

Constitutional and Legal Safeguards to Elderly People in India: An Appraisal

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Abstract

“Old is gold” this universal parlance across the globe exhibits theoretical aspect of old people and at the level of experience , it may reflect good results too as we see in homogenous societies where old people play a vital role as chief in home and political organization too . But present scenario is of globalization where economy based migration and hard survival make a situation of existence of nuclear family instead of sustainability of joint family which leads to many socio- legal problem for elderly people. India is culture specific developing country where elderly people are victim of circumstances. It is second largest populated country of the world and thousands of ethnic groups are living with their own culture and also in the ambit of democracy which make its effect by legal economic safeguards. The sense of duty within family for elderly people is reducing day by day while protection of human rights of elderly people by the government is increasing which is making elderly people more biological entity instead of cultural being. In spite of so many efforts by the government, Indian elderly people are far away from many facilities which come in the ambit of basic necessities either in culture or in human right framework. Present paper makes an analysis of safeguards provided to elderly persons in India.

Introduction

Population ageing is the most significant emerging demographic phenomenon in the world today. In 1950, the world population aged 60 years and above was 205 million (8.2 per cent of the population) which increased to 606 million (10 per cent of the population) in 2000. By 2050, the proportion of older persons 60 years and above is projected to rise to

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21.1 per cent, which will be two billion in number. Asia has the largest number of world's elderly (53 per cent), followed by Europe (25 per cent). This pressure of increasing numbers of elderly will intensify in the next 50 years. In 2050, 82 per cent of the world's elderly will be in developing regions of Asia, Africa, Latin America and the Caribbean while only 16 per cent of them will reside in the developed regions of Europe and North America. Population ageing is therefore rapidly emerging as the problem of developing countries. Ageing was not only an Asian trend up until 2000, but it is going to continue to dominate Asia in the next century as well (UNFPA, 1999).

Old age presents its special and unique problems but these have been aggravated due to the unprecedented speed of socioeconomic transformation leading to a number of changes in different aspects of living conditions. The needs and problems of the elderly vary significantly according to their age, socioeconomic status, health, living status and other such background characteristics (Siva Raju, 2002). For elders living with their families - still the dominant living arrangement - their economic security and well-being largely depends on the economic capacity of the family unit (Alam, 2006). In traditional Indian society, the informal support systems of family, kinship and community are considered strong enough to provide social security to its members, including older people. Urbanisation, industrialisation and the ongoing phenomenon of globalisation have cast their shadow on traditional values and norms within society. Gradual nuclearisation of the joint family, erosion of morality, changes in the value system, migration of youth to urban areas for jobs or work and increasing participation of women in the workforce are important factors responsible for the marginalisation of older people in rural India. As a result, the elderly depend on 'money-order economy' and their intimacy with their children is only from a distance (Kumar, 1999). The many physiological, economic, emotional and interpersonal facets of ageing influence the social functioning and well-being of individuals in different ways. Changing traditional values, mobility of the younger generation, changes in family structure and role of women have contributed to a 'crisis in caring' for the elderly (Prakash, 2004). Many facets of the

generation gap contribute to marginalisation of older persons and their wisdom by the younger generation, leading to conflicts, lack of respect and decline of authority, neglect and sometimes even exploitation or abuse. Given the rate of population ageing that developing countries like India are experiencing, there is a need to focus on ageing issues and to take effective measures for improvement in the quality of life of elderly in general and elderly women in particular. A country as large and complex as India needs to work out an extensive plan for the care and well-being of the elderly as necessary according to differences in levels of urbanisation as well as in cultural and familial systems. The rural poor, who mostly work in the informal or unorganized sector face insecure employment, insufficient income, and lack access to any form of social security and good quality and affordable health care. Generally, they have to pay a large percentage of their income for even basic healthcare services. As the interrelation of health and economic status continues throughout one's life, it is of special importance among the elderly whose livelihood depends on their physical ability and who do not have any provision for economic security. Social security pensions, though meager in amount, create a sense of financial security for the elderly, who benefit through schemes such as old age pension, widow's pension, agricultural pension and pension for informal sector workers. However, the proportion of elderly who benefit from these schemes has to be improved significantly.

Due to industrialisation and urbanisation and the changing trends in society, it is the urban elderly who are more likely to face the consequences of this transition as the infrastructure often cannot meet their needs. Lack of suitable housing forces the poor to live in slums which are characterised by poor physical conditions, low income levels, high proportion of rural migrants, high rates of unemployment and underemployment, rising personal and social problems such as crime, alcoholism, mental illness, etc. along with total or partial lack of public and community facilities such as drinking water, sanitation, planned streets, drainage systems and access to affordable healthcare services. With the increasing prevalence of slum dwellers who come to urban areas in search of better opportunities, a significant proportion of them would be elderly.

