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PROTECTION OF SENIOR CITIZENS IN INDIA AND HUMAN RIGHTS : A SOCIO-LEGAL STUDY



A
SYNOPSIS

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INTRODUCTION

Senior citizens are the treasure for our society. They are a link of past, present and future. As they lived their life, they saw past and pace of progress throughout their life, they are in a better position to evaluate the present and predict about the future. They are the senior members of the family who know better about the religion, family history, values and related customary practices. They possess better understanding of the family values and society. They pass these family values and societal knowledge to the upcoming generations. This was an automatic system of Indian family system to disseminate the past values and knowledge. Young generations while living in their own ways and style, also kept these values and information and lived their life. This is how our society moved on and still following the path.

But now a day's condition and situation of senior citizens are no more similar. With the decay in cultural values and westernization of Indian society, occupational needs and professional lifestyle, senior citizens are losing the respect and dignity which they earlier had. Presently our information technology field is changing very fast and young generation a very friendly to the technology. They can get any information by a single click of mouse. They can also get information about the past social values, culture and family system. Since the information is easily available and accessible which earlier, could be received only by a senior member of the family. I find this it as a major reason for the ignorance of senior citizens in the family by the young children.

In present Indian society, nuclear families are growing and it is happening sometimes by choice, where the young couple decides to live their married life alone in

the name and lust of modernism and sometimes by compulsion where earning member of family is bound to leave the home due to occupational needs and compulsion. In both the cases senior citizens with spouse or alone, are bound to live a lonely life. In first case, senior citizens are obviously ignored but in the second case they are not. But the consequences of both the situations are same i.e. loneliness. Though, the mental status of senior citizens in both the cases may vary.

Sometimes both the situations can be under the category of ignorance from State's perspective as in both the situations senior citizens are abundant. It is also true that some senior citizens in rural and urban areas are totally neglected, mentally and physically abused are not getting two square meals a day. Here the role of State comes into picture. Hubert Humphrey has truly said that:

“moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life, the sick, the needy and the handicapped.”

Prof. Roscoe Pound defines 'right' as an interest recognised, protected and enforced by law. Law is an instrument of social welfare. State and Society are composed of human beings. Primarily, human beings must be taken care of by their families. Families are consisted of children, parents and grandparents. India has traditionally enjoyed robust joint family system taking full care of elderly persons. However, with the fast changing socioeconomic conditions, disintegration of joint family system and emergence of nuclear families, the old people are getting increasingly neglected,

adversely affecting their care and dignity. It is, therefore, important that Government and the community play a proactive role in taking care of the elderly.

As human being, there are many categories recognized by legal system. It includes child, woman, man, and specially senior citizens. With changing nature of society, protection of rights of senior citizens has been constantly burning and critical issue. The issues related to senior citizens are untouched and remained as 'silent process' only. It needs to get clear platform and effective implementation of laws at municipal and international level. They are not few in number, as these are economically and psychologically independent forgotten souls.¹ The debate related to elderly people has not become successful on the basis several evident incidences. In sociological jurisprudence, very well stated by Roscoe Pound, in his social engineering theory that, Rights are nothing but interests which are recognized, protected and enforced by law. Hence, senior citizen i.e. subject of society, have entitled to have their own identity, dignity with peaceful life. Becoming elderly is a natural process which is not in control of individual's power or will. It brings change into lifestyle, health, process of mind etc. On one hand, it has been observed from several incidences that life, liberty and dignity of elderly people is at danger.

On other hand, due to advancement of day to day upcoming technology, better knowledge of health and nutrition and effective treatment of diseases have increased life expectancy in elderly people community. The population of the elderly people is steadily

¹ John R. Voris, "Overlooked aspects of the Senior Citizen Population", *Journal of Educational Sociology*, Vol.36 No.2, (Oct-1962) p.79

increasing, so the concern for ageing is at apex.² Though majority of elderly people are source of experience of life or evident knowledge of life but still the society never been such reluctant to help or assist or guide them. Therefore, they are in a position to make significant contribution to the socio-economic development of respective nation.

