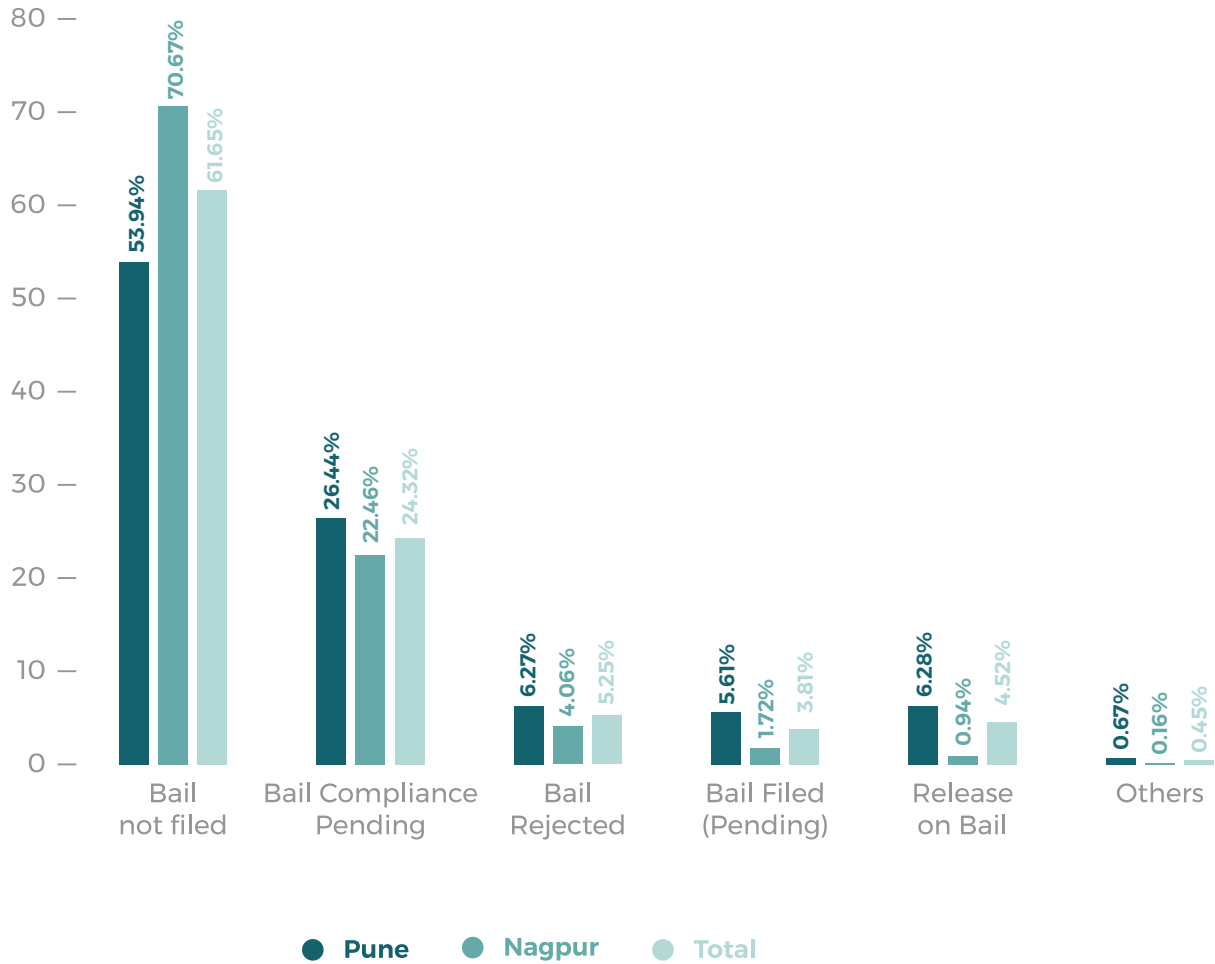
Most clients had not sought bail before approaching FTF. The numbers were higher for Nagpur as compared to Pune. A considerable number of clients needed assistance in bail compliance.⁴⁹ Chart 3.18 gives details of bail status.

Bail was most likely filed in cases where clients had a previous private lawyer (almost 65%) as against where no lawyer was appointed (86% had no bail applications filed) or a Panel Advocate (50% of cases with no bail application filed). Over 35% of cases that required assistance for bail compliance were of clients with a private lawyer.

⁴⁹ 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.

CHART 3.18 BAIL STATUS AT INTAKE

**(Data only for Detailed Intervention cases)*



Data on bail needs at intake indicates a strong need for bail-related services i.e. filing of bail in 61.65% of cases and compliance of bail in 24.32% of cases. A high number of cases with bail compliance pending correlated with the demographics of clients also points to the limitations of the bail system to provide justice to persons from marginalised backgrounds.

CONCLUSION

The response to the Programme's services from the initial days of intervention points to a clear need for legal services for undertrial prisoners in prison. Despite the multiple mechanisms of intake under the NALSA guidelines, approximately only 10% of undertrial prisoners were represented by the LSAs. This also correlates with the assessment of lawyer status at intake where 44% of cases had no lawyer at the time of approaching the Programme and another 35% had private lawyers. There is, thus, a strong need to strengthen points of access to legal aid for undertrial prisoners. The lack of access is starker for those undertrial prisoners whose cases are in courts beyond the municipal limits of the city in which the prison is located. The Programme's data indicating that in 42% of the cases the undertrial had spent over 3 months in custody at the time of case intake further substantiates the case for improving access to legal services.

While there is no baseline data to gauge the increase in utilisation of legal aid services through the Programme's interventions, high demand for the Programme's services right from the inception indicate that there is scope to improve access and utilisation of legal aid by streamlining existing procedures of the LSAs.

Case referrals to the Programme from multiple sources reflect the possibility of working with different stakeholders to increase points of access to legal services for the beneficiaries. A high level of attrition of FTF clients, while the LSA process was pending (33.8%) indicates the need to strengthen mechanisms to retain clients approaching the LSAs and minimise attrition.

Reflecting on the profile of cases received under the Programme, petty offences which are non-bailable constitute a significant majority of cases. This indicates that more undertrial prisoners with petty offences access legal representation through LSAs. Data on the stage of trial and bail status at the stage of intake points to a strong need for bail-related services at the pre-trial stage. ■

"Since prisons were the primary location for intervention under the Programme, the largest segment of cases under the Programme was where undertrial prisoners directly approached the SWF sitting inside the prison barracks."

04

CLIENT PROFILE AND DEMOGRAPHICS

The client profile of FTF was similar to the overall profile of the prison population, overwhelmingly poor, belonging to lower socio-economic sections of society and mostly male.

While women form a small percentage of undertrial population, they are more vulnerable due to lack of social support as compared to male prisoners. Women undertrial prisoners are, therefore, in greater need of legal aid and support services. The Programme focussed on working with women undertrial prisoners and the proportion of women clients in the Programme (15.8%) was considerably higher than the average proportion of women (4.3%) amongst undertrial prisoners.

Prison Statistics 2020 indicate an over-representation of Muslims in prison. However, the proportion of Muslim clients with FTF was lower compared to their population as per Prison Statistics 2020.

FTF data on caste provided on-ground confirmation of the experiential narratives on the over-representation of marginalised communities in prison. The caste profile of FTF Clients shows that around 10% of FTF Clients were STs and around 40% were either SC or ST.

A considerably high proportion of migrants amongst FTF clients coupled with a lack of documentary proof points to clients' lack of ties within the community and creates impediments in bail compliance even in petty cases. This results in longer periods of incarceration and an increase in the number of applications for modification of bail to cash or personal bond. There is also a need for continued post-release support services to such clients to ensure their presence in court during the trial.

The profile of education, occupation, income and ownership of property of FTF Clients establish that the socio-economic status of the vast majority of FTF Clients is by all parameters that of the lowest strata of society. These indicators provide a possible explanation for a high proportion of clients approaching the programme with bail orders pending compliance.

A majority of clients shared special needs that require socio-welfare intervention by the state to address such vulnerabilities. Especially in the case of prisoners with mental health care needs, prisoners with terminal illness and migrants without deep ties in the community, the lack of direct contact with the lawyers adversely affects the preparation of defence as such special circumstances are not taken into account by the lawyers while preparing for the defence.

The client profile of FTF was similar to the overall profile of the prison population, overwhelmingly poor, belonging to lower socio-economic sections of society and mostly male⁵⁰. This chapter provides for the demographic analysis and accounts for factors such as gender, age, religion, caste, domicile, education and occupation of clients and further does an assessment of clients who need special services.

The information shared in this chapter has been collected from clients by social workers at the time of intake. Some of the demographic data is incomplete and reasons for it are several. In some cases, clients did not divulge the information or lacked knowledge of the same, the latter especially when it came to their caste. Access to clients in prison was also limited due to time constraints and the number of prisoners seeking legal aid. In such cases, the detailed interview was asynchronous to the first meeting. On occasions, the client got released from prison on bail or acquittal without the SWF getting access to an in-depth interview. Another reason is that cases were also referred by courts with intake by LFs in court where either the client was not present or LFs had insufficient time and access to the client. Further, follow-up becomes a challenge in some of these cases, where the SWFs could not trace or meet the client in prison due to their release after the verdict. This was the case with many Jail Court cases.

PROFILE OF CLIENTS

The total number of clients who have accessed services of FTF is 2313 (1263 from Pune and 1050 from Nagpur) which includes both

Detailed Interventions (1027 clients) and OTIs (1286 clients) during the Reporting Period. Of these Detailed Interventions, 523 clients were from Pune and 504 clients were from Nagpur. Amongst clients categorized as OTIs, 740 were in Pune and 546 were in Nagpur.

4.1 GENDER

Out of the total number of FTF Clients, 1946 (84.13%) were males, 365 (15.78%) were females and 2 (0.08%) were transgenders. According to the latest available figures of Prison Statistics of India, 2020 (Prison Statistics 2020),⁵¹ published by National Crime Record Bureau (NCRB), 15,167 were women (4.07%) and 54 transgenders (0.01%) out of 371848 undertrial prisoners in India as of December 31st, 2020. In Maharashtra, out of the total of 26171 undertrial prisoners, there are 1155 (4.41%) women undertrial prisoners and 8 transgenders (0.03%). Over the period of 3 years, women constitute an average of 4.35% of undertrial prisoners.

While women form a small percentage of prisoners, they are more vulnerable with less support compared to male prisoners and therefore in greater need of legal aid and support services. The Programme, therefore, focussed on working with women undertrial prisoners and the proportion of women clients in the Programme (15.8%) was considerably higher than the average proportion of women prisoners (4.3%).

⁵⁰ Ministry of Home Affairs National Crime Records Bureau, Government of India, Prison Statistics of India 2020 (2021), https://ncrb.gov.in/sites/default/files/PSI_2020_as_on_27-12-2021_0.pdf.

⁵¹ Id.

CHART 4.1 DISTRIBUTION OF CLIENTS

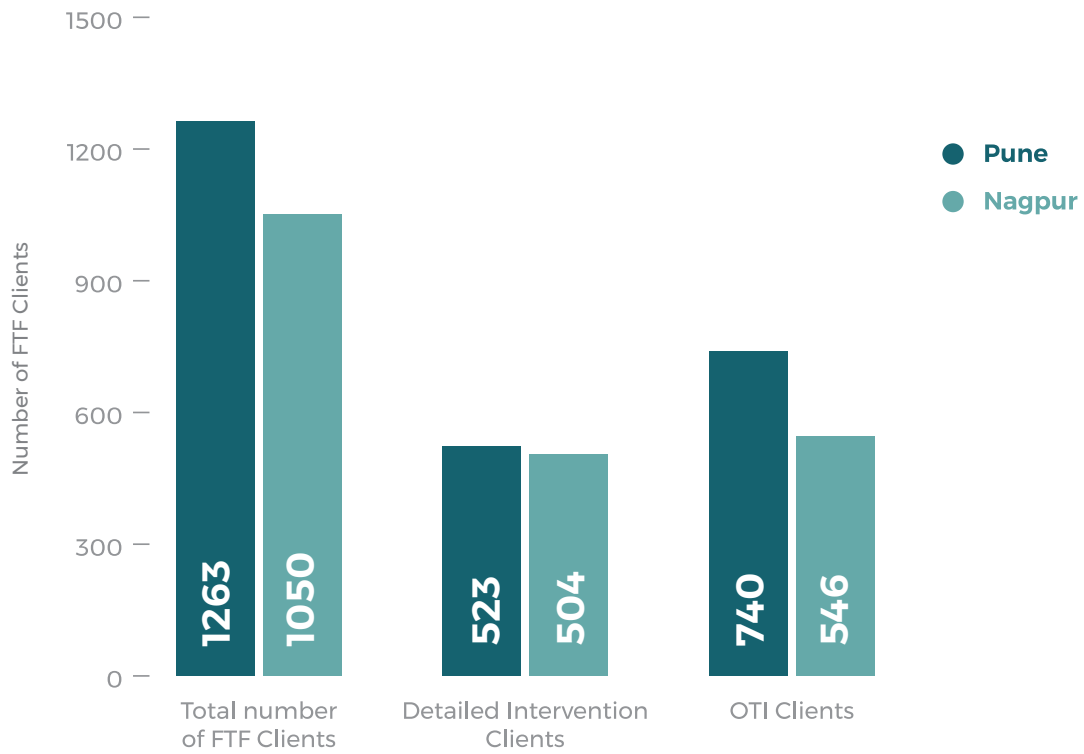
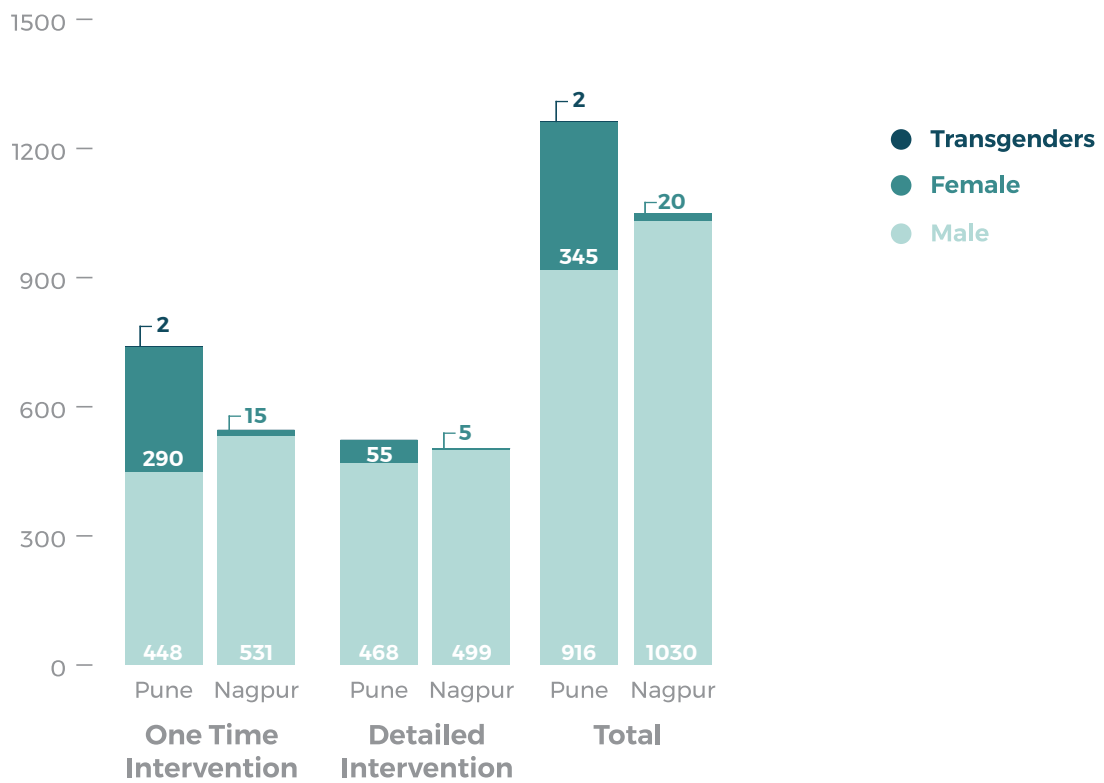


CHART 4.2 GENDER-WISE BREAK-UP OF CLIENTS



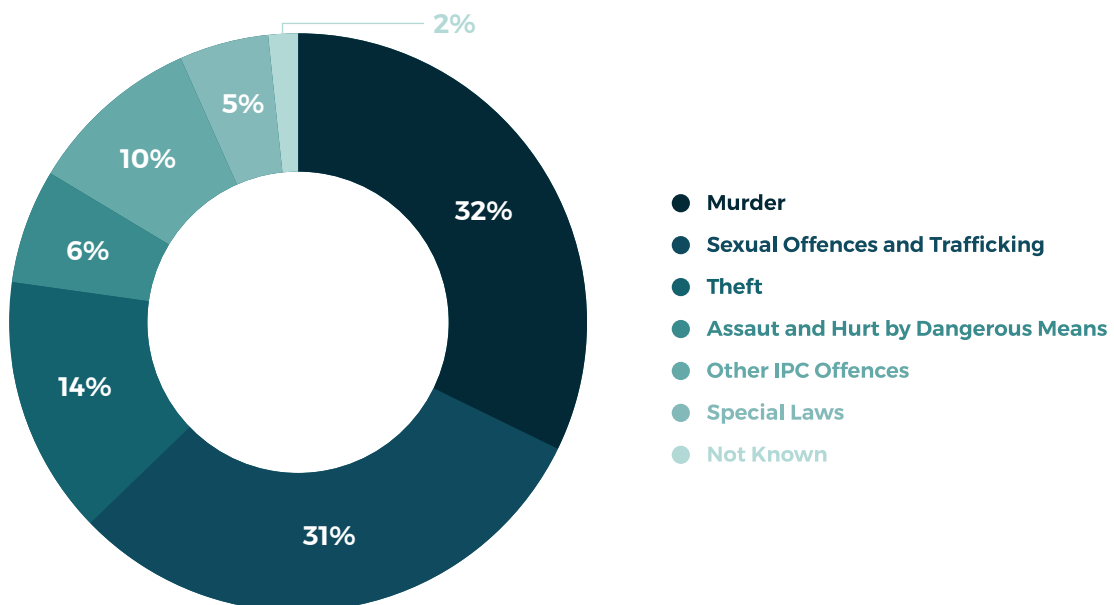
The Programme had only 2 cases, both OTIs, of transgender clients. While women constituted only 6% of FTF Clients with Detailed Intervention, the overall proportion of women amongst FTF Clients (Detailed Intervention and OTIs) was around 16%. Most women clients were from Pune (11% of the Detailed Intervention cases and 39% of the OTIs). This is due to the presence of the female SWF in Pune. The numbers in Nagpur were lower: 1% of Detailed Intervention cases and 3% of OTIs. Two women clients had their children in prison along with them. While clients who required socio-legal intervention outside of the DLSA process had been discontinued in the male section, OTI cases at the Women’s Jail in Pune had continued due to the request of the prison staff given the vulnerability of women prisoners and their need for support services.

Most women clients who have approached FTF to seek OTI services (290 of 345 i.e. 84%) required help mainly in contacting their families or following up with their lawyers. One of the reasons for limited

outreach was the regular attendance of JVLs in the female section at Yerwada Prison (Pune) who were reluctant to work with FTF Fellows. However, post-pandemic (between October 2020 to March 2021), with greater integration of services through the reference of cases by DLSA Pune to FTF, the number of Detailed Intervention cases in Pune escalated with 31 cases of women clients referred to FTF by DLSA Pune.

Majority of the women clients were arrested for serious offences. These include the largest number for murder (32.26%), 30.64% for sexual offences (including rape and POCSO, abduction and trafficking) and 14.5% for theft. Of the three arrested under Special Acts (apart from POCSO) are one each for the Arms Act, the Information Technology Act, 2000 (Information Technology Act) and Narcotic Drugs and Psychotropic Substances Act, 1985. Women constituted around 20% of the FTF Clients charged with murder) with women clients from Pune constituting 23.2% of the murder accused clients in Pune.

CHART 4.3 CRIME CATEGORY OF WOMEN CLIENTS



INTERVENTION EFFORTS AND STIGMA OF SERIOUS CRIME ON ACCUSED WOMAN

Sanskriti (name changed) had just completed 18 years and given her higher secondary examination when she was arrested by Junnar police on June 24th, 2020 under the charges of abetment of rape of minor under Section 376 of the Indian Penal Code (IPC) (Punishment of Rape) and Section 6 of Protection of Children from Sexual Offences Act (POCSO) for aggravated penetrative sexual assault. The Khed-Rajgurunagar Salgar District and Additional Session Court referred the client's case to FTF. The LF and SWF conducted four home visits to gather information and documentation such as a school leaving certificate to prove her age and a character certificate from school to build a defence. During the home visits, the LF and SWF found that her mother was an agricultural labourer and a sole breadwinner of the family. The client's grandmother had a paralytic attack upon her arrest. She also has a mentally disabled sister living in a hostel. They found that the family could not afford to arrange money for bail compliance. At the school, the LF and SWF found that the crime had stigmatized the client in the minds of the teachers and principal. Bail was granted before the filing of the charge sheet on July 20th, 2020. Multiple mulaqats with the client and phone conversations with her mother were conducted by LF and SWF to furnish Rs. 25,000 solvency surety. Her mother was unable to furnish it leading to a delay in release. LF was later informed by the client's mother over a phone call that her bail compliance had been done by a relative who is a lawyer at the Khed court. LFs have regularly met the client after her release during her court hearings.

NEED FOR SPECIAL SUPPORT SERVICES FOR WOMAN ABANDONED BY HER FAMILY

Sareeta (name changed), was accused of killing her two children by throwing them in the well under Section 302 of the IPC. According to the police, she had an illicit relationship with someone outside her marriage and the children were coming in between. The complaint was filed after 8-9 days after her incident by the partner. It was because she confessed to her husband later.

The accused had three daughters. Due to that, she was getting tortured by her in-laws including her husband. When she was pregnant for the fourth time, she consumed poison as she was feeling very dejected and frustrated. As a result, the son was born with an abnormal condition. Again, for the same, she was tortured and beaten up every day and it never stopped. She felt very depressed, frustrated and agitated. One day, she was working in her field and that day she had a fight at her house and was feeling very mentally disturbed. Later, two of her children came to meet her in the field. She felt a little troubled with them and frustrated and angry she threw her kids in the nearby well.

The Programme took her case when the SWF met her in the prison. The LF filed her bail application in the Sessions Court but the same was rejected considering the gravity of the offences. Subsequently, through DLSA Pune, the case was referred to the Maharashtra High Court Legal Services Committee. In the case, the lawyer appointed by Maharashtra High Court Legal Services





Authority successfully argued for her bail in the Bombay High Court. She was granted bail on her executing bail bond of Rs 25000 with one or more sureties on February 9th, 2021. Her family members were not ready to comply with the bail condition as they were not willing to keep her in their home. The Fellows eventually convinced the family members to take care of surety and the accommodation would be arranged by the Programme. She was released on July 14th, 2021. The Fellows arranged for her shelter in Snehalaya, an institution that provides support to vulnerable women and children.

4.2 AGE

Majority of the FTF Clients were young and below 30 years of age (59%). The age profile of FTF Detailed Intervention clients was younger than the overall age profile of the undertrial prisoners in India as per Prison Statistics 2020⁵² where the number of undertrial prisoners below the age of 30 years is less than 50%. However, the gender-wise break up shows that older women were approaching the FTF for legal services. While 37.3% of the women clients were under the age

of 30, 47.9% were between the age of 30 and 50 years old and 9.91% were over 50 years old. Table 4.1 below gives age-wise distribution of FTF Clients (Detailed Intervention) as well as all of India's undertrial population.

The overwhelmingly large number of young clients approaching FTF for legal services is indicative of the vulnerability of younger undertrial prisoners. 17% of the clients were

⁵² Data on age of undertrial prisoners is extracted from Chart 2.8 of Prison Statistics 2020 on page 40.

below 21 years and 84% below 40 years while 1% were over 60 years. As this chapter further reveals, most clients were also from socio-economically marginalized sections with severely limited life choices. 61% of clients with multiple cases were 27 years of age and below. By contrast, the age-wise profile of the OTI clients showed that they were more evenly distributed, with 49% of them being under 30 years and 39% being between 30 to 50 years of age. This could indicate that undertrial prisoners who are older have greater access to private legal services.

Offence-wise, almost two-thirds (65.25%) of cases under which clients between the age group 18-21 were arrested were for theft-related while 54.69% of those between 21-30 years were arrested for theft. Over two-thirds (68.6%) of clients arrested for theft-related offences were under the age of 30 years. The proportion of theft to other offences is lower for older clients. Two-thirds (66.9%) of murder cases were against clients who were between the age of 21 to 40 years.

TABLE 4.1 AGE-WISE DISTRIBUTION OF FTF CLIENTS (DETAILED INTERVENTION)

AS WELL AS UNDERTRIAL POPULATION

AGE WISE DISTRIBUTION	Pune (Detailed Intervention)		Nagpur (Detailed Intervention)		Total (Detailed Intervention)		Prison Statistics 2020 (Undertrial Prisoners - India)	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Below 18 years	3	1%	0	0%	3	0%	1	0.0%
18-30 years	290	55%	315	63%	605	59%	181153	48.7%
31-50 years	176	34%	160	32%	336	33%	151291	40.34%
Above 50 years	28	5%	27	6%	55	5%	39403	10.6%
Not Known	26	5%	2	0%	28	3%	---	---
Total	523	100%	504	100%	1027	100%	371848	100%

JUVENILE IN ADULT PRISON

Rohan (name changed), a 16-year male juvenile, approached FTF in Pune for legal aid charged under Section 489B (Using as genuine, forged or counterfeit currency-notes or bank-notes) and 489C of the IPC (Possession of forged or counterfeit currency-notes or bank notes), where he was accused of possessing fake currency notes. He informed the SWF that he was given Rs.2000 note, was unaware that the currency was fake and was at 'Pan Shop' when the police arrested him. At his request, Panel Advocate was appointed and filed vakalatnama. Fellows obtained documentary proof of age to show he was a minor, which was submitted in court by the Panel Advocate. The court directed that a medical examination or ossification test be conducted to confirm juvenility. The report confirmed that the client was a juvenile and the case was transferred to the Juvenile Justice Board (JJB) for further legal proceedings. Thereafter, the Tata Trust appointed a private lawyer to conduct the trial before the JJB.

4.3 RELIGION

Vijay Raghavan and Roshni Nair⁵³ point out that religious and ethnic minorities in prisons are disproportionately high. There is a disproportionately high population of undertrial prisoners from marginalised communities in the prison in India⁵⁴. Prison Statistics 2020⁵⁵ disclose a similar over-representation of minorities, though it fails to record the number of Buddhist and Jain prisoners. Hence, the FTF client profile data⁵⁶ is not a skewed representation of the general prison population. Table 4.2 below gives the break-up of the religious identity of FTF Clients (Detailed Intervention only) as

well as all India and non-Indian prisoners. The gender-wise break up shows that 74% of the women clients were Hindus, 14% were Muslims and 2% were Buddhists.

The 'Not Known' category in the Prison Statistics 2020 column in the table above represents the Maharashtra figures as Maharashtra failed to provide the break-up of its population. The figures- given Raghavan and Nair's findings- are unlikely to represent a different picture. The table shows that many FTF Clients belonged to minority communities that are routinely oppressed.

TABLE 4.2 RELIGION WISE BREAK UP OF FTF CLIENTS (DETAILED) AND OVERALL UNDERTRIAL POPULATION

Religion	Pune (Detailed Intervention)		Nagpur (Detailed Intervention)		Total (Detailed Intervention)		Prison Statistics 2020 (Undertrial prisoners Only) ⁵⁷	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Buddhist	30	5.74%	102	20.24%	132	12.85%	NA	
Christian	11	2.10%	6	1.19%	17	1.66%	8284	2.22%
Hindu	368	70.36%	341	67.66%	709	69.04%	249190	67.01%
Jain	0	0.00%	2	0.40%	2	0.19%	NA	---
Muslim	54	10.33%	38	7.54%	92	8.96%	72790	19.57%
Other	4	0.76%	6	1.19%	10	0.97%	2250	0.60%
Sikh	0	0.00%	3	0.60%	3	0.29%	13163	3.53%
Not Known	56	10.71%	6	1.19%	62	6.04%	26171	8.3
TOTAL	523	100%	504	100%	1027	100%	371848	100%

⁵³ Supra Note 2

⁵⁴ Sabah Gurmat, *Prison Statistics India 2020: 76 percent of prisoners are undertrial prisoners; the number of Muslims, Sikhs, SCs and STs among them disproportionate to their population*, The Leaflet, (Jan. 5, 2022) <https://theleaflet.in/prison-statistics-india-2020-76-per-cent-of-prisoners-are-undertrial-prisoners-the-number-of-muslims-sikhs-scs-and-sts-among-them-disproportionate-to-their-population/> Desegregated caste and religion wise data for Maharashtra is not available in Prison Statistics 2020. Also see Vijay Raghavan and Roshni Nair (2013) *Supra*, note 2.

⁵⁵ Figures in Table 4.2 of Prison Statistics 2020 are taken from Table 2.11C at p.67 and are of undertrial prisoners only. The disaggregation of the religious denominations are also taken from that table. Apart from similar tables denoting disaggregation of data of convict, detainees and 'other' prisoners on grounds of religion, there is no other data on religious identity of prisoners in the report. NA in the tables denote 'Not Available'

⁵⁶ Please note that the identification of the religious identity is done solely on the basis of self-identification by the clients and no documentary verification has been done on our part.

⁵⁷ The Prison Statistics 2020 did not provide the disaggregated data on religion for Maharashtra.

FTF's data on religion reflects the over-representation of Buddhists, amongst FTF clients. Corresponding figures on the proportion of Buddhists among the general undertrial population are not covered in Prison Statistics 2020.

As regards the Muslim population, Prison Statistics 2020 indicate an over-representation of Muslims in prison. However, the proportion of Muslim clients with FTF was lower compared to their population as per Prison Statistics 2020.

4.4 CASTE

Like religion, a disproportionately high population of undertrial prisoners are from vulnerable castes.⁵⁸ The caste-wise segregation⁵⁹ of Detailed Intervention clients combined with the socio-economic profile of clients reveal that most FTF Clients like the general prison population was marginalised and in need of legal aid. The caste profile of clients also shows that majority of the clients were from vulnerable castes. The Scheduled Caste (SC) population in Nagpur District was 18.7% and the Scheduled Tribe (ST) population

was 9.4%.⁶⁰ Nagpur clients from SC communities accounted for 27.18% and STs accounted for 14.68% of the total clients. While Pune had 12.5% SCs and 3.7% STs⁶¹, Pune clients from SC communities accounted for 24.09% and STs accounted for 5.54% of the total clients. This indicates an over-representation of SCs and STs among the FTF clients, compared to their general population. Table 4.3 below gives the caste-wise break-up of the FTF Clients (Detailed Intervention) along with the all-India undertrial Data from Prison Statistics 2020⁶².

⁵⁸ Adv. Rahul Singh, *Criminal Justice in the Shadow of Caste: Study on Discrimination Against Dalit and Adivasi Prisoners & Victims of Police Excesses* NDMJ-NCDHR (2018);

⁵⁹ Please note that caste-wise segregation of data has been done on the basis of the self-declaration of their respective castes by the clients and no documentary verification has been done on our part.

⁶⁰ District Census Handbook Nagpur retrieved on 9th September 2019 from http://censusindia.gov.in/2011census/dchb/2709_PART_B_DCHB_%20NAGPUR.pdf

⁶¹ District Census Handbook Pune retrieved on 9th September 2019 from http://censusindia.gov.in/2011census/dchb/2725_PART_B_DCHB_%20PUNE.pdf.

⁶² Like the religion-wise data, the caste-wise break up in Prison Statistics 2020 is given separately for undertrial prisoners, Convicts, Detenues and Other Prisoners. The data incorporated in Table 4.3 is from Table 2.11D on page 68 and only includes the categories of SC, ST, OBC and Others. As in the religion-wise disaggregated data, the Not Known figures are from Maharashtra which did not furnish caste-wise break-up of the prisoners. The caste-wise break up does not have a General Category in Prison Statistics 2020 and hence there is a difference in the numbers of "Other" in the FTF data and Prison Statistics 2020. The FTF data has a separate category of "General" and thus the category "Other" of FTF does not include clients belonging to the General Category

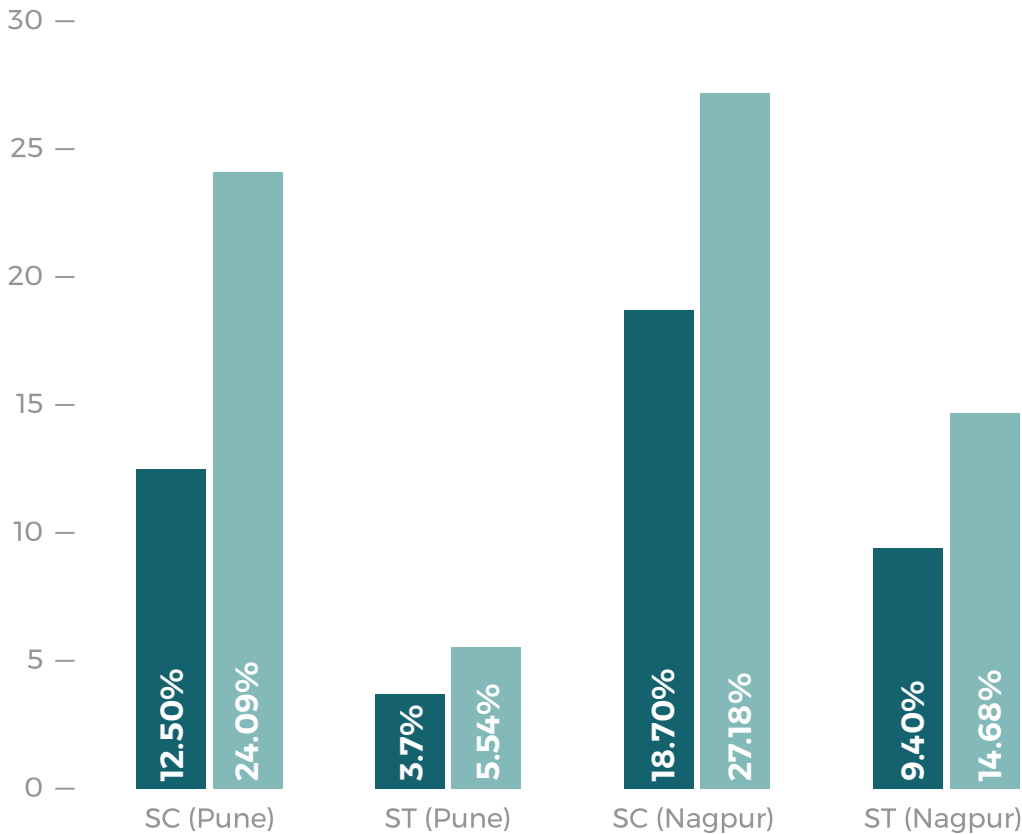
**TABLE 4.3 CASTE WISE BREAK UP OF FTF CLIENTS (DETAILED INTERVENTION) AND
UNDERTRIAL ALL INDIA POPULATION**

Caste	Pune (Detailed Intervention)		Nagpur (Detailed Intervention)		Total (Detailed Intervention)		Prison Statistics 2020 (Undertrial Population)	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
DNT/VJNT	24	4.59%	14	2.78%	38	3.70%	NA	---
EBC	47	8.99%	0	0.00%	47	4.58%	NA	---
General	96	18.36%	86	17.06%	182	17.72%	NA	---
NT	35	6.69%	7	1.39%	42	4.09%	NA	---
OBC	61	11.66%	139	27.58%	200	19.47%	127736	34.35%
Other	1	0.19%	4	0.79%	5	0.49%	101194	27.21%
SC	126	24.09%	137	27.18%	263	25.61%	77316	20.79%
ST	29	5.54%	74	14.68%	103	10.03%	39031	10.50%
Not Known	104	19.89%	43	8.53%	147	14.31%	26171	7.03%
TOTAL	523	100%	504	100%	1027	100.00%	371848	100%

“A disproportionately high population of undertrial prisoners are from vulnerable castes.”

The chart below compares proportion of SCs and STs in the overall population of Pune and Nagpur with the proportion of SCs and STs amongst FTF clients.

CHART 4.4 COMPARISON OF SC AND ST POPULATION (PUNE AND NAGPUR)



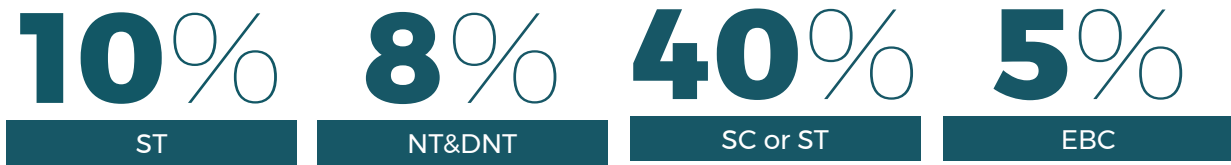
● **Proportion in general population**

The caste profile of FTF Clients shows that around 10% of FTF Clients were STs and around 40% were either SC or ST. Most clients who stated that they did not know their caste status were Muslims, while a few might be those who did not wish to disclose their caste identity. SWFs feel one of the possible reasons for FTF Clients withholding their caste identity could be apprehension of stigma attached to their caste identities and the

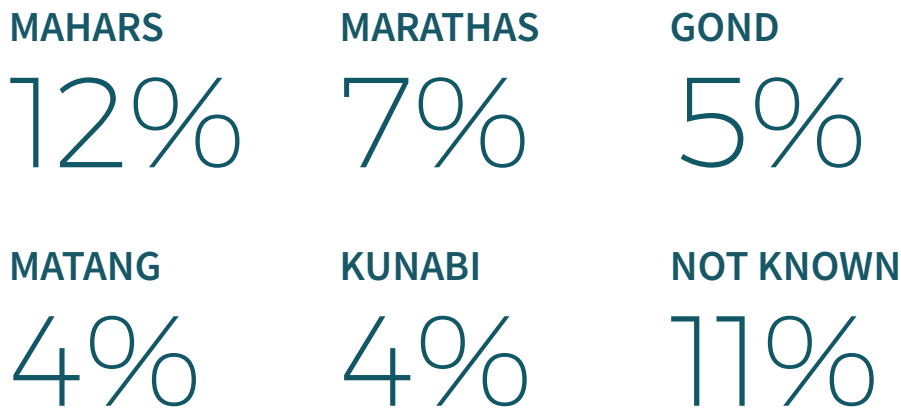
● **Proportion in FTF Clients**

fear of bias by the state functionaries. Almost 8% of the clients were from 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 (12% of the FTF Clients), Marathas (7%), Gond (5%), Matang (4%) and Kunabi (4%). The caste identity of 104 clients (11%) could not be ascertained.

