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NEED OF THE HOUR: RIGHTS OF THE ELDERLY CITIZEN IN INDIA

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ABSTRACT

Ageing is a process which occurs naturally in the human life cycle. It is the decline in the capacity of the functioning of the organs of human body. However, they constitute a reservoir of human resource, gifted with knowledge, deep insights and varied experiences. The population of the aged has been increasing over the years. Their rights are being encroached upon each day and protection of them comes naturally to balance the human rights scale. They are the most vulnerable class of our society. It is true that India is a country where we compare our elders to God and have a special place for them in our traditions, culture, and scriptures. Sadistically it is equally true that India is also one of those countries which have very few laws regarding the rights of senior citizens. The rising life expectancy across the country, there has been a significant rise in the number of older persons in our country too. It is transparent that that India has had a long standing tradition of giving the older persons a position of respect in all spheres of life. However, the position and status of the elderly in the contemporary society is being undermined due to several factors including the breakdown of the joint family system. The present paper therefore deals with various problems faced by elderly Citizen in India such as physical, psychological, emotional, and social and so on. It also discusses various policies and programmes relating to Senior citizen and their implementation. The National and International parameters relating to senior citizen government policies and critical analysis of the law under study with appropriate recommendations are also discussed.

Keywords: Elderly Citizen, Ageing, Abuse, Human Rights, Psychological, Emotional and Social Security

1. INTRODUCTION

Indian traditional society with its concept of joint family system was a strong pillar in ensuring the security and wellbeing of the elderly. But modernization and globalization paved way for the birth of nuclear families. The individualistic thoughts among the younger people encouraged them to live independently and this adversely disturbed the living arrangements of old people. In India, changes in the family pattern, existence of poverty, greater life expectancy, and deterioration of the values, norms, beliefs and the difficulty of the elderly people to adjust with these changes were also enlisted in the challenges faced by them. The Government of India had adopted ‘National Policy on Older Persons’ in January (1999). As per the definition laid down in the policy an ‘elderly’ is a person who is of age 60 years and above.

Impact of Globalisation:

Globalization has affected all segments of population which includes the aged persons. It has both positive and negative impacts on them. Some of them are as follows: The medical treatments have now become more efficient and easily accessible. The technology has given shape to a number of devices which help the elderly to gauge their health conditions. There is a positive increase in the average life expectancy and health because of the improvement in living standards, medical facilities and technology.

The rapid growth in technology with respect to communication has made the world a small place. It is easier for the working population residing in foreign countries to provide monetary assistance to their old parents by sending money back home in fraction of seconds, granting a certain level of financial independence. Regardless of the many positive impacts, the cumulative implications of industrialization, urbanization, and globalization have imparted changes of irreversible nature into the structure of families in India. This has resulted in psychological distress and isolation of aged persons. In earlier times, the expertise and experience of the aged
people was utilized. However, with improved education, modernization and rapid technological changes, have rendered their knowledge and wisdom obsolete. Once they are about to retire, they are unclear about their role and this leads to loss of status, worthlessness and loneliness. It leads to various other problems when parents are economically dependent on their children. The result of such disintegration of families and increasing influence of modernization has thus resulted in the increasing concerns about the human rights of the elderly.

**Issues faced by the Elderly Population and the Societal Reflection and Perception towards Ageing**

Old age is that stage in one’s life that requires both mental and social support from others, both of which are interconnected. A relatively convincing definition of social support can be given where we divide 4 classes of social support as

1. Emotional support – providing empathy, caring, love, trust, esteem, concern, and listening.
2. Instrumental support – providing aid in kind, money, labour, time, or any direct help.
3. Informational support – providing advice, suggestions, directives, and information for use in coping with personal and environmental problems.
4. Appraisal support – providing affirmation, feedback, social comparison, and self-evaluation.

In a society where there are poor facilities for sanitation, infrastructure, and health care, it is the elderly people who suffer the most. In the Age Well Foundation’s, “Human Rights of Elderly in India Survey”, conducted in association with ECOSOC in 2015, it was found that the elderly in India suffers the following problems:

- Lack of gainful engagement opportunities
- Declining health status
- Lack of respect in family/society
- Loneliness/isolation
- Psychological issues
- Financial problems
- Legal issues
- Interpersonal problems

These are the main findings by the foundation which when read along with the classification propounded by Cobb, we can conclude that The elderly has no institutional care or medical system around them and have to depend on community care/ family care to support them in India.

