

Rights of Senior Citizens under Statutes and International-National Perspective

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Abstract: Senior citizens or old people constitute a precious reservoir of such human resource as is gifted with varied experience, knowledge of various sorts and deep insights. Old age is a new phase of life which is considered as second childhood. It is a stage where a person is physically weak, seeking emotional strength and love from near and dear ones. Ageing is a natural process which inevitably occurs in human life cycle. This article has been discussed through heading like introduction, international and national perspective of rights of senior citizens, and conclusion.

Keywords: *Senior Citizens, Old Age.*

Introduction

The Senior Citizens constitutes a precious reservoir of such human resource as is gifted with varied expenditure, knowledge of various sorts and deep insights. May older people have formally retired yet majority of them are physically fit and mentally alert. Given an appropriate opportunity, they are in a position to make significant contribution to the socio-economic development of their nation. No person remains forever young. Each day person is nearer to his or her second childhood that is old age. It is an age where a person is physically weak, seeking emotional strength and love from near and dear ones. Ageing is a natural process which inevitably occurs in human life cycle. In the present scanners earning more and more money is becoming the utmost priority of human being of the Indian society.¹ Old age consist of ages surpassing the life of expectancy of human beings & thus the end of the human life cycle. The term for old people or elderly people includes old people seniors citizens older adults (in the social science) and the elders.²

Problems of the Senior Citizens

The problems faced by the older people in modern times are a basic reason to for the

¹Souvenir, *National Seminar on New Dimensions of Law: Growth and Relevance* 97 (October, 2009).

²Jayasankar K.I., "Senior Citizens in India A Probe on Their Plights and Rights" XLII (2) *IBR* 101 (2015).

implementation of policy for older persons. The problems faced by elders are:³

Economic Problems

Economic problems include such problems as loss of employment, income deficiency and economic insecurity.

Physiological Problems

Physical and physiological problems include health and medical problems, nutritional deficiency and the problem of housing etc. with growing age, older people experience various physiological changes.

Housing Related Problems

Housing for the aged should be suitable not only to the living pattern which they have established in optimum health, but also to conditions of failing health and illness.

Social Isolation and Loneliness

Social isolation and loneliness are often considered to be the problems of growing older. As people age, many outlive relatives and friends and social interaction may become limited as people stay closer to home because of mobility difficulties and increased chronic illness. Older people may be less or more dissatisfied with the narrowing of their social network.

Problem of Elder Abuse

Elder abuse means ill treatment to an older person. Elder abuse includes several types of violence that occur among those ages 60 and older. The violence usually occurs at the hands of a caregiver or a person the elder trusts. Six types of elder abuse include: (i) Sexual: This involves forcing an elder person to take part in a sexual act when elder does not consent. (ii) Physical: This includes hitting kicking, pushing, slapping, burning or other show of force. (iii) Emotional: This includes name calling of eldest, embarrassing destroying property or not letting the elder see friends and family. (iv) Neglect: This is a failure to meet an elder's basic needs. These needs include food, housing, clothing and medical care. (v) Abandonment: This happens when a caregiver leaves an elder alone and no longer provides care for him or her.

Rights of Senior Citizens: International Scenario

Ageing has become the worldwide problem today. Persons who have served the society

³*Ibid.*

throughout their young age and even in the years of their gradually fruiting body strength up to sixty five years in some cases of services of public posts, have become retired persons and are being felt to be a burden upon their families and the state itself.⁴ The Declaration on Social progress and Development in 1969 for the first time specifically mentions old age in Article 11.

Universal Declaration of Human Rights, 1948

There are certain rights the specific mention of which is relevant here. There are: (i) Everyone has the right of life, liberty and security of persons,⁵ and (ii) Everyone as a member of society has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each state of the Economic, Social and cultural rights indispensable for his dignity and the free development of his personality.⁶ Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.⁷

International Covenant on Economic, Social and Cultural Rights, 1966

International Covenant on Economic, Social and Cultural Rights, 1966 also provides some basic rights essential for the proper well-being of a person, provisions relevant for the present study are: (i) The state parties to the present covenant recognize the right of everyone to social security, including social insurance,⁸ (ii) The States parties to the present covenant recognize that: The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society,⁹ (iii) The state parties to the present covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living condition.¹⁰

⁴A.N. Sen, *Human Rights* 454 (Sri Sai Law Agency, Faridabad, 2006).

