



Study of the human rights of the elderly in India

Mayank Tiwari

Second Year Student (B.A. L.L.B.) National University of Study and Research in Law, Ranchi, Jharkhand, India

Abstract

Human Rights is a wide concept, which covers varied realms of human concern, right from the dignity and security of the human beings to their working conditions and their right to life. Interestingly, the Right to Life is ensured and protected by Article 21 of our highest laws of the land, The Constitution. Under the same umbrella our Apex Court, declared Right to work as a fundamental right, in the celebrated case of *Olga Tellis & Ors. v Bombay Municipal Corporation & Ors.* In the case of *Sayeed Maqsood Ali v State of Madhya Pradesh*, the Hon'ble Court held that Right to sleep comes under the ambit of Fundamental Rights. There are plethora of cases by virtue of which we come to know that Right to clean environment, Right to privacy, Right to die with dignity and many others come under the domain of Fundamental Rights. As the term 'Fundamental' suggests the basic rights every individual must possess and the same goes with the latent idea lying in the advent of the concept of Human Rights in the Universal Declaration of Human Rights.

Keywords: elderly, human rights, problems, protection, implementation

Introduction

"I am not interested in picking up crumbs of compassion thrown from the table of someone who considers himself my master. I want the full menu of rights."

- Bishop Desmond Tutu

Human Rights are those rights, rooted in appeal to human nature, which all human beings have simply because they are humans. They are indeed a moral right held unconditionally and unaltered by all and only human beings. They are often said to belong to persons already, prior to and independently of legislative enactment. According to H.L.A. Hart, human rights are,

1. Rights which all men have if they are capable of choice; they have the rights of men and not only if they are members of the same society or stand in the same social relation to each other.
2. These rights are not created or conferred by man's voluntary actions like other moral rights ^[1].

It is quite essential to note that our discussion will revolve around the conditions specific to Indian Territory, as well as some other parts of the world.

"Trees grow stronger over the years, river wider, likewise, with age, human beings gain immeasurable depth and breadth of experience and wisdom. That is why older persons should be not only respected and revered; they should be utilized as the rich resources to society that they are"

- Kofi Annan

Ageing is a universal phenomenon and no society can escape from it. At all stages of our life we have to face socio - economic, psychological and health related problems. But in old age the magnitude and the extent of these problems are much serious. The social and psychological problems of

the aged are very much linked with health and financial status of these individuals.

Before delving into the issues of Human Rights and its violations in case of elderly people, it is pertinent to understand the population and its demographic patterns.

In India, as per the recent census the birth rate and death rate are 19.3 births/1000 population and 7.3 deaths/1000 population respectively. The pattern denotes, the population density belonging to the elderly group (Age>60) is increasing and this probably adds to the inference that we cannot neglect the Rights and Liberties of such group. The elderly group nearly adds to 8% of the total population in India, which indirectly emphasises that we should understand and acknowledge their presence, and cater all their needs through our dynamic legal procedures and executive actions.

Objective of the Study

- To study the status of human rights of Older people in India.

-To suggest or recommend some specific points to policy makers, planners and decision makers so that human rights of older people could be strengthened in future.

Problems Associated with the Elderly in India

The process of economic liberalization led to the emergence of capitalism, division of labour and availability of lucrative opportunities. The market relationships are emphasized with greater importance than emotional ones. Presently, everyone aspires to a rewarding career so they can have a better lifestyle, leaving the earlier caste based familial professions as evidenced by the rapid growth of the professionals in the Indian job market. Simultaneously, the mobility of the people has increased to meet the growing areas of production and services sectors. Therefore, the traditional joint family system is fragmenting, resulting in the formation of nuclear families. On the other hand, double-income-no-kid (DINK) couples are increasingly observed in

¹ Oyelade. O.S, Ogunleye. T.A.,2008. "Creating Old Peoples Friendly Society: Promoting Economic, Social and Cultural Rights of Old People in Nigeria", 1 NUJS L Rev 605.

Indian societies.

Hence, they may experience a higher degree of physical and mental strain in the future. Consequent to the above developments, the older people are experiencing remarkable changes in their physical and socio-economic circumstances. In smaller families, they are gradually marginalized in the decision-making process. Hence, the family that traditionally took care of the elderly or sick, widows and orphans is beginning to rely on society as a whole^[2].