Prior to enter into various ethical, social and legal issues of elderly people, it is important to explore the definition and meaning of term 'elderly people'. As far back as 1875, in Britain, the Friendly Societies Act, enacted the definition of old age as, "any age after 50", yet pension schemes mostly used age 60 or 65 years for eligibility.³ World Health Organisation has broadly defined Older People are as those aged 60 -74 years as elderly. "The ageing process is of course a biological reality which has its own dynamic, largely beyond human control. In the developed world, chronological time plays a paramount role. The age of 60 or 65, roughly equivalent to retirement ages in most developed countries is said to be the beginning of old age. In contrast, old age in many developing countries is seen to begin at the point when active contribution is no longer possible."⁴ A definition of old age people varies from county to country, society to society. Therefore, it is debatable to define elderly people as universally accepted definition. The United Nations uses 60 years to refer to elderly people. As changing nature of lifespan again defining of old age is not constant. Therefore the aging group sometimes considered as between 45-50 or 50-55 or 55-60 or above 60.

² J.C. Batra, "Rights for the Aged", in Pravin Parekh (ed.), *Human Rights Year Book 1*, (Universal Law Publishing co. in, New Delhi 2010), p. 87

³ Roebuck J. "When does old age begin?: the evolution of the English definition", *Journal of Social History*. Vol. 12(3) (1979) pp. 416-28.

⁴ Gorman M. "Development and the rights of older people" in Randel J, et al., (ed). *The ageing and development report: poverty, independence and the world's older people*, (London, Earthscan Publications Ltd., 1999), pp.3-21

REVIEW OF LITERATURE

The Sanskrit phrases like “Matru Devo Bhav” and “Pitru Devo Bhao”, reflects the sentiments to one’s parents. During the ancient period parents were worshiped as living Gods and Goddesses and placed at a very high position. But presently due to different problems and nuclear family system, these aged parents are taken by their own son/s or daughter/s as burden. As a consequence of this there is shifting of responsibilities from family members to government or State. Hence from human rights perspective, there is need to help them, to make their life prestigious, dignified and cheerful so also to infuse confidence in them to improve their life. No doubt different legislation and welfare schemes and policies for elderly have been implemented by the Government. The legislators came up with various Bills were said to have been introduced with some serious thought before they were rejected to formulate an Act⁵. Till 2007 there were no special or separate legislation exclusively for Senior Citizens. However, there are efforts made by the Government to initiate a special law to govern and regulate important problems of Senior Citizens. In 2006, on 3rd March, Ms. Sushma Swaraj of BJP has tried to introduce the Bill titled as Senior Citizens (Maintenance, Protection and Welfare) 2006, but the Bill could not proceed further⁶. Thereafter, the Government of India, through its Ministry of Social Justice and Empowerment, through then Minister, Smt. Mira Kumar introduced the Bill on 9th March, 2007, titled as “The Maintenance and

⁵ Bharat S. Kumar, Abandonment During Sunset Years, LAWZ, June, 2009, p34.

⁶ Bill No. X of 2006.

Welfare of Parents and Senior Citizens Bill 2007” in Lok Sabha⁷. The basic object of the Bill of 2007 was to provide effective remedies for the maintenance and welfare of Parents and Senior Citizens. The above referred bill is now became the Act, which received an ascent of the President of India on 31 December, 2007. However, even after completion of more than seven years in the implementation of the said legislation we come across the different problems and poor conditions of the aged persons in India.⁸

It may not, however, be presumed that joint family system originated in India. This institution is said to be the outcome of the settling down of the Aryans in different parts of the world. We have similar institutions practically all over the world. As we have learnt before in the ancient Roman society, the supreme authority rested in the eldest male member of the family who, in administering the family affairs, was entitled to take all steps.

When the pastoral stage was over and the people began to live a settled life by tilling the soil, constructing the house and maintaining the patrimony, joint family system came into existence. Difficulties of communication and travel compelled all the members of the family to live together and carry on jointly the family occupation in agriculture or trade.

Over and above these causes the kinship idea and the religion emphasizing ancestor worship further made joint family a complex organisation catering to the

⁷ Bill No. 40 of 2007

⁸ Dr. Prafull B. Chavate, Law for Senior Citizens and Elder People in India, Hind Law Publication, Pune, 2014.

spiritual and economic needs of the large family groups which composed the society. In other parts of the world while joint family system has disappeared, in India, it still continues though suffering heavy strains brought about by industrialization and urbanization.⁹

In the older times, after the completion of 50 years of life, one had to detach oneself from the responsibilities of a 'Grihastha' and switch over to the third stage of human life which was known as 'Vanpristha' which referred to the devotion of the next 25 years of life by the 'Vanpristhi' by mana, vachana and karma to the selfless service of the suffering humanity and the larger society in return to the services received from society during the first 50 years of life.¹⁰

In India, the joint family system has been in existence since ancient times. The father is considered as the head of the family. His wife, sons, daughters-in-law and grandchildren together constitutes a joint family.¹¹

In ancient and medieval times, the older members of the family enjoyed great respect. They relaxed in the company of their counterparts. They amused themselves with the pranks of their grandchildren. They handled the financial matters of the household.