⁵Article 3 of Universal Declaration of Human Rights 1948.

⁶Article 22 of Universal Declaration of Human Rights 1948.

⁷Article 25(1) of Universal Declaration of Human Rights 1948.

⁸Article 9 of International Covenant on Economic, Social and Cultural Rights, 1966.

⁹Article 10(1) of International Covenant on Economic, Social and Cultural Rights, 1966.

¹⁰Article 11(1) of International Covenant on Economic, Social and Cultural Rights, 1966.

European Social Charter, 1961¹¹

The relevant provisions for the present study from the European Social Charter are: (i) The right to social security, (ii) The Right to Social and Medical assistance, (iii) The right to benefit from social welfare services, and (iv) The right of the family to social, legal and economic protection.¹²

United Nations Proclamation on Ageing, 1992

Recognizing the need for a practical strategy on ageing for the decade 1992-2001: Urges the international community (i) To promote the implementation of the International Plan of Action on Ageing, (ii) To disseminate widely the United Nations Principles for older persons, (iii) To support the practical strategies for reaching the global targets in for the year 2001, (iv) To support the continuing efforts of the Secretariat to clarify policy options by improving data collection, research, training technical cooperation information exchange on ageing, (v) To promote intraregional and interregional cooperation and exchange of resources for programs and projects on ageing, including those for lifelong healthy ageing income generation and new forms of productive ageing.¹³

The Madrid International Plan of Action on Ageing, 2002

The United Nations organized the Second World Assembly in Madrid in April 2002, which elaborated the Madrid International Plan on Ageing the Madrid International Plan of Action on Ageing (MIPPA) in the Second after Vienna 1982 internationally agreed program to other recommendations and guidelines to countries seeking to develop and implement policies and program on ageing. The guiding framework aims to: (i) Help Member States to develop and implement policies on ageing by providing practical recommendations based on national level experience, (ii) Promote an age-integrated approach to the analysis and design of national policies and programs, and (iii) Expand the technical assistance provided by the Division for Social policy and development for implementing policies on ageing to a wider number of countries by sharing experience and capacity building can studies.¹⁴

¹¹European Social Charter, 1961.

¹²Article 16 of European Social Charter, 1961.

¹³*Ibid.*

¹⁴The Madrid International Plan of Action on Ageing, 2002.

The Macao Outcome Document, 2007¹⁵

The high level meeting on the regional review of the Mind Internal Plan of Action on Ageing (MIPAA) was held from 9-11 October, 2017 at Macao in China. The Macao Outcome document of 46 points were divided in parts. These are: (i) Older persons and development, (ii) Advancing health and well-being into old age, (iii) Ensuring Enabling and supportive Environment, and (iv) Further implementation and follow up.¹⁶

Rights of Senior Citizens: National Scenario

The Union List gives the National Government exclusive authority over 97 domains including banking, defense and income taxes and the State List given states authority over 66 matters such as health, education, welfare, agriculture and local government all of particular importance to the aged and their families. The constitutional framework provides the scenario under which prospects and policies for India's elderly occur particularly the National Policy on Older Persons (NPOP), Enacted in 1999.¹⁷

Provisions Relating to Protection of Old Age under Indian Constitution

Constitution of India provides various provisions relating to the welfare of aged persons. Provision relating to old age person directly deals with aged parents. Preamble of the Constitution itself declares 'India' to be a socialist country. Being asocialist nation maintenance and protection of the interests of the old person is the prime concern. Older or aged persons are also considered to be vulnerable the special attention must be made to safeguard the interests of aged persons. Right to life and personal liberty¹⁸ is a fundamental right provided by our Constitution to every person. In this article the term 'person' is used, thus it is clear from the language of the provision that this fundamental right is available to every person irrespective of his nationality race, caste, place of birth, residence, religion, age etc. Rights to life and Personal Liberty includes right to live with dignity. This Article indirectly contained the provision for providing economic means and resources to aged persons. The right to move the Supreme Court by appropriate proceedings

¹⁵The Macao Outcome Document, 2007.

