**Final Report Re: Consultancy Services for Undertrial (UT) Prisoners in Bangladesh**

***Contract No:* 83230808**

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# LIST OF ABBREVIATIONS

AC Administrative Committee

ACR Annual Confidential Report

AD Appellate Division

ADR Alternative Dispute Resolution

AECID Spanish Agency for International Development Cooperation

APP Assistant Public Prosecutor

BDT Bangladeshi Taka

BLT Bangladesh Law Times (A law journal)

BLAST Bangladesh Legal Aid and Services Trust

BMZ Federal Ministry of Economic Cooperation and Development, Germany

BRAC Bangladesh Rural Advancement Committee

CAPO Children Affairs Police Officer

CCC Case Coordination Committee

CDC Child Development Center

CDMS Central Data Management Software

CDR Call Data Records

CH Correctional Home

CHRI Commonwealth Human Rights Initiative

CJM Chief Judicial Magistrate

CMM Chief Metropolitan Magistrate

CMO Chief Medical Officer

CP Commissioner of Police

CPF Community Policing Forum

Cr. P C Code of Criminal Procedure

C. Cr. LR Calcutta Criminal Law Reports

CR Complaint Register

CRO Criminal Rules and Order

DFID Department for International Development, UK

DG Director General

DLAC District Legal Aid Committee

DLR Dhaka Law Reports

DMC District Monitoring Committee

DNA Deoxyribonucleic Acid

FGD Focus Group Discussions

FIR First Informant Report

FRT Final Report

GIZ Deutsche Gesellschaft für Internationale Zusammenarbeit

GRO General Registration Officer

HCD High Court Division

HQ Head Quarters

I.O Investigating Officer

IGP Inspector General of Police

IRSOP Improvement of the Real Situation of Overcrowding in Prisons in Bangladesh

JA Justice Audit

KII Key Informant Interview

LASA Legal Aid and Services Act, 2000

MLAA Madaripur Legal Aid Association

MO Medical Officer

MoHA Ministry of Home Affairs

MC Medical Certificate

NCA Narcotics Control Act, 1990

NCD Narcotics Control Department

NGO Non-Government Organization

NLASO National Legal Aid and Services Organization

NOS Nari-o-Shishu Nirjatan Daman Ain, 2000 (Women and Children Repression Prevention Act, 2000)

OC Officer In-Charge

PCPR Previous Credentials and Past Records

PP Public Prosecutor

PRB Police Regulation of Bengal

RAB Rapid Action Battalion

SC Supreme Court

SCC Supreme Court Cases

SCLAC Supreme Court Legal Aid Committee

S.I Sub-Inspector

SP Superintendent of Police

SRO Statutory Regulatory Order

URC Under-Trial Review Committee

UTP Under-Trial Prisoner

UzLAC Upazila Legal Aid Committee

ULAC Union Legal Aid Committee

VIP Very Important Person

WP Writ Petition

# EXECUTIVE SUMMARY

Like most other countries in South Asia, overcrowding in prisons is a pressing human rights challenge in Bangladesh. Existing state infrastructures are grossly inadequate to grapple with the constant inflow of criminal cases. Studies suggest that under-trial prisoners comprise almost two-thirds of the prison population. Owing to socio-economic constraints, an overwhelming majority of under-trial prisoners incarcerate for years together waiting hearing of their cases. Against this backdrop, GIZ undertook the IRSOP project in partnership with relevant state institutions and frontline legal aid NGOs in Bangladesh. It deployed trained paralegals to work inside target prisons Chapter I of this study report provides a concise description of the project; states the objectives for the research study commissioned by GIZ and the methodology adopted by the consultants in identifying the key bottlenecks within the criminal justice system and potential risk factors both within and beyond the scope of the GIZ project intervention accounting for the unusual high share of under-trial prisoners. Chapter II details out a plethora of laws, procedures, rules and guidelines which have direct ramifications for the undertrial population in Bangladesh. It emphasizes the importance of implementation of the existing legal provisions and how they could potentially contribute towards reducing overcrowding in prisons.

Chapter III provides a synopsis of the in-depth interviews of paralegals, implementing partner NGOs, family members of undertrial prisoners, prison officials, public prosecutors, police officers, civil surgeons, medical officers, ex-prisoners, judges, magistrates, lawyers, probation officers, GROs, court inspectors, bench clerks and representatives from the DLACs, Narcotics Control Department and the Prison Directorate. The qualitative study was carried out during September and October 2016 in Rangpur, Barisal, Madaripur, Sylhet and Moulavibazar. It summarizes some of the impending challenges facing various actors within the different institutions of the criminal justice system; highlights the lack of coordination among justice-service providers and the extent to which practices on the ground contravene the existing legal provisions accounting for the high proportion of undertrial prisoners in Bangladesh. Chapter IV provides an overview of the findings from the survey on released prisoners. Notably, the survey was administered among 498 respondents who were selected following purposive sampling procedure. It was conducted in 35 target districts where the IRSOP project has been rolled out in phases. The survey results complement some of the findings from the qualitative study. It helped in crunching the numbers and to understand among others, the socio-economic profile of UTPs; relevant laws under which they were brought to book; compliance with laws and guidelines relating to prevention of arbitrary arrests and blockages in various stages of the criminal justice system which accounted for the lengthy incarceration of UTPs; the role of the justice service providers during their incarceration as well as the level of awareness of released prisoners around their basic legal rights. Chapter V is a summary of the key bottlenecks which impede the release of under-trial prisoners across various stages of the criminal justice system. It has been presented in the form of a flow chart.

Chapter VI outlines regional good practices around reducing overcrowding in prisons. It collates enlightened Supreme Court directives and guidelines those have emerged through progressive interpretation of case laws in India. It further highlights promising practices adopted in India, Sri Lanka and Malaysia with a view to reducing the prison population. Chapter VII extensively lays down a set of comprehensive recommendations which may be considered by the service providers within the criminal justice institutions to deal with the menace of overcrowding in prisons. The study provides the evidence base that in the absence of designated focal points to proactively provide legal assistance and awareness to UTPs, it is daunting for them to navigate the criminal justice system. It concludes on the note that inter-institutional cooperation and coordination among the key actors within the criminal justice system holds the key in catalyzing policy and practice level changes for reducing overcrowding in prisons in Bangladesh.

# CHAPTER I

# INTRODUCTION AND METHODOLOGY

## Introduction and Background

The Constitution of Bangladesh acts as a safeguard against abuse of fundamental rights. As the supreme law of the country, it provides for equality before law and equal protection of law for its citizens (Art. 27). It also guarantees the inalienable right of every citizen of Bangladesh to be treated in accordance with the law (Art.31). Article 32 enjoins that no person shall be deprived of life or personal liberty save in accordance with the law. The right to speedy and public trial by an independent and impartial court or tribunal for every person accused of a criminal offence is laid down under Art. 35(3). Despite these enabling Constitutional pledges, all prisons in Bangladesh are severely congested. At present, the prison population in Bangladesh stands at nearly 214% over capacity (built to house 36,614, it has 78,008 inmates).[[1]](#footnote-1) One of the main reasons accounting for the high percentage of prison population is that minor prosecutions such as alleged offences involving petty theft, drugs, vandalism and public nuisance muddle up the prisons.[[2]](#footnote-2)

As per the fundamental principle of criminal jurisprudence, every person is considered innocent until duly tried by a competent court and found guilty. If we abide by this principle, then punishment can only be meted out to an individual upon conviction. However, an overwhelming majority of undertrial prisoners (UTPs)[[3]](#footnote-3)in Bangladesh continue to be punished before being tried and convicted. They constitute79% of the prison population and languish inside the prisons for months and years together pending conclusion of trial[[4]](#footnote-4). Given it is daunting to secure post-trial conviction in most criminal cases because of staggering backlogs[[5]](#footnote-5) and unusual delays in holding trial, most actors within the criminal justice system tend to rationalize and support pre-trial imprisonment as an appropriate lesson or punishment.[[6]](#footnote-6)

Overcrowding in prisons poses a serious human rights challenge.[[7]](#footnote-7) Existing state infrastructures are grossly inadequate to grapple with the constant inflow of criminal cases. Owing to their inability to afford legal services, an overwhelming majority of undertrial prisoners (mostly poor and vulnerable, including men, women and children) incarcerate for years together waiting the next hearing of their cases.[[8]](#footnote-8) Responsible stakeholders within the criminal justice system often tend to lose sight of the hapless plight of undertrials and ignore their cases in the absence of any regular coordination, active oversight and focal point to track and follow up their legal status upon confinement.

Against this backdrop, GIZ is implementing the “Improvement of the Real Situation of Overcrowding in Prisons in Bangladesh” (IRSOP) project jointly with the Ministry of Home Affairs with a view to aiding the Government in reducing the inflow into prisons. To achieve its objectives, it has partnered with relevant state institutions (including the Prison Directorate, National Legal Aid Services Organization (NLASO), District Legal Aid Committees (DLACS), Supreme Court Legal Aid Committee (SCLAC) among others and frontline legal aid non-governmental organizations- Bangladesh Legal Aid and Services Trust (BLAST), Madaripur Legal Aid Association (MLAA), and Bangladesh Rural Advancement Committee (BRAC) to jointly explore and exhaust avenues for accelerating outflow of inmates. At the core of this project is a team of paralegals who have been groomed to work (under a Code of Conduct) as a conduit between prisoners and key actors and institutions within the criminal justice system including the courts, prisons and police.

The project was piloted in Bogra, Dhaka and Madaripur way back in 2009. It has within a span of eight years been incrementally rolled up to 35 districts[[9]](#footnote-9) across Bangladesh by April 2017 with financial assistance from the Federal Ministry of Economic Cooperation and Development (BMZ) of Germany, the Spanish Agency for International Development Cooperation (AECID) and the United Kingdom’s Department for International Development (DFID). Since its inception phase in 2008, paralegals engaged and trained under the IRSOP project have been lauded for their initiatives to navigate the criminal justice system on behalf of poor and vulnerable prisoners and expediting their release.[[10]](#footnote-10) Before this project, there was no one to keep track of their time spent in detention in the absence of any designated focal point to provide legal assistance and follow up the cases of indigent and helpless prisoners.[[11]](#footnote-11)

According to key statistics shared by the project, paralegal advisory services have been provided to nearly 70,000 prisoners between January 2009 and April 2017 in 38 prisons across the country. Their demographic profile reveals that they languished for months and sometimes years behind the bars for committing petty offences owing to poverty, homelessness, drug dependence, low social status and education and ignorance around available legal remedies in pursuance of their rights.[[12]](#footnote-12) The innovation of the project is not limited to the introduction of a cadre of trained paralegals to work inside target prisons, courts and police stations alone, it has also for the first time set up horizontal platforms for communication in target districts through establishment of Case Coordination Committees (CCCs) – a forum which brought together high-level representatives from the judiciary, police, prisons, bar associations, civil society, district administration, DLACs, public prosecutors, probation officers and medical officers from the Civil Surgeon’s Office, Narcotics Control Department and other relevant players to jointly review and address the blockages within the criminal justice system leading to overcrowding in prisons of Bangladesh. Recognizing that there is also a dire need for initiating legislative and policy reforms around reducing prison overcrowding and case backlogs, the project subsequently set up a high profile Advisory Committee headed by a Justice of the Appellate Division of the Supreme Court of Bangladesh and besought the involvement of the Law Minister himself and the Ministry of Law, Justice and Parliamentary Affairs in Bangladesh and other criminal justice institutions.

Despite consistent efforts deployed by paralegals to proactively provide legal information and assistance to inmates in target prisons, courts and police stations, the project has faced an intractable challenge re: reaching one of its target of reducing the number of UTPs in target prisons by 15%.[[13]](#footnote-13) There is emerging evidence from the field that the growing number of under-trial prisoners is influenced by several factors which are outside the scope of the project interventions. Many external risks cannot be influenced or managed (e.g. political unrest, transfers between prisons etc.)[[14]](#footnote-14)

With a view to gaining a thorough understanding of the main causes for overcrowding in prisons in Bangladesh, GIZ has realized the need for commissioning an empirical study. This study will provide the evidence base and help in identifying the key bottlenecks within the criminal justice system and potential risk factors both within and beyond the scope of the GIZ project intervention accounting for the unusual high share of undertrial prisoners. It will also look at regional good practices and promising guidelines from the Supreme Court of India and attempt to propose a set of practical recommendations which may be considered for reducing overcrowding in prisons in Bangladesh.

## Study Methodology

The study was carried out applying a combination of both qualitative and quantitative approaches of social research. To delve into the reasons and factors responsible for the high proportion of under trial prisoners and to better understand the bottlenecks within the criminal justice system which impede the outflow of cases, the following tools were applied in this study:

**Desk Review**: Prior to scheduling field visits, a desk research was conducted which included literature review of relevant project documents provided by the Rule of Law team as well as scrutinizing relevant legal procedures and guidelines which have ramifications for undertrial prisoners in Bangladesh. It also included literature review of similar studies carried out at the national and regional level.

**Key Informant Interviews and Focus Group Discussions**: Six Key Informant Interviews (KIIs) and fifteen Focus Group Discussions (FGDs) were conducted using a checklist during September and October 2016 in each of the following districts- Rangpur, Barisal, Madaripur, Sylhet and Moulavibazar. The target groups for the KIIs comprised representatives from the judiciary, police, civil surgeon’s office, court staff, probation officers and the Narcotics Control Department. FGDs were conducted with paralegals, implementing partner NGOs, family members of ex-prisoners, panel lawyers (NGO and DLAC) as well as public prosecutors. These approaches have rendered valuable insights into the challenges facing the key actors within the criminal justice system, the gulf between theory and practice and statistical trends around UTPs.

**Questionnaire Survey**: From a quantitative study perspective, a structured questionnaire was developed to conduct a survey on released prisoners (as annexed).

**Sampling Design**

A structured questionnaire in Bengali was prepared and vetted with the Rule of Law team to conduct a survey on released prisoners (as annexed). The issue of sampling commonly relates to statistical representativeness. Representativeness is also related to whether the study population (in this case, undertrial prisoners) is homogeneous and normally distributed. The following factors have been considered in designing the study:

* Typology of cases against the undertrials;
* Age, gender, level of poverty;
* Social, demographic and economic characteristics;
* Cultural differences due to geographical locations;
* Time of initiation of the project and project duration (pilot, 1st year, 2nd year etc.)
* Districts where the CCC is yet to be fully functional;

There is a common statistical rule following standard error of proportion which suggests that a minimum of 384 subjects be included under a study to provide representative result. The questionnaire was administered among 498 released prisoners across 35 districts.[[15]](#footnote-15) in Bangladesh. Considering the sensitivity of this study and the issue of maintaining confidentiality of the respondents, paralegals were assigned to conduct the survey in target districts.

# CHAPTER II

# REVIEW OF LAWS, GUIDELINES, RULES AND PROCEDURES RE: UNDERTRIAL POPULATION IN BANGLADESH

This chapter enumerates a raft of laws, procedures, rules and guidelines which if implemented by relevant actors within the criminal justice system would see a decline in the number of pre-trial detainees. Various key informants interviewed by consultants during the qualitative study also emphasized on the enforcement of these provisions and voiced their concerns as to how practices on the ground often contravene the written laws accounting for the high proportion of undertrial prisoners in Bangladesh.



## Provisions relating to arbitrary arrests

Section 54 of the Code of Criminal Procedure (Cr. PC) has vested unfettered and unbridled powers with the police to arrest the following persons without warrant:

1. A person involved or concerned with a cognizable offence;
2. A proclaimed offender;
3. A person with stolen property;
4. A person obstructing a police officer in performing his duty;
5. A deserter;
6. A person committing an offence outside Bangladesh;
7. A released convict committing a breach of any rule;
8. A person against whom a requisition slip for arrest is received from another police station;

i. A habitual robber, housebreaker or thief, or a receiver of stolen property, or an extortionist.

Such unhindered powers to carry out arrests without warrant of the following persons have been further conferred upon the police under the Metropolitan Police Ordinances.[[16]](#footnote-16)

1. A person equipped with dangerous instruments without satisfactory excuse;
2. A person with face covered or otherwise disguised without satisfactory excuse;
3. A person being present in any dwelling house or other building, or on board any vessel, boat or vehicle without satisfactory reason;
4. A person lying or loitering in any street or other places without satisfactory reason;
5. A person having in possession implement of house breaking without satisfactory reason.

The history of criminal jurisprudence in Bangladesh like both India and Pakistan dates to the colonial legacy of the British rule that empowered the police to arbitrarily exercise their powers of arrest for reigning in unruly natives during politically volatile situations. Repressive provisions such as Section 54 were deliberately incorporated in the Code of Criminal Procedure with the objective of providing scope to the police to arrest any accused alleged to have committed a cognizable offence or a suspect in the name of maintaining law and order. In anticipation of the likelihood of gross abuse of the unbridled powers of arrests by the police from time to time, Article 32 of the Constitution succinctly lays down that nobody should be deprived of the indefeasible and invaluable right to life and personal liberty save in accordance with the law. Further safeguards against arrests and detention have been affirmed through Article 33 of the Constitution which include the right to be informed of the grounds for arrest, right to consult and be defended by a legal practitioner and the mandatory requirement of producing an arrestee before the nearest magistrate within twenty-four hours of arrest. The stipulated timeline is in sync with Section 61 of the Cr. P C which mandates that police cannot detain a person arrested under Section 54 for more than twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s Court unless a special order thereof has been made by a competent magistrate under Section 167. The underlying objective of this provision is to ensure that due prudence and judicial mind is applied in respect to deciding the legality of arrests and detention made without warrant.

However, the above safeguards do not apply if the arrestee is apprehended under any preventive detention laws on the grounds of maintaining public order, preventing a breach of security or in national interest.[[17]](#footnote-17) The underlying objective of arrests under preventive detention is to prevent the person from engaging in any prejudicial activity against the State.

### Supreme Court guidelines to prevent abuse of the powers of arrests and detention

Following disturbing reports in the media and public outcry over increasing police abuses and custodial violence in Bangladesh, BLAST along with other rights bodies invoked a writ petition before the Supreme Court of Bangladesh.[[18]](#footnote-18) In response, a division bench of the High Court on April 7, 2003 provided clear guidelines in the form of 15 directives relating to arrest, detention, remand and treatment of suspects in custody or confinement to be strictly followed by law enforcement agencies and magistrates. In this landmark case, the honorable judges of the High Court division of the Supreme Court categorized 4 conditions under Section 54 of the Cr. P C for enabling a police officer to arrest a person without warrant:

1. any person who has been concerned in any cognizable offence;
2. against whom a reasonable complaint has been made;
3. against whom credible information has been received; and
4. against whom a reasonable suspicion exists of his having been so concerned in any cognizable offence.

The learned judges noted that the use of the terminology “concerned” is vague that renders unhindered power to a police officer to arrest any person. As such, they opined that the word “concerned” should be substituted by any other appropriate word that will preclude the police from exercising their powers arbitrarily. To this end, the following guidelines have been issued:

1. police shall not arrest a person under Section 54 of the Cr. P C for detention under the Special Powers Act, 1974 and the Magistrate shall not make an order of detention in that case;
2. disclosure of identity and showing of ID card if demanded by the person arrested and the persons present during the arrest;
3. recording the reasons for arrest including the knowledge about the involvement of the person in a cognizable offence, of the offence, circumstances under which arrest was made, the source of information and the reasons for believing the information, date and time of arrest, name and address of the persons, if any, present at the time of arrest and getting it signed by the arrestee;
4. to take an arrested person to the nearest hospital or government doctor for treatment if the police officer finds any marks of injury on him/her;
5. furnishing reasons for the arrest to the arrestee;
6. informing relatives and friends of the arrestee about the arrest within three hours of bringing him/her to the police station;
7. allowing the arrestee to consult a lawyer of his/her choice and meet his/her relatives;
8. police officer to incorporate reasons in the forwarding as to why investigation could not be completed within 24 hours of arrest of the person and why s/he considers that the accusation or the information against the person is well founded and duly transmitting a copy of the case diary;
9. the Magistrate to pass an order of detention only if s/he is satisfied with the reasons stated in the forwarding of the police officer, otherwise to release the person forthwith;
10. the magistrate to proceed against the concerned police officer as per Section 190 (1) (c) of the Cr. PC for committing an offence under Section 220 of the Penal Code if the grounds for remand stated in the police forwarding are not satisfactory or if there are no materials to justify detention in the case diary;
11. the investigating officer to interrogate the accused for investigation in a room in the jail specially made for that purpose with a glass wall and grill on one side within the view but not hearing of a close relation or lawyer of the arrestee;
12. the investigating officer to state grounds for taking the accused to the custody to the satisfaction of the Magistrate;
13. Magistrates to be satisfied with the reasons for arrest and remand stated in the case diary and the police forwarding before authorizing detention. Magistrates are further directed to send the accused for medical examination by a designated doctor or medical board constituted for verifying the allegation of any torture in police custody;
14. the concerned magistrate be immediately informed about the death of any person in police custody; and
15. the Magistrate shall proceed for a judicial inquiry into the cause of such death.

