

Poor and the Law: The Reality and the Extent of Their Access to Justice

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Abstract:

Legal aid is all about giving free legal services to the poor and needy who are unable to offer their services of an advocate for the conduct of a case for legal proceedings in any court or tribunal. It is a constitutional imperative and the state has a duty to make sure that whether there is equal to injustice and social access to justice. The main objective of this study is to determine whether denial of free legal presentation by advocate for indigent person results in miscarriage of justice. The researcher has followed empirical research for the purpose of study and has collected samples through convenient sampling method. The sample size covered by the researcher is 501. The result is observed from the analysis of study is that most lawyers do practice legal aid as a part of their profession and some don't due to the fact that they don't get adequate fees.

Keywords: Legal aid, assistance, indigent persons, Justice, advocates.

INTRODUCTION

Article 39A of the Constitution of India provides that state shall security that that the operation of legal system promotes justice on the basis of equal opportunity, sunshine particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabled. Article 14 and 22(1) also make it obligatory for the state to ensure equality before the law and legal system which promotes justice on the basis of equal opportunity to all. Legal aid strives to ensure that the constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker section of the society.

The Department of Justice (part of Ministry of Law and Justice) launched three empowerment initiatives namely: pro bono legal services, tele-law and NyayaMitra, to promote pro bono legal aid, improve access to legal services and increase pendency of

cases in rural areas. The schemes would usher in a new era of social inclusiveness and promote legal justice to all corners of the country.

Factors that affect the access to justice for poor or income primarily, how are Ness or education about such legal assistance and the accessibility and criterion for availability of such assistance.

When it comes to current trends, our CM launched nation's first "Nalsa legal aid Helpline (15100). And the schemes launched by the Department of Justice, promotes pro bono legal aid, improves access to justice and legal service and has actually given awareness among the marginalised about their rights.

When it comes to other cities, the respective state government have really launched various empowerment initiatives to improve access to legal services in rural areas.

Objectives

1. To know how far the advocates for practising free legal aid as a part of their profession.
2. To determine whether a denial of free legal representation by advocates for indigent persons result in miscarriage of justice.
3. To contemplate how often a poor is being denied of his free legal aid by an advocate only on the basis that he doesn't get enough fees.

Lawyers assigned to provide legal aid and played with public funds do not fit only represent clients. (Miles)

Serious doubt this whether there is credibility of the scheme of legal aid provided to the weaker section of the society. (Powell)

Some lawyers engaged by legal aid committees hold their clients cases for a reason by employing delay tactics. (Rodríguez and Martín)

Many lawyers do not provide legal aid as there is no monetary benefit and humanity has died in these lawyers. (Rønning and Hammerslev)

Some lawyers compel their clients to pay additional amounts of money to them even though they are supposed to obtain their fees from the legal aid committee. (Vermeesch)

Major obstacle to the legal aid movement is that the delivery system for legal aid is far too inefficient. (Wrbka)

Even though the state is in duty to make sure that their lives equality and justice but in reality not all poor can afford it. ("Access to Justice for People with Disabilities under Article 13")

We have been pushed into an era where money has gained importance for people and hence there is inequality in breach of justice. (American Bar Association. House of Delegates and Center for Professional Responsibility (American Bar Association))

METHODOLOGY

The research method followed by the researcher here is empirical research. A total of 501 samples have been taken for the purpose of research. And the samples were collected through convenient sampling method. The sample frame taken by the researcher is public areas including the High Court premises and around and the surrounding. The independent variables used here for the research are age, gender and education qualification and the dependent variable is used here for the purpose of research are income, hours, accessibility of legal aid. The

LITERATURE REVIEW

India is a country with most population and of illiterate and a majority or not aware of the legal system and her own right. (Banik)

Even if people are aware of it, they are not in a situation to afford it because of their economic and social backwardness. (Boyle)

Poor people are aware of it but they are unable to afford and access them. (Craig and de Búrca, "9. The Relationship Between EU Law and National Law:")

Poor are in a helpless situation to engage their services of lawyers which has become costlier first these days. Access to justice is a basic human right conferred by the common law and exists unless it is taken. (Daniels and Martin)

Prime of obligation of the state is to provide free legal aid to the poor, intelligent and marginalised people. (Francioni)

Legal aid to the poor is necessary for the preservation of rule of law which is necessary for orderly society. (Kelly)

Until and unless what is not legally assistant, he is denied equally no opportunity to seek justice. (Ladan)

The main object is to provide equal justice is to be made available to the poor. (Lau)

Legal aid aims at providing an arrangement in the society so that administration of justice to all. (Law Society of Upper Canada)