As the number of old persons is rising and the social environment is changing, the proportion of the destitute among them are also increasing. These factors are also leading to the need for a large number of old-age homes where the old people may enjoy the end part of their lives in a group of their own. The impact of the above factors may be observed in the living arrangements of elderly Indians^[3]. With the growth of rural population, the area of arable land is decreasing to meet the increased demand for housing, leading to incremental and disguised unemployment. As a result, the rural masses are forced to migrate to the urban areas in search of a livelihood. According to the framework of economic development developed by Arthur Lewis, the movement of labour from the "traditional sector" comprising agriculture and allied areas that produce traditional outputs for all societies, to the "modern sector" (industrial area, which produces manufactured items) is placed on the centre stage. The traditional sector may be assumed to supply unlimited number of labourers, but the absorption of the same critically depends on the supply of capital to the modern sector^[4]. The level of savings and investments are the determinants of the growth of the modern sector and, hence, the generation of employment as well as the process of urbanization.

These migrants, mostly the youth, primarily relocate for better earning opportunities, leaving their elderly parents in the villages^[5]. Moreover, the higher cost of living in urban areas and the lack of space for all members of a family to reside at the same place are causing the disintegration of the joint family system. At the same time, the insurance motive of the joint family system has declined gradually while the cost of child rearing has been internalized to a higher degree, leading to a lower rate of fertility. Therefore, the growth of the industries catalyses the process of urbanization, but makes the invaluable family support system unavailable to senior citizens^[6].

Elderly people have different problems that too in different magnitude. In an organised society elderly people deal with the problems such as, reduction of income after retirement, meagre pension or no pension, loss of energy due to old age,

incapacity to take any hard work, sickness or loss of spouse, personal sickness disabling to meet personal needs, diseases which need continuous monitoring, children living in abroad or other parts of the country for employment or livelihood, children not liking their parents to live with them, not preferring to stay with married daughter, unable to live with the son due to some differences with daughter-in-law or son, burden of house-hold chores and services to children in the houses where son and daughter-in-law are employed.

The aged population living in unorganised sections of the society also face huge ordeal in their tough time like they lose their property for the education of their children and marriage, lack of proper accommodation and medical facilities, non-availability of old age homes in the rural areas to rehabilitate them who have no income of their own and who are neglected by their children. Moreover, many people at the time of retirement are healthy, strong in body, creative and alert in mind with added advantage of vast experience behind them^[7].

When any person is devoid of his fundamental Rights which includes, his Rights to clean environment, Right to proper hygiene and care, Right to live with dignity with human like existence which covers,

1. Good food
2. Good Health
3. Good Sanitation
4. Proper Quality of Living
5. Good Social Interaction
6. Timely attention and due Care
7. Adequate Privacy

These are just few to state, but the wholesome violations of the Fundamental Rights which indirectly leads to the sheer violations of Fundamental Rights.

Definition as per Art. 25 of Universal Declaration of Human Rights,

Everyone has the right to a standard of living adequate for the health and well-being 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, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Problems of the elderly, in explicit terms

In this the explicit emphasis is laid on the problems which are explicit to the aged in India, which is basically categorised into three categories, namely

1. Economic Problems: It includes problems, which hinders the basic daily needs of the elderly population, which may be directly or indirectly related to their loss of motor actions, such as superannuation at a fixed age gives rise to loss of employment, which consequentially results in income deficiency and economic insecurity.
2. Physical and Psychological Problems: It is pertinent to note here that when we have persistent physical agony, we have a deep impact on our psychological conscience. The unavoidable mental problems, nutritional deficiency, problems of housing and residence gives rise to distress.
3. Psycho-Social Problems: Psycho-social problems

² B. Prakash., "Implications of an Aging Population in India: Challenges and Opportunities", Institute of Chartered Financial Analysts of India Presented at the Living to 100 and Beyond Symposium Sponsored by the Society of Actuaries Orlando, Fla. January 12-14, 2005, p. 10.

³ National Human Development Report, 2001.

⁴ Arthur Lewis (1954) Quoted in Prakash Bhattacharya, *supra* note 1, p.2.

⁵ Prakash Bhattacharya, *supra* note 1, p.3.

⁶ Visaria, P., "Urbanization in India: An Overview, published in Urbanization in Large Developing Countries: China, Indonesia, Brazil and India, (ed.) by Gavin Jones and Pravin Visaria, 1997, p.273.

⁷ Dr. Y. Vishnu Priya, 2007-08. "A Socio-Legal Study of Elderly Persons in Hyderabad, Andhra Pradesh", 18 ALJ, 109.

include problems related with their psychological and social maladjustment as well as the problem of elder abuse etc.