### Bangladesh V. BLAST (Civil Appeal No. 53 of 2004)[[19]](#footnote-19)

The Appellate Division (AD) of the Supreme Court has delivered a milestone judgment[[20]](#footnote-20) on 25 May 2016 which dismissed the aforesaid civil appeal with recommendations and guidelines for both law enforcing agencies and courts of law who have power to take cognizance of an offence as a court of original jurisdiction. The guidelines are to be followed in case of arrest and detention of a person out of suspicion who is or has been suspected to have involved in a cognizable offence, and in case of custodial torture and deaths. The AD has also laid down a set of responsibilities for the law enforcing agencies. In this case, the AD modified the judgment passed by the High Court division (HCD) in Writ Petition No. 3806 of 1998 (popularly known as Section 54 Case). According to the judgment, the responsibilities of law enforcing agencies and guidelines are as below:

***Guidelines for the Law Enforcement Agencies:***

1. A law enforcement officer making the arrest of any person shall prepare a **memorandum of arrest** immediately after the arrest and such officer shall obtain the signature of the arrestee with the date and time of arrest in the said memorandum.
2. A law enforcement officer who arrests a person must intimate to a nearest relative of the arrestee and in the absence of his relative, to a friend to be suggested by the arrestee, as soon as practicable but not later than **12 (twelve) hours** of such arrest notifying the time and place of arrest and the place in custody.
3. An entry must be made in the diary as to the ground of arrest and name of the person who informed the law enforcing officer to arrest the person or made the complaint along with his address and shall also disclose the names and particulars of the relative or the friend, as the case may be, to whom information is given about the arrest and the particulars of the law enforcing officer in whose custody the arrestee is staying.
4. Registration of a case against the arrested person is sine-qua-non for seeking the detention of the arrestee either to the law enforcing officer’s custody or in the judicial custody under Section 167(2) of the Code.
5. No law enforcing officer shall arrest a person under Section 54 of the Code for the purpose of detaining him under Section 3 of the Special Powers Act, 1974.
6. A law enforcing officer shall disclose his identity and if demanded, shall show his identity card to the person arrested and to the persons present at the time of arrest.
7. If the law enforcing officer find, any marks of injury on the person arrested, he shall record the reasons for such injury and shall take the person to the nearest hospital for treatment and shall obtain a certificate from the attending doctor.
8. If the person is not arrested from his residence or place of business, the law enforcing officer shall **inform the nearest relation of the person in writing within 12 (twelve) hours of bringing the arrestee in the police station**.
9. The law enforcing officer shall allow the person arrested to consult a lawyer of his choice if he so desires or to meet any of his nearest relation.
10. When any person is produced before the nearest Magistrate under Section 61 of the Code, the law enforcing officer shall state in his forwarding letter under Section 167(1) of the Code as to why the investigation cannot be completed within twenty-four hours, why he considers that the accusation or the information against that person is well founded. He shall also transmit copy of the relevant entries in the case diary B.P. Form 38 to the Magistrate.

***Guidelines for the Magistrates, Judges and Tribunals having power to take cognizance of an offence:***

1. If a person is produced by the law enforcing agency with a prayer for his detention in any custody, without producing a copy of the entries in the diary as per Section 167(2) of the Code, the Magistrate or the Court, Tribunal, as the case may be, shall release him in accordance with Section 169 of the Code on taking a bond from him.
2. If a law enforcing officer seeks an arrested person to be shown arrested in a particular case, who is already in custody, such Magistrate or Judge or Tribunal shall not allow such prayer unless the accused/arrestee is produced before him with a copy of the entries in the diary relating to such case and if that the prayer for shown arrested is not well founded and baseless, he shall reject the prayer.
3. On the fulfillment of the above conditions, if the investigation of the case cannot be concluded within 15 days of the detention of the arrested person as required under Section 167(2) and if the case is exclusively triable by a court of Sessions or Tribunal, the Magistrate may send such accused person on remand under Section 344 of the Code for a term not exceeding 15 days at a time.
4. If the Magistrate is satisfied on consideration of the reasons stated in the forwarding letter and the case diary that the accusation or the information is well founded and that there are materials in the case diary for detaining the person in custody, the Magistrate shall pass an order for further detention in such custody as he deems fit and proper, until legislative measure is taken as mentioned above.
5. The Magistrate shall not make an order of detention of a person in the judicial custody if the police forwarding report disclose that the arrest has been made for the purpose of putting the arrestee in the preventive detention.
6. It shall be the duty of the Magistrate/Tribunal, before whom the accused person is produced, to satisfy that these requirements have been complied with before making any order relating to such accused person under Section 167 of the Code.
7. If the Magistrate has reason to believe that any member of law enforcing agency or any officer who has legal authority to commit a person in confinement has acted contrary to law the Magistrate shall proceed against such officer under Section 220 of the Penal Code.
8. Whenever a law enforcing officer takes an accused person in his custody on remand, it is his responsibility to produce such accused person in court upon expiry of the period of remand and if it is found from the police report or otherwise that the arrested person is dead, the Magistrate shall direct for the examination of the victim by a medical board, and in the event of burial of the victim, he shall direct exhumation of the dead body for fresh medical examination by a medical board, and if the report of the board reveals that the death is homicidal in nature, he shall take cognizance of the offence punishable under Section 15 of Hefajate Mrittu (Nibaran) Ain, 2013 against such officer and the officer in charge of the respective police station or commanding officer of such officer in whose custody the death of the accused person took place.
9. If there are materials or information to a Magistrate that a person has been subjected to ‘Nirjatan’ or died in custody within the meaning of Section 2 of the Nirjatan and Hefajate Mrittu (Nibaran) Ain, 2013, he shall refer the victim to the nearest doctor in case of ‘Nirjatan’ and to a medical board in case of death for ascertaining the injury or the cause of death, as the case may be, and if the medical evidence reveals that the person detained has been tortured or died due to torture, the Magistrate shall take cognizance of the offence suo-motu under Section 190(1)(c) of the Code without awaiting the filing of a case under sections 4 and 5 and proceed in accordance with law.

The Appellate Division directed the Inspector General of Police to circulate the above guidelines to all police stations for compliance forthwith to the letter and spirit. Similarly, the Director General, Rapid Action Battalion has also been directed to circulate them for compliance of its units and officers. The Court has also directed the Registrar General to circulate for compliance by the Magistrates forthwith. The Registrar General has been further directed to transmit copy of the Judgment to the Secretary, Legislative and Parliamentary Affairs Division; Ministry of Law, Justice and Parliamentary Affairs; Secretary, Ministry of Home Affairs; IGP Police; DG RAB for taking necessary steps as per the recommendations, observations and guidelines made in the body of the Judgment.

### Cr. PC guidelines relating to investigation

Section 167 of the Cr. PC lays down the procedure when investigation cannot be completed within the mandated timeline of twenty-four hours. Section 167 (1) provides that a person arrested without warrant shall be produced before the magistrate if the investigation cannot be completed within twenty-four hours and if there are grounds for believing that the accusation or information received against the person is well founded. Fulfilment of this requirement will enable the magistrate to decide upon the legality of the detention. A magistrate has been vested with the discretion to authorize further detention of the accused for a maximum period of 15 days under Section 167 (2). However, the law requires the police officer to state cogent reasons in its forwarding seeking detention of a person beyond the permitted time limit of 24 hours. It requires the forwarding to be attached with the case diary.

Section 172 of the Cr. PC and Regulation 263 of the Police Regulation of Bengal (PRB) requires the police officer to maintain a case diary for recording the time of receiving information, and beginning and closure of investigation related to arrest and searches. Pursuant to the investigation, a police officer is required to note the place(s) visited by him/her and write a statement of the circumstances ascertained through the investigation. Regulation 264 of the PRB provides for the procedure to maintain a case diary. If the case diary does not include the required entries, the magistrate shall forthwith release the arrestee.[[21]](#footnote-21) If the magistrate is satisfied with the reasoning and the entries of the case diary, s/he shall order detention of the accused after recording the reasons for doing so.[[22]](#footnote-22)

Through a subsequent amendment of the Cr. PC in 1992, sub-section (5) was introduced under Section 167 which states that investigation against an accused person shall be concluded within 120 days excluding the time required for obtaining sanction of the appropriate authority for prosecution of the accused, if any. It affords the Magistrate or the Court of Sessions to review the progress of pre-trial investigation within 120 days from the date of receipt of the information relating to the commission of the offence or the order of the Magistrate for such investigations and release the accused on bail if the police investigation has not been concluded.[[23]](#footnote-23)

Section 173 of the Cr. P C further requires that a police report be filed upon completion of every investigation without unnecessary delay. Regulation 261 of the PRB lays down that it should very rarely be necessary to prolong the investigation of even the most challenging case beyond 15 days.

### Procedural guidelines relating to discharge of an accused

At the pre-trial stage, Section 241A, casts a duty upon the concerned magistrate to exercise prudence and independent judgment to conclude whether a prima-facie case is made out against the accused to proceed with the trial. Accordingly, s/he shall discharge the accused and record cogent reasons for doing so. This provision also requires the concerned magistrate to apply judicial mind by perusing through the FIR; charge-sheet; statement of witnesses recorded under Section 161 of the Cr. PC and relevant documents in a police case and examining the petition of complaint; statement of witnesses recorded under Section 164 during judicial enquiry and related documents including medical certificates in a complaint case to decide whether any case is made out against the accused. Pursuant to hearing the prosecution and the accused, if the trying magistrate considers the charge brought against the accused to be groundless, s/he shall discharge the accused.

## Provisions relating to adjournments

According to the explanation provided under Section 344 of the Cr. PC, a magistrate having jurisdiction to try a criminal case may order further detention of the accused before submission of the charge sheet. By inclusion of this Section, the concerned magistrate has the option to remand the accused to judicial custody or direct his/her release on bail. This section envisages further remand of a UTP to jail custody[[24]](#footnote-24) and not to police custody which lies within the scope and ambit of Section 167 of the Cr. PC.

The Code strongly discourages adjournments of a criminal proceeding pursuant to the commencement of a trial except on judicious grounds. The intention is clear that criminal cases should not be allowed to linger but should be disposed of expeditiously, given the possibility of the truth being concealed looms large.

## Provisions relating to Compounding

Compounding means settlement of certain cases through a compromise. It is a composition between the parties about compoundable cases.[[25]](#footnote-25) Section 345[[26]](#footnote-26) of the Cr. PC provides for a comprehensive list of offences that may be compounded with the consent of the aggrieved person or with the permission of the Court before which any prosecution for such offence is pending. Section 345 (1) provides for a list of offences that can be compounded without the permission of the court. Compounding of cases is applicable only in case of pending proceedings.

The person mentioned in the third column of Section 345 can compound an offence. However, in case of a minor under the age of eighteen years, an idiot and a lunatic, any person competent to contract on his behalf may with the permission of the Court compound such offence. A person who is charged with a compoundable offence has the liberty to come to a settlement with the prosecution. If both parties (victim and the accused) agree, they can compound an offence subject to seeking prior permission of the concerned magistrate where applicable.

The High Court Division and the Sessions Court, acting in the exercise of its powers of revision, can allow any person to compound offences which may lawfully be compounded.[[27]](#footnote-27) The composition of an offence under Section 345 shall have the effect of an acquittal of the accused with whom the offence has been compounded.[[28]](#footnote-28) Although these enabling provisions appear immaculate on paper, in practice there is limited application of Section 345, given people are largely unaware of the compoundable provisions and how they could potentially benefit from exploring them and most lawyers are disinclined to advise or encourage their clients to compromise.

## Provisions relating to bail

The term “bail” has not been clearly defined under the statutes. If we go by the dictionary meaning, it denotes a security for the appearance of an accused person during trial.[[29]](#footnote-29) Bail is temporary release or conditional liberty of an accused or a suspect alleged to have committed a cognizable or non-cognizable offence by the Court or police and handing over to the hands of the sureties who undertake to produce him/her before the Court as and when required.[[30]](#footnote-30) It is a legal remedy afforded to accused person for the commission of bailable[[31]](#footnote-31) and non-bailable offences.[[32]](#footnote-32)

A person accused of a bailable offence has the indomitable right to be released on bail. Section 496 of the Cr. PC lays down that a person accused of committing a bailable offence who is arrested or detained without warrant by a police officer and is brought before a court has a right to be released on bail from the custody or confinement so long as s/he is willing to offer money bail or execute personal bonds. In practice, the prevailing socio-political conditions (discussed in detail in the empirical study findings) discourage the police from exercising their discretion of granting bail. They are more inclined to shift this responsibility to the courts.

Section 497 of the Cr. PC lays down the provisions for bail in case of non-bailable offences. The power to grant or refuse bail to a person accused of committing a non-bailable offence is discretionary. As per Section 497, the judge has the discretion to deny bail to a person accused of committing a non-bailable offence if there are reasonable grounds for believing that s/he is guilty of an offence punishable with death or life imprisonment.[[33]](#footnote-33) However, under the proviso to this Section, the Court has the discretion of granting bail to a woman; a child under the age of 16 years; any sick or infirm person accused of committing a non-bailable offence.

Section 497 (2) enjoins that if there are sufficient grounds for further inquiry into the guilt of an accused charged with the commission of a non-bailable offence, pending such inquiry, the Court has the discretion to release the accused on bail on the execution of a bail bond[[34]](#footnote-34) or a bond without sureties. Courts however retain the discretion to release the accused on bail if at any stage of the investigation, inquiry or trial, it appears to them that there are no reasonable grounds for believing that the accused has committed a non-bailable offence.

Some of the grounds for consideration in an application for bail are enumerated below[[35]](#footnote-35):

* Whether there is any pima facie reason to believe that the accused has committed the offence?
* What is the nature and gravity of the alleged offence?
* Whether the name of the accused is in the FIR or not?
* Whether the accused is directly involved with the offence?
* Whether the accused will cooperate with the investigation?
* Whether the accused will temper with the evidence (case documents) or influence the witnesses?
* Whether the accused is a repeat or habitual offender?
* Whether the accused will flee away after being released on bail?
* Whether the accused will appear before the court later?
* Whether the accused is suffering from any chronic diseases?
* Whether the accused is the only earning member?
* Whether the accused will fail to defend him/herself due to confinement?
* Whether there has been a long delay in holding trial?
* Whether there has been an inordinate delay in submitting an investigation report?
* Whether the accused is a woman, a person below sixteen years of age, sick or infirm?

On the ground, there are rare instances of proactive application of the judicial mind by magistrates and judges while exploring their discretion around bail. The age and mental state of the offender, the FIR and the consequences of imprisonment on the accused and his/her family is seldom considered in most cases before trial commences. The courts are reticent to exercise their discretion of granting bail in the first instance in most cases and are more inclined to grant bail after submission of investigation and/or medical reports.

Unlike India, the Code of Criminal Procedure in Bangladesh does not expressly provide for an anticipatory or pre-arrest bail.[[36]](#footnote-36) This extraordinary remedy has however been sparingly explored in exceptional cases by the courts[[37]](#footnote-37) in exercise of wide discretionary powers conferred upon them under Section 498 of the Cr. PC. It has been clearly stated through a milestone ruling[[38]](#footnote-38) that anticipatory bail may be granted in anticipation of arrest only when the Court is convinced to believe that the criminal proceeding has been drawn up against the accused with an oblique motive, political or otherwise, with the intention of humiliating or harassing the accused and not for securing justice. By dint of this section, the Court of Sessions and the High Court Division of the Supreme Court has been vested with the discretion to admit an accused person to bail in any case even when s/he is charged with a non-bailable offence.

## Time-limit for disposal of cases

Section 339 C of the Cr. PC prescribes the timeline for disposal of criminal cases. It states that a magistrate shall conclude the trial within 180 days from the date of receipt of the case.[[39]](#footnote-39)A Sessions Judge, an Additional Sessions Judge or an Assistant Sessions Judge shall conclude the trial within 360 days from the date of receipt of the case.[[40]](#footnote-40) Section 339 C (4) further vests the discretion with the concerned magistrate or the Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge to release the accused on bail even if s/he is charged with a non-bailable offence unless for reasons to be recorded in writing, the court otherwise directs. In *Captain (Rtd.) Nurul Huda v. State,*[[41]](#footnote-41) the Appellate Division of the Supreme Court has held that long delay in holding trial confers a right upon the accused of a non-bailable offence to be released on bail.

## Provisions relating to bail bonds

Section 498 of the Cr. PC stipulates that the amount of every bail bond shall be fixed with due regard to the circumstances of the case and that the bail amount shall not be excessive. The Court of Sessions and the High Court Division has been further empowered to reduce the amount of bail at their discretion. In the absence of any benchmark which may serve as a standard for determining the amounts of bail bonds, it is expected that a magistrate while dealing with a bail application will not fix an amount that would be excessive or disproportionate to the amount which the accused person would be liable to pay upon conviction.[[42]](#footnote-42) The bail amount should not be too onerous and should be arrived at having regard to the financial capacity of the accused.

## Review of the Criminal Rules and Orders(CRO)[[43]](#footnote-43)

2.7.1 Provisions relating to adjournments

Rule 33 of the CRO emphasizes that the Court must avoid piecemeal examination of witnesses pursuant to the commencement of a trial unless there are cogent reasons for the adjournment. In the same vein, Rule 34 (1) lays down that criminal proceedings should not be allowed to linger unnecessarily and that they should be disposed of as expeditiously as possible. For this purpose, the Courts are required to exercise their discretion cautiously in the matter of allowing a prayer for adjournment.

2.7.2 Service and Execution of Processes to Formal Witnesses

### Issue of Processes to Medical Witnesses

Rule 37 (2) provides that the summons issued to a registered medical practitioner should state for his/her attendance, the time when the Court concerned expects to examine him/her, and his/her examination should take place at the time indicated in the summons or as soon thereafter as practicable.

Rule 44 (2) lays down that if a warrant is to be executed under sub-section 1 of the Section 83 of the Code, outside the local jurisdiction of the Court issuing it, the same shall be forwarded to an executive magistrate or district SP or CP within the local limits of whose jurisdiction it is to be executed and not to the CJM or to the CMM.

Rule 46 (1) states that a summons to a MO shall be served through the Civil Surgeon of the district or the concerned authority of the Health Directorate or the Health Ministry or the CMO of the organization to enable the latter to plan for performance of medical duties during his/her absence; (2) lays down that summons to a MO posted outside the district HQ which does not require any formal permission to leave the station shall be sent to him/her directly and not through his/her higher authority as stated in (1).

Issue of Processes to a Police Officer

Rule 45 (1) lays down that every summons to a police officer shall be served through the SP in a district or the CP in a metropolitan area or the OC of a PS in which such officer is posted; (2) lays down that when jail or other departmental officers of the government who reside in the station are summoned as witnesses, processes should be issued to them only when they are wanted.

Issue of Processes to a Judicial Officer

Rule 47 (1) provides that a summons to a judicial officer may be served through the Metropolitan Sessions Judge in a metropolitan area or the Sessions Judge in a district in which s/he is posted and the latter shall permit him/her to attend the Court concerned, after planning for the performance of his/her duties during his/her absence. Likewise, Rule 47 (2) lays down that a summons to a judicial magistrate may be served through the CMM in a metropolitan area or the CJM in a district in which s/he is posted. In a case where the present place of posting of the concerned judicial officer is not known to the issuing court, a summons may be served through the Registrar of the High Court Division.

Rule 50 of the CRO lays down that an attempt should be made by all courts to have the officers who are about to leave the station (those going on leave or being transferred) examined in any pending case in which they are material witnesses before their departure if the same can be done without violation of any important rules of procedure.

Rule 51 further lays down that the witnesses brought under arrest should be dealt with not as criminals, but simply as persons arrested under civil processes.

### Service and Execution of Processes through Police

Rule 64 (1) stipulates that all processes to be served by the police should ordinarily be collected from the Court by the court police officer on duty and sent to the OC of the PS within whose jurisdiction the processes are to be served, provided that the Court may send a warrant of arrest for execution directly to the concerned police officer. Rule 65 (1) provides that all processes sent to the police shall be served or executed within the time fixed by the Court and if or any reason the same is not possible, the process should be returned to the Court with short notes, stating the cause for delay before the date fixed so that those can be reissued by fixing new dates.

Rule 65 (2) stresses that the police should not retain a process without service or execution, beyond the date fixed, without informing the Court of the reason for non-service or non-execution of the process concerned. Rule 65 (3) states that the SP or the CP shall make necessary arrangements so that processes sent to the police for service or execution are served or executed with utmost expedition and may, for this purpose, make an order for special arrangement for serving and executing processes in each PS.