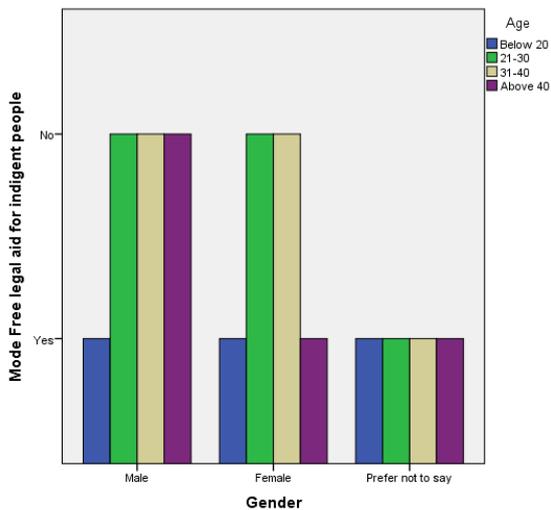
One need not be in litigant to such legal led by means of legal aid and it is imperative that anyone who is poor can access legal aid. (Loveland)

Foundation of the right to legal aid is premised in the universally accepted principle of fair trial. (Medary)

statistical tools used for the purpose of research are correlation and graphical representation.

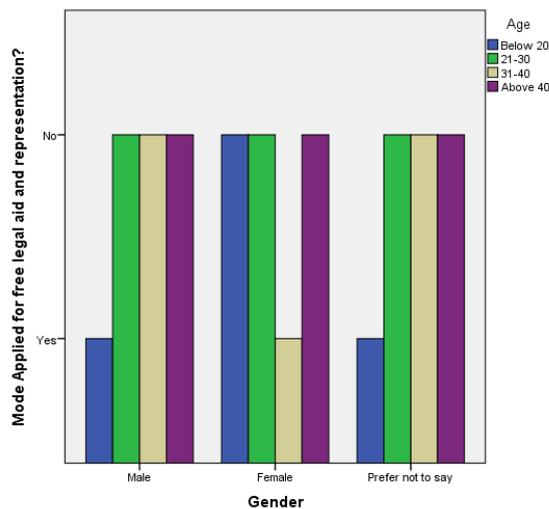
DATA ANALYSIS AND INTERPRETATIONS

FIGURE: 1



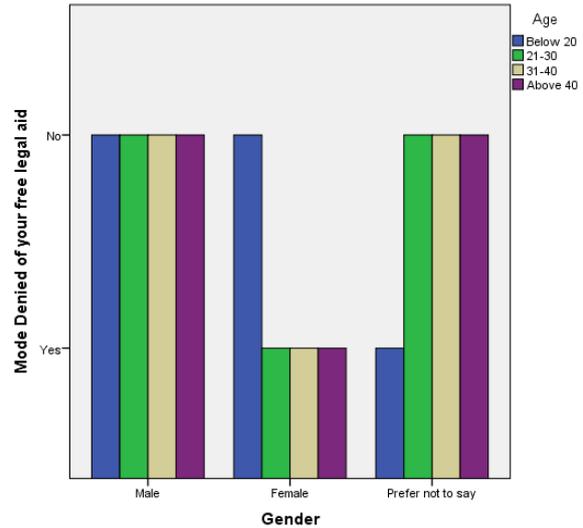
LEGEND: The chart depicts about the gender distribution over varying age groups and their opinions on legal aid for indigent people.

FIGURE: 2



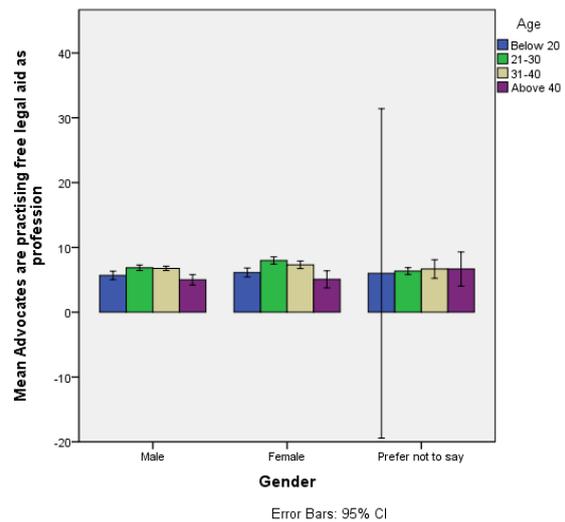
LEGEND: The chart shows about the gender distribution over varying age group and their response for their claim of legal aid.