CASTE PROFILE OF FTF CLIENTS



CASTE IDENTITIES OF FTF CLIENTS



While it could be argued that most undertrial prisoners in need of legal aid would belong to weaker sections, the caste-wise break up of all undertrial figures as extracted from Prison Statistics 2020 reflects that the overall prison population is drawn from these marginalized communities. The vulnerability of socially marginalized caste groups is further reflected by the fact that 30% of the SC clients and 13% of the ST clients had multiple cases against them. Prisons and custodial institutions as Lois Wacquant (2010) points out appear to have become a powerful tool in the hands of the state to control the “unruly classes,” as the gap between the rich and the poor widens under neo-liberalism⁶³.

FTF data on caste provide on-ground confirmation of the experiential narratives on the over-representation of marginalised communities in prison. The caste profile of FTF Clients shows that around 10% of FTF Clients were STs and around 40% were either SC or ST. Most clients who stated that they did not know their caste status were Muslims, while a few might be those who did not wish to disclose their caste identity. SWFs feel one of the possible reasons for FTF Clients withholding their caste identity could be apprehension of stigma attached to their caste identities and the fear of bias by the state functionaries.

⁶³ Supra Note 2; Lois Wacquant, *Crafting the Neoliberal State: Workfare, Prisonfare and Social Insecurity*, Sociological Forum, Vol 25(2), June, pp 197– 220 (2010).

MULTIPLE MARGINALISATION AND BAIL COMPLIANCE

Mukesh (name changed), a 22 year old migrant belonging to Mandal caste from Jharkhand, has been in Nagpur Central Prison since 2018 for the offence of cheating under section 420 of the IPC (Cheating and dishonestly inducing delivery of property) and under Section 66B of the Information Technology Act (Punishment for dishonestly receiving stolen computer resource or communication device). He is a diploma holder and was in private employment at Jamtara in Jharkhand at the time of arrest. He was also arrested in another case in Gujarat. After the client approached the SWF for help in June 2019, search of the court records showed him as released on PR bond but he was still in prison. This was brought to the court's notice by the LF and it was further found that the previous entry was wrong and that the bail order was for surety of Rs. 15,000/- surety. The client did not have contact details of his family members and they had not visited him as they were in Jharkhand. Some released undertrial prisoners offered to help him by finding him a surety but that did not happen. The LF moved for modification of bail order and it was modified from surety to cash of Rs.15000 which he was again unable to comply with. Another modification was moved and the amount of cash bail was reduced to Rs. 5000 with surety for Rs. 10000 to be furnished after release. However, the client was unable to furnish that too. Despondent, he informed the SWF in December that he had decided to plead guilty and the SWF convinced him not to do





so. Application for release on PR bond was rejected in February 2020. During COVID-19, the undertrial regained contact with his family members. A fresh PR application was filed during COVID in December 2020 and the Court sought the SWF's report before release. After speaking to the family, the SWF authored and sent the report detailing the undertrial and his family's conditions, which was accepted by the court. Cash bail of Rs. 3000/- was granted in April 2021 and furnished by his father when he came to Nagpur in September 2021. However, since the client has another ongoing case in Gujarat, he was released from Nagpur prison and sent to Gujarat.

4.5 DOMICILE

Prison Statistics 2020 divulges that over 90% of the undertrial prisoners belong to the same state that they are held in while 8.64% are from other states and the remaining are foreigners. The Maharashtra figures are that 78.60% undertrial prisoners belong to Maharashtra while 20.14% are from other states and 1.45% are foreigners. The data maintained by FTF further bifurcates the data to include those from different districts in Maharashtra and current and permanent residents, to take migrant workers into account. These distinctions are crucial legally, as not having roots in the community adversely

impacts the ability of clients to avail and furnish bail as well as legal services.

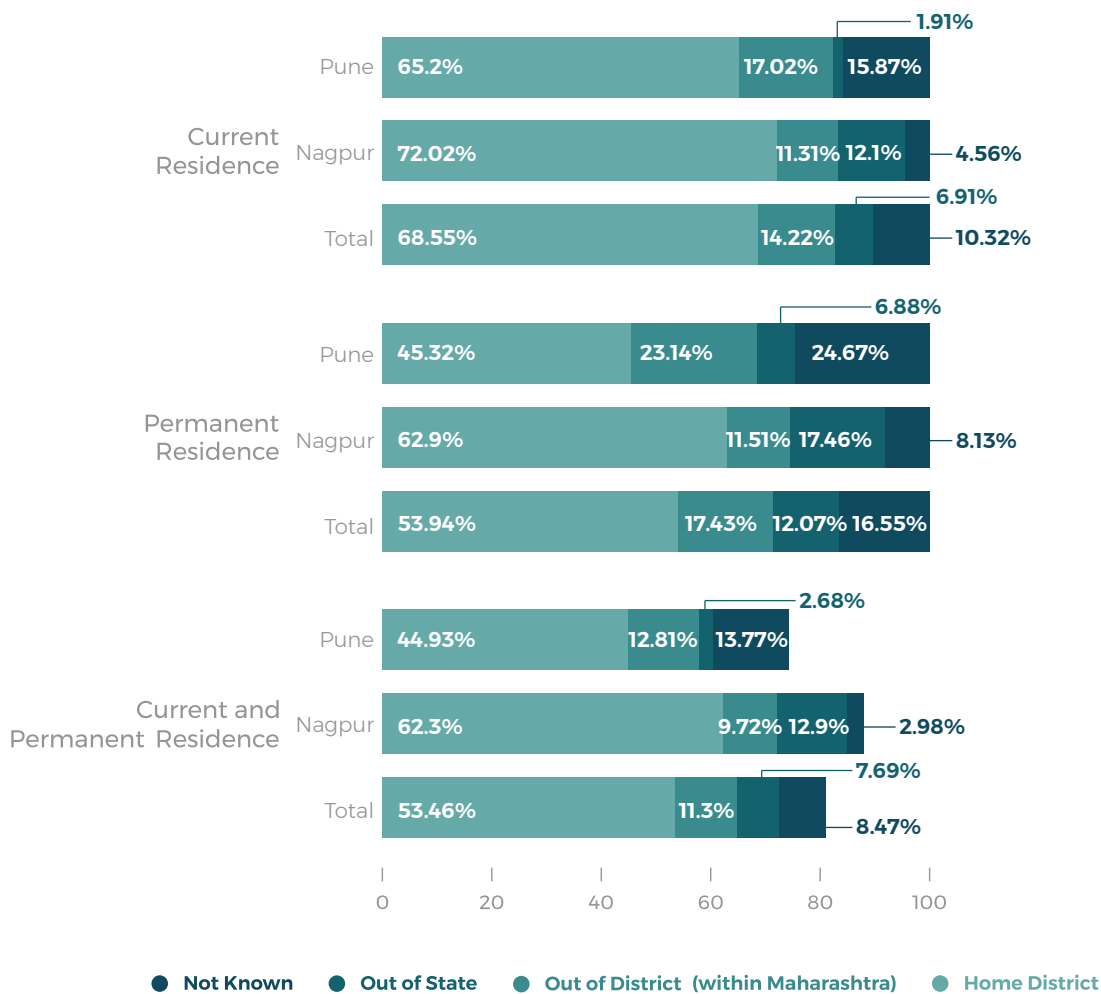
The number of local clients whose both current and permanent district was the same as where they were in custody was 53.46% (44.93% in the case of Pune and 62.30% in the case of Nagpur). 11.63% of FTF Clients were from out of the district within Maharashtra and 7.69% of FTF Clients were from out of Maharashtra. In Pune, less than two-thirds of the clients (65.22%) were current residents of Pune and a little over 45% were permanent residents of Pune. Though there

were a significantly high number of persons from other districts in Maharashtra, there were fewer clients who were from out of Maharashtra. In Nagpur, 72.02% of the FTF Clients were current residents of Nagpur, 12.1% of the FTF Clients were currently from out of Maharashtra and 17.46% of the FTF Clients were permanently from out of Maharashtra.

Combined with this is a lack of documentary proof of identity and residence. 58.13% of FTF Clients had both identity and residence proof and 57.55% of the FTF Clients had proof of age and 56.57% of the FTF Clients had all three,

58.91% of the FTF Clients had at least one, and 12.56% of the FTF Clients had none of them. The numbers for Pune⁶⁴ were 52.2% who had proof of identity, residence and age, while 52.58% had at least one of them, 51.24% had all three of them and 7.07% had none of them⁶⁵. In Nagpur, 64.68% of the clients had proof of identity and residence, 63.1% had proof of age, 65.48% had at least one of the documents and 62.1% had all three, and 18.25% had no documents. Amongst the 58 women clients, only one had documentary proof of age, residence and identity and the rest had no documentary proof whatsoever.

CHART 4.5 DOMICILE OF FTF CLIENTS (DETAILED INTERVENTION) (N=1027)



⁶⁴ Data is not available for 211 clients i.e. 40.34% in Pune.

⁶⁵ Data is unavailable for 82 or 16.27% of the clients in Pune.

MIGRATION AS A GROUND FOR REJECTION OF BAIL

Rohini (name changed) is a 45-year-old non-literate woman undertrial prisoner from Pune Women's Jail, belonging to the Gaund NT. Prior to her arrest, she was a farmer with a yearly income of Rs.100000 who had migrated from Madhya Pradesh to Maharashtra in search of work with her husband, and she did not understand Marathi or Hindi. She was arrested along with her husband for abetment of murder. The client had two minor daughters in their native village in Madhya Pradesh. The family was unaware of their arrest and neither did she remember the address of the location where she used to work nor could she recall the contact details of her family members. She was incapable of accessing the same as her mobile phone was seized during the investigation. The Fellows were not able to establish contact with other family members. The client was arrested in this case just one and a half weeks after she immigrated to Pune for work and had no local contact in Pune. The Fellows decided to move for bail and contacted her contractor (employer) who was willing to furnish bail. Though the evidence against the client was extremely tenuous, as the only circumstantial evidence against her was that she was standing at the scene of the crime before she was arrested, the Sessions Court rejected her bail on the sole ground that she was a migrant and there was a likelihood of her absconding.

A considerably high proportion of migrants amongst FTF clients coupled with a lack of documentary proof points to clients' lack of ties within the community and creates impediments in bail compliance even in petty cases. Lack of documentary proof is often a consequence of lack of property and unfairly targets people without assets. This results in long periods of incarceration and an increase in the number of applications for modification of bail to cash or personal bond. There is also a need for continued post-release support services to such clients to ensure their presence in court during the trial.

4.6 EDUCATION OF CLIENTS

Over half of the FTF Clients were educated up to the primary level (54.17%) while less than 2% were graduates and professionals. The figures for all India prison data show a similar trend of the undertrial population⁶⁶. Table 4.4 below shows that while 21.03% of FTF Clients were non-literate, figures for Pune are higher at 26.58% closer to the national figure of 28.6%, than Maharashtra numbers which are higher- 19.8% of the undertrial prisoners are non-literate and 45.58% are educated up to the secondary level as against 39% FTF Clients. All Maharashtra data in Prison Statistics 2020 reveals that a little over 65% of the

prison population is educated below SSC or is non-literate while 72% of FTF Clients are educated below SSC. The figures for women clients reflect the low status of women with 38% of women being non-literate and another 17% having completed education up to secondary school. None of the women clients had studied up to graduation and above and only 2% was a diploma holder.

Vocational/ educational activities which could enable prisoners to get employment opportunities and move out of poverty and the resultant criminalization accounted for 0.6% of the total expenditure reflecting the low priority of skill enhancement of this already low-skilled population.⁶⁷

⁶⁶ The segregation of data as per educational attainment differs for Prison Statistics 2020 as against the same by FTF. Prison Statistics 2020 takes into account the following categories of Educational Attainment: (i) Illiterate; (ii) Below Class X; (iii) Class X and above but below Graduation; (iv) Graduation; (v) Holding Tech Degree/ Diploma; and (vi) Post Graduate. The same have been incorporated in appropriate categories created by FTF. Thus, there is a collapsing of Primary and Secondary categories for the category Below Class X, SSC and Above Class 10 but below graduation for Class X and above but below Graduation and Diploma and Vocational Training for Holding Tech Degree/ Diploma. Since there is no matching category in Prison Statistics 2020, the same has not been included in the pertinent columns.

⁶⁷ Chart 12.2 of Prison Statistics 2020 at p.265.

TABLE 4.4 EDUCATIONAL ATTAINMENT OF FTF CLIENTS (DETAILED INTERVENTION)

AND ALL INDIA UNDERTRIAL POPULATION (PRISON STATISTICS 2020)

Education	Pune (Detailed Intervention)		Nagpur (Detailed Intervention)		Total (Detailed Intervention)		Prison Statistics 2020 (Undertrial Prisoners)	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Non Literate	139	26.58%	77	15.28%	216	21.03%	100297	26.97%
Primary School	153	29.25%	290	57.54%	443	43.14%	151386	40.71%
Secondary School- 6th to 9th	50	9.56%	30	5.95%	80	7.79%		
SSC- class 10	56	10.71%	53	10.52%	109	10.61%	85071	22.87%
Above class 10 but below graduation	40	7.65%	35	6.94%	75	7.30%		
Graduate	6	1.15%	6	1.19%	12	1.17%	23771	6.39%
Post - Graduate	2	0.38%	1	0.20%	3	0.29%	6436	1.73%
Professional	1	0.19%	0	0.00%	1	0.10%	NA	NA
Diploma	1	0.19%	5	0.99%	6	0.58%	4887	1.31%
Vocational Training	1	0.19%	4	0.79%	5	0.49%		
Not Known	74	14.15%	3	0.60%	77	7.50%	NA	NA
TOTAL	523	100%	504	100%	1027	100%	371848	100%

POVERTY, ILLITERACY HINDERING LIBERTY

Ameen (name changed), a 40-year-old non-literate Muslim self-employed client who earned approximately Rs.8000 per month and had a wife and two children, was arrested on October 13th, 2018 for molestation of minor under Section 354 IPC (Assault or criminal force to woman with intent to outrage her modesty) and POCSO. He informed the SWF that he had been falsely implicated by the minor's father due to frequent quarrels between them. He sought legal aid on April 16th, 2019 after his private lawyer refused to appear for non-payment of fees. His bail compliance was pending when he approached FTF. The family could not afford to furnish bail. The SWF visited his house and made contact with some people belonging to the community and convinced them to furnish bail. On June 3rd, 2019 his bail was modified on application by the LF and Panel Advocate and he was released on July 1st, 2019.

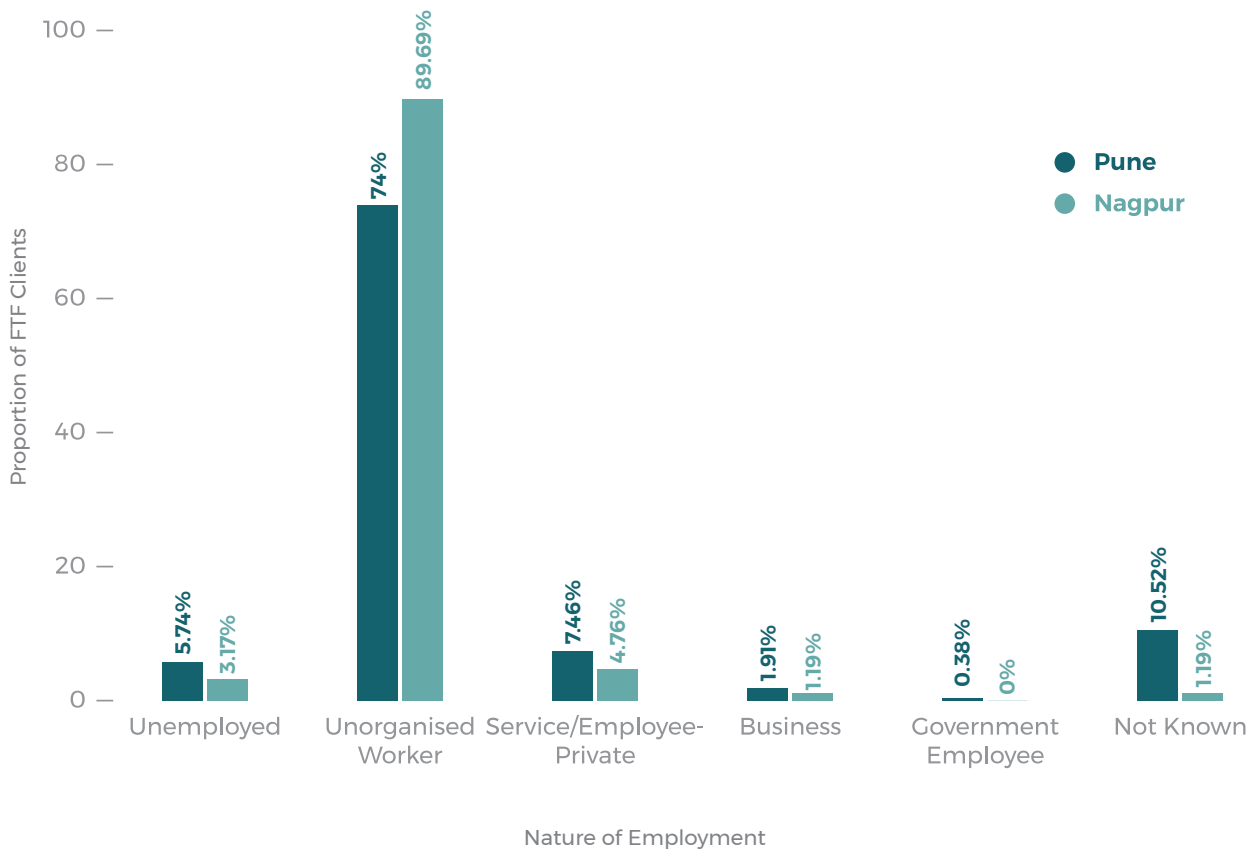
4.7 OCCUPATION OF FTF CLIENTS

Most FTF Clients were precariously employed or unemployed. The chart below gives details of the occupation of FTF Clients⁶⁸.

Over 10% of the FTF Clients were not gainfully employed which included those who were unemployed (4.48%), home-makers (0.49%), students (0.78%) and retired (0.19%). Over 80% were employed in the informal sector including daily wage earners (64.6%), self-

employed (6.33%), farmers (5.06%), drivers (4.77%), domestic workers (1.07%) and two sex workers (0.19%). 6% of clients' occupation was not known and apart from 1.56% who had their business and 0.19% who were government servants and the rest (6.13%) were employed in the private sector. Amongst women clients 9% were unemployed, 9% were home-makers and none had a business or a government job. 10% of women were farmers. 5% were in private services while the rest were employed in the unorganized sector with details not being known of 21%.

CHART 4.6 OCCUPATION OF FTF CLIENTS (DETAILED INTERVENTION) (N=1027)



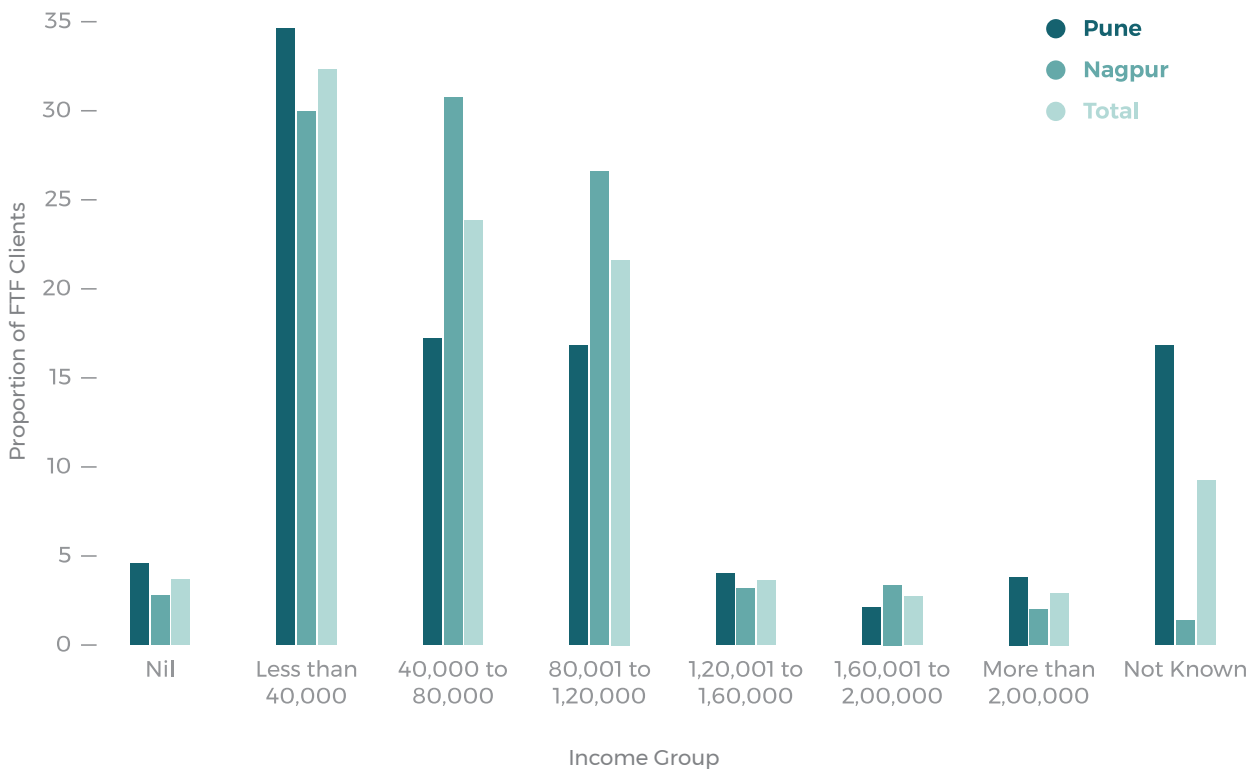
⁶⁸ Prison Statistics 2020 does contain occupational data of prisoners.

4.8 INCOME OF FTF CLIENTS

Expectedly, the income level of most FTF Clients was extremely low with 81.25% earning less than Rs.1.2 lakhs a year or less than Rs.10000 pm. The figures for Nagpur are 90%. The income of 9.25% was not known and only 30 or 2.92% earned over Rs.2 lakhs per annum of whom 10 were in Nagpur and 20 in Pune. While almost 4% had no

income, 32.33% had income below Rs.40000 p.a. Amongst women clients, 19% had no income, 3% earned over Rs.2 lakhs, 71% of them had an income below Rs.120000 and income details of 22% were not known. Chart 4.7 gives the income-wise position of Detailed Intervention clients⁶⁹.

CHART 4.7 INCOME BREAKUP OF FTF CLIENTS (DETAILED INTERVENTION) (N=1027)



Income	Nil	Less than 40,000	40,000 to 80,000	80,001 to 1,20,000	1,20,001 to 1,60,000	1,60,001 to 2,00,000	More than 2,00,000	Not Known
Pune	4.59%	34.61%	17.21%	16.83%	4.02%	2.1%	3.82%	16.83%
Nagpur	2.78%	29.96%	30.75%	26.59%	3.17%	3.37%	1.98%	1.39%
Total	3.7%	32.33%	23.86%	21.62%	3.6%	2.73%	2.92%	9.25%

⁶⁹ Income break up of undertrial and other prisoners is not available in Prison Statistics 2020

CRIMINALISATION DUE TO LIMITATIONS IN SEEKING SUPPORT SERVICES

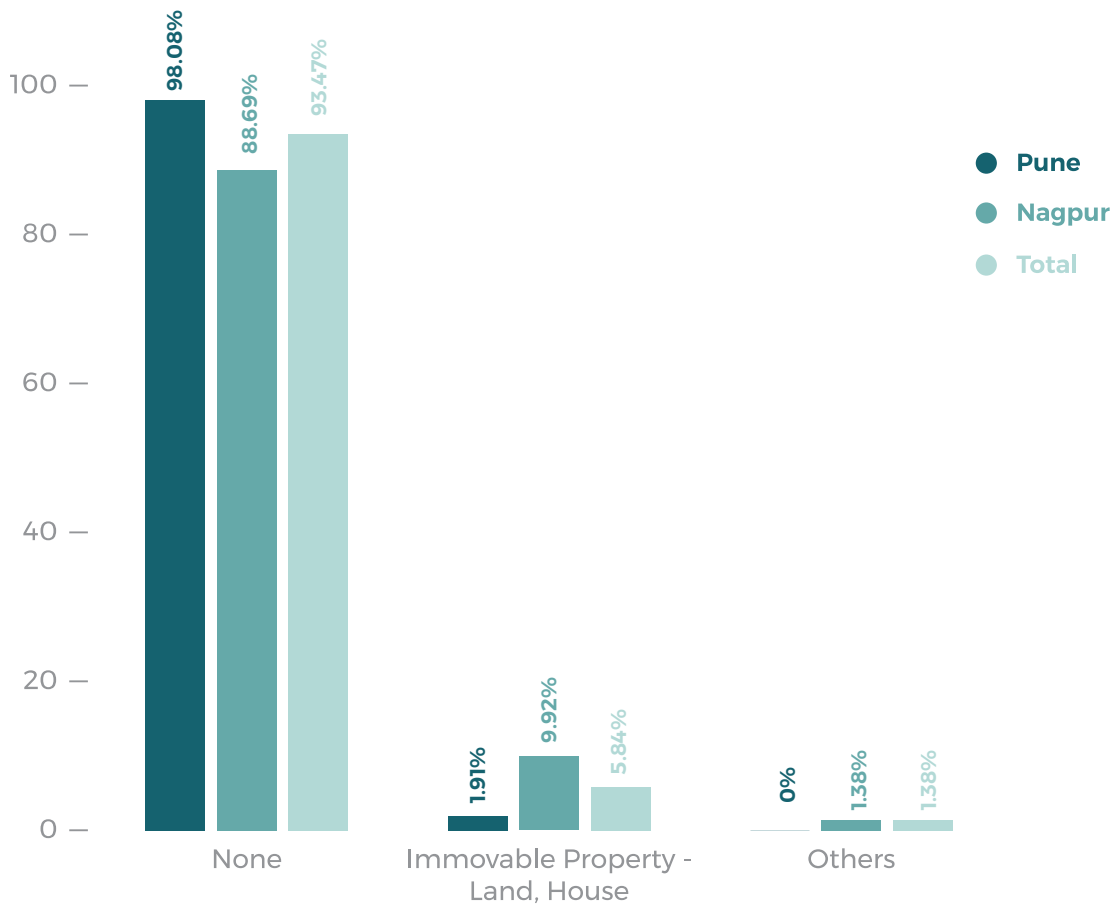
Salim (name changed), a 28 year old Muslim, owned a mobile repair shop and has completed primary education. He used to live in Pune. His yearly income is less than Rs. 40000. He was arrested on July 7th, 2019 by Yerwada Police under Arms Act for possession of unlicensed firearms and ammunition. The client approached the SWF for legal representation on July 19th, 2019. While working on the case, SWF and LF through his mother found that his wife had died due to brain fever. His wife's death had devastated the client and turned him into an alcoholic. His behavior towards his family became abusive, violent and aggressive. His mother came to know that he had suicidal tendencies and consulted a policeman (who she considered as her relative) who recommended that the client be sent to prison for his safety. She could not afford to send him to a de-addiction centre and was suspicious of its outcome. Hence, she said she got the client arrested on false charges. In prison, he was constantly worried about his children. The SWF gave case updates to the client and followed up with the family for further details. Bail was filed and granted by the court at Rs.5000 PR bond. The SWF contacted the client's mother for compliance. After release the client and his mother met SWF in court for his regular court hearing. The client informed SWF that he has started working in a private company and was taking care of his family.

4.9 OWNERSHIP OF ASSETS

Details of ownership of any assets, movable and immovable, were elicited from Detailed Intervention clients to assess their ability to furnish bail. 93.48% of the FTF Clients did not own any property and only 5.84% of the FTF

Clients owned immovable property (1.91% in Pune and 9.92% in Nagpur). 7 clients in Nagpur had other forms of movable property. Chart 4.8 below lists asset ownership details of Detailed Intervention clients⁷⁰.

CHART 4.8 ASSET OWNERSHIP OF FTF CLIENTS (N-1027)



⁷⁰ Prison Statistics 2020 does not include details of the asset ownership of prisoners.

The profile of education, occupation, income and ownership of property of FTF Clients establish that the socio-economic status of vast majority of FTF Clients is by all parameters that of the lowest strata of society. These indicators provide a possible explanation for a high proportion of clients approaching the programme with bail orders pending compliance. The profile of clients also points to the need to integrate support services for bail compliance/ sponsorship, socio-legal counselling, and post-release interventions within the ambit of LSAs.

4.10 CLIENTS WITH SPECIAL NEEDS

Close to half of the clients with Detailed Intervention had special needs with 42.55% having at least one identified special needs. The objective of collecting such information at the time of intake was to provide services directly or through referrals. Table 4.5 gives details of the type of special needs that clients have.

TABLE 4.5 SPECIAL NEEDS OF CLIENTS (DETAILED INTERVENTION)

SPECIAL NEEDS OF CLIENTS	Pune	Nagpur	Pune and Nagpur	Percentage of Total Detailed Clients
Medical History- Physical	14	24	38	3.70%
Medical History- Mental Health	15	14	29	2.82%
Needs Medical Attention	5	1	6	0.58%
Needs Mental Health Services	5	8	13	1.27%
Disability	1	3	4	0.39%
Ongoing Education	2	1	3	0.29%
Child in Prison (Below 6 years)	2	0	2	0.19%
Suspected Juvenile (Child in conflict with Law)	2	3	5	0.49%
No contact with family	352	287	639	62.22%
Terminal Illness	2	1	3	0.29%
Migrant	116	74	190	18.50%

DISABLED AND CRIMINAL JUSTICE SYSTEM

Manas (name changed), a 33-year-old client with a physical disability, arrested under section 307 of IPC for an attempt to murder, approached the SWF on February 18th, 2019 in Nagpur prison for legal aid. The client is non-literate and tribal. He was living on a footpath making his living vending earphones on the street earning less than Rs. 40000 per annum. The client grievously injured the victim when he picked up a stone to defend himself from the victim's attack. The LF and Panel Advocate filed bail and the same was granted by the court on March 15th, 2019 for Rs. 25000 with a solvency certificate. However, there was nobody who could furnish his bail. The LF filed for modification of bail which was rejected on May 15th, 2019 on the ground that the allegation was serious in nature and there was a commitment on the part of the accused that the accused would comply with the bail condition at the time of granting the bail. The SWF made a home visit, and spoke to family members and they managed to furnish bail and he was released from prison on May 22nd, 2019.

Approximately two-thirds of clients had no contact with their families and almost one-fifth are migrants. Close to 10% of clients had a history of previous incarceration. These factors exacerbated the challenges of furnishing bail and following up with the client upon release. Almost 16% of clients had a history of substance abuse, the majority of whom consumed alcohol, followed by consumption of tobacco and 10

clients consumed weed. The numbers in Nagpur were 25.2% raising concerns about rearrests upon release and necessitating continuous follow-up.

Majority of clients with disability were polio affected. Amongst clients with a terminal illness, one had a heart problem and others are HIV positive. 2 clients with terminal illnesses were women.

“Close to half of the clients with Detailed Intervention had special needs with 42.55% having at least one identified special needs.”

All the clients identified as having mental health issues also have a history of substance abuse.

LACK OF TREATMENT FOR MENTAL HEALTH ISSUES

Rahim (name changed), a 39 year old Muslim male from Pune arrested for theft under Section 380 of the IPC (Theft in dwelling house, etc.) had history of prior arrest. He did not speak and underwent treatment for mental illness at the hospital ward of the prison. At a home visit to his family which was not in contact with him, his sister informed the SWF that he had mental health issues since childhood but had not received any treatment.

There was another client who was a daily wage worker and was educated up to primary level. He had a history of alcoholism and been arrested for murder earlier. His family had cut relations because of his violent behavior and were not in contact with him in order to protect their children. The client was released during the pandemic on PR Bond.

DISABLING DISABILITY

Sanjana (name changed), a 55-year-old non-literate Marathi woman, was a farmer. She was lodged in a prison in Pune for murder. From the time she entered the prison in May 2019, the SWF found her incoherent and unable to carry out basic tasks such as standing on the weighing machine during regular medical check-ups, dressing and using prison phone services. She initially had a private lawyer. Thereafter, she approached SWF for legal aid and the bail was filed by Panel Advocate on March 6th, 2020 just before the lockdown. Since she had signs of mental health challenges, Fellows, along with Panel Advocate, tried to access records of the same but have been unsuccessful.

The SWF tried contacting the client's sister on the available phone number, but the same was out of service. The client's family and friends were not in touch and there were no further contact details so obtaining additional information and documents was not possible. SWF tried getting details from prison officials regarding mental health check-ups or treatment of the client including medication prescribed but the prison administration was not forthcoming.

Even though the client was a senior citizen suffering from mental illness, the bail order did not get passed due to the lockdown being declared while the bail application was pending argument. In this case, there was a huge challenge in establishing a defence of mental illness due to a lack of documents, relevant information, communication or contact with the family.

PROCEDURAL IRREGULARITY IN THE CASE OF MENTAL ILLNESS

Mukesh (name changed), a 27-year-old client was arrested under Section 302 (Punishment for Murder) for allegedly killing his granddaughter on December 20th, 2016. He is a daily wage worker who had mental health issues. He was schizophrenic, used to hear multiple voices, and was not able to sleep properly. Accordingly, an application under Section 330 of the CrPC (Release of lunatic pending investigation or trial) was filed. The bail was rejected on the ground that he was a danger to society and the accused was getting the treatment in the prison itself. However, during the production of the accused, the doctor examined the mental health condition of the accused. Based on the examination, the court ordered that the accused should be sent to the mental health prison and the trial would not start unless the accused could defend himself. However, later, he was sent to prison purely on his self-declaration that he was mentally sound and the concerned doctor was not even consulted. During the framing of charges, the LF in the oral hearing had made the representation that he was not mentally fit. However, the court was also insistent to frame charges against the accused and was not inclined to entertain the issue related to mental health. Overall, in this case, the experience of the SWF and LF in the case was that the issue of mental health was not taken seriously by the court or the public prosecutor or the Panel Advocate.

A majority of clients shared special needs that require socio-welfare intervention by the state to address such vulnerabilities. Especially in the case of prisoners with mental health care needs, prisoners with terminal illness and migrants without deep ties in the community, the lack of direct contact with the lawyers adversely affects the preparation of defence as such special circumstances are not taken into account by the lawyers while preparing for the defence. Such considerations have a bearing on the decisions related to bail and are considered as mitigating circumstances during the trial.

CONCLUSION

The on-ground experiences of the FTF confirm that a significantly large section of the population from the undertrial prisoners share unique socio-economic vulnerabilities. Such a situation reinforces the view that the role of the penal arm of the state disproportionately targets and criminalises the structurally disadvantaged instead of providing support mechanisms to remove the structural barriers which often lead them to get trapped in a cycle of criminalisation. As they come in conflict with the law, their unique vulnerabilities demand that customised legal assistance should be given to them to ensure a fair trial and secure their release. This requires going beyond the traditional model of providing legal representation to undertrial prisoners which focuses on individual problems of individual people and reimagining legal aid through a collective lens that focuses on the issues that confront the criminal justice system at a structural level. Due to the prisons suffering from multiple axes of oppression (including the incarceration itself), they need support services to address their unique socio-economic vulnerabilities. Therefore, for effective legal defence, they need access to social workers, counsellors, mental health professionals, and mitigators who could help them navigate through the whole process of incarceration. Moreover, there is a need to also ensure their reintegration into society once they are released and special services should be provided for the same. ■

05

**WORK DONE
WITH PRISON,
LSA AND PANEL
ADVOCATES**

Most interventions in the Programme were in prisons, courts and the LSAs but a considerable amount of work was also done with families of undertrial prisoners and other organizations.

Work with FTF Clients inside prison broadly included three elements: case intake, socio-legal counselling and casework and follow-up.

SWFs were the primary point of contact between the clients and the outside world, as over 60% of FTF Clients had no family contact.

SWFs had personally written 112 applications for release on PR Bond on behalf of those undertrial prisoners who had been granted bail but were unable to comply with bail conditions. 52 of these applications were in Detailed Intervention cases and 62 in OTIs.

The Programme had received a total of 1716 applications for the appointment of Panel Advocates. Out of these, applications were forwarded to the DLSA authority in 1246 cases, Panel Advocates were allocated in 1080 cases and vakalatnama was filed in court in 990 cases. The drop in the outcome numbers at each stage in the DLSA process was owing to the attrition of clients while the DLSA process was pending and the case was closed as an OTI.

One of the major causes for the delay in submitting an application to the DLSA office was due to the time taken by Fellows to ascertain the case status and details of the case. Fellows had to conduct a case search prior to forwarding applications to the LSA office. Such case searches in prison judicial registers and court records were necessitated due to the inability of the undertrial prisoners to provide complete case details. A significant number of clients inside prison did not have accurate information on the status of bail and lawyer engagement in their cases.

