

## The rights of old age persons in India: A challenging facet of human rights

Dr. Anand K Deshmukh

Asst. Professor, Dept. of P.G. Studies in Law, Dr. B.A.M. Uni., Aurangabad, Maharashtra, India

### Abstract

Old age is an indispensable stage of life of a human being which a man cannot avoid except untimely death. The childhood and old age are the different stages of life where children depend on parents and vice-versa. The traditional value system develops respect for old age person. The old age person plays vital role in the family as they give their advice and guidance on every aspect of the family. Now a day these values are fast eroding. The disintegration of joint family system has resulted not only in the separation of families but also in the severance of family ties. The conditions of old age people are miserable moreover children perceive them as burden of the family. Care and protection of parents are totally ignored and they are denied basic amenities of life. Their social, economic and health securities are threatened affecting their right to live with dignity guaranteed under human rights law. The paper explores and examines international and national legal endeavors to protect the rights of old age person in India.

**Keywords:** old age person, human rights, social security, abuse

### Introduction

In recent decades, the rapid socio-economic transformation has affected every aspect of traditional Indian society and badly influenced conventional value system. One of such facets of customary practices is disintegration of joint family system. The modern trend of nuclear family excluded aged parents from the purview of family. Care and protection of parents are totally ignored. They are denied of basic amenities of life. Social isolation, economic abuse, health care, neglect are their common experiences. Many old are running away from their homes and some are committing suicides, as they do not tolerate torture in the family. Some old are abandoned at holy places like *Kasi* and many are thrown outside the home. There are also such incidents where children even not attended the funeral of parents. They are suffering humiliation and emotional disturbance in the hands of their loved ones. Ultimately they are living in pathetic condition<sup>[1]</sup>. The position is common both in poor and elite and in all castes and communities. The majority of Indian elders are in potentially vulnerable situation<sup>[2]</sup>. According to Human Development Index<sup>[3]</sup>, Indians have poor quality of death and it stands even below Uganda, one of the most backward countries in the world. Therefore, the vulnerability undermines the status of older persons.

According to "Report on Elder Abuse in India (2014)" by Help Age India, half of the elderly (50%) reportedly experiencing abuse. 48% males and 53% females reported personal experience of abuse. According to report, Verbal Abuse (41%),

Disrespect (33%) and Neglect (29%) are ranked as the most common types of abuse experienced by the elderly. According to one survey, 11% of 60+ year olds have experienced at least one type of elderly abuse (Physical 5.3%, Verbal 10.2%, Economic 5.4%, Disrespect 6%, Neglect 5.2%). The most common perpetrator is the son, who is reported to be responsible for the abuse among 41% of male victims and 43% of female victims<sup>[4]</sup>. Moreover the lack of social support, breaking up of the joint family system and changing lifestyles aggravate the health and nutritional problems of the elderly<sup>[5]</sup>. Thus, there is need for making provisions to ensure that the basic requirements of old age persons are met and that they can enjoy their right to live with dignity as is envisaged by Article 21 of Indian Constitution.

### Social security of old age person: International efforts

International norms for the protection of old age person are settled in human rights documents. The United Nations is deeply involved in the development of international legal framework on old age security. The Universal Declaration of Human Rights recognised the old age security as a human rights issue<sup>[6]</sup>. However, Argentina has the credit to raise discussion on aged at first before the General Assembly of the United Nations in the year 1948. The issue was again raised by Malta in 1969. The General Assembly in 1971 asked the

<sup>1</sup> Dr. Nandita Adhikari, Law and medicine, Central Law Publications, Allahabad (2007), p.211.

<sup>2</sup> In 1961 the population of old in India was 24 million and currently it increased to 100 million. According to a survey in 2001 nearly 2/3 of the elders live in rural areas, nearly half are women out of whom over half are widows. Two-thirds of all elderly persons are illiterate and dependent on physical labour; 90 percent existed in the unorganised sector with no regular source of income; one-third living below poverty line. See the Hindu, 22th September, 2010, p.13.

<sup>3</sup> See Times of India (Pune ed.) 17th July, 2010, p.7.

<sup>4</sup> Chirag Sharadkumar Jani, Protection of Right to Maintenance and Welfare of Oldage Persons in 21st Century: A Challenging Facet of Senior Citizens Rights in Changing Scenario, Research Front, Special Issue, 4, March, 2015. P.91-96

<sup>5</sup> Tenth Five Year Plan 2002-2007, Vol. 2, Planning Commission, Government of India.

<sup>6</sup> Article 25(1) of the UDHR provides that every one has the right to standard of living adequate for the health and wellbeing of himself and of his family including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, widowhood, old age or other lack of livelihood in circumstances in his control.