Generally, elderly women are seen to have no time for leisure or recreation and have lesser possibilities than man to lead retired life. Elderly suffer lack of emotional care, support and elder abuse more in urban areas than rural areas. Along with the social, medical and psychological issues there exist many economic issues.

**Economic Problems:** Economic dependency high among females. In case of disadvantaged section, the dependency level is even higher. Economic necessity forces the elderly people to work and earn the money. (This shows the lack of social security to support the old aged people). Even the government policies and norms are not efficient enough to assure the security. NSSO 2007-2008 report reveals the incidence of loan taken to meet the medical expenditure of the elderly.

**Health Issues:** The elderly people mainly suffers from the chronic diseases like cardio vascular illness, cancer, arthritis, hyper tension, diabetics, kidney problems. Loss of vision, memory loss etc. Elderly with good health are viewed with respect. Elderly with poor health are considered to be a liability and burden. Sometimes they are abused.

Emergence of nuclear family leads to marginalisation of the elderly. Social isolation, loneliness and desertion from society will lead to adverse effects on mental health. Psychological disorders – dementia, depression, delirium are the diseases common among elderly. Senile Dementia, Psychosis with Cerebral Arteriosclerosis.

**Family challenges:** The generation gap among the older and younger generation a matter of concern. Conflict of views often led to the division of family. Less inter-generational interactions. Cases of property grabbing resulting in abandoning the elderly.

**Legal challenges:** The incongruence of the prevalent laws and its implementation. Less awareness in rural areas. Difficulty in translating their awareness into actual assistance Therefore, the survey seeks to delve into the various laws prevalent in the southern states of the country and gauge the efficacy of the same in fostering and improving the welfare and standard of living of the elderly.

**II. ELDERLY RIGHTS IN INDIAN LAW**

Problems of the aged as follows: (i) Economic problems, include such problems as loss of employment, income deficiency and economic insecurity. (ii) Physical and physiological problems, include health and medical
In 1992, the U.N. General Assembly adopted the proclamation to observe the year 1999 as the International Year of the Older Persons. (ii) The U.N. General Assembly has declared 1st October as the International Day for the Elderly, later rechristened as the International Day of the Older Persons. (iii) The U.N. General Assembly on December 16, 1991 adopted 18 principles which are organized into 5 clusters, namely independence, participation, care, self-fulfilment, and dignity of the older persons. These principles provide a broad framework for action on ageing. Some of the Principles are as follows: (i) Older Persons should have the opportunity to work and determine when to leave the work force. (ii) Older Persons should remain integrated in society and participate actively in the formulation of policies which affect their wellbeing. (iii) Older Persons should have access to health care to help them maintain the optimum level of physical, mental and emotional well-being. (iv) Older Persons should be able to pursue opportunities for the full development of their potential and have access to educational, cultural, spiritual and recreational resources of society. (v) Older Persons should be able to live in dignity and security and should be free from exploitation and mental and physical abuse.

III. CONSTITUTIONAL PROVISIONS

Upon approaching old age, physical and mental problems become daily affair. Due to such afflictions, he is unable to work and earn his own livelihood which in turn makes him dependent on others. In order to protect the interest of the most valuable assets of the country i.e. elderly people, our Constitutional framers have inserted certain provisions on this subject under Part IV of the Constitution, i.e. Directive Principles of State Policy. Furthermore, although not explicitly stated as a Fundamental Right, the judiciary reads the rights of the elderly as a facet of Article 21 of the Constitution. Although Directive Principles are not enforceable unlike Fundamental Rights, it is an accepted norm that they must be taken into account while framing the state policy. Article 41 of the Constitution provides that, “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 want.” It places obligation upon the State to provide job opportunities and other help to the elderly so that they can earn and live a respectful and independent life. Article 38(1) enjoins the State to strive to promote welfare of the people by securing and protecting as effective as it may a social order in which justice social, economic and political shall inform all institutions of the national life. In particular the State shall strive to minimize the inequalities in status, facilities and opportunities. Article 39(e) requires the State to secure that the health and strength of workers, men and women and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their area of strength. To achieve these goals, State provides pensions as monetary benefit to former employees so that they can live meaningful life with dignity. By keeping these Directive Principles in mind, legislations to protect the interest of the elderly have been enacted. This includes the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Rules on the same along with other legislations.

Art. 41: Right to work, to education and to public assistance in certain cases: 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.
Art. 46: Promotion of educational and economic interests of the weaker sections: The state shall promote with special care the educational and economic interests of the weaker sections of the people in the society and shall protect them from social injustice and all forms of exploitation.