Rule 66 (1) lays down that all cases of avoidable delay or willful default in the matter of service or execution of processes, shall be reported by the CJM or the CMM to the concerned controlling authority of the incumbent police for investigation. Rule 66 (2) provides that all cases recorded under (1) shall be duly investigated and if any gross negligence is found in the matter of compliance with the Court’s order, necessary disciplinary action should be taken against the persons responsible for such negligence by the concerned police authorities and the CJM or CMM shall be informed of the action so taken.

Rule 67 casts a duty upon the SP in a district or the CP in a metropolitan area to provide necessary instructions to all the concerned police officers entrusted with the responsibility to serve or execute processes from time to time with a view to ensuring that all such processes issued by the Court are expeditiously served or executed. The primary objective of this provision is to ensure speedy disposal of pending cases by avoidance of unnecessary adjournments. As per Rule 68, it is incumbent upon the OC of the concerned PS to send a pending list of all processes (unserved or unexecuted) received by him/her during the month to the CJM or the CMM citing the reasons thereof.

### Guidelines for Passing an Order for Detention

The recurring practice of allowing unauthorized detention of an alleged offender beyond 24 hours, (following his/her arrest and subsequently being produced before the Magistrate), has been strongly discouraged through incorporation of the following provisions in the CRO:

Rule 74 (1) expressly provides that sound judicial discretion must be exercised by the concerned magistrate before passing an order for police remand under Section 167 of the Code. It further makes it obligatory upon the magistrate to scrutinize the entries in the case diary. Rule 74 (3) iterates that while considering an application for further detention, the magistrate shall approve the remand for the shortest possible duration, depending on the facts and circumstances of each case.

Rule 74 (7) enjoins that the Magistrates shall refrain from passing an order for police remand of UTPs to custody unless they have been physically produced before them on due dates. Rule 75 (2) and (3) requires the concerned magistrate to impress upon the police to complete investigation of an offence as expeditiously as possible, without prolonging the need for further detention beyond 15 days. According to note 1 of Rule 84 of the CRO, a person shall be treated as a UTP from the time s/he is held in the police lockup in relation to any alleged crime.

## Government Legal Aid

On recognition of the importance of legal aid as a powerful tool for empowerment of the poor and disadvantaged groups, the Government of Bangladesh enacted the Legal Aid Services Act (LASA), 2000 and subsequently drafted and formulated the Legal Aid Policy, Rules and Regulations in support of its legal aid program. Under the Legal Aid Services (Amendment) Act, 2013, the coverage for legal aid includes free legal assistance, lawyers’ fees, mediator’s or arbitrator’s fees, process fees, costs incurred on DNA tests where applicable, costs for obtaining certified copies of judgments/orders, paper advertisement in CR cases and other incidental costs for anyone who is denied access to justice owing to poverty and indigence and other social factors. This law mandates the establishment of a registered Legal Aid Institution to be governed by a National Legal Aid Board (the “Board”) headed by the Minister for Law, Justice and Parliamentary Affairs. It also provides for formation of three tiers of bodies, at the District, Upazilla and Union levels respectively.[[44]](#footnote-44) Reportedly, from the inception to 2015, about 30,409 people from the economically disadvantaged population have received services from the government legal aid.[[45]](#footnote-45) Till 2015, a total of 8,704 prisoners have received legal aid from DLACs.[[46]](#footnote-46)

By dint of Section 7(a) of the LASA, the Government has prepared a comprehensive legal aid policy and published it through a gazette notification on May 24, 2001. However, this policy was drastically amended in 2014.[[47]](#footnote-47) The policy succinctly lays down the eligibility criteria for receiving government legal aid. According to the Legal Aid Policy 2014, applications for legal aid are screened and applicants are required to pass the means test for becoming eligible to receive legal aid. As per the policy, persons having annual income of not more than BDT 150,000 (for a case to be filed before the Supreme Court) and having an annual income of not more than BDT 100,000 (for a case to be filed in other subordinate courts) are entitled to government legal aid. The eligibility criteria have been relaxed for certain people according to Clause 2 of the revised policy to include undertrial prisoners who are unable to afford legal representation and helpless and insolvent inmates referred by the concerned prison authorities to the legal aid committees. According to Clause 3 of the aforesaid policy, any person regardless of his/her financial status are entitled to receiving legal information, legal advice and ADR services. The Government has already put in place the Legal Aid (Legal Advice and Alternative Dispute Resolution) Rules, 2015[[48]](#footnote-48) for ensuring access to justice for the service seekers.

Through the latest amendment of 2013[[49]](#footnote-49), the LASA paved the way for setting up of the Supreme Court Legal Aid Committee (hereinafter referred to as SCLAC). The SCLAC has played a catalyzing role in expediting the release of undertrial prisoners. The SCLAC sent letters to 68 (sixty-eight) prisons of Bangladesh on 15 November 2016 requesting the prison authorities to provide detailed information around the number of undertrial prisoners incarcerating for over 5 years and 10 years. The DIG (Prisons) responded promptly on 31 November 2016 by furnishing a list of such undertrial prisoners. Between August 2015 and March 2017, the SCLAC[[50]](#footnote-50) has received 555 applications, out of which 298 cases have been disposed of.

The Government has also been empowered to appoint as many legal aid officers as required through the amendment in 2013. The legal aid officers are mandated to provide legal advice to the legal aid seekers and to encourage settlement of disputes through ADR if such disputes are referred to them by any competent Court or Tribunal for disposal. The legal aid officers (judicial officers on deputation are recruited to this position) are currently providing legal advice and ADR services across 64 District Legal Aid Committees (DLAC). This in turn is contributing to the paring down of cases making their way into the formal justice system and contributing towards reducing case backlogs.

However, this pro-poor legislation continues to be plagued by some practical limitations which are going to be flagged in the section of overarching recommendations of this study report.

## Special Law Provisions re: time limit for concluding investigation and trials

Few of the existing special laws have prescribed time limits for concluding investigation and disposal of cases as described in the table below:

|  |  |  |
| --- | --- | --- |
| ***Name of Law*** | ***Sections and Timeline Re: Investigation*** | ***Sections and Timeline Re: trials*** |
| Narcotics Control Act, 1990 | SECTION 42 B  If the accused is caught red handed, investigation must be completed within 15 (fifteen) working days from the date of detention;  If the accused is not detained on the spot, the investigation must be concluded within 60 (sixty) working days from the date of information received or, order for investigation passed by Director General or by any person duly authorized by him/her, magistrate or by any authority;  If the investigation cannot be completed within the prescribed time limit (15 or 60 days), s/he must conclude the process within additional 7 (seven) working days subject to informing authorities in writing. If the investigation is not completed within additional 7 days, the I.O shall inform his/her superior in writing within 24 hours of exhaustion of specified time limit for investigation. After receiving such information re: inability/failure to complete investigation within the stipulated timeframe, the authority shall assign new I.O for conducting fresh investigation within 7 working days (when the accused caught red handed) or 30 working days (in other cases except caught red handed).  If the investigation is not completed with extended time, the I.O must inform his/her superior about this within 24 hours of expiry of time limit.  If the regulating authority/ DG/ magistrate thinks that the I.O is personally responsible for the failure to complete investigation within extended time limit, the failure shall be deemed as inefficiency of the concerned investigating officers (owing to incompetence/negligence). This point will be noted in I.O’s ACR and disciplinary action shall be taken as per service rules | The NCA, 1990 does not expressly provide for a prescribed time limit for disposal of cases filed under this Act. |
| Women and Children Repression Prevention Act, 2000 | SECTION 18  Investigation must be completed within 15 working days from the date of being caught red handed, or within 60 working days from the date of information received or from the date of order for investigation passed by the concerned officer or the tribunal;  If the investigation cannot be completed within aforesaid time limit, the investigating officer shall complete the investigation within additional 30 days subject to recording reasons in writing;  If the investigation cannot be completed within the extended time, the I.O shall inform his/her superior or the tribunal in writing within 24 hours of expiry of prescribed time;  Upon receiving this information, the regulatory authority or the tribunal may assign a new I.O to complete investigation within 7 working days (in case of accused being caught red handed) or 30 working days (in other cases except being caught red handed).  Failure to complete investigation within stipulated time limit shall be deemed as inefficiency and misconduct of the concerned investigating officer. In such a case, the relevant superior will make a note in his/her ACR and disciplinary action shall be taken as per rules. | SECTION 20  The law stipulates a timeline for concluding trial and disposing a case within 180 days;  SECTION 31 A  It sets forth that if trial cannot be completed within 180 days, the tribunal shall forward a report explaining the reasons thereof to the Supreme Court within 30 days of exhaustion of prescribed time, and shall forward a copy of such report to the government;  Likewise, the Public Prosecutor and the concerned police officer is mandated to submit a report to the government with a copy to the Supreme Court.  The concerned authority shall take necessary action against the persons who are responsible for the delay in concluding trial |
| Speedy Trial Tribunal Act, 2002 |  | SECTION 10  The Speedy Trial Tribunal shall dispose the case within 90 working days from the date of transfer of the case to the said Tribunal.  If the case cannot be tried and disposed of within 90 days, the tribunal shall allow an additional timeline of 30 days pursuant to submission a report to the Supreme Court for failure to conclude the trial. If the tribunal cannot conclude trial within extended time, it shall try and dispose the case within next 15 days and simultaneously submit a report to the Supreme Court explaining reasons for the delay.  If the case cannot be disposed of within additional 15 days, the tribunal shall send back the case to the Court which transferred the case to the Speedy Trial Tribunal and submit a report to the Supreme Court explaining reasons for the delay. Copies of the reports to the Supreme Court shall also be provided to the government. |
| Offences relating to Disruption of Law and Order (Speedy Trial) Act, 2002 | SECTION 10  When the accused is caught red handed, the police shall submit investigation report within 7 (seven) working days from the date of production before the Court;  When the accused is not caught red handed, police shall submit report within 7 (seven) working days from the date of occurrence. | SECTION 10  When the accused is caught red handed, the Court shall conclude the trial within 30 (thirty) working days from the date of receipt of the report or the complaint.  When the accused is not caught red handed, the court shall conclude the trial within 60 (sixty) working days from the date of receipt of the report or from the date of filing.  When the accused surrenders before the Court, it shall conclude the trial within 30 working days from the date of receipt of the report/complaint. |
| Domestic Violence (Prevention and Protection) Act, 2010 | SECTION 24  The Court may direct for an onsite investigation. Such investigation must be concluded within the prescribed time limit fixed by the Court. | SECTION 20  The Court shall dispose of the case within 60 days from the date of issuing a notice. If for an inevitable reason, the case cannot be disposed within the prescribed time, the Court shall try and dispose of the case within an additional time of 15 working days subject to recording the reasons thereof and submitting a report to the Appellate authority. If the case cannot be completed within the extended timeline, the trial court shall inform the Appellate authority about the progress of the case every 7 days and the Appellate authority may transfer the case to any other competent court *suo-motu* or upon receiving an application to this end from any party to the case.  SECTION 26  The Court may issue warrant of arrest if the opposite party fails to appear before the court on the date fixed by the Court. |
| Prevention and Suppression of Human Trafficking Act, 2012 | SECTION 19  Investigation must be completed within 90 (ninety) days of filing of the complaint or passing of an order for investigation by the concerned Tribunal. The law requires the investigating officer to apply to the tribunal for increasing the timeline. Such an application is to be made 3 working days before the expiration of 90 days. Subject to the satisfaction of the tribunal, a further time extension of 30 days may be allowed.  There shall be a central monitoring cell under the police headquarters.  Subject to recommendation by the tribunal, the relevant superior authority may take disciplinary action against any responsible officer for failure to discharge his/her duties efficiently. The Tribunal may also direct the responsible persons to pay compensation [Section 45 (2)] | SECTION 24  The tribunal shall conclude trial and dispose the case within 180 working days from the date of framing of the charge.  If the case cannot be tried and disposed of within the prescribed time, the tribunal shall submit a report within 10 working days to the High Court Division of the Supreme Court of Bangladesh explaining the reasons for the delay. |
| Pornography Control Act, 2012 | SECTION 5  Duration of investigation will be 30 (thirty) working days. Subject to the approval of the SP or any officer of equivalent rank or superior officer, time frame for investigation may be increased by another 15 (fifteen) days. If the investigation is not completed within 45 (forty-five) days, an additional timeline of 30 (thirty) days may be allowed subject to approval by the Tribunal. |  |
| The Children Act 2013 | No time limit prescribed for investigation | SECTION 32  The Children Court shall conclude the trial within 360 days from the date of first appearance of the alleged accused before it. If the case cannot be disposed within the prescribed time, the Court may provide for a time extension of 60 days for disposal of the case subject to being satisfied of the reasons for such delay. |

## Monitoring the implementation of time limits re: investigation and trials

Although some of the special laws stipulate time limits for completion of investigation and trials with a view to expediting dispensation of justice, there is no monitoring mechanism in place and oversight to ensure compliance. In a recent judgment[[51]](#footnote-51) a High Court Bench directed the Registrar General of the Supreme Court of Bangladesh to constitute a Monitoring Cell headed by him or the Registrar of the High Court Division. The monitoring cell shall include two other members i.e. the Secretary to the Ministry of Home Affairs (or his representative not below the rank of Additional Secretary) and the Secretary to the Law and Justice Division (or his representative not below the rank of Additional Secretary). This judgment provided further guidelines to be complied by the Monitoring Cell. According to the judgment, the Cell is mandated to monitor the enforcement of Sections 20 (3) and 31 A (3) of the Women and Children Repression Prevention Act, 2000. The monitoring cell is required to oversee delivery of reports (with explanation of failure to conclude trial within 180 days) from the tribunal judges, public prosecutors and police officers. The cell shall consider the reports and submit a progress report from time to time to the concerned authorities for taking appropriate action in accordance with Section 31 A (3) of the Women and Children Repression Prevention Act, 2000.

## Abuse/ wrongful application of provisions under the Special Laws

In Bangladesh, it is a common phenomenon that cases filed under special law provisions are often founded on colorable, fictitious and vexatious facts. For example, cases of simple hurt are registered as grievous hurt, cases relating to demand for dowry turn into cases under torture for dowry while both are triable under different laws. In another judgment,[[52]](#footnote-52) the High Court Division held, “the Principle of Natural Justice speaks that when there are two parallel laws, harsh law should not be applied to an accused as the accused has the right to fair trial which cannot be possible under harsh law.”

## Ruling on Mobile Courts

The Executive Magistrates are vested with the powers to take cognizance of certain offences under (near about) 110 laws as are enlisted in the schedule of the Mobile Courts Act, 2009. Section 5 of the Act allows the Executive Magistrates or District Magistrates to preside over the mobile courts for discharge of judicial functions which as per constitutional mandates can only be performed by the persons holding posts in the Judicial Service of Bangladesh.

According to the Section 6 (1), the Executive Magistrates are empowered to take cognizance of offences if committed or unfolded in his/her presence and to convict upon confession by the accused. Section 6(2) permits the government to create offences under delegated legislation and Section 6(4) leaves room for the Executive Magistrates to exercise their discretion around prosecution of persons and whom to commit to the regular Courts for trial. Section 7 of the Act describes how the Mobile Courts shall operate under the Executive Magistrates. According to this section, the Magistrate is to frame a charge first, then, to allow the accused person to defend. If the accused person does not confess, s/he must be either acquitted or sent to a competent court for trial.

Section 8 of the Act limits the sentencing power of the Mobile Court. The section clearly mentions that no Mobile Court shall impose imprisonment for more than two years. Section 9 deals with amount of fine, realization procedure and consequences of failure to pay fines. Both these sections are arbitrary and discriminatory in their applications. Section 10 prohibits double jeopardy and Section 11 allows District Magistrates to preside mobile courts. Section 13 provides for appeal and allows the District Magistrates to be the Appellate authority. Section 15 affords the power to amend the schedule by the Executive.

However, recently in a judgment (delivered on 11th May 2017),[[53]](#footnote-53) a High Court Bench has declared that Sections 5, 6(1), 6(2), 6(4), 7, 8(1), 9, 10, 11, 13 and 15 of the Mobile Courts Act, 2009 (Act 59 of 2009) are ultra vires the Constitution and violative of two basic structures of the Constitution, namely, Independence of the Judiciary and separation of powers among the three organs of the State, namely, the Executive, the Legislature and the Judiciary. The High Court Bench held that the operation of the mobile courts must be knocked out. The Court did not outright reject the concept of mobile courts but rather supported them as it viewed that the mobile courts are undoubtedly fast-track courts which are necessary in Bangladesh to facilitate access to justice at the grassroots level. Hence the Court observed that mobile courts may run but must be manned either by Judicial Magistrates or Metropolitan Magistrates.

## Circular to enforce Section 35A of the Cr. PC

According to Section 35A[[54]](#footnote-54) of the Cr. PC, except in the case of an offence punishable only with death, when any court finds an accused guilty of an offence and, upon conviction, sentences such accused to any term of imprisonment, simple or rigorous, it shall deduct from the sentence of imprisonment, the total period for which accused may have been in custody in the meantime, in relation to that offence. If the total period of custody prior to the conviction is longer than the period of imprisonment to which the accused is sentenced, the accused shall be deemed to have served out the sentence of imprisonment and shall be released at once, if in custody, unless required to be detained in relation to any other offence; and if the accused is also sentenced to pay any fine in addition to such sentence, the fine shall stand.

The Registrar of the High Court Division of the Supreme Court has recently through a circular[[55]](#footnote-55) directed concerned authorities to implement Section 35 A of the Cr. PC in letter and spirit. The circular empowers the prison authorities to release the prisoners after deducting the period they have already spent in prison-custody during pendency of trials.

# CHAPTER III

# FINDINGS FROM THE QUALITITATIVE STUDY: REASONS FOR THE UNUSUAL HIGH SHARE OF UTPs AND BOTTLENECKS WITHIN CRIMINAL JUSTICE SYSTEM

Consultants scheduled field visits to Rangpur, Barisal, Madaripur, Sylhet and Moulavibazar during September and October 2016 for undertaking an in-depth qualitative study. They were accompanied by GIZ staff from the RoL program. The consultants deemed it necessary to engage in field level consultation through Key Informant Interviews (KII) and Focus Group Discussions (FGDs) where feasible with different stakeholders with a view to discerning the gap between theory and practice. The target groups for the qualitative study comprised paralegals, implementing partner NGOs, family members of undertrial prisoners, prison officials, public prosecutors, police officers, civil surgeons, medical officers, ex-prisoners, judges, magistrates, lawyers, probation officers, GROs, court inspectors, bench clerks and representatives from the DLACs, Narcotics Control Department and the Prison Directorate. In-depth interviews with representatives from the CCCs were particularly useful in gaining insights into the key bottlenecks within the criminal justice system which impede the release of remand prisoners and contribute towards the huge backlog of criminal cases. The interviewees attributed overcrowding in prisons to an exhaustive list of challenges and unfair practices on the ground in contravention of existing laws as well as shared some statistical trends based on their day to day work experience which have been clustered and summarized below:



## Role of Magistrates and Judges

***Workload and its impact on case-backlogs***

1. There is a dearth of judges in the lower judiciary in comparison to the huge volume of pending cases. There is a backlog of approximately 7,000 cases in the criminal courts of Rangpur out of which 2,000 are pending before the Nari o Shishu (NoS) Tribunal alone. However, currently there are only 2 Additional Sessions Judges in charge of the NoS Tribunals of Rangpur. There is only one Additional Sessions Judge in charge of the NoS Tribunal in Barisal while there are around 2,300 cases pending before him. There are approximately 5,000 pending cases in Sylhet and about 7,229 cases in Moulavibazar, respectively.
2. The judges and magistrates are overburdened, and their focus is on the numbers which often preclude them to concentrate and decide cases judiciously.
3. Due to lack of adequate number of courts, judges are constrained to record the deposition of witnesses even after their attendance on a fixed date.
4. Recording of evidence is disrupted when a court is unable to sit on a date fixed for hearing.

***Capacity Issues:***

1. Post-separation of the judiciary, there is no provision for intensive practical training of judicial magistrates after their appointment under the Judicial Service Commission. Consequently, they are not adequately trained to apply judicial mind and sound judicial discretion around discharge or bail.
2. Judicial Magistrates often deliver non-speaking orders which do not detail out the background of what has been considered in arriving at a decision.
3. Judicial Magistrates often rely upon and are influenced by police and GROs in granting remand.

