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## **CONSTITUTIONALISM AND RIGHTS OF AGED PERSONS - NATIONAL AND INTERNATIONAL PERSPECTIVE**

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Ms. Twinkle Jaiswal, LLM, Amity Law School

### **ABSTRACT**

Old age is an indispensable stage of life of a human being which a man cannot refute except untimely death. The childhood and old age 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.

Ageing is a natural process, which inevitably occurs in human life cycle. It brings with a host of challenges in the life of the elderly, which are mostly engineered by the changes in their body, mind, thought process and the living patterns. Ageing refers to a decline in the functional capacity of the organs of the human body, which occurs mostly due to physiological transformation, it never imply that everything has been finished. The senior citizens constitute a precious reservoir of such human resource as is gifted with knowledge of various sorts, varied experiences and deep insights. May be they have formally retired, yet an overwhelming majority of them are physically fit and mentally alert. Hence, given an appropriate opportunity, they are in a position to make significant contribution to the socio-economic development of their nation.

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

## **2. STATUS OF OLD AGED PERSONS**

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 not<sup>1</sup> 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. 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 marriages<sup>3</sup> and expulsion from their homes . 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. 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 year. These acts of violence have become firmly entrenched as social customs and may not be considered locally as elder abuse.

### **3. PROBLEM OF THE OLD AGED PERSONS**

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

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

If in a society where there are poor facilities for sanitation, infrastructure, and healthcare, it is the elderly people who suffer the most.

In the Age Well Foundation's, "Human Rights of Elderly in India Survey", conducted in association with ECOSOC in 2015, it was found that the elderly in India suffers the following problems:

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

- Legal issues
- have Interpersonal problems

These are the main findings by the foundation which when read along with the classification propounded by Cobb, we can conclude that

- The elderly has no institutional care or medical system around them and to depend on community care/ family care to support them in India.
- Generally, elderly women are seen to have no time for leisure or recreation and have lesser possibilities than man to lead retired life.
- Elderly suffer lack of emotional care, support and elder abuse more in urban areas than rural areas
- Along with the social, medical and psychological issues there exist many economic issues.

Economic Problems:

- Economic dependency high among females. In case of disadvantaged section, the dependency level is even higher.
- Economic necessity forces the elderly people to work and earn the money.

(This shows the lack of social security to support the old aged people). Even the government policies and norms are not efficient enough to assure the security.

- NSSO 2007-2008 report reveals the incidence of loan taken to meet the medical expenditure of the elderly.

Health Issues

- The elderly people mainly suffers from the chronic diseases like cardio vascular illness, cancer, arthritis, hyper tension, diabetics, kidney problems Loss of vision, memory loss etc.
- Elderly with good health are viewed with respect. Elderly with poor health are to be a liability and burden. Sometimes they are abused.
- Emergence of nuclear family leads to marginalisation of the elderly. Social isolation,

loneliness and desertion from society will lead to adverse effects on mental health.

- Psychological disorders – dementia, depression, delirium are the diseases common among elderly. Senile Dementia, Psychosis with Cerebral Arteriosclerosis

#### Family challenges

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

#### Legal challenges

- The incongruence of the prevalent laws and its implementation.
- Less awareness in rural areas.
- Difficulty in translating their awareness into actual assistance

## 4. NATIONAL PERSPECTIVE

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, Gujarat And In Bihar<sup>1</sup>.

### 4.1 PROVISIONS IN THE CONSTITUTION SAFEGUARDING THE RIGHTS OF ELDERS.

The framers of our constitution were well aware of the plight of our country's elderly people. They knew that it is quite difficult to meet ends when one hits their 60s. They would face problems like those of housing, taxes, healthcare facilities, and psychological help for aging

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<sup>1</sup> National Human Rights Commission (NHRC). (n.d.). *Elderly People: Know Your Rights*. New Delhi: NHRC.

and social support. Hence, they gave ample provisions to the lawmakers of our country to make laws for them. A few of the provisions in the constitution are:

**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.*

**Right to work, to education and to public assistance in certain cases–**

*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.*

**Article 42 Provision for just and humane conditions of work and maternity relief**

*The State shall make provision for securing just and humane conditions of work and for maternity relief*

**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 and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health<sup>2</sup>.*

All of the above provisions of the constitution give the right to the elderly to live a peaceful, dignified life. All the above articles provide provisions to get social, economic and political support from the government as their legal right. However, these articles come under the

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<sup>2</sup> Constitution of India by Dr. D.D Basu.

Directive Principles, which means that though these articles give directions to the State to ensure a minimum standard of living to our elderly; these are not enforceable in courts.

## **4.2 LEGAL PROVISIONS**

There are laws given under the Criminal Procedure Code (Cr. P. c.), personal laws and policies focused on the rights of elderly people. Some of which are discussed below:

### **Hindu Personal Laws**

#### **Hindu Adoption and Maintenance Act, 1956**

The Hindu Adoption and Maintenance Act, 1956 empowers our elderly people with legal rights to claim maintenance from their children. Laws and rights under this Act can however be accessed by only Hindus. These laws do not apply to non-Hindu citizens of the country.