The maximum amount of time was spent between the date of the order of allocation of the Panel Advocate and the filing of vakalatnama in court. In 33% of the cases where vakalatnama was filed, the process took more than 15 days from the date of allocation. Of the 15% of cases that took more than one month for the process, 8% of cases took more than 30 days, 3% of cases took more than 60 days and 4% took more than 90 days for completion.

In 81.35% of all Detailed Intervention cases, Panel Advocates were active and actively received Fellows' assistance. In 12.41% of the Detailed Intervention cases, the Panel Advocate was not active but was comfortable in permitting the Fellow concerned to actively work on the case and in 3.80% of the Detailed Intervention cases, Panel Advocates did not take any assistance from the Fellows.

While the Programme's outcomes seem to be encouraging stand-alone, there is no baseline data to provide an assessment of the Programme's impact on outreach and utilization of services offered by state legal aid institutions.

This chapter sets out the actual work done on the ground by the Fellows and the Programme team towards achieving the Programme Objectives and implementing the intervention models as set out in chapter 1 and chapter 2 above. As will be seen, most interventions in the Programme were in prisons, courts and the LSAs but a considerable amount of work was also done with families of undertrial prisoners and other organizations. The current chapter details the Programme's work in prison, LSA and with Panel Advocates, the modus operandi of the work, challenges faced and the respective outcomes of the interventions done by the Programme.

In the work related to prison, the chapter discusses the aspects related to the case intake process, the socio-legal counselling of the clients and how the clients were kept in the loop with the follow-up process envisaged under the Programme. The chapter further discusses the work with the LSAs by examining the data on the number of days taken for the allotment of the Panel Advocate by the LSAs and the number of days taken to file the vakalatnama once they are appointed and analyses the factors that account for the delay in the allotment of Panel Advocates by the LSAs and what causes the delay by the Panel Advocates in filing the vakalatnama. Moreover, the chapter provides an empirical account of the level of assistance provided to the Programme by the Panel Advocates.

5.1 WORK IN PRISON

To allow smooth interaction with the undertrial prisoners, SWFs in both locations were given access to barracks inside the prisons from January 2019.

In Nagpur, all 3 SWFs in Nagpur visited the Nagpur Central Prison (male and female section) on three days of the week (Tuesday, Thursday and Saturday). SWFs were allocated a space to sit on the verandah of the Circle (*Badi Gol*) where they were approached by all undertrial prisoners seeking services from the Programme. This was the SWFs interface both with new undertrial prisoners for case intake as well as with existing FTF Clients seeking updates on their cases. SWFs would also take support from the source personnel present in the circle to announce names of undertrial prisoners, so as to proactively reach out to them for providing important updates and seek instructions/information relevant to the next steps in casework.

In Pune, SWFs took turns to visit the prison in a manner that at least 2 male SWFs visited the male section in Yerwada on three days of the week (Monday, Tuesday, Wednesday) and each male SWF went at least twice a week. In the male section in Yerwada, SWFs were assigned different barracks and their interventions

were usually limited to undertrial prisoners in the specific barrack assigned to them. In the women's section, one female SWF was present on three days of the week (Monday, Thursday, and Saturday). Similar to the set up in Nagpur, SWFs in Yerwada were also allocated outdoor sitting space in the barracks where they met the undertrial prisoners and interacted with them for case intake and subsequent follow-ups. SWFs in Pune also took assistance from prison personnel to make announcements for reaching out to existing FTF Clients.

In both prisons, SWFs also traced and identified undertrial prisoners who were referred to the Programme through sources outside the prisons like sitting judges, Jail Courts, LSA authorities, Panel Advocates etc. during their visit to the circle/barrack. In addition to visiting the barracks, SWFs in both locations also visited the after-barrack to interact with newly admitted undertrial prisoners and identify ones needing legal representation.

Work with FTF Clients inside prison broadly included three elements: case intake, socio-legal counselling and casework and follow-up.

5.1.1 Intake Process (Identifying undertrial prisoners in need of legal representation)

As part of the preliminary interactions with the undertrial prisoners, SWFs introduced the legal aid system under the LSA, gave details on the process of seeking free legal aid through the LSA and explained the services offered by the

Programme in this context. FTF Applications were obtained from undertrial prisoners, who were seeking the Programme's services, at this stage. These FTF Applications were taken outside the prison only after obtaining stamps of approval on these applications.

For undertrial prisoners seeking legal representation through the LSA, the LSA Application and details in the Facesheet were also obtained. Since the process of filling the Facesheet needed dedicated time with the FTF Client, SWFs usually visited barracks to meet clients for obtaining case history and filling the Facesheets.

As had been imagined in the Programme's intervention model, this process was crucial for building rapport with the FTF Clients and facilitated the identification of their needs in the case as well as careful assessment of unstated and unidentified special needs. SWFs played an important role in identifying clients with special needs as clients did not disclose them often. As seen in the last chapter, close to half (42.55%) of the clients had at least one special need. Instances of such identification included cases of no contacts with family, migrant undertrial prisoners, suspected juvenility, history of mental illness, disability etc. as most clients were not aware that these issues have legal repercussions and give rise to legal rights.

SWFs also experienced that a significant number of undertrial prisoners initially approached them with basic queries or requests in the nature of OTI services and subsequently requested for legal representation through LSAs. In all such

cases, the LSA Application and the Facesheets were filled only after the undertrial requested for representation through LSAs.

After collecting details from the FTF Clients, SWF also spent considerable time and effort in checking case details from the Undertrial Register to collate as well as cross-verify information provided by the FTF Client.

5.1.2 Socio-Legal Counselling

SWFs were constantly engaged in conversations with the FTF Clients beyond the scope of preliminary case history. SWFs were the primary point of contact between the clients and the outside world, as over 60% of FTF Clients had no family contact.

This included setting out basic legal and procedural provisions to the FTF Clients, explaining the nature of charges against them with possible punishments and providing an understanding of the current stage of proceedings, suggesting the next steps be taken along with indicative timelines for these procedures.

SWFs regularly counselled FTF Clients on legal issues based on inputs from LFs regarding the consequences of cases including possibilities of the grant of bail, consequences upon non-attendance of court dates upon release and repercussions of pleading guilty. Where necessary, LFs also met the FTF Clients through the mulaqat route to discuss issues needing legal inputs.

SWFs provided psycho-social support to clients apart from providing legal support, especially ongoing conversations regarding the special needs of the FTF Clients where applicable.

5.1.3 Case Work and Follow up

FTF Clients were provided regular updates on case progress and prepared for upcoming stages where required. The planned course of action and case strategy was discussed by the SWFs with the FTF Clients. In cases which were at the stage of the trial, SWFs discussed the nuances of the chargesheet to understand the FTF Client's version of the chain of events of the alleged crime and compared it with the contents of the chargesheet.

5.1.4 PR Application by SWF

Writing applications on behalf of undertrial prisoners seeking release on PR Bond has been a major contribution of SWFs to the Programme. SWFs had personally written 114 applications for release on PR Bond on behalf of those undertrial prisoners who had been granted bail but were unable to comply with bail conditions. 52 of these applications were in Detailed Intervention cases and 62 in OTIs.

In all cases where clients had a bail order pending for compliance (both at intake or subsequent order obtained by FTF Fellows), SWFs wrote applications for release on PR bond on their behalf. This was done specifically in cases where, based on the facts of the case, the chances of compliance or modification of bail

conditions were minimal. In such cases, SWFs wrote applications on behalf of the undertrial prisoners which were submitted by them directly before the judge in their subsequent production or forwarded to the court through the prison authorities.

CHART 5.1 PR BOND APPLICATION WRITTEN BY SWFs

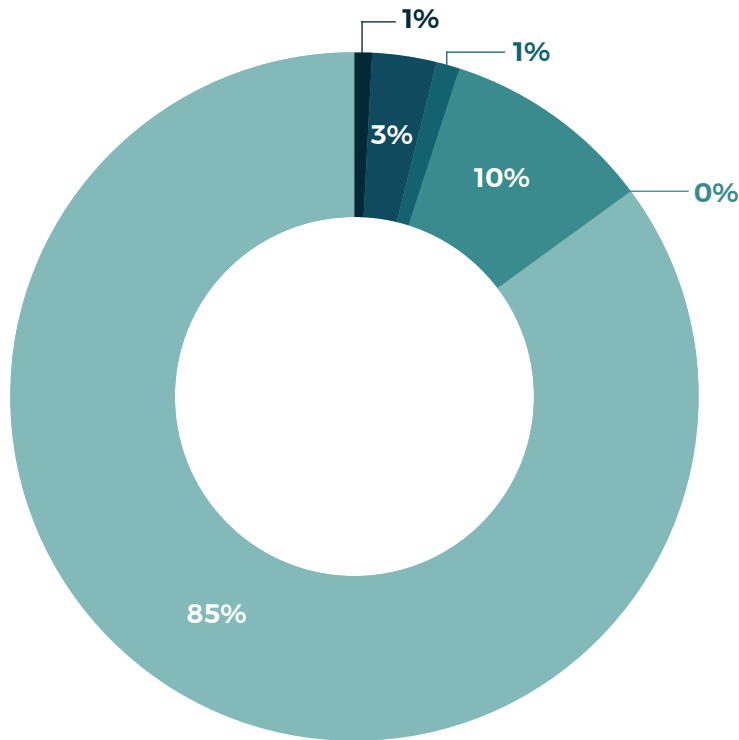


Writing applications on behalf of undertrial prisoners seeking release on PR Bond has been a major contribution of SWFs to the Programme.

5.2 WORK WITH LSAs

Coordinating the process of allocation of a Panel Advocate on a case was one of the early points of intervention in the Programme’s casework. Out of the 1390 Detailed Intervention cases under the Programme, vakalatnama of the Panel Advocate had been filed in 85% of cases. The allocation process at the level of the LSA office was completed in 10% of cases and the allocation process was pending in another 4% of cases. In 1% of the cases, the LSA process was not yet initiated.

CHART 5.2 DLSA STATUS OF ALL DETAILED INTERVENTION CASES (N=1390)

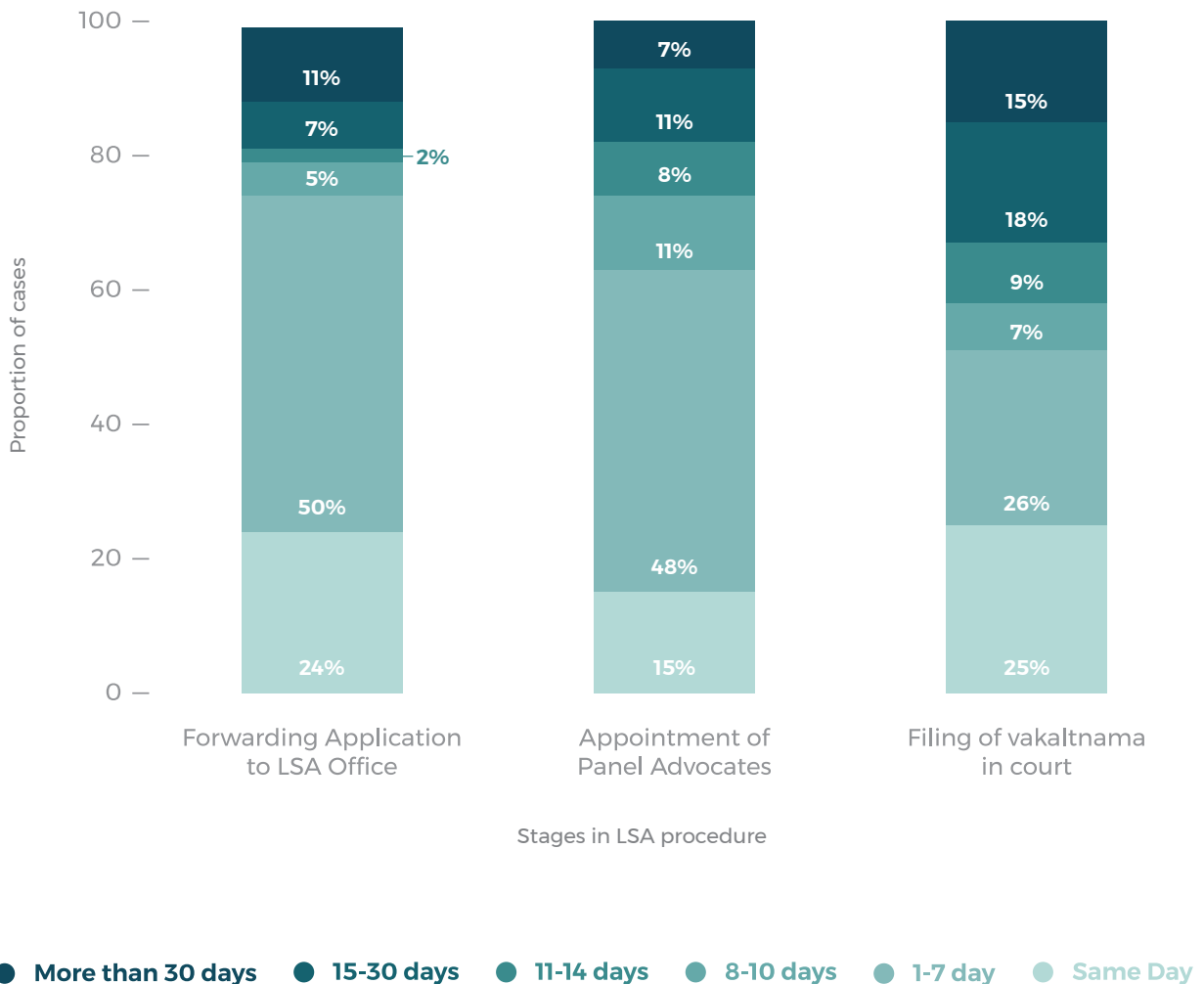


- LSA process not initiated
- Application received not forwarded to LSA
- Allocation of Panel Advocate pending
- Panel Advocate appointed
- Process for change of Panel Advocates
- Vakaltnama filed in courts

The Programme had received a total of 1716 applications for the appointment of Panel Advocates. Out of these, applications were forwarded to the DLSA authority in 1246 cases, Panel Advocates were allocated in 1080 cases

and vakalatnama was filed in court in 990 cases. The drop in the outcome numbers at each stage in the DLSA process was owing to the attrition of clients while the DLSA process was pending and the case was closed as an OTI.

CHART 5.3 TIMELINE RELATED TO THE LSA ALLOCATION PROCESS



In terms of timelines required for the LSA process, 74% of applications were forwarded to the LSA within a week of receiving the FTF Applications. While the Programme managed to forward 24% of applications on the same day, there was a time lag of 1-7 days at this stage for 50% of FTF Applications and a time lag of more than 7 days for 26% of FTF Applications. One of the major causes for the delay in submitting an application to the DLSA office was due to the time taken by Fellows to ascertain the case status and details of the case. Fellows had to conduct a case search before forwarding applications to the LSA office. Such case searches in prison judicial registers and court records were necessitated due to the inability of the undertrial prisoners to provide complete case details. A significant number of clients inside prison did not have accurate information on the status of bail and lawyer engagement in their cases. In some cases, even finding basic details such as case numbers, court names and police stations needed significant efforts from Fellows due to gaps in the prison records. Fellows also needed to conduct a case search before forwarding applications to the LSA to avoid conflict with lawyers who may have been working on the case without the client being aware of their engagement.

Once the application was forwarded to the DLSA Office concerned, the allocation of a lawyer was completed within a week in the majority of the cases (63%). The application and allocation procedure at the LSA is manual and entirely through physical documents. Tracking of allocation of lawyers (specifically by the beneficiaries) required in-person visits by the Fellows to the DLSA/TLSA office concerned. While applications for courts under DLSAs in Pune and Nagpur were submitted at the office of the DLSA, applications for cases in courts at Taluka level had to be submitted directly in the court before the Chief Judicial Magistrate (CJM) and the allocation of the Panel Advocate was done by the CJM at the same time in the courtroom. Some instances of delay at this stage could also be attributed to the unavailability of individuals like the member secretaries, judges in charge of taluka courts and office clerks on account of multiple reasons (personal and official).

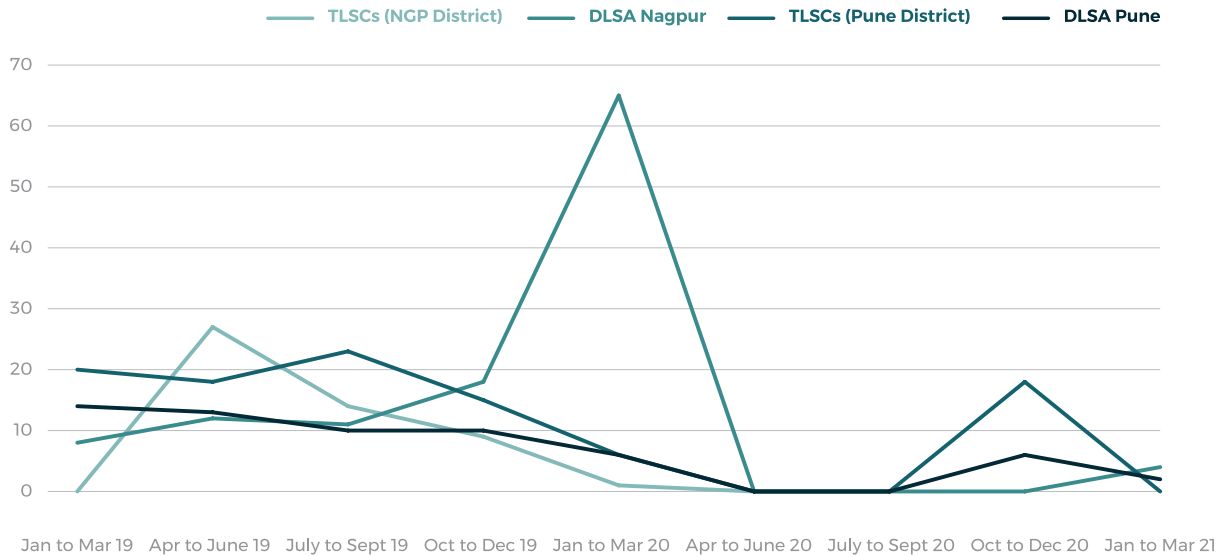
Chart 5.4 indicates a comparative charting of the average number of days taken for the allocation of the Panel Advocates from the date the Legal Aid Application was submitted before the LSA office.

In terms of timelines required for the LSA process, 74% of applications were forwarded to the LSA within a week of receiving the FTF Applications. While the Programme managed to forward 24% of applications on the same day, there was a time lag of 1-7 days at this stage for 50% of FTF Applications and a time lag of more than 7 days for 26% of FTF Applications.

“A significant number of clients inside prison did not have accurate information on the status of bail and lawyer engagement in their cases.”

CHART 5.4 PANEL ADVOCATE ALLOCATION TIMELINE

(from the date of submitting application in LSA Office)



	Jan to Mar 19	Apr to June 19	July to Sept 19	Oct to Dec 19	Jan to Mar 20	Apr to June 20	July to Sept 20	Oct to Dec 20	Jan to Mar 21
DLSA Pune	14	13	10	10	6	0	0	6	2
TLSCs (Pune District)	20	18	23	15	6	0	0	18	0
DLSA Nagpur	8	12	11	18	65	0	0	0	4
TLSCs (NGP District)	0	27	14	9	1	0	0	---	1

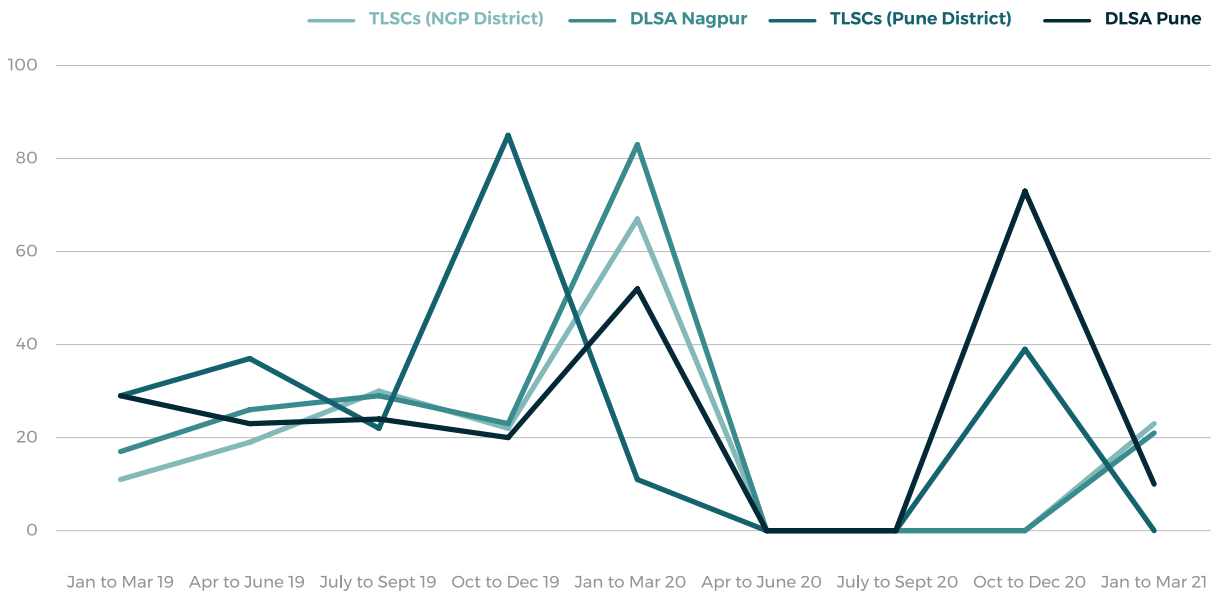
The nil/low average for TLSCs in Nagpur, for January to March 2019, and for all categories of TLSCs between January 2020 to September 2020 was due to a lack of cases being followed up during the pandemic. Similarly, the sharp increase in the average number of days for cases taken up from January to March 2020 for DLSA Nagpur was due to the applications received in March which had to be put on hold due to the lockdown. The jump in the number of days for TLSC, Pune in October-December 2020 reflected the work being resumed in this period. Barring a few justifiable instances, the timeline shows a gradual decrease in the number of days needed for allotment in FTF cases. While the timeline still leaves much to be desired in terms of the efficiency of processes, the reduction in the number of days for allocation is a clear impact of the constant follow-up on allocation by the FTF Fellows.

In the process with the LSA, the maximum amount of time is spent between the date of the order of allocation of the Panel Advocate and the filing of vakalatnama in court. In 33% of the cases where vakalatnama was filed, the process took more than 15 days from the date of allocation. Of the 15% of cases that took more than one month for the process, 8% of cases took more than 30 days, 3% of cases took more than 60 days and 4% took more than 90 days for completion.

The process of signing of the vakalatnama by the clients involves multiple steps i.e., getting the vakalatnama signed by the client in prison, getting the vakalatnama signed by the Panel Advocate allocated and subsequent filing of the vakalatnama in Court⁷¹. The need to coordinate with prison authorities and track the client in prison/court for taking their signatures on the vakalatnama is a major reason for the delay at this stage. Fellows often have to face delays in stamping on the vakalatnama by the jailor and even challenges in locating undertrial prisoners in circles/barracks and difficulty in obtaining vakalatnamas when dropped in the drop box in the prison premises.

Moreover, Fellows also faced challenges in getting signatures from the Panel Advocate allocated to the case. Fellows faced reluctance from some Panel Advocates who were unwilling to work with the Fellows and wanted to independently pursue the matter. In some cases, Panel Advocates did not want to commit to working on cases without meeting the undertrial prisoner’s family which further added to the delay. In taluka courts tracing the Panel Advocate may also be a challenge if they are not local residents. After the vakalatnama is signed, it can be filed only when the matter is listed on the board.

CHART 5.5 TIMELINE FOR SIGNING OF VAKALATNAMA



	Jan to Mar 19	Apr to June 19	July to Sept 19	Oct to Dec 19	Jan to Mar 20	Apr to June 20	July to Sept 20	Oct to Dec 20	Jan to Mar 21
DLSA Pune	29	23	24	20	52	0	0	73	10
TLSCs (Pune District)	29	37	22	85	11	0	0	39	0
DLSA Nagpur	17	26	29	23	83	0	0	0	21
TLSCs (NGP District)	11	19	30	22	67	0	0	0	23

⁷¹ However, it is important to note that as per the circular (dated October 4th, 2021) issued by the Registrar of Mumbai High Court, the filing of vakalatnama is not mandatory and filing of a memo of appearance by the Panel Advocate should suffice. This circular has eased timelines for the completion of the LSA process.

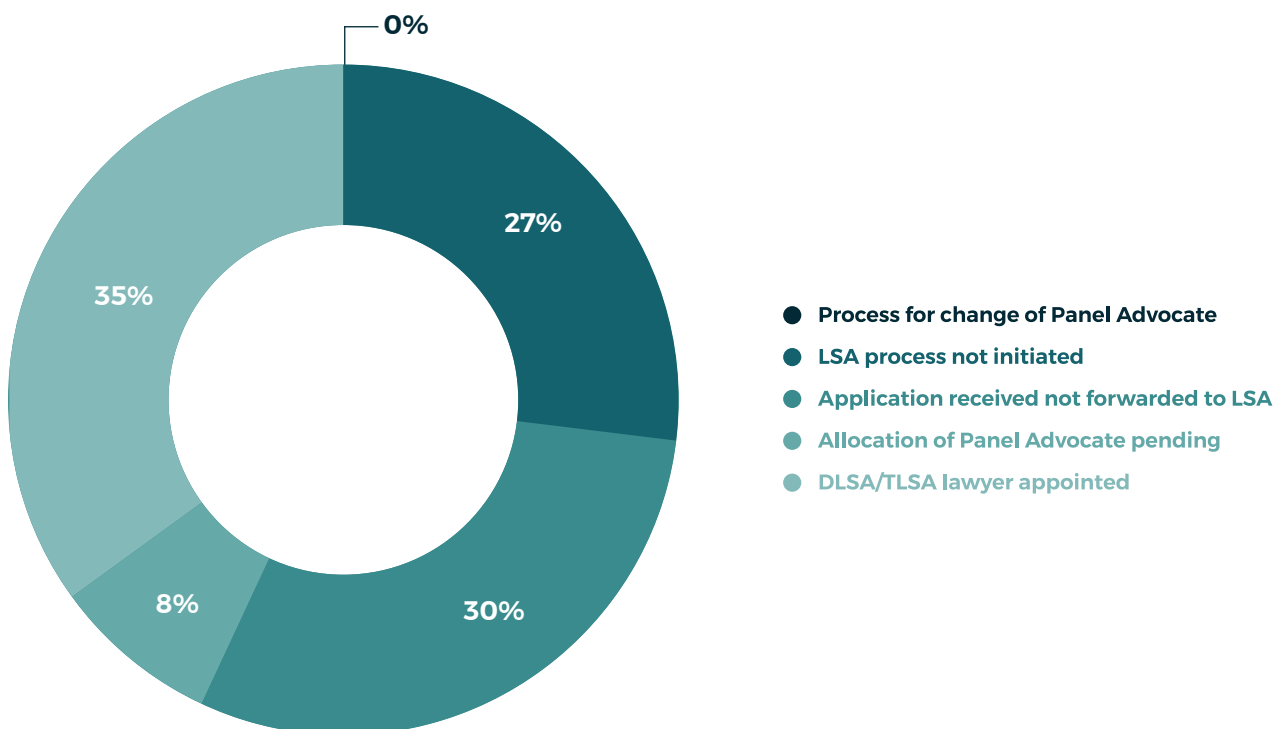
The graph below indicates that the average number of days needed for filing a vakalatnama from the date of allocation is much higher in cases of taluka courts. This could be because of the Fellows’ challenges in coordinating with the outstation Panel Advocates. There also seems to be a spike in the average number of days during the pandemic. A significantly high period for filing a vakalatnama for TLSCs in Pune is also indicated in the last quarter of 2019. This was due to challenges faced by one of the LFs in coordinating with the Panel Advocates in 2 taluka courts.

5.2.1 Attrition from LSA-- Cases Closed as OTI

A significant number of cases (39%) which were closed as OTI were at the stage of forwarding of application to the DLSA. As mentioned in Chapter 3, multiple reasons may be attributed to the closing of cases as OTI. However, based on their experiences, Fellows have pointed out that a significant number of attritions may be attributed to the delay in the initial response of getting a Panel Advocate allocated. Delay at the stage of forwarding the application, as

explained above, was caused due to delays in case search. Moreover, as discussed earlier, the client already being represented by a private lawyer and being unaware of their engagement at the time of approaching the Programme, the client pleading guilty, the client being released on PR Bond and untraceable post-release etc were other reasons for attrition. The below chart provides the DLSA status for cases closed as OTI.

CHART 5.6 DLSA STATUS FOR CASES CLOSED AS OTI (N=710)



SWITCHED FROM DETAILED INTERVENTION TO OTI

Sunita (name changed), a 29-year-old married woman, met the SWF during prison visit in Pune and requested her to appoint a Panel Advocate in her case. She was charged with murder under Section 302 of the IPC. Panel Advocate filed vakalatnama in the court and decided to file bail application before the Sessions Court after committal of the case. The bail application of her co-accused was rejected. The LF required a fresh vakalatnama for the Sessions Court but before the same could be signed by the client, the lockdown was imposed and prison visits were suspended and the SWF could not go to the prison. This made the client impatient and frustrated as there was no movement in the case. The client's sister called and informed the SWF that they had appointed a private lawyer as they did not want to wait any longer. This case therefore switched from Detailed to OTI.

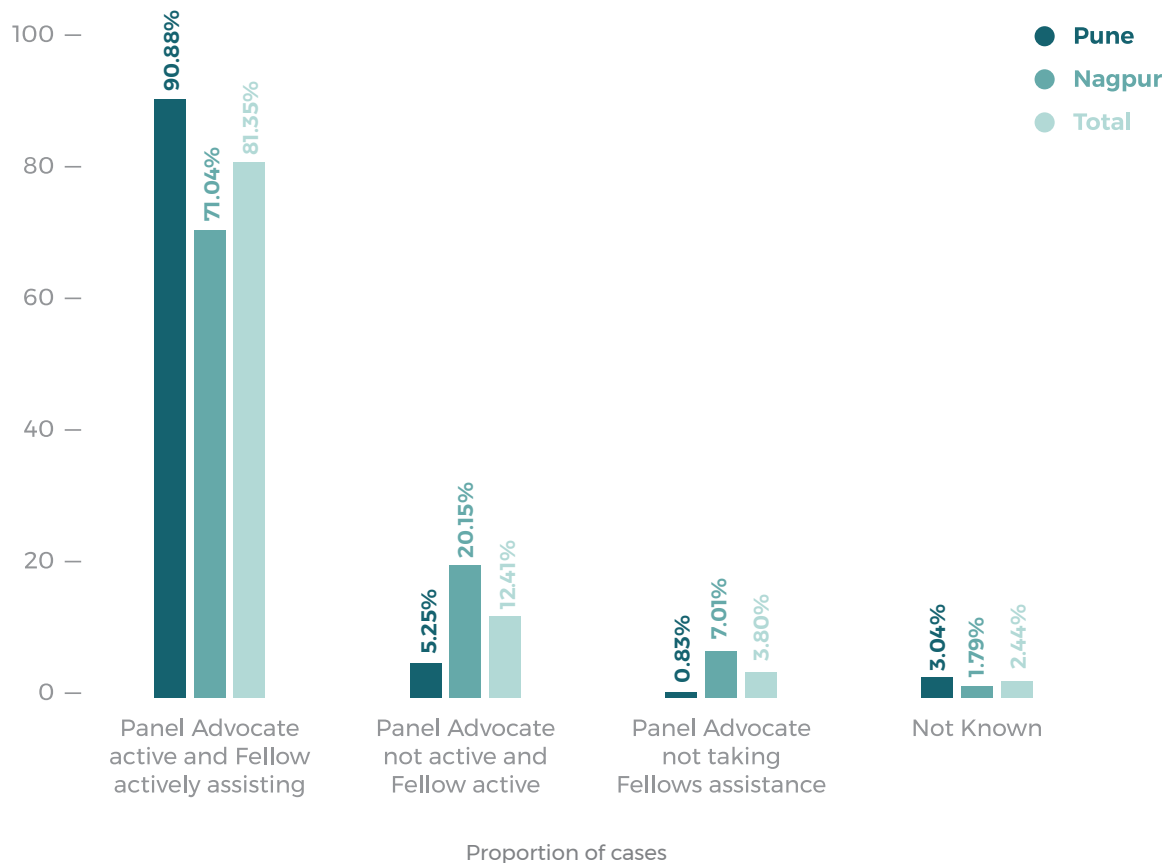
5.3 ASSISTANCE TO PANEL ADVOCATES

Assistance to Panel Advocates for ensuring quality legal representation was one of the core areas of focus under the Programme. Out of the 1080 cases for which Panel Advocates were allocated, Fellows actively worked with Panel Advocates in at least 990 cases (for which vakalatnama had been filed). In these cases, Fellows worked with a total of 178 Panel Advocates.

The chart below represents the level of involvement of the Panel Advocate in the Detailed Intervention cases in the Programme.

Based on the assessment of the Fellows, as recorded in the MIS, in **81.35% of all Detailed Intervention cases, Panel Advocates were working regularly and actively received Fellows' assistance. In 12.41% of the Detailed Intervention cases, the Panel Advocate was not active but was comfortable in permitting the Fellow concerned to actively work on the case and in 3.80% of the Detailed Intervention cases, Panel Advocates did not take any assistance from the Fellows.**

CHART 5.7 INVOLVEMENT OF PANEL ADVOCATE IN THE DETAILED INTERVENTION (N=1390)



The relationship with the DLSA lawyers was comparatively less harmonious in Nagpur where in almost one-third of the cases, the Panel Advocate was either inactive or unwilling to work with the LFs. In most cases where the Panel Advocates refused to work with the LF, the SWF followed up on the case and updated the client. In over one-tenth of the cases, the LF worked independently on the case with the close supervision of the LSC. Cases, where status is Not Known, are those which were completed prior to the operationalization of the entry in the MIS but the LFs had left the Programme before the computation of the data in the MIS⁷².

In some cases, Panel Advocates refused to work with the LF but were open to coordinating with the SWF for case updates. In instances where the Panel Advocate absolutely failed to follow up on the case and also refused to involve the LF in the case, the Programme attempted to get the case reallocated to another Panel Advocate.

“Out of the 1080 cases for which Panel Advocates were allocated, Fellows actively worked with Panel Advocates in at least 990 cases.”

⁷² The entry regarding the engagement of the Panel Advocate was not included when the MIS was designed. However, when a review of work revealed that the Panel Advocate engagement varied and so did their relationship with the Fellows, it was decided to include this entry. The entries were filled in by the LFs involved in the case.

MULTIPLE CASES AND DIFFERENT EXPERIENCES

Rohan (name changed), a 26-year-old man from Nagpur, educated up to primary school and was working in a private company. He was earning approximately Rs.10000 pm and was living with his mother and grandmother. He was arrested under Section 379 IPC for theft of a bike and informed the SWF that he had multiple cases against him but did not know how many. The FTF team assisted the client in 5 cases. The experience with the DLSA lawyers in each of the cases differed. In the first case referred, the Panel Advocate was cooperative. There was already a cash bail order of Rs.2000 but it had not been complied with. The LF and SWF did not have the contact number of the mother of the client. So, they visited the house of the client and met the grandmother as the mother was at work and left their phone number. The mother contacted them thereafter and they explained the release procedure and the mother came and complied with the bail. The SWF found that there was another case pending against the client and moved for the appointment of a Panel Advocate which was done. However, when the LF contacted the DLSA lawyer, he was informed that the appointment order had not been handed over and refused to sign the vakalatnama insisting on a confirmation call from the DLSA office. The





LF went to the DLSA office and requested the office to inform the Panel Advocate of his appointment and they informed him. The Panel Advocate refused to take the assistance of the LF in this case. Bail was filed and granted in this case and the matter was finally compounded.

Thereafter, the client failed to attend court hearings and the client did not take the Fellows' calls. Consequently, both the SWF and LF made another home visit and found that the client was lying on his bed in an alcoholic stupor. They asked him to visit the FTF office as one of his cases had been referred to the Lok Adalat for compounding. The client failed to turn up and neither did he answer the calls. After a few days, the SWF discovered the client in prison again and he informed the SWF that he was rearrested on his way to the office. The Fellows discovered that this time round, Arms Act provisions had been added along with the theft charges in two cases. The client wanted legal aid in all his cases and DLSA lawyers were appointed in two of them, one of whom was working closely with the LF while in the other, she refused to take the Fellow's assistance. However, when the LF went to move for bail, he discovered that the client had appointed a private lawyer in both these cases as well as the third in which the DLSA process was still pending.

The client was released under the HPC guidelines during the lockdown. The client is not in touch with Fellows and is not attending court in the one open case with the FTF.

CONCLUSION

The idea behind the Programme's work with the prison, LSAs and Panel Advocates was to increase the number of undertrial prisoners represented through the LSAs and to reduce the average time taken for the allocation of Panel Advocates. While the Programme's outcomes seem to be encouraging stand-alone, there is no baseline data to provide an assessment of the Programme's impact on outreach and utilization of services offered by state legal aid institutions. It is also interesting to note that despite best efforts and interventions targeted towards improving utilization of legal aid, the Programme's outreach to the undertrial prisoners within the prison appears to be in small proportion to the total number of admissions within the prison in a year. In 2019, while 9580 undertrial prisoners were admitted to Yerwada prison and 4890 undertrial prisoners were admitted to Nagpur prison, the Programme's outreach in Yerwada prison was 936 and in Nagpur was 886. This points to a huge need for support services within the prison which are resource-intensive to be able to cater to higher number of requests. The Programme's experience indicated that the presence of SWFs instills faith in the client because of the constant engagement of SWFs with the clients. With respect to the time taken for allocation of lawyers, there has been a gradual decrease in the time taken to allocate lawyers although the timeline still leaves much to be desired in the efficiency of the processes. The attrition rate was high due to delays in the initial response of getting a Panel Advocate allocated. Maximum attrition (39%) was at the stage of forwarding application to the DLSA. Overall, the relationship of the LFs with Panel Advocates was harmonious as in 81.35% of the Detailed Intervention cases Panel Advocates actively took the assistance of the LFs. ■

06

**WORK IN
COURTS**

Based on the identification of the needs of clients at the stage of intake, support on filing and compliance with bail emerged as the primary need for clients to approach the Programme. Assisting on bail-related needs including support on bail compliance and release was, therefore, a primary focus for Fellows.