***Gulf between theory and practice:***

1. Judicial magistrates often refrain from scrutinizing the case diaries before granting remand.
2. It has become a routine practice for magistrates to pass a remand order or an order for detention based on the forwarding by the police officer without perusing the entries of the case diary.
3. Judicial magistrates often refrain from exercising sound judicial discretion and tend to pass orders for shown arrest of detained persons in new cases without perusing the case records.
4. Judicial Magistrates often tend to sign court warrants in their chambers before rising to the *Ejlash* or during short intervals at lunch time and pass orders remanding UTPs to pre-trial custody without the same being physically produced before the Court on due dates.
5. Ex-prisoners enlarged on bail with the assistance of GIZ have shared their frustrations of being brought to the court lock-up and sent back to prisons on many occasions without being physically produced before magistrates.
6. Rigid mindset of the judicial magistrates in rejecting discharge applications and refusing bail at the pre-trial stage is a major contributing factor.
7. No institutional mechanism in place to track, prioritize and hear cases based on the length of incarceration and socio-economic status of UTPs.
8. No proper observance and implementation of Criminal Rules and Order, 2009 by judicial magistrates.
9. Judicial magistrates are disinclined to exercise their discretionary power to grant bail when police report is not submitted within the stipulated timeframe in accordance with S167 (5) of Cr. P C.
10. Judicial magistrates seldom press for updates from IOs on the progress of investigation which encourages them to refrain from submitting the police report on time.
11. No application of the Probation of Offenders Ordinance 1960 in adjudicating cases of first and petty offenders.
12. No digitalized case tracking and update mechanism in place which accounts for lengthy and cumbersome disposal of criminal cases which eventually contributes to denial of justice.

***Hard Facts and Statistics:***

1. All judicial magistrates interviewed opined that 95% criminal cases in magistrate Courts are compromised or settled out of court.
2. Only 7-8% criminal cases result in conviction. The accused are acquitted in an overwhelming majority of criminal cases or the case is compromised at various stages. Notably, most criminal cases are false and fabricated. They mask property or relationship disputes among parties.
3. Cases which could be settled under the Village Court or through ADR often see their way into the criminal justice system.

## Role of the Police

***Challenges Re: Investigation***

1. Delay in submission of police report is a major impediment and a contributing factor towards pre-trial detention.
2. IOs have noted with concern that it is time consuming and challenging to investigate occurrence of alleged crimes in remote places. Seeking expert opinion from doctors, serologists, radiologists, forensic experts, hand-writing, and finger print and chemical experts also takes time.
3. On an average, in a month almost 70-80 cases are lodged in a police station that must be investigated.
4. Police is overworked and engaged in multitasking- their usual duties include, among others, registering general diaries, executing warrants, recovery of drugs and arms and other *alamats* and exhibits, investigation of alleged crimes, conducting searches and seizures, preparing list of tenants within their jurisdiction, maintaining communication with the local elites and the public at large, service and execution of summons and processes for departmental as well as public witnesses, beefing up security in cultural programs as well as rallies organized by political parties, ensuring security protocol for VIPs. They have very long working hours and are seldom appreciated for their demanding work and contribution in maintaining law and order and ensuring public security.
5. There is no commuting allowance for arresting an accused or a witness in an alleged crime committed within the local limits of a metropolitan area. However, a nominal transportation allowance can be claimed in case of apprehending an accused or a witness from a place which is more than 5 km away from the metropolitan area.
6. The officer in charge of a police station is entitled to a full-time vehicle. All other officers must apply for requisition of 16 vehicles those are routinely booked to carry out their regular duties on a roster basis (9 for night duty and 7 for the day shift). However, these vehicles are poorly maintained and seldom serve the purpose for investigation.
7. IOs are often required to travel to remote places in their own motor cycles for conducting investigations beyond their duty hours. There is no provision for the IOs to be reimbursed for their fuel costs.
8. There is no risk allowance for the officers above the rank of SI.

***Arbitrary Abuse of Powers:***

1. In practice, police often do not comply with the mandatory requirement of producing an arrestee before the nearest magistrate within 24 hours.
2. Likewise, police often do not exercise their discretion of arbitrary arrests judiciously and refrain from informing the family or relatives of the arrestee after the arrest.
3. Current trends of shown arrest of detained persons in new cases and apprehending many suspected accused against anonymous persons named in FIR lodged by informants across different police stations are directly contributing to the high number of undertrial prisoners.
4. Police do not cite specific reasons for apprehending suspected accused. However, they often tend to implicate habitual offenders, drug-users and those based on their previous credentials and past records (P.C.P.R).
5. It has been reported that many suspected accused apprehended in a case are subsequently discharged after having to incarcerate for some months in prison upon filing of FRT by the police. However, no legal action is invoked against the police.

***Other Contributing Factors:***

1. There are instances where the informant does not subsequently cooperate with the police during investigation.
2. If the informant in a case is dissatisfied and files a naraji against a FRT, it results in re-investigation which accounts for prolonged incarceration of the UTP.
3. Police are reticent to exercise their discretion of granting bail from police stations even in petty offences.
4. Instances of granting bail from police station are very rare. Options for diversion of petty cases from the police station for settlement through the local dispute resolution forums and CPFs are sparingly explored in sites outside the project intervention.
5. While registering an FIR, owing to their existing workload, the concerned police officers often refrain from primary investigation of the facts and circumstances of the case if the time, place and manner of occurrence of the alleged crime are properly documented in the General Diary.
6. It has been reported that police often act under pressure from the community as well as local elites to reduce into writing an ornamental FIR by adding applicable non-bailable and/or non-compoundable sections of penal laws with a view to ensuring detention of the alleged offender.
7. Police are risk-averse and disinclined to encourage an aggrieved informant to explore ADR. A police officer commonly believes that it is his/her primary duty to prevent the commission of a crime in society, s/he is wary that trivializing a complaint and encouraging ADR could lead to the commission of a serious crime which could otherwise be thwarted through timely intervention under the formal justice system.
8. There are instances of diversion of petty cases from the police station for settlement through the local dispute resolution forums and CPFs in recent times.
9. Arrests under Section 54 of the Cr. PC have seen a decline following the landmark judgment from the Appellate Division re: prevention of arbitrary arrests, police continue to apprehend shelterless and poor people under relevant sections of the Metropolitan Police Acts and Ordinances; Section 34 of the Police Act; and Section 22 of the Narcotics Control Act.
10. Post terrorist attacks in the Holey Artisan Bakery and in the wake of rising militancy and security threats across the country, arrests under Section 54 and unreasonable exercise of the power of remand under Section 167 have seen a sharp rise in recent times which are directly contributing to the high number of UTPs.

## Role of Touts

***Challenges re: reaching out to arrestees at an early stage:***

1. It has been observed that paralegals have very limited access to UTPs in police custody or lock-ups. Frequent transfer of police officers from *sadar* police stations with whom the paralegals had forged a good working relationship is a major impediment in providing legal assistance to UTPs at an early stage.
2. The reach of paralegals is also very limited as they are unable to communicate with arrestees in remote police stations. Touts work in close syndication with low ranking police officers following the arrest and apprehension of a suspect in the police custody. Unofficial rates are negotiated with the arrestee for securing his /her discharge or bail through their network of lawyers. However, UTPs are often denied access to justice in most cases and they continue to incarcerate till the time they met paralegals in court lock-ups or prisons.
3. In some cases, touts present in court premises also mislead the witnesses and persuade them to return from the court without deposing their evidence on the scheduled hearing date.

## Role of Probation Officers & Challenges in Implementation of the Children Act, 2013

1. Only 44 Probation Officers have so far been appointed across the country. The Social Welfare Officers continue to perform additional duties as probation officers.
2. Following the enactment of the Children Act 2013, a female SI has been designated to take over the role of a child friendly police officer in most police stations. However, in practice, these police officers seldom perform their duties laid down under Section 13 of the Children Act. They find it cumbersome to discharge the responsibilities conferred upon them under the special law in addition to performing their usual duties.
3. The designated child-friendly officers are yet to receive appropriate training to deal with children in contact or in conflict with the law or to provide counseling, first aid and other ancillary support to them.
4. Options for diversion including the possibility of granting bail from police stations to a child for allegedly committing a bailable offence in consultation with the Probation Officers are seldom explored by CAPO in accordance with Sections 48 and 52 of the Children Act.
5. In the absence of birth certificates or school certificates or date of birth entered at the time of admission in school, police in general rely upon the physical appearance of the child in determining the age of the child especially if s/he is above 14 years of age. Police are more inclined to register the age of a child as an adult to avoid legal complexities. They consider it a hassle to prepare separate charge sheet for the child if s/he has been alleged to have committed an offence together with adults as it would lead to separate trials.
6. Police are yet to be held accountable for willfully suppressing the real age of the child and recording his/her age to be above 18 (relying upon the physical appearance) in most cases.
7. Currently, children below the age of 12 years are generally produced before the Children’s Court by the police.
8. Police are disinclined to liaise with the probation officers and make an application to the court for verifying the age of the child through a radiologist by way of requisition. Even if the court grants permission, it takes considerable time for a report to be submitted after filing a requisition as radiologists are not available in all districts.
9. There is significant communication gap between the police and probation officers. The probation officers in many districts are not routinely informed if a child is brought to a police station or is arrested for the commission of an alleged crime along with other adults.
10. Police do not take proper initiatives to coordinate with the probation officers and trace the guardians of children in contact with the law. They also complain that probation officers are not readily accessible to help in such cases.
11. Probation officers have been further criticized for not playing a proactive role in preventing child marriages.
12. Probation officers must make phone calls to police stations to inquire if children have been apprehended.
13. There is no designated desk for probation officers in the court premise and there is no formal mechanism in place for informing probation officers in the event if an alleged child accused surrenders in a C.R case.
14. Courts are yet to pass probation orders requiring probation officers to submit a social inquiry report as stipulated under the Children Act.
15. There are instances where the complainant in a C.R case willfully suppresses the age of the child to ensure the detention of the child. As a result, children in conflict with the law often continue to incarcerate in jails until probation officers take necessary measures to send them to CDCs upon receiving information from jail authorities.
16. Probation and aftercare services continue to exist only in theory.
17. Probation officers are yet to explore the provision for settlement of disputes where a child has committed a less serious offence against an individual victim in compliance with Section 37 of the Children Act.
18. Children, women and transgender and other marginalized people are widely used as drug carriers. Although the Children Act has criminalized using children to carry or transport drugs, probation officers are yet to work in coordination with the Narcotics Control Department officials on this issue.

## Role of Medical Officers and Medico-legal Evidence

***Challenges: re: delay and mechanisms for accountability around false MCs:***

1. Delay in submission of medical certificates and filing of false medical certificates at the pre-trial stage and delay in deposition of medico-legal evidence at the stage of trial have been identified as factors contributing to the prolonged incarceration of UTPs.

1. Medical Officers interviewed have iterated that there is a dire need for practical training of government registered medical officers on medical jurisprudence especially around writing reports on injury, hurt, assault and rape.
2. In the absence of practical training and oversight, medical certificates are routinely produced containing language which is misleading. For example, instead of clearly detailing out the measurement and description of hurt or injury, doctors often tend to abruptly conclude the hurt as simple or grievous. Such reports have serious ramifications and account for the detention of UTPs.
3. After examination of rape victims, the most commonly used language in the reports prepared by doctors include judgmental statements which are humiliating for the rape victim. The commonly used phraseologies are: “She is habituated to sexual intercourse.” Or “No recent signs of forced sexual intercourse have been found.”
4. No central monitoring and oversight mechanism is in place under the Ministry of Health for online screening of medical certificates and holding the medical officers accountable.
5. Mandatory requirement of noting the Doctor’s ID code and mobile number in MCs is yet to be explored for curbing the practice of producing false and misleading certificates.
6. No provision for practical orientation of government doctors at the Upazila and district level currently exists on writing medical certificates.

***Challenges: re: medico-legal evidence:***

1. Although Section 32 of the NoS Act lays down the procedure for deposition of medico-legal evidence, initiative to bring together judges, magistrates, police officers and medical officers to engage in an intensive brainstorming on medical jurisprudence and medico-legal evidence is yet to be explored.
2. Currently, there is a dearth of radiologists in many districts. A central radiology unit has not been set up to review digital X-rays sent from the respective Civil Surgeon’s Office in every district and provide online reports through emails to save on time.
3. An instruction from the Civil Surgeon’s Office on fast-tracking the issuance of medical certificates within 3 days from the date of receiving a requisition is yet to be effected in every district.
4. Respondents have mooted that it would be helpful to form a team comprising a forensic expert, police and magistrate to prepare an inquest report.
5. Currently, post-mortem reports are normally produced within seven days.
6. Respondents observed that a medical board is entrusted with the responsibility of conducting the post mortem in UD cases which negates the possibility of biasness.
7. All government hospitals in every district are yet to be equipped with modern infrastructure to conduct DNA tests. They are yet to appoint forensic experts and provide appropriate skills training and logistics to the same.

## Role of Lawyers

***Challenges: honorarium, speed money, knowledge and accountability:***

1. NGO and DLAC panel lawyers have noted with concern that the honorarium provided to them is very nominal and unrealistic in providing expeditious relief and legal services to the UTPs.
2. Panel Lawyers lament they are unable to pay speed money to the court-staff as a result of which they are disinclined to assist with the disposal of cases of poor litigants.
3. Lawyers have admitted there is very little application of compounding cases under Section 345 of Cr. PC.
4. Lawyers are yet to be properly oriented around the use of Section 345 of Cr. PC.
5. No incentives are in place for lawyers to encourage their clients for exploring compounding of cases with the leave of the Court.
6. Some lawyers do not prepare well for their cases and apply for time petitions and seek frequent adjournments.

## Role of Court Staff

***Challenges: Speed money, knowledge and accountability:***

1. It has been reported that the Court Staff often do not cooperate with the indigent and poor litigants as well as lawyers who provide legal aid. It is alleged that they often change the serial number of cases.
2. Lawyers have noted that it is the responsibility of the court-staff to ensure that summons and processes are expeditiously transmitted subsequent to their signing by the Presiding Officer of the respective Courts for execution to the relevant departments.
3. Court Staff (steno/ computer operators) engaged under criminal courts are not familiar with legal terminology. They often contribute in preparing faulty orders which are indiscriminately signed by judicial magistrates.
4. The court staff in general is disinclined to perform their duties without speed money.

## Role of Witnesses

***Challenges re: Non-Appearance:***

1. Disposal of cases is delayed due to non-attendance of witnesses before the Court on scheduled hearing dates.
2. Speedier disposal in CR case may be possible when the complainant is proactive in ensuring attendance of witnesses in Court.
3. The complainants often tend to compromise or settle the case out of court or without prior permission of the Court in non-compoundable cases.
4. Change in social circumstances and undue pressure decide the fate of many criminal cases after the charge is framed or when a warrant has been issued and the case is ready for trial. Under such circumstances, it becomes difficult to produce the witnesses.

***Challenges: re: GR Cases:***

1. In GR cases, multiple factors have been identified for lengthy incarceration of UTPs and delay in disposal of cases.
2. There are no enabling provisions for protection of victims and witnesses in the existing legal framework of Bangladesh. This is a major cause for non-attendance of witnesses before the Courts.
3. Lawyer respondents have identified the following reasons for non-appearance of witnesses in Court:

* Summons and processes often remain unexecuted for long or are served upon witnesses after expiry of the scheduled hearing date.
* Conveyance for commuting, lodging and food expenditure incurred by public witnesses are not reimbursable.
* Police occasionally harass and intimidate the witnesses.
* It has been reported that the witnesses often collude with the opposite party, become bias and do not cooperate with the Court.
* Due to lack of adequate number of courts, judges are constrained to record the deposition of witnesses even after their attendance on a fixed date.
* Recording of evidence is disrupted when a court is unable to sit on a date fixed for hearing.
* There are no incentives for witnesses to commute from long distances and attend courts on a new date.
* It is a huge challenge to produce floating witnesses for the second time due to themselves being shelterless.
* It has been reported that it is challenging to track eye witnesses where the place of occurrence of an alleged crime is in a metropolitan area. It has been found that the witnesses do not have a permanent address, or they do not provide the correct address to the police. As a result, summons or warrants can’t be executed properly and witnesses cannot be produced before the Court on due dates.
* If the place of occurrence of an alleged crime is in a slum area and if any power holder within that area is somehow involved with the crime or is siding with the accused, it becomes impossible to produce witnesses.

## Role of Public Prosecutors and APPs

***Challenges: Pay, Recruitment, knowledge and accountability:***

1. Most lawyer respondents have noted with concern that the criminal justice system is suffering owing to the negative role of the PPs and APPs.
2. The long-standing demand of recruiting skilled, knowledgeable and experienced criminal lawyers to the position of PPs and APPs remain largely unmet.
3. In most cases, public prosecutors are politically-biased, partisan, under-paid and overworked. A PP receives a daily rate of 500 taka while an APP receives 200 taka as honorarium for a case. As such, they are more inclined to engage in private practice and assist resourceful clients.
4. It has been observed by some magistrates and Court-Inspectors that APPs often do not exhaust necessary steps to ensure attendance of witnesses in Courts on scheduled hearing dates.
5. Although it is the duty of the PPs to supervise the transmission of summons and warrants to the executive police under the orders of the criminal courts and to ensure that return of such processes are made without delay, they seldom comply with these duties.
6. PPs often engage in piecemeal examination of witnesses and seek adjournments as a result of which trial is delayed.
7. The prosecution witnesses like IOs, magistrates, forensic experts and medical officers hold transferable positions in service. Sometimes, it become difficult to ensure attendance of such witnesses on due dates before the Court once they are transferred to another working station.
8. On account of prolonged delay in holding trial, sometimes the departmental witnesses are unable to carefully peruse through the case records in advance and end up deposing faulty evidence.

## 3.10 Challenges with the Service of Summons and other Processes

1. Bench assistants and process servers often refrain from sending the summons and other processes expeditiously subsequent to their signing by the Presiding Officer of the Court.
2. Police seldom comply with the Criminal Rules and Orders. Often processes sent to the police for service or execution are not served on the accused and departmental as well as public witnesses within the time fixed by the Court for hearing.
3. Returns of unexecuted processes are not submitted to the Court before the date fixed by the Court for the next hearing. As a result, the Courts are precluded from re-issuing the processes and fixing new dates.
4. Non-execution reports are not sent to the Courts on time stating clearly the cause of delay in service and execution.
5. The SP or the Commissioner of Police routinely do not provide necessary instructions and oversee that processes sent to the police for service or execution are served by them with utmost expedition.
6. There is no clear timeframe for service or execution of processes under the Criminal Rules and Orders. It only lays down that processes should be served or executed expeditiously.
7. Causes for negligence or willful default on the part of the concerned police officers for delay in service or execution of processes are seldom investigated and no disciplinary action is invoked against them.
8. After passing an order of W/W by the Court, there is considerable bureaucracy and time gap which hinders the service and execution of processes on time. It is first sent to the office of the SP or Police Commissioner from where it is sent to the concerned police station for execution. It is reported that processes are often communicated and served upon the witnesses after the scheduled hearing date.
9. Owing to negligence of the court staff in not marking up in red ink showing the number of witnesses already examined in each case, processes are often reissued against the same witnesses.

## Challenges: re: Implementation of Cr. PC and CRO around processes

1. Police are disinclined to execute a Proclamation and Attachment Order in compliance with Sections 87 and 88 of the Cr. PC as they lack necessary logistics such as transport and manpower.
2. It has been observed that in order to meet the requirement of communicating notification to an absconding accused person to appear before the court through publication in national dailies having wide circulation as stipulated under Section 339B (trial in absentia), significant costs are involved (Taka 3,500 for notification in the newspaper) as a result of which these processes cannot be practically exhausted and a number of old cases have been pending for years.
3. Although mechanisms for accountability have been clearly stated under Rule 95 of the Criminal Rules and Order in relation to delay in holding trials resulting from unusual long intervals between the apprehension and appearance of the accused persons in compliance with the requirements under Sections 87, 88 and 339B of the Code, those are seldom exercised.