¹⁶*Ibid.*

¹⁷Phoebe S. Liebig and S. IrudayaRajan, *An Aging India Prospective, prospects and policies* 3-4 (Rawat Publications, New Delhi, 2005).

¹⁸Article 21 of the Constitution of India, 1950.

for the enforcement of the fundamental rights is guaranteed.¹⁹ Similar proceedings are also maintainable in the concerned High Court.²⁰

Article 14 of the Indian Constitution is the first Fundamental Right secured to the people of India i.e. Right to Equality. The state shall not deny to any person equality before the law or equal protection of laws within the territory of India.²¹ The obligation imposed on the state by Article 14 is for the benefit of all persons including older person within the territory of India Article 41 of the Directive Principles of State Policy has particularly evinced to old age social security.²² This provision is directly deals with the responsibility of the state to provide public assistance to old aged person. The state shall Endeavour to ensure for the citizens a Uniform Civil Code throughout the territory of India.²³ This article is relevant because concept of maintenance comes in the field of civil personal law. In our country in the matter of family law each community is governed by its own personal law which may be sometimes cause huge hardship and injustice to the victim party.

Maintenance of Parents under the Criminal Procedure Code, 1973

Section 125 to 128 of Code of Criminal Procedure, 1973²⁴ make provision for maintenance of wives children and parents, It is natural and fundamental duty of every person to maintain his wife and children who are not able to maintain themselves. So it is sacred duty of a person to maintain his parents if they are unable to maintain themselves. The provision of the Code of Criminal Procedure, 1973 under chapter is give effect to this natural duty of man. These provisions serve a special purpose to avoid vagrancy.²⁵ Section 125 (1) (d) of Code of Criminal Procedure, 1973 is a provision in Indian law whereby a Magistrate can order children to make a payment of monthly allowance as maintenance to their parents (father or mother).

Maintenance to Parents under Hindu Law

All member of a joint family, whatever be their status and whatever be their age, are entitled to maintenance. Hindu law also recognizes that a Hindu has a personal obligation to maintain certain

¹⁹Article 32(1) of the Constitution of India, 1950.

²⁰Article 226 of the Constitution of India, 1950.

²¹Article 14 of the Constitution of India, 1950.

²²Article 41 of the Constitution of India, 1950.

²³Article 44 of the Constitution of India, 1950.

²⁴The Code of Criminal Procedure, 1973 (Amendment Act, 2010).

²⁵S.N. Misra, *The Code of Criminal Procedure, 1973* 127 (Central Law Publication, Allahabad, 2008).

near relations, such as wife, children and aged parents and that onewhen takes another's property has an obligation to maintain the latter dependents.

The Hindu law of maintenance may be studied under the following three heads: (i) Personal obligation to maintain certain relation, (ii) Obligation of a person to maintain the dependents of another whose property has devolved on him end, and (iii) Obligation of the joint family to maintain its members. In Hindu law, the term 'maintenance has been used in a wide sense. The Hindu Adoption and Maintenance act, 1956²⁶ defines maintenance as provision for food, clothing residence, education and medical attendance and treatment.²⁷ Under Hindu law the term Parents' include both natural as well as adoptive parents. As per provisions of Hindu Adoption and Maintenance Act, 1956, parents include a children step mother.²⁸

Maintenance of Parents of Hindu adoption and Maintenance Act, 1956

The obligation to maintain aged or infirm parents is a personal obligation arising out of the parent child relationship. Under the old Hindu law, this obligation was imposed on the son alone. Daughter has no such obligation. The modern Hindu law makes it an obligation of sons and daughter.²⁹

Sec 20 of Hindu Adoption and Maintenance Act, 1956 also lays down an obligation of maintenance of old and infirm parents who are not able to maintain themselves out of their own personal earnings and property. The Hindu Adoption and Maintenance Act, 1956 is the first statute in India, which imposes an obligation on the children to maintain their parents. The obligation to maintain is not only limited to the sons but it also extends to the daughters. Under Hindu Adoption and Maintenance Act, both the mother and the father have an equal right to claim maintenance.