While rural India continues to provide family support in old age, the forces of globalisation have touched many a life leading to migration of children to cities or abroad.

Elderly People And Indian Safeguards

I. Constitutional Provisions

In Constitution of India, entry 24 in list III of schedule VII deals with the Welfare of Labour, including conditions of work, provident funds, liability for workmen's compensation, invalidity and Old age pension and maternity benefits. Further, Item No. 9 of the State List and item 20, 23 and 24 of Concurrent List relates to old age pension, social security and social insurance, and economic and social planning.

Article 38. State to secure a social order for the promotion of welfare of the people - (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Article 41 of Directive Principles of State Policy has particular relevance to Old Age Social Security. According to this Article, "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 case of undeserved want.

Article 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. (Shukla, 2008)

II. Legal Provisions

The Code of Criminal Procedure (Cr.P.C):

The 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.

The provision for maintenance of parents under the code was introduced for the first time in Section 125(1) of the Code of Criminal Procedure in 1973. As per the code 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 father or mother, at a monthly rate as the magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.

Section 125. Order for maintenance of wives, children and parents-

(1) If any person having sufficient means neglects or refuses to maintain—

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) 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:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means-

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance

(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

finer, 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:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order. (Pillai, 2014)

III. 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, initiated by Ministry of Social Justice and Empowerment, Government of India to provide more effective provision for maintenance and welfare of parents and senior citizens. This Act makes it a legal obligation for children and heirs to provide maintenance to senior citizens and parents, by monthly allowance. This Act also provides simple, speedy and inexpensive mechanism for the protection of life and property of the older persons. After being passed by the parliament of India received the assent of President of India on December 29, 2007 and was published in the Gazette of India on

December 31, 2007. Some states have already implemented the act and other states are taking steps for implementing this Act.

Indian society lay high importance on providing care and protection for parents and elderly. Withering of joint family system has contributed to the challenges faced by elderly. Nowadays they are forced to live alone and are exposed to various kinds of problems such as lack of physical, social, emotional and financial support. To overcome such difficulties and to face new challenges, the Government of India has enacted this law in the fifty- eighth year of republic so as to provide maintenance and protection to parents and senior citizens. (Times of India. 2013) The population of the senior citizens constituted 7.5% of the total population in 2001. However, as per the Report of the Technical Group on Population Projections, constituted by the National Commission on Population in May 2006, and published by the Office of the Registrar General of India, this figure is projected to go up to 12.40% of the population by 2026.

The first case under the Act was filed in November 2011 by Siluvai (age 84) and his wife Arulammal (age 80) of Tuticorin against their son and daughter-in-law for neglect, besides taking away their two homes and gold jewellery. (Times of India, 2011)

Objects of the Act

This Act provides in-expensive and speedy procedure to claim monthly maintenance for parents and senior citizens. This Act casts obligations on children to maintain their parents/grandparents and also the relative of the senior citizen to maintain such senior citizens. The main attraction of this Act is there are provisions to protect the life and property of such persons. This Act also provides setting up of old age homes for providing maintenance to the indigent senior citizens and parents. This Act extends to the whole of India except Jammu and Kashmir state. (Section 1(2) of the Act).

· Children- Include son, daughter, grandson, grand daughter but does not include a minor (Section 2(a) of the Act)

· Maintenance includes provision for food, clothing, residence, medical attendance and treatment (Section 2(b) of the Act)

- **Parent-** means father or mother whether biological, adoptive or step father or step mother, whether or not father or mother is a senior citizen (Section 2(d) of the Act)

- **Senior citizen-** means an Indian who attained the age of 60 years or above (Section 2 (h) of the Act)

- **Relative-** means any legal heir of childless senior citizen who is not a minor and is in possession of or would inherit his property after his death (Section 2 (g) of the Act)

- **Welfare-** means provision for food, healthcare, recreation centers and other amenities necessary for senior citizens (Section 2 (k) of the Act)

Maintenance of Parents and Senior Citizens

A senior citizen including parent who is unable able to maintain himself from his own earning or out of the property owned by him, is entitled to get relief under this Act. Children/grand children are under obligation to maintain his or her parent either father, mother or both. (Section 4 of the Act) Likewise, relative of a senior citizen is also bound to look after the senior citizen. If such children or relative is not maintaining his parents or senior citizen respectively, then the parents/senior citizen 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/relatives as the case may be. (Section 5 of the Act)

Such application for maintenance can be filed by the senior citizen or a parent himself, or if such person is incapable, then by any other person or any registered organisation authorised by him. (Section 5(1) of the Act) The Tribunal can also *suo motu* take cognizance of the case. 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 implead other person who are liable to pay maintenance. (Section 5(5) of the Act)

If such children/relative who are 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. (Section 5(8) of the Act) The Tribunal will not issue Warrant to execute the order of maintenance, if such petition for execution is filed after a period of 3 months from the date on which the maintenance is due. The application under this Act can be filed before the Tribunal in any district, where the applicant resides or last resided or where children or relative resides.

