

Protection of Rights of Oldage Person in India: A Challenging Facet of Human Rights

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Abstract - Oldage is an indispensable stage of life of a human being which a man cannot refute except untimely death. The childhood and oldage 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 elderly people's human rights are infringed and they bound to suffer pain and agony. The article also reflects the available laws, policies and guidelines for the protection of the rights of oldage person in India.

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Abstract - Oldage is an indispensable stage of life of a human being which a man cannot refute except untimely death. The childhood and oldage 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 elderly people's human rights are infringed and they bound to suffer pain and agony. The article also reflects the available laws, policies and guidelines for the protection of the rights of oldage person in India.

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I. INTRODUCTION

Human Rights are the basic rights which fundamentally and inherently belong to each individual. In other word these are the freedoms established by custom or international agreement that impose standards of conduct on all nations. These rights are distinct from civil liberties, which are freedoms established by the law of a particular state and applied by that state in its own jurisdiction. Thus, these are the Fundamental rights which human being possesses by the fact of being human, and which are neither created nor can be abrogated by any government. Supported by several international conventions and treaties (such as the United Nation's Universal Declaration of Human rights in 1948), these include cultural, economic, and political rights, such as right to life, liberty, education and equality, and right of association, belief, free speech, information, religion, movement, and nationality. Promulgation of these rights is not binding on any country, but they serve as a standard of concern for people and form the basis of many modern national constitutions. Although they were defined first by the English philosopher John Locke as absolute moral claims or entitlements to life, liberty and property, the best-known expression of human rights is in the US Declaration of Rights in 1776 which proclaims that —All men are by nature equally free and independent and have certain inherent natural rights of which when they

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enter a society they cannot by an compact deprive or divest their posterity.

II. TRADITIONAL SOCIETIES AND STATUS OF OLDAGE

Many traditional societies of the past considered family harmony to be an important factor governing family relationships. This reverence for the family was reinforced by philosophical traditions and public policy. In Chinese society, it was embedded in a value system that stressed —filial piety . Mistreatment of older people was unrecognized and certainly unreported. These traditions are still influential today. Studies in the United States of attitudes towards older abuse revealed that citizens of Korean origin believed in the primacy of family harmony over individual well-being as a yardstick for determining whether a particular behaviour was regarded as abusive or not¹ Similarly, people of Japanese origin considered the —group to be paramount, and that an individual's well-being should be sacrificed for the good of the group.²

In some traditional societies, older widows are abandoned and their property seized. Mourning rites of passage for widows in parts of Africa and India include practices that elsewhere would certainly be considered cruel, for example sexual violence, forced levirate marriages³ and expulsion from their homes⁴. In some places, accusations of witchcraft, often connected with unexplained events in the local community, such as a death or crop failure, are directed at isolated, older women.⁵

In sub-Saharan Africa, accusations of the practice of witchcraft have driven many older women from their homes and their communities to live in poverty in urban areas. In the United Republic of Tanzania, an estimated 500 older women accused of witchcraft are murdered every year⁶. These acts of violence have become firmly entrenched as social customs and may not be considered locally as —elder abuse .

III. DEVELOPMENT OF MODERN HUMAN RIGHTS

Bunches of rights protecting and safeguarding basic human dignity including the dignity of oldage persons are globally recognized human rights. Nowadays, these remarkable rights are also known as fundamental rights in different countries of constitutional

democracy. Modern human rights law developed out of customs and theories that established the rights of the individual in relation to the state. These rights were expressed in legal terms in documents such as the English Bill of Rights of 1688, the U.S. Declaration of Independence of 1776, the U.S. Bill of Rights added to the U.S. Constitution in 1789, and the French Declaration of the Rights of Man and the Citizen added to the French Constitution in 1791. Human rights law also grew out of earlier systems of International Law. These systems, developed largely during the eighteenth and nineteenth centuries, were predicated on the doctrine of national sovereignty, according to which each nation retains sole power over its internal affairs without interference from other nations. As a result, early international law involved only relations between nation-states and was not concerned with the ways in which states treated their own citizens.