36.9% of the clients who approached FTF required bail applications and appeals to be filed (the number in Nagpur being 73.17%) and 21.87% wanted assistance in availing support for compliance of bail such as surety, documents or cash (the number in Nagpur is 42.28%).

Contrary to the client's needs, the Programme's experience with the Panel Advocates reflected that even those Panel Advocates who were actively involved in pursuing the cases, prioritized completing the trial process over filing of bail applications.

From the 491 applications where bail was filed, bail was granted in 399 applications (81%), rejected in 75 (15%) and 17 (4%) applications were pending orders. From these orders, only 33% resulted in the actual release of undertrial prisoners from prison. In 45% of orders compliance with bail conditions remained pending and for another 2% of orders, undertrial prisoners remained in custody despite compliance with bail conditions.

The analysis of bail/ modification orders tells us that favourable bail orders were more likely to be granted in less serious offences. In some of the cases, serious offences in itself were a ground to reject the bail application.

A total of 891 undertrial prisoners (30% of total outreach) were released with interventions at different stages in the bail process. As of March 31st, 2021, compliance with bail conditions remained pending in 13 % (188) of the total Detailed Intervention cases.

Timelines for compliance with bail conditions emerging from the data indicated that bail conditions were complied within 14 days for 51% of the cases. However, in almost 35% of cases, compliance was done after more than a month of the grant of the bail order. The delay in compliance with bail conditions was linked directly to the inability of the undertrial prisoners in arranging for means to comply with the bail conditions.

Charging of multiple offences has been a major hurdle in the process of securing the release of undertrial prisoners. The cycle of criminalization 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.

On multiple occasions, Fellows have also come across undertrial prisoners who were unaware of the additional cases under which they had been booked and retained in custody despite complying with bail conditions.

As a logical consequence of the Programme's focus on providing legal representation to undertrial prisoners, courts emerged as the key location for the Programme's interventions. FTF Fellows assisted Panel Advocates in both pre-trial and trial processes for cases and a significant proportion of work under the Programme was undertaken in courts.

Based on the identification of the needs of clients at the stage of intake, support on filing and compliance with bail emerged as the primary need for clients to approach the Programme. Assisting on bail-related needs including support on bail compliance and release was, therefore, a primary focus for Fellows. In addition to working on bail, FTF Fellows have intervened in conducting trials on cases. The Programme's intervention in courts has primarily involved providing assistance to Panel Advocates and Fellows' efforts in complementing the Panel Advocate's responsibilities. The chapter deals with two aspects of working in the courts and is accordingly divided: (i) Work related to bail; and (ii) Work in conducting trials.

This chapter describes work done by the Fellows in courts, both at pre-trial and trial stages, analyses the outcomes from these interventions and presents the key learnings for the Programme at each stage of work. In work related to bail, this chapter provides an

account of bail-related outcomes. The chapter does an empirical analysis of the number of cases in which bail has been granted and with what conditions, the number of cases in which bail has been granted but not complied with, the number of cases in which the bail order has been complied with and the number of cases in which prisoners remained in prison despite complying with bail orders. In the work related to the trial, the chapter gives an overview of the trial outcomes and the progress of the cases after the intervention by the FTF.

6.1 PRE-TRIAL INTERVENTIONS UNDER THE PROGRAMME

6.1.1 Work at remand courts

The Programme in its initial phase had made attempts to engage at the stage of the first production by way of Legal Fellows shadowing Remand Duty Counsels in one or two specific courts. However, as per the Fellows' experience, Remand Duty Counsels were not allocated exclusively for remand hearings in these courts but also appeared for criminal trials and bail hearings (both legal aid and private matters). Consequently, the presence of remand counsels in court was sporadic and Fellows were unable to take up these cases.

Since the DLSA had not permitted Fellows to work independently of the Remand Duty Counsels, intervention at this point became difficult for the Programme. In most cases, even if the Remand Duty Counsels were absent, judges would allocate matters (ad-hoc) to other lawyers present in the court for the purposes of ensuring legal representation during the hearing.

In addition to this, police-referred lawyers appear as remand counsels in a lot of cases. The practice of Remand Duty Counsels taking up matters as private engagements with low fees was also quite prevalent. Given these challenges, the Programme discontinued its attempts to work at the stage of the first production.

The experience of working at Remand Courts had several learnings for the Programme. While courts ensured representation for arrested persons at the remand stage, the mode of appointments of lawyers at first production and their lack of interaction with the accused had direct implications on the quality of representation and the nature of arguments raised for ensuring the accused's pre-trial rights. This became even starker in cases where the accused was represented by a private lawyer referred by the police station.

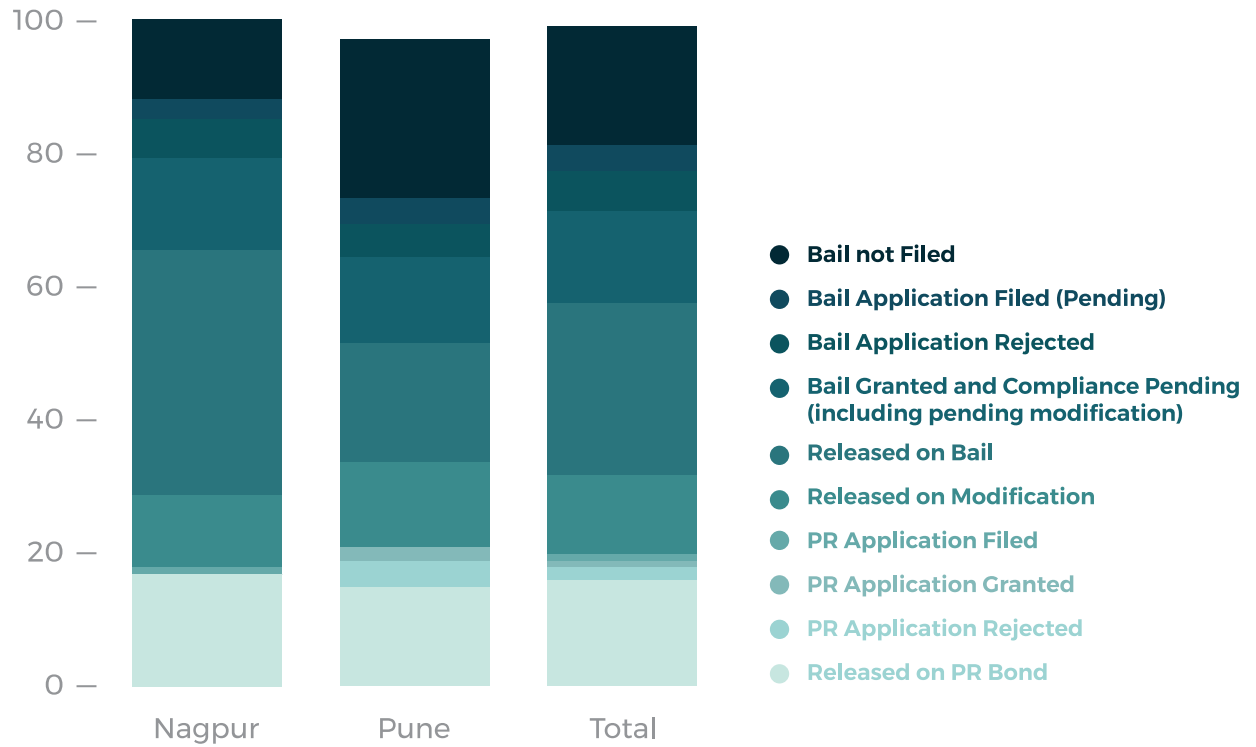
6.1.2 Work Related To Bail

The needs assessment at case intake reflected a strong need for support in bail filing and compliance-related services. As already discussed in chapter 3, 36.9% of the clients who approached FTF required bail applications and appeals to be filed (the number in Nagpur being 73.17%) and 21.87% sought to avail support for compliance of bail such as surety, documents or cash (the number in Nagpur is 42.28%).

Contrary to the client's needs, the Programme's experience with the Panel Advocates reflected that even those Panel Advocates who were actively involved in pursuing the cases, prioritized completing the trial process over filing bail applications. Panel Advocates were often reluctant to file for bail/modification due to apprehensions of the client's inability to comply with bail conditions and even the possibility of them absconding post-release. The Programme relied on the SWF's linkage with FTF clients and their families to address such concerns and work with the Panel Advocates for the filing of bail. LFs played a key role in drafting the application, incorporating facts of the case that were relevant and preparing the arguments with case law search for bail arguments, thus providing a much-needed service to the clients.

A summary of the status of bail filing and outcome for all Detailed Intervention cases (1390) in the Programme as on March 31st, 2021, is summarized in the chart below.

CHART 6.1 BAIL FILING AND OUTCOME OF DETAILED INTERVENTION CASES (N=1390)



	Nagpur	Pune	Total
Released on PR Bond	17%	15%	16%
PR Application Rejected	0%	4%	2%
PR Application Granted	0%	2%	1%
PR Application Filed	1%	0%	1%
Released on Modification	11%	13%	12%
Released on Bail	37%	18%	26%
Bail Granted and Compliance Pending (including pending modification)	14%	13%	14%
Bail Application Rejected	6%	5%	6%
Bail Application Filed (Pending)	3%	4%	4%
Bail not Filed	12%	24%	18%

Filing of bail applications was dependent on the completion of the DLSA process and the filing of vakalatnama by the Panel Advocate in court. Thus, a delay at any stage in the DLSA process contributed to the delay in filing of the bail application. Instances of delay in completion of the DLSA process were more frequent post the onset of the pandemic. Limited access to jails, courts and Panel Advocates during this period contributed to delays in the signing and filing of vakalatnama during this period which led to a substantial backlog in the filing of bail applications. As of March 31st, 2021, bail was not filed in 18% of the total Detailed Intervention cases. The figures were higher for Pune (24%) where there was a higher number of intake of cases due to active referrals from the DLSA office in the last quarter of 2020 and early 2021 but the DLSA process could not be completed.

The Supreme Court in *In Re: Inhuman Conditions in 1382 Prisons*⁷³ has observed that a large number of undertrial prisoners were in custody only because they were unable to comply with bail conditions⁷⁴ imposed on them due to their poverty. Furthermore, in the case of *Moti Ram v. State of MP*, the Supreme Court had acknowledged that “*the bail system causes discrimination against the poor since the poor would not be able to furnish bail on account of their poverty while the wealthy persons otherwise similarly situated would be able to secure their freedom because they can afford to furnish bail*”.⁷⁵

The below chart compares the bail status at intake with the bail status at the end of the Reporting Period (March 31st, 2021).

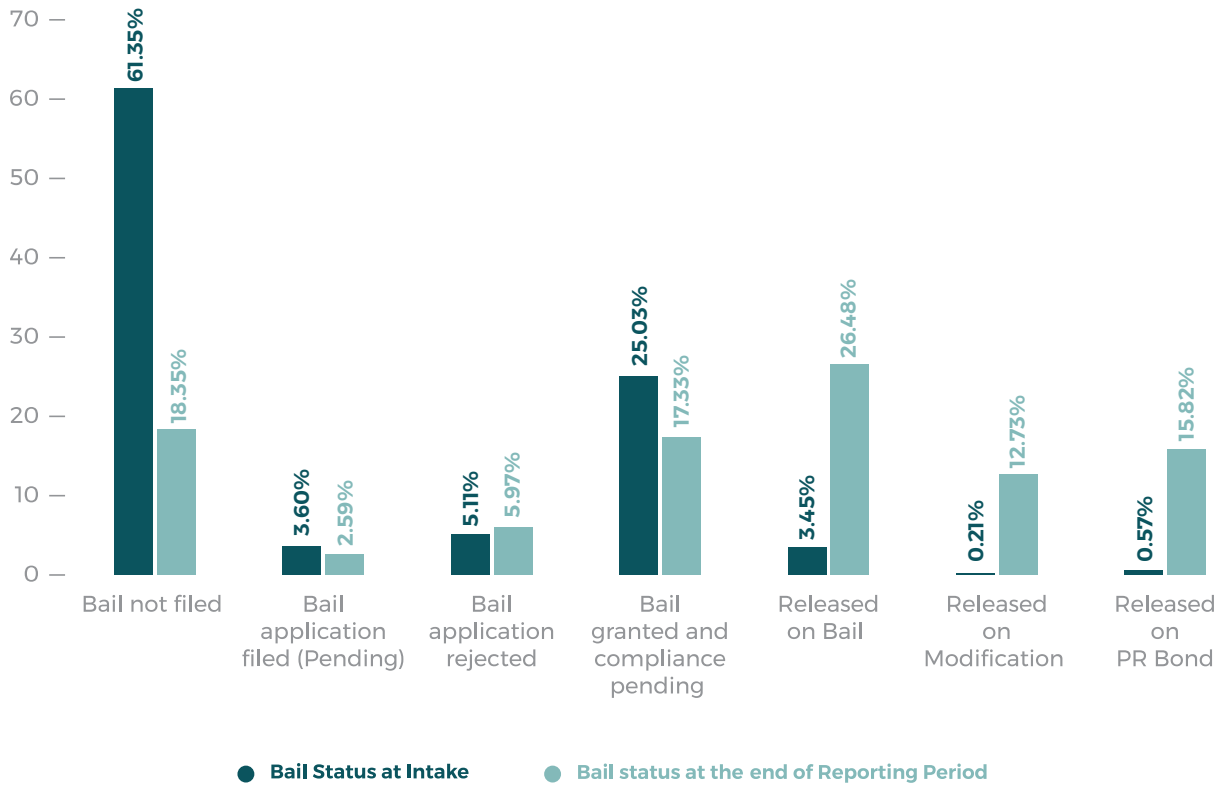
The bail application was filed and pending orders in 4% of cases and rejected in 6 % of cases. In 14% of cases, the FTF Client was granted bail but was unable to comply with the order and remained in custody. This category included cases where modification was filed but did not result in a release (i.e., modification application was either pending, rejected or modification order was pending for compliance). In 38% of the cases, the FTF Client was released on bail/modification and in 16% of cases released on PR Bond.

⁷³ In Re: Inhuman Conditions in 1382 Prisons, AIR 2016 SC 993.

⁷⁴ 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.

⁷⁵ Moti Ram v State of MP, 1979 SCR (1) 335.

CHART 6.2 COMPARISON OF BAIL STATUS AT INTAKE AND AFTER INTERVENTION



6.1.2.1 Bail/Modification filing by Fellows

Filing for bail/modification, as needed, was usually the first point of legal intervention after the Vakalatnama of the Panel Advocate was submitted in court. Fellows were involved in filing a total of 491 bail applications and 258 modification applications during the Reporting Period.

Modification applications were filed in all cases where FTF clients had an existing bail order pending for compliance or where a bail order obtained by the Fellows remained pending for compliance. This was done under Section 439(1) (b) of the CrPC for Sessions Court and under Section 437 (5)⁷⁶ of the CrPC for Magistrate Courts. Moreover, relying on the Supreme Court judgments in Motiram⁷⁷ and Hussainara Khatoon’s⁷⁸ cases, LFs successfully argued for

⁷⁶ In the case of Brijesh Singh and Ors. (2002) Kar LJ 548, the Karnataka High Court had held that the Magistrate had the power to modify bail order under Section 437(5) of the CrPC. The HC argued that Section 437 (5) allows the magistrates to cancel the order and ,therefore, by logical corollary, it also allows the Magistrates to amend or effect necessary alterations in the bail order.

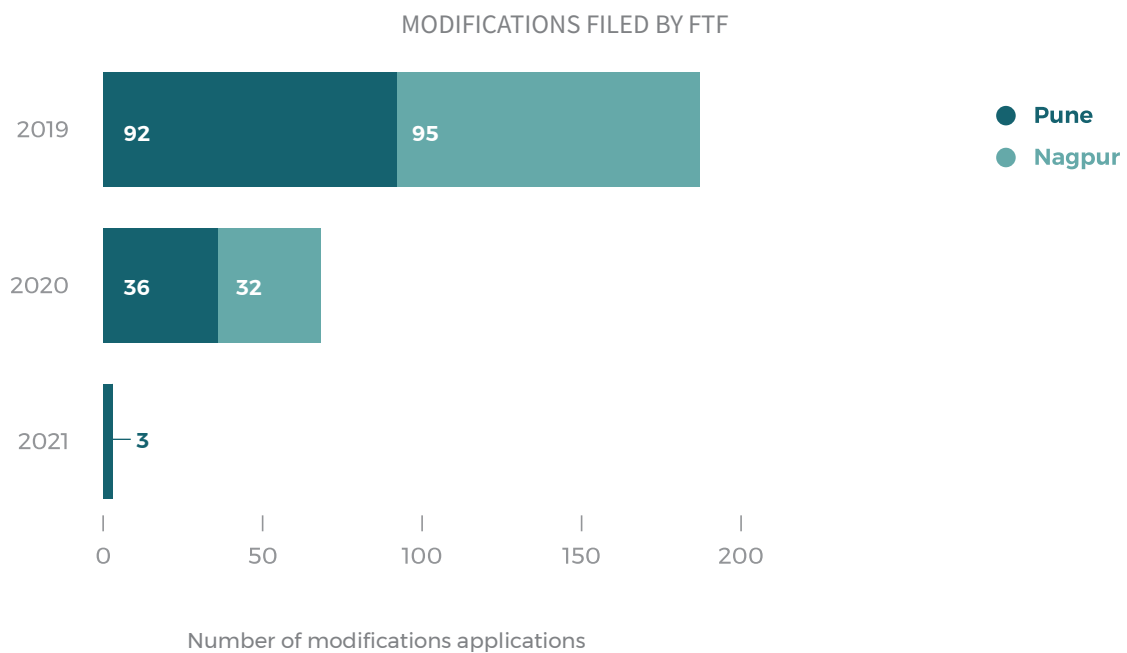
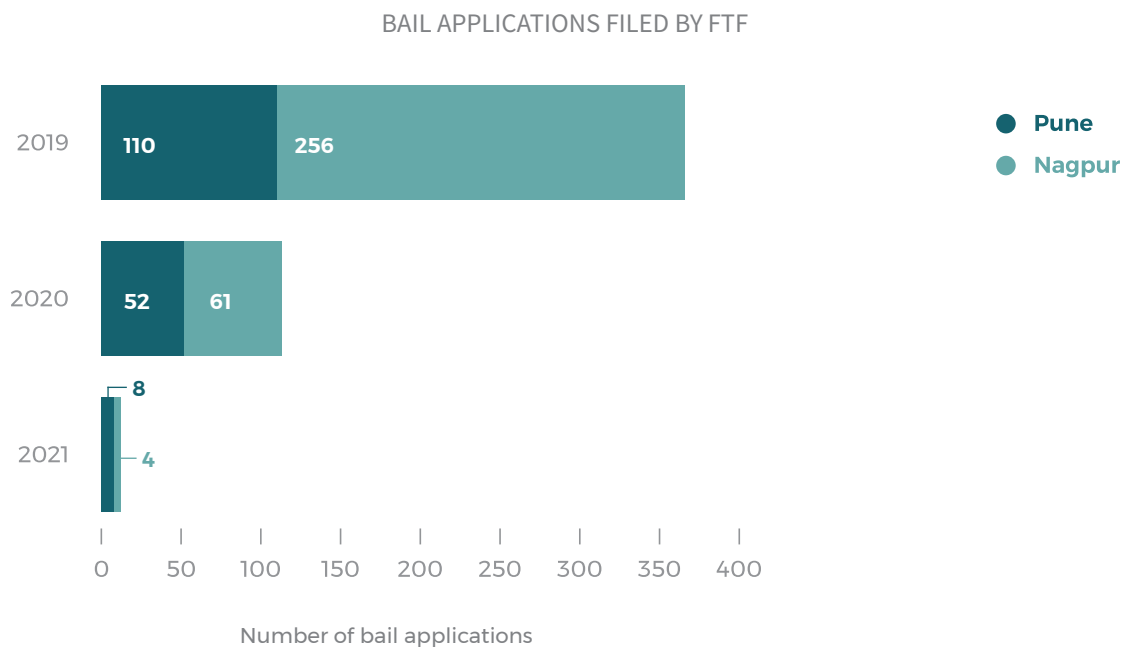
⁷⁷ Motiram v. Madhya Pradesh, 1978 AIR 1594 SC (While holding that the bail includes both the release on one’s own bond, with or without sureties, the Supreme Court held that bail should be given liberally to poor people simply on a personal bond if reasonable conditions are satisfied.)

⁷⁸ Hussainara Khatoon v Home Sec, State of Bihar AIR 1979 SC 1360; (The Supreme Court held that the courts must abandon the antiquated concept under which the pre-trial release is ordered only against bail with sureties. If the court is satisfied, on the basis of information that the accused has his roots in the community and is not likely to abscond it can safely release the accused on the personal bond.)

the grant of PR bonds in cases of indigent clients. The challenge sometimes after the grant of a PR Bond was that the clients were becoming untraceable after release.

The below chart gives the details of the bail and modification applications filed through the FTF Fellows.

CHART 6.3 DETAILS OF THE BAIL AND MODIFICATION APPLICATIONS FILED



Most bail applications were filed in the first year of the Programme. While 110 applications and 92 modifications were filed in 2019 in Pune, the numbers reduced to 52 and 36 respectively in 2020 and only 8 applications and 3 modifications were filed between January and March 2021. In Nagpur, while 256 bail applications and 95 modifications were filed in 2019, in 2020, the figures were 61 and 32 respectively and in 2021, only 4 bail applications were filed. The reasons for the same were low intake and non- functioning of courts due to COVID.

PAST CRIMINAL RECORD AND CHALLENGES IN GETTING RELEASED

David (name changed), a 19-year-old client lodged in Nagpur Central Prison, charged with multiple cases of theft and cases under Arms Act, approached the FTF for legal aid. The LF with the Panel Advocate applied for and obtained orders for grant of bail for minimal cash bail of Rs.1000 in one case, Rs.3000 in another case and Rs.2000 cash bail in the third case. In the fourth case, there was already a bail order and the LF modified the order to cash bail of Rs.3000 and later got the case compounded in the Lok Adalat. In the fifth case, the client had sent a bail application and the court had granted him cash bail of Rs.5000. The LF filed modification for PR bond and the same was granted. The Fellows approached Samta Foundation for assistance in bail and it helped in furnishing bail in some of the cases and for the rest, bail was furnished by his mother. A few months post release, he was arrested again. In the first case, he had approached the SWF in August 2020 but later switched to a private lawyer. However, for his later cases, he had appointed the Panel Advocate through FTF for his trial. During the course of intervention, the SWF met his mother who informed her that since her son had a juvenile crime record, the police kept re-arresting him in any crime that took place in their vicinity. His mother works as a daily wage labourer and is a widow. He has come back to prison three or four times for cases of theft and robbery during the course of three years now.

The difference in numbers between Pune and Nagpur could be partly attributed to the fact that while in Pune bail had been filed in almost half the cases (bail not filed in 53.9% of cases) in Nagpur, bail had been filed in only approximately 30% cases (bail not filed in 70.67% cases) at the time of intake. This is also the reason why Pune has a higher number of modification applications. The other reason is that in Nagpur over three-fourths of the cases were at the remand/ production stage (77.38%) while in Pune, chargesheets had been filed in over half the cases and almost 46% were at the trial stage.

BAIL AND MODIFICATION WORK BY LFs

The LF came across Aman (name changed), a 27-year-old client, while visiting the Kishore Vibhag of the Pune prison. Aman said that he had 9 cases of theft against him and wanted to plead guilty. While searching for the case details, she discovered that he had been granted bail in all the cases but was not released due to failure to furnish surety. Upon meeting the client, he informed her that he had decided to plead guilty as he could not furnish bail. The LF informed him of the consequences of pleading guilty and convinced him not to do so. Thereafter, she moved for modification and release on PR bond. The court granted the same and he was released on PR Bond.

Upon the client's release, his co-accused's (Ratan) mother learnt that he was released through a Panel Advocate free of cost and approached the LF seeking legal aid for her son too. Ratan (name changed) had 10 to 15 cases of theft against him in various courts. The LF met the co-accused in the jail and traced all the cases in the various courts and discovered that bail had been granted



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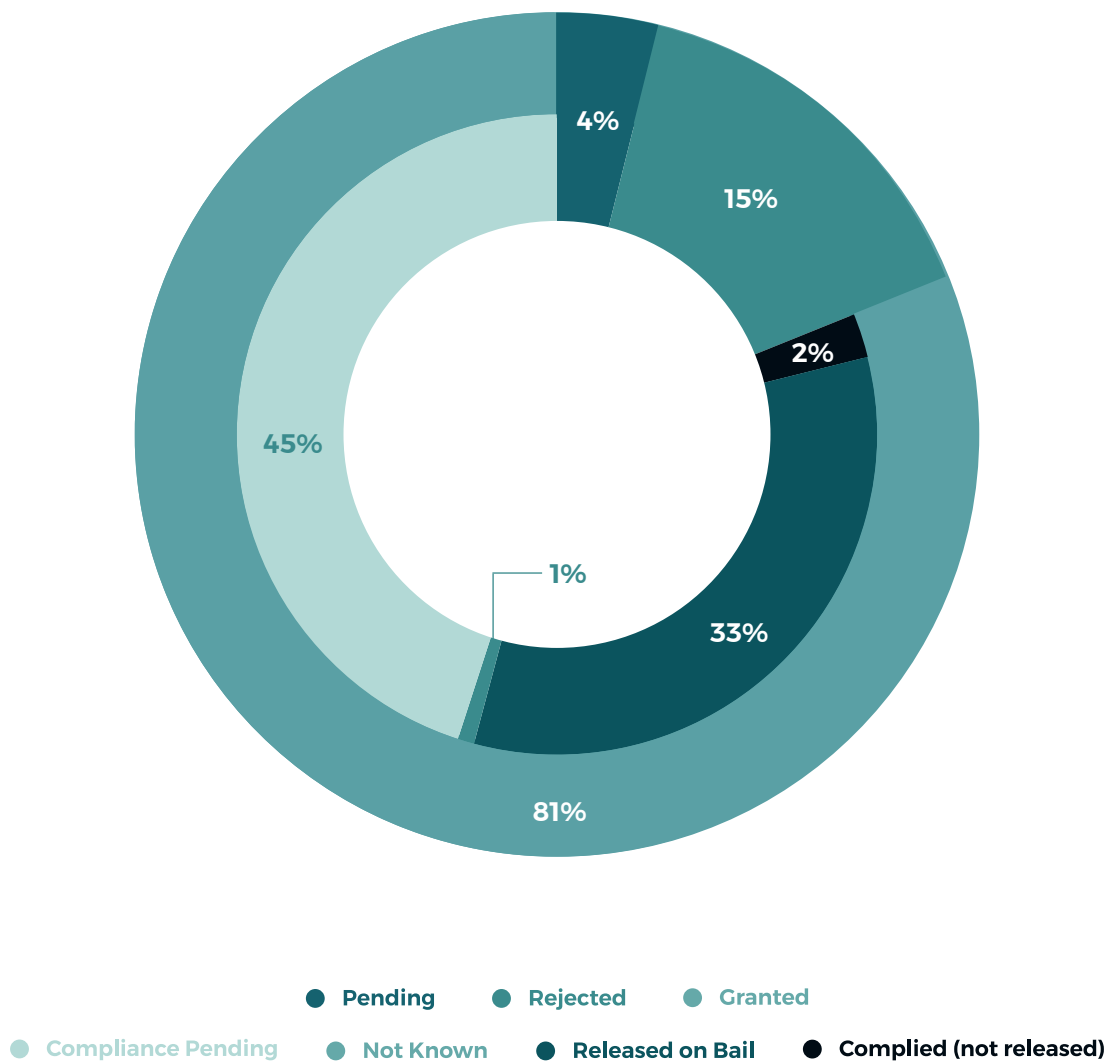
in some cases and had not been applied for in others. The SWF got legal aid applications from the co-accused and the Panel Advocate was appointed. The LF moved for bail in cases where it had not been applied for, and for modification where it had been granted. The LF argued that the co-accused had been in custody for a year and a half and could not furnish surety and managed to secure his release on PR Bond in all the cases. The mother and grandmother who were present in the court broke down.

Aman works as an electrician and comes to court regularly. But Ratan does not come as he fears rearrest in other cases by the police if he comes to the court.

6.1.2.2 Bail Outcomes

From the 491 applications where bail was filed, bail was granted in 399 applications (81%), rejected in 75 (15%) and 17 (4%) applications were pending orders.

CHART 6.4 OUTCOME OF BAIL FILED BY FTF (N=491)



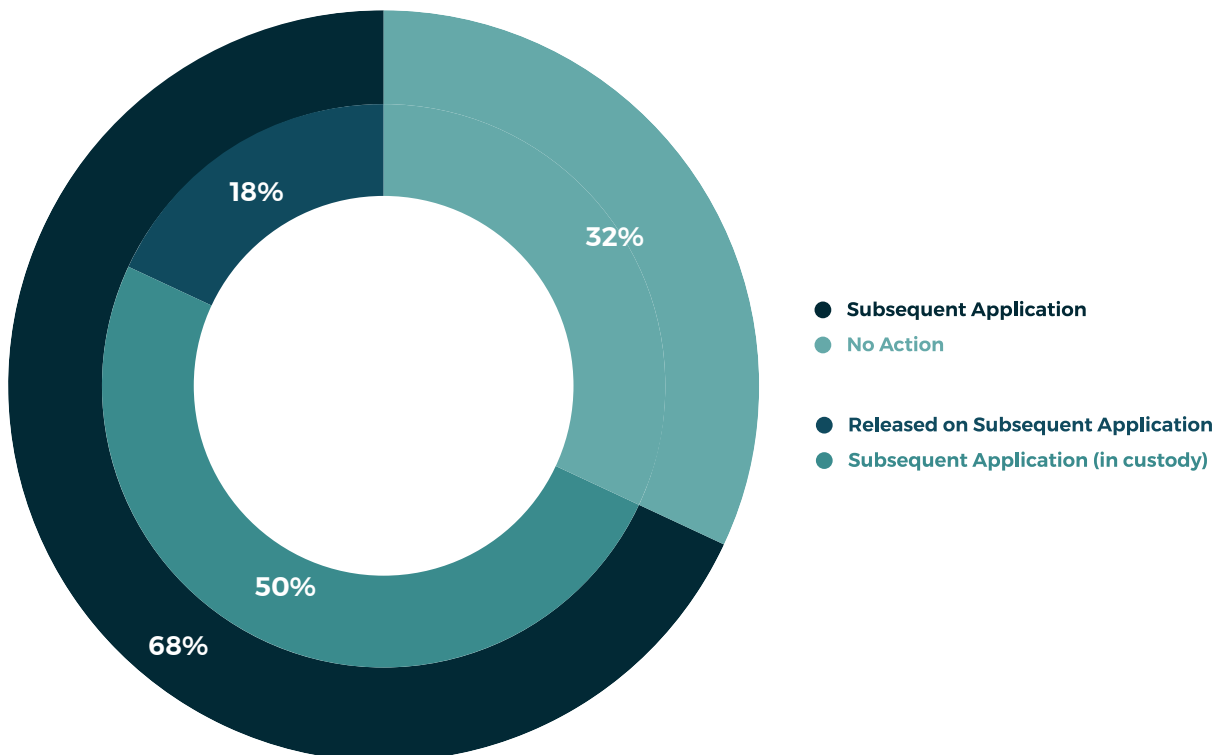
BAIL REJECTED DUE TO GRAVITY OF OFFENCE

Aseem (name changed), a 32-year-old truck driver from MP, was caught by the Pune police under Section 302 of the IPC (Punishment for Murder). He approached FTF for legal aid. The SWF took his applications and relevant details. He stated that he was a truck driver. He was Hindu, later on converted to Islam when he married a Muslim woman. He took delivery order of material and delivered to the place near Pune. He found a mobile lying near the road and took it along with him to Gwalior. After a few days, police arrested him of murder. Police told him that he had murdered a person, snatched his phone and ran away. The client said that he did not even know the victim and did not have any connection with the crime. He was arrested on the grounds of recovery of the SIM Card and the phone with the victim's IMEI number from him. He said that he found the mobile lying near the road in MIDC and took it. He got it repaired in UP and was caught when he switched on the mobile. On his request, Panel Advocate was appointed and vakalatnama was filed. LF and SWF read the chargesheet and discussed the points for bail argument. Bail application was drafted and filed in court. After the argument, bail application was rejected by the court due to the gravity of the offence. Now, the FTF team is working on filing the bail application in the High Court.

From the 399 (81%) orders where bail was granted, only 33% resulted in the actual release of undertrial prisoners from prison. In 45% of orders compliance with bail conditions remained pending and for another 2% of orders, undertrial prisoners remained in custody despite compliance of bail conditions due to other cases filed against them. The status of release was not known for 1 % of the bail orders obtained.

From the pool of applications (215) where the compliance for bail order was pending, subsequent interventions in the nature of modification applications, PR Bond applications and bail applications on fresh circumstances were made in 68% of applications resulting in further releases in almost 50% of these applications, where compliance was originally pending.

CHART 6.5 COMPLIANCE PENDING (SUBSEQUENT OUTCOMES) (N=215)

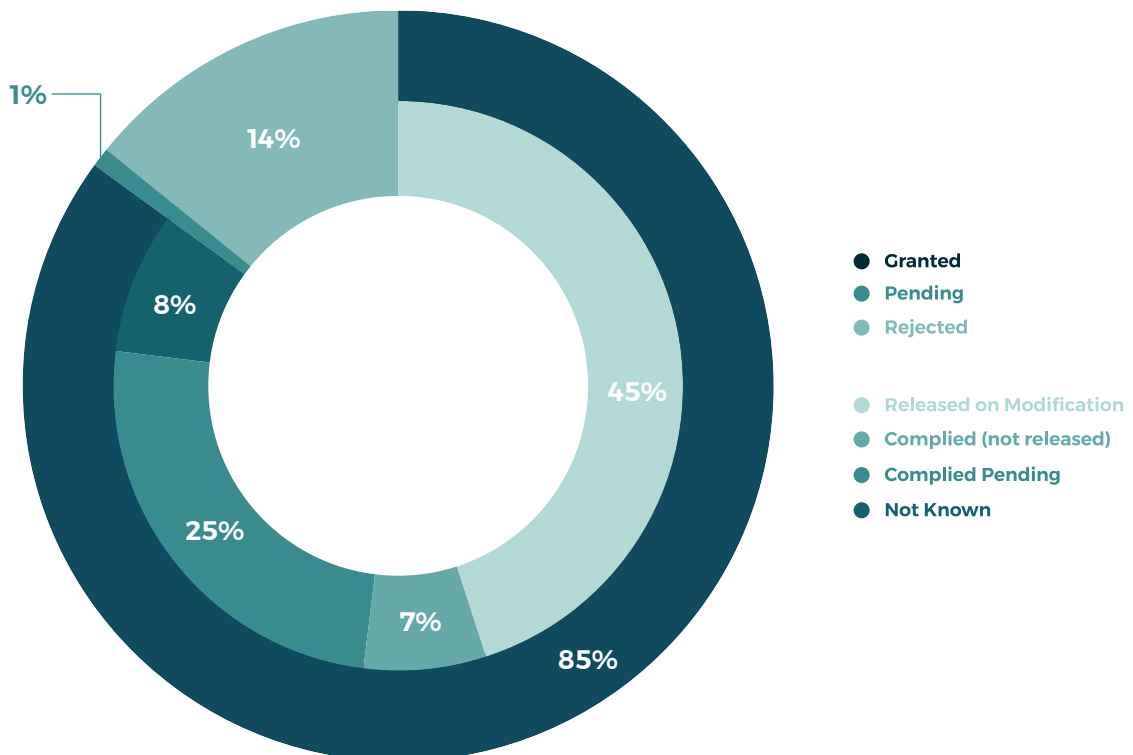


6.1.2.3 Modification Outcomes

From the 258 modification applications filed by FTF Fellows, 219 (85%) were granted, 37 (14%) were rejected and 2 (1%) were pending orders. 90 of these modification applications were filed in cases where bail applications were filed by FTF Fellows.

Out of the 219 applications, modification orders were granted in 85% applications, 45% resulted in the release of undertrial, and 7% of applications undertrial prisoners remained in custody despite compliance with modification orders. Moreover, compliance with modification conditions was pending in 25% applications and the outcome of the grant order was not known in 8% application.

CHART 6.6 OUTCOME OF MODIFICATION FILED BY FTF (N=258)



6.1.2.4 Analysis of Bail /Modification Orders

In terms of the total number of favourable bail orders (where applications were filed by Fellows) 31% were in Pune and 69% were from Nagpur. Similarly, for modification orders, 54% were in Pune and 46% in Nagpur. This number correlates to the trend of bail filings in the two cities.