## Challenges facing Drug Users & Field-level NCD Officers

1. Most respondents including paralegals have observed that a large number of drug-dependents tend to reoffend. They account for about 22% UTPs.
2. Drug-users often come into contact with organized crime syndicates and hard-core criminals inside prisons as a result of which they often graduate to becoming drug-peddlers from drug-users.
3. Police also tend to implicate drug-users in other criminal cases after they are enlarged on bail based on their PCPR.
4. There is a tendency to implicate the poor as well as tea garden workers in drug cases.
5. Police have access to *yaba* and other drugs. They often tend to implicate innocent people by documenting a note in the police forwarding stating recovery of *yaba* and other prohibited drugs.
6. It is often challenging to provide legal-aid to those drug-users who continue to reoffend after being released.
7. It is daunting for drug-users to integrate with the society given they face alienation from their families as well as the community.
8. Respondents have noted that it is difficult to find a surety for bail in cases filed against drug-users by their families or parents.
9. In narcotics cases, significant time is exhausted in sending a chemical report from Dhaka subsequent to receiving a requisition. It takes 15-30 days for a chemical report to be sent to the court. The delay in submission of a chemical report is another contributing factor for the prolonged incarceration of UTPs in such cases as has been noted by most judicial magistrates
10. The scope for setting up chemical laboratories at the Divisional level is yet to be explored.
11. Options for conditional discharge of drug-users through getting them to sign a bond with a commitment from their end to abstain from usage of drugs and visit drug rehabilitation centers for counseling and treatment are hardly explored.
12. Probation Officers are not required by the Courts to submit a social inquiry report on drug-users who have come in contact with the criminal justice system for the first time. They are not entrusted with the responsibility to oversee and report the progress and change in behaviour of drug-users subsequent to attending counseling and undergoing treatment in drug rehabilitation centers.
13. It has been reported that offenders apprehended in narcotics cases are handed over to the police by the inspectors of the Narcotics Control Department. It takes 10-15 days for the SI of the NCD to submit a charge-sheet. Chemical Reports are produced before the Court within 10 working days.
14. Communication and coordination gap exists between the police and the officials of the NCD. It has been alleged that police seldom inform the officials of the NCD when they apprehend an offender in an alleged crime under the Narcotic Control Act.
15. The NCD officials do not have adequate logistics for conducting raids and searches based on information from sources relating to smuggling and transportation of drugs. They have to give requisition for rent-a-car service and police force to conduct raids and inspections.
16. Currently, there are only 2 government drug rehabilitation centers housed in Dhaka and Chittagong. In other districts, there are private drug rehabilitation centers which are more expensive.
17. Respondents have noted that drug-users should be diverted from prisons and provided long-term counseling and treatment to enable them to come out of their addiction.
18. They have iterated the need for budgetary allocations to set up a drug-rehabilitation and counseling unit for long-term treatment of drug-users in every government hospital with modern infrastructure in each district.

# CHAPTER IV

# SUMMARY REPORT ON THE SURVEY OF RELEASED PRISONERS

## Survey Methodology

The survey has served as a useful tool in assessing the socio-economic profile of detainees and identifying some of the blockages in various stages of the criminal justice system which prolonged their stay inside prisons. It provides an understanding of the level of support they received from paralegals and other criminal justice service providers while inside the prisons. It also lends a numerical basis to the percentage of released prisoners who were able to understand their basic legal rights and navigate the criminal justice system. The study population comprised ex-prisoners those have recently secured release. The sampling covered all 8 geographical divisions (35 districts) taking about 15 ex-prisoners from each sampled district which would result in a total of 15x34=510 respondents. However, during implementation of the survey, number of respondents exceeded 15 in some areas - for example in Rajshahi, 20 respondents were surveyed. On the other hand, number of respondents from Tangail, Sherpur and Noakhali were limited to 2, 4 and 8, respectively. Altogether, the total filled-in questionnaires were 498. Data for the study has been collected using structured questionnaire (Annex-00).

## Respondents Profile

Out of 498 respondents, only one has been found to be a foreigner (a citizen of Myanmar from Chittagong Prison) and all other 497 are Bangladeshis.

Out of 498 respondents, 87.8% are male and 12.2% female. Most of the respondents are Muslims (93%). Only 6% are Hindus, 0.4% (2 respondents) are from indigenous groups. Information on 3 respondents (0.6%) is not available.

Out of 498 respondents, 1 did not reply and 4 stated that their residence is not specific in village or town, which is about 1% of total respondents. Among the rest, 314 (63.1%) and 179 (35.9%) are from different villages and towns respectively. Most of the respondents- 97.6% (486 out of 498) are Bangalees (Bengali-speaking), 9 (1.8%) are indigenous, and ethnicity of 3 respondents is not mentioned. Out of 9 indigenous respondents, one each has been mentioned as Burmese, Tea Garden Worker and Urao; 2 are Rudra Pal and 3 Shantals.

## Socio-Economic-demographic profile

***Age and Sex:*** Most of the respondents fall within the age group of 20-39 years (75.1%). Notably, 13 respondents (2.6%) are found to be minor or fall within the age group of less than 18 years who were arrested in theft and drug related offences. If child protection safeguards and diversion measures as laid under the existing laws were applied, unlawful incarceration of this 2.6% could have been prevented. 109 respondents (21.9%) are from over 40 years. Average age of the respondents is 32.5 years with 32.2 years in case of males and 34.6 years in case of females. (Table No. 01 and 02)

***Education:*** More than 42% respondents have no education meaning they are either illiterate (11.6%) or can sign only (31.5%). 20.3% respondents have primary education and the remaining 30.1% have education up to at least secondary level. Only 11 (2.2%) respondents pursued education at higher secondary or graduate level. (Table No. 03)

***Marital Status:*** Marital status of 6 (1.2%) of the respondents has not been mentioned. Out of the others, 146 (29.3%) are unmarried and 301 (60.4%) are married. 15 (3%) of them fall into the categories of divorced, widower/widow. (Table No. 04)

***Occupation:*** Out of 498, data on 7 (1.4%) respondents were not available. Only 6.2% respondents noted that their occupation is agriculture. Occupation like household work (3.4%), housewife (4.8%), student (3.0%), and unemployed (5.2%) together accounts for 16.4% of the total respondents. Respondents involved in Small Business (10.6%) and Medium or Large Business (3.4%), giving total in business as 14%. Agriculture day labourer are 9.2% and Non-Agriculture day labourer 8.4%. If Rickshaw, Van or Push Cart Puller (11.0%) and labourer in Mechanized Transport (10.4%) are added with agricultural and non-agricultural day labourer, total respondents involved in these occupations together becomes 39.0%. (Table No. 05)

***Housing Status:*** Regarding ownership of house, 63.3% respondents live in their houses constructed on their own land. However, 8.2% respondents live in houses on other people’s land and 19.3% respondents live in rented houses. (Table No. 06)

***Livelihood:*** 67.7% respondents are the main bread winners of their respective households. Other main bread winners are spouse (6.2%), father (14.7%) and brother (5.6%). Female members as main earner of the household are mothers (2.2%) and other female members (0.8%). According to the respondents, at all levels, average monthly income of the households of male respondents is more than that of the female respondents. (Table No.07 and 09)

***Impact of Incarceration on Income:*** No significant difference or trend has been found in the level of income during the periods mentioned (before and after arrest). As shown in the table, there might not have important relation of household income with arrest of the respondents. (Table No. 08)

In response to the question whether any loan was incurred in securing release/ legal support, only 8.8% (44 respondents) replied positively, and the rest 426 respondents (85.5%) expressed that they did not incur any loan to get legal support.

## Legal issues

### Pre-Trial Stage

### Case related information

***Status of Case:*** Out of 498 respondents’ cases, 158 are in pre-trial stage, 225 in trial stage and 73 are disposed of. 23 respondents identified the status of case as “others” (unspecified) and remaining 19 did not respond to the question regarding present status of their cases. (Table No. 10)

***Multiplicity of Case:*** Out of 498 interviewees, 358 (71.9%) claimed that the case under which they were arrested was the first and only case against them. It may be noted that 34 could not manage bail within first six months of arrest though presumably they were not habitual offenders as they were brought to book for the first time. Multiple cases have been filed against 126 interviewees. 6 were found having no knowledge about number of cases filed against them and 8 did not respond to the question regarding number of cases that have been filed against them. (Table No. 11)

***Case recording authority:*** 452 (90.8%) cases concerning the respondents were filed with police stations and only 37 with Courts/tribunals. Remaining 9 did not respond to the question regarding the forum where litigation was initiated (Table No. 12).

***Nature of crimes:***

* Out of 498, maximum respondents (190) have been found to have incarcerated under drug related offences under the Narcotics Substances Control Act, 1990 and 146 under different sections of Penal Code, 1860. A total of 18 were in prison under allegation of offences under the Women and Children Repression Prevention Act, 2000 (Amended in 2003). 15 were in prison for petty offences under the Police Act, 1861 and another 15 were in prison under Rajshahi Metropolitan Police Ordinance. 5, 3 and 2 were in prisons under the Dowry Prohibition Act, 1883; the Special Powers Act, 1974 and the Negotiable Instrument Act, 1981 respectively. Only one foreign prisoner incarcerated under the Citizenship Act, 1951. 28 released prisoners were in prison under different laws relating to forest conservation, pornography, sexual harassment, human trafficking and illegal possession of arms. 65 respondents were unable to provide information under which law they had been imprisoned. 10 respondents did not respond to this question (Graph No. 01). Notably, the aforesaid data mirrors the findings of the JA[[56]](#footnote-56) data on most common crimes in their 5 target districts. According to the JA report, the most common crimes are drugs/narcotics, women repression, murder, robbery, dacoity, theft, riot, assault and rape.
* Out of 498 respondents, a total of 146 (29.31%) incarcerated in relation to cases filed under different sections of the Penal Code, 1860; 98 were imprisoned for theft, dishonestly receiving stolen property and criminal trespass under Sections 378-382, 410-414, 441-462 of the Penal Code; 3 for public nuisance and unlawful assembly or riot under Sections 143/147/148/149/189/323/333/109 of the Penal Code; 27 for murder, attempt to murder, grievous hurt, kidnapping and abduction under Sections 302/326/307/365/359/34 of the Penal Code; 8 for extortion, robbery and dacoity under Sections 383-389, 390-402 of the Code; 5 for voluntarily causing simple hurt, criminal intimidation under Sections 323/506 of the Penal Code; and another 5 in relation to cases under Sections 406/411/419/420/506 of the Penal Code for criminal breach of trust and cheating. (Graph No. 02)
* Out of 498 respondents, 229 incarcerated in drugs related cases. Interestingly, out of these 229 respondents, 125 claimed they were locked up just because of using drugs illegally. 46 were incarcerated for carrying drugs and 51 were locked up for illegal drug business/smuggling. 3 respondents said they were incarcerated for both using and carrying drugs, 3 said they were arrested under allegation of both using and trading and only 1 found to be imprisoned for carrying and trading drugs. (Table No. 17)

### *Arrest and Incarceration*

***Mode of Incarceration***

Out of 498 respondents, majority (478 persons) claimed that they were locked up through “arrest” while only 15 were incarcerated after surrender. 5 respondents did not respond. (Table No. 13)

***Status of compliance with laws and guidelines regarding prevention of arbitrary arrests:***

* Only 216 released prisoners/respondents were duly informed about specific reasons of arrest while 267 claimed that they were not duly informed. 5 did not respond to the question whether they were informed about specific reason of arrest by police. However, the High Court directives re: arbitrary arrests have not been followed by the law enforcing agencies. (Table No. 14)
* It is also evident from data explored under this study that HCD directives were not complied with during arrest of 39.2% respondents.
* Police or law enforcing agencies informed the family members/relatives of only 242 respondents soon after their arrest. 195 respondents’ families/relatives were not informed about the arrest. 49 respondents did not know whether their family members were communicated soon after their arrest or not. (Table No. 15)
* After having been arrested, only 224 respondents got opportunities to consult a lawyer. 255 respondents did not get an opportunity to consult a lawyer or seek legal assistance. 19 respondents did not respond. At least 51.2% of total 498 released prisoners were not allowed to consult a lawyer of their choice (Table No.16)

### *Investigation*

Out of 498 respondents, 138 noted that the investigation of their cases has been closed, 42 said the investigation was ongoing and 207 were found having no knowledge on the status of investigation. 111 did not respond. (Table No.18)

### *Police Report*

According to the data that had been explored under this study, police have submitted charge-sheet in 172 cases and final report in 23 cases. 15 respondents identified the status of police report as “others” but did not specify the status. 217 are not aware of the status of police report. 71 did not respond to the question. (Table No. 19). The tables re: investigation and police report indicate that a high number of released prisoners did not receive regular updates from lawyers or other sources, or, they might be unaware. The Justice Audit Report[[57]](#footnote-57) also reveals that the detainees either do not understand or have little understanding (in Comilla, Madaripur, Gopalganj) about what is happening to their cases.

### *Legal Aid and Services*

* Out of 498 respondents surveyed, everyone received legal aid either from the DLACs or from NGOs. 83 received legal aid from GoB and 343 received legal services from NGOs. 56 respondents said that they received legal services from other sources. 16 did not respond to the question regarding the legal service providers. (Table No.20)
* 288 respondents were highly satisfied with the legal support they have received. 117 were satisfied and 18 were somewhat satisfied with the legal support offered by the legal aid service providers. 2 respondents opined the level of satisfaction as dissatisfactory and 16 it as extremely dissatisfactory. (Table No.21)

### *Paralegal Support*

* Out of 498 respondents, 451 claimed to have received legal assistance from the paralegals. 28 respondents opined that they did not receive any service from the paralegals. 19 respondents did not respond to the question. (Table No. 22)
* Out of 498, majority (451 in number) respondents met the paralegals inside prisons, 3 were introduced to the paralegals at police stations and 2 were introduced at Court premises. 42 respondents did not respond to the question regarding how they were introduced with the paralegals. (Table No. 23). According to the Justice Audit[[58]](#footnote-58) (practitioners survey-paralegal) report, in criminal matters, the paralegals typically met with accused persons for the first time in target prisons, police stations and courts which resonate with the survey findings.
* 367respondents said that the paralegals assisted them with their release on bail. 23 said that the paralegals extended support to apply for discharge. 17 said that the paralegals helped them to exhaust steps in trial and appeal procedures. 48 said that the paralegals extended other support services to them. (Table No. 24)

### *Exploitation by Touts and Intermediate Agents*

* Out of 498 respondents, 15 noted that they received support from the touts/intermediate agents for bail before introduction with the legal aid service providers. 114 reported that they did not receive any assistance from touts or intermediates; whereas 271 said they have no knowledge regarding receipt of assistance from touts. (Table No. 25)
* Out of 498 respondents, 49 were introduced with intermediate agents or touts at different entry points. 7 respondents reported that they were introduced with touts at police stations, 34 reported that they were introduced with touts at Court premises and 8 said that they were introduced at prisons. Notably, the data affirms that timely access to paralegals reduces the scope of exploitation at the hands of touts. For example, as shown in the earlier table, 451 respondents were introduced with paralegals at prisons; whereas only 8 respondents were introduced with touts at prisons meaning once introduced with the paralegals there was no scope for the touts to intervene. (Table No. 26)

### *Bail*

* Out of 498 respondents, 60.6% were granted bail in response to the first bail petition moved by their lawyers, and first attempt for bail yielded no results for 33.7% respondents. 28 respondents were unable to provide any information on the question. Grant of bail in 60.6% cases (most of 498 cases were filed under non-bailable sections) reflects that the Courts were comparatively more flexible in using discretion as to granting bail in paralegal assisted cases. (Table No.27)
* Out of 498 respondents, 245 responded to the question re: preferring miscellaneous (misc.) case against the rejection of bail petition. Out of these 245, 73 preferred to file misc. case for bail and 172 did not proceed against the rejection order. Question regarding misc. case against rejection of bail was not relevant to 253 respondents (50.8%). (Table No.28)
* Majorityof the respondents (81.1%) said that they were released immediately after granting bail by competent courts. 12.9% had experienced delay in getting released immediately after bail was granted. 6% did not respond to the question, or, the question was not relevant to them. (Table No.29)
* Out of 498 respondents,357 did not respond to the question or, the question was not relevant for them. 7 respondents said they were released on the same day of granting bail and 102 were released on the next day. 11 reported they were released 2 days later, 9 were released 3 days later, 4 were released 4 days later and 8 after more than 5 days of granting bail. (Table No.30)
* Therespondents who experienced delay in release from prison identified some reasons for delay. 50 noted that their release was delayed due to lack of money. 14 said they did not find local guarantor and 51 said the bail bond did not reach the prison authorities on time. 25 respondents identified other reasons (unspecified) (Table No. 31)

### Trial Stage

### *Charge Framing and Application of Discharge Procedure*

* Out of 498 cases, chargehas been framed in 44.4% respondent’s cases. 28.3% respondents said that charge was not framed in their cases. It may be be noted that a large number of respondents (27.3%) did not respond to the question regarding status of charge framing. This indicates that surveyed ex-prisoners are either not updated or aware of the progress of their case which is also a contributing factor for overstay in prisons (Table No.32)
* 13.9% of total respondents said they applied for discharge while 21.7% did not apply. 30.5% respondents had no knowledge whether their lawyers applied for discharge. These figures further support the finding that prisoners lack awareness around legal remedies or progress on the status of their cases. (Table No. 33)
* Out of 498 respondents, 125 provided reasons as to why they did not apply for discharge. 18 did not apply due to financial reasons, 81 did not apply for discharge as their lawyers did not advise them for doing so and 26 respondents identified other reasons. 371 respondents left this question unanswered, or, the question was not relevant for them. (Table No.34)

### *Guilty Plea*

46.2% respondents reported that their lawyers did notadvise them to plead guilty during charge framing while 7.2% respondents noted that their lawyers advised them to plead guilty. 46.6% refrained from responding to this question, or the question was not relevant for them. (Table No.35)

### *Physical production in court*

* 18.1% respondents were produced before the concerned court only once following incarceration, 11.2% were produced twice and 3.6% thrice during the total period of incarceration. 2.0% said they were physically produced before court 4 times and 5.8% respondents were produced before court more than 5 times before release. 39% respondents could not remember the exact number of times they were produced before the courts. (Table No.36)
* Out of 498 respondents, 41.8% (208) had experience of returning from court lock-ups without being physically produced before Courts. 39.8% respondents did not have such experience. 18.5% did not respond to the question regarding appearance before Court. (Table No. 37)

### *Appearance of Witnesses before Court*

* Out of 187respondents (37.6%), 135 (27.1%) reported that witnesses did not appear before the court on time and 52 (10.4%) reported that the witnesses appeared before court on time. 311 respondents did not respond to the question. (Table No. 38)
* Out of 498 respondents, 160had no knowledge about how many times the time petition was preferred for non-appearance of witnesses and 321 respondents did not respond to the question regarding adjournment of proceedings due to non-appearance of witness. 4 respondents said time petition for non-appearance was submitted once during incarceration and 7 said time petition was preferred twice for such non-appearance. 6 respondents said the number of time petition was more than thrice. The JA[[59]](#footnote-59) report also indicates that the main reason for adjournments is non-appearance of witnesses. (Table No. 39)

### *Quashment and Remedy before the Supreme Court*

* 21 respondents moved to the High Court for a range of remedies. 120 said that they did not explore any remedy with the High Court and 54 said they had no knowledge about this. 303 did not respond to this question, or the question was not relevant to them. (Table No.40)
* 11 respondentsmoved to the High Court for bail, 1 moved for other (unspecified) remedies. 22 respondents did not know for what remedies they went to the High Court. 464 respondents did not respond, or, the question was not relevant for them. (Table No.41)
* According to the survey data, it is evident that a sizeable number of respondents did not try to explore remedies from the Supreme Court of Bangladesh. Out of 498 respondents, 12.4% did not move to the Supreme Court due to financial reasons. 5.8% did not move since their lawyers did not advise them. 1.4% respondents were not able to clearly specify as to why they did not move to the Supreme Court. 80.3% respondents left this question unanswered, or, the question was not relevant to them. (Table No.42)

# CHAPTER V

**PROCESS MAP**

### Bottlenecks in the Criminal Justice System

***At Police Station***

1. FIR is often registered without primary investigation under improper provisions/laws
2. Options for diversion of cases is sparingly explored
3. Tendency to register cases under non-bailable and non-compoundable sections
4. Implicating habitual offenders and drug users in certain cases based on P.C.P.R
5. No early screening as to age and mental state of alleged offenders
6. No MIS
7. Lack of adequate resources

***At Cognizance Court***

1. Complainants are not properly examined
2. Magistrates often refrain from exercising discretion and applying judicial mind to decide if a *prima-facie* case is made out

**PRE-TRIAL STAGE**

1. Investigations are delayed- not concluded within prescribed time-limit
2. Expert reports are delayed/lack of coordination
3. MCs are often falsely procured
4. Informants do not cooperate
5. Lack of Equipment and modern technology
6. No central monitoring mechanisms to oversee the investigations
7. Arbitrary use of powers during arrest
8. Limited practice re: diversion of cases
9. Non-compliance with the SC directives and guidelines re: arrest, detention and treatment of suspects
10. Indiscriminate arrest of children, vagabonds, shelterless and lunatics
11. Practice of shown arrest to detain drug dependents and repeat offenders
12. Increased arrest under police laws for petty offences
13. Non-application of probation laws

**Arrest**

**Investigation**

1. Not submitted within prescribed time-limit
2. Improper reports result in naraji applications which prolong the procedures

1. Lack of judicious application and discretion as to bail
2. Delayed release after bail; procedural dilemma
3. Rare practice of police bail

**Police Report**

**Bail**

1. Discharge provisions are sparingly explored
2. Limited practice of guilty plea
3. Lack of judicious charge framing, charge framed without prima-face case

**Charge Framing**

1. Orders of cognizance court/ magistrates are rarely challenged in the higher courts
2. Remedies under section 561A are sparingly explored (for bail, quashment etc.)

