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PROTECTION OF RIGHTS OF OLDER PERSON (SENIOR CITIZENS)

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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. The childhood and old age are natural reliant conditions of life where children depend on parents and parents depend on children. The concept of nuclear family affected this usual cycle resulting in disbalance 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. The article also reflects the available laws, policies and guidelines for the protection of the rights of old age person in India.

Keywords : Old age person, Human Rights, Protection,



Human rights are for all, regardless of age. The elderly are seen as vulnerable because biological, psychological and social ageing predispose the ageing person to frailty, infirmity, and in many cases dependency, setting the older person apart from the rest of the population in need of special protection and rights. Ageing is a process which occurs naturally in the human life cycle. It is the decline in the capacity of the functioning of the organs of human body. However, they constitute a reservoir of human resource, gifted with knowledge, deep insights and varied experiences. The population of the aged has been increasing over the years. Their rights are being encroached upon each day and protection of them comes naturally to balance the human rights scale. They are the most vulnerable class of our society. When it comes to ageing population, the society and the government's focus is more on financial side, as when one gets older the dependency on others increases and the government has to allocate more money on making them stable and secure. India has the second largest global population of ageing people. In the years to come, the number of elderly persons may increase, but our country lacks basic expertise to support and respond to the needs of this section. Information gathered from various sources reveals that the senior citizens in our country are deprived of basic medical care, the expenses to maintain their livelihood, adequate financial support, and they face discrimination, mistreatment, lack of security and are isolated and abandoned too. The process of ageing is often associated with declining health, mental and physical ability, economic instability and to a certain extent, psychological problems.

Indian traditional society with its concept of joint family system was a strong pillar in ensuring the security and well-being of the elderly. But modernization and globalization paved way for the birth of nuclear families. The individualistic thoughts among the younger people encouraged them to live independently and this adversely disturbed the living arrangements of old people. In India, changes in the family pattern, existence of poverty, greater life expectancy, deterioration of the values, norms, beliefs and the difficulty of the elderly people to adjust with these changes were also enlisted in the challenges faced by them.

BACKGROUND

Collectivism is valued in Indian society, which encourages social solidarity and reliance. The traditional Indian joint family, which adheres to collectivism's values, has shown to be a valuable resource for caring. However, society is changing, with the breakdown of joint families and the development of nuclear families being two of the most major changes. Although even in today's changed scenario, the family forms a resource for mental health that the country cannot neglect, yet utilization of family in management of mental disorders is minimal.

Family focused psychotherapeutic interventions might be the right tool for greater involvement of families in management of their mentally ill and it may pave the path for a deeper community focused treatment in mental disorders. This paper elaborates the features of Indian family systems in the light of the Asian collective culture that are pertinent in psychotherapy. Authors evaluate the scope and effectiveness of family focused psychotherapy for mental disorders in India, and debate the issues and concerns faced in the practice of family therapy in India.

Family values play an important role in shaping the outlook of people. Respect and care for elders are among the central principles in Indian family system.

Adopting our age-old philosophy of Vasudhaiva Kutumbakam, which embodies the spirit of humanism, compassion, magnanimity and tolerance, family becomes the basic building block of a harmonious, inclusive society. Family can shape the world view, foster and reinforce the value system of the individuals and therefore, consequently, be the warp and weft of a sustainable, peaceful, inclusive, prosperous world.

NEED

The family as a social institution has been undergoing change. Both in its structure and functions changes have taken place. In India, as in many traditional societies, the family has been not only the centre of social and economic life but also the primary source of support for the family members. The increasing commercialization of the economy and the development of the infrastructure of the modern state have introduced a significant change in the family structure in India in the 20th century. Especially, the last few decades have witnessed important alterations in family life.

However, without being judgmental, I feel that it is not good in the long run either for the country or the society to neglect the elderly. That is when they become most vulnerable and need family support, particularly from their children. I also get disturbed when I come across news reports relating to the abuse of the aged. The government, of course, has enacted laws to deal with such instances, but every effort should be made by all to ensure that the value system of respecting the elderly is not eroded.

India is home to 100 million elderly people today. Their numbers are likely to increase threefold in the next three decades. People are living much longer and couples raising fewer children; moreover three in four elders still report living with their children. The result is that smaller numbers of adults are responsible for many more years of old-age care than ever in the past, and as bodies and minds of ageing parents dwindle, somewhere along the way in crowded urban habitats, relationships within families have come under great strain. Ugly cracks are beginning to show.