Under section 21 of Hindu Adoption and Maintenance Act, 1956 the parents of Hindu have a right to maintenance against the property of their daughter or son inherited by any person. The mother is a class I heir and the father is in category of class II heirs of a Hindu male. The father being in class II of the heirs of a Hindu male, he will not take property in the presence of the mother or any other class I heir. It may happen that the mother may be excluded by the will of the deceased. As to

²⁶The Hindu Adoption and Maintenance Act, 2010 (Act 30 of 2010).

²⁷The Hindu Adoption and Maintenance Act, 1956 (Act 78 of 1956).

²⁸*Ibid.*

²⁹*Ibid.*

the heirs of a Hindu female, parents came in entry III and even on intestatesuccession their turn will come much later. Even when they are heirs, they may beexcluded by will of the deceased Hindu female. When parents do not get a share inthe property of their son or daughter whosoever gets it takes it subject to their right of maintenance.³⁰

Maintenance of Parents under Muslim Law

Children have a duty to maintain their aged parents even under the Muslim law.Children in easy circumstances are bound to maintain their poor parents although thelater may be able to earn something for themselves. A son though in strainedcircumstances is bound to maintain his mother, if the mother is poor, though shemay not be infirm. A son, who though poor, is caring something is bound tosupport his father who earn nothing. Parents and grandparent in indigent circumstance are entitled to maintainform their children and grandchildren who have the means, even if they are able toearn their livelihood under Hanafi law. Both sons and daughters have a duty to maintain their parents under the Muslim law.

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

The Indian Parliament has passed in 2007 the Act the Parents and Senior Citizen Act of 2007. This will come into force in a state once the concerned state enforces it. The date on which the Act comes into effect will be notified by the concerned state government in its official gazette. This bill seeks to make it a legal obligation for children including grandchildren and heirs to provide maintenance to senior citizens. It includes in its purview all Indian citizens, including those living abroad. The state government may set up maintenance tribunals one or more in every subdivision, to decide she level of maintenance. Appellate tribunals are to be set up at the district level. In this manner, the filing of an appeal is simplified and there is a directive to determine the level of maintenance within 90 days. Any maintenance order made by the tribunals shall have the same force as an order passed under Chapter IX of the code of criminal procedure. If the tribunal is satisfied that there is neglect, it may order the children or relatives to give a monthly allowance of up to Rs.10,000. The procedure for filing petitions to the tribunals is seen to be simpler over; a voluntary organization registered with the government can do this for an elderly person, also another person on behalf of a senior citizen. The tribunal is also given the authority to file a

³⁰Section 21(4) of the Hindu Adoption and Maintenance Act, 1956 (Act 78 of 1956).

petition suomotu. In case of children persons, the relatives are obliged to look after them. The Bill defines the term relative as someone who I in possession of or would inherit a senior citizen's property.³¹

The Tribunal may issue warrant within 3 months of the due date on failure to comply with the maintenance. If maintenance is remain unpaid the accused may be imprisoned to one month or till the time it is paid which over is earlier punishment for abandoning a senior citizen shall include imprisonment for up to 3 months or a long of rupees 5000/- or both. The Tribunal can declare a transfer of property from a senior citizen to transfers as void if the transfer was made under the condition of maintenance and the transferee neglects the government. Only parents are allowed to appeal against the tribunals. There is a provision in this Act under which transfer of property after the commencement of this act, by fit or otherwise can be declared void if legal wise to senior citizens property refuse to provide for maintenance of the senior citizen. In this Act provision is made for establishment of old age homes by the state government in every district of the State.

