

Protection of right to maintenance and welfare of old age persons in India

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Abstract

Old age is one in all the stages of life cycle of someone that need special care. Elderly people square measure smitten by others as they suffer from several physical further as mental diseases and disabilities. They cannot be unheeded by sensitive and accountable society except premature death. The recent trend of family unit has adversely affected this inevitable stage of life triggering imbalance in traditional lifetime of old individuals by defeating thousand years recent practices of Republic of India wherever oldsters square measure treated as God. Old individuals become physically feeble and square measure unable to earn. Children ponder their parent as burden because of their monetary liabilities square measure raised additionally to economical time for his or her day to day life support that compromises their freedom. during this article, out there legal social, ethical and government norms square measure examined within the context of attainable method by that old people's human rights are infringed ending up in affected by pain and agony. The article conjointly examines the available laws, policies and pointers for the protection of maturity person's rights in India.

Keywords: maintenance, elder abuse, ageing, article

Introduction

India is facing all the issues endemic to a developing country with population ageing, within the absence of parallel developments in socio-economic and health spheres. Abundant has been mentioned and written concerning the fast changes within the family, living arrangements and price system in trendy India. Longevity conjointly implies health expenses for long-run sicknesses and constant losing battle with steep rises in value of living. For an extended time it had been assumed that, families would be the natural care suppliers for the aged. It has become inevitable to look for acceptable alternatives. In several Asian cultures, adulthood was loved; kids were thought-about as insurance for adulthood. There was a robust and implicit belief that folks would point out the young and reciprocally they might be sorted in adulthood by the adult kids. One amongst the duties of possessor in Hinduism was shelter, which is provided to recent and weak. Joint family system provided a security internet for elder folks ^[1]. Very different provisions that area unit given in several legislations area unit mentioned during this chapter. Once there is incidence of crime at intervals the society, drawback headed safety internet is provided by the legislative assembly to manage the rising drawback.

Ageing policies with in the colonial time

The time from the middle 18th to the middle 20th centuries, nation government was primarily involved with maintaining law and order including the event of a paperwork composed of each British and Indian civil servants. Throughout colonial time, nation thought of addressing social problems through the instruments of institutionalization and legislation was introduced in India. Nation government established laws

regarding security in adulthood, adore pensions and provident funds restricted to the formal employment sector and a system of elder-age homes supported via grants. The traces of this heritage area unit found in varied new laws enacted since 1950, a number of these earlier laws were maintained once independence in 1947. Four major items of legislation were introduced from the decennium to the Forties. The Pension Act of 1871 discovered a programme for colonial directors that were created obtainable to any or all government workers, together with Indians in government employment. The Royal Commission on Civil institution absolutely administered it. Amendments were enacted by nation in 1919 and 1935. Other welfare legislation was passed within the 1920 and 1930. In 1923, a workers, compensation law was passed for state staff it, too, was maintained once independence. Among alternative provisions, the quantity of compensation can be recovered by the elder parent just in case of death of a baby throughout the course of employment. Two alternative laws resolved around inheritance problems and mirrored the requirement to form acceptable legislation for each Hindus and Muslims. The Indian succession Act allowed the daddy to succeed to the property of associate intestate United Nations agency dies while not lineal descendants. Within the absence of a father and any lineal descendants, the property would dissolve to the mother. The Shariat Act of 1937 allowed for property to be distributed among the heirs of the deceased Muslim-which might embody elders once the payment of ceremonial occasion expenses, of any payment due for services preceding death and of any times for the compensation of debt. The problem of social insurance became a lot of salient throughout the first Forties. The Adarkar Commission Report was submitted on holy day of obligation, 1944 to stipulate the

inspiration for a social insurance theme, supported many security theme, supported many principles, monetary viability, expandability, and required and causative needs. The Adarkar Commission Report set the idea for the creation of varied retirement financial gain schemes and alternative welfare programs once independence in 1947. Especially, the insurance theme planned by the Commission materialized within the scope of the staff State Insurance Act of 1948; it absolutely was totally amended ^[2] in 1966.