The evidence of proceedings shall be taken in the presence of children/relative against whom relief is sought and if such respondent is willfully avoiding service of summons or neglecting to attend the Tribunal, the Tribunal may proceed and determine the case *ex parte*. If the Tribunal is satisfied that such children/relative against whom such application for maintenance is pending, neglect or refuses to maintain the parents/senior citizens as the case may be, may order such children/relative to pay monthly allowance to such applicant.

The maximum amount of maintenance that can be allowed by the Tribunal is Rs.Ten Thousand per month. (Section 9(2) of the Act) The tribunal has power to alter, modify or cancel the order in appropriate circumstances. The Tribunal has also power to levy interest on the maintenance amount, which shall be not less than 5% and greater than 18%. Aggrieved by the order of Tribunal, senior citizen/parent can file appeal before Appellate tribunal within a period of 60 days and if the Appellate tribunal is satisfied that there occurred some delay in filing appeal due to sufficient cause, the appeal can be entertained.

Protection of Life and Property of Senior Citizens

If a senior citizen after the commencement of this Act, has transferred his property either moveable or immovable, by way of gift or

otherwise, subject to the condition that the transferee shall provide him basic amenities and physical needs and thereafter such transferee reuses or fails to provide such promise, such transfer of property shall be deemed to have been made by fraud, coercion or undue influence and the Tribunal can declare such transfer as void. (Section 23 of the Act) Before the enactment of this law, a senior citizen's only remedy in such a case was to approach the court for maintenance from the children to whom he had given the property by way of gift or otherwise and such property would be the exclusive property of the transferee and the senior citizen had no right in such property. But after the enactment of this Act, a senior citizen can reclaim his property from the transferee (<http://archive.indianexpress.com>). The concerned police personnel will also ensure priority in dealing with these types of cases (<http://www.thehindu.com>). Representation by lawyers are prohibited under section 17 of this Act. However the Hon'ble Kerala High Court held that legal practitioners also could represent cases under this Act (<http://judis.nic.in>).

Abandoning a senior citizen in any place by a person who is having the care or protection of such senior citizen is a criminal offence and such person shall be punishable with imprisonment for a term which may extend to three months or fine which may extend to five thousand rupees or both (Section 24 of the Act).

This Act also provides that state governments may establish old age homes at least one in one district to accommodate indigent senior citizens. State governments may also ensure proper medical care for senior citizens.

Though this Acts provides provisions for a better position for the parents and elderly, there are some criticism also. It is alleged that ,this Act is not easy to implement, there is no obligation casts on the state government to establish old age homes, there is no provisions for old age pensions, definitions provided are confusing too.

Issues and Challenges Regarding Elder Persons in India

In India the size of the elderly population, i.e. persons above the age of 60 years is fast growing although it constituted only 7.4% of total

population at the turn of the new millennium. For a developing country like India, this may pose mounting pressures on various socio economic fronts including pension outlays, health care expenditures, fiscal discipline, savings levels etc. Again this segment of population faces multiple medical and psychological problems. There is an emerging need to pay greater attention to ageing-related issues and to promote holistic policies and programmes for dealing with the ageing society.

- The institution and functioning of the family as a support structure for older people is under severe pressure because of poverty, unemployment and changing attitudes and as such external support is needed to strengthen the family and provide supplementary income;
- Since the older people are disadvantaged by stereotypes which largely discredit the poor older workers in the unorganized sector, necessary measures are required to create opportunities, increase the competence of older workers and counterbalance this negative image;
- Incidence of widowhood among women even before reaching old age results in a serious disadvantaged experience of old age;
- Lack of food is a major cause of poor health; priority for elderly in these circumstances receiving nutritional supplements is highly desirable.
- The configuration, design and general physical environment in which older people live including housing, transport, work place and recreation could be made more user friendly to achieve greater independent personal mobility, safety and convenience;
- Systematic and analytical studies on the needs of the elderly in India, both urban and rural, are required to add substance to the many preliminary and exploratory studies already made;
- On account of the shortage of trained personnel in many specialist fields, the training of professionals to organize and promote services and programmes for the elderly needs to be given high priority especially in such areas as family support, financial provisions, health care and community involvement.
- The specialised health needs of the older people require greater attention through the expansion and integration of geriatric and gerontological training in the medical curricula, mainstreaming of geriatric

services in the Primary Health Centres and geriatric rehabilitation in the integrated Community Development programmes as an integral component of community based services would ensure that the full range of support services is accessible to older people in the health system.

At this age of their life, the senior citizens need to be taken care of and made to feel special. They are a treasure to our society. Their hard work has helped in the development of the nation. The youth of today can gain from their experience, in taking the nation to greater heights.

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