

## HUMAN RIGHTS OF ELDERLY PEOPLE AND SENIOR CITIZENS: INDIAN PERSPECTIVE

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### ABSTRACT

The elderly people and senior citizens are profusely similar and are used interchangeably with one another. Usually, retirees are classified as senior citizens in general terminology whereas elderly, denotes a person who is nearing his life expectancy age or is above that age. This class of people stands to be one most vulnerable group at both international and national levels. On achieving old age, they get sense of neglect once their children grow up on their feet and become independent, socially and economically. The old age is the time when more care, love and affection is sought as parents invest their time, energy, money and almost everything to raise their children and nurturing them to become successful and independent. They at their young age try to protect the human rights of their children to the best possible manners, nevertheless, the same approach is missing from the children towards their old age parents. This has become an international concern. This paper tries to uncover the reasons for neglect and pathetic attitude towards elderly/senior people, available protection and welfare laws at international level and in India. The paper will also throw light on the role of judiciary towards the rights and protection of senior citizens and explore as to why they do not receive the due care, love and affection from their children/legal heirs despite of many judicial directions?

**Keywords:** Human Rights, Elderly People, Senior Citizens, Old Age Rights, Role of Judiciary.

## INTRODUCTION

*“Our senior citizens paved many great paths for the future that have deep sentimental values, and are deserving of the greatest care and love.”*

— Wayne Chirisa

Senior citizenship is a natural phenomenon because at the age of 60 people retire or withdraw themselves from work. The trends to talk about their human rights have been seen where elder people in the family are neglected which creates an apprehension of their identity loss because they do not have jobs post retirement. They suffer memory loss leading to loss of respect in the society and increase of dependence upon others.<sup>i</sup> The senior citizens or the old age people need special care because of these natural conditions and must be treated with utmost care and empathy by the people around them be it home, old age care center, old age homes or hospitals. The old age is not less than disability in one sense which results into discrimination on the basis of age causing gross violation of international human rights laws. To a certain extent respect for the older people is seen in the Indian and other eastern countries however it seems to be diminished<sup>ii</sup> in western culture. But at the same time abuse<sup>iii</sup> against older persons has become a global concern due to increasing number of elder persons’ population, change in economy, needs and priorities of the families.

## UNDERSTANDING RIGHTS OF ELDERLY PEOPLE AND SENIOR CITIZENS

The United Nations considers ‘Ageing’ as one of the pertinent global issues because the population of persons aged 65 and above is increasing faster than all other age groups.<sup>iv</sup> The United Nations adopted the first Plan of Action on Ageing at International forum in Vienna in the year 1982, and it took until 1991 for the General Assembly<sup>v</sup> to adopt the UN Principles for Older Persons and its four main themes namely – (i) independence, (ii) participation, (iii) care and (iv) self-fulfilment and dignity. The United Nations Committee on ECOSOC<sup>vi</sup> adopted the General observation on the Economic and Social, and Cultural Rights of Older Persons. In 1999, with the celebration of the International Year of Older Persons the Conceptual Framework was initiated that was based on the Plan and Principles with four priority areas

consisting of firstly, the condition of older persons, secondly, individual lifetime progress, thirdly, the relationship between generations and lastly, the inter-relationship of population, aging and development.

In Madrid in 2002, the second World Assembly on Ageing (WAA) had adopted unanimously a 'Political Declaration and an International Strategic Plan of Action on Ageing.' The 2004 report of the Secretary-General to the General Assembly recommends "to assign fulltime focal points on ageing and provide them with adequate resources to further implementation."<sup>vii</sup> Thereafter, the international day of older persons is celebrated every year on 1st day of October.

## PROBLEMS OF THE ELDERLY PEOPLE AND SENIOR CITIZENS

In the year 2019, there were 703 million people of age 65 or over in the world. The region of East Asia and South-East Asia was home to the maximum number of old age people with an estimate of 261 million followed by North America and Europe estimating over 200 million.<sup>viii</sup> Over the next three decades that is till 2050, the number of elderly persons worldwide is anticipated to more than two-folds, reaching more than 1.5 billion persons.<sup>ix</sup> Though ageing is the natural stage of human life, it brings with it innumerable problems for the people who have grown old. An analysis of the major problems of the aged persons in the light of the findings from various studies is explained below:

- **Economic Problems:** As far as economic problems are concerned; they are very basic to all the other problems faced by the aged. With superannuation, a person has to retire from the service, which not only results in loss of employment and social status but also a substantial reduction in his income level. Majority of the elderly face acute financial problems, which makes older persons economically insecure.
- **Physiological Problems:** With growing age, older persons experience various anatomical and physiological changes. These changes bring many psychological, behavioural and attitudinal changes in them. Consequently, they have to suffer varied sorts of physiological problems such as loss of physical strength and stamina, which become more acute as a person grows older.
- **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, commonly associated with later years of life such as, failing eye sight of hearing, slowing and unsureness of step, diminishing energy and more acute disabilities, such as blindness, forgetfulness etc. On this pattern, the housing available to a majority of the senior citizens may be found inappropriate and unsuitable to their requirement. The sizeable populations of older widows as well as the older males have been facing the problem of “where to live peacefully”.