During the late nineteenth and early twentieth centuries, the notion of national sovereignty came under increasing challenge, and reformers began to press for international humanitarian standards. In special conferences such as the Hague Conference of 1899 and 1907, nations created laws governing the conduct of wars and handling of prisoners.

IV. NATIONAL POSITION

In India for the first time in the year 1993 the law relating to human rights was passed in the name of Protection of Human Rights Act, 1993. Under which a National Human Rights Commission in the national level and State Human Rights Commissions were established for smoothen the protection of human rights in India. Presently in India we have apart from national commission 18 state human rights commission in ANDHRA PRADESH, ASSAM, HIMACHAL PRADESH, JAMMU & KASHMIR, KERALA, KARNATAKA, MADHYA RADESH, MAHARASHTRA, MANIPUR, ORISSA, PUNJAB, RAJASTHAN, TAMILNADU, UTTAR PRADESH, WEST BENGAL, CHHATTISGARH, GUJARAT AND IN BIHAR.

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 oldage, 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.

a) *Problems of the Old Age Person:*

From past to present study of various enriched resources during different periods comprehensibly consolidated following major problems of the aged for which they have been suffering deeply and required thorough implication not only through legal measures instead requires socio-legal mechanism to curb out this long waited problem:

- i. Economic problems include problems like loss of employment, income deficiency and economic insecurity.
- ii. Physical and physiological problems including health and medical problems, nutritional deficiency, and the problem of adequate housing etc.
- iii. Psycho-social problem which cover problems related with their psychological and social maladjustment as well as the problem of elder abuse etc.

b) *Growing Population of Old Age Person:*

The population of the oldage persons has been increasing over the years. As per the UNESCO estimates, the number of the aged (60+) is likely to 590 million in 2005. The figure will double by 2025. By 2025, the world will have more Oldage than young people and cross two billion mark by 2050. In India also, the population of elder persons has increased form nearly 2 crores in 1951 to 7.2 crores in 2001. In other words about 8% of the total population is above 60 years. The figure will cross 18% mark of total population by 2025 in India.

c) *Abuse of Oldage Person:*

Older abuse is also very often the result of long-term family conflict between parent and child or between spouses. Increasingly, the relationship between domestic violence and older abuse is understood to be important. In few studies which examine the phenomenon as a specific category, domestic violence accounts for a significant percentage of cases identified as 'elder abuse'. In many of these cases, the abuse is

¹Moon A, Williams O. Perceptions of elder abuse and help-seeking patterns among African-American, Caucasian American and Korean-American elderly women. *The Gerontologist*, 1993, 33:386–395.

²Tomita SK. Exploration of Elder Mistreatment Among the Japanese. In: Tataru T, ed. *Understanding Elder Abuse in Minority Populations*. Philadelphia, PA, Francis & Taylor, 1999:119–139.

³ Where a man is obliged by custom to marry the childless widow of his brother.

⁴Owen M. *A world of widows*. London, Zed Books, 1996.

⁵Gorman M, Petersen T. *Violence Against Older People and its Health Consequences: Experience from Africa and Asia*. London, Help Age International, 1999.

⁶Witchcraft: A Violent Threat. *Ageing and Development*, 2000, 6:9.

the continuance of long-term domestic violence into old age. With the onset of disability and the intervention of community services, behaviour which has long been carefully concealed is exposed and labeled as —older abuse . However, once again, the relationship is not straightforward. In some cases, the situation is reversed—the long-term perpetrator becomes dependent upon their victim and the domestic violence victim now becomes the abuser under changed power relations. As well as domestic violence, a history of other forms of family violence such as child abuse plays an important role. An abusive care may also be the victim of domestic violence or the adult survivor of child abuse who is now in a position of power over their past perpetrator. A full understanding of older abuse must also move beyond individual risk factors, and concentrate upon the problem as a function of broader social structural issues such as poverty, isolation, ethnicity and gender.

d) Risk Factors for Older Abuse:

Most of the research on risk factors has concentrated upon identifying individual pathologies, either on the part of the victim or of the perpetrator, or pathologies of the family environment. Studies have shown the important influence of dependency of the abused upon the abuser. In some cases, this is due to some form of cognitive or physical impairment of the abused (Kurrle et al. 1992; Sadler 1994). Carer stress, the most common early explanation for the existence of elder abuse, appears to be a less influential factor than first thought. Rather, where carer stress is a contributing factor, it is usually associated with dependency or other mediating influences. Predisposing individual factors in the abuser, such as dementia, substance abuse or psychiatric illness, have also been identified (Kurrle et al. 1992; Sadler 1994; Sadler & Weeks 1996).

