

Protections of Rights of Elderly Persons in India: Legal Issues and Remedies

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Abstract:

The Wisdom and experience of elderly persons is a resource of inestimable worth. Recognizing and treasuring contributions of older people is essential to the long-term flourishing of any society. Old age is an indispensable stage of life of a human being which a man cannot refute except untimely death. The childhood and old age are natural reliant conditions of life where children depend on parents and vice versa. The concept of nuclear family affected this usual cycle, resulting in misbalance of the normal life of elderly people by defeating thousand years old practice of India where parents are treated as a pious form of God. Nowadays, the parents are becoming burdensome for their child whenever they lost their strength to work and earn. Available legal, social, moral and governmental norms are analyzed in this article to find out the possible ways by which the rights of elderly people are infringed and they bound to suffer pain and agony. The article also reflects the available laws, policies and guidelines to the protection of the rights of Elderly persons in India.

Keywords: Elderly persons, Rights, Protections, Abuse .

1. Introduction:

A human being is not beyond the reach of the old age in its general cycle of the life. Ageing is a natural process, which inevitably occurs in human life cycle. It brings with a host of challenges in the life of the old age, which are mostly engineered by the changes in their body, mind, thought process and the living patterns. Ageing refers to a decline in the functional capacity of the organs of the human body, which occurs mostly due to physiological

transformation, it never imply that everything has been finished. The senior citizens constitute a precious reservoir of indispensable human resource coupled with knowledge of various dimensions, varied experiences and deep insights. May be they have formally retired, yet an overwhelming majority of them are physically fit and mentally alert. Hence, they should be given an appropriate opportunity as they remain in a position to make significant contribution to the socio-economic development of the nation.

The 2011 census has shown that the elderly population [60+] of India accounted for 98.3 million and is estimated that the number of older persons will grow to 137 million by 2021. By 2025, the world will have more elderly than young people and cross two billion mark by 2050. In India also, the population of elder persons' mark will cross 18% by 2025. The problems of the elderly in India were not serious in the past because the numbers were small and the elderly were provided with social protection by their family members. But owing to relatively recent socio-economic changes, ageing of the population is emerging as a problem that requires consideration before it becomes critical. However a few studies indicate that family and relatives still play a dominant role in providing economic and social security for the elderly. But still the majority of elderly need social, economic and health support. For all practical purposes people above 65 years are considered to be 'senior citizens'.

Migration of younger generations from rural to urban areas and from one urban centre to another as well as transnational migration results in the elderly being left to fend for themselves at a time when family support becomes more crucial¹. Ironically, in India, older generations are not aware of their human rights- but the question now arises why this is so? This is because of the prevalence of illiteracy and lack of awareness. On the other hand, due to comparatively high physical as well as physical vulnerability, their cries remain within the four walls; that's why only a few cases of violation of Human Rights of the elderly come into light. Moreover, the elderly people do not form a homogeneous group. Their needs and requirements vary from person to person. Therefore all the needs and requirements of all the elderly cannot be covered by a single act. In this backdrop, this very article seeks to elucidate and draw light on the various provisions in different legislations and policies implemented in Indian legal framework, which in some way or the other, helps aged and assure honor and life with dignity and also provide social security. The Constitutional norms are the highest law in the legal system. Thereupon, it is necessary to begin with Apex Law.

2. Constitutional Protection:

The well being of the Older Persons has been mandated in the Constitution of India. Following are some of the provisions in the Constitution of India which speaks about the protection of interest of elder people.

Article 41 of the constitution: Article 41 of Directive Principles of State Policy has particular relevance to Old Age security. According to Article 41 of the constitution of India , “The State shall, within the limits of economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”

Article 47 of the constitution of India provides that the state shall regard the raising of the level of nutrition and the standard of living of its people and improvement of public health as among its primary duties.