However, these provisions are included in the Chapter IV i.e., Directive Principles of the Indian Constitution. The Directive Principles, as stated in Article 37, are not enforceable by any court of law. But Directive Principles impose positive obligations on the state, i.e., what it should do. The Directive Principles have been declared to be fundamental in the governance of the country and the state has been placed under an obligation to apply them in making laws. The courts however cannot enforce a Directive Principle as it does not create any justiciable right in favour of any individual. It is most unfortunate that state has not made even a single Act which are directly related to the elderly persons.

IV. 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.

Hindus Laws: Amongst the Hindus, the obligation of sons to maintain their aged parents, who were not able to maintain themselves out of their own earning and property, was recognized even in early texts. And this obligation was not dependent upon, or in any way qualified, by a reference to the possession of family property. It was a personal legal obligation enforceable by the sovereign or the state. 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.

Muslim Law: Children have a duty to maintain their aged parents even under the Muslim 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.

Christian And Parsi Law: The Christians and Parsis have no personal laws providing for maintenance for the parents. Parents who wish to seek maintenance have to apply under provisions of the Criminal Procedure Code.

Under The Code of Criminal Procedure: 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 considerably 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 Criminal Procedure in 1973. It is also essential that the parent establishes that the other party has sufficient means and has neglected or refused to maintain his, i.e., the parent, who is unable to maintain himself. It is important to note that Cr.P.C 1973, is a secular law and governs persons belonging to all religions and communities. Daughters, including married daughters, also have a duty to maintain their parents. (IV) Governmental Protections: 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 elderly 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 centres 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
The act will be enforced by the State government concerned. The date on which the Act will come into force will be notified by the State government concerned in the Official Gazette. Under Clause 5(1) of the Bill, a senior citizen or a parent may apply for maintenance under Clause 4 of the bill. (A senior citizen is an Indian citizen of 60 years of age or more or an Indian woman who has completed 50 years of age. A senior parent is a parent of the applicant who is in need of maintenance and is not gainfully employed.)

The layout of the housing colonies will respond to the needs and life styles of the elderly so that there is no physical barriers to their mobility; they are allotted ground floor; and their social interaction with older society members exists. Despite all these attempts, there is need to impress upon the elderly about the need to adjust to the changing circumstances in life and try to live harmoniously with the younger generation as far as possible. It may be pointed out that recently the Madurai Bench of the Madras High Court has ruled that the benefits conferred on a Government employee, who is disabled during his/her service period, under Section 47 of Persons with Disabilities (equal opportunities, protection of rights and full participation) Act, 1995 cannot be confined only seven types of medical conditions defined as 'disability' in the Act. The seven medical conditions are blindness, low vision, leprosy-cured, hearing impaired, locomotor disability, mental retardation and mental illness. A Division Bench comprising Justice F.M. Ibrahim and Justice K. Venkataraman said: We feel that the court cannot shut its eyes if a person knocks at its doors claiming relief under the Act. In a welfare State like India, the benefits of benevolent legislation cannot be denied on the ground of mere hyper technicalities. It may be noted that this Act is not directly related to aged person but seven medical conditions which prescribed in this Act are the common symptom of the aged person.