Elder abuse, mistreatment and torture of older people are a manifestation of the timeless phenomenon of interpersonal violence is prevalent in India. Still, there is no systematic collection of statistics or prevalence studies, crime records, journalistic reports, social welfare records and studies to provide evidence on existence of abuse, neglect and financial exploitation of elders. Being mistreated, verbally abused, and denied proper food, proper medication and care by younger members of family, most older people are indeed in a very helpless situation. With eroding social values in India, cases of elder abuse and mistreatment in every neighbourhood are daily routine. With nuclear family further getting reduced to single parent family, increasing number of old people have to head towards the Old Age Homes. In a still developing country like India, there is no guarantee that they are not experiencing severe abuse in Old Age homes as well.

Human Rights of the Elderly

1. Right to life shall be protected by law.
2. Right not to be subjected to inhuman treatment "No-one shall be subjected to torture or to inhuman or degrading treatment or punishment".
3. Right to liberty "Everyone has the right to liberty and personal security.
4. Right to a fair hearing "In the determination of his civil rights and obligations... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

"Civil rights and obligations"⁸ includes,
 -The right to respect at home, within family and in private life
 -The right to freedom of thought and conscience.
 -The right not to be discriminated against age
 -The right to property - everyone is entitled to the peaceful enjoyment of his possessions
 -The right to education

Protection of Rights of Elderly - Indian Perspective

1. Constitution of India

Art. 41: Right to work, to education and to public assistance in certain cases: The State shall, within the limits of 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 47 of the Constitution:

Article 47 of the constitution of India provides that the state shall regard the raising of the level of nutrition and the standard of living of its people and improvement of public health as among its primary duties.

Some Other Constitutional Provisions:

Entry 24 in list III of schedule VII of constitution of India deals with the welfare of labour, including conditions of work, provident funds, liability for workmen's compensation, invalidity and old age pension and maternity

benefits. Further, item 9 of the state list and item 20, 23 and 24 of concurrent list relates to old age pension, social security and social insurance, and economic and social planning. The right of parents, without any means, to be supported by their children having sufficient means has been recognized by section 125(1) (d) of the Code of Criminal Procedure 1973, and section 20 (1 & 3) of the Hindu Adoption and Maintenance Act, 1956.

1. Under Personal Laws

The moral duty to maintain parents is recognized by all people. However, so far as law is concerned, the position and extent of such liability varies from community to community.

2.1 Hindu Law

Amongst the 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. And this obligation was not dependent upon, or in any way qualified, by a reference to the possession of family property. It was a personal legal obligation enforceable by the sovereign or the state. The statutory provision for maintenance of parents under Hindu personal law is contained in Sec 20 of the Hindu Adoption and Maintenance Act, 1956. This Act is the first personal law statute in India, which imposes an obligation on the children to maintain their parents. As is evident from the wording of the section, the obligation to maintain parents is not confined to sons only, and daughters also have an equal duty towards parents. It is important to note that only those parents who are financially unable to maintain themselves from any source, are entitled to seek maintenance under this Act.

2.2 Muslim Law

Children have a duty to maintain their aged parents even under the Muslim law. According to Mulla

- a. Children in easy circumstances are bound to maintain their poor parents, although the latter may be able to earn something for themselves.
- b. A son though in strained circumstances is bound to maintain his mother, if the mother is poor, though she may not be infirm.
- c. A son, who though poor, is earning something, is bound to support his father who earns nothing. According to Tyabji, parents and grandparents in indigent circumstances are entitled, under Hanafi law, to maintenance from their children and grandchildren who have the means, even if they are able to earn their livelihood. Both sons and daughters have a duty to maintain their parents under the Muslim law. The obligation, however, is dependent on their having the means to do so.

2.3 Christian & Parsi Law

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.

3. Under the Code of Criminal Procedure

Prior to 1973, there was no provision for maintenance of parents under the code. The Law Commission, however,

⁸ "Human Rights of Elderly People Report", 2014. Agewell Research & Advocacy Centre in collaboration with ECOSOC,

was not in favor of making such provision. According to its report:

The Cr. P. C is not the proper place for such a provision. There will be considerably difficulty in the amount of maintenance awarded to parents apportioning amongst the children in a summary proceeding of this type. It is desirable to leave this matter for adjudication by civil courts. The provision, however, was introduced for the first time in Sec. 125 of the Code of Criminal Procedure in 1973. It is also essential that the parent establishes that the other party has sufficient means and has neglected or refused to maintain his, i.e., the parent, who is unable to maintain himself. It is important to note that Cr. P. C 1973, is a secular law and governs persons belonging to all religions and communities. Daughters, including married daughters, also have a duty to maintain their parents.