Today, part XV, Article 309 of the constitution sets forth achievement and conditions of service, together with required retirement and conditions of service, together with required retirement at age sixty. It applies each to central and government pensions with relevancy the later, state legislative assembly alone has the authority to create amendments to any legislation ^[3].

Ageing policies once independence

With independence, the constitution of India was established ^[4], mandating the well-being of elders as a government responsibility. Article 41 a Directive of government policy needs that the state shall, at intervals the bounds of its economic capability and development; create effective provision for securing the proper to public help in cases of adulthood, state, sickness, unfitness and alternative cases of underserved wish. Alternative constitutional provisions embody directions for government's role, each at the national and state levels, through its varied schedules. as an instance, entry twenty four in list III of schedule VII deals with the welfare of labour, together with work conditions, provident funds, staff compensation, illogic (disability), and elder-age pensions and maternity advantages. Similarly, item nine of the state lists and item twenty, twenty-three and twenty-four of the simultaneous list relate to elder-age pensions, social insurance, welfare and economic and social planning. The proper to equality secured by the constitution as a elementary right applies equally to elders. Many laws were enacted within the Nineteen Fifties to Nineteen Eighties to reinforce the safety of the aged. These enclosed the Employee's Provident Fund and Miscellaneous Provisions Act of 1952, a step towards creating, welfare provisions for the long run of commercial staff once retirement or for the advantage of their dependents, just in case of early death. The family pension program, passed in 1971, helped extend much-needed long-run protection for families of commercial staff United Nations agency die untimely while not this program, the accumulations within the provident fund were too meager to render adequate family protection for industrial staff within the organized sector concerning ten of India's entire manpower staff in agriculture and little business do not seem to be coated.

As earlier mentioned that The Hindu Adoption and Maintenance Act and also the Hindu Succession Act were each enacted in 1956. Section 125 of the Code of Criminal Procedure 1973 created welfare provision for folks. Variety of states, together with Himachal Pradesh, Maharashtra and Karnataka conjointly passed parents maintenance laws. Varied Indian states conjointly established elder-age pensions for needy elders within the late Nineteen Fifties and Nineteen Sixties. Karnataka was initial in 1957, followed by Andhra

Pradesh and Kerala. Administered by state welfare departments, these advantages ranged from thirty to a hundred rupees per month. As of these days all the states and Union Territories have enforced adulthood pension schemes for the poor elder. The plans area unit involved by every political entity in keeping with its monetary resources, no statutory sanction does not exist, nor will these pensions be claimed as a matter of right. the speed of pension, eligibility criteria, residency conditions, and coverage vary from state to state. Alternative legislation passed within the initial decades once independence enclosed a special tax break for elder's age of sixty-five beneath the revenue enhancement Act of 1961 and also the Payment of Gratuity Act of 1975 and extra pension for industrial staff. Pensions for Freedom Fighters United Nations agency had fought for independence and retired service members conjointly were enacted. Two life assurance schemes, Jeevan Akshay and Jeevan Dhara were enacted to supply monetary security once the age of fifty ^[5]. Some states conjointly started giving grants to voluntary organizations for the upkeep of needy elders in elder-age homes. In some cases, the adulthood pensions paid to residents of those homes area unit paid to the voluntary organization running the homes for his or her repairs and care. These many efforts helped lay the inspiration for a national policy on Ageing.

National Scenario: Issues of Elderly People Growing population of old age person

The population of senior citizens aged 60 and above in India has increased from 42.5 million in 1981 to 55 million in 1991 and is now placed at 70.6 million in the 2001 census. They comprise about 6.9 % of the total population. Life expectancy of citizens at birth and also at age sixty have increased due to better nutrition and medical facilities. As of 2010, India's elderly population is estimated at 8%. Presently India has the second largest population of senior citizens in the globe. According to UN by 2050 the population of 60 plus in India would likely to increase up to 20%.

Abuse of old age person

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.