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**Misc. Case/ Appeal/ Revision at Pre-trial stage**

**TRIAL STAGE**

1. Non-speaking Judgment/Orders
2. Judgments are mostly silent about deduction of period already spent in prisons
3. Non-appearance of witnesses
4. High frequency of adjournments and irregular production of witnesses
5. Summons are not duly and timely served
6. Transfer of IOs, MOs, Police Officers as well as magistrates
7. Absence of digital case tracking and monitoring systems
8. Practical caveats around exhausting steps for trial in absentia

1. systems

**Examination of witness**

**Judgment/Order**

**CROSS-CUTTING ISSUES**

1. Legal aid for the poor is often translating into poor legal aid;
2. Lack of skilled, knowledgeable and experienced criminal lawyers in the posts of PPs and APPs
3. Lack of dedicated, committed and competent lawyers in the DLAC panel
4. No designated focal point to proactively navigate the criminal justice system on behalf of UTPs
5. No formal mechanism and oversight body to track, review and monitor progress of cases of UTPs
6. No accountability and incentives for court staff to expedite the disposal of cases of UTPs
7. No formal platform to jointly review and address the blockages within the criminal justice system by the key actors
8. No MIS system in place to collect and store data re: inflow into prisons for immediate intervention

# CHAPTER VI

# REGIONAL DEVELOPMENTS AND PRACTICES AROUND REDUCING OVERCROWDING IN PRISONS

This chapter will provide a snapshot of good practices (re: measures towards reducing prison overcrowding) that have been mooted or piloted in recent years in India, Sri Lanka and Malaysia. In India, they are an outcome of a spate of Supreme Court (SC) directives and guidelines in response to public interest litigation filed by concerned human rights activists (including former Justices of the Supreme Court of India) and civil society actors as well as recommendations emanating from consultations triggered at various levels involving key actors within the criminal justice system. Below is a raft of options either in the form of guidelines, directives, observations from the Apex Court or legislative and policy changes which if implemented in letter and spirit would go a long way in relieving the State of the burden of tackling the menace of overcrowding in prisons on one hand and reducing case backlogs on the other.

## Developments in India Re: Case-laws, Legislative Amendments and NGO initiatives

### Menace of overcrowding

Overcrowding in prisons adversely impacts the health of prisoners.[[60]](#footnote-60) In this case, it has been observed by the Supreme Court of India, that because of overcrowding, first offenders and petty criminals often mingle with hardened criminals and are influenced by them. In the same case, the Supreme Court has provided directives to the concerned jail authorities to enable prisoners to visit their homes in case of emergency like death, serious illness and on important festivals, relaxing the necessary formalities, including insisting for any deposit or security or police report. The jail authorities by way of follow up action may be instructed to submit the report of their returns to the concerned sessions judge. To this end, suggestions have been made for the posting of adequate number of escorts and providing vehicles by the Home Department to facilitate periodic visits by the prisoners to their homes. The Jail Superintendents have been further instructed to make necessary arrangements (by providing for police escorts and vehicles to the jail authorities) to produce the UTPs before the concerned courts (in which their cases are pending) on the hearing dates fixed by the same.

With a view to reducing overcrowding in prisons, the SC went on to recommend exploring other alternatives to imprisonment, such as fine; community service, parole, release before serving the full sentence upon conviction and probation.

### Observations on the rights of prisoners/ relationship between poverty and incarceration

The Indian Supreme Court has way back in 1980 emphatically iterated that prisoners cannot be robbed of their fundamental rights although it may result in limited curtailment of such rights while held in confinement.[[61]](#footnote-61) In the same case, the Court aptly suggested that most detainees who incarcerate belong to the economically and socially marginalized groups and owing to their financial and social limitations, their voices become silent inside the ‘*walled -off’* world of prisons.

### Advocating Towards a Therapeutic or Corrective Intervention for Prisoners

Emphasizing the need to treat criminals with dignity and compassion in consonance with human rights principles, the Indian Supreme Court[[62]](#footnote-62) has suggested curing “the diseased psychology” of an offender that is responsible for his/her criminal acts through a remedial or restorative approach to ensure his/her rehabilitation and integration with the community.

### Legislative Reforms through Amendments in the Code of Criminal Procedure Re: Overstay of UTPs in Detention

In recognition of the challenge of lodging high number of under trial prisoners in jails and its detrimental impact, significant changes were put in place through specific amendments to the Code of Criminal Procedure in India in 2005. The Code of Criminal Procedure (Amendment) Act 2005 came into effect on June 23, 2006. It has two newly inserted provisions – proviso to Section 436 that makes it obligatory for the Court to release on bail without surety an accused person charged with a bailable offence if s/he is unable to provide surety within a week from arrest. In such case, s/he is presumed to be indigent and it is mandatory for the Court to release the person on bail.

Section 436A succinctly lays down that an UTP (other than one accused of an offence punishable with death) cannot be allowed to incarcerate beyond the timeline of having served one half of the maximum sentence s/he would have received if convicted and has the right to apply for bail. In such case, s/he should be released on his/her personal bond with or without sureties.

### Supreme Court Guidelines towards setting up a mechanism for periodic monitoring and review of cases of under trial prisoners

Through a landmark judicial pronouncement[[63]](#footnote-63), the Indian Supreme Court for the first time accentuated the need for reviewing the cases of UTPs in sync with the spirit of Section 436A of the Cr. PC and directed concerned government authorities to explore and exhaust necessary measures to zero-in the possibility of prolonged incarceration of UTPs beyond half the timeline of the maximum sentence they would have received upon conviction.

### Observations and Guidelines Re: Inhuman Conditions in 1382 Prisons Case[[64]](#footnote-64)

Following a graphic story of the harrowing plight of 1382 prisons published in the Dainik Bhaskar (National Edition) on 24 March 2013, Justice R.C Lahoti through a letter drew the attention of the Social Justice Bench of the Supreme Court on the overcrowding in prisons; unnatural death of prisoners; gross inadequacy of staff and the quality and capacity of prison staff. In his letter, he sounded a note of caution that concerned authorities cannot absolve themselves of their duty to groom inmates for a productive life post-imprisonment and deploying efforts to segregate petty and first offenders from habitual and hard-core criminals. Subsequently, this letter was registered as a public interest litigation through an order dated 5 July 2013 and the Registry of the Court was directed to issue notice to appropriate authorities for furnishing formal responses on steps taken for the reformation and rehabilitation of prisoners.

Recognizing that the steps taken by the concerned authorities were superficial, the Social Justice Bench of the Supreme Court through an order dated 13 March 2015 required the Union of India to provide detailed information around certain queries including steps taken by the concerned government authorities for effective implementation of Explanation to Section 436 of the Cr. PC; the number of persons incarcerating owing to indigence and incapacity to furnish sufficient security/surety for their release on bail; the number of persons incarcerating for having committed compoundable offences and steps taken for the implementation of the Repatriation of Prisoners Act, 2003.

In response, the Ministry of Home Affairs through an affidavit flagged that in the absence of digitalized information management system, it was daunting to aggregate the data manually. As such, the Ministry explained that an e-prison application was being piloted so that it could be rolled out to all the prisons across India and once in place, this would serve as a tool for monitoring the status of prisoners and especially the UTPs. On the issue of implementation of Section 436 A of the Cr. PC, the MoHA informed that it had issued an advisory to concerned government authorities for constituting an Under-Trial Review Committee in every district headed by the District Judge and including the District Magistrate and the Superintendent of Police as members to review the cases of UTPs. It mandated that the URC should meet at least once in every three months. The advisory also required the Jail Superintendents to report to the District Legal Services Committees and the newly constituted URCs on cases where UTPs have completed more than one fourth of the maximum sentence. Besides, they were asked to educate UTPs on their right to bail. In a related vein, it required the District Legal Services Committees to instruct their panel lawyers to take up the cases of UTPs and provide legal assistance for their release on bail as well as take appropriate legal measures for the reduction of the bail amounts where applicable.

On the issue of avenues exhausted for the implementation of Section 436 of the Cr. PC, the MoHA referring to a previous advisory issued by the same way back in 2011 highlighted efforts exhausted by some of the States to reduce the number of UTPs which included releasing some of them under the Probation of Offenders Act, 1958 as well as encouraging NGOs and District Legal Services Committees to proactively take up cases of unrepresented UTPs and thereby accelerating their release.

A chart was annexed with the affidavit which was testimony to the fact that little or no steps were taken by most of the States in relation to persons incarcerating for having committed compoundable offences. However, what came across clearly from the affidavit was that many UTPs had not been released given they were unable to furnish security and surety. The affidavit remained silent as to what steps were taken to mitigate these challenges.

Lamenting that very little has been done on the ground to change the prison culture and reducing overcrowding in prisons, the following directives were issued by the Apex Court on 5 February 2016:

* URCs formed in every district should meet quarterly to review the cases of UTPs. The Secretary of the District Legal Services Committee has been mandated to attend these meetings and explore options for expediting the release of UTPs and convicts who have served their terms of imprisonment or are entitled to release because of remission granted to them;
* URCs are mandated to work for the effective implementation of Section 436 and Section 436A of the Cr. PC with a view to fast-tracking the release of UTPs and to take necessary action so that indigent UTPs do not continue to incarcerate for their incapacity to furnish bail bonds;
* URCs have been required to engage with concerned authorities to apply the Probation of Offenders Act in case of first offenders and expedite their release;
* The State and District Legal Services Committee have been directed to coordinate and take on sufficient number of competent lawyers in their panel to provide efficacious relief to needy UTPs;
* The Secretary of the District Legal Services Committee has been mandated to explore the possibility of compounding offences at the pre-trial stage and thereby ensure the release of those UTPs charged with compoundable offences before the commencement of trial;
* The Director General of Police and the Inspector General of Police in charge of police have been directed to ensure that funds allocated for the welfare of prisoners are effectively exhausted to improve their health, hygiene, sanitation, food, clothing and rehabilitation;
* The Ministry of Home Affairs have been required to implement the installation of Management Information System in all prisons without further delay;
* The Ministry of Home Affairs have been mandated to conduct an annual review of the implementation of the Model Prison Manual 2016 and ensure incorporation of relevant recommendations made by the senior government officials as well as the civil society;
* The URCs have been directed to focus attention on the issue of monitoring the prison conditions through regular jail visits as laid down in the composite document-the Model Prison Manual 2016.

### CHRI Findings on the Implementation of the Under-trial Review Committees

Commonwealth Human Rights Initiatives (CHRI) commissioned a study titled “Undertrial Review Mechanism: West Bengal” which primarily focused on the performance of Undertrial Review Committee (URC)[[65]](#footnote-65) in the State of West Bengal, India. The need for the formation of URCs in all States were emphasized way back in 1979 in a conference of Chief Secretaries where constitution of District and State level review committees was mooted. Since then the Central Government as well as the Supreme Court on various occasions issued orders/directions for formation of URCs. The All India Jail Reform Committee (1980-83) also recommended having effective mechanisms in place for review of the cases of UTPs on a regular basis at both District and State level. In January 2010, the Ministry of Law & Justice of India introduced the “Mission Mode Programme for Delivery of Justice & Legal Reforms – Undertrial Programme” with a view to reducing 2/3 of UTPs by July 2010. All these efforts seemed to have yielded insignificant results. Rather, the Indian judicial system was found to be struggling to uphold the constitutional promises of the individual liberty and rights of due process of law for its citizens.[[66]](#footnote-66)

The CHRI study documents the existing mechanism for review of cases of UTPs. Among others, it revealed that in 2011, the Correctional Service Department sent a proposal to the State Government for setting up of URCs. The Ministry of Home Affairs too stressed the importance of formation of such committee. However, no URC was formed in West Bengal.[[67]](#footnote-67) The study identified the need for constitution of URC in West Bengal as to “safeguard individual liberty and to guarantee fair trial rights especially to the unrepresented and the unfortunate.”[[68]](#footnote-68)

URCs are meant to be inter-agency coordination bodies providing a platform for all relevant persons to come together to assist the courts to ensure people’s right to liberty and fair trial. Generally, they are headed by the Chief Judicial Magistrate. In the State of Gujrat, among others, Civil Surgeon, District Education Officer, Social Defense Officer, representative of Public Works Department and Municipality also form part of such committee. The study strongly recommended formation of URC in West Bengal even though there exist 2 types of multi-agency committees i.e. District Monitoring Committee (DMC) and Administrative Committee (AC). According to the study, the existing committees do not have the mandate to deal with cases of UTPs. The DMC consists of the District Judge, District Magistrate and SP. The Chief Medical Officer is also included at times. The AC, on the other hand, comprises District Magistrate, District Judge and representative from the Public Works Department. The Jail Superintendent is also included. Neither of the Committees did conduct any review of undertrial cases.

The study noted that the existing review mechanism in West Bengal is limited to visit of Correctional Homes (CHs) by judicial officers, mostly, by the Chief Judicial Magistrates. The study revealed that there was a visit at least once in a month in 13 CHs. In 4 CHs, no visit was made. Analysis of the data collected through the survey indicates that even though judicial officers conducted routine visit to CHs, there was no review of undertrial cases. When asked, all the judicial officers opined that establishment of a mechanism for review of undertrial prisoners’ cases would immensely assist in reducing the undertrial prison population in the State.[[69]](#footnote-69)

The study indicates that vigilance by DMC and AC at the CHs is noteworthy. However, without having a formal process of review of undertrial cases, the ultimate objective of reducing undertrial population cannot be achieved. Therefore, the study strongly suggests that “there is a dire need for the institutionalization and set up of a mechanism to review cases of undertrial prisoners.”[[70]](#footnote-70) Considering the complex process involved in forming a new committee, the study recommends that the purpose can be served by modifying the mandate of existing multi-agency committees such as DMC or assigning the task to the relevant judicial officers. Finally, the study made a set of recommendations for formation and effective functioning of review committees in West Bengal.[[71]](#footnote-71)

### Apex Court Observations and Guidelines on Arbitrary Arrests

The Apex Court has flagged its concern that arrest brings disgrace, clips individual liberty and leaves perpetual scars not only on the arrestee but on his/her family.[[72]](#footnote-72) The Indian SC has lamented that the police are yet to come out of its colonial image, even after more than 6 decades of independence. It spoke on the public perception of the police: “it is sad that the public do not perceive the police to be people-friendly but as an institution for harassment and oppression.” In a related vein, it has iterated that the need for restraint in exercising the sweeping power of arrest has been emphasized time and again by the courts but has not yielded desired results in practice. It noted that “unreasonable exercise of the power to arrest is a demonstration of police arrogance and the failure of the Magistracy to check it. It is also a lucrative source of corruption within the police.”

The court strongly opined that the attitude to arrest first and then proceed with the rest is shameful and is a medium for harassing the vulnerable. It urged to strike a balance between exercise of the power of arrest and its justification. “No arrest can be made in a routine manner on a mere allegation of commission of an offence by an accused person without a reasonable satisfaction reached after some investigation into the genuineness of the allegation.”

In this case, the Court also emphatically advised to discontinue and discourage the practice of mechanically reproducing in the case diary, all or most of the reasons contained in Section 41 of the Indian Cr. PC for affecting arbitrary arrests. The Court further noted that prudence, utmost care and caution must be exercised by the concerned Magistrate in authorizing detention of an accused beyond 24 hours under Section 167 Cr. PC. It opined that, “in most cases, detention is authorized in a routine, casual and cavalier manner.” Seldom do the Magistrates engage their time and effort in satisfying themselves, whether the arrest made is in accordance with the law. Without prima facie recording the reasons for arrest, in most cases, concerned magistrates tend to authorize detention, without applying their judicial mind. The SC has strongly laid down that the police officers who fail to comply with the directives provided in this case would be liable to be punished for contempt of Court apart from facing departmental action. Likewise, the concerned judicial magistrates would tend to authorize unreasonable detention in exercise of their discretionary powers would also be liable for departmental action by the appropriate High Court.

Bearing in mind the ramifications of arrest and detention on the accused and his/her family, the Indian SC has opined that remand and custodial interrogation should be exhausted as the last resort.[[73]](#footnote-73) In Mhetre case, the Apex Court has referenced several cases and provided six suggestions which if implemented in the right spirit could limit the need for carrying out routine arrests:

* Direct the accused to cooperate with the investigation instead of arresting him/her right away;
* Confiscate important documents such as passports, title deeds of properties, share certificates and fixed deposit receipts of the accused;
* Direct the accused to execute personal bonds;
* Direct the accused to furnish adequate number of sureties deemed necessary by the prosecution based on the factual matrix of a case;
* Require the accused to provide an undertaking in writing stating that s/he will refrain from tampering with the evidence or intimidating the witnesses;
* Freeze the bank accounts of the accused pending investigation.

### Supreme Court Directives to Tackle Pendency of Criminal Cases

On 9 March 2017,[[74]](#footnote-74) a Division Bench of the Supreme Court of India reiterating that the right to speedy trial is an inalienable right guaranteed under Article 21 of the Indian Constitution made the following observations:

“The Court is entitled to issue directions to augment and strengthen investigating machinery, setting up of new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional judges and other measures as are necessary for speedy trial.”

The Apex Court referred to a decision arrived at a Conference held in April 2015 organized jointly with Chief Ministers of States and Chief Justices of High Courts where setting up of arrears committees were agreed upon with the mandate to review and clear backlog of cases pending for over 5 years. While expressing deep concern on the alarming statistics of over five-year cases pending before the different courts and the number of UTPs those have overstayed beyond five years, the Apex Court issued the following directions to the High Courts:

1. The High Courts may issue directions to subordinate courts that-

* Bail applications be disposed of normally within one week;
* Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials, where accused are in custody, be normally concluded within two years;
* Efforts be made to dispose of all cases which are five years old by the end of the year;
* As a supplement to Section 436A, but consistent with the spirit thereof, if an undertrial has completed period of custody more than the sentence likely to be awarded if conviction is recorded, such undertrial must be released on personal bond. Such an assessment must be made by the trial courts concerned from time to time;
* The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports;
* The High Courts are requested to ensure that bail applications filed before them are decided as far as possible within one month and criminal appeals, where accused are in custody for more than five years, are concluded at the earliest;
* The High Courts may prepare, issue and monitor appropriate action plans for subordinate courts;
* The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time; and
* The High Courts may take such stringent measures as may be found necessary considering judgment of this Court in Ex. Captain Harish Uppal (2003) 2 SCC 45.

## Measures to Reduce Prison Overcrowding in Sri Lanka

Like India and Bangladesh, overcrowding in prisons remain a pressing human rights challenge in Sri Lanka.[[75]](#footnote-75) As per statistics provided by the Commissioner of Prisons, the prison population outnumbered the system’s capacity by 50% on an average.[[76]](#footnote-76) Statistics from 2015 reveal that drug offenders accounted for almost 46% inmates while another 5% ended up behind the bars for being drunk in public places as per media reports in 2016.[[77]](#footnote-77) With a view to mitigating the challenge of over incarceration, the Sri Lankan Government set up an eleven-member Inter-institutional Task Force in September 2015 to scrutinize the legal and judicial causes responsible for prison overcrowding.[[78]](#footnote-78)

The members of the Task Force included one representative each from the Government Analyst Department, Department of Community Based Corrections, Department of the Legal Draftsman, Sri Lanka Police Department, Department of Prisons, Legal Aid Commission, The Judges Training Institute and two representatives each from the Attorney General’s Department and the Ministry of Justice.[[79]](#footnote-79) The Task Force was entrusted with the responsibility to evaluate the main reasons for prison overcrowding; to identify the role of different actors within the criminal justice system in reducing the prison population and develop concrete action plans; to monitor prisons as well as to advocate policies and measures to tackle this challenge and to oversee their implementation. It came across from subsequent discussions that drug dependents, fine defaulters, first offenders who are poor and arrested for non-violent crimes and are unable to furnish bail clog the prison system.[[80]](#footnote-80) The following recommendations have been mooted by the Task Force to ease the congestion in prisons[[81]](#footnote-81):

* Use of community-based corrections productively as a viable alternative to incarceration;
* Review and amend the Community Based Correction Act No. 46 of 1999 to make it more effective;
* Fully implement the provisions in Criminal Procedure Code (Amendment) Act No 4 of 1995 permitting the payment of fines in instalments instead of arresting those who fail to pay fines;
* Until prosecutions are made in High Courts regarding cases which the Magistrate's Court has no jurisdiction, to continue such cases in Magistrate's Court;
* Implement a Management Information System for preventing misplacement of files;
* Release persons detained without prosecuting on a bond;
* Ensure that magistrates visit prisons once a month to monitor prison conditions as mandated under the law;
* Utilizing police bailing method according to provisions in Bail Act No. 30 of 1997;
* Providing vocational training to ensure employment post imprisonment with marketable skills alongside imparting psycho-social counselling and spiritual education to offenders;
* Consider reducing death penalty to life imprisonment;
* Construction and relocation of prisons; and
* Creating a conducive environment for prisoners and staff of prison.
  1. **Efforts by the Malaysian Government to Reduce Prison Overcrowding**

With the objective of cutting down the high maintenance costs incurred by the Prison Department and Malaysian Government in housing inmates, the Ministry of Home Affairs focused its attention around exploring reforms in the prison system re: introduction of the parole system. Drawing from the Australian parole system, the Malaysian Government introduced parole under the Prison (Amendment) Act 2008 which came into effect on 30 June 2008.[[82]](#footnote-82)

The following persons are eligible for parole as laid down under the Prison Act:

* If s/he is sentenced to a minimum one year imprisonment for any offence other than the offences prescribed in the Fourth Schedule contained in the Prison Act;
* After s/he has served at least half of his term of imprisonment without considering the remission of sentence granted to him/her; and
* After s/he has undergone a rehabilitation programme approved by the Commissioner General while serving his/her sentence of imprisonment.