4. Government Legislations and Welfare Schemes

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

1. Setting up of a pension fund for ensuring security for those persons who have been serving in the unorganized sector,
2. Construction of old age homes and day care centres for every 3-4 districts,
3. Establishment of resource centres and re-employment bureaus for people above 60 years,
4. Concessional rail/air fares for travel within and between cities, i.e., 50% discount in train and Indian Airlines.
5. Enacting legislation for ensuring compulsory geriatric care in all the public hospitals
6. The Ministry of Social Justice and Empowerment has set up of a National Council for Older Persons in the process to make life easier for older persons.
7. Attempts to sensitize school children to live and work with the elderly. Setting up of a round the clock help line and discouraging social ostracism of the older persons are being taken up.
8. The government policy encourages a prompt settlement of pension, provident fund (PF), gratuity, etc. in order to save the
9. superannuated persons from any hardships. It also encourages to make the taxation policies elder sensitive.
10. The policy also accords high priority to their health care needs.
11. According to Sec. 88-B, 88-D and 88-DDB of Income Tax Act there are discount in tax for the elderly persons.
12. Life Insurance Corporation of India (LIC) has also been providing several schemes for the benefit of aged persons, i.e., Jeevan Dhara Yojana, Jeevan Akshay Yojana, Senior Citizen Unit Yojana, Medical Insurance Yojana.

4.1 The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

This Act provides in-expensive and speedy procedure to claim monthly maintenance for parents and senior citizens. This Act casts obligations on children to maintain their parents/grandparents and also the relative of the senior

citizen to maintain such senior citizens. The main attraction of this Act is there are provisions to protect the life and property of such persons. This Act also provides setting up of old age homes for providing maintenance to the indigent senior citizens and parents. This Act extends to the whole of India except Jammu & Kashmir state.

4.2 National Policy on Senior Citizens 2011

The foundation of National Policy for Senior Citizens 2011 is based on several factors – demographic explosion among the elderly, the changing economy and social milieu, advancement in medical research, science and technology and high levels of destitution among the elderly rural poor. In principle the policy values an age integrated society. It believes in the development of a formal and informal social support system, so that the capacity of the family to take care of senior citizens is strengthened and they continue to live in the family. All those of 60 years and above are senior citizens. This policy advocates issues related to senior citizens living in urban and rural areas, special needs of the ‘oldest old’ and older women. It will endeavour to strengthen integration between generations, facilitate interaction between the old and the young as well as strengthen bonds between different age groups. It believes in the development of a formal and informal social support system, so that the capacity to the family to take care of senior citizens is strengthened and they continue to live in the family. The policy seeks to reach out in particular to the bulk of senior citizens living in rural areas who are dependent on family bonds and intergenerational understanding and support. The focus of the new policy:

Promote the concept of ‘Ageing in Place’ or ageing in own home, housing, income security and homecare services, old age pension and access to healthcare insurance schemes and other programmes and services to facilitate and sustain dignity in old age. The thrust of the policy would be preventive rather than cure.

Mainstream senior citizens, especially older women, and bring their concerns into the national development debate with priority to implement mechanisms already set by governments and supported by civil society and senior citizens’ associations. Support promotion and establishment of senior citizens’ association, especially amongst women.

The policy will consider institutional care as the last resort. It recognizes that care of senior citizens institutional care as the last resort. It recognises that care of senior citizens has to remain vested in the family which would partner the community, government and the private sector.

Long term savings instruments and credit activities will be promoted to reach both rural and urban areas. It will be necessary for the contributors to feel assured that the payments at the end of the stipulated period are attractive enough to take care of the likely erosion in purchasing power. Being a signatory to the Madrid Plan of Action and Barrier Free Framework it will work towards an inclusive, barrier-free and age- friendly society. Recognise the senior citizens are a valuable resource for the country and create an environment that provides them with equal opportunities, protects their rights and enables their full participation in society. Towards achievement of this directive, the policy visualizes that the states will extend their support for senior citizens, living below the poverty line in urban and rural areas and ensures their social security, healthcare, shelter and welfare. It will protect them from abuse and

exploitation so that the quality of their lives improves. Employment in income generating activities after superannuation will be encouraged. States will be advised to implement the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and set up Tribunals so that elderly parents unable to maintain themselves are not abandoned and neglected. Support and assist organisations that provide counselling, career guidance and training services. States will set up homes with assisted living facilities for abandoned senior citizens in every district of the country and there will be adequate budgetary support.

