

# Legal Representation for Undertrials in Maharashtra

2018 - 2021

*Summary*



Supported by





# **Legal Representation for Undertrials in Maharashtra**

Written by

Dr. Anup Surendranath, Medha Deo, Dr. Vijay Raghavan, Sharli Mudaliyar, and Saugata Hazra.

With input from

Devyani Kacker and Anil Ramaprasad.

The full version of this document is available on [www.azimpremijfoundation.org](http://www.azimpremijfoundation.org)



# Legal Representation for Undertrials in Maharashtra - Reflections and Learnings

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

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

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

## What was the Programme trying to achieve?

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

The Prison Statistics Report of India, 2020 (PSI Report) published by National Crime Records Bureau (NCRB), highlights that as on December 31, 2020, prisons in India had an average occupancy rate of 118% and undertrials comprised 76.1% of the total inmate population.<sup>3</sup> As on December 31, 2021, Maharashtra has a total prison population of 36,828 prisoners with an average occupancy rate of 149% and average undertrials population of 86%.<sup>4</sup>

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

<sup>1</sup> 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 offence, 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).

<sup>2</sup> *M.H. Hoskot v State of Maharashtra*, AIR 1978 SC 1548

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

<sup>4</sup> [http://mahaprison.gov.in/Uploads/pdf\\_GR/3b3a6c7f-4906-4326-bd77-c22ad80ef5fa2021.pdf](http://mahaprison.gov.in/Uploads/pdf_GR/3b3a6c7f-4906-4326-bd77-c22ad80ef5fa2021.pdf). Accessed on January 21, 2022

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

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

### Identifying key challenges to legal representation for undertrials

- **Lack of confidence in legal aid leading to poor utilisation of the service by undertrials**  
Data on utilisation of legal aid over a period of four years, between 2016 and 2019, reveals that only 7.91% of the undertrials admitted into prisons utilised the legal aid services they were entitled to.<sup>6</sup> While the current data on utilisation is not capable of attributing reasons behind the underutilisation, lack of quality legal services is presumed to be the main reason.
- **Exacerbation of socio-economic vulnerabilities of undertrials**  
PSI Report indicates that a typical undertrial prisoner in an Indian prison is illiterate, young and socio-economically disadvantaged. They end up spending more time than they should in prison, because of their poor awareness of procedures and the inability to access quality legal services.
- **Lack of coordination amongst criminal justice institutions**  
Undertrials face major hurdles in implementation due to lack of coordination amongst multiple agencies in the criminal justice system, i.e., the LSA, the police, the courts and the prison.
- **Unavailability of relevant data to assess needs and efficacy of the legal aid system**  
There currently exists very little public data to assess the cause and effect of the various issues relating to undertrials and their right to legal representation. For example, there is nearly no data available on utilisation of resources within the LSA to provide a base for any analysis of the systems.

### Imagining innovations to address the challenges

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

---

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

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

Legal representation for undertrials often involves understanding multiple layers of vulnerability faced by the prisoners and addressing those issues to ensure that the outcome of the legal process is relevant to the prisoner's reality. The Programme visualises trained social workers and lawyers as equal stakeholders in driving the pre-trial (bail) and trial process and divides the work between relevant skill sets.

- **Professional assistance to institutional stakeholders towards innovating, reforming and strengthening legal aid institutions in the criminal justice system**

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

- **Generation, recording and analysis of data towards legal aid policymaking driven by empiricism**

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

## How did the Programme approach this?

### Key elements of Programme design

- **Institutional collaborations**

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

- **Fellowship model**

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

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

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

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

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

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

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

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

- **Strategic engagements with stakeholders**

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

## What did the Programme achieve?

### Broader impact of the Programme

- Undertrials have a higher degree of confidence in state legal aid. Eventually, in more than 50% of the cases received by the Programme, the inmate had a private lawyer but wanted to seek legal representation through the LSAs.
- Reducing timeline and improving documentation and record-keeping for LSA processes. Timely and effective implementation of LSA processes. LSA allocation process was completed within a week in majority of the cases under the Programme.



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

### Story with numbers

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

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

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

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

Most cases in the Programme (89.87%) were for non-bailable offences.<sup>7</sup> Theft and burglary constituted the highest proportion (39%) of cases under the Programme. Cases punishable beyond seven years formed the largest category of cases for which services were sought under the Programme – 39.45 percent. Cases punishable with less than three years as punishment were the next largest category - 26.79 percent.

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

---

#### TOTAL OUTREACH

---

Total undertrials reached	9570
---------------------------	------

---

Total released	4504
----------------	------

Break up below (A+B+C+D+E+F)

---

#### LEGAL INTERVENTION THROUGH LSAs (BAIL)

---

Applications for appointment of panel advocates forwarded to LSAs	4355
---	------

---

Panel advocates appointed	3161
---------------------------	------

---

Bail+ modification applications filed	1430
---------------------------------------	------

---

Total bails and modifications granted	1234
---------------------------------------	------

---

Released through bails and modifications (A)	921
--	-----

---

#### LEGAL INTERVENTION THROUGH LSAs (TRIAL)

---

Released on acquittal, discharge, compounding/withdrawal (B)	267
--	-----

---

#### SOCIO-LEGAL INTERVENTION

---

Released through assistance for personal bond applications (C)	448
--	-----

---

Released under HPC guidelines (D)	252
-----------------------------------	-----

---

Released through private lawyers (E)	740
--------------------------------------	-----

---

Released through bail compliance (F)	1876
--------------------------------------	------

---



---

<sup>7</sup> See foot note number 1.

## What we learnt and what we need to do?

### Learnings

### Way forward

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

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

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

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

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

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

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

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

**Need to focus on quality of legal services delivered to undertrials**

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

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

- Creating institutional mechanisms of monitoring by the LSA.

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

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

**Socio-economic conditions impede getting bail/ bail compliance**

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

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

- Procedural protections for 'plead guilty' cases.

**Rearrest of clients/those designated as 'habitual offenders'**

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









