

An Analytical Study of Human Rights and Legal Protection to Elderly Persons in India

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Abstract

The subject of the study feel that old age is a period of rest and relaxation. However, in reality it is not so. Sometimes they are burdened by the family members and many times they are not able to relax as they desire. They also expect that old age is the time to get respect from younger generation, but in fact they are insulted. Elderly people expect the family to consult and get their opinion in each and every matters regarding major decision making in the house, but they are completely ignored. In the Indian society, traditionally the elderly people are respected and taken care of the many ways. Elderly people are considered as the backbone of society. Unfortunately, in our Indian society this scenario is changing. Elderly people in our society are sometimes viewed as nuisance and not valued the way they are respected traditionally.

Keywords: - Elderly Person, Indian society, Human Rights, Indian Constitution, Safeguards,

Introduction

The present study is undertaken to deal with the above mentioned problems of the elderly persons and need for their maintenance and welfare. An evaluation of the international laws regarding the care of elderly, the various welfare measures taken by the Government of India and the constitutional and legal provisions regarding elderly persons especially the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has been also dealt with at length. The role of judiciary for the maintenance and welfare of elderly citizens has also been discussed in the study.

Old age 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 in many walks of life. They are the senior participants of the family system who recognize better the faith, family history, values and related customary practices. They own better information of the family values and society. The population of the aged has been increasing over the years with the growing exposure of human towards industrialization in 20th century; the consequential rush towards consumerism has deeply ruptured the intactness of social fabric. Therefore, the elderly persons in the society are made subject to various discriminations, torture and negligence.

India has by tradition consists of societies wherein ageing persons are paid utmost respect and regard. These elderly people find a special place for them in our customs, culture, and scriptures. Unfortunately, India also stands as no exception to the increasing trend of human rights violations against elderly people.

As human being, there are many categories recognized by legal system it includes child, woman, man, and especially senior citizens. With changing nature of society, protection of rights of elderly persons has been constantly burning and critical issue. The issues related to elderly persons are untouched and remained as

“silent process” only. It needs to get clear platform and effective implementation of laws at municipal and international level.

In India, the Protection of Human Rights Act, 1993 says that “Human Rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.” The concept of Human Rights is a 20th century concept. It was traditionally known as natural rights or the rights of man. In the 18th century in Europe, several political philosophers developed the concept of ‘natural right’ in line with the law of nature. These are the rights belonging to a person by nature and because he is a human being and not by virtue of his citizenship in a particular country or membership in a particular religion or ethnic group.

Elderly persons are also seen to suffer from physical disabilities, financial insecurity and loneliness resulting from ostracism by the family and society. Owing to their economic dependency, social deprivation and change in behavior towards diet and health care, they become more vulnerable to malnutrition and ill health. Studies have shown that diet and nutrition play a crucial role in maintaining good health and functional status of elderly.

But recent upheavals in the structure of the society and family have considerably changed their status and living conditions. For example, urbanization and the resultant changes in family structure, women employment, high cost of living, increasing materialism and individual orientation, all these lead to problems with accommodation and care of the elderly in a family environment. Old age homes were established in urban and rural areas under the initiative of both Governmental and Non-Governmental agencies, to provide shelter and support to the old destitute. At present such institutional care is a source of relief to the aged in our society. As Sreevals and Nair pointed out, in the absence of joint family system, the old parents are sometimes left with no other alternative than joining the old age homes.

Statement of the Problems

Old age as discussed above is a natural process therefore elderly people should enjoy human rights available to persons in general and certain additional rights in particular to balance the human rights scale. However, the laws and policies governing the welfare of elderly people are very scattered in India. In this regard the problems relating to research on elderly people are as follows:

Firstly, there is no set parameter to identify and define the term elderly person? It gets more complicated in a country like India where birth registrations are still not mandatory to calculate the exact age of a person.

Secondly, there are various categories of elderly people and accordingly they have varying problems as well. Therefore studying the nature of their social, economic and other problems itself a big task,

Thirdly, this research will focus upon the, human rights of the elderly people are violated on a continuous basis.

Objectives of present work

Present research will have the following objectives:

1. To study the status of human rights of elderly persons in India and factors responsible for its non implementation.
2. To find out social and economic problems, which are faced by elderly people?
3. To study and analyze the existing legal provisions, policies of government for the protection, maintenance and welfare for the elderly people in India.
4. To suggest or recommend some specific points to policy makers, planners and decision makers for protecting and empowering the human rights of elderly people in India.

Hypothesis

The present study essentially concentrates on human rights and legal protection to elderly persons in India. Present Research study proceeds with the hypothesis that the existing laws and policies in India are not adequate for proper protection of the human rights of the elderly persons and there is an immediate need for a new comprehensive piece of legislation to protect the human rights of elderly persons in India.

Research Methodology

The methodology adopted for this research is doctrinal in nature. The sources used in the present work are primary as well as secondary. Materials relevant to the topic available from Bare Acts, books, e-books, journals, e- journals articles and decided cases of various Indian courts, have been critically analyzed in order to conclude the present work. Doctrinal study includes the jurisprudential analysis the rights of elderly persons. For this purpose international and regional human rights documents, Declarations, Conventions, commentaries, digest, books and journals, periodical, Newspaper magazines, AIR, SCR, SCC, Published and unpublished matter, government record, documents, report etc. Maintenance of Parents and Senior Citizens Act, 2007 and National policy on Senior citizen, 2011 have been taken into consideration. The conclusion is drawn by the researcher on the basis of study of said laws and policies.

Conclusion

This Study of the conclusion it also makes various suggestions in order to address the research problem. In India, despite several laws, policies and schemes for the welfare and empowerment of older persons, elderly human rights violation is on the rise. Transformation of traditional joint family system into small family system, fast declining moral value system and fast paced modern lifestyle are among the main factors responsible for violation of human rights of elderly persons. In compression of rural areas, cases of elder abuse are on the rise in urban areas. Popularity of small family system, lack of intergenerational interaction, less social interaction of elderly persons, age discrimination, nonexistence of inclusive social security system in the country, etc. are among the most important reasons of miserable condition of elderly persons in urban area.

In India the maintenance and welfare provisions find a pride place in the Indian Constitution and several statutes including personal laws Article 41 of the Constitution of India provides, inter alia, about social security of the elderly persons. There is much legislation dealing with the welfare of elderly citizens either directly providing for maintenance or indirectly through some welfare measures. After going through all the

provisions it is clear that son/daughter is under personal obligation to maintain his/her parents in cases the parents are unable to maintain themselves. Under personal laws this can be enforced through a decree of a court but today's Indian courts are burdened with huge amount of pending case and this will take much time to complete the hearing of a case and subsequent enforcement of the decree, if any, in favor of the parents.

Suggestions

In the light of the present study and analysis of the issues raised in the work, following suggestions are made:

1. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has only defined senior citizen under section 2 (h) but this act has omitted to include the rights and status of elderly persons in India. It has taken only one aspect of age for determining elderly persons. Amendment is necessary in the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
2. Legislature should make provisions for setting up Help line, Counseling Centers etc. to cater to the psychological and emotional needs of the elderly person's age of 60 and widowed women who often spend their twilight years lonely, in a state of negligence and deprivation.
3. Programmes should be organized to recognize the potential of the elderly persons by involving them in various activities. Elderly persons through their experience and familiarity with their communities are well placed to identify the needs and vulnerabilities of their families and neighbors, including the most vulnerable elderly persons.

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