Older abuse is also very often the result of long-term family conflict between parent and child or between spouses. Most of the early work on abuse of the elderly was limited to domestic settings and carried out in developed countries. In seeking explanations for elder abuse, researchers drew from the literature in the fields of psychology, sociology, gerontology and the study of family violence. To accommodate the complexity of older abuse and many factors associated with it, many other researchers have turned to the ecological model, which was first applied to the study of child abuse and neglect⁷ and has been applied more recently to older abuse^{8 9}. The ecological model can take into account the interactions that take place across a number of systems¹⁰.

e) The Consequences of Older Abuse:

For oldage people, the consequences of abuse can especially serious. Oldage people are physically weaker and more vulnerable than younger adults, their bones are more brittle and convalescence

takes longer. Even a relatively minor injury can cause serious and permanent damage. Many Oldage people survive on limited incomes, so that the loss of even a small sum of money can have a significant impact. They may be isolated, lonely or troubled by illness; in that case they are more vulnerable as targets for fraudulent schemes.

f) The Example of Oldage Abuse in India:

An eighty four year old women living with her son and daughter- in-law, she was ill treated by her family members putting her in the corridor of the house and she cannot go anywhere just like prisoner she was treated and also she was forced to do all the work of the house. The cruel part of the story is that her daughter-in-law was forcing her to bath by the toilet water.¹¹

V. INTERNATIONAL POSITION OF HUMAN RIGHTS AND OLDAGE PERSON

Human Rights are universal in nature and includes, and civil, political, economic, social and cultural rights which belongs to all human being irrespective of any restrictions, including Oldage people. The Human Rights of the aged are explicitly set out in the Universal Declaration of Human Rights, the International Covenants, the Convention on the Elimination of All Forms of Discrimination Against Women, and other widely adhered to international human rights treaties and Declarations. From different international and national instruments term human rights of older person includes the Human Rights of the old aged includes the following indivisible, interdependent and interrelated human rights. The human rights;

- to an adequate standard of living, including adequate food, shelter and clothing.
- to adequate social security, assistance, and protection.
- to freedom from discrimination based on age or any other status, in all aspects of life including employment and access to housing, health care, and social services.
- to the highest possible standard of health.
- to be treated with dignity.
- to protection from neglect and all types of physical or mental abuse.
- to full and active participation in all aspects of political, economic, social and cultural life of society.
- to full and effective participate in decision - making concerning their well-being.

a) Development:

The question of ageing was first debated at the United Nations in 1948 at the initiative of Argentina. The issue was again raised by Malta in 1969. In 1971 the General Assembly asked the Secretary-General to prepare a comprehensive report on the elderly and to

suggest guideline for the national and international action. In 1978, Assembly decided to hold a World Conference on the Ageing. Accordingly, the World Assembly on Ageing was held in Vienna from July 26 to August 6, 1982 wherein an International Plan of Action on Ageing was adopted. The overall goal of the Plan was to strengthen the ability of individual countries to deal effectively with the ageing in their population, keeping in mind the special concerns and needs of the elderly. The Plan attempted to promote understanding of the social, economic and cultural implications of ageing and of related humanitarian and developed issues. The International Plan of Action on Ageing was adopted by the General Assembly in 1982 and the Assembly in subsequent years called on governments to continue to implement its principles and recommendations. The Assembly urged the Secretary-General to continue his efforts to ensure that follow-up action to the Plan is carried out effectively.

- i. 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-fulfillment, and dignity of the older persons.

b) Principles Providing Action for Old Age Person:

- 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 affecting their well-being.
- 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 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.

⁷Garbarino J, Crouter A. Defining the Community Context for Parent-Child Relations: The Correlates of Child Maltreatment. *Child Development*, 1978, 49:604-616.