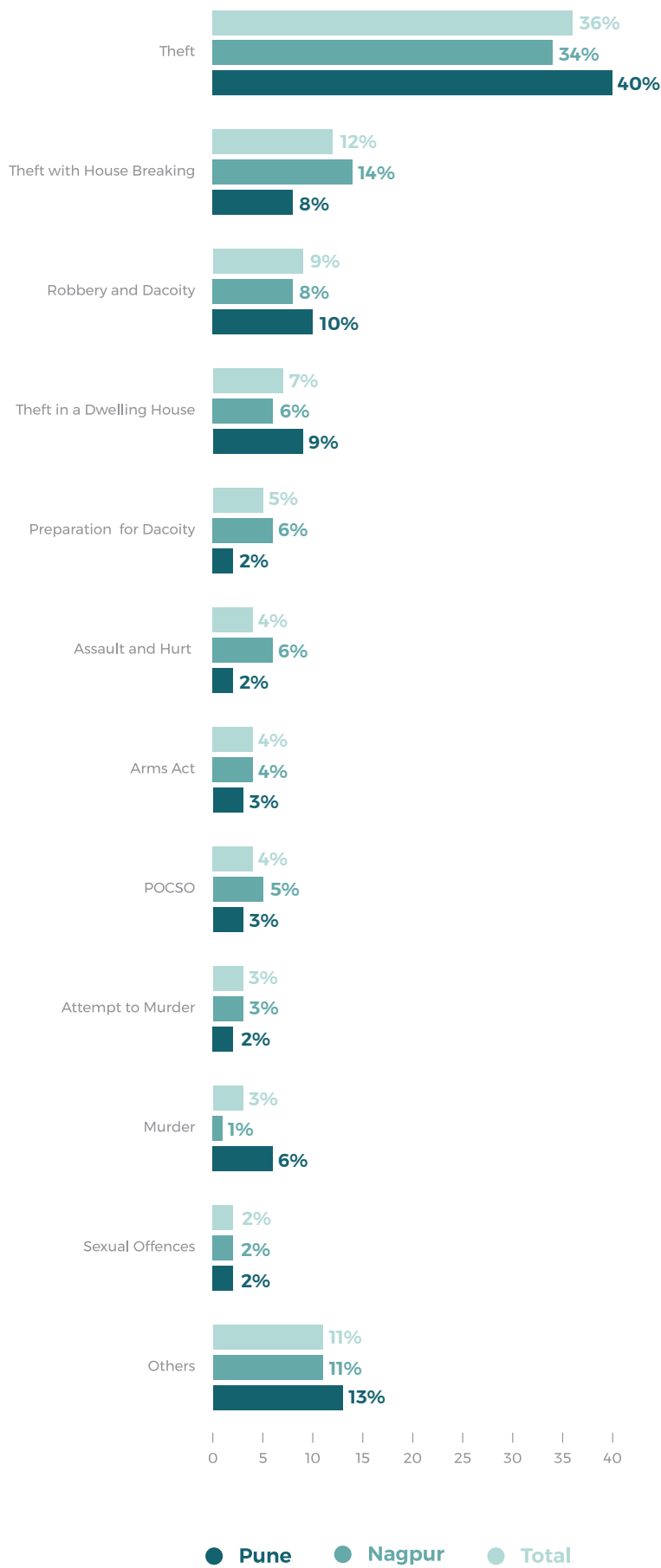
In Pune, 78% of the bails granted were in cases triable by the Magistrate and 22% in cases triable by the Sessions court. While in Nagpur, 71% of the bails were granted in cases triable by the Magistrate and 29% in cases triable by the Sessions court.

In terms of crime categories, 36% of the bails granted were in theft cases, 12% in cases of theft with house break-in, 9% in cases of robbery and dacoity, 7% in cases of theft in dwelling house, 5% in cases of preparation and assembly for dacoity, 4% in cases under POCSO Act, 4% in cases under Arms Act, 4% in cases of assault and grievous hurt, 3% in murder and 2% in sexual offences (excluding rape). Other categories individually comprised of 1% or lesser cases in which bail was granted.

The analysis of bail/ modification orders tells us that favourable bail orders were more likely to be granted in less serious offences. In some of the cases, serious offences in themselves were a ground to reject the bail application.

“Modification applications were filed in all cases where FTF clients had an existing bail order pending for compliance or where a bail order obtained by the Fellows remained pending for compliance.”

CHART 6.7 CRIME CATEGORY-WISE ANALYSIS OF BAIL ORDERS (N=399)



BAIL IN A CASE UNDER MCOCA⁷⁹

Rambabu (name changed), a 50-year-old client who was a resident of Bihar and physically impaired in both legs, approached the SWF in Nagpur Central Prison for legal aid. He was non-literate, belonged to the Macchhimar community which falls under the ST category and begged for a living. He was arrested on January 25th, 2019 and approached the SWF on February 4th, 2019. He was initially caught under Section 25 of the Arms Act and his bail was filed by the LF which was rejected in the trial court on the ground that the investigation had already started and the allegation against him was serious in nature. Thereafter, 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 as the Sessions Court cannot entertain the bail application in the MCOCA cases.

In this case, the client had no criminal antecedents but his co-accused had a criminal case filed against him. Therefore, on that basis, he was accused of being part of an organized crime. Bail was filed again in the Special MCOCA Court and was granted Rs. 50000 sureties along with a solvency certificate. However, the surety amount was unaffordable and his family back in Bihar were not able to furnish it. As a result, he had to stay in prison for around 6 months. The client's mother died in Bihar and consequently a modification application was filed to enable him to go to his village. The modification order was rejected on the ground that the inmate being a migrant and accused in such a serious offence is likely to abscond if released on bail without strict conditions.



⁷⁹ The Maharashtra Control of Organised Crime Act, 1999



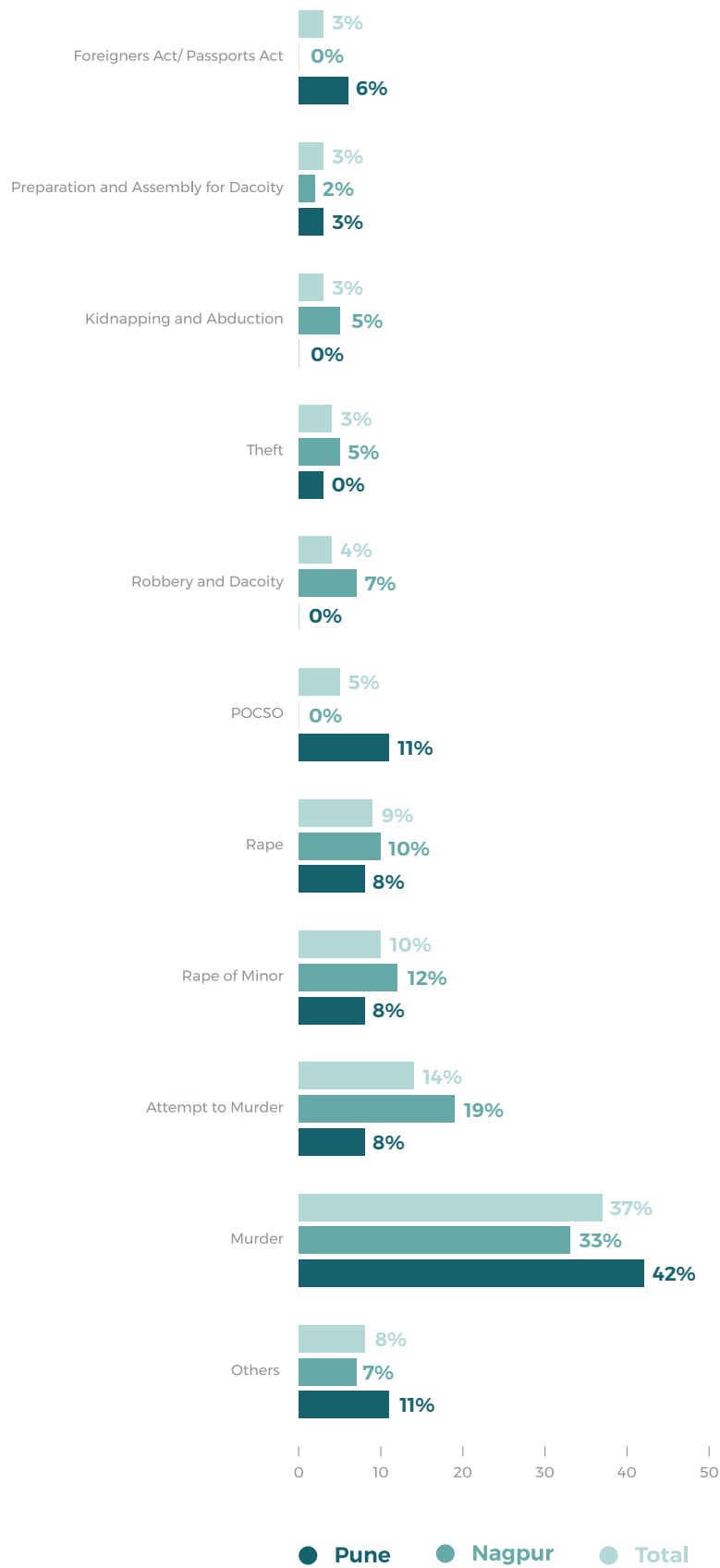
The LF and SWF kept trying to obtain sureties for the client. After almost a year, one of the co-accused's family members were able to furnish bail for him and he was finally released. His bail was granted on September 11th, 2019 and he was finally released on August 31st, 2020. However, he had no money to go back home and had to stay at the Nagpur Railway Station for a night. The next morning, Fellows provided him with a railway ticket to his hometown along with some money for food. A discharge was filed in his case under Section 227 of the CrPC (Discharge). The discharge application got rejected. Thereafter, charges were framed against him. Presently, the case is at the stage of the recording of the evidence.

The court, in its order, had specifically appreciated and mentioned the work of Panel Advocate and Secretary of the DLSA for providing quality legal aid to the prisoners.

From the modification orders obtained, the greatest number of modification orders (37%) were granted in murder cases. In Pune, this number was significantly higher at 42% as compared to 33% in Nagpur. 14% of modification orders were obtained in cases of attempt to murder (19% in Nagpur and 8% in Pune). 10% in cases of rape of minors and 9% in rape

cases. This trend indicated that modification orders were granted in more serious offences as compared to bail orders which were higher for petty offences. This could be attributed to the fact that first bail orders would ordinarily be more onerous in serious offences and the need to seek a modification of conditions would also be higher in such cases.

CHART 6.8 CRIME-CATEGORY-WISE ANALYSIS OF MODIFICATION ORDERS (N=219)



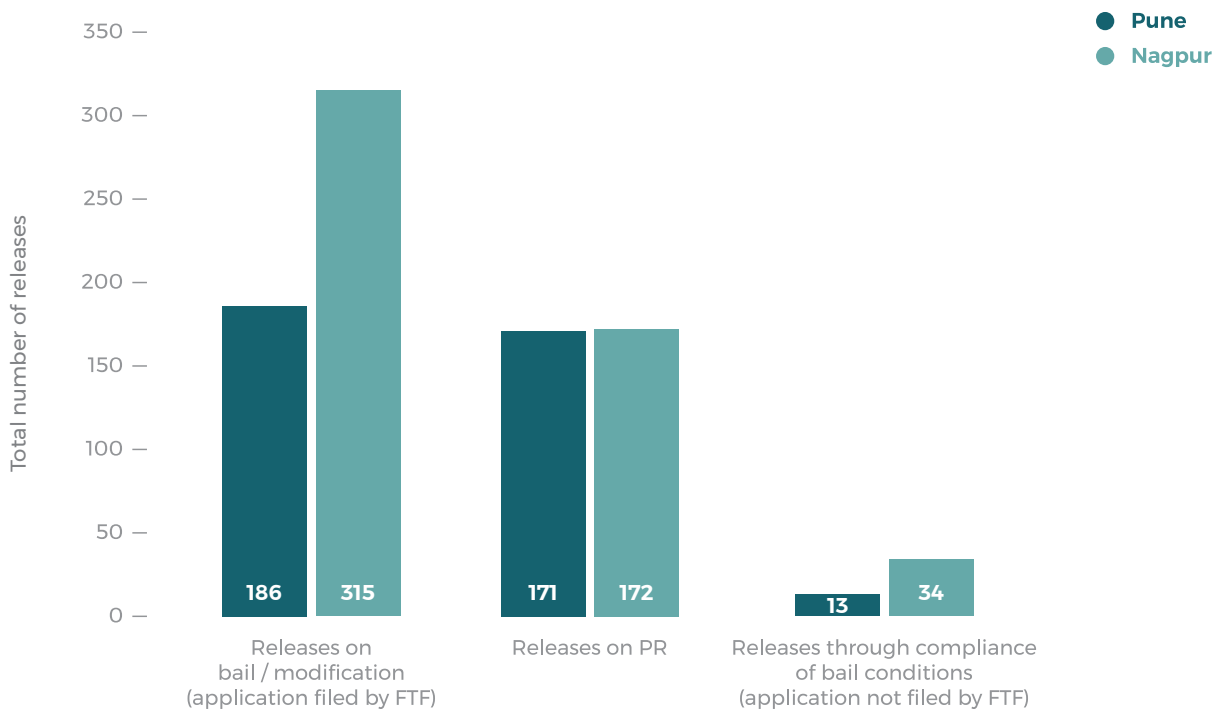
In terms of demographics, 64% of clients who received a favourable modification order had an income of less than Rs 80000 per annum.

6.1.2.5 Trends of Release on Bail

A total number of 501 undertrial prisoners were released on bail and modification by FTF intervention. These releases corresponded to releases in cases where the Fellows were actively involved in the filing of applications as well as cases where Fellows followed up on applications which were filed by Panel Advocates.

In addition to this, 343 undertrial prisoners were released on PR Bond, where applications were sent directly from prison and FTF Fellows had either provided support in the writing of the application or in the identification of inmates eligible for release under HPC guidelines during the pandemic. 47 undertrial prisoners were also released through compliance with bail conditions in cases where FTF was not involved in filing/hearing of the bail application in court.

CHART 6.9 BREAKUP OF RELEASES ON BAIL



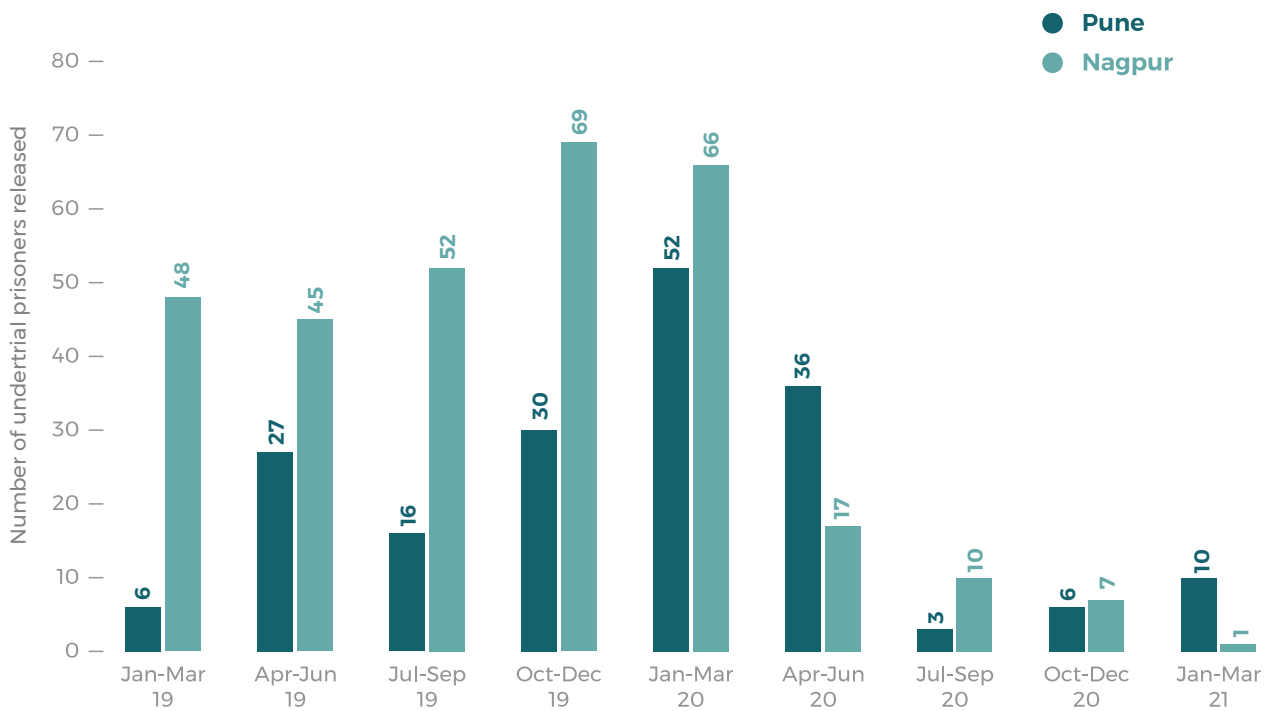
A total of 891 undertrial prisoners (30% of total outreach) were released with interventions at different stages in the bail process. As of March 31st, 2021, compliance with bail conditions remained pending in 13 % (188) of the total Detailed Intervention cases.

WORKING WITH FAMILY TO SECURE RELEASE ON BAIL

Amit (name changed), a client from Nagpur was arrested under the Arms Act, Sections 399 (Making preparation to commit dacoity) and 402 of the IPC (Assembling for purpose of committing dacoity) on July 4th, 2018. The police during night patrolling had apparently received secret information that a group of persons were sitting suspiciously near a public library. This 23-year-old private employee from Yavatmal belonging to the Mahar caste (SC) was also arrested. He used to live with his mother and grandmother as his father had left his mother when he was young. The client maintained that he had been falsely implicated and that he did not even know his co-accused. He approached the SWF for legal aid and a Panel Advocate was appointed. The SWF contacted the family who were worried about him. Bail was granted of cash of Rs. 15000 on November 26th, 2019. The Fellows contacted the family and explained the entire procedure and documentation required, upon which the mother and grandmother came to Nagpur and furnished bail. After which the LF applied for release order and the Fellows along with the mother and grandmother went to the prison where the authorities refused to release the client as the order was not signed by the judge. Thereafter, the LF rushed to the court and rectified the order and the client was released on the same evening on December 16th, 2019. The client is in contact and regularly attends court.

The quarter-wise trend of releases based on bail-related interventions has been mapped with city-wise segregation in the figures below. It is interesting to note that a gradual increase in the number of releases as the Programme has progressed with interventions and the highest number of releases on bail/modifications orders are seen in the first quarter of 2020 which is followed by a decline from April 2020 and a further decline in subsequent quarters due to the impact of the pandemic on the functioning of the courts and access to prison by FTF Fellows as discussed in Para 7.3.1.

CHART 6.10 UNDERTRIAL PRISONERS RELEASED ON BAIL/ MODIFICATION



Notably, the initial phase of the pandemic (March and April of 2020) saw a considerable rise in the number of people released on PR Bond due to the releases under the HPC guidelines which had started from the last week of March 2020. Releases under this category included FTF Clients with OTIs.

CHART 6.11 RELEASE ON PR BOND

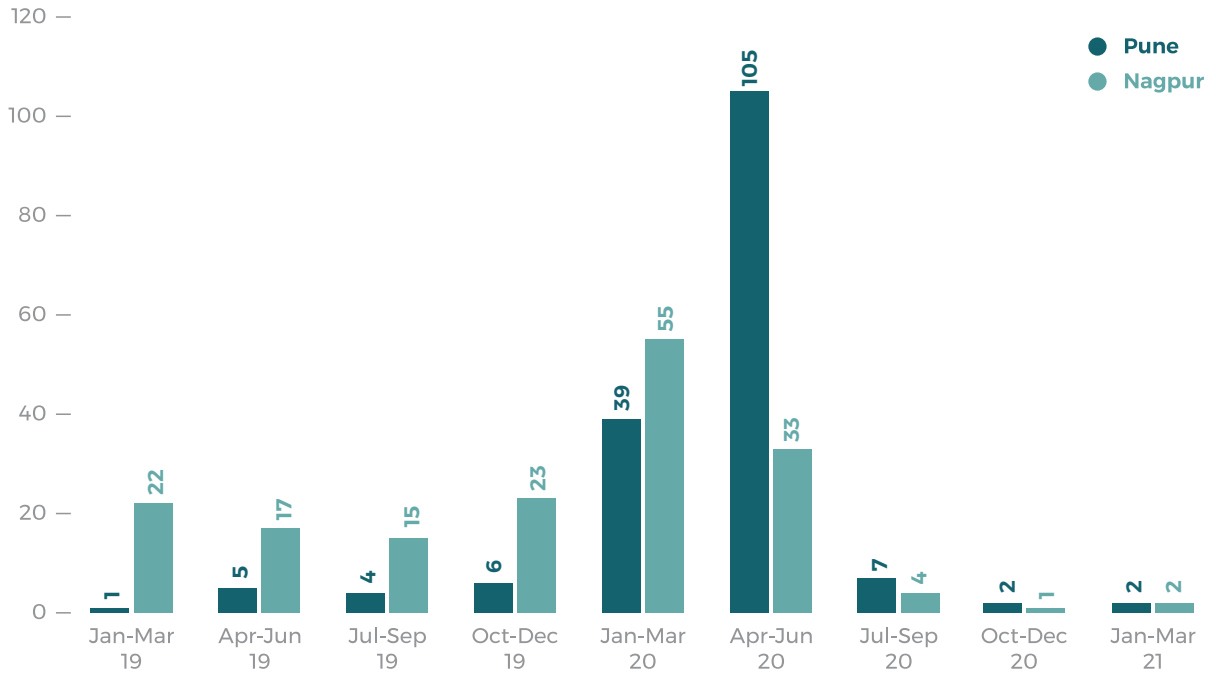
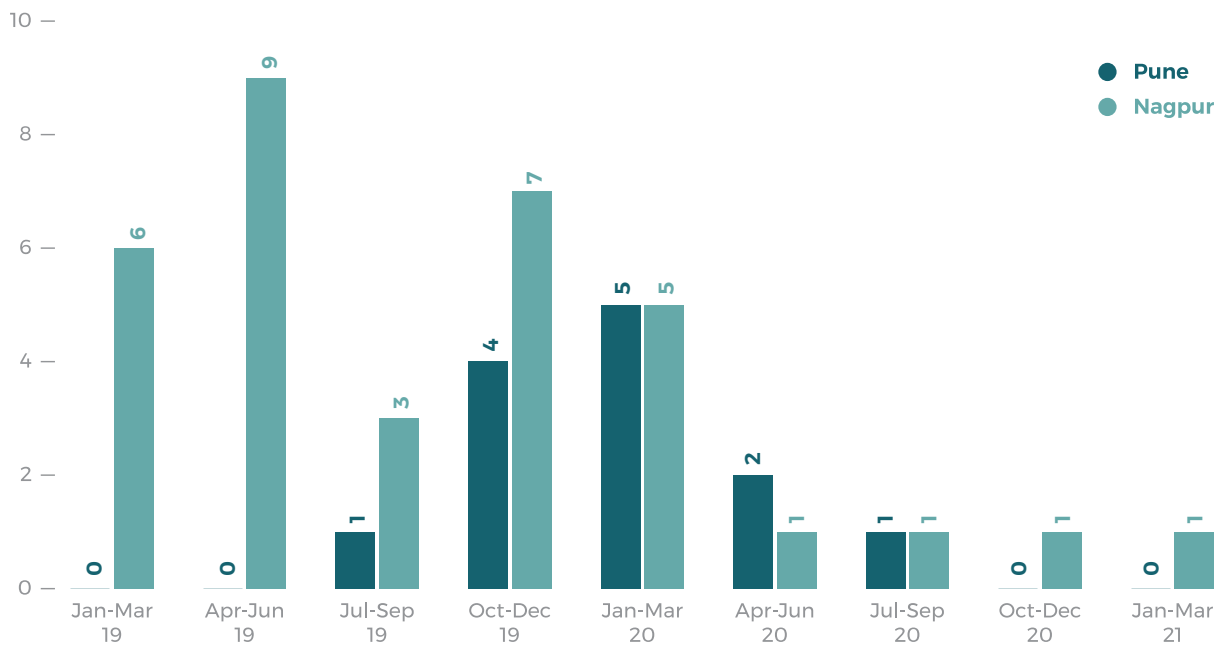


CHART 6.12 RELEASES (NOT FILED BY FTF)



“343 undertrial prisoners were released on PR Bond, where applications were sent directly from prison and FTF Fellows had either provided support in the writing of the application or in the identification of inmates eligible for release under HPC guidelines during the pandemic. 47 undertrial prisoners were also released through compliance with bail conditions in cases where FTF was not involved in filing/hearing of the bail application in court.”

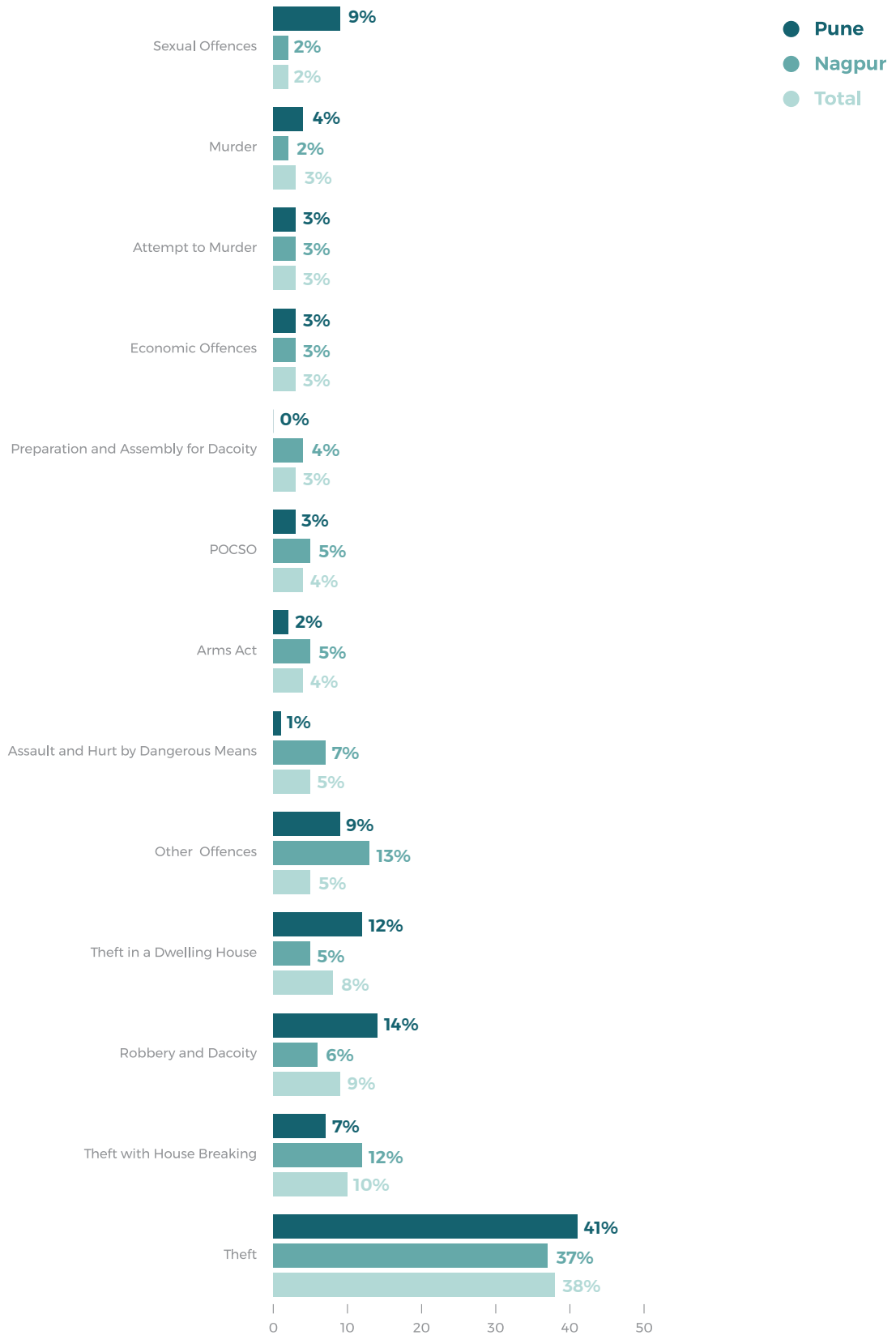
Fellows had also assisted in releases in cases where legal intervention for bail was not done by FTF. This mostly involved OTIs where the client had an existing bail order obtained through the assistance of a private lawyer but was unable to comply with bail conditions. In some Detailed Intervention cases, similar support was provided to clients where the Panel Advocate was unwilling to take assistance for the filing of bail. Support for bail compliance was mainly by way of referrals to organisations providing bail sponsorships to undertrial prisoners.

6.1.2.6 Crime-wise analysis of released undertrial prisoners

As per the crime categorisation for releases on bail/modification/PR bond, undertrial prisoners charged with theft (38%), theft with house breaking (10%), robbery/dacoity (9%), theft in a dwelling house (8%) and Assault/Hurt by dangerous means constituted the highest proportion of releases.

The trend for releases on bail corroborates with the trend for grant of bail orders thereby confirming that the probability of securing release is lesser for persons charged with serious offences.

CHART 6.13 CRIME-WISE ANALYSIS OF RELEASED CRIMINALS



FAILURE TO COMPLY WITH BAIL CONDITIONS DESPITE REPEATED EFFORTS

Kartik (name changed), a 19-year-old client, was arrested in Nagpur on charges of murder on October 4th, 2019. This matriculate daily wage earner was a resident of Nagpur and lived with his parents at the time of his arrest. He approached the SWF on October 18th, 2019 and the Panel Advocate was appointed on November 4th, 2019. On January 4th, 2020, the LF and the Panel Advocate decided to file an application for default bail since it was 90 days since the arrest and the chargesheet was still not filed. The LF sought the papers from the court staff which were not given to him and he decided to go ahead and file the default bail application and took due acknowledgement. Thereafter, when the matter came up for hearing, the Magistrate asked for the records and discovered that default bail was due and granted bail of cash security of Rs.15000. Despite repeatedly contacting the family and asking them to come for compliance, they failed to comply with the bail order. The family later appointed a private lawyer in the case. This challenge of changing stakeholder perceptions of legal aid continues despite the outcomes for legal aid.

6.1.2.7 Timelines for Bail

Analysis of timelines in the bail process revealed that the maximum delay was at the stage of filing of bail applications. In 51% of cases, bail applications were filed after three months from the date of arrest. In 17% of cases, bail applications were filed after a year of the arrest. In 16 cases out of these, the bail application was filed after more than three years of the arrest. This corroborated with the experience at the stage of intake which indicated that 61.65% of cases had no bail applications filed at the time of intake. Thus, there was an existing time lag in bail filing even at the stage of intake for majority of the cases received under the Programme.

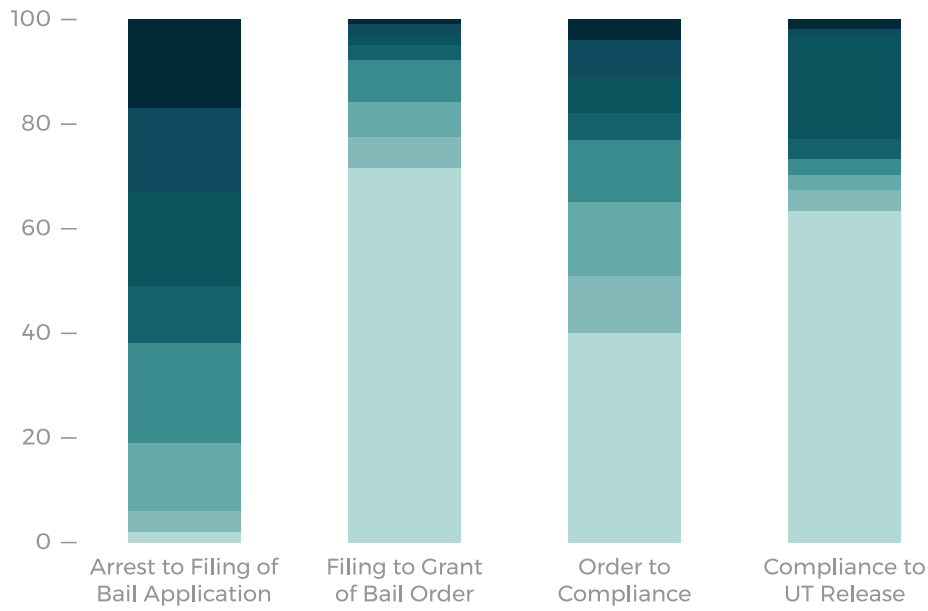
For all cases where bail order was granted, in 74% of the cases, bail order was granted within a week from the date of filing of the bail application. In the case of modification applications which were granted, 85% of orders were passed within a week from the date of filing of the modification application.

It is, however, to be noted that in a small proportion of cases, where the undertrial prisoners were charged with multiple cases, the lawyers delayed compliance with bail conditions until favourable orders were received in all pending cases as a matter of strategy since such compliance would not secure the clients' release.

Timelines for compliance with bail conditions emerging from the data indicated that bail condition was complied within 14 days for 51% of the cases. However, in almost 35% of cases, compliance was done after more than a month of the grant of the bail order. The delay in compliance with bail conditions was linked directly to the inability of the undertrial prisoners in arranging for means to comply with the bail conditions.

In the case of release of undertrial prisoners, while 64% of undertrial prisoners were released within a week of complying with bail conditions, a significant proportion (30%) remained in prison for over a month despite complying with bail conditions. This would be on account of the undertrial prisoners being charged with multiple offences and remaining in custody under those cases.

CHART 6.14 TIMELINE RELATED TO BAIL (N=491)



● more than 365 days ● 181-365 days ● 91-180 days ● 61-90 days ● 31-60 days
 ● 15-30 days ● 8-14 days ● 0-7 days

	0-7 days	8-14 days	15-30 days	31-60 days	61-90 days	91-180 days	181-365 days	more than 365 days
Arrest to Filing of Bail Application	2%	4%	13%	19%	11%	18%	16%	17%
Filing to Grant of Bail Order	73%	6%	7%	8%	3%	2%	2%	1%
Order to Compliance	40%	11%	14%	12%	5%	7%	7%	4%
Compliance to UT Release	64%	4%	3%	3%	4%	20%	1%	2%

Charging of multiple offences has been a major hurdle in the process of securing the release of undertrial prisoners. The cycle of criminalization 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. On multiple occasions, Fellows have also come across undertrial prisoners who were unaware of the additional cases under which they had been booked and retained in custody despite complying with bail conditions.

6.2 WORK IN TRIALS

Fellows actively participated in trials by assisting Panel Advocates through the trial process in cases (both pre and post-release) as required. They worked with Panel Advocates in preparing for the recording of evidence, cross-

examination of witnesses, final arguments and sentencing. The progress on the trial of cases can be mapped by comparing the pre-intake status of cases with the status of cases as of March 31st, 2021.