⁹ See article, Significance of Joint Family System in India, by Shuni, available at, <http://www.yourarticlelibrary.com/family/significance-of-joint-family-system-in-india/47653/>, dated, 19/10/16, 5.20 pm.

¹⁰ See article, Karma Yoga, by Sri Swami Sivananda, available at <http://www.dlshq.org/teachings/karmayoga.htm>, dated, 19/10/16, at 5.30pm.

¹¹ See article, 'In/dependence, intergenerational, uncertainty, and the ambivalent state: Perception of old age security in India', by Sarah Lamb, bk, 'Security, socialization and affect in Indian families, Unfamiliar grounds' 1st publication 2014, by Routledge, Oxon, OX 14 4RN.

But with the rise of towns and cities, the older and younger generations widened a great deal.¹²

Joint family system in India provided 'social security' to all its members. It not only looked after the older people, but also took care of unemployed, sick, orphans, widows, etc. In a joint family the seniors were highly respected and the decision made by them was final.

In ancient and medieval times the older members enjoyed great respect. They relaxed in the company of their counter parts and amused themselves with the pranks of grandchildren; they handled finances of their household.

In the joint family the members are well aware of one another's rights and duties. Each member of the family performs certain duties which benefit the other members as well as the family as a whole. Simultaneously each member enjoys certain benefits contributed by other members in the family. Therefore one enjoys certain rights and performs certain duties simultaneously. This system of mutual rights and duties holds the family members together as a closely knit unit.¹³ The head of the joint family is known as 'karta'. The head of the family appears to have had absolute control over the family property and members. However the relation between the head and the other subordinates in the family is cordial. The head of the family is the trustee of the family and enjoys unquestionable authority.

¹² See article, 'Comparative Essay on Joint Family Vs. Nuclear Family System', by, Dinayak Shenoy, available at, <http://www.publishyourarticles.net/knowledge-hub/essay/an-comparative-essay-on-jointfamily-vs-nuclear-family-system/1576/>, dated, 20/10/16 at 3.00pm.

¹³ See article, 'Characteristic Features of Joint Family in India', by, Nitisha, available at <http://www.yourarticlelibrary.com/society/indian-society/family-indian-society/characteristic-featuresof-joint-family-in-india/47467/>, dated, 20/10/16 at 3.20.

However, joint family system has undergone tremendous change due to the impact of industrialisation, modernisation, westernisation and urbanisation. This has greatly affected the senior citizens in the family. The problems which they are facing today are all due to the disintegration of the joint family.

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 that 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.¹⁴

Raju SS (2011) reported that the status of research on ageing in India and provides a situational analysis of elderly in terms of economic, social, psychological and health aspects, and elder abuse. The paper also develops issues upon which models of care for the elderly can be framed and argues that factors such as place of residence, social class and gender among others tend to influence such models of care. The paper

¹⁴ 'Studies on Aging in India: A Review', S. Siva Raju, BKPAI Working Paper No. 2, United Nations Population, Fund (UNFPA), New Delhi

draws from population censuses, various rounds of the NSSO and several published and unpublished articles, papers and project reports. The review shows that not all aspects of ageing have been uniformly researched and many of them are micro-level localised studies based on small samples. The paper suggests that the institution of the family needs to be protected and strengthened through professional welfare services, including financial support to low income families, and counselling services both to the elderly and to family members. The review of psychological issues shows that there were many studies conducted abroad and a dearth of studies in India particularly on determinants of happiness in old age. There is a gap in our understanding of the modes of frustration, degree of social adjustment and the need patterns of different elderly age and social groups, old age ailments, physical infirmities and mental health. The paper suggest models of care and well being of five groups of elderly to better target services to their differing needs. These are: (a) rural elderly, (b) urban poor elderly, (c) urban middle income well-to-do elderly, (d) female elderly and (e) elderly living alone. More studies are needed which use a multidisciplinary approach and do not view the elderly as passive receivers of care but as significant contributors to the family, society and country.