⁸Schiemberg LB, Gans D. An Ecological Framework for Contextual Risk Factors in Elder Abuse by Adult Children. *Journal of Elder Abuse and Neglect*, 1999, 11:79-103.

⁹Carp RM. *Elder Abuse in the Family: An Interdisciplinary Model for Research*. New York, NY, Springer, 2000.

¹⁰The model consists of a nested hierarchy of four levels of the environment: individual, relationship, community and society.

¹¹Sahara samay M.P.(news television program), 29/10/05 (8.30 am morning news) at jaipur.

c) Governmental Obligation under International Instrument:

Everyone is entitled to all ... rights and freedoms ... without distinction of any kind.... Everyone, as a member of society, has the right to social security and is entitled to realization ... of the economic, social and cultural rights indispensable for his dignity.... Everyone has the right a standard of living adequate for ... health and well-being..., including food, clothing, housing and medical care and necessary social services, and the right to security in the event of ... sickness, disability, widowhood, old age.¹²

States Parties ... undertake to guarantee that ... rights ... will be exercised without discrimination of any kind.... States Parties ... recognize the right to work.... Equal opportunity for everyone to be promoted ... subject to no considerations other than those of seniority and competence.... States Parties ... recognize the right of everyone to social security, including social insurance...; ... the right of everyone to an adequate standard of living..., including adequate food, clothing and housing...; ...the fundamental right of everyone to be free from hunger...; the right of everyone to the highest attainable standard of physical and mental health.¹³

Each State Party ... undertakes to respect and to ensure to all individuals ... rights ... without distinction of any kind.... No one shall be subjected to torture or to cruel, inhuman or degrading treatment.... In particular, no one shall be subjected without his free consent to medical ... experimentation.... All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human being.... No one shall be subjected to arbitrary or unlawful interference with his privacy, family, and home.¹⁴

States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: the right to work...; the right to the same employment opportunities...; ... the right to promotion, job security and all benefits and conditions of service...; the right to social security, particularly in cases of retirement,... sickness, invalidity and old age.... States Parties shall ... eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services.... States Parties shall ... eliminate discrimination against women in rural areas in order to ensure ... in particular ... the right ... to benefit directly from social security programmes...; to enjoy adequate living conditions.¹⁵

d) Commitments of International Organisation for the Protection of Oldage Persons' Rights:

The General Assembly.... urges the support of national initiatives on ageing ... so that: Appropriate national policies and programmes for the oldage are

considered as part of overall development strategies;...Governmental and non-governmental organizations collaborate in the development of primary health care, health promotion and self-help programmes for the Oldage; Older persons are viewed as contributors to their societies and not as a burden;... Policies and programmes are developed which respond to the special characteristics, needs and abilities of older women; Families are supported in providing care.¹⁶

Objectives of the programme is to develop systems of health care as well as systems of economic and social security in old age....paying special attention to the needs of women; To develop a social support system ...with a view to enhancing the ability of families to take care of elderly people within the family....Governments should seek to enhance the self-reliance of elderly people to facilitate their continued participation in society. In consultation with elderly people, Governments should ensure that the necessary conditions are developed to enable elderly people to lead self-determined, healthy and productive lives and to make full use of the skills and abilities they have acquired in their lives for the benefit of society....Governments, in collaboration with non-governmental organizations and the private sector, should strengthen formal and informal support systems and safety nets for elderly people and eliminate all forms of violence and discrimination against elderly people in all countries, paying special attention to the needs of elderly women.¹⁷

We heads of State and Government ...will create ... action to improve the possibility of older persons achieving a better life...Develop and implement policies to ensure that all people have adequate economic and social protection during...widowhood, disability and old age.¹⁸ The eradication of poverty requires universal access to economic opportunities that will promote sustainable livelihood and basic social services, as well as special efforts to facilitate access to opportunities and services for the disadvantaged.... There is ... an urgent need for: ... Policies ensuring that all people have adequate economic and social protection during ... disability and old age....Particular efforts should be made to protect older persons, including those with disabilities, by:..... Improving the situation of older persons, in particular in cases where they lack adequate family support....Ensuring that older persons are able to meet their basic human needs

meet their basic human needs through access to social services and social security, that those in need are assisted, and that older persons are protected from abuse and violence and are treated as a resource and not a burden...Strengthening measures... to ensure that retired workers do not fall into poverty.¹⁹