CHART 6.15 PROGRESS IN THE STAGE OF THE TRIAL

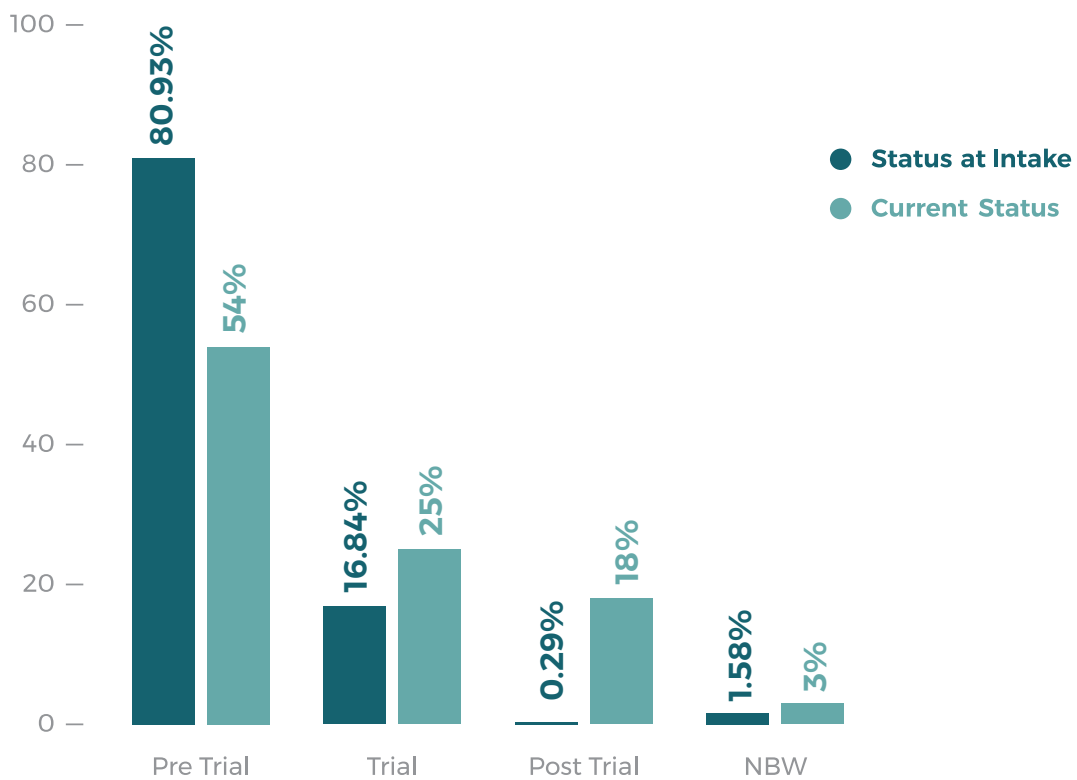
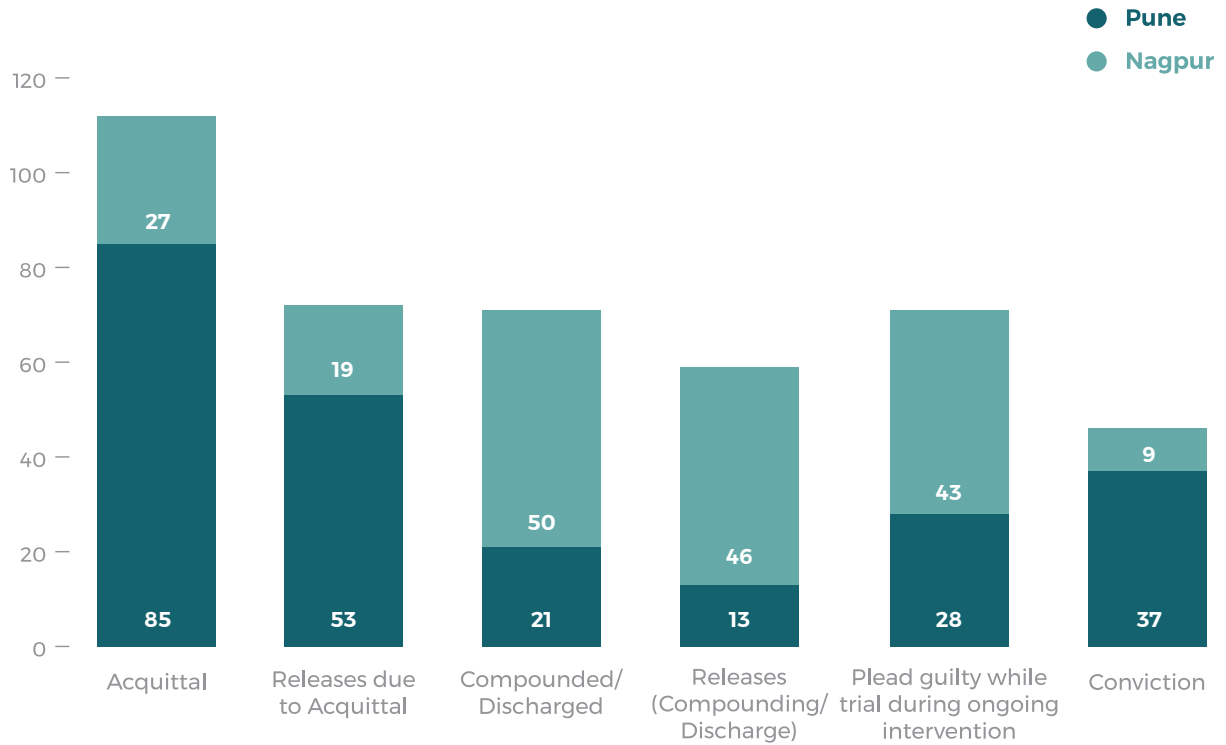


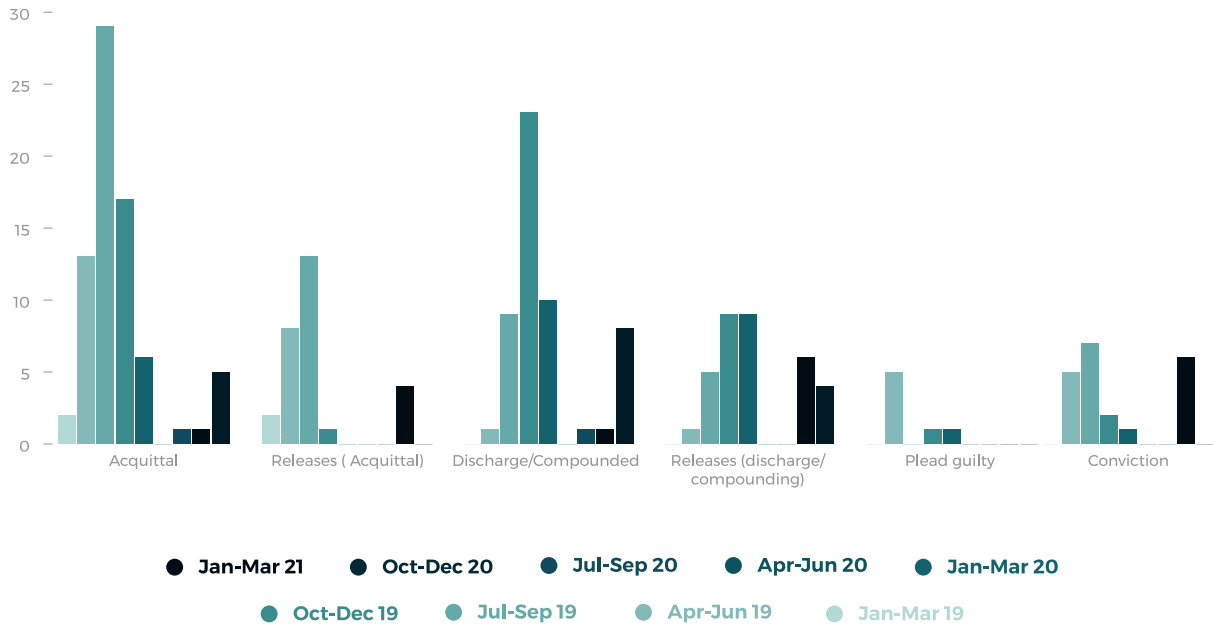
CHART 6.16 TRIAL OUTCOMES



The Programme had a total of 112 acquittals, which resulted in the release of 72 undertrial prisoners. The Programme’s engagement at multiple stages in the trial process resulted in compounding/discharge in 71 cases and consequent release in 59 cases. In addition to these outcomes resulting in releases, clients plead guilty in 71 cases and got convicted in 37 cases.

While the number of releases on bail was higher in Nagpur, Pune has seen more acquittals and releases on acquittals. Nagpur also had more undertrial prisoners pleading guilty. In terms of outcomes in closed cases, quarter-wise outcomes for both cities have been mapped below.

CHART 6.17 TRIAL OUTCOMES-PUNE



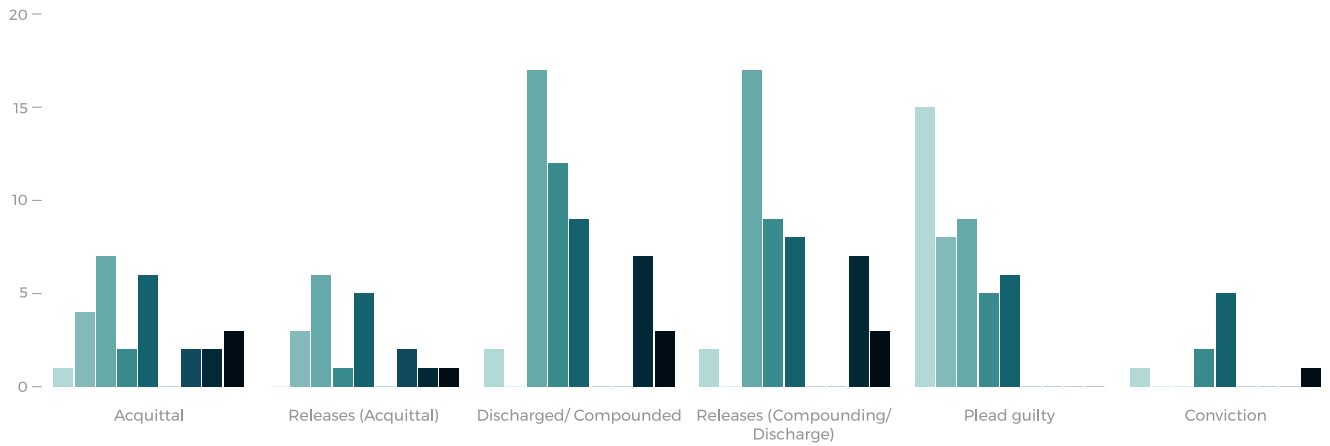
	Jan-Mar 19	Apr-Jun 19	Jul-Sep 19	Oct-Dec 19	Jan-Mar 20	Apr-Jun 20	Jul-Sep 20	Oct-Dec 20	Jan-Mar 21
Acquittal	2	13	29	17	6	0	1	1	5
Releases (Acquittal)	2	8	13	1	0	0	0	4	0
Discharge/Compounded	0	1	9	23	10	0	1	1	8
Releases (discharge/compounding)	0	1	5	9	9	0	0	6	4
Plead guilty	0	5	0	1	1	0	0	0	0
Conviction	0	5	0	1	1	0	0	0	0

RELEASED DUE TO CONTRADICTING STATEMENT MADE BY THE ACCUSED

Ankit (name changed), a Pune client is 43 years old, a private company employee who has completed education till 10th standard. He belongs to Navi caste under OBC category and his yearly income is around Rs.160000. The Chakan police arrested him on April 26th, 2015 under Section 302 of the IPC for murdering his wife. Khed-Rajgurunagar Salgar judge had referred client's case to FTF on July 15th, 2019. The Bombay High Court had ordered this case to be completed in a time bound manner within 1 month. LF convinced the judge to give more time to study the case. LF and SWF conducted spot visits to the crime scene, visited the hospital in which the victim was admitted and recorded evidence. They measured the distance between witnesses' house, hospital, client's house and also established relations between witnesses and client.

After chargesheet was filed, LF filed bail application which got rejected. Initially, there were no witnesses in the case and hence the case got delayed. Later, LF conducted cross-examination of 7 witnesses in the case including client's daughter who had testified that he killed her mother. LF recorded accused's statement under Section 313 of the CrPC. The dying declaration of the victim recorded by the police stated that client burned his wife with kerosene when his wife refused to give him money for alcohol. But, at the time of admission in the hospital, the victim had told the doctor working on her case that she was burned due to the explosion of a gas cylinder. Final argument in the case was built on the ground that the statements made by the victim to the doctor and the police didn't match and that the victim was influenced into implicating client. Final arguments took place before COVID lockdown. After the lockdown, the client was acquitted on December 4th, 2020.

CHART 6.18 TRIAL OUTCOMES-NAGPUR



	Jan-Mar 19	Apr-Jun 19	Jul-Sep 19	Oct-Dec 19	Jan-Mar 20	Apr-Jun 20	Jul-Sep 20	Oct-Dec 20	Jan-Mar 21
Acquittal	1	4	7	2	6	0	2	2	3
Releases (Acquittal)	0	3	6	1	5	0	2	1	1
Discharge/Compounded	2	0	17	12	9	0	0	7	3
Releases (discharge/compounding)	2	0	17	9	8	0	0	7	3
Plead guilty	15	8	9	5	6	0	0	0	0
Conviction	1	0	0	2	5	0	0	0	1

MULTIPLE MURDER CASE AND MENTAL HEALTH ISSUES

This multiple murder case in Nagpur had Arjun (name changed) accused of killing his sister, brother-in-law, mother of brother-in-law, niece and his son at his brother-in-law's place over a land dispute between his sister, brother-in-law and him. This case was referred to the LF by the Panel Advocate appointed in the case. Arjun is kept in the Anda cell which is a high-security area and the SWF cannot meet him. The LF and Panel Advocates used to meet the accused in prison in the chamber of the jailor. Arjun is 35-year-old and belongs to the Kunbi caste, is educated above higher secondary and is a daily wage worker. He had earlier been arrested for the murder of his wife but was later acquitted by the High Court. Two Panel Advocates had given up the brief and a third has been appointed.

Due to the seriousness of the allegations and the possibility of severe punishment, the LF has been in touch with the Mitigation team of Project 39A to look for factors which could give some reprieve to the client. As part of the preparation, the LF visited the village of the client to meet with family and neighbors. She also visited the mother of the client who resides in an old age home. According to his mother, the client wanted his mother to attain salvation and therefore he killed her relatives as he did not want her to have any earthly attachment. However, despite showing acute signs of mental health issues, he was not examined for mental health issues. Presently, the charge has been framed against the client and the trial has started.

6.2.1 Plead guilty

The FTF stands for fair trial as a fundamental right of all and discourages clients from pleading guilty as it is a denial of this right. Clients are often ill-advised to plead guilty when information of legal consequences of having a criminal record are not disclosed to them and the SWF gives them this information.

It is important to highlight that in all the above cases the clients pleaded guilty in an informal way which has no legal sanction and has no legal safeguard resulting in low visibility miscarriage of justice. Inducing an accused to make a confession of guilt on an allurements being held out to them that if they enter a plea of guilty, they will be let off very light is against public policy.⁸⁰

“The Programme had a total of 112 acquittals, which resulted in the release of 72 undertrial prisoners. The Programme’s engagement at multiple stages in the trial process resulted in compounding/discharge in 71 cases and consequent release in 59 cases. In addition to these outcomes resulting in releases, clients plead guilty in 71 cases and got convicted in 37 cases.”

⁸⁰ Law Commission of India, 142nd Report on Concessional treatment for offenders who on their own initiative choose to plead guilty without any bargaining (1991), available at <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080812.pdf> at page 17; Muralidhar Meghraj Loya v. State of Maharashtra, AIR 1976 SC 1929.

REASONS FOR PLEADING GUILTY ARE DIVERSE BUT NOT NECESSARILY GUILT

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

Anwasha (name changed), a 27-year-old unemployed male, was charged under Section 380 (Theft in dwelling house, etc.) and 457 (Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment) of the IPC and was in Yerawada Central Prison. During the jail visit of SWF, the prison authority referred his case for legal aid to the FTF. After inspection of the file, the LF learnt that he had been granted default bail under Section 167(2) of the CrPC. However, both he and his family were unable to furnish the bail due to poverty. The trial was taking time and it made the client impatient and frustrated. At the lawyers mulaqat, he informed the LF that he wanted to plead guilty. LF advised him not to plead guilty explaining the ramifications of the same. However, he was adamant and on production before the court, he informed the court that he wanted to plead guilty on the condition that minimum possible punishment be imposed on him. The court agreed and sentenced him for one year.

Randeep (name changed), a farmer from Pune district, approached the FTF for legal aid for his multiple cases in which he was charged for theft under Section 379 of the IPC (Punishment for theft). He informed the SWF that the police had filed many false cases against him. The cases were referred to the Jail Court for trial and he was acquitted in two cases. Even after getting two acquittals, the lack of progress in the other cases made the client impatient and frustrated. He thought that trial would take more time. In the absence of the LF in the court on his hearing, he pleaded guilty in one case to secure a quick release.

6.2.2 Multiple Cases

Charging of multiple offences 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. On multiple occasions, Fellows have also come across undertrial prisoners who were unaware of the additional cases under which they had been booked and retained in custody despite complying with bail conditions.

48 MULTIPLE CASES AGAINST THE SINGLE CLIENT

Madhav (name changed), a 34-year-old male undergraduate undertrial, was working in the private sector and was a permanent resident of Hyderabad. He approached the SWF for legal aid in a theft case in early January 2019 when the Programme had just begun. He was arrested in October 2018 by the Pune Police in multiple cases of theft and robbery. It was on case search that the 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 which required bail compliance. After the Fellows, through the Panel Advocate, moved for modification of bail and obtained favourable orders, he began to refer more cases to the FTF gradually over the next year.

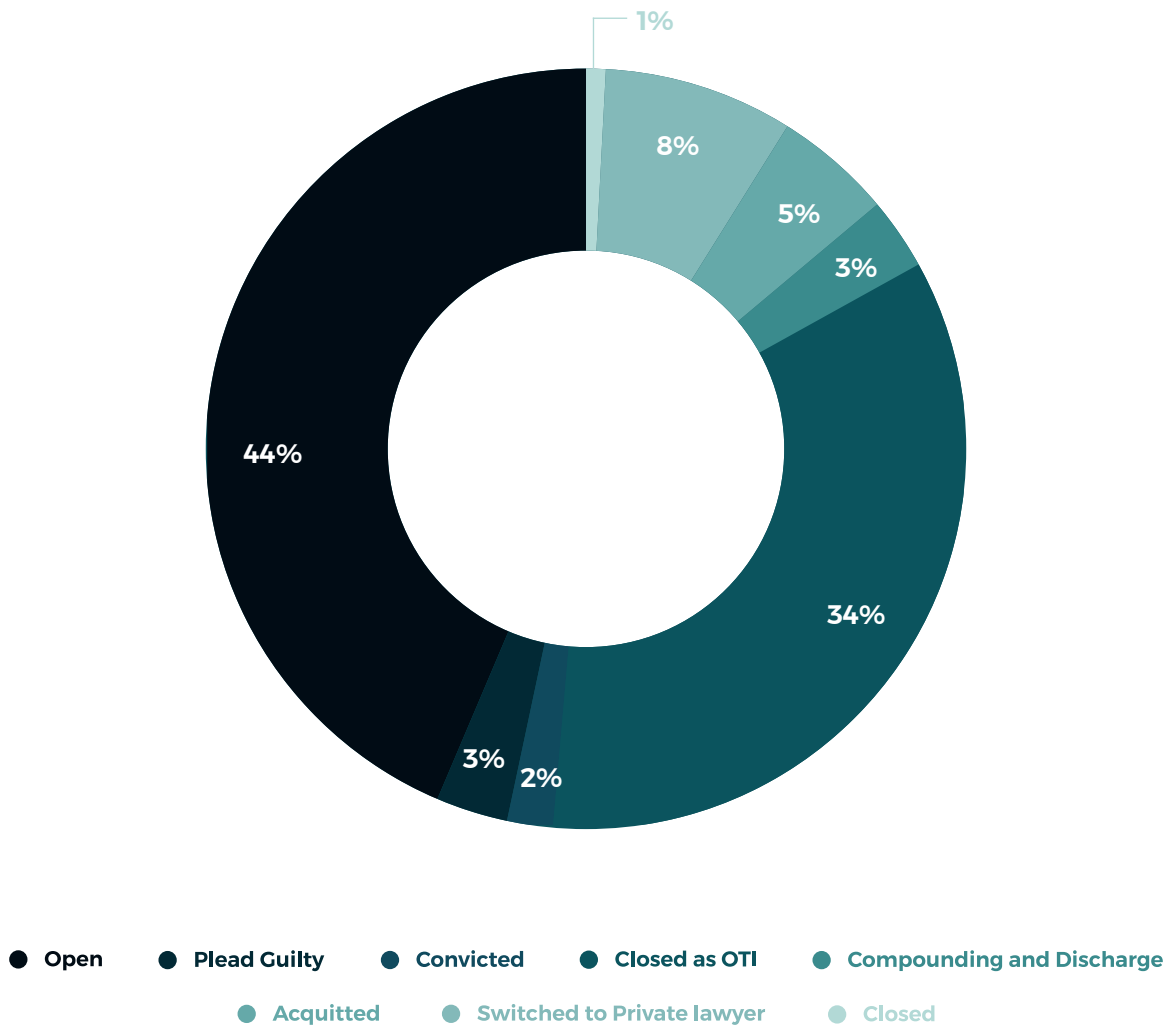
In total, 48 of his cases have been handled by the Programme wherein orders have been obtained, including bail and acquittals where his cases were referred to the Jail Court. The client informed the SWF that he was employed as a manager in a small restaurant where a group of policemen had come and refused 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 his colleague in multiple cases. Despite favourable orders, he was in custody due to the large number of cases against him. During the pandemic, he was released on PR Bond as per the HPC guidelines. However, he was subsequently rearrested by the Hyderabad police.

OVERALL OUTCOMES

From amongst the Detailed Intervention cases, 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 OTIs. For cases received as OTIs, work was concluded in 98 % cases and 2% cases were open.

CHART 6.19 OUTCOME FOR DETAILED INTERVENTION CASES (N=2100)



SWITCHED TO PRIVATE LAWYER

Delays in the court processes and the demand for quick relief is one of the reasons for clients switching to private lawyers. Despite the best efforts, the response of the Panel Advocates may not be satisfactory. In such situations, the families appoint a private lawyer and the client decides to go along with the decision of the family.

Sita, a 55-year-old woman, was imprisoned in Pune for abetting rape approached the FTF for help. The LF, along with the Panel Advocate appointed in the case, filed bail for her in the Sessions Court. It got rejected on the grounds of the accused being a threat to the victim since they lived in the same locality. The LF and the SWF visited that locality and found out through conversations with neighbors that the victim no longer lived in the locality. On the basis of this new information, the LF decided to file bail in the High Court and approached the High Court Legal Aid Services for the same. A new Panel Advocate in the High Court was appointed after submitting the client's documents. However, on the day, the Panel Advocate and the LF were going to file for bail, the client's family appointed another private lawyer on the case. On speaking to Saraswati, she told the Fellows that the private lawyer that was hired by her family would be now handling her case.

Similarly, in Nagpur, Vineet, a 30-year-old self-employed male, charged under Section 377 (Unnatural Offences), 380 (Theft in dwelling house, etc.) and 395 (Punishment for dacoity) of the IPC. He approached FTF for legal aid. On his request, Panel Advocate was appointed and vakalatnama was filed. His bail application had already been rejected before the Panel Advocate was appointed due to the gravity of the offence. There was an inordinate delay in the case and the court kept adjourning the hearing and delayed the framing of charges. The client was not produced in the court on the hearing dates. This upset and disheartened the client who wanted some progress in the case. He felt that a private lawyer would expedite the hearing of the case and decided to switch.

CONCLUSION

Support on filing and compliance for bail emerged as the primary need for clients to approach the Programme. A primary focus of the Programme was, therefore, to get the client released on bail as the Panel Advocates prioritized trial over bails. A total of 891 undertrial prisoners (30% of total outreach) were released with interventions at different stages in the bail process. However, despite favourable bail orders, compliance with bail conditions was pending in 13 % of the total Detailed Intervention cases. In almost 35% of cases, compliance was done after more than a month of the grant of the bail order. The delay in compliance is primarily linked to the inability of the undertrial prisoners to pay for arranging for the means to comply with bail conditions. A property-based bail system has made this critical right beyond the reach of most undertrial prisoners. A property-based bail system operates on the flawed assumption that every accused person has property or has propertied social connections and the risk of financial loss necessarily ensures cooperation with the law enforcement authorities.

With respect to the interventions at the trial stage, the Programme had a total of 112 acquittals, which resulted in the release of 72 undertrial prisoners. The Programme's interventions reflect the progress of the stages of the trial. At the stage of intake in the Programme, over 82.51% of cases were at the pre-trial stage, while 16.84% were at the trial stage. By the end of the Reporting Period, the number of cases at the pre-trial stage reduced to 55%, and the number of cases at the trial increased to 22%. ■

07

**OTHER
INTERVENTIONS
AND AREAS OF
WORK**

The experience of the Programme has demonstrated that most clients not only require quality legal representation but also lack knowledge of the legal system and face barriers in navigating through the same.

As regards the Programme's work in Jail Courts, almost half (46%) of the cases resulted in acquittal due to negligible evidence as most cases were lodged against unknown persons. The conviction rate in Jail Courts was far lower than the overall conviction rate for theft (40.4%) as per the Crime in India Report (2021).

While it is understood that Jail Courts are prone to compromising procedural safeguards for the accused, FTF's experience in Pune indicated otherwise with Fellows finding both judges and judicial staff cooperative and helpful, trials being conducted expeditiously and clients getting relief. However, this experience may have been specific to the Jail Court in Pune and highly dependent on the approach of the sitting judge in the Jail Court. The Programme's experience does not necessarily demonstrate the general trend of procedural compliance across Jail Courts.

The onset of the pandemic had a significant impact on the Programme's outreach and intervention. While the Programme was able to reach out to 2059 undertrial prisoners during the pre-COVID period, this number reduced significantly to 255 undertrial prisoners during the post-COVID period. The number of bail and modification applications filed during the post-COVID period also reduced from 677 to 77.

Pursuant to the HPC guidelines, 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. In this process, the Programme was able to establish contacts with families of 38 clients from Pune and 50 clients in Nagpur who were released on temporary bail.

The last three years of experience have demonstrated the need for an inter-disciplinary intervention as client follow-up is one of the key reasons for the success of the Programme. This interface between the system and the client is provided by SWFs through constant updates even during periods of stagnancy in court procedure. SWFs provided a human face to the system by keeping clients constantly in the loop. Ensuring fair trial for undertrial prisoners entails interventions at multiple levels and cannot be guaranteed merely by providing legal representation in courts. Any effort towards guaranteeing fair trial therefore needs to address other social and personal needs of clients, which often have a bearing on the outcome of court procedures. Even legal representation had to be tailored to the concerns and lived realities of clients and SWFs played the role of bringing these concerns and needs to the table and making the intervention client-centric. Clients, especially those in prison, face tremendous challenge in navigating a highly bureaucratic, slow-moving system which operates in legalese both of which they fail to understand.

The remarkable aspect of the Programme is that its intervention is to have an organic relationship with the client and therefore the intervention was not only limited to court-related work but also to provide a constant support system to the clients through working with their families and helping them arrange

shelter and employment after the release of the clients. Moreover, other significant aspects of the Programme's intervention were in Jail Courts and navigating through pandemic-induced constraints to realize the rights of fair trial for the clients.

7.1 WORK WITH FAMILIES

As part of the casework process, Fellows constantly engaged with families and friends of FTF Clients for the purpose of obtaining detailed case history, medical information, cultural and economic profile, mitigation information and other relevant documents, and ensuring compliance of bail conditions, post-release attendance in courts, and providing support on special needs.

Fellows worked with families through letters, phone calls, home visits and meeting them in person when they came to court or prison to meet the FTF Client concerned. SWFs usually took the lead in work with families but based on the nature and extent of the LFs involvement, they would also be equally involved in communicating with families. A total of 248 home visits were made in the Reporting Period by both SWFs as well as LFs. However, of these home visits, 214 (86.3%) were made in the first year of intervention and only 7 were made in the post-pandemic period.

FINDING THE FAMILY TO SECURE COMPLIANCE WITH BAIL CONDITIONS

Sangeeta (name changed), a woman client in Pune Women's Prison, was arrested along with her husband, minor son and another son for murder. She and her husband lived on the outskirts of Khed in a village and worked as agricultural labourers. When the SWF met her on February 21st, 2019, she had a private lawyer. However, in May, she decided to ask the SWF to provide her with legal aid when her lawyer did not update her on the case over the few months. The client was worried about her son in the Observation Home and her other children and husband. She did not have the contact details of her relatives and could not give her postal address. The SWF visited the JJB to get details of the son and learnt that he had been released on bail.

Meanwhile, the Panel Advocate along with the LF filed for bail and she was granted bail of Rs.30000 with sureties within five months of arrest. The challenge was now to get her released on bail. The SWF and LF went to Khed to the area where she used to stay (which was approximately 30 to 40 km from Khed) and tried to locate her house after getting some approximately 30 to 40 km from Khed) and tried to locate her house after getting general directions from her. But they were unsuccessful. They asked several villagers but no one appeared to know her or her husband. Finally, one person recognized her name and informed the Fellows that her niece lived in Khed city. The Fellows went back to the town, visited the niece, and got information about the family.

On July 18th, 2019, her father and father-in-law appeared in court and her bail was complied with. On July 19th, 2019 the SWF met her in Yerwada prison and gave her instructions to follow upon release to avoid infringement of bail conditions and re-arrest. The SWF also gave her contact number to the client for the attending date and post-release follow-up. The client was reunited with her son and family.

NEGOTIATING THE DYNAMICS WITH PANEL ADVOCATE

Sakib-al-Hasan (name changed), a 19-year-old Muslim boy, was arrested for an attempt to murder under Section 307 of the IPC. He was a non-literate daily wage earner. His co-accused had been released on bail but he was not able to afford a lawyer since he was an orphan who lived with his uncle. His family lived on the outskirts of Nagpur and were unable to visit him in prison regularly. His uncle was a vegetable seller and could not afford to hire a good lawyer. The Fellows visited his uncle's house where they came to know that the client had been kidnapped when he was 13 years old, taken to Andhra Pradesh and was forced to work in a factory. He was given sedatives/injections everyday. He managed to escape and return home but was mentally disturbed after this incident and was on drugs.

The Fellows assured the family that legal aid would be provided to the client. The Panel Advocate appointed on the case refused to co-operate with the LF and wanted to get contact details of the family members before filing for bail. The client informed the SWF that the Panel Advocate was asking for money. Both Fellows visited the family and asked them to inform the lawyer about their inability to pay any money. Since they did not pay him, the lawyer stalled filing for bail. He also opposed change of lawyer claiming that he was working on the case.

Finally, after repeated calls from the LF, bail application was filed and granted on grounds of parity of surety for Rs.25000. The client was released from prison. Later, the family members informed the SWF that at the time of release, the lawyer had again asked for money and at that time, they did ultimately pay him since they did not want to risk any more delay.

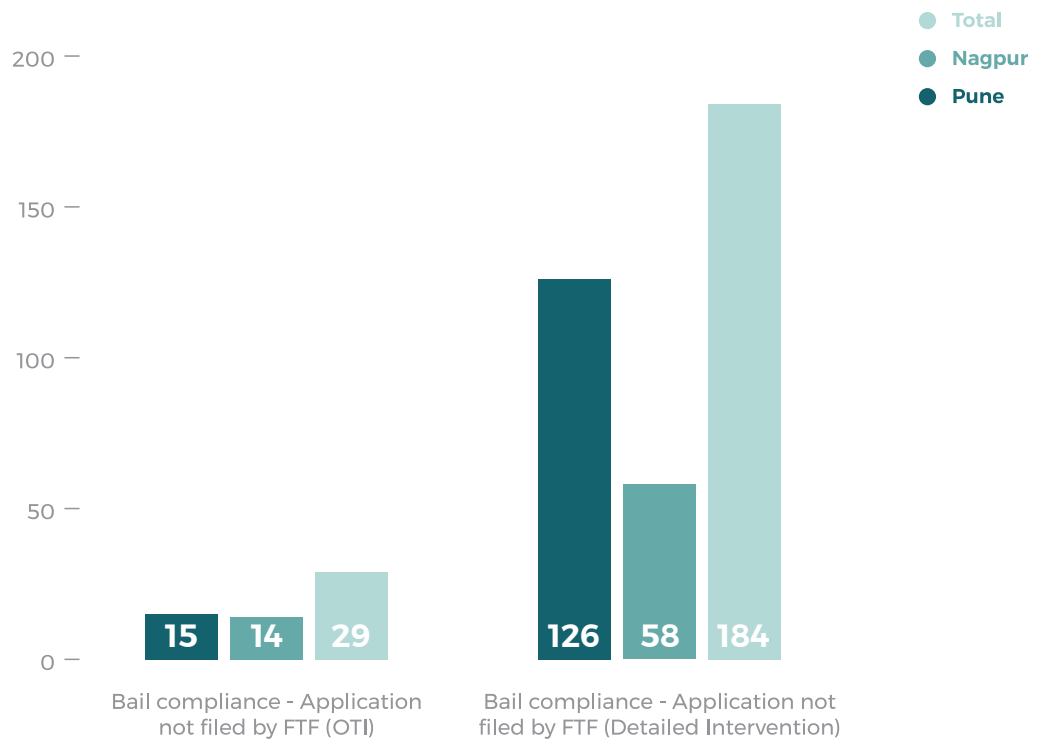
7.1.1 Bail Compliance and Sponsorship

As the next step in the bail process, once a favourable order was granted, Fellows had to work for ensuring compliance of bail conditions and subsequent release of the clients from prison. This process often involved working with families/employers/ community members of the FTF Client to convince them to support the FTF Client in complying with bail conditions. Fellows would also support friends/family members in collating documents needed for bail compliance

and accompany them in courts throughout the process for compliance. For FTF Clients with an order for cash bail, Fellows also worked with organizations who sponsored bail amounts in case their families were unable to deposit the cash amounts.

Apart from the above cases where bail filing was done by FTF Fellows, SWFs along with LFs have also helped in compliance with bail in 213 cases where bail has not been filed by FTF (184 Detailed Intervention cases and 29 OTIs).

CHART 7.1 BAIL COMPLIANCE- APPLICATION NOT FILED BY FTF



7.1.2 Other Support Services

Apart from the above, SWFs also provided support to undertrial prisoners in multiple non-legal situations especially relating to post-release support in shelter and livelihood. In most cases, interventions towards addressing

such needs were limited to making referrals to other organizations working in the specific area. However, in a few cases, SWF themselves worked with the clients and their families proactively to address these non-legal needs of FTF Clients.

TRACING THE FAMILY AND HISTORY OF CLIENT

This case was referred by Tata Trust where the client was at the Mentally Ill Ward of Nagpur Central Prison. The client was arrested on March 04th, 2018 under Sections 324 (Voluntarily causing hurt by dangerous weapons or means) & 353 (Assault or criminal force to deter public servant from discharge of his duty) of the IPC for assaulting an on-duty police officer during Shiv Jayanti bandobast.

Upon meeting the SWF, the client gave him the name of the village he came from. He had come to Nagpur cycling to repair a tube light. It was Shiv Jayanti and he was watching the procession and had a knife in his hand. A police officer tried to snatch it from him and in the scuffle, the police officer sustained an injury in his hand. Thereafter, the client was arrested.

The client was taken to the hospital for treatment for mental illness. The SWF wrote to the client's family a few times but there was no response. Then, the LF and SWF visited the client's village and tried to trace his family but no one





could identify him by his name. The Fellows asked for his brother and were directed to the client's house. There, they learnt that the client's name was wrongly recorded. The Fellows obtained relevant documents relating to the client and his name. They were also informed that the client had taken a loan to purchase an auto which was confiscated by the finance company after which his engagement broke and he lost his mental balance. The brother also informed the Fellows that the client had been undergoing treatment for mental illness with a psychiatrist in Nagpur. The Fellows approached the psychiatrist in Nagpur but he refused to share the client's record unless directed by the client, police or the court.

Meanwhile, the client had undergone half his term in prison and was entitled to bail under Section 436A of the IPC. The LF applied for it and the same was granted. But the client and his family could not furnish bail. The family is unable to meet him due to the non-verification of his name by authorities. The SWF is working with the family to ensure that he is rehabilitated and reintegrated into the community after his release.

Fellows worked with families through letters, phone calls, home visits and meeting them in person when they came to court or prison to meet the FTF Client concerned. SWFs usually took the lead in work with families but based on the nature and extent of the LFs involvement, they would also be equally involved in communicating with families. A total of 248 home visits were made in the Reporting Period by both SWFs as well as LFs.

7.2 JAIL COURTS

To address the issue of overcrowding in prisons and a high number of undertrial prisoners, Jail Courts were set up in jails to take up the cases of petty offences which are punishable up to 3 years.⁸¹ It is a properly constituted criminal court with full power to record convictions and sentences in a summary proceeding. Often, in jail court proceedings, the magistrate, clerk and the accused are present. Due to its short procedure, jail courts are criticized for weakening the presumption of innocence, encouraging and even inducing guilty pleas, and a consequent criminal history with the threat of an undetermined stay in prison thereby circumventing the fair trial rights of the undertrial prisoners⁸².

Given the above understanding, the Programme was initially circumspect about working in Jail Courts. However, the Programme began its engagement with Jail Courts in Pune in April 2019 due to requests from the judiciary and LSA to provide legal representation in Jail Courts. This was also perceived as an opportunity for the Programme to have a first-hand assessment of the procedural limitations in the functioning of the Jail Courts and examine whether such deficiencies could be cured through safeguards.

The work of FTF at the Additional Chief Metropolitan Magistrates' Court (ACMM), who also headed the Jail Court, had generated goodwill for the Fellows and the ACCM started

referring Jail Court matters to the LFs. The DLSA Secretary was of the opinion that Jail Courts would be a good place for the LFs to work.

The Programme had worked on 141 cases till March 2021. The Jail Courts sit on alternate Saturdays which for a short period (from May 2019 to August-September 2019) grew to twice weekly and then reverted to sittings on every alternate Saturday. Although jail courts have jurisdiction to try all petty cases punishable with up to three years imprisonment where the accused is in custody, all cases handled by FTF were theft cases. Almost 70% of these cases were referred to LFs by the presiding officer when the matters came up for hearing and the rest had come directly from clients (12.79%) and other judges (10.63%). These cases were then transferred to the Jail Court by the LF for expeditious trial where release on bail was not possible. An SWF also remained present in the Jail Court in Pune to note down details of clients whose cases were allotted and thereafter contacted the client at the barrack.

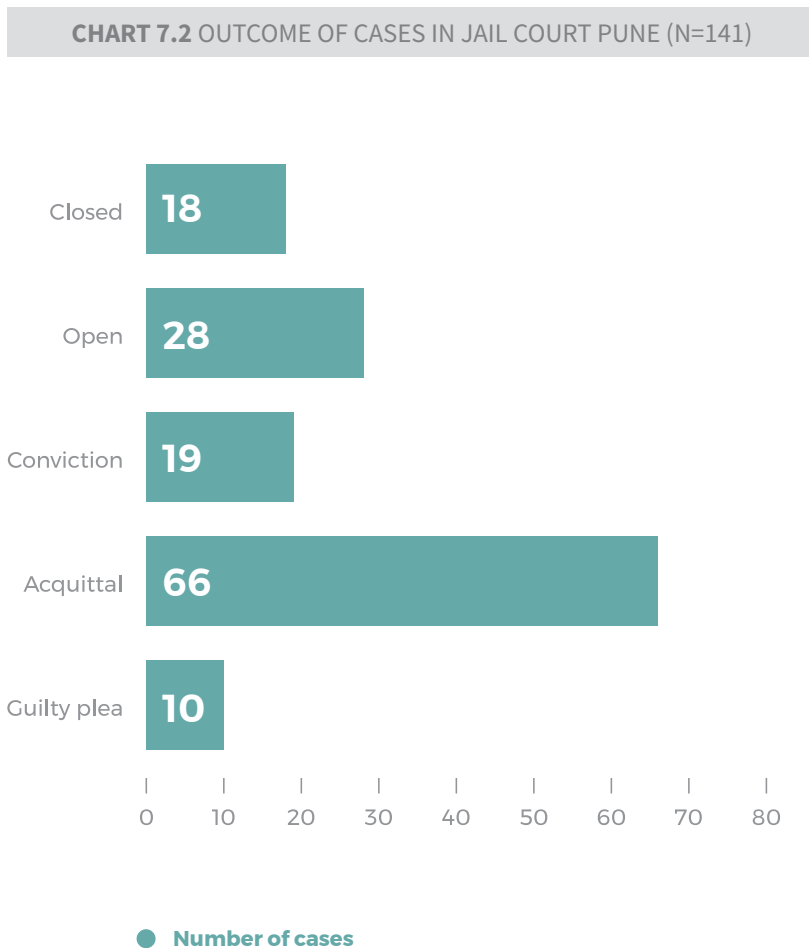
The profile of the cases revealed that the majority of the clients in Jail Courts were young with about 75% below 30 years of age. This was 20% higher than the below 30 years of age clients from the aggregate FTF data for clients below 30 years of age. 21-year-olds alone accounted for about 20% of Jail Court clients. The maximum age was 41 and the minimum was 19 years. The other demographic and socio-economic profile of the clients did not differ from other clients of FTF.