Secretary General to prepare a comprehensive report on the elderly and to suggest guidelines for the national and international action.

The United Nations in 1977 adopted convention on ageing recognising the right to live with dignity and security and freedom from exploitation and abuse of aged. The World Assembly on Ageing was convened in Vienna on 26th July, 1982 and 'the International Plan of Action on Ageing' was adopted. The World Assembly resolved that fundamental and inalienable rights contained in the Universal Declaration to be applied fully to ageing and that the quality of life is as much important as the longevity. The aged should be enabled to enjoy a life of fulfillment, health, security and contentment and that they should be treated as integral part of the society.

On 16th December, 1991 basing on 'International Plan of Action on ageing' the General Assembly of the United Nations adopted the UN Principles for Older Persons for better existence of aged persons. These principles are concerning to maintenance of independence, active participation, information and implementation of policies, family care, development, dignity of life and self fulfillment of the older persons. Principle 1 asserts that older persons must have access to adequate food, water, shelter, clothing and health care through the provisions of income, family and community support and self-help. These principles further provided that older persons should be able to live with dignity and security. Older persons should be free of exploitation and physical or mental abuse. The UN urged the Governments of different nations to incorporate these principles in their national programmes.

The UN Resolution, 'Proclamation of Ageing' (1992) noted that UN activities must consider ageing in the context of human rights, employment, education, health and housing. The Habitat Agenda, in paras 17 and 40 proclaims that older persons are entitled to lead fulfilling and productive lives and should have opportunities for full participation in their communities and society and all decision making regarding their wellbeing especially their shelter needs.

Under the aegis of the UN various international conventions are adopted which consists provisions for the betterment of the aged<sup>[7]</sup>. Regional Conventions on Human Rights also have attempted to protect the spirit of these international documents<sup>[8]</sup>.

<sup>7</sup> The following are some of the international human rights instruments which recognised rights of older persons.

- a) United Nations Charter (Art.55)
- b) UDHR-1948 (Articles-2,3,22,25 and 27)
- c) Convention Relating to the Status of Refugees, 1951 (Art 21-24)
- d) Convention on Economic, Social and Cultural Rights, 1966 (Articles-2,7,9,11 &12)
- e) Declaration on the Rights of Disabled Persons 1975, (Arts. 5,9,10 & 12)
- f) Declaration on the Elimination of Violence Against women, 1933.
- g) Covenant on Civil and Political Rights, 1966 (Arts. 1,2,6,7,9,10 & 26)
- h) Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (Arts. 2, 11,12 & 14)
- i) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984(Arts.2 & 4)
- j) Madrid International Plan of Action on Ageing, 2002.
- k) The UN General Comment 6 on The Rights of Older Persons adopted by Committee on Economic, Social and Cultural Rights, 1955.
- l) General Comment 14 on the Right to the enjoyment of Physical and Mental Health, 2000.
- m) ILO Recommendation No.162 Concerning Older Workers, 1980-Section-II para 5 (g).

<sup>8</sup> Following are some of the Regional Conventions which recognised rights of older persons.

Recently, the UN Secretary-General's report (2011) on the follow-up to the Second World Assembly on Ageing concludes that some good measures have been introduced since 2002 with regard to older persons' rights. However, these policies are inconsistent among nation-states and do not indicate the presence of a comprehensive legal, policy and institutional framework for the protection of the human rights of older persons<sup>[9]</sup>.

The UN has done elaborate work for the protection and security of the old by adopting conventions, declarations, resolutions, policies, programmes and plans. All these international instruments recognised adequate standard of living, social security, protection of health, shelter, life and dignity of older. They create generous and generic protection for older persons. Therefore protection of rights of old age person has assumed lot of significance in international law. However, for effective protection, still there is a need of comprehensive international law and effective enforcement mechanism.

### **Legislative measures in India to protect the rights of old age person**

The Indian legislature realised the necessity of old age social security and recognised the care and protection of old age person as an integral part of the Indian Juris corpus. The Constitution of India in articles 14, 15, 21, 38, 41 and 46 guarantees care and welfare of the elderly people.

The objective of Articles 14 and 15 is equal justice to all without any discrimination. Though the 'age' is not explicit in prohibited discriminations of these provisions, it shall not be a ground for denial of equality. Therefore, they should not be discriminated but treated equally on par with the members of family and society as well. Article 21 guarantees a right to dignified life to every one including senior citizen. Social security is a means to dignified life. Therefore, right to security of aged is an integral part of right to life under Art.21. Articles 38, 41 and 46 provide for dignified living for the elderly. Though, these Directive Principles are not enforceable in a court of law they provide constitutional matrix for making law and for policies and programmes of governments. Therefore, the Constitution of India has provided protection to basic human rights of the elderly.