Risk factor for older abuse

The prime risk factor of elderly abuse is illiteracy. Decadency of the abused upon the abuser is another risk factor. Older abuse is also very often the consequence of long term family conflict between parent and child or between spouses.

Problems of the old age persons

Major problems which old age people suffer are;

1. Economic problems related to unemployment and economic insecurity.
2. Physical and physiological problems related to health, wellness, medical problems, appropriate residential facility etc.
3. Psychological problems and difficulties faced by elder people in society, elder abuse is problems related to psychosocial troubles. Generation gap causing conflict in mindset and behavior ends up in separation of parents from their children. This further aggravates economic problems.

International Law Provision

The article 25 of “Universal Declaration Of Human Rights” states that “everyone has the right to a 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, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control”. “The Universal Declaration of Human Right” applies to people of all ages. Both the International Covenant on Civil and Political Rights (ICCPR-1966) and International Covenant on Economic Social and Cultural (ICESCR-1966) apply to every person regardless of their age. The question of ageing was first debated at the United Nations in 1948 at the initiative of Argentina. In 1971 the General Assembly asked the Secretary- General to prepare a comprehensive report on the elderly and to suggest guidelines for the national and international action. In 1978 Assembly decided to hold a world conference on the Ageing.

National Policy on Elder Persons in 1999

Covering all aspects needed to be taken under consideration for real welfare of elder persons. It is a very comprehensive document. It covers all the main aspects intimately in favour of elder persons:

1. Monetary Security
2. Health Care and Nutrition
3. Shelter
4. Education
5. Welfare
6. Protection of Life and Property

National council for elder persons

A National Council for Elder Persons (NCOP) has been recognized by the Ministry of Social Justice and authorisation to operationalize the National Policy on Elder Persons. The essential objectives of the NCOP area unit to:

- Give feedback to the govt. on the implementation of the National Policy on elder persons in addition as on specific programme initiatives for elder persons advocate the simplest interests of elder persons,
- Advise the govt. on policies and programmes for elder persons,
- Give a nodal purpose at the national level for redressing the grievances of elder persons that area unit of a private nature give lobby for concessions, rebates and discounts for elder persons each with the govt. in addition like the company sector^[6].

- Recommend steps to create adulthood productive and attention-grabbing
- Recommend measures to reinforce the standard of inter-generational relationships.
- Undertake the other work or activity within the best interest of elder persons. Represent the collective opinion of elder persons to the govt.

Provisions as mentioned within the Indian constitution for the elder

However, these provisions area unit enclosed within the chapter IV i.e. Directive Principles of the Indian Constitution. The Directive Principles as explicit on Article 37 of the Constitution do not seem to be enforceable by any court of law. However, Directive Principle impose positive obligation on the state, i.e what it ought to do. The Directive Principles are declared to be elementary within the governance of the country and also the state has been placed beneath associate obligation to use them in creating laws the courts but cannot enforce a directive Principle because it doesn't produce any excusable right in favour of someone^[7]. It is most unfortunate that state has not created even one Act that is directly concerning the elder persons. Constitution of India-article 14 distribution of state largesse-policy call for providing permanent non-grant aid to adulthood homes in state of Maharashtra^[8].

Legislations for the preservation of elder

There are unit such a large time of provisions given beneath totally different personal laws. Hindu law, Muslim law, Sikh, Parsi, Christian Law. beneath these personal laws useful provisions for the aged and infirm parents area unit given. They will take profit either beneath the non-public laws or beneath section a hundred twenty five of the criminal procedure code 1973.

Provision as given beneath the code of criminal procedure, 1973, for the upkeep of elder

The Supreme Court control that a unfruitful step-mother might claim maintenance from her step-son provided she is widow or her husband, if living, is additionally incapable of supporting and maintaining her^[9].

The Hindu adoption and maintenance act, 1956

Maintenance may be a term of wide connotation and as explained beneath sub section three of section twenty of The Hindu Adoption and Maintenance Act 1956. It says if the financial gain from the own earnings and alternative property of the parents falls short to satisfy these needs, the son and also the girl cannot escape their liability by pleading that the parents area unit able to maintain themselves out of their own earnings and alternative property.