⁸¹ Chief Justices' Conference-2009 (August 14-15, 2009), Resolutions. available at <https://main.sci.gov.in/pdf/sciconf/cjconference2009resolutions.pdf> see resolution 12 at page 8.

⁸² Commonwealth Human Rights Initiative, *Liberty at Cost of Independence: A Report on Jail Adalats in India*, 49 (2009)

All cases handled in the Jail Court were that of theft (Section 379 of the IPC) with a total of 75 Jail Court clients whose cases have been handled. Of these, 31 clients (40% of total client strength in Jail Court) had multiple cases while the rest had only one case against them. Among prisoners with multiple cases, half of them had two cases against them, while there were only 4 prisoners who had 5 or more cases against them.

At intake, about 50% of the cases were at the stage of summoning of prosecution witnesses and in 30% of cases, charges were to be framed. The intervention and the outcome in cases are set out in the chart below.



Almost half (46%) of the cases in Jail Court resulted in acquittal due to negligible evidence as most FIRs are against unknown persons. The prosecution mainly relies upon the evidence of the Investigating Officer. Approximately 13% of cases resulted in a conviction, almost 8% pleaded guilty and 18% of the clients were released on bail during the pandemic based on HPC guidelines. The conviction rate is far lower than the conviction rate for theft (40.4%) as per Crime in India 2021 published by NCRB.

8 of the 10 clients who pleaded guilty had multiple cases against them. The experience of the Programme shows that clients with multiple cases plead guilty after acquittal in most of the cases and are sentenced to a period undergone. As in other FTF cases, clients plead guilty not as an admission nor out of remorse for offences committed but to secure an early release. Another strategic reason for pleading guilty is when the judge is perceived as a “convicting judge”. The experience of Fellows in Jail Court shows that these perceptions are not baseless and even in cases with similar evidence, the results differ due to the subjective reading of the evidence. While some judges discard the sole evidence of the Investigating Officer finding it insufficient and acquit the accused, other judges convict the accused on this evidence.

While it is understood that Jail Courts are prone to compromising procedural safeguards for the accused, FTF's experience in Pune indicated otherwise with Fellows finding both judges and staff cooperative and helpful, trials being conducted expeditiously and clients getting relief. However, this experience may have been specific to the Jail Court in Pune and highly dependent on the approach of the sitting judge in the Jail Court. The Programme's experience does not necessarily demonstrate the general trend of procedural compliance across Jail Courts.

7.3 WORK DURING COVID

COVID significantly limited the Programme's outreach and also considerably impacted the intervention of the Programme. The outbreak of COVID-19 affected the work of FTF as the lockdown led to the stopping of entry into prisons and courts being shut down. There was neither any movement on pending cases nor was there new intake or follow-up during this period. The Programme was able to reach out to 2059 undertrial prisoners during the pre-COVID⁸³ period but the number reduced to 255 undertrial prisoners during the post-COVID⁸⁴ period. Moreover, the number of bail and modification applications was also reduced from 677 to 77. The table below demonstrates how COVID affected the overall performance of the Programme.

TABLE 7.1 IMPACT OF COVID ON THE PROGRAMME

PARTICULARS	Pune		Nagpur		Total	
	Pre-COVID	Post-COVID	Pre-COVID	Post-COVID	Pre-COVID	Post-COVID
Total undertrial prisoners reached	1040	224	1019	31	2059	255
Total number of new applications received from undertrial prisoners	1326	276	1278	37	2604	313
Number of Panel Advocates appointed	468	24	549	39	1017	63
Bail+Modification applications filed	251	50	421	27	672	77
Total bails and modifications granted	212	33	359	15	570	48
Release on bail/ modification	131	55	280	35	411	90
Release on PR Bond	55	116	132	40	187	156
Release through compliance of bail conditions (application not filed by FTF)	10	3	30	4	40	7
Acquittal/ Compounding/ Discharge Order	90	16	60	17	150	33
Released on acquittal, discharge, compounding/ withdrawal	55	11	51	49	106	25
Conviction	34	3	8	1	42	4
Clients pleading guilty	22	6	43	0	65	6
Closed as OTI	341	119	278	23	619	142

⁸³ Period between January 1,2019 to March 31,2020

⁸⁴ Period between April 1,2020 to March 31,2021

7.3.1 Impact of the Pandemic on Case Intake and Referrals

As an exception to the overall trend described above, the highest number of cases post the pandemic period were received as referral from the DLSA office in Pune. Restrictions on prison access during the pandemic had a major impact on the Programme's case intake mechanism. As a consequence, the Programme did not have any case intake during the period from April to September 2020. In this period, the team was constantly liaising with different stakeholders to explore alternate ways of reaching out to undertrial prisoners who needed legal assistance. In October 2020, the DLSA in Pune referred 134 cases of undertrial prisoners which were received by them from multiple sources (court, prison referrals or collected by the PLV) from April 2020 to September 2020. These cases were then taken up as FTF cases and allocated to Fellows for follow-up and interventions. The Nagpur DLSA had received 9 such cases from April 2020 to September 2020 and referred them to the FTF team. The Nagpur team also received case referrals through the social workers in prison appointed by Tata Trust who resumed prison visits from October.

The Pune team also resumed prison visits in October 2020 but the visits were not regular and

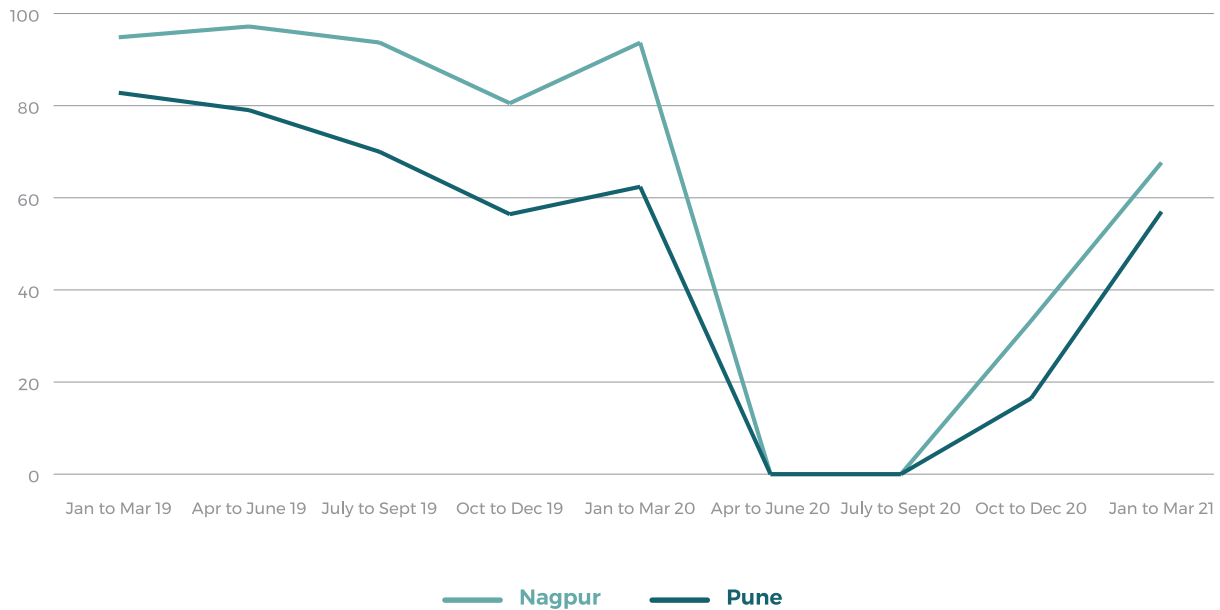
faced interruptions due to bouts of intermittent rise in COVID-19 cases inside prison. The Nagpur team did not have any intake from prison even from October to December 2020 resulting in very few cases being received from prisons during the post-pandemic period. This reflects the overall dip in the case intake numbers from prison during this period due to a lack of access to prisons.

As a corollary, cases referred by the DLSA constituted the majority of new cases under the Programme post-pandemic. In the quarter of October to December 2020, almost 80% cases were received through referrals from the DLSA.

At the outbreak of the pandemic, the Programme had handled 1211 Detailed Intervention cases of which 735 were open. There were also 31 open OTI cases at that juncture⁸⁵. Many cases were at a crucial stage and their outcome has been adversely affected. Intake has also been severely impacted, as seen in chapter 3. Moreover, due to the non-functioning of courts and the low rate of disposal, the number of pending cases had increased. As of March 2021, there were 856 pending cases of which 825 were Detailed Intervention cases with Pune having 417 Detailed Intervention cases and 6 OTIs and Nagpur having 408 Detailed Intervention cases and 25 OTIs.

⁸⁵ The figures are that of 31st March 2020.

CHART 7.3 TREND OF INTAKE FROM PRISONS



Quarter	Jan to Mar 19	Apr to June 19	July to Sept 19	Oct to Dec 19	Jan to Mar 20	Apr to June 20	July to Sept 20	Oct to Dec 20	Jan to Mar 21
Pune	82.80%	79.02%	70.00%	56.44%	62.40%	0.00%	0.00%	16.48%	56.99%
Nagpur	94.85%	97.19%	93.71%	80.53%	93.67%	0.00%	0.00%	33.33%	67.65%

Restrictions on prison access during the pandemic had a major impact on the Programme’s case intake mechanism. As a consequence, the Programme did not have any case intake during the period from April to September 2020. In this period, the team was constantly liaising with different stakeholders to explore alternate ways of reaching out to undertrial prisoners who needed legal assistance.

The below gives the case status of the cases at the outbreak of the pandemic.

TABLE 7.2 CASE STATUS OF OPEN DETAILED CASES IN MARCH 2020 (N=735)

COURT STATUS	Pune	Nagpur	Total
Remand	16	12	28
Production of Accused	24	30	54
Appearance	132	28	160
Chargesheet filed	6	2	8
Compliance under 437 A	1	0	1
Framing of Charges/ Recording of Plea	47	115	162
Prosecution Evidence - Summons to Witness	84	121	205
Evidence	5	15	20
Recording of statement under Section 313 of the CrPC	3	2	5
Pronouncement of Judgement	0	5	5
Transferred to Lok Adalat	17	9	26
Non-Bailable Warrant	41	7	48
Others	7	6	13
Total	383	352	735

The table reveals that the trial had either commenced or was to commence in 57.55% and 5 cases were awaiting the pronouncement of judgment and another five at the stage of the accused's statement under Section 313 of the CrPC.

WORK DURING PANDEMIC

Laukik (name changed), a 30-year-old tribal non-literate migrant daily wage worker, in Nagpur was under POCSO and Section 354 of the IPC (Assault or criminal force to woman with intent to outrage her modesty) where he was accused of sexually molesting his minor cousin. He stated that he had been implicated in a false case. The cousin had been called by him to Nagpur to look after his pregnant wife and two young children, one of whom has polio. A few days later, the girl fought with the client and disappeared and reported this to the police. The girl when found stated that she had been forcibly brought from her village by the client and had escaped as he harassed her. The police arrested him.

The Panel Advocate took active interest in the case and immediately applied for bail after discussing the case with the SWF and the LF. The challenge was in securing the compliance of the bail order after the bail of Rs.15000 surety was granted. The wife had no phone and all the client could inform the Fellows about was the location of the construction site where they lived and worked when the incident occurred. Fortunately, they could locate them there where the wife continued working. However, since the documents of the wife were not from the jurisdiction of the court, her documents were rejected. The Panel Advocate and LF then filed a modification of bail application which was granted and the bail reduced to cash of Rs. 5000/-. The financial assistance for bail was finally provided and paid by the contractor after the intervention of the social worker. Finally, the client was released from Nagpur jail on July 28th, 2019 and he had approached the FTF in May 2019.



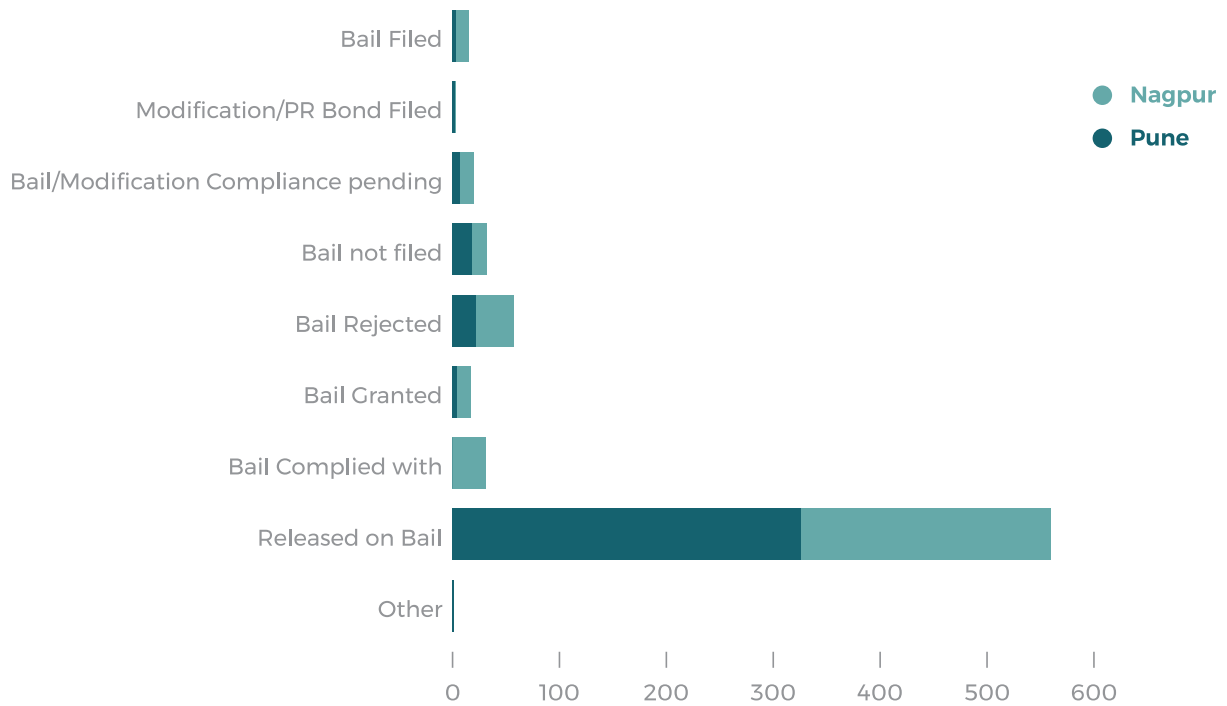


He was regular in attending court after release and his trial was ongoing in March 2020 when lockdown was declared. Despite having no work and living on alms and by eating food distributed by locals to poor people like his family, he refused to return home to his village in Madhya Pradesh due to his ongoing case in Nagpur as he did not want to be labelled as an absconder. Since he had no means of earning or supporting his family during this tough time, the SWF who was following up his case networked with an organisation in Nagpur which was doing relief work during COVID and they gave ration and medicines to Chotu and his family for two months. Currently, the work at the construction site has picked up and the client is able to earn a little bit again. The trial is going on and he is regularly attending court.

At the outbreak of the pandemic, the Programme had handled 1211 Detailed Intervention cases of which 735 were open. There were also 31 open OTI cases at that juncture⁸⁵. Many cases were at a crucial stage and their outcome has been adversely affected. Intake has also been severely impacted, as seen in chapter 3. Moreover, due to the non-functioning of courts and the low rate of disposal, the number of pending cases had increased.

While in most cases, clients were released on bail (559 or 76%), bail was also at a critical stage for some clients. The below sets out the bail status of the clients as of March 31st, 2020.

CHART 7.4 BAIL STATUS OF OPEN DETAILED CASES IN MARCH 2020 (N=735)



	Pune	Nagpur
Bail Filed	3	12
Modification/PR Bond Filed	2	1
Bail/Modification Compliance pending	7	13
Bail not filed	18	14
Bail Rejected	22	35
Bail Granted	4	13
Bail Complied with	0	31
Released on Bail	326	233
Other	1	0

MENTALLY ILL CLIENT AND RELUCTANCE TO COMPLY WITH BAIL ORDER

Rajeevan (name changed), a 23-year-old client from Nagpur was arrested under Section 354 of the IPC (Assault or criminal force to woman intent to outrage her modesty) along with POCSO and Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 for molesting a tribal girl. He is a resident of Shilli village in Kuhi taluka of Nagpur district and lives with his father, mother and one younger brother. He is educated up to primary school and was working in a private company earning approximately Rs.10000 per month. The family has been engaged in their traditional occupation of barbers. He is a first-time offender and is suffering from mental health issues. It took the LF some time to find the case as he did his initial search in the POCSO Special Court and when he could not find the case, he looked for it in the Special Court for Atrocities against SC/ST. The LF discovered that there was a delay in filing of the chargesheet and that the client was entitled to default bail. He applied for the same and got an order of Rs.30000 with solvency bond.

Meanwhile, the SWF inquired about the family and was informed by the client that his family did not come to meet him. He gave her the contact number of his aunt who informed the SWF that the client had mental health issues and gave the contact of his family members. She visited his home in Shilli village





and informed the mother of the accused about his case and asked about his mental health condition. The mother informed the SWF that the accused's mental health condition started deteriorating a few years back. The family began his treatment but there was no change in mental condition. One day he jumped from his house and suffered fracture in his leg.

When SWF asked about the accused case, the mother said that on the day of the incident, everyone had gone for their work. The accused asked for water from a 17-year-old girl who was his neighbour's niece. When the girl gave him water, the accused grabbed her hand and she then started shouting. The girl's uncle then filed an FIR. The SWF then informed the mother about the bail order and explained to her the bail process. However, the family failed to comply with the bail order and it lapsed on the filing of the chargesheet. The LF and SWF visited the family again to inquire regarding the reason and the mother informed them that she was demanded Rs.6000 for the solvency certificate. She was dissuaded by the villagers from spending the money required for bail as she would also have to look after her mentally ill son on his release. She said that she was the only earning member of her family and could not afford to stay home to look after him. The SWF counselled her on a regular basis to get her son released on bail. The LF applied for regular bail and while the hearing was pending, COVID lockdown was imposed. Thereafter, in June, the bail was argued and granted for Rs. 15000 with solvency bond on June 30th, 2020. The Fellows convinced the family members to come and get the client released and the father came on July 7th, 2020 and completed the formalities. After being quarantined for 15 days outside the prison, the client was released from custody.

BAIL REJECTED DURING COVID

Asadulla (name changed), a 40-year-old Muslim daily wage labourer, was referred by Tata Trust social worker to FTF for legal aid in a murder case at Pune. He is also a person with disability having his left arm missing. The SWF took down his case details and application. On his request, Panel Advocate was appointed in his case and a vakalatnama was filed. He was arrested on July 6th, 2019 and approached the FTF on November 18th, 2019. During COVID-19 lockdown, the client applied for temporary bail directly from the prison which was rejected on the grounds of gravity of offence and the presence of an eye witnesses in the case. The LF also filed for temporary bail which was not entertained in view of the rejection of the other application. The client contacted COVID in prison. The matter has been kept for framing of charges since before the lockdown and there has been no movement in the case.

There were also clients whose LSA process was underway and who was adversely impacted by the lockdown. The table below gives the DLSA status of the cases as of March 31st, 2020.

TABLE 7.3 DLSA STATUS OF OPEN DETAILED CASES IN MARCH 2020 (N=735)

DLSA STATUS	Pune	Nagpur	Total
DLSA process not initiated	2	2	4
Application Received	6	4	10
Application under Process	1	0	1
DLSA/TLA lawyer appointed	9	23	32
Received Appointment Order	0	2	2
Vakalatnama Signed	4	6	10
Vakalatnama Filed in Court	330	345	675
Other	0	1	1
Total	352	383	735

The inability of SWFs and LFs to attend prison and court due to the lockdown, adversely impacted the following up of cases. Fellows attempted to work on matters within the constraints of the lockdown. One of the tasks carried out during COVID was the preparation of list of clients eligible for release on personal bond as per orders of the High-Power Committee constituted

by the Supreme Court and forwarding lists to prison and DLSA office. As a result, 92 clients were released in Nagpur and 47 in Pune. SWFs also made phone calls to families of clients for updates and the LFs began to go to court when they began partial functioning. 35 bail applications were filed in Pune between April 2020 to March 2021 and 20 in Nagpur.

7.3.2 Releases during Pandemic

Given the risks of spread of pandemic due to crowding in prisons, the SC pointed out ‘an imminent need to take steps on an urgent basis to prevent the contagion of COVID-19 virus in our prisons’ and issued directions to reduce overcrowding of prisons so as to better manage the spread of the disease in case of an outbreak. It further directed a High-Powered Committee (HPC) to be constituted by all the states/union territories to determine the class of prisoners to be released on parole or an interim bail for such period as may be thought appropriate. Subsequently, Maharashtra High Powered Committee on Prisons issued a slew of directions leading to courts getting actively involved in releasing inmates on conditional bail in Maharashtra. 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. In this process, the Programme was able to establish contacts with the families of 38 clients from Pune and 50 clients in Nagpur who were released on temporary bail.

To ensure that eligible undertrial prisoners who were clients of FTF are released as part of this process, Fellows prepared lists of undertrial prisoners who had been charged with offences punishable with imprisonment under 3 years,

between 3 and 5 years and between 5 and 7 years respectively. These lists were forwarded to the prison, to facilitate initiating the process of release, by the HPC guidelines. Subsequently, after the HPC order of May 11th, 2020, a list of undertrial prisoners with special needs like pre-existing illnesses and old age was also shared as the list of undertrial prisoners who had been granted bail but had not been released due to non-compliance with bail conditions.

Since neither the prison nor the DLSA compiled lists of released prisoners, it was difficult to ascertain how many undertrial prisoners from the lists provided by FTF were released from the prison. Due to the risk of the spread of COVID-19, physical visits to courts were discouraged for Fellows. Follow-up on the 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 in minimal capacity and coordination with court clerks and officers for seeking records was not possible without physically visiting the court premises.

Thus, the entire reliance on the 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

⁸⁶ The HPC held its first meeting on March 25th, 2020 and identified the following categories of inmates as eligible for release as set out in the minutes of the meetings released by the HPC: (a) undertrial prisoners who have been booked/charged for such offences for which maximum punishment is 7 years or less to be considered for release on interim bail on personal bond; (b) convict prisoners sentenced to maximum punishment of 7 years or less to be considered for release on emergency parole; and (c) convict prisoners sentenced to maximum punishment of more than 7 years to be considered for release on emergency parole if the prisoner has returned to prison on time on the last two releases (whether on parole or furlough). Following were excluded from the eligible category of prisoners: (a) undertrial prisoners booked for serious economic offences/bank scams and offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA etc; (b) Foreign nationals; and (c) undertrial prisoners having their place of residence out of Maharashtra.

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. Therefore, the lack of organised online resources and physical presence in prison 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 LSA, for seeking updates on the release of inmates, transportation and other prison-related updates. The Fellows were also in touch with the clerks at the LSA office and the Court Masters, to provide clarification and further information on cases of FTF Clients.

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 prisoners who had been released from these clients.

During the period of lockdown, LFs and most Panel Advocates were not attending court proceedings and regular contact and follow-up on court proceedings in cases was a challenge. LFs managed to remain in contact with some Panel Advocates who were working through this period and followed up on the cases that were being taken up. These Panel Advocates were able to follow up about inmates whose names were on the lists as well as helped confirm some of the releases.

The entire reliance on the 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. Therefore, the lack of organised online resources and physical presence in prison led to pockets of information being shared sporadically and haphazardly, relayed largely in estimates and severely lacking in particulars.

HPC RELEASE

FTF had prepared a list of those clients who were eligible for release under the HPC Guidelines and forwarded the list to the DLSA for escalation to the concerned courts. In some cases, separate bail applications were filed. One case in Pune related to a 21-year-old non-literate client whose case was referred by the Panel Advocate to FTF for legal aid. He was facing trial for an offence punishable under Sections 399 (Making preparation to commit dacoity) and 402 of the IPC (Assembling for purpose of committing dacoity). Out of total 5 accused, he was the only one in the jail since July 2016. His application was forwarded for the appointment of Panel Advocate and a vakalatnama was filed in the court. During COVID-19 lockdown, as per the guidelines of the HPC, FTF filed his interim bail application in the court. Considering his long incarceration and two co-accused already released on bail, the court granted him interim bail as per guidelines of HPC and he was released from prison.

7.3.3 Miscellaneous work during the Pandemic

Another intervention carried out during COVID was the supply of sanitisers and masks to prisoners at the request of the prison authorities. FTF carried out a crowdfunding campaign for the purchase and supply of the essentials supplied.

CONCLUSION

The experience of the last three years of intervention has reiterated the belief that legal aid services are enhanced by the presence of social workers who play multiple roles in the process and are a bridge between the legal system and the client. The experience of the Programme has demonstrated that most clients not only require quality legal representation but also lack knowledge of the legal system and of negotiating the same. They require several services linked to their case which lawyers are not professionally equipped to perform. The caseload of LFs does not permit any expansion of their role. SWFs in the Programme have helped in providing quality legal aid and building relations with different stakeholders. The SWFs have not only played a leading role in instilling and continuance of faith in the Programme amongst undertrial prisoners and prison officials but also family members of clients. They have also contributed to legal strategizing of the case and all the SWFs regularly go to court, especially in cases where the Panel Advocate is reluctant to take the assistance of LF as well as where Panel Advocates are not active and the burden of the entire case is on LF. SWF also plays a pivotal role in cases where the client is released on bail and for preparation of trial.

While COVID has restricted the role of SWFs due to the discontinuation of entry into prison, they have continued to provide support services to released clients and family members of clients in prison. The role of SWFs has expanded over the last three years as they have responded to new challenges and needs that arose in the course of the Programme. ■

08

FELLOWSHIP
JOURNEY

The profile of the recruited Fellows necessitated intensive preparation before placing them in the field. Therefore, a 2 month residential induction program was conducted for all Fellows at the University campus, giving them intensive inputs on criminal law and procedure and also orienting them on the needs of different marginalised communities to understand structural inequalities.

The implementation of the objectives of the Programme was dependent on the cooperation of staff at the ground level. Initially, the prison authorities and LSAs were circumspect about the Programme. However, with the delivery of outcomes, the Programme was increasingly accepted.

The current legal aid dispensation does not imagine the role of trained social workers, beyond case intake which is currently handled by the PLVs. The focus of the Programme was to integrate social work in the delivery of legal aid. In our Programme, this work was done by social workers.

There is a higher need for legal support in talukas. As only Panel Advocates and PLVs from DLSAs visited the prisons, undertrial prisoners whose cases were in talukas outside of the DLSA jurisdiction had no access to the TLSCs concerned.

Finding the LSCs was in itself a huge challenge as it involved finding fairly experienced criminal lawyers who were willing to discontinue their established private practice. Considering the nature of work, it was also imperative that the Programme needed a local LSC. Moreover, the task demanded not only strategizing litigation-related work but also administrative workload.

Case intake is highly dependent on SWFs in prisons. With time, as the Programme has managed to generate goodwill, the Programme started getting references from other sources as well. However, a reasonable chunk of case intake came from the prisons themselves, making the role of SWFs really crucial.

There was a challenge in making Fellows appreciate the value of maintaining their interventions in the MIS. This was particularly true for lawyers who were not originally trained in dealing with empirical and sociological studies and saw their primary role confined to legal intervention.

Given the profile of Fellows hired by the Programme, developing adequate skillsets on using information systems and database were a challenge. Consequently, they were more focused on the casework and considered maintaining data intervention as an extra burden on their work. This created difficulty in maintaining real-time data.

The Programme was committed to working on the individual growth of the Fellows as the idea was to prepare them to be established, criminal defence lawyers. While there were areas that required handholding and supervision, the attempt was to provide adequate space for the Fellows to work independently.

In managing the workload of the Fellows, there was a need to maintain a fine balance between the casework and other administrative aspects of work which are important for monitoring.

For monitoring purposes, efforts were made to measure the impact of the work of Fellows in tangible outcomes. However, the framework of the Programme acknowledged that qualitative inputs by the Fellows do not necessarily translate into quantitative outcomes and therefore the subjectivity of the process was acknowledged in the Programme.

The Programme started with the understanding that creating a cadre of trained professionals working for criminal defence in the district was crucial to strengthen the legal aid service delivery at the trial court level. This was the core rationale behind implementing the Programme in a fellowship model. In addition to mentoring the Fellows, implementing the fellowship also involved building relationships with prison authorities and LSAs, creating avenues for Fellows to provide effective legal representation to undertrial prisoners and constant monitoring and reviewing casework progress. This chapter reflects on the journey of the Programme, the paths it charted, the milestones it achieved, and the roadblocks and barriers (organisational and structural) that came its way in achieving what it was set out to achieve. In doing so, it details the modus operandi, the internal learnings, dilemmas, and the evolution of the Programme and provides the readers with a glimpse into the running of the Programme. It gives the readers a view of the training of the Fellows, the strengthening of relationship with legal service authorities, the focus of the Programme, case intake, data management and how the Programme was monitored, assessed and evaluated.

8.1 RECRUITMENT AND INDUCTION OF FELLOWS

The process for the recruitment of Fellows was initiated in May 2018. Approximately 700 applications were received (about 200 for the position of LFs and 500 for the position of SWFs). For the first cohort, the Programme envisaged

recruiting a team of 10 LFs and 5 SWFs for each location. The focus of the recruitment process was to select young Fellows who would continue to practice criminal law in the designated districts (Pune and Nagpur) in the long run. Therefore, in the recruitment, priority was given to the applicants from the same or neighbouring districts who at least had a year-long experience in trial court lawyering.

The profile of the recruited Fellows necessitated intensive preparation prior to placing them in the field. Therefore, a 2-month residential induction program was conducted for all Fellows at the University campus, giving them intensive inputs on criminal law and procedure and also orienting them on the needs of different marginalised communities to understand structural inequalities. The curriculum design for the induction training started with sessions on basic concepts of constitutional and criminal law and graduated to more complex, procedural aspects towards the end of the induction program. The availability of academic infrastructure at the University campus facilitated on-campus delivery of the training and residential facilities for the Fellows. The training included classroom lectures, drafting workshops, role plays and experience sharing by professionals/practitioners.

The induction training was followed up by field placement/orientation of one and a half months in both districts. For the field placement, SWFs were placed in the respective prisons under the supervision of the prison-designated authorities/ social workers of other organisations like Tata Trust to observe and

understand the working of the prison system and the need for intervention. Almost all the SWFs did not have previous work experience in prison or with undertrial prisoners (though most had some experience working with the criminal justice system) and were new to the jurisdiction of their respective postings. Hence, this phase was to settle them in gently into the setting and work under the guidance of experienced social workers. This was especially important as the LSCs in both cities were lawyers. Similarly, LFs were placed with leading criminal lawyers at the trial court level in both Nagpur and Pune to train them on trial court procedures and develop their skills in legal strategy and drafting. Fellows under the Programme started with case intake and interventions only after completion of field placement.

After placement, there were two in-person refresher training programmes, one in July 2019 for all FTF Fellows held in Pune and the other only for Pune FTF Fellows in January 2020. From April to July 2020, during the period of the lockdown, online training programmes were carried out weekly for both SWFs and LFs.

Fellows perceived the training process as a substantial value addition to their existing knowledge and skillset. They were introduced to new concepts in criminal law and were introduced to many landmark judgements in criminal jurisprudence. Delivery of the training sessions in Marathi/ Hindi with a mix of English worked well for Fellows, most of whom received education in vernacular medium. For the Programme, the training was a team building exercise as well as it provided a space for the Fellows to learn more about each other.

The training gave an insight into the needs of the Fellows and helped the Programme identify areas which needed handholding for the Fellows. Sessions on experiential learning and self-reflection also provided insights into Fellows' personal motivations, goals and temperament. Based on the inputs of the Fellows, learning in and of the English language was given importance as, according to the Fellows, preferential treatment is given to the advocates who could argue their case in English in the trial court. Separate classes for the English language were conducted subsequently for all Fellows.

8.2 INSTITUTIONAL COLLABORATION

One of the initial tasks of the Programme was to build institutional relationships with both the prison authorities as well as the DLSA.

The Programme approached the NALSA with a proposal for collaboration in February 2018. NALSA subsequently approved the proposal for collaboration and called for a meeting to discuss the modalities of implementing the proposal. On April 10th, 2018, NALSA wrote to the MSLSA asking them to facilitate working out the modalities for carrying out the project. MSLSA instructed DLSA in Pune, Nagpur and Alibag (for Talaja) to co-ordinate with University to carry out the project

Subsequently, meetings with prison officials were conducted to introduce the Programme and seek permission for prison entry in accordance with the terms of MOU. Permission for entry to Yerwada and Nagpur prisons was granted by the department for all Programme staff vide a letter dated September 11th, 2018. Subsequently, upon meetings with the Superintendents of the said prisons, SWFs in both locations were granted permission to visit the respective prisons for three days in a week in a designated time slot.

It was a challenge to position the Programme's intervention and the role of the Fellows especially vis a vis the DLSA and the Panel Advocates as a support system and not a monitoring mechanism. There was a lack of clarity amongst both Panel Advocates as well as

the LFs about the latter's role in the case and the court proceedings. There was initial scepticism about the role of the Fellows, especially amongst LFs who were concerned about the scope for court appearance during the Fellowship, given that all the LFs were practising lawyers and keen to pursue a career in criminal law. However, most Panel Advocates were happy with the assistance of the LFs. The LFs had taken the initiative in the filing of bail applications and providing assistance in doing so. LFs also operated like "juniors" to the Panel Advocates and assisted them in doing their research, drafting and appearance in their absence. Most Panel Advocates were welcoming of this assistance and the LFs filed joint vakalatnamas with the Panel Advocates. In Pune, when the work started in January 2019, the DLSA Member Secretary had been freshly appointed and the tenure of existing Panel Advocates came to an end. The first case taken up in Pune was referred by the DLSA Member Secretary of an undertrial prisoner who had spent more than the maximum period of punishment in prison and he used the services of the FTF and the LF to ensure that the undertrial prisoner was represented in court and discharged and released in the matter.

The LFs also introduced the Programme and its objectives to the presiding officers of the courts they attended and with time, some referrals were made through the courts. The Programme and its work were known to all the courts where LFs appeared. In May 2019, in Pune, the DLSA had been directed by NALSA to collect data on the need for legal aid from family members of prisoners and the Fellows participated in the same. Subsequently, the Fellows participated

in awareness programmes of DLSA as well as collecting data on women prisoners in both Nagpur and Pune prisons for DLSAs (for NALSA). The active participation of the Fellows in the DLSA programmes especially data collection from prison for the DLSA led to greater penetration in the prison, stronger association with the DLSA, insights into the field as well as trust building.

The implementation of the objectives of the Programme was dependent on the cooperation of staff at the ground level. Initially, the prison authorities and LSAs were circumspect about the Programme. However, with the delivery of outcomes, the Programme was increasingly accepted. The prison authorities and LSAs became keen to accept the Fellows as they were not only assisting the Panel Advocates in representing the clients but were also easing the administrative workload of prison authorities and LSAs.

8.3 RELEASE AND LAST MILE CO-ORDINATION

The focus was not only on the legal outcome but also on ensuring the early release and post-release follow up. In many instances, Fellows have helped the client reach home and have

been a bridge between the family and the client especially since many of the clients are not in contact with the families at intake. SWFs have had to coax family members into meeting the client in prison, securing their release as well as ensuring their presence in the court upon release. A finding of the Programme at its initial stages of intervention was that several clients approaching the SWFs had bail orders and needed help in compliance. The Fellows responded by either applying for modification/release on personal bonds and networking with organizations which sponsored cash bail. The initial numbers of releases on PR bonds especially in Nagpur also led to clients failing to turn up in courts due to which the Programme began to get a reputation of focusing on getting people out but failing to secure their presence in court thereafter.

Subsequently, the Fellows began to play a greater role in follow-up of the cases by ensuring that contact details were maintained and the Fellows were in constant touch with the client as well as a contact person. Pre-release counselling was also conducted explaining the legal consequences of failure to attend court. Another strategy was to draft applications for modification or release on PR bond and ask the client to directly file the same through jail in cases where either a private lawyer was working or where ensuring attendance post-release was challenging as the client was a migrant or homeless.

"It was a challenge to position the Programme's intervention and the role of the Fellows especially vis a vis the DLSA and the Panel Advocates as a support system and not a monitoring mechanism. There was a lack of clarity amongst both Panel Advocates as well as the LFs about the latter's role in the case and the court proceedings."

8.4 SOCIAL WORK INTERVENTION

One of the unforeseen challenges faced in Pune prison was that women SWFs were denied entry into the male section. The Programme's hiring objective was to promote diversity and hence women SWFs were hired in both districts. While Nagpur Prison (where 3 of the 4 SWFs hired initially were women) permitted entry of women SWFs in the male section, in Pune the two women SWFs were denied entry. One of the male SWFs in Pune quit soon after the training and the sole male SWF had to bear a disproportionate workload as most intakes were from the male section. This also slowed down documentation and intervention as he had to follow-up on over a hundred cases that he received over the first three months of intervention. Subsequently, more male SWFs were employed in Pune due to this impediment. A large number of case intakes also increased the workload of the SWFs as, apart from regularly attending the prison, they were primarily responsible for the detailed intake, entering the data in the MIS, cross-checking facts and following up with the LFs on each case and reporting the same to the client. Apart from that, they had to contact families, do home visits and attend to the non-legal requirements of the clients. A large number of OTIs and interventions in them led to the slowing down of intervention in the Detailed Intervention cases and hence in October 2019, it was decided that SWFs would concentrate intervention in Detailed Intervention cases and stop the intake of OTIs.