Some other constitutional provisions: Entry 24 in list III of schedule VII of constitution of India deals with the welfare of labour, including conditions of work , provident funds, liability for workmen’s compensation, invalidity and old age pension and maturity benefits. Further, item 9 of the state list and item 20, 23 and 24 Of concurrent list relates to old age pension, social security and social insurance and economic and social planning.

3. Legislative Protection:

(i) Protection under Personal Laws

The moral duty to maintain parents is recognized by all people. However, so far as law is concerned the position and extent of such liability varies from community to community.

(A) Protection under Hindu Laws:

Part IX –Personal Law (Hindu), (Chapter III –Hindu Adoption and Maintenance Act, 1956)

A Hindu is bound during his or her life-time, to maintain his or her legitimate/illegitimate children and his or her aged or infirm parents. The obligation of a person to maintain his other aged infirm parent or a daughter who is un married extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her

own earnings or others property. The statutory provision for maintenance of parents under Hindu personal law is contained in Sec 20 of the Hindu Adoption and Maintenance Act 1956. This Act is the first personal law statute in India, which imposes an obligation on the children to maintain their parents. As is evident from the wording of the section, the obligation to maintain parents is not confined to sons only and daughters also have an equal duty towards parents. It is important to note that only those parents who are financially unable to maintain themselves from any source, are entitled to seek maintenance under this Act.

(B) Protection under Muslim Law:

Children have a duty to maintain their aged parents even under the Muslims Law. According to Mulla:

(a). Children in easy circumstances are bound to maintain their poor parents, although the latter may be able to earn something for themselves.

(b) A son though in strained circumstances is bound to maintain his mother, if the mother is poor, though she may not be infirm.

(c) A son, who though poor, is earning something, is bound to support his father who earns nothing.

According to Tyabji, parents and grandparents in indigent circumstances are entitled, under Hanafi law, to maintenance from their children and grandchildren who have the means, even if they are able to earn their livelihood. Both sons and daughters have a duty to maintain their parents under the Muslim law. The obligation, however, is dependent on their having the means to do so.

(ii) Protection under Criminal Laws:

Protection under Criminal Procedure Code, 1973:

Criminal Procedure Code, 1973: Chapter IX: Order for maintenance of wives, children and parents : If any person having sufficient means neglects or refuses to maintain his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees

in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.⁴

Section 125(3): If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made.⁵ It can thus be said that prior to 1973, there was no provision for maintenance of parents under the code. The Law Commission, however, was not in favour of making such provision. According to its report The Cr.P.C is not the proper place for such a provision. There will be considerable difficulty in the amount of maintenance awarded to parents apportioning amongst the children in a summary proceeding of this type. It is desirable to leave this matter for adjudication by civil courts. The provision, however, was introduced for the first time in Sec. 125 of the Code of in 1973. It is also essential that the that the other party has sufficient neglected or refused to maintain his, who is unable to maintain himself. It is that Cr.P.C 1973, is a secular law and belonging to all religions and communities. Daughters including married daughters, also have a duty to maintain their parents.

(C) Maintenance and Welfare of Parents and Senior Citizens Act, 2007

The Act aims at providing maintenance to senior citizens in order to prevent their destitution as well as protecting the life and property of the senior citizens. It envisages setting up Old Age Homes for indigent senior citizens with a capacity of 150 persons in every district of the country. Some of the important provisions of the Act are discussed herein.

- A childless senior citizen can claim maintenance from any relative who possess his property or who would inherit it.
- The state government is directed to constitute a tribunal which would hear the cases regarding maintenance.
- The maximum maintenance allowance is to be specified by the state government which should not exceed 10,000 per month.
- The Act prescribes punishment for the abandonment of parents or senior citizens by a person who is liable to take care of them.

- Pension provision for abandonment of senior citizens.
- Adequate medical facilities and security for senior citizens.