The Malaysian Government has also introduced a new legislation- The International Transfer of Prisoners Act, 2012 with a view to reducing the high number of foreign prisoners. Besides, it has adopted the following programs[[83]](#footnote-83) for the rehabilitation of prisoners and to relieve itself of the pressure to house and feed inmates:

* Industrial Prison Programme:

The programme aims to equip prisoners with employment skills upon their release through imparting of vocational trainings. This program was piloted in Kajang and Selangor prison and a bakery was set up within the prison compound to source bread to inmates in four other prisons beside its own.

* After-release development programme:

Under the Government Transformation Program, 14 halfway- homes for ex-convicts (those without family support) were set up by the Prison Department in May 2010. Between 2010-2013, 840 ex-convicts were housed under this programme out of which 90% found employment and none of them reoffended[[84]](#footnote-84).

* Improvement to the in-house rehabilitation programmes in prisons:

The Prison Department introduced a streamlining process to segregate first-time offenders from repeat offenders. It aimed to streamline and enhance the provision of rehabilitation programmes while ensuring that first-time offenders do not fall under the negative influence of hard-core criminals.

**CHAPTER VII**

**RECOMMENDATION AND CONCLUSION**

* 1. **Over-arching Recommendations Towards Reducing Overcrowding in Prisons in Bangladesh**

A menu of options has already been provided in the earlier chapter which could be explored by policy makers as well as key actors within the criminal justice system to reduce overcrowding in prisons. Alongside those options, recommendations mooted by various key informants as well as those flagged in other studies[[85]](#footnote-85) have been summarized below that may go a long way in reducing overcrowding in prisons:

* + 1. **Recommendations for the Police and the Ministry of Home Affairs**
* There is a need to educate the police around helping them to come out of their colonial image. They should be sensitized to refrain from indiscriminate and unjustifiable arrests of drug-dependents, poor, shelterless, vagabonds, destitute children and lunatics in the name of maintaining public safety and security;
* There is a pressing need to separate the investigative functions of the police and to equip them with adequate resources including skilled manpower and modern technology to fast-track investigation of alleged offences;
* Options for screening of cases prior to registering an FIR and diversion of petty cases to community based alternative dispute resolution forums and restorative justice platforms should be frequently explored;
* Police should be educated and empowered to exercise their discretion of granting bail at police stations where appropriate;
* Fast-track the installation of an updated software- CDMS system (it is supposed to be in place in every police station from October 2016). The software has the potential to assist in expediting investigation of alleged crimes within local jurisdiction.
* It may be helpful to track alleged criminals through information procured by sim registration of mobile phones and use of CDR.
* The Police Bureau of Investigation (PBI), a relatively new unit yet to be fully set up in all districts has skilled officers who have access to modern technology and equipment. It is claimed that they are trained to investigate serious offences under the Penal Code and are capable of fast–tracking investigations and produce unbiased reports.
* Harmful practice of shown-arrests should be strongly discouraged;
* Coordination between the police and the NCD officials should improve;

### Recommendations for the Judiciary

* With a view to reducing case backlogs and to relieve the burden of the judiciary, vacant posts should be urgently filled up by judges with solid experience and sound track record;
* The Supreme Court and the Judicial Administrative Training Institute (JATI) should collaborate for organizing intensive practical training of judicial magistrates after their appointment under the Judicial Service Commission;
* Young members of the lower judiciary should be adequately trained to apply judicial mind and sound judicial discretion around discharge and bail. The Indian Supreme Court has rightfully observed[[86]](#footnote-86) that “a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use.” In a related vein, it has urged judges to exercise judicial discretion with due care and caution. To this end it has noted that “an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use, is the hallmark of a prudent exercise of judicial discretion.”
* The Supreme Court Legal Aid Committee should periodically arrange workshops, symposiums, seminars and lectures by experts to sensitize judicial officers, police officers and investigating officers, so that they can properly understand the significance of individual liberty vis-à-vis public interests;
* The judiciary should collaborate with the DLACs and prison authorities to prioritize and hear cases based on the length of incarceration and socio-economic status of UTPs;
* The monitoring and implementation of enlightened SC directives and guidelines should be decentralized and taken up by the District Judges;

### Recommendations for the Bar Council

* Lawyers should be educated, sensitized and incentivized to encourage their clients around compounding offences under Section 345 of the Cr. PC;
* Widespread dissemination of enlightened SC directives and guidelines re: prevention of arbitrary arrests and unreasonable exercise of the power of detention and treatment of suspects should be explored jointly by the bar associations, judiciary, media and civil society representatives;

### Recommendations for the Ministry of Social Welfare

* Steps should be explored for appointing adequate number of probation officers and orienting them for effective application of the Probation of Offenders Ordinance, 1960;
* Children in contact and in conflict with the law should be dealt with only under the Children Act 2013;
* Incarceration of children in prisons can only be avoided if the concerned duty-bearers are properly oriented and there is a platform for inter-institutional coordination among the police, probation officers, lawyers, judiciary, jailors and GROs as well as court staff.
* There is a need to educate and orient probation officers and CAPO to help them in discharging their duties as laid down under the Children Act 2013;

### Recommendations for the Ministry of Health

* Practical training and orientation of doctors at the Upazila and district levels on writing medical certificates should be arranged;
* A central monitoring and oversight mechanism should be set up at right earnest under the Ministry of Health for online screening of medical certificates and holding the medical officers accountable for producing false MCs;
* A mandatory practice for noting the Doctor’s ID code and mobile number in MCs should be introduced by the Ministry of Health for curbing the practice of producing false and misleading certificates;
* Initiatives to bring together judges, magistrates, police officers and medical officers to engage in periodic brainstorming on medical jurisprudence and medico-legal evidence should be urgently explored;
* Budgetary allocations for setting up a drug-rehabilitation and counseling unit for long-term treatment of drug-users in every government hospital with modern infrastructure in each district is a priority;

### Recommendations for the Ministry of Law, Justice and Parliamentary Affairs

* Legislative amendments within the Code of Criminal Procedure in sync with the SC directives and guidelines re: prevention of arbitrary arrests should be explored;
* Legislative amendments within the LASA should be actively explored to do away with the practical caveats which impede delivery of expeditious and effective legal aid to the needy UTPs;
* Emphasis must be laid upon upgrading the skills and competencies of the panel lawyers enlisted in the different committees formed under the LASA with a view to enabling budding young, committed and dynamic lawyers to be empaneled;
* The honorarium offered to panel lawyers is too nominal to ensure delivery of quality legal services to poor beneficiaries. For example, the current fee allocation (BDT 700 for preparing a complaint or Appeal Memo, BDT 500 for arguments, BDT 200 for writing an FIR or GD, BDT 300 for drafting petition of Cr. Misc. case, BDT 500 for drafting/hearing bail application and BDT 400 for preparing and submitting bail bond) must be revised and upped to encourage and incentivize competent lawyers to take up the cases of poor UTPs and provide effective and timely legal remedies;
* The regulation under the LASA determines the advocate’s fee for services provided by them during various stages of the litigation. The panel lawyers or their clerks and court officials demand speed money from the service seekers. This is a practical caveat which impedes the steady progression of a case and hence requires immediate attention;
* Commuting, boarding and food cost for the public witnesses should be covered from the legal aid funds;
* A portion of the legal aid fund could be exhausted in paying fines or furnishing bail to fast-track the release of indigent prisoners (first offenders);
* Competent, experienced and skilled criminal lawyers should be appointed to the posts of PPs and APPs and necessary policy changes effected to this end.

### Recommendations for the Prison Directorate

* First offenders, drug-dependents, juveniles and women should not be allowed to incarcerate in prisons where they run the risk of mingling with hardened criminals and habitual offenders;
* There should be a mechanism to identify and screen drug dependents for referrals to rehabilitation and counselling centers so that they do not languish inside prisons and re-offend.

### Recommendations for the IRSOP Project

* Deploy increased number of paralegals at police stations (key entry point for inflow into prisons) and courts to proactively assist needy arrestees and suspects;
* Collaborate with the Ministry of Information and Technology and pilot an updated MIS system re: inflow of criminal cases concerning UTPs and roll out in police stations, courts and prisons across Bangladesh;
* Co-ordinate with partner NGOs for training and motivation of court-staff on legal aid services to eradicate the practice of demanding speed money from lawyers providing legal assistance to indigent UTPs;
* Explore measures with implementing partners for monitoring implementation of existing legal procedures and guidelines laid down in Cr. PC, CRO and Special Laws as well as systematic dissemination of landmark SC directives and guidelines among the justice service providers.
  1. **Concluding Observations**

The study provides the evidence base that in the absence of designated focal points to proactively provide legal assistance and awareness to UTPs, it is daunting for them to navigate the criminal justice system. The study would like to propose that the role of the paralegals be institutionalized by coopting them into the government legal aid program in the long run. Recognizing that there is a dire need for an institutional mechanism and platform to periodically review and address the blockages within the criminal justice system by key duty bearers, the study would like to recommend that the mandate of the DLACs be extended to track, review and monitor progress of cases of UTPs. The oversight body should ensure implementation of Section 35 A of the Cr. PC in letter and spirit. In an ultimate analysis, inter-institutional cooperation and coordination among the key actors within the criminal justice system holds the key in catalyzing policy and practice level changes for reducing overcrowding in prisons in Bangladesh.

# ANNEXURE -01: Summary of Methods and Target Groups to Conduct the UTP Study

|  |  |  |  |
| --- | --- | --- | --- |
| **Sl. No.** | **Target groups** | **Method** | **No.** |
| **1.** | **Ex-Prisoners / family members of ex-prisoners those have benefited from IRSOP** | **FGD** | **1 in each district** |
| **2.** | **Paralegals and implementing partner NGOs** | **FGD** | * **-Do-** |
| **3.** | **Police (OC, IO, SI)** | **KII** | **-Do-** |
| **4.** | **CJM/CMM/ Addl. Sessions Judge** | **KII** | **-Do-** |
| **5.** | **Lawyers (NGO Panel/ DLAC/Private)** | **FGD** | **-Do-** |
| **6.** | **Civil Surgeon/ Deputy Civil Surgeon** | **KII** | **-Do-** |
| **7.** | **Court Staff (Process Servers/ Nejarot/ CI)** | **KII** | **-Do-** |
| **8.** | **Probation Officers** | **KII** | **-Do-** |
| **9.** | **Narcotic Control Department Officials** | **KII** | **-Do-** |

# Annexure-02: Survey Questionnaire

**Improvement of the Real Situation of Overcrowding in Prisons in Bangladesh**

[A Joint Project of Ministry of Home Affairs and Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH]

**Survey on the Status of Released Prisoners**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  | Date of Interview | Day | | Month | | Year | | | |
| Serial No. |  |  |  |  |  |  |  |  |  |  |  |  |  |

|  |
| --- |
| Declaration: This survey is exclusively meant for research. Data collected from the interviews will not be used for any other purpose, or shared with any other person(s) who are not involved with this research. Maintaining confidentiality of data is the sole responsibility of the research team. |

Name of the interviewer/ paralegal: **---------------------------------** Signature: --------------------------------

**A. Identification of the respondent**

A1. Name of the respondent: -----------------------------------------------------

|  |  |
| --- | --- |
| A2. Nationality | 1. Bangladeshi □  2. In case of foreigners, mention nationality.................. |
| A3. Present Address | Village: .......................................................  If urban, House no. : .......................................................  Name of road: .......................................................  Union/Ward: .......................................................  Upazila: ............................. District: .................................. |
| A4. Main place of residence is in rural or urban area? | 1. Rural □  2. Urban □  3. not specific □ |
| A5. Age (in full years) | ……..Years |
| A6. Sex | 1. Male □  2. Female □  3. Transgender □ |
| A7. Religion | 1. Islam □  2. Hinduism □  3. Buddhism □  4. Christianity □  5. Other (Specify)............................. |
| A8. Ethnicity | 1. Bengali □  2. Ethnic community (mention name) □..................... |
| A9. Education, highest class passed or degree obtained | □Illiterate □Can Sign □Primary □ class 6-10 □ SSC □ HSC □ Graduate □ Post Graduate |
| A10. Marital Status | 1. Unmarried □  2. Married □  3. Divorced □  4. Widow/Widower □  5. Separated □ |
| A11. What is your current occupation? | 1. Agriculture (own land), sharecropper, or mortgaged land □ 2. Agricultural day labourer □ 3. Non-agricultural day labourer □ 4. Pulling rickshaw/van □ 5. Cottage industry or self-employment □ 6. Labourer in mechanized transport □ 7. Small trade – tea stall, hawker etc. □ 8. Medium or large business □ 9. Skilled worker – carpenter, construction, weaving, work in garage etc. □ 10. Household work – care taker, cook, maid- servant etc. □ 11. Housewife □ 12. Student □ 13. Unemployed □ 14. Government/non-government service □ 15. Other-specify........................ |
| **B. Household Information** | |
| **Information on housing** | |
| 1. Ownership of the household | 1. House on own land □ 2. Own house on other’s land – relative, neighbour, friend   □   1. House on khas/govt. land or on embankment   □   1. Other’s house allowed to stay □ 2. Rental house □ 3. Slum □ 4. Homeless □ 5. Other-specify....................................... |
| Monthly income of the family | |
| B2. Who is the main earner of the family? | 1. Self □  2. Spouse □  3. Father □  4. Mother □  5. Brother □  6. Other female member □  7. Other male member □  8. Other, Specify.................................................. |
| B3. Average monthly income of the family | ....... .......Taka |
| B. Immediately before getting into prison | ....... .......Taka |
| B5. Last monthly income of the family | ....... .......Taka |
| B6. Did your family incur any loan for your release from prison? | Yes  No |

**SECTION C: LEGAL ISSUES**

**SECTION C1: PRE-TRIAL STAGE**

**C 1 INFORMATION REGARDING CASE/ FIR/COMPLAINTS)**

|  |  |  |
| --- | --- | --- |
| C1.1 | What is the present status of your case under which you were arrested? | Pre-trial  Trial  Disposed  Others (please specify)---------------- |
| C1.2 | Is this the first and only case you are charged with? | Yes  No  Don’t know |
| C1.3 | If yes, under which section/law the case was filed? | -----------------------------------------  Don’t know |
| C1.4 | Was there any co-accused with you? | Yes  No  Don’t know |
| C1.5 | If Yes, how many? | Persons -------------------- |
| C1.6 | Are they in prison or released on bail? | 1. ---------- Prison 2. ---------- Released on bail 3. Don’t Know |
| C1.7 | Where was the case initiated? | 1. Thana/Police station 2. Complaint in Court |

**C.2 INFORMATION ABOUT IMPRISONMENT**

|  |  |  |
| --- | --- | --- |
| C2.1 | How were you imprisoned? | 1. Arrest □  2. Surrender □  [If the answer is ‘arrest’ ask next questions or else avoid next three questions] |
| C2.2 | What was the date of your arrest? | -----Day-----Month-----Year |
| C2.3 | Was the reason of your arrest explained to you? | Yes  No |
| C2.4 | Were your family members/relatives informed about your arrest?) | Yes  No  Don’t know |
| C2.5 | Were you allowed to consult a lawyer? | Yes  No |
| C2.6 | Following your imprisonment, when were you allowed to consult a lawyer/paralegal/anyone who can provide legal assistance? | --------- Days,  Can’t remember |
| C2.7 | For how long were you in prison? | …….Years……. Months …… Days |
| C2.8 | For which offence were you in prison? | [If the answer is drug related please specify]  a. User □  b. Carrier □  c. Dealer □ |

**C.3 INVESTIGATION**

|  |  |  |
| --- | --- | --- |
| C3.1 | What is the present status of investigation? | Closed  Still ongoing since -------- Days **----------------** Months -----------Years  Don’t Know |
| C3.2 | If the investigation is closed, please mention how long did it take to investigate your case? | ----------------- Year **----------------** Months  -------------------- Days |

**C.4 POLICE REPORT**

|  |  |  |
| --- | --- | --- |
| C4.1 | By which process you got released from prison? | 1. On bail □  2. Discharged from the case □  3.Acquitted from the case □  3. Others (specify) ---------------------- |
| C4.2 | What kind of report did the police give? | 1. Charge sheet □  2. Final Report □  3. Don’t know □  3. Others (specify) --------------------- |

**C5 LEGAL ASSISTANCE**

|  |  |  |
| --- | --- | --- |
| C5.1 | Where did you get the legal aid services? | 1. Government (DLAC) □ 2. Non-govt. organization (Please mention the name) ---------------------- 3. Self □ 4. Others (Please specify) ………………………   [if the answer is 1 or 2 please ask questions C5.2 and C5.3] |
| C5.2 | What kind of assistance did you receive from DLAC/NGOs?) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| C5.3 | Are you satisfied with the legal aid services? | * 1. □ [Highly dissatisfied]   2. □ [Dissatisfied]   3. □ [Somewhat satisfied]   4. □ [Satisfied]   5. □[ Highly Satisfied] |
| C5.4 | Have you ever received any assistance from a Paralegal? | Yes  No  If yes, ask questions C5.5 and C6.6 |
| C5.5 | If yes, what kind of service or assistance have you received from them in relation to your case? | 1. Bail □ 2. Discharge □ 3. Trial and Appeal □ 4. Others (Please specify)---------------- |
| C5.6 | Where did you come into contact with the paralegals? | 1. Police Station □ 2. Court □ 3. Prison □ |
| C5.7 | Have you sought any assistance from other sources like touts? | Yes  No  Don’t know |
| C5.8 | Where did you meet them? | 1. Police Station □ 2. Court □ 3. Prison □ |
| C5.9 | Have you benefitted or have been harassed from their services? | 1. □ [benefitted] 2. □ [lost money] 3. □ [time waste] 4. □ [Harassed] 5. □ [Others (please specify)………………….] |

**C6 BAIL**

|  |  |  |
| --- | --- | --- |
| C6.1 | From which court did you get bail? | From…………………………….Court  Don’t know |
| C6.2 | Did you get bail after applying for the first time? | Yes  No  If the answer is no please ask questions C6.3 and C6.4 and if the answer is ‘yes’ please ask question C6.5 |
| C6.3 | How many times the application was moved before your bail was granted? | ...... Times  Don’t know |
| C6.4 | Did you file miscellaneous case against the rejection of bail? | Yes  No |
| C6.5 | Were you released from prison within 24 hours after your bail was granted? | Yes  No  If the answer is no please ask questions C6.6 and C6.7 and if the answer is ‘yes’ go to section ‘D’ |
| C6.6 | How long did it take for your release from prison following your bail? | …………… Days |
| C6.7 | What was the reason for delay in bail? | Did not have money  Did not find any surety  Lawyer did not send the bail bond on time  Prison authority did not receive the bail bond on time  Others (please specify) …………………. |

**D TRIAL STAGE**

**D1 CHARGE/DISCHARGE/GUILTY PLEA**

|  |  |  |
| --- | --- | --- |
| D1.1 | Has the charge been framed against you? | Yes  No |
| D1.2 | Did anyone apply for your discharge? | Yes  No Don’t know |
| D1.3 | If not, identify the reasons? | 1. Financial  2. Lawyer did not advise  3. Others (Specify)------------------- |
| D1.4 | Did your lawyer advice you to accept the charge/plead guilty during the framing of charges? | Yes  No |

**D2 PRODUCTION OF UNDER TRIAL PRISONERS IN COURT**

|  |  |  |
| --- | --- | --- |
| D2.1 | How many times had you been produced before the Court after imprisonment? | ……………………..Time  can’t remember |
| D2.2 | Have you ever been brought back from court without being physically produced before the judge? | Yes  No |

**D3 APPEARANCE OF WITNESSES IN COURT**

|  |  |  |
| --- | --- | --- |
| D3.1 | Did the witnesses appear before the Court on time? | Yes  No |
| D3.2 | How many adjournments had been sought for non-appearance of witnesses? | ................Times  Don’t know |

