

Right of Elderly Person: A Legal framework in India

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ABSTRACT

Old age is an indispensable stage of life of a human being which a man cannot refute except untimely death. Like childhood, the concept of old age is a socially constructed phenomenon. Older persons are seen as segregated from society, producing a gap that must be bridged, while at the same time recognizing the particular needs and contribution of this group. Economically, they are often viewed as non-productive and therefore incapable of contributing to society. So, they are assumed to be economically non-productive, legitimizes and reinforces their marginality. The Problems of the elderly people are: - The Economic problems, includes loss of employment, income deficiency and economic insecurity. Then Physical and physiological problems, include health and medical problems, nutritional deficiency, and the problem of adequate housing etc. and also the Psycho-social problem which cover problems related with their psychological and social maladjustment as well as the problem of elder abuse etc. Apart from this the elderly people also faces various problems such as Community and Social Care, Housing, Transport, Income, Leisure Safety & Security Utilities & Consumer Protection, Access to information and Decision-Making etc. In this article the available legal, social, moral and governmental norms are analyzed to find out the possible ways by which elderly people's rights are infringed and they bound to suffer pain and agony. The article reflects the available laws, policies and guidelines for the protection of the rights of old age person in India.

Key Words- Economic problem, Marginality, old age, economic security, leisure safety, consumer protection, decision making, Govt. policies and laws, Community Care, Social Care, Employment

Introduction

The problems of the elderly in India were not serious in the past because the numbers were small and the elderly were provided with social protection by their family members. But owing to relatively recent socio-economic changes, ageing of the population is emerging as a problem that requires consideration before it becomes critical. Thus, strengthening and protecting rights of older people has also emerged as their major need now. In general, the rights stipulated for the older persons in international instruments stem from the principles of dignity and nondiscrimination. The rights of older persons can be divided into three main categories. They are the protection, participation and image. Protection refers to securing the physical, psychological and emotional safety of older

persons with regard to their unique vulnerability to abuse and ill treatment. Participation refers to the need to establish a greater and more active role for older persons in society. Image refers to the need to define a more positive, less degrading and discriminatory idea of who older persons are and what they are capable of doing. In India, majority of Older People have at least one chronic disease such as asthma, angina, arthritis, depression, or diabetes. The aging of India's population is leading to increases in the prevalence of chronic conditions such as diabetes and hypertension. India's health insurance scheme for the poor only covers those aged 65. As per Art. 25 of Universal Declaration of Human Rights 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, 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.

Rights of Older People

Right to life shall be protected by law. Right not to be subjected to inhuman treatment "No-one shall be subjected to torture or to inhuman or degrading treatment or punishment". Right to liberty "Everyone has the right to liberty and personal security. Right to a fair hearing "In the determination of his civil rights and obligations... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

"Civil rights and obligations" are the right to respect at home, within family, the right to freedom of thought and conscience, the right not to be discriminated against age, the right to property and the right to education etc.

There are many problems faced by the elderly people. Economic problems- it includes such problems as loss of employment, income deficiency and economic insecurity. Physical and physiological problems-it includes health and medical problems, nutritional deficiency, and the problem of housing etc. Psycho-social problems- it includes problems related with their psychological and social maladjustment as well as the problem of elder abuse etc.

Constitutional provision for elderly people

Art. 41 of the Indian Constitution states that 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.

Hindu Law

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.

Criminal Procedure Code

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 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.

Governmental Protections

Government has formulated several well-intentioned policies and laws but there is no effective implementation mechanism and most of the policies and provisions are on paper only. There is a widespread anxiety among older people, particularly younger older people (60-70 years) about the current old age scenario in the society.

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

Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is a legislation enacted in 2007. This Act makes it a legal obligation for children and heirs to provide maintenance to senior citizens and parents, by monthly allowance and also provides simple, speedy and inexpensive mechanism for the protection of life and property of the older persons. Parent who is unable to maintain himself from his own earning or out of the property owned by him, is entitled to get relief under this Act. If such children are not maintaining his parents or senior citizen respectively, then the parents can seek the assistance of Tribunal constituted under this Act, to enforce the remedy of maintenance. Such parents/ senior citizen can file an application before the Tribunal, claiming maintenance and other reliefs from their children and after receiving the application the Tribunal may issue notice to the respondent-children/relative and provide them time to furnish their reply. Such application for maintenance should be disposed of within 90 days from the date of service of notice of application to the respondent. However, the Tribunal can extend time for a maximum period of 30 days in exceptional circumstances after recording reason. The Tribunal is having power to allow interim maintenance pending disposal of the case. Even though the application can be filed against any of children/relative as the case may be, such respondent-children/relative can imp lead other persons who are liable to pay maintenance. If such children/relative who is directed to pay maintenance fail to comply with the order of tribunal without sufficient cause, the Tribunal may issue warrant for levying the due amount from them in the manner levying fines and can also sentence the erring respondent to imprisonment that may extend to one month or until payment made whichever is earlier. This bill also permits State Governments to establish old age homes with the minimum capacity of 150 elders for the neglected elderly people in every district. The State Government may establish a maintenance tribunal in every district under which every old age citizen can go and claim their right of maintenance seeking monthly allowance from their children or heirs. The appellate tribunal may also be established in every district. The bill makes Rs 10,000 which shall

not exceed as a monthly allowance to the elder parent from their children or heirs and if they do not pay the allowance shall be liable for punishment of 3 months of imprisonment or Rs 5000 or both.

National Policy for Older Persons 1999.