(D) Governmental Protections:

The Government of India, Ministry of Social Justice & Empowerment is the nodal Ministry responsible for welfare of the Senior Citizens. It has announced the National Policy on Older Persons covering all concerns pertaining to the welfare of older persons. The National Policy on Older Persons recognizes a person aged 60 years and above as a senior citizen. The Ministry is also implementing following schemes for the benefit of Senior Citizens:

1. The Government of India approved the National Policy for Older Persons on January 13, 1999 in order to accelerate welfare measures and empowering the Old age in ways beneficial for them. This policy included the following major steps:

- (i) Setting up of a pension fund for ensuring security for those persons who have been serving in the unorganized sector,
- (ii) Construction of old age homes and day care centers for every 3-4 districts,
- (iii) Establishment of resource centers and re-employment bureaus for people above 60 years,
- (iv) Concessional rail/air fares for travel within and between cities, i.e., 30% discount in train and 50% in Indian Airlines.
- (v) Enacting legislation for ensuring compulsory geriatric care in all the public hospitals.

2. The Ministry of Justice and Empowerment has announced regarding the setting up of a National Council for Older Person, called AGEWELL Foundation. It will seek opinion of aged on measures to make life easier for them.

3. Attempts to sensitise school children to live and work with the Old age. Setting up of a round the clock help line and discouraging social ostracism of the older persons are being taken up.

4. The government policy encourages a prompt settlement of pension, provident fund (PF), gratuity, etc. in order to hardships. It policies elder sensitive.

SCHEMES OF OTHER MINISTRIES:

i) Ministry of Railways

The Ministry of Railways provided the following facilities to senior citizens (elderly).

- Separate ticket counters for the elderly people at various Passenger Reservation System Centers.
- Provision of Lower Berth Quota – provide in AC and Sleeper Classes.
- Provision of 30 percent discount in all Mails/
- Express.
- Provision of wheel chairs at stations for the disabled elderly passengers
- Railway grant 75 percent concession to Senior Citizens undergoing major heart/cancer operations from starting station to Hospital station for self and one companion.

(ii) Ministry of Health and Family Welfare:

Central Government Health Scheme provides pensioners of central government offices the facility to obtain medicines for chronic ailments up to three months at a stretch. Ministry of Health and Family Welfare provides the following facilities for the elderly people:

- Provision of separate queues for elderly people in governmental hospitals.
- Set up of two National Institutes on Ageing at Delhi and Chennai.
- Provision of Geriatric clinic in several government hospitals.

(iii) Ministry of Finance:

Some of the facilities for senior citizens provided by the Ministry of Finance are:

- Exemption from Income Tax for senior citizens of 60 years and above up to Rs. 2.50 lakh per annum.
- Exemption from Income Tax for senior citizens of 80 years and above up to Rs. 5.00 lakh per annum.
- For an individual who pays medical insurance premium for his/her parents or parents who are elderly or senior citizen, deduction of Rs. 20,000 under section 80D is allowed.

- An individual is eligible for a deduction of the amount spent or Rs. 60,000, whichever is less for medical treatment of a dependent elderly or senior citizen.

(E) SOME OTHER IMPORTANT ACTIVITIES

Some of other important activities regarding the welfare of elderly people are as follows:

International Day of Older Persons

The International Day of Older Persons is celebrated every year on 1st October, 2009. On 01.10.2009, the Hon'ble Minister of Social Justice and Empowerment flagged off "Walkathon" at Rajpath, India Gate, to promote inter-generational bonding. More than 3000 senior citizens/elderly people from across Delhi, NGOs working in the field of elderly issues, and school children from different schools participated in this.

Role of Non-Governmental and voluntary organisations:

While the government continues its efforts to introduce programmes for the welfare of the elderly, it is the non-governmental organisations which have played a key role in bringing to the forefront the problems of the older people to the society at large and through its various services it has sown the seeds for a forum whereby the voice and the concerns of the elderly can be addressed. In India most of the nongovernmental organizations have concentrated their work among the lower income group and the disadvantaged sections of the society. This is mainly because one-third of these people are defined as "capability poor" which means that they do not have access to minimum levels of health care and education for earning a decent living.