**D4 QUASHMENT/ HIGHER COURT REMEDIES**

|  |  |  |
| --- | --- | --- |
| D4.1 | Did you or the other party move to the Higher Court for relief? | Yes  No  Don’t Know |
| D4.2 | If yes, please specify the purposes | 1. Bail  2. Quashment  3. Others …………………………………..  4. Don’t know |
| D4.3 | If no, please identify the reasons for not exploring the remedies available at the Higher Court? | 1. Financial  2. Lawyer did not advise  3.Others (Please specify) ------------- |

# Annexure- 03: List of Tables and Graphs

**Quantitative Study Report on Survey of Released Prisoners**

**(Socio-Economic and Legal Issues)**

# Table No. 01: Age of the respondents

|  |  |  |
| --- | --- | --- |
| Age Group | Frequency | Percent |
| Below 18 | 13 | 2.6 |
| 20-29 | 200 | 40.2 |
| 30-39 | 174 | 34.9 |
| 40-49 | 66 | 13.3 |
| Over 50 | 43 | 8.6 |
| Total | 496 | 99.6 |
| NA or No Response | 2 | .4 |
| Total | 498 | 100.0 |

# Table No. 02: Average Age of the Respondents by Sex

|  |  |  |
| --- | --- | --- |
| Sex | No. of Respondents (N) | Mean |
| Male | 435 | 32.2 |
| Female | 61 | 34.6 |
| Total | 496 | 32.5 |

# Table No. 03: Level of Education of the Respondents

|  |  |  |
| --- | --- | --- |
| Level of Education | Frequency | Percent |
| Illiterate | 58 | 11.6 |
| Can sign only | 157 | 31.5 |
| Primary | 101 | 20.3 |
| Class VI-X | 90 | 18.1 |
| SSC | 29 | 5.8 |
| HSC | 20 | 4.0 |
| Graduate or above | 11 | 2.2 |
| Total | 467 | 93.8 |
| Not Specific or No Response | 32 | 6.4 |
| Total | 498 | 100.0 |

# Table No. 04: Marital Status

|  |  |  |
| --- | --- | --- |
| Marital Status | Frequency | Percent |
| Unmarried | 146 | 29.3 |
| Married | 301 | 60.4 |
| Divorced | 15 | 3.0 |
| Widower or Widow | 15 | 3.0 |
| Separated | 15 | 3.0 |
| Total | 492 | 98.8 |
| NA or No Response | 6 | 1.2 |
| Total | 498 | 100.0 |

**Respondents Profile: Economic Issues**

**Table No. 05: Distribution of the respondents by their Occupation**

|  |  |  |
| --- | --- | --- |
| Occupation | Frequency | Percent |
| Agriculture | 31 | 6.2 |
| Agri day labourer | 46 | 9.2 |
| Non-Agri day labourer | 42 | 8.4 |
| Rickshaw, Van or Push Cart Puller | 55 | 11.0 |
| Handicraft or self employed | 7 | 1.4 |
| Labourer in Mechanized Transport | 52 | 10.4 |
| Small Business | 53 | 10.6 |
| Medium or Large Business | 17 | 3.4 |
| Skilled work | 37 | 7.4 |
| Household work | 17 | 3.4 |
| Housewife | 24 | 4.8 |
| Student | 15 | 3.0 |
| Unemployed | 26 | 5.2 |
| Service | 21 | 4.2 |
| Other | 48 | 9.6 |
| Total | 491 | 98.6 |
| NA or No Response | 7 | 1.4 |
| Total | 498 | 100.0 |

# Table No. 06: Ownership of Homestead Land

|  |  |  |
| --- | --- | --- |
|  | Frequency | Percent |
| House in Own Land | 315 | 63.3 |
| House in other's land | 41 | 8.2 |
| House on government khas land | 23 | 4.6 |
| Living in other's house | 7 | 1.4 |
| Rented house | 96 | 19.3 |
| Other | 12 | 2.4 |
| Total | 494 | 99.2 |
| NA or No Response | 4 | .8 |
| Total | 498 | 100.0 |

# Table No. 07: Main Earner of the HH

|  |  |  |
| --- | --- | --- |
| Main Household Earner | Frequency | Percent |
| Self | 337 | 67.7 |
| Spouse | 31 | 6.2 |
| Father | 73 | 14.7 |
| Mother | 11 | 2.2 |
| Brother | 28 | 5.6 |
| Other female member | 4 | .8 |
| Other male member | 5 | 1.0 |
| Other | 7 | 1.4 |
| Total | 496 | 99.6 |
| NA or No Response | 2 | .4 |
| Total | 498 | 100.0 |

# Table No. 08: Average Monthly Income of the Households in Different Periods

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Level of Income (Taka) | Average Monthly Income | | Average Monthly Income before arrest | | Average Monthly Income last month | |
| No. of Respondents | % | No. of Respondents | % | No. of Respondents | % |
| 2,500<= | 23 | 4.6 | 28 | 5.6 | 21 | 4.2 |
| 2,501-5,000 | 114 | 22.9 | 129 | 25.9 | 102 | 20.5 |
| 5,001-7,500 | 119 | 23.9 | 131 | 26.3 | 119 | 23.9 |
| 7,501-10,000 | 155 | 31.1 | 106 | 21.3 | 134 | 26.9 |
| 10,001-12,500 | 15 | 3.0 | 16 | 3.2 | 16 | 3.2 |
| 12,501-15,000 | 28 | 5.6 | 29 | 5.8 | 25 | 5.0 |
| 15.000> | 39 | 7.8 | 37 | 7.4 | 28 | 5.6 |
| Total | 493 | 99.0 | 476 | 95.6 | 445 | 89.4 |
| NA or No Response | 5 | 1.0 | 22 | 4.4 | 53 | 10.6 |
| Total | 498 | 100.0 | 498 | 100.0 | 498 | 100.0 |

# Table No.09: Average monthly income in different periods of male and female respondents

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Sex | 1 Male | | 2 Female | | Total | |
|  | N | Mean | N | Mean | N | Mean |
| Average Monthly Income | 434 | 9,182.7 | 59 | 8,367.8 | 493 | 9,085.2 |
| Average Income of Pre-Arrest month | 421 | 8,480.1 | 56 | 5,857.1 | 477 | 8,172.1 |
| Income of the Last Month | 388 | 9,178.6 | 57 | 8,068.4 | 445 | 9,036.4 |

**Respondents Profile: Legal issues**

# Table No. 10: Present status of Cases

|  |  |  |
| --- | --- | --- |
|  | Frequency | Percent |
| Pre-Trial | 158 | 31.7 |
| Trial | 225 | 45.2 |
| Disposed | 73 | 14.7 |
| Others | 23 | 4.6 |
| Total | 479 | 96.2 |
| No Response | 19 | 3.8 |
| **Total** | **498** | **100.0** |

# Table No. 11: Multiplicity of cases against same person

|  |  |  |
| --- | --- | --- |
| **QC1.2: Is this the first and only case filed against you?** | | |
|  | Frequency | Percent |
| Yes | 358 | 71.9 |
| No | 126 | 25.3 |
| Don't Know | 6 | 1.2 |
| Total | 490 | 98.4 |
| No Response | 8 | 1.6 |
| **Total** | **498** | **100.0** |

# Table No.12: Place/Forum for Filing of Cases

|  |  |  |
| --- | --- | --- |
| **QC1.7: Where was the case filed?** | | |
| Place | Frequency | Percent |
| In Police Station | 452 | 90.8 |
| In Court | 37 | 7.4 |
| Total | 489 | 98.2 |
| No Response | 9 | 1.8 |
| Total | 498 | 100.0 |

# Graph No. 01: Laws under which cases were filed

# Graph No. 02: Cases filed under the Penal Code 1860

# Table No. 13: Mode of Incarceration

|  |  |  |
| --- | --- | --- |
| **QC2.1: How have you been arrested?** | | |
| How have you been arrested? | Frequency | Percent |
| Arrest by police | 478 | 96.0 |
| Surrender | 15 | 3.0 |
| No Response | 5 | 1.0 |
| **Total** | **498** | **100.0** |

# Table No.14: Informing the arrestee about specific reason of arrest

|  |  |  |
| --- | --- | --- |
| **QC2.3: Have you been informed about the specific reason of arrest?** | | |
|  | Frequency | Percent |
| Yes | 216 | 43.4 |
| No | 267 | 53.6 |
| Total | 483 | 97.0 |
| No Response | 15 | 3.0 |
| Total | 498 | 100.0 |

# Table No.15: Informing family members/relatives of arrestee

|  |  |  |
| --- | --- | --- |
| **QC2.4 Had your family or relatives been informed about arrest?** | | |
|  | Frequency | Percent |
| Yes | 242 | 48.6 |
| No | 195 | 39.2 |
| Don't Know | 49 | 9.8 |
| Total | 486 | 97.6 |
| No Response | 12 | 2.4 |
| Total | 498 | 100.0 |

# Table No.16: Opportunity to consult a lawyer

|  |  |  |
| --- | --- | --- |
| **Q.C24/25: Did you get opportunity to consult with lawyer?** | | |
|  | Frequency | Percent |
| Yes | 224 | 45.0 |
| No | 255 | 51.2 |
| Total | 479 | 96.2 |
| NA or No Response | 19 | 3.8 |
| Total | 498 | 100.0 |

# Table No.17: Nature of drug offenders

|  |  |  |
| --- | --- | --- |
| **QC2.8b: If you were incarcerated for drug related offence, please specify the type of act** | | |
|  | Frequency | Percent |
| Use and Carry | 3 | .6 |
| Use and Trade | 3 | .6 |
| Drug User | 125 | 25.1 |
| Carry and Trade | 1 | .2 |
| Drug Carrier | 46 | 9.2 |
| Drug Trading | 51 | 10.2 |
| NA or No Response | 269 | 54.0 |
| Total | 498 | 100.0 |

**Investigation**

# Table No.18: Status of Investigation

|  |  |  |
| --- | --- | --- |
| **QC3.1: What is the present Status of investigation?** | | |
|  | Frequency | Percent |
| Closed | 138 | 27.7 |
| Running | 42 | 8.4 |
| Don't Know | 207 | 41.6 |
| Total | 387 | 77.7 |
| NA or No Response | 111 | 22.3 |
| Total | 498 | 100.0 |

**Police Report**

# Table No.19: Status of Police report

|  |  |  |
| --- | --- | --- |
| **QC4.2 : Type of police report** | | |
|  | Frequency | Percent |
| Charge-sheet | 172 | 34.5 |
| Final Report | 23 | 4.6 |
| Other | 15 | 3.0 |
| Don't Know | 217 | 43.6 |
| No response | 71 | 14.3 |
| **Total** | **498** | **100.0** |

**Legal Aid and Services**

# Table No.20: Legal aid providers

|  |  |  |
| --- | --- | --- |
| **QC5.1: Type of organization from which legal support was received** | | |
|  | Frequency | Percent |
| DLAC | 83 | 16.67 |
| NGOs | 343 | 68.88 |
| Private | 00 | 00 |
| Other | 56 | 11.24 |
| NA or No Response | 16 | 3.21 |
| Total | 498 | 100.0 |

# Table No.21: Level of satisfaction with legal support

|  |  |  |
| --- | --- | --- |
| **QC5.4 : Are you satisfied with legal support?** | |  |
|  | Frequency | Percent |
| Extremely Dissatisfied | 16 | 3.2 |
| Dissatisfied | 2 | .4 |
| Somewhat Satisfied | 18 | 3.6 |
| Satisfied | 117 | 23.5 |
| Highly Satisfied | 288 | 57.8 |
| No Response or NA | 57 | 11.5 |
| **Total** | **498** | **100.0** |

**Paralegal Support**

# Table No.22: Support from Paralegals

|  |  |  |
| --- | --- | --- |
| **QC5.5 : Did you get support from paralegals?** | |  |
|  | Frequency | Percent |
| Yes | 451 | 90.6 |
| No | 28 | 5.6 |
| Total | 479 | 96.2 |
| No Response | 19 | 3.8 |
| **Total** | **498** | **100.0** |

# Table No.23: Place of prisoner’s introduction with Paralegals

|  |  |  |
| --- | --- | --- |
| **QC5.7 : Where were you introduced with paralegals?** | | |
|  | Frequency | Percent |
| Police Station | 3 | .6 |
| Court | 2 | .4 |
| Prison | 451 | 90.6 |
| Total | 456 | 91.6 |
| NA or No Response | 42 | 8.4 |
| Total | 498 | 100.0 |

# Table No. 24: Types of services provided by the Paralegals

|  |  |  |
| --- | --- | --- |
| **QC5.6: What kind of support/assistance have you received from paralegals?** | | |
|  | Frequency | Percent |
| Getting Bail | 367 | 73.7 |
| Discharge | 23 | 4.6 |
| Steps during trials and Appeals | 17 | 3.4 |
| Other | 48 | 9.4 |
| NA or No Response | 43 | 8.6 |
| Total | 498 | 100.0 |

**Exploitation by Touts and Intermediate Agents**

# Table No.25: Assistance from intermediate agents or touts

|  |  |  |
| --- | --- | --- |
| **QC5.8 : Did you receive any support from touts or intermediate agents for getting bail before getting legal assistance?** | | |
|  | Frequency | Percent |
| Yes | 15 | 3.0 |
| No | 114 | 22.9 |
| Don't Know | 271 | 54.4 |
| Total | 406 | 80.3 |
| NA or No Response | 98 | 19.6 |
| Total | 498 | 100.0 |

# Table No.26: Place of introduction with touts or Intermediate media

|  |  |  |
| --- | --- | --- |
| **QC5.9: Where have you been introduced with agent or other media?** | | |
|  | Frequency | Percent |
| Police Station | 7 | 1.4 |
| Court | 34 | 6.8 |
| Prison | 8 | 1.6 |
| Total | 49 | 9.8 |
| NA or No Response | 449 | 90.2 |
| Total | 498 | 100.0 |

**Bail**

# Table No.27: Grant of bail in first attempt

|  |  |  |
| --- | --- | --- |
| **QC6.2: Was your bail granted in response to your first bail petition?** | | |
|  | Frequency | Percent |
| Yes | 302 | 60.6 |
| No | 168 | 33.7 |
| Total | 471 | 94.6 |
| No Response | 28 | 5.6 |
| Total | 498 | 100.0 |

# Table No.28: Preference of Miscellaneous case against rejection of bail

|  |  |  |
| --- | --- | --- |
| **QC6.4 : Did you appeal against rejection of bail misc. case?** | | |
|  | Frequency | Percent |
| Yes | 73 | 14.7 |
| No | 172 | 34.5 |
| Total | 245 | 49.2 |
| NA or No Response | 253 | 50.8 |
| Total | 498 | 100.0 |

# Table No. 29: Immediate release from incarceration after grant of bail

|  |  |  |
| --- | --- | --- |
| **QC6.5 : Did you get released within 24 hours after grant of bail?** | | |
|  | Frequency | Percent |
| Yes | 404 | 81.1 |
| No | 64 | 12.9 |
| Total | 468 | 94.0 |
| NA or No Response | 30 | 6.0 |
| Total | 498 | 100.0 |

# Table No.30: Days required for release from prison

|  |  |  |
| --- | --- | --- |
| **QC6.6 : After how many days did you get released following acceptance of bail?** | | |
| No. of Days | Frequency | Percent |
| 1 day | 102 | 20.5 |
| 2 days | 11 | 2.2 |
| 3 days | 9 | 1.8 |
| 4 days | 4 | .8 |
| More than 5 days | 8 | 1.6 |
| NA or No Response | 364 | 73.0 |
| Total | 498 | 100.0 |

# Table No.31: Reasons for delayed release

|  |  |  |
| --- | --- | --- |
| **QC6.7 : What were the causes of delay?** | | |
|  | Frequency | Percent |
| Lack of money | 50 | 10.0 |
| Want of Bail | 14 | 2.8 |
| Bail bond did not reach the prison authority in time | 51 | 10.2 |
| Other | 25 | 5.0 |
| Total | 140 | 28.1 |
| NA or No Response | 358 | 71.9 |
| **Total** | **498** | **100.0** |

**About Charge Framing**

# Table No.32: Status of framing charges

|  |  |  |
| --- | --- | --- |
| **QD1.1 : Has the charge already been framed against you?** | | |
|  | Frequency | Percent |
| Yes | 221 | 44.4 |
| No | 141 | 28.3 |
| Total | 362 | 72.7 |
| No Response | 136 | 27.3 |
| Total | 498 | 100.0 |

# Table No.33: Application for discharge

|  |  |  |
| --- | --- | --- |
| **QD1.2 : Did you apply for discharge?** | |  |
|  | Frequency | Percent |
| Yes | 69 | 13.9 |
| No | 108 | 21.7 |
| Don't Know | 152 | 30.5 |
| NA or No Response | 169 | 33.9 |
| Total | 498 | 100.0 |

# Table No.34: Reasons for not exploring provisions for discharge

|  |  |  |
| --- | --- | --- |
| **QD1.3 : If you did not apply for discharge, please explain why?** | | |
|  | Frequency | Percent |
| Financial | 18 | 3.6 |
| Lawyer did not suggest for | 81 | 16.3 |
| Other | 26 | 5.2 |
| Total | 125 | 25.1 |
| NA or No Response | 373 | 74.9 |
| Total | 498 | 100.0 |

# Table No.35: Status of pleading guilty

|  |  |  |
| --- | --- | --- |
| **QD1.4 : Did your lawyer advise you to plead guilty during charge framing?** | | |
|  | Frequency | Percent |
| Yes | 36 | 7.2 |
| No | 230 | 46.2 |
| NA or No Response | 232 | 46.6 |
| Total | 498 | 100.0 |

# Table No.36: Production before Courts during incarceration

|  |  |  |
| --- | --- | --- |
| **QD2.1 : No. of times you were produced before the court?** | |  |
| No. of Production dates | Frequency | Percent |
| 1 | 90 | 18.1 |
| 2 | 56 | 11.2 |
| 3 | 18 | 3.6 |
| 4 | 10 | 2.0 |
| More than 5 days | 29 | 5.8 |
| Cannot remember | 194 | 39.0 |
| No Response | 101 | 20.3 |
| Total | 498 | 100.0 |

# Table No.37: Returning from Court Lock-up without being produced before the courts

|  |  |  |
| --- | --- | --- |
| **QD2.2 Did you return from the court without being produced before the court?** | | |
|  | Frequency | Percent |
| Yes | 208 | 41.8 |
| No | 198 | 39.8 |
| Total | 406 | 81.5 |
| NA or No Response | 92 | 18.5 |
| Total | 498 | 100.0 |

**Appearance of Witnesses Before Court**

# Table No.38: Appearance of witnesses before courts

|  |  |  |
| --- | --- | --- |
| **QD3.1 : Do the witnesses appear before the court on time?** | | |
|  | Frequency | Percent |
| Yes | 52 | 10.4 |
| No | 135 | 27.1 |
| Total | 187 | 37.6 |
| NA or No Response | 311 | 62.4 |
| Total | 498 | 100.0 |

# Table No.39: Frequency of adjournment due to non-appearance of witnesses

|  |  |  |
| --- | --- | --- |
| **QD3.2 : How many times the time petition was preferred in your case due to absence of the witness?** | | |
| No of Times | Frequency | Percent |
| Once | 4 | 1.2 |
| Twice | 7 | 1.4 |
| More than thrice | 6 | .4 |
| Don't Know | 160 | 32.1 |
| NA or No Response | 321 | 64.5 |
| Total | 498 | 100.0 |

**Quashment and Remedy Before the Supreme Court**

# Table No.40: Exploring remedies from the Supreme Court

|  |  |  |
| --- | --- | --- |
| **QD4.1 : At any stage of the case did you or other party move the High Court?** | | |
|  | Frequency | Percent |
| Yes | 21 | 4.2 |
| No | 120 | 24.1 |
| Don't Know | 54 | 10.8 |
| NA or No Response | 303 | 60.8 |
| Total | 498 | 100.0 |

# Table No.41: Type of remedies sought before the Supreme Court

|  |  |  |
| --- | --- | --- |
| **QD4.2 If yes, what were the purposes for moving to the High Court?** | | |
| Purpose | Frequency | Percent |
| Bail | 11 | 2.2 |
| Quashment | 00 | 0.0 |
| Other | 1 | .2 |
| Don't Know | 22 | 4.4 |
| NA or No Response | 464 | 92.2 |
| Total | 498 | 100.0 |

# Table No.42: Reasons for avoiding remedies from the Supreme Court

|  |  |  |
| --- | --- | --- |
| **QD4.3: Why did not you explore remedies from the Supreme Court?** | | |
|  | Frequency | Percent |
| Financial | 62 | 12.4 |
| Lawyer did not advise | 29 | 5.8 |
| Other | 7 | 1.4 |
| Total | 98 | 19.7 |
| NA or No Response | 400 | 80.3 |
| Total | 498 | 100.0 |

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17. Arrests under the Special Powers Act, 1974 are often made in Bangladesh for detaining political rivals. [↑](#footnote-ref-17)
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