Government Policies for Older Persons

Over the years, the government has launched various schemes and policies for older persons. These schemes and policies are meant to promote the health, well-being and independence of senior citizens around the country. Some of these programmes have been enumerated below:

National Policy for Older Persons, 1999

The Central Government came out with the National Policy for older Persons in 1999 to promote the health, safety, social security and well-being of senior citizens in India. The policy recognizes a person aged 60 years and above as a senior citizen. The main objectives of this policy are to make older people fully independent citizens. This policy has resulted in the launch of new schemes such as: (i) Strengthening of primary health care system to enable it to meet the healthcare needs of older persons, (ii) Training and orientation medical and paramedical personnel in health care of the elderly, (iii) Promotion of the concept of healthy ageing, (iv) Provision for separate queues and reservation of beds for elderly patients in hospitals.³² The policy also appreciates special needs

³¹P.K. Kuruvilla, "Old Age Insecurity: How far does the Parents and Senior Citizen's Act of 2007 address the Problem" 52 *IJP* 298 (2010).

³²The National Policy on Older Persons in 1999.

of older persons and therefore lays emphasis on empowerment of community as well as individuals to adequately meet the challenges of the process of ageing.³³ Objectives of National policy on older persons, 1999 are: Financial Security, Health security, recognizing shelter as basic human need, Welfare and institutional care, Protection of life and property of older persons, and Training of human resources to care for older persons.

National Policy on Older Persons, 2011

Recognize that senior citizens are a valuable resource for the country and create an environment that provides them with equal opportunities, protects their rights and enables their full participation in society. Towards achievement of this directive, the policy visualizes that the states will expand their support for senior citizens living below the poverty line in urban and rural areas and ensures their social security, healthcare, shelter and welfare. It will protect them from abuse and exploitation so that the quality of their lives improves. State will be advised to implement the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and set up Tribunals so that elderly persons unable to maintain themselves are not abandoned and neglected. States will set up homes with assisted living facilities for abandoned senior citizens in every district of the country and there will be adequate budgetary support.³⁴

National Council for Older Persons

A National Council for Older Persons (NCOP) has been constituted by the Ministry of Social Justice and Empowerment to operationalize the national policy on older persons. The basic objectives of the NCOP are to: (i) advise the government on policies and programmes for older persons, (ii) Provide feedback to the government on the implementation of the national, (iii) Policy on older person as well as on specific programme initiative for older, (iv) Persons advocate the best interests of older persons.

The Protection of women from Domestic Violence Act, 2005

Parents and Senior citizen being women can claim protection, possession of property, compensation and maintenance from their sons, daughter, husband, landlord and similar

³³*Ibid.*

³⁴*Ibid.*

parties who inflicts violence on them.³⁵

The Indian Penal Code, 1860

The Indian Penal Code (IPC) gives protection against torture of when it gives rise to offence of criminal nature. The relevant sections for senior citizens are section 319-hurt Section 383 Extortion, Section 384-Punishment for Extortion and Section 503-Criminal intimidation.³⁶

Conclusion

After careful examination of almost all the relevant legislative provisions and various schemes we can conclude that there are numerous enactments on the issue of rights of parents to maintenance and welfare of old aged person in the shape Constitution of India, Criminal Law, Personal Laws of different communities and also various welfare schemes adopted by the state it is shown from the working of these laws and schemes that these are completely failed in achieving the purpose for which these were enacted It is also submitted that state is going on wrong track because its entire emphasis on monetary welfare on aged parents but money is not the thing that parents want from their children It is also submitted that more efficient implementation of already enacted law is the crying need of the hour. Lastly, it is submitted that another enactment is not required rather proper implementation of existing laws are capable to protect the rights and interests of parents and old aged person. It is also submitted that more emphasis on the matter of implementation is need of the hour.

³⁵Paratha Sarathi Adhya and Sanjeev Kumar Tiwari, "International Movement for Welfare of Senior Citizens vis-à-vis Indian Perspective" XLI 4 *IBR* 101(2014).

³⁶*Ibid.*