With the increase in life expectancy and the growing number of older women, their health concerns require particular attention....Diseases of ageing and the interrelationships of ageing and disability among women...need particular attention....Actions to be taken: ..Develop information, programmes and services to assist women to understand and adapt to changes associated with ageing and to address and treat the health needs of older women...Discrimination in...hiring and remuneration, promotion...continue to restrict employment, economic, professional and other opportunities...for women....Actions to be taken:...Adopt and implement laws against discrimination based on sex in the labour market, especially considering older women workers, hiring and promotion, the extension of employment benefits and social security, and working conditions.²⁰

Older persons are entitled to lead fulfilling and productive lives and should have opportunities for full participation in their communities and society, and in all decision-making regarding their well-being, especially their shelter needs. Their many contributions to the political, social and economic processes of human settlements should be recognized and valued. Special attention should be given to meeting their evolving housing and mobility needs in order to enable them to continue to lead rewarding lives in their communities....We commit ourselves to...:Promoting shelter and supporting basic services and facilities for education and health for...older persons.²¹

VI. PROTECTION UNDER NATIONAL LAWS

a) *Constitutional Protection:*

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.

Promotion of educational and economic interests of ... and other weaker sections: The State shall promote with special care the educational and economic interests of the weaker sections of the people.....and shall protect them from social injustice and all forms of exploitation.²³

However, these provision 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.,

¹² Universal Declaration of Human Rights, Articles 2, 22, and 25

¹³ International Covenant on Economic, Social and Cultural Rights, Articles 2, 7, 9, 11, and 12

¹⁴ International Covenant on Civil and Political Rights, Articles 2,7,10,17

¹⁵ Convention on the Elimination of All Forms of Discrimination Against Women, Articles 11, 12, and 14

¹⁶ UN General Assembly Proclamation on Ageing, para. 2

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 is directly related to the Oldage persons.

b) 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.

1. 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.²⁴

The obligation of a person to maintain his or her aged infirm parent or a daughter who is unmarried 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.²⁵ Thus 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.

2. Protection under 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.

ii. Protection under Criminal Laws:

1. Protection under the Code of Criminal Procedure

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.²⁶

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.²⁷

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 considerably difficulty in the amount of

¹⁷ Cairo Programme of Action, paras. 6.17, 6.19, and 6.20

¹⁸ Copenhagen Declaration, para. 26 and Commitment 2

¹⁹ Copenhagen Programme of Action, paras. 24, 25, and 40

²⁰ Beijing Platform for Action, paras. 101, 106, and 165

²¹ Habitat Agenda, paras. 17 and 40

²² Article 41 of the Constitution of India

²³ Article 46 of the Constitution of India

²⁴ Section 20(1) of Hindu Adoption and Maintenance Act, 1956

²⁵ Section 20(3) of Hindu Adoption and Maintenance Act, 1956

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.

c) 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:²⁶

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 Oldage 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 Oldage. 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 save the superannuated persons from any hardships. It also encourages to make the taxation policies elder sensitive.

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(1) Expeditious Disposal of Cases Involving Senior Citizens:

The Chief Justice of India has advised Chief Justices of all High Courts to accord priority to cases involving older persons and ensure their expeditious disposal. [vide letter of Government of India, Ministry of Social Justice & Empowerment (SD Section), New Delhi, F. No. 20-76/99-SD dated 03.11.1999]

(2) RTI Act (Right to Information Act):

Second appeals filed by senior citizens and differently abled persons under the Right to Information Act (RTI) are taken on a high priority basis, according to a directive of the Central Information Commission (CIC). For, senior citizens and physically challenged if appeals are already pending with the CIC/SCIC, they should write to the CIC/SCIC about their status.

²⁶ Section 125(1)(d) of Criminal Procedure Code 1973

²⁷ Section 125(3) of Criminal Procedure Code 1973

²⁸ Formulated by the Govt. Of India, Social Justice and Empowerment Ministry and adopted by the Union Cabinet on 13th February 1999

(3) Health Care :

- a. There is provision for separate queues for senior citizens at hospitals and health care centers when they visit for any health related concerns or clinical examinations.
- b. The Delhi Government runs special clinics for Senior Citizens in most of its hospitals in Delhi.