Section 20 of the HAMA, 1956, deals with the maintenance of children and aged parents. Under this section, it is clearly mentioned that it is the responsibility of a person to maintain their old and aged parent if they are not able to maintain themselves. Section 23 of this Act deals with the amount of maintenance that is to be paid to the old and aged parents. According to this section, the court has the discretion to decide the amount or alter the amount already agreed upon to be paid to the aged parents, if it feels that the original amount offered might not be sufficient for their survival.

Under the modern codified Hindu laws, it is not only the son who has the responsibility to maintain the aged parents; such obligation also lies upon the daughter to maintain them. Maintenance can be claimed by both the natural and adoptive parents. However, step-parents, having their own children cannot claim maintenance under this Act.

### **Muslim Personal Laws**

Muslims are also legally entitled to maintain their parents, provided, they have the means to do so.

According to Mulla, a son is entitled to maintain his mother even under “strained” circumstances, if she is poor, even if not “infirm”. The son is also bound to maintain his father if he is earning nothing.

There exists no concept of adoption under the Muslim laws. Hence, there exist no provisions for the maintenance of adoptive parents under Muslim law.

### **Christian and Parsi Laws**

The Christians and Parsis have no personal laws providing for maintenance for the parents. Parents who wish to seek maintenance have to apply under provisions of the Criminal Procedure Code (National Human Rights Commission (NHRC)).

### **The Code of Criminal Procedure (Cr.P.C.)**

Section 125 under the Cr.P.C. 1973 deals with the maintenance of old parents. Under this section, old parents, irrespective of their religion can seek maintenance.

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 (National Human Rights Commission (NHRC)).

### **The Maintenance and Welfare of Parents Act, 2007**

This act aims at providing maintenance to senior citizens in the country. It is an Act to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto (Maintenance and Welfare of Parents Act, 2007). It is a 'go-to' statute for providing maintenance as it applies to the whole of India except the state of Jammu and Kashmir.

This Act defines a senior citizen as a person who is above 60 years of age and is a citizen of India. Under section 5(1) of this Act, any senior citizen who is also a parent is entitled to get maintenance; where "parent", according to section 2 means "father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen".



The Act also provides provisions for maintenance of child-less senior citizens. Such citizens may be maintained by their legal heir or the person to whom the property maybe transferred after the death of such citizen.

If the senior citizen or parent is incapable, any other person or a voluntary organization authorised by the senior citizen or parent can apply for maintenance on their behalf. This provision is very helpful as most of the senior citizens or parents do not have the time and energy to go around courts and tribunals (Singh, 2008).

Section 24 of the Act provides a punishment for those who, taking care of any senior citizen, leave the senior citizen with an intention of wholly abandoning them to place where no one can find them. Thus, this Act is very useful in protecting the dignity of our senior citizens.

### **4.3.GOVERNMENT POLICIES**

#### **National Policy for Older People, 1999**

This policy was launched by the Ministry of Social Justice and Empowerment in the year 1999 to help the senior citizens of the society. Some of the features of this scheme were old age pension scheme, tax exemption, subsidy in healthcare, geriatrics care, mental health services, counseling facilities, land grants, setting up of welfare funds etc. (Rajput Avinash).

Keeping in view the changing demographic pattern, socio-economic needs of the senior citizens, social value system and advancement in the field of science and technology over the last decade, the National Policy on Older Persons, 1999 has been reviewed and the new National Policy for Senior Citizens was finalization (Ministry of Social Justice and Empowerment). India's population grew rapidly in the subsequent years and the need of forming more provisions was sought. Three new policies were launched by different ministries. The policies and a few of their main features are:

#### **Scheme of Integrated Programme for Older Persons (IPOP)**

This scheme was launched by the Ministry of Social Justice and Empowerment in 1992 and was revised in 2008. Under this scheme, funds were provided to the state government, local bodies, NGOs etc. to run and maintain old age homes, day care centres, mobile Medicare units, help lines and counselling centres, day care units for persons with Alzheimer's disease and dementia etc.

**Indira Gandhi National Age Pension Scheme (IGNOAPS)**

This scheme was introduced by the Ministry of Rural development. This scheme provided central assistance towards pension by providing Rs 200 per month to persons above 60 years of age and Rs 500 to persons above 80 years of age who belong to households below poverty line (Ministry of Social Justice and Empowerment).

**National Programme for the Health Care for the Elderly (NPHCE)**

This scheme was launched by the Ministry of Health and Family welfare in the year 2010-11. The major features of this scheme were community based primary healthcare approach, strengthening of health care services, dedicated facilities at 100 districts hospitals etc.

All these policies were aimed at working at the lower levels of the society and ensure that the poorest of poor senior citizens were provided the basic amenities to live their life peacefully.

**5. 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.

- 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 he 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.

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.<sup>12</sup> 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. 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. 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

d) Commitments of International Organisation for the Protection of Old age Persons' Rights: The General Assembly urges the support of national initiatives on ageing so that: Appropriate national policies and programmes for the old age 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 Old age; 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.

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 nongovernmental 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<sup>3</sup>.

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,

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<sup>3</sup> Universal Declaration of Human Rights, Articles 2, 22, and 25.

hiring and promotion, the extension of employment benefits and social security, and working conditions. 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.

## **6. CONCLUSION**

In spite of aforesaid special arrangements for the old age persons the position of old age 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.

Last but not the least apart from political will in favour of the protection of old age 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 considered as god in mortal form.