It was a step to promote the health, safety, social security and well-being of elderly in India. The policy recognizes a person aged 60 years and above. This policy enables and supports voluntary and nongovernmental organizations to supplement the care provided by the family and provide care and protection to vulnerable elderly people.

National Council for Older Persons 1999

A National Council for Older Persons was constituted in 1999. This council is the highest body to advise the Government in the formulation and implementation of policy and programmes for the elderly.

Central Sector Scheme of Integrated Programme for Older Persons 1992

The main objective of the scheme is improving the quality of life of senior citizens by providing basic amenities like food, shelter, medical care and entertainment opportunities etc

National Old Age Pension 1994

It is implemented in the State and Union Territories through Panchayats and Municipalities. The Ministry is now implementing the Indira Gandhi National Old Age Pension Scheme. Under this scheme Central assistance in form of Pension is given to persons, above 65 years @ Rs. 200/- per month, belonging to a below poverty line family. This pension amount is meant to be supplemented by at least same contribution by the States so that each applicant gets at least Rs. 400/- per month as pension.

National Policy on Senior Citizens 2011

The focus of the new policy is to promote the concept of 'Ageing in Place' or ageing in own home, housing, income security and homecare services, old age pension and access to healthcare insurance schemes and other programmes and services to facilitate and sustain dignity in old age. The thrust of the policy would be preventive rather than cure. The policy will consider institutional care as the last resort. The policy visualizes that the states will extend 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.

other important activities

The International Day of Older Persons is celebrated every year on 1st October, 2009.

schemes of other ministries:

(i) Ministry of Railways

The Ministry of Railways provided the following facilities to senior citizens such as: Separate ticket counters for the elderly people, provision of Lower Berth Quota – provide in AC and Sleeper Classes, provision of 30 percent discount in all Mails/Express, railway grant 75 percent concession to Senior Citizens undergoing major heart/cancer operations from starting station to Hospital station for self and one companion.

(ii) Ministry of Health and Family Welfare provides facility to obtain medicines for chronic ailments up to three months at a stretch and separate queue for elderly people in governmental hospitals.

(iii) Ministry of Finance provides exemption from Income Tax for senior citizens of 60 years and above up to Rs. 2.50 lakh per annum, exemption from Income Tax for senior citizens of 80 years and above up to Rs. 5.00 lakh per annum etc.

(iv) Ministry of Road Transport:

The Ministry of Road Transport and Highways has provided reservation of two seats for elderly or senior citizens in front row of the buses of the State Road Transport Undertakings. Some States Governments are providing fare concession to senior citizens in the State Road Transport Undertaking buses.

Other facilities for elderly persons

Reverse Mortgages- Under such scheme the senior citizen mortgages his property to a lender in the capacity of a borrower, the lender thereby makes periodic payments to the borrower during his lifetime.

Banking- Indian government gives high rate of interests to its senior citizens on certain savings plans which are run by the post offices and other private banks. They can also avail of Income tax rebate up to an income of Rs 1.85 lakhs per annum.

Housing-The Indian government provides housing facilities such as retirement homes and recreational or educational centers. These centers provide older persons with opportunities to spend their free time doing various activities. Most recreational centers have yoga clubs, fitness club, parks, spiritual session, picnic, food fests, libraries, art and craft, music classes and indoor games.

International Comparison

Internationally also various laws have been developed for securing the interests of the old aged:-

1. United States: Older American Act of 1965- created the administration on ageing within the department of health, education and welfare; authorized grants for the research and training in the field of ageing, for community planning, for implementing services for the elderly.

2. South Africa: Older Person Act no. 13 of 1996- provides strict control for registration of various kinds of facilities for the older people, makes abuse of the elderly a criminal offence; creates social and culture community- based services for the elderly.

3. Sri Lanka: Protection of Rights of Elder's Act 2000- has established a National Older Persons' Council, which requires children to provide care for their parents.

4. Canada: Parents Maintenance Act, 1978 and 1993 respectively- mandates children to pay maintenance to dependent parents. The amount of maintenance has an upper limit, fixed at \$20 per week.

Conclusion

The goal of all these provisions is to provide safety and security to the elderly citizens of the country. They should be financially assisted so that they live with dignity. Many children neglect their parents when they are turning old and moving towards the very crucial years of their life where they need support, help, care, and love. Many cases have been noticed where the parents are left alone or left in the old age homes by their children. The people who once took care of every single need, whims and fancies of their children have now been left alone in this world by their children.

While seeing to all these cases, the Government of India took a stand on behalf of the elders and made provisions in the personal as well as secular laws. These laws made it mandatory for the children to maintain their parents. Both the son and daughter are under this obligation. Earlier, it was not a legal obligation but a moral one. But due to the various circumstance like increasing old age homes and all, the government made various laws to protect the elder section of the country.

The Parents and Senior Citizens Bill was also drafted by the parliament to ensure the rights of the elder citizens towards their children and heir. Punishments are also mentioned under the same bill that disobeys the provisions of the bill. But the worst part is, there is no solid and strong law for the elders under which their rights cannot be curtailed. Therefore, the government of India should take up a strong initiative to make laws for the elder citizens of the country. The government has tried its best to provide for the upliftment and protection of older persons (that could make their everyday living better) by drafting various governmental concessions, schemes and policies specifically for them. However the implementation of these well-intended instrument is very poor.

The other concern that has not been adequately addressed by legal instruments is the increased crime rate against the elderly populace on the streets and within the confines of their homes, robbery and dacoity being the primary reasons for their attack. Proper police patrolling, SOS facilities seem to be the urgent needs of this hour along with the implementation of the instruments that are already in place.

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