FIGURE: 3



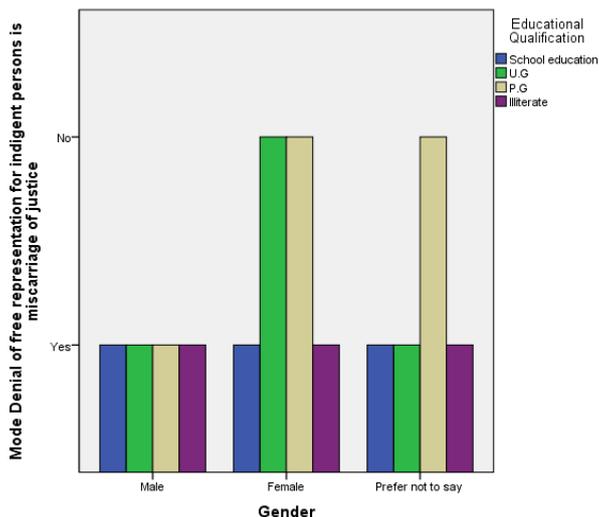
LEGEND: The chart shows about the gender distribution over varying age groups and their denial of their legal aid.

FIGURE: 4



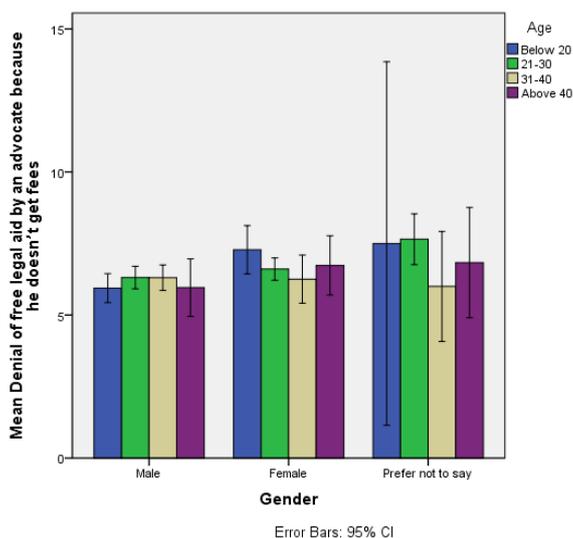
LEGEND: The chart shows about the gender distribution over varying age groups and their response on opinion that advocates practicing free legal aid as part of their profession.

FIGURE: 5



LEGEND: The chart shows about the gender distribution over their education qualification and their opinion that the nail of free legal aid results in miscarriage of justice.

FIGURE: 6



LEGEND: The chart shows about the Gender distribution over varying age groups and their opinion on that advocates refused to give legal aid because he does not get sufficient fees.

DISCUSSION

The male respondents in the age group below 20 years accept that the free legal aids are given to indigent people whereas the respondents of the other age groups do not accept. The female respondents in the age group below 20 years and above 40 years

accept it but the age group 221-30 years and 31-40 years do not accept. Irrespective of the age group, the respondents of other gender accept it (Fig-1)

The male respondents in the age group below 20 years accept that the indigent people apply for legal free aids whereas the respondents of the other age groups do not accept. The female respondents in the age group 31-40 ydars accept it but the other age groups do not accept. Except the age group of below 20 years in the third gender, other age groups do not accept it. (Fig-2)

Irrespective of age, all male respondents do not accept that the indigent people deny the free legal aids offered. Except the age group of below 20 years in female respondents, other age groups accept it. But it is reverse in other gender (Fig-3)

At present the illegal it movement in India is diffused and sporadic. Illiteracy is a major obstacle to legal aid (figure 5). Now it is common knowledge that about 70% of the people living in rural areas are illiterate and even more than that are not aware of the rights conferred upon them by law. It is the absence of legal awareness which leads to exploitation of the provision of rights and benefits of the poor.

Age could be an important factor in having awareness regarding legal aid (figure 1). And people feel that lawyers deny legal aid because he does not get fees (figure 6) and this could be due to the fact that lawyers are money driven. People feel that most advocates or still practising legal it as their profession figure for this may be due to the fact that people still believe in the few who actually aid the poor in giving them assistance.

The ideal of equal access and availability of Justice has reached an almost breakdown point. There is a wide gap between the goals set and met. The legal education imparted here earlier did not provide social education. Therefore they did not meet the set goals of social justice and this is because that social education plays an important role in giving awareness about their rights.

RESULT

In figure 1, male respondents of age group 21-30, 31-40 and above 40 and female respondents of age group 21-30, 31-40 words seem to be aware about the free legal aid at the cost of state offered for intelligent people.

In figure 2, apart from males of age below 20, female of age 31-40, all other males and female respondents have not applied for legal aid.

In figure 3, old male and female respondents apart from female respondents of age group 21-30, 31-40 and above 40 were not the need of their free legal aid.

In figure 4, most respondents answer that lawyers are practising legal aid as part of their profession except female and male respondents of age group above 40 years.

In figure 5, most respondents it's a female having UG and PG qualification believed that the mail of free legal representation for indigent person is miscarriage of justice.

In figure 6, male and female respondents of age 21-30, 31-40 answer that lawyers deny providing free legal aid because of the fact that he does not get adequate fees.