- **Problem of Elder Abuse:** Elder abuse is usually defined as any ill treatment to an older person. It refers to “infliction of physical, emotional or psychological harm on an older adult”. Around 81 per cent of the elderly persons face the problem of verbal abuse, while 53 per cent of them face neglect followed by material abuse (37 per cent) and physical abuse (23 per cent). In order to understand the term ‘abuse’ the Act of 2007 provides that the term “abuse” includes physical abuse, verbal and emotional abuse and economic abuse, neglect and abandonment causing assault, injury, physical or mental suffering.<sup>x</sup>

## **PROTECTION MECHANISM OF ELDERLY PEOPLE AND SENIOR CITIZENS IN INDIA**

The ‘senior citizen’ or ‘elderly’ is a person who is of age 60 years or above.<sup>xi</sup> As per Census of India, 2011, the number of elderly populations is almost 104 million who are of age 60 years or above which consists of females as 53 million and males as 51 million. Due to old age the proportion of dependency also shoot up from 10.9% in 1961 to 14.2% in 2011 for India as a whole. Wherein the females old age dependency has been higher than males that is females were at 14.9% dependency rate and males were at 13.6% dependency rate in 2011. Further the most common issues among the aged persons were locomotor disability and visual disability as per census 2011. There have been many attempts to deliberate upon the issues of elderly population of India.<sup>xii</sup>

The chapter IV of the constitution (coming under the Directive Principles) has taken up the concerns of the elderly. Nonetheless, these are not enforceable by the law. In 1956, the Hindu Law made a statutory provision for the elderly. Maintenance of parents by their children (sons and daughters) is subsumed in section 20 of the Hindu Adoption and Maintenance Act of 1956.

A similar clause for sons to look after their parents existed under the Muslim Law, too. However, here too it remained only a moral obligation. In 1973, for the first time, a provision was introduced in the code of criminal procedure. An elderly person could thus move court for his maintenance. It is, however, essential that the other party has sufficient means and has neglected or refused to maintain the parent who is unable to take care of himself. This law is secular and includes married daughters in addition to sons. However, the parent needs to approach the court against an offspring, and the onus was on the parent to prove that the other party has sufficient means and has refused to maintain him i.e., the parent. This is harsh and cumbersome as well. Even at the time of its inception, the Law Commission was not in favour of making such a provision. It remarked that, "The Criminal Procedure Code is not the proper place for such a provision. There will be considerable difficulty in the amount of maintenance awarded to parents amongst the children in a summary proceeding of this type. It is desirable to leave this matter for adjudication by the Civil Courts."

The Directive Principles under article 41 of the Constitution of India cast a legal obligation on the State to make effective provision within limits of its economic capacity for ensuring social support to old, sick and disabled persons.

The Indian parliament has passed a welfare legislation in 2007 to protect "Parents and Senior Citizens."<sup>xiii</sup> It has been amended in year 2019 comprehensively and elaborated the definition of senior citizen as "senior citizen" means any person being a citizen of India, who has attained the age of sixty years or above. This age shall be uniformly applicable for availing the facilities and benefits for senior citizens including health, housing, travel, insurance etc. extended by the Central and State Government, Semi-Government and Private Organisations.<sup>xiv</sup> For the welfare of elderly parents the Act of 2019 has widely put the responsibility upon all those persons who are directly or indirectly related which provides "children" includes son or daughter whether biological, adoptive or step, son-in-law, daughter-in-law, grandson, grand-daughter and also includes a minor through his/her legal Guardian as the case may be.<sup>xv</sup>

In order to address the economic problems which may arise due to transfer of property whether movable or immovable by any parent or senior citizen or elderly person to someone for a consideration that the transferee shall look after him i.e., transferor by providing basic amenities and basic physical needs and if the transferee refuses or fails to provide such amenities and basic needs, the said transfer of property shall be deemed to have been made by

fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.<sup>xvi</sup>

The expression 'basic amenities' and 'basic physical need' are not clear and precise. They being elastic would require understanding and due application depending upon the facts and circumstances of each case. In a given transfer, the condition of transferor has been fulfilled or not is a question of law to be decided on facts produced before the Tribunal. Whether on the facts and circumstances of a claim, on a plea of person in opposition of such a claim, legal presumption of fraud or coercion or undue influence can and should be raised or not is an intricate legal question of complexity which ought to have been given for decision to a legally trained Judge of Civil Court rather than leaving it to the decision of Executive Officers acting as Tribunal and Appellate Tribunal.

Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.<sup>xvii</sup> In the attempt to keep elderly persons and senior citizens there have been certain initiatives by the government. In this context, it appears relevant to mention two schemes, that were announced during the budget in the year 2007.

**Reverse Mortgage:** The 2007 Budget announced the introduction of reverse mortgage for senior citizens by the National Housing Board. The scheme involves the senior citizen borrower mortgaging the housing property to a lender, who then makes periodic a payment to the borrower(s) during the latter's life time.

**New Pension Scheme:** Under the NPS, every subscriber is to have an individual pension account, portable across job changes. The amount (including the income on investments) will be available at the age of 60 years, with at least 40% to be converted to monthly payments for the rest of their lives. This pension scheme wants to bring into its fold, those working in the unorganized sector, so that they can save for their old age right from the time they start earning.

So far as physiological care of elderly or senior citizens is concerned several steps and programmes are need to be undertaken for effective implementation of the Act of 2007.<sup>xviii</sup> The state is unable to provide free medical facilities to poor elderly persons. There are very minimal

transport facilities available to them in case of serious illness. There is a need of regular/routine medical check-up programmes for senior members of the society which is utmost necessary with their advancing age.

To solve the housing or accommodation issues, mere setting up of Old Age Homes<sup>xxix</sup> in itself may not achieve the object of United Nations Principles for Older Persons which are the guidelines to help them a dignified life. It is necessary civil society should cooperate with the Government in various programmes so that the inmates of Old Age Homes receive due care and affection in a like manner that they receive in family. The care givers need to be trained for the service to the elderly people.

Right to legal aid for seeking protection of human rights has been held to be a part of fundamental right under the Constitution of India<sup>xxx</sup> by honourable Supreme Court in certain cases.<sup>xxxi</sup> Abuse of any kind to elderly persons and senior citizens is a violation of fundamental right to life with dignity. Whoever, having the care or protection of a parent or senior citizen, intentionally abuses or abandons such parent or senior citizen, shall be punishable with imprisonment for a term which shall not be less than three months, but which may extend to six months or with fine up to ten thousand rupees or with both.<sup>xxxii</sup>

## CONCLUSION

It is necessary that the senior citizens should feel integrated in the society and their knowledge and experience should be utilized by giving them opportunity to mingle with people of all age groups. The United Nations Principles are comprehensive and focus on the expectations of the senior citizens from the society. It is expected from the State and the Civil society to allow their senior citizens and elderly persons as much as independence as possible and help them to lead a happy and useful life during old age.

A senior citizen or elderly person needs affection and respect as his or her personality demands. The State and society should feel committed to fulfil that desire. A young citizen of today is senior citizen of tomorrow and both must care for and respect the human rights of each other. The elderly people starve for love, respect and an opportunity to lead a dignified life.

## ENDNOTES

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- <sup>ix</sup> Ibid
- <sup>x</sup> Explanation to Section 24, *Maintenance and Welfare of Parents and Senior Citizens (Amendment) Act, 2019*.
- <sup>xi</sup> National Policy on Older Persons' Government of India, 1999
- <sup>xii</sup> *Elderly in India*, Government of India, Ministry of Statistics and Programme Implementation, Central Statistics Office, Report, 2016 [http://mospi.nic.in/sites/default/files/publication\\_reports/ElderlyinIndia\\_2016.pdf](http://mospi.nic.in/sites/default/files/publication_reports/ElderlyinIndia_2016.pdf)
- <sup>xiii</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
- <sup>xiv</sup> Section 2(h), *Maintenance and Welfare of Parents and Senior Citizens (Amendment) Act, 2019*.
- <sup>xv</sup> Section 2(a), *Maintenance and Welfare of Parents and Senior Citizens (Amendment) Act, 2019*.
- <sup>xvi</sup> Section 23(1), *The Maintenance and Welfare of Parents and Senior Citizens Act, 2007*.
- <sup>xvii</sup> Section 23(2), *The Maintenance and Welfare of Parents and Senior Citizens Act, 2007*.
- <sup>xviii</sup> Section 19 and 20, *The Maintenance and Welfare of Parents and Senior Citizens Act, 2007*.
- <sup>xix</sup> Section 19, *The Maintenance and Welfare of Parents and Senior Citizens Act, 2007*.
- <sup>xx</sup> Article 21 & Article 39-A, *Constitution of India 1950*.
- <sup>xxi</sup> *Hussainara Khatoon v. Home Secretary, Bihar AIR 1979 SC 1377; Khatri II v. State of Bihar (1981) 1 SCC*.
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