Another challenge with regard to SWFs has been the high attrition rate with SWFs leaving for more permanent positions elsewhere. In the field of criminal justice system, the nature of social work is distinct and unique, and even while recruiting it was difficult to find social workers with relevant knowledge and experience. After recruitment, considerable time and energy is spent in training them and thereafter social workers leave when they find employment in sectors with greater stability. Some of the social workers also consider the role of the LFs to be more integral to the Programme and see themselves as playing a supporting role, where they are unable to fully utilize their skills or have opportunities for career growth. The conventional understanding of legal representation is that it plays out substantially in the courts and, therefore, the social workers feel that the outcome of the case is not dependent on their work, despite their best efforts. Initially, the Programme had applicants who also had legal qualifications apart from being professional social workers, but after their joining the Programme, they expressed their desire to be made LFs which was not possible given that all LFs come with considerable years of practice and they subsequently left the Programme. Most LFs have continued in the Programme with little attrition. One of the reasons for this could be that the initial years of criminal law practice in most districts have limited opportunities for appearance and learning and are poorly paid.

The focus of the Programme was to integrate social work into the delivery of legal aid. In the Programme, this work was done by social workers. Among other things, they were the primary contact with clients, ensure presence of the clients in courts after release and put in efforts to make sure that the clients did not plead guilty. The current legal aid dispensation does not imagine the role of trained social workers, beyond case intake which is currently handled by the PLVs.

8.5 TALUKAS AND JUGGLING CASES

The Programme has a significant number of cases which are pending in taluka courts. Attendance in these courts has been challenging given the distance and the caseload. In Nagpur, Fellows generally do not attend the courts in taluka matters on days where the matter is likely to be adjourned and take the dates from the Panel Advocates. In Pune, due to large number of taluka court matters, LFs are dedicated to these courts and visit them regularly. With the increase in the number of cases spread over multiple courts, LFs have to often decide between the cases to attend to and give priority to those cases where either the Panel Advocate is absent or where the case is at a crucial stage with arguments or trials likely to occur. The LFs also adjust and attend to each other's cases in court during formal hearings.

There is a higher need for legal support for cases listed in courts in talukas outside the municipal limits of Pune/ Nagpur. In both Nagpur and Yerwada prisons, only Panel Advocates and PLVs from DLSAs visited the prisons. As a result, undertrial prisoners with cases in talukas outside of the DLSA jurisdiction had no access to the TLSCs concerned. They had to therefore depend on DLSAs to make referrals to the TLSCs, which was a time-consuming and cumbersome process. This became more challenging because the Panel Advocates had multiple cases.

8.6 LEGAL STRATEGY COORDINATORS

While the LSC in Pune has been with the Programme since its inception and was actively involved in the recruitment and training of the Fellows, the Nagpur LSC left the Programme after a few months before the start of the training. Thus, Nagpur Fellows missed out on nurturing by a leader that the Pune Fellows received. Further, the Pune LSC is from Pune and is familiar with the courts, prison and the DLSA and was able to guide the negotiation with the system. The new LSC joined Nagpur in December during the field placement but she had relocated to Nagpur from Mumbai and had to familiarize herself with both the Programme as well as the city's legal institutions. Fortunately, Nagpur had a few LFs from the local bar with experience of working both in criminal law and the DLSA and they were of immense assistance in establishing the Programme as well as organizing the field orientation of the Fellows. The second LSC also left the Programme in August 2019 in less than a year into the intervention and the Associate Director who had just joined had to take charge until a new LSC was recruited. The third LSC in Nagpur had practiced criminal law in Nagpur, worked with the DLSA and had been employed with Project 39A at the Delhi office and consented to take over the reins at Nagpur and has stabilized the Programme since. LFs in Nagpur have thus played a significant role in providing continuity to the Programme and assisting the LSCs transition into the Programme.

The Programme faced challenges in recruitment of the LSCs, which required a balance of skill sets involving experience in criminal litigation as well as organisation building and leadership values. The nature of the role also imposed restrictions against continuing any kind of private litigation practice. Given the need for local-level networking and coordination, it was also desirable that the LSCs were originally from the districts and familiar with the local bar. The role of the LSCs involves multitasking across roles and is crucial for successful intervention at the ground level.

8.7 INTAKE

Case intake has been consistent during non-COVID periods with few hiccups. In February 2020, prison permission in Nagpur was suspended due to the appointment of a new DIG Prisons who had withdrawn permission to all organizations working in prisons falling within his jurisdiction. After case-by-case assessment of the organizations, permission was restored in March 2020 just preceding the lockdown. This not only slowed down intake but also follow-up. Given the large number of undertrial prisoners

in both Nagpur and Pune, penetration has also been limited due to access issues and lack of personnel along with COVID restrictions. Some of the clients who initially approached the Programme shifted to private lawyers due to speedier intervention as immediate intervention was not possible due to considerable time spent in checking case details and the DLSA process. There has also been considerable attrition of cases during COVID due to a lack of follow-up. Though, after the easing of the lockdown restrictions, SWFs attempted to contact families but could not give updates on the progress in cases. The delays in the system also leads to a significant proportion of undertrial prisoners pleading guilty. The Programme has faced challenges in explaining the negative consequences of doing so but has not always succeeded as clients see this as a route to early release. Appropriate strategies to deal with these challenges are still being explored.

One of the key learnings of the Programme has been that regular follow-up by social workers who update clients regarding the progress of the case and are a link between the lawyers and the clients is one of the reasons for the Programme's success and prevents attrition of clients. While COVID negatively impacted the Programme due to the closure of courts as well as suspension of permissions, post-COVID the work has continued at the pre-COVID levels. The reason for this has been constant contact with the DLSA and the

prison during COVID and assisting the DLSAs in preparing the list of undertrial prisoners eligible for release as well as providing support to the prisons in accessing sanitizers, masks and other health-related materials. This assistance has changed the equation between the functionaries and the Programme. Post-COVID, there has been a role reversal with not only the Programme referring cases to the DLSAs but also vice versa. Follow-up has been one of the significant factors in achieving Programme Objectives. Another development in Pune was the intervention in the Jail Court which began at the initiative of the Presiding Officer of the Jail Court who had been introduced to the Programme in January 2019 and subsequently at the suggestion of the DLSA Secretary, with work beginning in April 2019 and continuing until COVID restrictions.

Case intake is highly dependent on SWFs and their access to undertrial prisoners in prison. With time, as the Programme has managed to generate goodwill, the Programme started getting references from other sources as well. However, a reasonable chunk of case intake came from the prisons themselves, making the role of SWFs really crucial.

8.8 MONITORING AND DATA MANAGEMENT

Given the large number of cases, quality control of services has been a focus of the Programme and one of the primary roles of the LSCs. Regular reviews of the Programme were initially done daily and weekly by the LSCs and monthly by the Programme Director. These reviews not only focus on the progress and outcome of the cases but also an initiative of the Fellows, including the SWF intervention such as identification of special needs, psycho-social counselling, networking and work with families and clients after release. Fellows demonstrating a higher degree of commitment and capability were encouraged to work independently whereas those requiring a higher degree of guidance were given closer supervision and mentoring. Fellows were encouraged to approach the LSCs as frequently as required to seek inputs on their work. When required, LSCs visited courts and attended matters on important dates to assist both the LF as well as the Panel Advocates in challenging cases. These revealed substantial

growth in the Fellow's professional skills as well as skills in navigating the system through a growing understanding of the prison, DLSA and judicial system. Another method of assessing the implementation and its quality has been through intensive documentation and data management of the cases and interventions. Initially, data was maintained through multiple Google excel sheets where each case, its details and each intervention by the Fellows were entered. One of the sheets known as the Consolidated Sheet had all the demographic details of the cases and the clients. A unique identification number was given to each case clients to trace multiple cases of clients as well as cases with multiple clients. This also helped in the case allocation to Fellows for even distribution of work. Thereafter, the MIS was developed for more efficient data maintenance. During the first lockdown, most of the data were manually transported to the MIS by the Fellows and interns were hired for this purpose. The data entered by the interns was cross checked by the concerned Fellows and the entire data entry was monitored by the LSCs.

The Programme faced challenges in making Fellows appreciate the value of documenting their interventions in the MIS. This was particularly true for lawyers who are not originally trained in dealing with empirical and sociological studies and saw their primary role confined to legal intervention. Given the profile of Fellows hired by the Programme, developing adequate skillsets on using information systems and database were a challenge. Consequently, they were more focussed on the case work and considered maintaining data intervention as an extra burden on their work. This created difficulty in maintaining real-time data. This issue of maintenance of data could be a challenges to the LSAs as well considering the human-resource and infrastructural costs.

8.9 ASSESSMENT OF THE PROGRAMME

An exercise at assessing the Programme through the feedback of Fellows was done in July 2019, six months after intervention began. Similar feedback was received from the clients and their families through anonymous interviews by the LSCs for any course correction required. The feedback at both ends was largely positive with the changes suggested being implemented. This included rationalizing documentation and paperwork as well as designing future trainings of Fellows based on inputs received. The endeavor has been to create transparent and democratic processes wherein the assessment of Fellows on a case is given primacy because of their direct contact with the clients while simultaneously monitoring for quality assessment and expeditious delivery of services.

Another evaluation of the Fellow's journey was conducted in November 2020 to assess the structural changes required and to look at key learnings/ takeaways of the Programme. The findings were that apart from professional development, the Programme had contributed to their sensitization to clients' needs and circumstances and changed their overall perspective towards crime and criminals. They also developed a greater understanding of the legal structures and skills required to negotiate them. The Fellows also saw value in the integration of both social work and legal intervention in the Programme. The

Programme has also demonstrated that the two professionals' work in tandem has positively impacted intervention. Overall, the Fellows found that the DLSA, Panel Advocates and the prison authorities were receptive to the Programme and the Fellows. ■

The Programme was committed towards working on the individual growth of the Fellows as the idea was to prepare them to be established criminal defence lawyer. While there were areas that required handholding and supervision, the attempt was to provide adequate space for the Fellows to work independently. In managing the workload of the Fellows, there was a need to maintain a fine balance between the casework and other administrative aspects of work which are important for monitoring. For monitoring purposes, efforts were made to measure the impact of the work of Fellows in tangible outcomes. However, the framework of the Programme acknowledged that qualitative inputs by the Fellows do not necessarily translate into quantitative outcomes and therefore the subjectivity of the process was acknowledged in the Programme.

09

**LEARNINGS AND
CONCLUSIONS**

The Programme's experience confirmed a definite and massive need for legal aid services. Regular and consistent access mechanisms through the Programme have improved the utilisation of the LSA's services. While considerable amounts of skepticism about the efficacy of the services through LSAs exist, high attrition and dropout from the legal aid system are also major factors contributing to the overall low utilisation of legal services from LSA.

The presence of SWFs in prison led to an escalation in the legitimacy and response of the legal aid system. The constant follow-up by SWFs through regular visits to prison resulted in clients getting constantly updated on their cases including reasons for delays.

Social workers are the much-needed bridge between lawyers and clients translating legalese into a language which they can understand and also providing other social support to them. The SWFs provide many other services equally relevant to legal representation such as contacting families for support, assisting in locating or preparing the documentation required for the case and networking with other organisations for social support.

The experience of Fellows reveals that health issues remain largely unattended even in the prison and never make it to the court docket. Lawyers are hesitant in bringing these up, especially when the evidence against the client is tenuous and likely to result in acquittal. In such cases, post-release follow-up becomes critical as families are often unsupportive or lack sufficient means to take care of special needs requiring support and rehabilitation support post-release.

The FTF experience demonstrates that there is a need for focussed and prompt bail-related services for undertrial prisoners under the legal aid system to ensure the early release of a large population of prisoners.

Delays in the system and inability to get released on bail due to poverty are primary reasons why the accused plead guilty to secure an early release. The FTF experience reinforces this open secret that those associated with the criminal justice system already know.

While the consensus is that Jail Courts impinge on the right to a fair trial by encouraging the accused to plead guilty and also compromise their right to a public hearing, the FTF experience has been an encouraging one even though the acquittal depends on the individual discretion of the judge.

Given the outcomes of cases handled by FTF, it is clear that the private lawyering system is not qualitatively superior to the state legal aid but may be more responsive to the client's needs.

There are considerable barriers to maintaining accurate data. One barrier is that the main source of information- the clients- themselves have an information deficit, including a lack of documents and facts relating to cases which hamper both intervention and data maintenance. The other source of information is the prison records which also lack updated and accurate information to effectively follow up on the cases including information on police stations, courts and case numbers.

The constant micro-managing of cases as done by FTF requires substantial resources and persons who are solely committed to legal aid defence. This is not the case with the design of the legal aid program in India. The state legal aid system functions through the empanelment of lawyers based on an eligibility criterion permitting lawyers to work on private cases alongside legal aid ones.

A challenge faced by the Programme is the non-institutional nature of the relationship between FTF Fellows and the prison, LSAs and judiciary. Due to a lack of institutional arrangement, the Programme's continuity and access depends on the conditional permissions.

The initial three years of the Programme have contested presumptions, thrown up challenges, and learnings as well as raised new questions while answering many old ones. In this chapter, we look at some of these reflections and come to some tentative conclusions based on data and experience.

9.1 NEED FOR LEGAL AID

The first learning of the Programme was that there was a definite and massive need for legal aid and the reason why the state legal aid figures were low is not because of lack of demand but due to inefficacious outreach. FTF saw queues of undertrial prisoners lining up for legal aid services from day one of the Programme. This disproved the assumption that even indigent litigants believe that state legal aid is qualitatively poor and paid services are better because they are paid and the clients prefer to pay and hire the same Panel Advocate privately rather than through the legal aid route. This presumption led to the realisation that the state legal aid system with its various functionaries including PLVs, JVLs, Duty Counsels (DCs), periodic visits by the secretary of the DLSAs and the courts which also directly appoint lawyers, had failed to penetrate and reach out to the most vulnerable and needy population. It proved the principle on which FTF work is premised, i.e., belief that private legal representation including pro bono representation cannot replace state-dispensed legal aid and that an efficient state legal aid system is the only way to ensure quality legal representation to the majority of litigants with the severely compromised right to fair trial.

9.2 FOLLOW-UP AND ROLE OF SOCIAL WORKERS

Another early discovery reiterated during COVID was the necessity to follow up cases. The presence of SWFs in prison led to an escalation in the legitimacy and response of the legal aid system. The constant follow-up by SWFs through regular visits to prison resulted in clients getting constantly updated on their cases including reasons for delays. Clients knew that the matter did not proceed because the court was on leave or the public prosecutor took time and this gave them a sense of progress even where there were no results. Conversely, during COVID, there was greater attrition of cases when SWFs could not visit prisons due to lockdown. Follow-up is required not only when clients are in prison but also upon release as they require being informed about the consequences of missing court dates and the importance of attendance. This is done by SWFs through regular contact and home visits and the clients are especially contacted a few days before the court date to remind them of the dates.

9.3 SOCIAL SUPPORT

Social workers are the much-needed bridge between lawyers and clients translating legalese into a language which they can understand and also providing other social support to them. The SWFs provide many other services equally relevant to legal representation such as contacting families for support, assisting in locating or preparing the documentation required for the case and networking with other

organisations for social support. Their role goes beyond a PLV, being in constant contact with clients both in and out of jail and also responding to the needs of clients rather than the objectives of the system. Further, a significant number of FTF Clients (as also the prison population) are migrants and have no family to follow up on their cases or provide the required support. Social workers fulfil this missing link. The Programme's experience has conclusively demonstrated the imperative need for social workers in a responsive legal aid system.

9.4 SPECIAL NEEDS OF CLIENTS

The data also reveals that many clients suffer from health issues, mental and physical, which could be a cause of their incarceration. In several cases of mentally ill clients, our finding is that mental health issues led to behaviour which has been termed criminal. Many clients are not clinically diagnosed as mentally ill and require a qualified professional to discern signs from their behaviour. In some cases, it is when Fellows visit families and intake client history that a long history of mental health issues are untreated and termed as "problem behaviour" is revealed. In some cases, traumatic past events have led to mental health issues. The experience of Fellows reveals that health issues remain largely unattended even in the prison and never make it to the court docket. Lawyers are hesitant in bringing these up, especially when the evidence against the client is tenuous and

likely to result in acquittal. In such cases, post-release follow-up becomes critical as families are often unsupportive or lack sufficient means to take care of special needs requiring support and rehabilitation support post-release. Almost half of the FTF Clients have been identified as having some special need that requires assistance including struggles with alcoholism or substance abuse which aided conditions leading to the commission of the offence which is not taken into consideration in the model of punishment.

9.5 MULTIPLE MARGINALIZATION

Unsurprisingly, the findings with regards to client population revealed what prison statistics from India and the world over reveal: over-representation of the poorest and most marginalised communities. The data revealed that Dalits and Tribals in prison (and FTF Clients) are disproportionately high. Clients face multiple marginalizations and are also socio-economically backward. The Programme has been conscious of addressing their needs. Bail has been one of the key interventions of FTF with modifications filed in cases where clients find the bail amount onerous and difficult to comply with. FTF has facilitated the reduction of the bail amount and release on cash bail or personal bond based on the client's ability to furnish bail and the gravity of the offences.

9.6 BAIL CHALLENGES

Data reveals that a significant proportion of FTF Clients have bail orders that they cannot comply with. This would be true of all undertrial prisoners given the reality that the property-based bail system is out of reach of the majority of Indians lacking property and wherewithal to furnish the security required in most bail orders. Many do not have the required documentation and neither do they have the financial capacity to abide by bail conditions. In some cases, the grant of bail is not as arduous as compliance is. One Programme response has been through modification applications and drafting PR Bond applications sent directly to court from clients. Another response has been contacting organisations assisting in furnishing bail. These organisations generally extend help to first-time offenders only and have a cash bail limit, and also the type of cases they assist. A significant number of both FTF Clients and the general prison population are migrants either coming from out of the district or out of state (and few out of the country) which makes providing satisfactory documents or furnishing sureties a challenge. In a few FTF cases, modification of bail conditions and release on PR Bond is rejected due to the lack of local community antecedents. The data reveals that there are inconsistencies in the grant of bail especially the amount and conditions for the same and there are no consistent parameters for bail with a stark difference in bail amounts of Pune and Nagpur. The FTF experience demonstrates that there is a need for focused and prompt bail-related

services for undertrial prisoners under the legal aid system to ensure the early release of a large population of prisoners.

9.7 PLEADING GUILTY

Delays in the system and inability to get released on bail due to poverty are primary reasons why accused plead guilty in order to secure an early release. The FTF experience reinforces this open secret that those associated with the criminal justice system already know. Most clients who pleaded guilty were incarcerated for petty offences and delays in the trial, failure of court production, and inability to comply with bail orders made them plead guilty. Fellows learnt that many young poor clients in petty cases are encouraged by other prisoners to plead guilty. FTF discourages clients from pleading guilty due to the legal repercussions of having a criminal record and has succeeded in some cases. But push factors tend to be more persuasive. The system also subtly prompts the clients to do so with delays in trial and comparatively lenient sentences of period undergone upon pleading guilty resulting in early release. Clients also appear to exercise informed choice as those with serious offences do not plead guilty and neither do clients with multiple cases plead guilty in all cases pending against them. The motive, based on the interactions with the clients is not guilt per se or a desire to confess, but a calculated, strategic move to secure an early release. This apparent choice is not voluntary nor based on actual guilt. Irrespective of whether or not the

client admits to having committed the offence, they plead guilty. Clients who have been acquitted in other cases against them decide to plead guilty in the last one to get released even when they know the last case is likely to result in acquittal. Some clients plead guilty after being released on bail to avoid attending court dates regularly due to reasons such as having to commute from out of town for their cases to inability to get regular leave to attend the court hearings.

9.8 JAIL COURTS

One intervention with a positive outcome both in terms of results and timeline was the intervention at Jail Court in Pune. While the general consensus is that Jail Courts impinge on the right to fair trial by encouraging the accused to plead guilty and also compromise their right to a public hearing⁸⁷, the FTF experience has been an encouraging one even though the acquittal depends on the individual discretion of the judge. The court mainly hears theft cases against unknown persons and trials are expeditious as evidence is limited to statements of Investigating Officers and Panchas leading to early releases. The work in Jail Courts in Pune was due to the initiative of DLSA and the Presiding Officer of the Court and the result was a high rate of disposal including a high rate of acquittals and releases with very few clients pleading guilty. This was partly because the Fellows actively participated in the conduct of trials.

9.9 QUALITY LEGAL AID

Given the outcomes of cases handled by FTF, it is clear that the private lawyering system is not qualitatively superior to the state legal aid but more responsive to the client's needs. The acquittal rate of FTF compares favourably with the overall acquittal rate for both IPC as well as Special Laws as per the Crimes in India statistics. The number of bail orders given the seriousness of cases and the type of bail orders especially upon modification is indicative of quality lawyering. This is achieved through dedicated work on cases, close supervision and the Programme's constant effort to upscale the Fellows' legal skills. This was done through the initial intensive two-month training, periodic short-term training, constant monitoring by LSCs as well as investment in journals and legal commentaries. The Programme has benefited most from its dedicated Fellows who have been committed to the cause of legal aid and give their time exclusively to this work.

9.10 DATA MANAGEMENT

A factor contributing to quality checks exercised is an intricate MIS system that traces all case details. The data is entered by LFs and SWFs including client details, case details as well as every intervention that was done in the case with timelines. The MIS is equipped to generate tables and data sheets which assist in monitoring of each case and its trajectory as well as the overall workload and performance of each Fellow,

⁸⁷ Commonwealth Human Rights Initiative, *Liberty at Cost of Independence: A Report on Jail Adalats in India*, 49 (2009).

both quantitatively and qualitatively. The MIS also generates reports of work done at a macro level allowing for continuous internal evaluation of the Programme and its performance. One of the objectives of the Programme was to comprehensively document intervention and generate research and significant learnings to understand the feasibility of the model and make quality legal aid a reality for lakhs of prisoners in dire need of it. Several data points were designed to facilitate effective intervention, generate need assessment and profile those who access/ need legal aid as well as document the process of intervention and roadblocks, along with catalysts to effective intervention. The types of intervention required (and those that are possible), gaps and learnings were all sought to be mapped. There are, however, considerable barriers to maintaining accurate data. One barrier is that the main source of information- the clients- themselves have an information deficit, including a lack of documents and facts relating to cases which hamper both intervention and data maintenance. The other source of information is the prison records which also lack updated and accurate information to effectively follow up on the cases including information on police stations, courts and case numbers. Another challenge with the MIS in its current state is that while it does assist in generating a multitude of data, it requires substantial time and expertise to enter the same. However, there are advantages of the system and a less complex system would facilitate similar monitoring and

evaluation of the entire legal aid services.

The constant micro-managing of cases as

9.11 MONITORING OF LEGAL AID

done by FTF requires substantial resources and persons who are solely committed to legal aid defence. This is not the case with the design of the legal aid program in India. The state legal aid system functions through the empanelment of lawyers based on an eligibility criterion permitting lawyers to work on private cases alongside legal aid ones. The lawyers' honorarium is also fixed as per the work done or the number of hearings of a case with an upper cap. There is limited incentive to run the extra mile in a case and there is no minimum guarantee either about the number of cases or the honorarium. The three years of the Programme have revealed that there is no effective monitoring of the work done and LSAs are only cognizant of the case allotted to a Panel Advocate and there is no supervision to oversee the intervention, the outcome, attrition to private lawyer or conversion to the private case by Panel Advocates and demands for gratification. The fact that many Panel Advocates do not claim their honorarium is indicative of the direction of the legal aid system and raises questions as to whether this has become a means to build up a private practice. In some cases, Panel Advocates refuse to work with FTF Fellows especially the LF

due to the silent monitoring that occurs through their presence. There is a need to plug these loopholes into the system for effective legal aid. This requires a dedicated workforce and regular monitoring of work.

9.12 NEED FOR INSTITUTIONALIZATION OF SERVICES

A challenge faced by the Programme is the non-institutional nature of the relationship between FTF Fellows and the prison, LSAs and judiciary. Due to a lack of institutional arrangement, the Programme's continuity and access depend on

conditional permissions. Access to undertrial prisoners in prison is randomized and dependent on the undertrial prisoners reaching out for help. Currently, there is no mechanism for a Fellow to specifically reach out to undertrial prisoners who are incarcerated for prolonged durations or to those with special needs like juvenility claims, mental health issues, health issues, pregnancy etc. Fellows are completely dependent upon the prison authorities for access. Individual subjectivity and systemic resistance to external scrutiny make intervention challenging and streamlining of work arduous. Access is restricted both in terms of time and place and access settings frequently changed resulting in partial penetration of the targeted prison population.

9.13 WAY FORWARD

There is a need for improving access to legal aid in prisons and a need for a robust accountability mechanism and a time-bound grievance redressal mechanism to ensure quality legal aid services are provided to undertrial prisoners. Moreover, the accountability of the legal aid mechanism for undertrial prisoners could be further ensured when there is greater transparency. Due to the inadequate usage of technology, there is a lack of data in the public domain to systematically analyse the issues related to the delivery of legal aid to undertrial prisoners.

The Programme is labour and resource intensive and is susceptible to the same corrupt practices without regular supervision. 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 similar to the public defender system with hierarchy and supervision including self-disclosure of the work done which includes uploading of orders, centralised allocation and monitoring.

The current scheme of the 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. 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 point to a strong need for support services for legal representation. This indicates that the setup of the LADC office should not only have dedicated lawyers but also social workers who respond to the special needs of the clients, follow up and be the bridge between the client and the system. ■

"There was a definite and massive need for legal aid and the reason why the state legal aid figures were low is not because of lack of demand but due to inefficacious outreach. FTF saw queues of undertrial prisoners lining up for legal aid services from day one of the Programme."

10

ANNEXURES

Annexure A (FTF Application)

दिनांक: / /

प्रति,
फेअर ट्रायल फेलोशिप प्रोग्राम,
प्रोजेक्ट ३९A, एन. एल. यु. दिल्ली.
पुणे.

विषय: वकील मिळणे बाबत / कायदेशीर मदत मिळणे बाबत.

महोदय,
उपरोक्त विषयास अनुसरून मी _____
न्यायाधीन बंदी क्र _____ गुन्हा क्र _____ पोलीस स्टेशन

U/S _____ हे मा _____ ह्या न्यायालयात
प्रलंबित आहे. मी दि: / / पासून येरवडा कारागृहात न्यायाधीन बंदी आहे. माझी आर्थिक
परिस्थिती दुर्बल असल्यामुळे मी सदर प्रकरण चालविण्यास व वकील देण्यास असक्षम आहे.

कृपया मला जिल्हा/तालुका विधी सेवा प्राधिकरण मार्फत वकील देण्यात यावा व सदर प्रकरण
न्यायालयात चालविण्यात यावे हि नम्र विनंती.

Date of Arrest: / /

आपला विश्वासू

सही:

नाव:

समक्ष

Annexure B (Facesheet)

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 Any Other Help –
specify (financial, medical, child
related, livelihood related) Referral to Tata Trust
Required (Y/N)

E. HISTORY OF LEGAL PROCEEDINGS**PREVIOUS INCARCERATION – Yes/No** Conviction Acquittal Pending Case (Bail)**PRESENT 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	Bail Status and date of last order	If granted, type and amount	Reason for custody

F. HISTORY OF LEGAL PROCEEDINGS**PREVIOUS INCARCERATION – Yes/No** Conviction Acquittal Pending Case (Bail)**PRESENT 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	Bail Status and date of last order	If granted, type and amount	Reason for custody

Annexure C (Legal Aid Application)

Form -I National Legal Services Authority (Free and Competent Legal Services) Regulations

(See Regulation -3) The Form of Application for Legal Services

विधी सेवा/ सहाय मिळणेकरीता अर्जाचा नमुना

Registration No. & Date : 202 Date :- / / 202

अर्ज नोंदणी क्रमांक व दिनांक

1. Name of Applicant Birth Date
अर्जदाराचे संपुर्ण नाव, जन्म दिनांक
2. Permanent Address
राहण्याचा कायमचा पत्ता
3. Contact Address with Phone no if any
e-mail ID, if any. :
संपर्काचा पत्ता, मोबाईल क्रमांक, ई- मेलसह
4. Whether the applicant belongs to the category :
Of persons mentioned in section – 12 of the Act, Cast
अर्जदार हा अधिनियमाच्या कलम 12 अंतर्गत येतो का ? धर्म जात
5. Yearly income of the applicant :
अर्जदाराचे वार्षिक उत्पन्न
6. Whether affidavit/ proof has been Produced
in support of income/eligibility u/s 12 of the Act :
अर्जदाराने अधिनियमाच्या कलम १२ अन्वये त्याचे उत्पन्नाचे
प्रतिज्ञापत्र वा पुरावा दिला आहे का ?
7. Nature of legal aid or advise required :
.....
अर्ज कोणत्या कारणासाठी केला आहे ?

8. A brief statement of the case, if court based :

.....
Legal services is required

अर्जाचे थोडक्यात स्वरूप/ प्रकरणाची माहिती/ हकीकत

9. If Case is pending, pls give Details :

...../.....

प्रकरण क्रमांक

.....
प्रकरण न्यायालयात प्रलंबित असल्यास त्याची माहिती

न्यायालयाचे नांव

.....

पुढील नेमली तारीख

...../...../.....

10. Name & Address of opposite party :

.....
.....
.....

11. Attached documents

.....

अर्जासोबत दाखल कागदपत्रे

.....

Place : PUNE

निशाणी

Signature of the Applicant

अर्जदाराची स्वाक्षरी /

FOR OFFICE USE : -

Opinion of Retainer/Panel Lawyer :-

.....
.....
.....

Signature of Lawyer

ORDER

Application is allowed. Adv..... is appointed in this case as defending/
/filling on behalf of applicant/s.

Pune

Date:- / /

.....

DLSA, Pune

Annexure D (List of Police Stations)

PUNE

1	Alankar Police Station, Pune	37	Loni Kand Police Station, Pune
2	A.T.S. Pune	38	Manchar Police Station, Pune
3	Baramati City Police Station, Pune	39	Market Yard Police Station, Pune
4	Baramati Taluka Police Station, Pune	40	MIDC Bhosari Police Station, Pune
5	Bharati Vidyapeeth Police Station, Pune	41	Mundhawa Police Station, Pune
6	Bhor Police Station, Pune	42	Narayangaon Police Station, Pune
7	Bhosari Police Station, Pune	43	Nigadi Police Station, Pune
8	Bibvewadi Police Station, Pune	44	Otur police Station, Pune
9	Bund Garden Police Station, Pune	45	Paud Police Station, Pune
10	Chakan Police Station, Pune	46	Pimpri Police Station, Pune
11	Chandan Nagar Police Station, Pune	47	Raigad Police Station, Pune
12	Chaturshringi Police Station, Pune	48	Railway Police, Pune
13	Chinchwad Police Station, Pune	49	Sahakar Nagar Police Station, Pune
14	Dattawadi Police Station, Pune	50	Samarth Police Station, Pune
15	Daund Police Station, Pune	51	Sangavi Police Station, Pune
16	Deccan Police Station, Pune	52	Saswad Police Station, Pune
17	Dehu Road Police Station, Pune	53	Shirur Police Station, Pune
18	Dighi Police Station, Pune	54	Shivajinagar Police Station, Pune
19	Faraskhana Police Station, Pune	55	Sinhagad Police Station, Pune
20	Ghodegaon Police Station, Pune	56	Swargate Police Station, Pune
21	Hadapsar Police Station, Pune	57	Talegaon Dabadhe Police Station, Pune
22	Haveli Police Station, Pune	58	Uttamnagar Police Station, Pune
23	Hinjewadi Police Station, Pune	59	Velha Police Station, Pune
24	Indapur Police Station, Pune	60	Vimantal Police Station, Pune
25	Jejuri Police Station, Pune	61	Vishrambaug Police Station, Pune
26	Junnar Police Station, Pune	62	Vishrantwadi Police Station, Pune
27	Khadak Police Station, Pune	63	Wadgaon Maval Police Station, Pune
28	Khadaki Police Station, Pune	64	Wadgaon Nimbalkar Police Station, Pune
29	Khed Police Station, Pune	65	Wakad Police Station, Pune
30	Kondhwa Police Station, Pune	66	Walchandnagar Police Station, Pune
31	Koregaon Park Police Station, Pune	67	Wanawadi Police Station, Pune
32	Kothrud Police Station, Pune	68	Warje Malwadi Police Station, Pune
33	Lashkar Police Station, Pune	69	Yavat Police Station, Pune
34	Lonavala City Police Station, Pune	70	Yerawada Police Station, Pune
35	Lonavala Rural Police Station, Pune	71	Customs Police station, Pune
36	Lonikalbhor Police Station, Pune	72	Kamshet Police station, Vadgaon Mawal , Pune

NAGPUR

1	ACP Ambazari Police station, Nagpur	33	Katol Poilce Station, Nagpur
2	Ajni Police station, Nagpur	34	Kelwad Poilce Station, Nagpur
3	Amabazri Police station, Nagpur	35	Khapa Police station, Nagpur
4	Aroli Poilce Station, Nagpur	36	Khaperkheda Police station, Nagpur
5	Bajaj Nagar Police Station, Nagpur	37	Killod Police station, Nagpur
6	Bela Police station, Nagpur	38	Kondhali Police station, Nagpur
7	Beltarodi Police Station, Nagpur	39	Koradi Police station, Nagpur
8	Bhandra Road Poilce Station, Nagpur	40	Kotal Police station, Nagpur
9	Bhiwapur Police station, Nagpur	41	Kotwali Police station, Nagpur
10	Bori Police station, Nagpur	42	Kuhi Police station, Nagpur
11	Butibori Police Station, Nagpur	43	Lakadganj Police Station, Nagpur
12	Central Avenue Road Poilce Station, Nagpur	44	Mankapur Police Station, Nagpur
13	Civil Linea Poilce Station, Nagpur	45	Mouda police station, Nagpur
14	Deolapar Police station, Nagpur	46	Nandanvan Police Station, Nagpur
15	Directorate of Revenue Intelligence, Nagpur	47	Narkhed Police station, Nagpur
16	Dhantoli Poilce Station, Nagpur	48	Panchpauli Police station, Nagpur
17	Gandhibagh Poilce Station, Nagpur	49	Parseoni Poilce Station, Nagpur
18	Ganesh Peth Poilce Station, Nagpur	50	Pratapnagar Police Station, Nagpur
19	Gittikhandan Police station, Nagpur	51	Ramtek Poilce Station, Nagpur
20	GRP Nagpur Railway Police	52	Ravi Nagar Poilce Station, Nagpur
21	GRP Itwari Railway Police, Nagpur	53	Sadar Police station, Nagpur
22	Hingna Police station, Nagpur	54	Sakardhara Police station, Nagpur
23	Hudkeshwar Police Station, Nagpur	55	Saoner Police station, Nagpur
24	Imamwada Police station, Nagpur	56	Sita Buldi Police station, Nagpur
25	Jalalkheda Police station, Nagpur	57	Sonegaon Police Station, Nagpur
26	Jaripatka Police station, Nagpur	58	Tahsil Police station, Nagpur
27	Kapilnagar Police Station, Nagpur	59	Umred Police station, Nagpur
28	Kadmana Police station, Nagpur	60	Veltur Police station, Nagpur
29	Kalmeshwar Police station, Nagpur	61	Wadi Police Station, Nagpur
30	Kalamna Police Station, Nagpur	62	Yashodara nagar Police station, Nagpur
31	Kamptee Police station, Nagpur	63	New Kamptee Police station, Nagpur
32	Kanhan Police station, Nagpur	64	RPF police station, Nagpur

Annexure E (List of Courts)

COURTS IN PUNE

1	Shivajinagar District and Sessions Court, Pune
2	Baramati Additional District and Sessions Court, Pune
3	Khed Additional District and Sessions Court, Pune
4	Vadgao Maval Additional District and Sessions Court, Pune
5	Junnar Judicial Magistrate First Class Court, Pune
6	Chodegao Judicial Magistrate First Class Court, Pune
7	Saswad Judicial Magistrate First Class Court, Pune
8	Shirur Judicial Magistrate First Class Court, Pune
9	Daund Judicial Magistrate First Class Court, Pune
10	Daund (Railway) Judicial Magistrate First Class Court, Pune
11	Bhor Judicial Magistrate First Class Court, Pune
12	Paud Judicial Magistrate First Class Court, Pune
13	Pimpri Judicial Magistrate First Class Court, Pune
14	Khadki Cantonment Judicial Magistrate First Class Court, Pune
15	Laskar Cantonment Judicial Magistrate First Class Court, Pune
16	Pune Railway Judicial Magistrate First Class Court, Pune
17	Indapur Judicial Magistrate First Class Court, Pune

COURTS IN NAGPUR

1	District and Sessions Court, Nagpur
2	Chief Judicial Magistrate Court, Nagpur
3	Bhiwapur Judicial Magistrate First Class Court, Nagpur
4	Hingna Judicial Magistrate First Class Court, Nagpur
5	Kalmeshwar Judicial Magistrate First Class Court, Nagpur
6	Kamptee Judicial Magistrate First Class Court, Nagpur
7	Katol Judicial Magistrate First Class Court, Nagpur
8	Kuhi Judicial Magistrate First Class Court, Nagpur
9	Mouda Judicial Magistrate First Class Court, Nagpur
10	Narkhed Judicial Magistrate First Class Court, Nagpur
11	Parshvini Judicial Magistrate First Class Court, Nagpur
12	Ramtek Judicial Magistrate First Class Court, Nagpur
13	Savner Judicial Magistrate First Class Court, Nagpur
14	Umred Judicial Magistrate First Class Court, Nagpur



PROJECT 39A
EQUAL JUSTICE
EQUAL OPPORTUNITY



Fair Trial
Fellowship