DISCUSSION

At present the illegal it movement in India is diffused and sporadic. Illiteracy is a major obstacle to legal aid (figure 5). Now it is common knowledge that about 70% of the people living in rural areas are illiterate and even more than that are not aware of the rights conferred upon them by law. It is the absence of legal awareness which leads to exploitation of the provision of rights and benefits of the poor.

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LIMITATIONS

The major limitation of my study is the sample frame. The sample frame in village areas outside Chennai have no roots of educated samples. The various initiatives by the government which did not meet the goals is also one of the major drawbacks of my study. The restrictive area of sample sizes is also another major drawback.

CONCLUSION

From all the analysis part from the research it is found that most advocates practice legal aid in their profession. The denial of legal aid by advocates for indigent people will result in miscarriage of justice. One recommendation is that the legal aid movement has to go to the grassroots level and help to discover, identify and solve the problems and difficulties of the poor. It should be inclusive of all activities like spreading legal awareness and education to the illiterate people on their basic rights which will actually in turn help this people to reach their way to the fruits of law.

REFERENCES

1. "Access to Justice for People with Disabilities under Article 13." *The Development of Disability Rights Under International Law*, 2014, pp. 221–34, doi:10.4324/9780203711712-7.
2. American Bar Association. *House of Delegates, and Center for Professional Responsibility (American Bar Association). Model Rules of Professional Conduct*. American Bar Association, 2007.
3. Banik, Dan. *Rights and Legal Empowerment in Eradicating Poverty*. Ashgate Publishing, Ltd., 2008.
4. Boyle, Alan. "5. Soft Law in International Law-Making." *International Law*, 2018, doi:10.1093/he/9780198791836.003.0005.
5. Craig, Paul, and Gráinne de Búrca. "9. The Relationship Between EU Law and National Law." *Law Trove*, 2015, doi:10.1093/he/9780198714927.003.0009.
6. ---. "28. Competition Law." *Law Trove*, 2015, doi:10.1093/he/9780198714927.003.0028.
7. Daniels, Stephen, and Joanne Martin. "Legal Services for the Poor: Access, Self-Interest, and pro Bono." *Access to Justice*, 2009, pp. 145–66, doi:10.1108/s1521-6136(2009)0000012010.
8. Francioni, Francesco. "The Rights of Access to Justice under Customary International Law." *Access to Justice as a Human Right*, 2007, pp. 1–56, doi:10.1093/acprof:oso/9780199233083.003.0001.
9. Kelly, Tobias. "Law, Culture and Access to Justice under the Palestinian National Authority." *Development and Change*, vol. 36, no. 5, 2005, pp. 865–86, doi:10.1111/j.0012-155x.2005.00439.x.
10. Ladan, MuhammedTawfiq. "Access to Justice as a Human Right Under the Ecowas Community Law." *SSRN Electronic Journal*, doi:10.2139/ssrn.2336105.
11. Lau, Martin. "Chapter 7. Access to Environmental Justice: Karachi's Urban Poor and the Law." *Access to Environmental Justice: A Comparative Study*, 2007, doi:10.1163/ej.9789004157835.i-380.48.
12. Law Society of Upper Canada. *Access to Justice for a New Century: The Way Forward*. Irwin Law, 2005.
13. Loveland, Ian. "Constitutional Law, Administrative Law, and Human Rights." *Law Trove*, 2018, doi:10.1093/he/9780198804680.001.0001.
14. Medary, Samuel. *The New Constitution*. 1849.
15. Miles, Kate. "Soft Law Instruments in Environmental Law: Models for International Investment Law?" *International Investment Law and Soft Law*, doi:10.4337/9781781003220.00010.
16. Powell, Emilia Justyna. "International Law, Islamic Law, and Islamic Law States." *Islamic Law and International Law*, 2020, pp. 25–85, doi:10.1093/oso/9780190064631.003.0002.
17. Rodríguez, Luis Ignacio Sánchez, and Ana Gemma López Martín. "Chapter Three. The Travails of Poor Countries in Gaining Access to the International Court of Justice." *The Legal Practice in International Law and European Community Law*, 2007, doi:10.1163/ej.9789004154261.i-689.23.
18. Rønning, Olaf Halvorsen, and Ole Hammerslev. *Outsourcing Legal Aid in the Nordic Welfare States*. Springer, 2017.
19. Vermeesch, Griet. "Access to Justice: Legal Aid to the Poor at Civil Law Courts in the Eighteenth-Century Low Countries." *Law and History Review*, vol. 32, no. 3, 2014, pp. 683–714, doi:10.1017/s0738248014000261.
20. Wrba, Stefan. "Substantive Law – Complementing Access to Justice 2.0." *European Consumer Access to Justice Revisited*, pp. 153–54, doi:10.1017/cbo9781139680431.025.