NATIONAL POSITION

In India, the Protection of Human Rights Act, 1993, was passed for the first time in the year 1993. In order to improve the protection of human rights in India, a National Human Rights Commission at the national level and State Human Rights Commissions were established. Apart from the national commission, India currently has 26 state human rights commissions.

In the general cycle of life, a human being is not immune to the ravages of old age. Ageing is a normal process that happens to everyone at some point in their lives. It brings with it a slew of obstacles in the lives of the elderly, most of which are caused by changes in their bodies, minds, mental processes, and living habits. The term "ageing" refers to a decrease in the functioning ability of the body's 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 indispensable human resource coupled with knowledge of various dimensions, varied experiences and deep insights. May be they have formally retired, yet an overwhelming majority of them are physically fit and mentally alert. Hence, they should be given an appropriate opportunity as they remain in a position to make significant contribution to the socio-economic development of the nation.



PROTECTION UNDER NATIONAL LAWS

CONSTITUTIONAL PROTECTION

Article 41 : Right to work, education, and public help in certain circumstances : Within the limits of economic capability and growth, the State shall establish adequate provisions for safeguarding the right to work, education, and public help in cases of unemployment, old age, disease, and disablement, as well as other cases of unjustified want.

However, these provision are included in the Chapter IV i.e., Directive Principles of the Indian Constitution. The Directive Principles, as stated in Article 37, are not enforceable by any court of law. But Directive Principles impose positive obligations on the state, i.e., what it should do. The Directive Principles have been declared to be fundamental in the governance of the country and the state has been placed under an obligation to apply them in making laws. The courts however cannot enforce a Directive Principle as it does not create any justiciable right in favour of any individual. It is most unfortunate that state has not made even a single Act which are directly related to the elderly persons.

LEGAL PROTECTION

HINDU LAW

(Hindu Adoption and Maintenance Act, 1956)

A person's obligation to support an elderly infirm parent or an unmarried daughter extends to the extent that the parent or unmarried daughter, as the case may be, is unable to support himself or herself from his or her own earnings or other property. 25 As a result, among Hindus, sons have an obligation to support their elderly parents who are unable to support themselves.

Thus, even in early Hindu writings, the obligation of sons to support their elderly parents who were unable to support themselves out of their own earnings and property was recognised. And this commitment was not contingent on, or limited in any manner by, the possession of family property. It was a personal legal responsibility that the sovereign or the state might execute

The Hindu Adoption and Support Act, 1956, contains a statutory framework for the maintenance of parents under Hindu personal law. This Act is India's first personal law statute to impose a financial obligation on children to support their parents. As the section's phrasing indicates, the need to support parents does not apply only to sons, but also to daughters.

MUSLIM LAW

Under the Muslim personal law, both son and daughter are bound to maintain their parents who are poor if they have means to do so. Since the concept of adoption does not exist in the Muslim community, the personal law is silent on the right to maintenance of adoptive parents.

CHRISTIAN AND PARSE LAW

No provisions for maintenance are mentioned under Christian and Parsi personal laws regarding parents. The Christian and Parse parents who wish to seek maintenance from their children need to claim it under Code of Criminal Procedure.

CRIMINAL LAW

Parents irrespective of the community they belong to can claim maintenance from their children (son and daughter including married daughter) under section 125 of CrPC. The children must have sufficient means to maintain their parents and the parents must lack means to maintain themselves

Criminal Procedure Code, 1973: Chapter IX: Order for maintenance of wives, children and parents:

The Act aims at providing maintenance to senior citizens in order to prevent their destitution. It also seeks to protect the life and property of the senior citizens. It envisages setting up Old Age Homes in every district. The definition of maintenance covers basic necessities of life. This Act applies to all the citizens of India, who have crossed the age of 60 years. Some of the important provisions of the Act are discussed herein:

A childless older citizen can seek support from any relative who owns or would inherit his property.

The state government is required to establish a tribunal to hear issues involving maintenance.

The state government will set the maximum maintenance allowance, which should not exceed ₹10,000 per month.

If a person violates the law, they can be imprisoned.

The tribunal's order can be appealed to the appellate tribunal within 60 days after its issuance.

A summary hearing may be held by the tribunal.

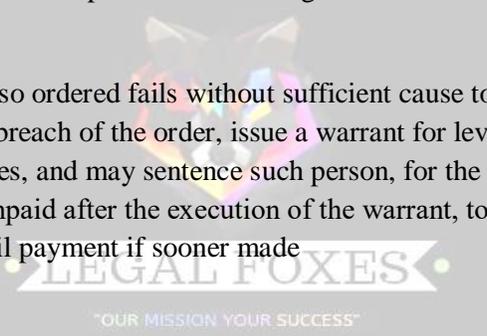
To reduce the cost of the proceedings, the parties are unable to hire a legal practitioner.