4.3 National Programme for Health Care of Elderly (NPHCE)

National Programme for Health Care of Elderly (NPHCE) is an articulation of the international and national commitments of the government as envisaged under (UNCRPD), National Policy on older Persons (NPOP) adopted by the Government of India in 1999 and Section 20 of "The Maintenance and Welfare of Parents and Senior Citizens Act, 2007" dealing with provisional for medical care of senior citizen. Ministry of Health and Family Welfare (MOHFW) has taken appropriate steps in this regard by launching the National Programme for Health Care of Elderly (NPHCE) as a centrally sponsored scheme under the new initiatives in the XI five years plan. Presently, it is being rolled out in 100 districts.

The vision of the NPHCE is:

- To provide accessible, affordable and high quality long-terms comprehensive and dedicated care services to an Ageing population.
- Creating a new "architecture" for Ageing.
- To build a frame-work to create an enabling environment for "a society for all ages".
- To promote the concept of Active and Healthy Ageing.
- Convergence with National Rural Health Mission, AYUSH and other line departments like Ministry of Social Justice and Empowerment.

Role of Non-Governmental and voluntary organisations

While the government continues its efforts to introduce programmes for the welfare of the elderly, it is the non-governmental organisations which have played a key role in bringing to the forefront the problems of the older people to the society at large and through its various services it has sown the seeds for a forum whereby the voice and the concerns of the elderly can be addressed. Presently there are many non-governmental organisations working for the cause of the elderly in India. In India most of the non-governmental organisations have concentrated their work among the lower income group and the disadvantaged sections of the society. This is mainly because one-third of these people are defined as "capability poor" which means that they do not have access to minimum levels of health care and education for earning a decent living. However in the first few years of the growth of the NGO's the emphasis was on the abuse of women due to the gender discrimination prevalent in our Indian society. It is only in the last few years when the demographers provided alarming statistics on the growth of the elderly population that a need was felt to work in this area as it was always assumed that the elderly were well taken care of and were safe in the custody of the well-integrated joint family system in India. Initial studies show that the elderly are taken care of by the family

but the reality and recent ethnographic cases studies also prove that the so called "joint family system" in India is a myth and the elderly though they live with their sons and their families are neglected and uncared for by them. This scenario led to the emergence and mushrooming of various NGO's working towards the concerns of the elderly.

In recent years several national level and state level voluntary organisations have been set up for promoting the welfare of the elderly, for advocating a general national priority to their problems and needs and for organising services. The Government describes the services they are providing as residential care, day care, geriatric care, medical and psychiatric care, recreation, financial assistance and counselling. These services are however primarily urban based.

One of the premier voluntary organisation which began work on the cause and care of the older people of our country is Help Age India. It is a secular, a political, non-profit, non-governmental organisation and is registered under the Societies' Registration Act, 1960, in 1978. Help Age India was formed in 1978 with the active help from Mr. Cecil Jackson Cole, founder member of help the Aged, United Kingdom. In its newsletters and brochures one can clearly see it has charted out its goals and objectives which are "To create an awareness and understanding of the changing situation and the needs of the elderly in India and to promote the cause of the elderly. To raise the funds for creation of infrastructure through the medium of voluntary social service organisations for providing a range of facilities especially designed to benefit the elderly and thus to improve the quality of their lives." Help Age India is basically a funding organisation which looks for partner agencies in the field that are able to implement the various projects and programmes of the organisation. The head office of Help Age India is located in New Delhi and it has around twenty-four regional and area offices located all over the country.

Old Age Homes and Day Care Centres

Help Age India has sponsored the construction and maintenance of old age homes in India. These homes cater to the needs of those elderly who are unable to live by themselves and for those who have been abandoned by the family or are neglected and uncared for by their children. These old age homes provide and cater to the various needs of the elderly so that they can spend the "evenings of their lives" with dignity and respect and not feel a burden to the society. There are over 800 old age homes all over India and nearly half of them are being sponsored and funded by Help Age India. Besides old age homes, Help Age India also supports day care centres where the elderly come for a few hours every day or on certain days of the week and spend some time together. These centres combat the loneliness they face and create a sense of "we feeling" among them. In some of the centres being supported by Help Age India in rural areas they are also places where the income generating activities are conducted.

Suggestions

The above policies and laws favouring the elderly in India must be propagated through proper medium so that it can reach maximum people, and can benefit them in all the aspects. The policies must be coherent enough to judiciously drive away the problems of the people, and bring maximum

satisfaction and ease in mode of living for maximum people. *“Where, after all, do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”*

- Eleanor Roosevelt

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