A Hindu is bound during his or her life-time, to maintain his or her legitimate/illegitimate children and his or her aged or infirm parents<sup>[10]</sup>. The obligation of a person to maintain his or her aged infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or others property<sup>[11]</sup>. Thus amongst the

a) American Convention on Human Rights, 1969 and the Rules of Procedure of the Inter American Commission on Human Rights, 2000.

b) Inter American Convention on Elimination of All Forms of Discrimination Against Persons with Disabilities, 1999.

c) African Charter on Human and Peoples Rights, 1981 (Art.81).

d) European Social Charter, 1961 (Articles 11, 12, 13 & 14)

e) Charter of Fundamental Rights of European Union, 2000 (Arts. 25, 34 & 35)

f) Arab Charter of Human Rights, 1994 (Arts. 30 & 38)

g) The Cairo Declaration on Human Rights in Islam, 1990 (Arts. 17 & 18)

<sup>9</sup> Mathe Fredvang and Simon Biggs, The Rights of Older Persons, Brotherhood of St Laurence and University of Melbourne Centre for Public Policy 2012, p.12.

<sup>10</sup> Section 20(1) of Hindu Adoption and Maintenance Act, 1956.

<sup>11</sup> Section 20 (3) of Hindu Adoption and Maintenance Act, 1956.

Hindus, the obligation of sons to maintain their aged parents, who were not able to maintain themselves out of their own earning and property, was recognized even in early texts. Criminal Procedure Code, 1973 in section 125 (1) (d) provides for the maintenance of parents of any age and any religion. This provision was major means for old age security until recent past.

To keep the fag end of their life safer from horrible experiences, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has been passed. The object of this Act is to provide more effective provisions for the maintenance and welfare of parents and childless senior citizens guaranteed and recognised under the Constitution of India. The Act provides protection to childless senior citizens, adoptive parents, step father, grand parents which is absent feature in earlier social security legislations. The Act provides for the establishment of maintenance tribunals, oldage homes and protection of maintenance agreements. Apart from maintenance it also ensures care, welfare, security of health, life, dignity, person and property of this vulnerable group guaranteed in human rights law. The Act provides better, adequate, appropriate, speedier and less expensive relief and also provides innovative social security measures<sup>[12]</sup>. The Act has been enacted to give effect to the Directive Principles<sup>[13]</sup>. Therefore, social security under the Act is the constitutional right of the old and it creates justiciable fundamental right. For better enforcement of the Act, Rules are adopted in 2010 but many States are not yet taken any initiative for the enforcement of the Act.

The National Policy on Older Persons, 1999 identified financial security, health care and nutrition, shelter, education, welfare, protection of life and property and protection against abuse as important areas of action plan for the empowerment of old. It is a comprehensive document covering every aspect of elder's life. But unfortunately even after 15 years the poilicy awaits implementation in many states. To implement the National Policy the central government has set up the National Council for Older Persons. Under the National Social Assistance programme the Government of India adopted various schemes and support services<sup>[14]</sup>. In addition to them travel concessions, tax rebates other incentives are provided for the welfare and benefit of the aged. All these measures are meant for the improvement of the quality of life of old age persons.

## Conclusion

At national and international level, there are various measures initiated to provide a life of dignity to old age persons. But lot of old age person remains outside the perview of these

measures because of lack of awarness of these security measures and ineffective enforcement of the same. There should be social security network for old age person which ensures assistance to old age person and old age security should be recognised as fundamental right in the Indian Constitution. The States can adopt effective policy for childless old. At the same time, present approach towards old age person is required to be changed. It is essential to develop a value based social system where parents are considered as God in mortal form. After all one should not forget that he is formed from the flesh and blood of their parents and his achievements are the result of sacrifice, suffering and toil hard of his parents.

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<sup>12</sup> Dr.S.R.Katari, Senior Citizens Act, 2007- A Progressive Law to Ensure Old Age Security, NAYAYA DEEP, April, 2011 P.95.

<sup>13</sup> See Objectives of the Act.

<sup>14</sup> The Government of India adopted following schemes and support services for oldage persons.

- a) Indira Gandhi National Old Age Pension Scheme (IGNOAPS)
- b) National Family Benefit Scheme
- c) *Annapurna* Scheme
- d) Indita Gandhi National Widow Pension Scheme (IGNWPS)
- e) Indira Gandhi National Disability Pension Scheme (IGNDPS)
- f) National Initiative on Care for Elderly (NICE)
- g) Old Age Social and Income Security Scheme (OASIS)
- h) *Aadhar*.