Muslim Law

In Muslim law provision concerning maintenance of fogeys is provided through which folks are often benefited.

Provisions regarding maintenance provided to grand-parents

Section 88 of the Mohammeden Law Says that the grand-

children of someone wouldn't be at risk of maintain if there's a husband, kids or parents United Nations agency would be beneath duty to take care of, although they will be entitled to inherit. Thus, if a person contains a girl or father and a son, the girl or the daddy should maintain. The son`s son wouldn't be certain to maintain although he's entitled to inherit. As within the case of sons, the liability of all grand-children would be equal.

Provisions regarding maintenance provided by children

Section 87 of Mohammaden Law says that the parents have following position within the right of maintenance once the Children. The liability to take care of parents rests solely on the Children and is not shared by anyone else. As between parents, the mother is entitled to preference over the daddy. There is a distinction of opinion on the question whether or not father United Nations agency is poor however will earn (and is thus not necessitous) is entitled to maintenance.

Sikh, Christian and Parsee Law

Sikhs do not have any personal law, beneath that they will claim profit. They will take profit beneath Hindu law. The Christians and Parsee do not have any personal laws providing maintenance for the parents. Parents United Nations agency would like to hunt maintenance.

The Safeguarding and Welfare of parents and senior citizen act, 2007.

Traditional norms and values of the Indian society set stress on providing take care of the elder. However, because of withering of the joint family system an oversized range of elder do not seem to be being sorted by their family. Consequently, several elder persons significantly unmarried girls area unit currently forced to pay their twilight years on their own and exposed to emotional neglect and to lack of physical and financial backing. This clearly reveals that ageing has become a serious social challenge and there is a desire to administer a lot of attention to the care and protection for the elder persons. Although the parents will claim maintenance beneath the code of criminal procedure, 1973, the procedure is each time overwhelming in addition as high-priced. Hence, there is a desire to own straightforward, cheap and speedy provisions to assert maintenance for folks ^[10].

Social control of the order of maintenance and deposit of maintenance quantity

Section 11 provides that a duplicate of the order of Maintenance and the expenses of the continuing shall incline to the grownup or parent freed from value. The order of maintenance created beneath this Act can have a similar force associated impact as an order passed beneath chapter IX of the Code of Criminal Procedure, 1973. Section 13 provides that the Children or relatives United Nations agency area unit needed to pay any quantity of maintenance ordered by the assembly shall deposit the whole quantity at intervals thirty days with the assembly in such manner because the assembly might direct ^[11].

Medical Support and Public Awareness

Section 20 provides that the government shall make sure that

beds be provided for all senior voters in government hospitals or hospitals totally or part funded by the govt. as so much as attainable. It conjointly provides that separate queues be organized for senior voters, facility for treatment of chronic, terminal and chronic diseases, research activities for chronic disease shall be expanded and facilities for geriatric patients in every district hospital shall be earmarked. Section 21 provides that the government shall take measures to administer substance through public media together with the tv, radio and also the print, at regular intervals, the provisions of the Act. It conjointly provides that the government shall make sure that the officers of the central government and government together with the law enforcement officials and also the members of the judicial service area unit given periodic sensitization and awareness coaching on the problems regarding this Act and effective co-ordination between the services provided by the involved ministries or departments addressing law, home affairs, health and welfare ^[12].

Conclusions

Conclusively, yes of course special arrangements are there for old age persons but still orderly people are not happy due to our, social approach towards them and our mindset is required to be changed. There should be social security network for old age person and ensuring assistance to old age should be priorities. A package of services must be assured to elderly for better quality of life. It is constitutional duty to provide extra protection to senior citizens. Moreover, the recent law passed by the parliament also needs revision to make it effective. Political will to protect old age people is of utmost importance. Civil society should also be sensitive towered senior citizens. State support is needed to ensure financial and food security, healthcare, shelter, as well as protection of life and property in order to improve the quality of the lives of senior citizens.

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