V. THE POLICY MENTIONS:

In the older times, after the completion of 50 years of life, one had to detach oneself from the responsibilities of a 'Grihastha' and switch over to the third stage of human life which was known as 'Vanpristha' which referred to the devotion of the next 25 years of life by the 'Vanpristha' by mana, vachana and karma to the selfless service of the suffering humanity and the larger society in return to the services received from society during the first 50 years of life. Certain strategies and approaches at different levels of policy making, planning and programming etc. will have to be adopted in order to harness this vast human resource for promoting the involvement and participation of senior citizens in socio-economic development process on a much larger scale. This participation must result in an end to their social isolation ad an increase in their general satisfaction with their life. Any attempt to secure the help of the elderly 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 effectively 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; and (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. Palliative Care: Need of the hour: According to a pilot survey, 70% of city's elderly population is undergoing some kind of medication. The average spending per day ranges between Rs. 3 to 200. However, nearly half of the money goes waste. The reason is absence of proper palliative care in the country. World Health Organization has marked October 7 as a day to create awareness about the importance and need for hospice and palliative care. Access to the best quality care, while facing terminal illness is a human right. Ironically, many people in the world are denied this right. The bitter side is that government in many countries does not even realize the important of this right said geriatric physician Dr. Abhishek Shukla.
who is at least 60 years old. A parent could be father or mother, whether biological, adoptive or step father or step mother, whether or not the father or the mother is a senior citizen). If the senior citizen or parent is incapable, any other person or a voluntary organization authorized by the senior citizen or parent can apply for maintenance on their behalf. The Tribunal may take cognizance suo motu (that is, it can act on its own cognizance). These two provisions are welcome since most senior citizens or parents do not have the energy (they do not have the money anyway) to apply for maintenance. The said Tribunal may, when a proceeding regarding monthly allowance for the maintenance under this section is pending, order such children or relative to pay a monthly allowance for the interim maintenance of the senior citizen including parent. The State government is required to constitute within a period of 6 months from the date of commencement of the law (Act), Tribunals for the purpose of adjudicating and deciding upon the order for maintenance under Clause 5. According to Clause 4(1), the senior citizen including parent is entitled to apply for maintenance under Clause 5 if he is unable to maintain himself from his own earnings or out of the property owned by him. A parent or grand-parent can make an application for maintenance against one or more of his children who are majors (‘children' includes son, daughter, grandson and grand-daughter). The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life. A childless senior citizen, on the other hand, can make an application against his relative ("relative" means any legal heir of the childless senior citizen who is a major and is in possession of or would inherit the property after the childless senior citizen's death; property means property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and includes rights or interests in such property). Thus Clause 4 makes a reference to grand-parent while Clause 5 does not. In other words, Clause 5 is silent about how the application for maintenance should be made by a grand-parent (who is not yet 60) under Clause 4. I wish the learned law-makers took notice of this inconsistency lest vested interests should exploit this well-intended provision. If the senior citizen has transferred by way of gift or otherwise, his property, subject to the condition that the relative shall provide the basic amenities and basic physical needs to the senior citizen and such relative refuses or fails to provide such amenities and physical needs, Clause 23 (1) says the said transfer of property shall be declared void by the Tribunal, if the senior citizen so desires. This is a welcome provision since it protects naïve senior citizens from exploitation by relatives who intend to renege on their promise subsequently. The State government is also required to prescribe a comprehensive action plan for protecting the life and property of senior citizens. This is also a welcome provision since the vulnerable senior citizen can be easily harmed or hurt. In fact the senior citizen may be even carted away somewhere to ensure that none else including the voluntary organization and the Tribunal come to know of their whereabouts. Fortunately Clause 24 of the Bill takes care of this aspect. According to this Clause, ‘Whoever, having the care or protection of senior citizen leaves, such senior citizen in any place with the intention of wholly abandoning such senior citizen, shall be punishable with imprisonment of either description for a term which may extend to three months or fine which may extend to five thousands rupees or with both'. I suggest registration of senior citizens with the jurisdictional police station be mandated. The NGO concerned may be requested to visit senior citizens at least every quarter under intimation to the jurisdictional police station.

VIII. A CRITIQUE OF THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS BILL, 2007

The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007, which was introduced in Lok Sabha in March, aims to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto. While it is difficult to contest the objective of ensuring a comfortable life for senior citizens, a number of provisions in the Bill may not be easy to implement. The Bill neatly sidesteps the directive in the Constitution (Article 41), which directs the state to provide public assistance in cases of old age. The Bill does state that, the state government may establish and maintain such number of old age homes at accessible places, as it may deem necessary, in a phased manner, beginning with at least one in each district to accommodate in such homes a minimum of one hundred fifty senior citizens who are indigent. Note the use of May instead of shall — there is no obligation on the state governments to establish these. Even without this clause, there was never any prohibition on them from providing old age homes. Also, one wonders why a Bill should specify details such as the minimum size of an old age home.

IX. CONCLUSION:

Ageing is a natural process, which inevitably occurs in human life cycle. It brings with a host of challenges in the life of the elderly, 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 such human resource as is gifted with knowledge of various sorts, varied experiences and deep insights. May be they have formally retired, yet an overwhelming majority of them are physically fit and mentally alert. Hence, given an appropriate opportunity, they are in a position to make significant contribution to the socio-economic development of their nation.

It may be conclude by saying that the problem of the elderly must be addressed to urgently and with utmost care. There is urgent need to amend the Constitution for the special provision to protection of aged person and bring it in the periphery of fundamental right. With the degeneration of joint family system, dislocation of familiar bonds and loss of respect for the aged person, the family in modern times should not be thought to be a secure place for them. Thus, it should be the Constitutional duty of the State to make an Act for the welfare and extra protection of the senior citizen including palliative care.

REFERENCES