Dr. Naresh VW (2015) stated that India is a welfare State governed by a Constitution which holds the pride of place in the hearts of its citizens. It lays, special emphasis on the protection and well being of the weaker sections of society and seeks to improve their economic and social status on the basis of constitutional guarantees spelled out in its provisions. The welfare of senior citizens is mandated by the Constitution of India. In India, age of 60 is considered (to be Senior citizens) as the beginning of old age.

Senior citizens should be treated as a human being entitled to all the basic human rights, human dignity and human sympathy. It is, therefore, important that Government and the community play a proactive role in taking care of them. The researcher has discussed the law in changing society with reference to senior citizens, need for care and protection of rights of them and suggestions to have general consensus in deciding the age of senior citizens, awareness and proper implementation of the law, and provision for necessary care and support to them within the families and community setting instead of opening more old age homes.

Ajay B.S. (2015) reported that the human rights are valuable to every human being. As a human being, elderly people are integral and important subject of society. United Nations is like a representative of “unity of nations” as well as authority for promotion and protection of “human rights” of human beings of world. But unfortunately, there is no separate legal document for promotion and protection of human rights of elderly people at International level. This paper will deal with conceptual as well as human rights perspective of elderly people with the help of Universal Declaration of Human Rights, 1948, Draft Resolution on a Declaration of Old Age Rights, 1948 from Argentina and several international meetings and conferences of United Nations. This paper examines the role of United Nations in strengthening human rights of elderly people. Lastly, this article will conclude the need of legislative human rights framework exclusively for elderly people and outcome of human rights of elderly people in future.

OBJECTIVES OF STUDY:

To study the human rights perspectives on the protection of senior citizens, the present research will have the following objectives:

1. To identify the various problems of senior citizens.
2. To study the existing conditions of the senior citizens.
3. To study the socio-legal concerns of the senior citizens.
4. To study the status of human rights of senior citizens in India.
5. To identify responsible factors for dismal status of elderly human rights protection.
6. To study the protective constitutional and legal framework for the senior citizens in India.
7. To draw a line of action to protect senior citizens in India in the light of human rights.
8. To study existing programmes and policies to the protection, maintenance and welfare for the senior citizens in India.
9. To suggest some specific points to policy makers, planners and decision makers so that human rights of senior citizens could be strengthened in future.

SCOPE OF THE STUDY:

The study involves Legislative investigations and the utilization of the prospective outcome to develop new laws and legislation that will help the senior citizens. Sociology

and law are interconnected and interdependent on each other. This interdisciplinary study will help the lawmakers and law executors to make and implement law, so as to serve the people. The main objective behind all this exercise would be to study the existing conditions and necessity of a State legislation relating to rights of Senior Citizens, make an analysis of the previous legislations and suggest ways for the future so that a comprehensive piece of legislation, at national level is the outcome.

SIGNIFICANCE OF THE STUDY:

The present research will be instrumental in identifying various problems pertaining to Senior citizens rights and duties. The present research is very vital to bring to the notice of state government the importance introducing and implementing Senior citizens Act in India.

RESEARCH METHODOLOGY-

The methodology adopted for this research is both doctrinal and empirical. Doctrinal study includes the jurisprudence of the basis of rights of older persons, international and national initiatives through resolutions, declarations, legislations and policy measures. For this purpose international and regional human rights documents, Declarations, provisions of the Constitution of India, Hindu Adoption and Maintenance Act, 1956; Criminal Procedure Code, 1973; Muslim Personal Law, Maintenance of Parents and Senior Citizens Act, 2007. The legislations in U.K, U.S.A and South Africa relating to the protection of older persons is examined.

The research will also consult the news papers, news letters, magazines, AIR, SCR, SCC, Journals, Book etc. The conclusions will be drawn by the researcher on that basis.

STATEMENT OF THE PROBLEM:

The present research problem is stated that - "**Protection of Senior Citizens in India and Human Rights : A Socio-Legal Study.**"

LIMITATION OF THE STUDY:

- i) The survey is conducted in U.P. only.
- ii) Limited availability of literature on the said topic.

TENTATIVE CHAPTER PLAN

1. Introduction
2. Review of Literature
3. Socio-legal context of the senior citizens
4. Prevailing and existing conditions of senior citizens
5. Human rights perspectives on senior citizens
6. Constitutional and legal framework of senior citizens
7. Existing programmes and policies to protection, maintenance and welfare of senior citizens
8. Conclusion & suggestions for further research
9. References

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