The Act mandates that each district create at least one old-age home with a capacity of 150 senior persons.

A senior individual can also seek to the tribunal to have the transfer of his property by will or gift revoked.

The Act outlines the consequences of a person who is obligated to care for parents or older persons abandoning them.

Section 125(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 fines, 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



GOVERNMENTAL PROTECTION

The Ministry of Social Justice and Empowerment of the Government of India is the nodal ministry responsible for senior citizens' welfare. It has announced the National Policy on Older Persons, which covers all issues concerning the welfare of the elderly. A senior citizen is defined as someone who is 60 years old or older, according to the National Policy on Older Persons. The Ministry is also putting in place follow-up measures:-

1. The Government of India approved the National Policy for Older Persons on January 13, 1999 in order to accelerate welfare measures and empowering the Oldage in ways beneficial for them. This policy included the following major steps:

- (i) Setting up of a pension fund for ensuring security for those persons who have been serving in the unorganized sector,
- (ii) Construction of old age homes and day care centers for every 3-4 districts,
- (iii) Establishment of resource centers and re-employment bureaus for people above 60 years,

(iv) Concessional rail/air fares for travel within and between cities, i.e., 30% discount in train and 50% in Indian Airlines.

(v) Enacting legislation for ensuring compulsory geriatric care in all the public hospitals.

2. The Ministry of Justice and Empowerment has announced regarding the setting up of a National Council for Older Person, called age-well Foundation. It will seek opinion of aged on measures to make life easier for them.

3. Attempts to sensitize school children to live and work with the Old-age. Setting up of a round the clock help line and discouraging social ostracism of the older persons are being taken up.

4. The government policy encourages a prompt settlement of pension, provident fund (PF), gratuity, etc. in order to save the superannuated persons from any hardships. It also encourages to make the taxation policies elder sensitive.

GOVERNMENT SCHEMES

1. Pradhan Mantri Vaya Vandana Scheme
2. Indira Gandhi National Old Age Pension Scheme (IGNOAPS)
3. National Programme for the Health Care of Elderly (NPHCE)
4. Varishta Mediclaim Policy
5. Rashtriya Vayoshri Yojana
6. Varishta Pension Bima Yojana
7. Senior Citizens' Welfare Fund
8. Vayoshreshtha Samman
9. Reverse Mortgage Scheme
10. Pradhan Mantri Jan Arogya Yojana

CONCLUSION

'Honour your father and mother,' says the Fifth Commandment (Exodus 32:19). Bhishma tells Yudhisthira in the Mahabharata, "The adoration of mother, father, and instructor is most essential to me." 29 The Indian Constitution stipulates, "Within the limits of its economic capabilities and development, the state shall make effective provisions for safeguarding the right to labour, to education, and to health in case of unemployment, old age,

Despite the aforementioned specific accommodations for the elderly, the position of the elderly is not improving, and this is due to our current social attitude toward the elderly. It is a well-known truth that, despite the fact that facilities are provided, there is no mechanism in place to monitor whether they are being used or whether people are unable to use them.

This participation must lead to a reduction in their social isolation and an increase in their overall life satisfaction. Any attempt to enlist the assistance of the elderly in providing service to the nation must also include some form of package of services aimed at providing them with a better quality of life and a well-designed social security network.

Finally the problem of the OLDAGE must be addressed urgently but utmost care. It is important that the Constitution be amended to include an unique provision for the protection of elderly people on the perimeter of fundamental rights. With the decline of the joint family system, the disintegration of familiar relationships with the entrance of the nuclear family concept, and the loss of respect for the elderly in the family, modern times should not be regarded a safe haven for them.

We may do a lot for the security of an elderly person by using a good legal approach and practise. It undoubtedly directs society's course toward social harmony and established compatibility. It is vital to do study on existing legislation and legal policies, as well as to create an elder-friendly legal system in this country by providing an equitable, productive, and secure legal approach. The Government shall take every possible step to create awareness among the society as well to create a safe environment for the aged people aware them about their rights, various schemes, policies, concessions and benefits available for aged people

At last I want to mention that Beautiful young people are accidents of nature, but beautiful old people are works of art.

- Eleanor Roosevelt. "OUR MISSION YOUR SUCCESS"

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