Old Age Homes and Day Care Centres:

Help Age India has sponsored the construction and maintenance of old age homes in India. These homes cater to the needs of those elderly who are unable to live by themselves and for those who have been abandoned by the family or are neglected and uncared for by their children. These old age homes provide and cater to the various needs of the elderly so that they can spend the "evenings of their lives" with dignity and respect and not feel a burden to the society.

There are over 800 old age homes all over India and nearly half of them are being sponsored and funded by Help Age India. Besides old age homes, Help Age India also supports day care centres where the elderly come for a few hours every day or on certain days of the week and spend some time together. These centres combat the loneliness they face and create a sense of “we feeling” among them. In some of the centres being supported by Help Age India in rural areas they are also places where the income generating activities are conducted.

Conclusion and Suggestions

In spite of aforesaid special arrangements for the old age persons the position of old age person is not happier and it is because of our social approach toward elderly people in the present scenario. It is very known fact that though facilities are provided but there is no mechanism to check whether they have been availing the same or unable to avail the facilities. The present approach towards old age person is required to be changed. In reality certain strategies and approaches at different level of policy making, planning and programming shall have to be adopted or altered in order to harness this vast human resource for promoting their involvement and participation in the main stream of socio-economic development process at a larger scale.

This participation must result in an end to their social isolation and increase in their general satisfaction with their life. Any attempt to secure the help of the Old age in offering their service to the nation must simultaneously ensure some sort of package of services aimed at arranging for them a better quality of life and a well-designed social security network for the senior citizen.

The society and the state in India need to accept the challenge of their effectiveness focusing their attention on the following twin issues of:

- (i) How to provide a fair-deal to the senior citizens so that they are able to peacefully, constructively and satisfactorily pass their lives;
- (ii) How to utilize the vast treasure of knowledge and rich life experience of the older people so that they are able to utilize their remaining energies and contribute to the all round development of their nation.

The Constitution of India states, —The state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want⁷. Finally, it may be conclude by saying that the problem of the

Old age must be addressed to urgently but and with utmost care. There is urgent need to amend the Constitution for the special provision for the protection of aged person and bring it in the periphery of fundamental right. With the degeneration of joint family system, dislocation of familiar bonds with arrival of nuclear family concept and loss of respect for the aged person in the family, in modern times should not be considered to be a secure place for them. Thus, it should be made the Constitutional duty of the State to take effective steps for the welfare and extra protection of the senior citizen including palliative care. As we know that in the country like India is not lacking in law instead lacking in implementation of laws which is to be taken care of properly with appropriate measures. Moreover, the recent law on old age person passed by the Parliament is not a complete one so considering all aspects of the problem it requires a thorough revision to make it effective and workable. Last but not the least apart from political will in favour of the protection of old age people a strong and sensitive civil society is to be shaped so that the value based social responsibility of individual as well as of society at large can be created to prevent the pollution of our strong Indian values where parents are consider as God in mortal form.

The following suggestions are put forth to ensure and safeguard the rights of the elderly people: There shall be comprehensive legislation to provide the social security to all the persons including persons from unorganized sector. If the aged people are destitute with no one to look after them, the responsibility must be shared by government/state. The state must take all necessary steps to provide them the succor and peaceful life. In spite of the fact that, the number of aged people is increasing day by day, issue of aged is dealt with by Ministry of Social Justice and Empowerment which is already over burdened. There is ministry for Women, Children Youth, and Environment; there is National Commission for Minority, Women and Population but about 7.5 per cent elderly as stated above are represented by congested and overloaded Ministry of Social Justice and Empowerment. There is no separate Ministry for Senior Citizens or Aged or elderly People, which in fact, is great need. The Constitutional norms and legal provisions of general laws support protection and promotion of the dignity of aged people.

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