(4) Finance & Taxation:

- a. You are advised to refer to the Indian Income Tax Department for the current slabs of Income Tax including rebate admissible to senior citizens. As per recent finance budget 2008-09 (presented on 29th February, 2008) the threshold income when you start paying tax stands at Rs. 2.25 lakh per annum for senior citizens.
- b. The benefit of Section 80C of the Income Tax Act, 1961 has been extended to the investments made under 5-Year Post Office Time Deposits Account and Senior Citizens Savings Scheme, with effect from 01.04.2007.

(5) Banking and Insurance :

- a. Government also gives a higher rate of interest to senior citizens on certain Savings schemes which it runs through its large network of Post Offices (Senior Citizens Savings Scheme) and Public sector Banks. For further details you are advised to contact your nearest Bank or local Post Office.
- b. Some banks like State Bank of India charge only 50% of the applicable prescribed charges in respect of following services like i) Issue of duplicate passbook/statement of account ii) Issue of cheque books, iii) Noting of standing instructions, iv) Stop payment instructions, v) Charges of non maintenance of minimum balance, vi) Issue of balance certificate, vii) Signature verification, viii) Ledger folio charges etc. and ix) Minimum balance requirement is also 50% for these class of customers.
- c. Life Insurance Corporation of India (LIC) has also been providing several scheme for the benefit of aged persons, i.e., Jeevan Dhara Yojana, Jeevan Akshay Yojana, Senior Citizen Unit Yojana, Medical Insurance Yojana.

(6) Telecommunications

- a. Department of Telecommunications has made special provisions for senior citizens who apply for a new telephone connection. The department has earmarked separate priority category for senior citizens wherein they can apply for registration.
- b. In case of any complaint or fault with the telephone a senior citizen's complaint is redressed on a priority basis.

(7) Travel by Indian Railways

- a. Travel by Indian Railways is 30% cheaper for all Senior Citizens who are 60 years in age or above.

Indian Railways provides this fare concession to elderlies in all its trains including Shatabdi, Rajdhani and Jan Shatabdi trains. Kindly note that while travelling all Senior Citizens needs to carry proof of their Date of Birth/ Age with a Photo ID Card.

- b. There are separate Counters/Queues for Senior Citizens at all Railway Stations for purchase, booking or cancellation of tickets.
- c. Special arrangements are available for those who find it difficult to walk or move on their own. Wheel Chairs are available at all major junctions, District Headquarters and other important Railway stations for the convenience of Senior citizens and also for those who are in need.
- d. Indian Railways have recently introduced specially designed coaches which have provisions for hand rails and specially designed toilets for handicapped persons. These coaches also have space for wheel chairs.

(8) Travel by Airlines:

- a. Senior Citizens are entitled to 50% discount on Economy Class fares on all flights of Indian Airlines subject to certain conditions.
- b. Air India gives 45% discount in economy class on domestic sectors to senior citizens (women aged 63+ and men aged 65+).
- c. Other Airlines operating in India also offer discounts to senior citizens. It is advisable to check with them before you plan your travel.

(9) Travel by Roadways (state transport):

- a. State Road Transport Undertakings have made provision for senior citizens for reservation of 2 seats in the front row of all buses.
- b. Some state governments also give concessions (in fare) to senior citizens, while some also have specially modelled buses for the elderlies.

(10) Law (Legislations)

Maintenance & Welfare of Parents and Senior Citizens Act, 2007.

VII. CONCLUSIONS

In spite of aforesaid special arrangements for the oldage persons the position of oldage 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 Oldage 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; 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.

The Fifth Commandment directs, —Honour your father and your mother (Exodus 32:19). In the Mahabharata, Bhishma tells Yudhishthira, —The worship of mother, father and teacher is most important according to me.²⁹

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 want.³⁰ Finally, it may be conclude by saying that the problem of the Oldage 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 oldage 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 oldage 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.

²⁹ Shanti Parva CVIII

³⁰ Article 41 of the Constitution of India.

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