

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 3

2022

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at the **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Rights of Elderly People: Legal Framework in India

M VIJAY BHASKAR¹

ABSTRACT

Growing old is an irreversible process which every human being has to encounter. Nobody can escape it. Besides, that getting old has numerous issues relating to social security like health care, maintenance, financial aspects and etc. Every elderly person being also a human being is entitled to certain rights. The violations rights of elderly person are concomitant with violations of human rights. Although, the India Constitution under Article 41 provides that the State within its economic capacity and development shall provide public assistance in old age but this is merely an obligation which cannot be enforced. Obviously the judiciary through its decisions has championed the cause of elderly persons. But elderly person don't enjoy any fundamental right of their own, best suited to address their insecure state of being. No doubt their rights come within the purview of Article 21 but the need of the hour is a holistic socio legal approach to safeguard the rights of elderly people.

Keywords: Human rights, Indian Constitution, Article 21, Socio legal approach.

I. INTRODUCTION

Becoming old is a natural and inevitable process which brings with it declining mental and physical faculties, and a reduced participation in social commitments. With old age comes serious livelihood insecurities caused by factors such as growing incidence of prolonged old age disabilities, ailments lack of opportunities in gainful activities and little or no family support. In the current scenario the condition of senior citizens has become more precarious because younger generation see senior citizens as a burden due to which senior citizens feel deprived of social, medical and financial security. Due to which the senior citizens are forced to sustain themselves completely on their savings or their provident fund, gratuity, which is not sufficient in a society where cost living is very high. Moreover, one eighth of the world's elderly population lives in India. Most of them will never retire in the usual sense of the term and will continue to work as long as physically possible, inevitably though the disability to produce and earn will decline with age. The absence of savings will result in sharp decline in living

¹ Author is an Assistant Professor at Capital Law College, Madhusudan Law University, Odisha, India.

standards, and for many it can mean destitution. Therefore, this is the challenge of old age income security in India. ²The situation will get worse in the absence of preventive measures to safeguard the rights of elderly people. Therefore, it is indispensable that the elderly persons should be provided with ample opportunities of social security.

(A) Objectives

1. To examine the rights of elderly people as per the existing legal framework
2. To identify the human rights violation committed against elderly people.
3. To examine the steps taken by the government for the welfare of elderly people.
4. To suggest remedial measures for the amelioration of the conditions of elderly people in India.

(B) Methodology

To examine the present position of elderly people in India exploratory research has done by collecting secondary data from different sources like journals, articles, reports, surveys, books, internet etc. After that, by thoroughly analyzing the sources an attempt has been made to suggest remedial steps to improve the well being of elderly people after considering ground realities. Attempt has also been made to highlight what approach should be adopted from socio legal aspect.

II. RIGHTS OF ELDERLY PEOPLE

The United Nations Principles of Ageing (1982)³ contemplates and outlines the basic guidelines for the promotion of the rights of senior citizens. . These principles are as follows:

Independence: Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self help. Older persons should have the opportunity to work or to have access to other income generating opportunities.

Participation: Integration of older people in the society and their active participation in policy formulation affecting their well being

Care: Access to health care for older people in order to maintain the optimum levels of emotional, physical and mental well being

²National Policy for Senior Citizens, March 2011, Government of India.

³International Plan of Action on Ageing, adopted by the World Assembly on Ageing and endorsed by the General Assembly in its resolution 37/51 of 3 Dec 1982

Self-Fulfilment: Older Persons should be able to pursue opportunities for the full development of their potential and have access to educational, cultural, spiritual and recreational resources of society.

Dignity: To live in dignity and security and freedom from any form exploitation and mental and physical abuse.

III. HUMAN RIGHTS OF ELDERLY PERSONS

Any discussion with regard to the rights of an individual or any group of individuals can't ignore a mention about international human rights instruments. There are numerous international systems that recognize and protect human rights such as the United Nations system, the European system, the Inter-American system, and the African system. Each of these systems has its own unique set of human rights treaties and instruments. Human rights are universal because they apply to all human beings everywhere, irrespective of their sex, age, religious affiliation, disability, social status, sexual orientation and other distinctions. So, the human rights apply to all people, including elderly persons. Giving special mention to old age the UDHR⁴ that states that everyone has the right to security and an adequate standard of living for the health and well being of himself and his family. The two Conventions, the ICESCR and the ICCPR, provide for protection of cultural, economic, social, civil and political rights.

The ICESCR under Article 6 and 7 provides work related rights and under Article 9 the right to social security and under Article 11 right to an adequate standard of living, and under Article 13 right to education. Further Article 12 provides for the highest attainable standard of physical and mental health. The International Covenant on Civil and Political Rights (ICCPR) may not seem to provide the elderly with many specific protections; however, its articles can be used for that purpose. The Human Rights Committee has accepted the ICCPR to protect the rights of the elderly persons. The ICCPR specifically establishes the right to equal protection and also may afford to provide the right to social security to the elderly⁵

IV. HUMAN RIGHTS VIOLATIONS AGAINST ELDERLY PERSONS

Abuse and violence against elderly persons is an infringement of their most basic human rights. Abuse of elderly person has been defined as "a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust causing distress or harm to an older person."⁶ There are different ways in which elderly abuse can take place. It

⁴Article 25(1)The Universal Declaration of Human Rights,1948

⁵Article 26 The International Covenant on Civil and Political Rights (ICCPR)

⁶The World Health Organization (WHO)

can be physical, psychological/emotional, sexual, and financial. It can also take the form of neglect, abandonment, and permitting self-neglect⁷. However in most of the cases it is under reported and the extent of mistreatment is unknown.

There has been growing incidents where elderly people's rights are violated. Some of them are mentioned below:-

1. Physical abuse: By inflicting pain or injury, physical coercion, physical
2. Psychological/emotional abuse: By inflicting of mental anguish
3. Financial/material abuse: By illegally and improperly exploiting financial or use misuse of funds or resources
4. Sexual abuse: By non-consensual inappropriate contact of any kind with an older person
5. Neglect: By intentionally or unintentionally refusing or failure to fulfil a nurturing and care-giving obligation

Human rights violations of elderly also involve abandonment, harassment and torture. In elderly abuse, the perpetrators may be from outside the family circle but in majority of cases elderly persons' own family members are not treating them well.

V. INDIAN CONSTITUTION

The Constitution of India under Article 21 provides that, "No person shall be deprived of his life or personal liberty except according to procedure established by law". Here the rights of elderly can come within the purview of Article 21 provided that they affect the life and dignity of an elderly person. Further, Article 39(a) of the constitution of India provides that the state shall in particular direct its policy towards securing (a) that the citizen, men and women equally have the right to an adequate means of livelihood'. Moreover, Article 41 of the provides that the state shall make effective provisions for public assistance within the limits of its economic capacity and development, in cases of unemployment old-age, sickness and disablement and in other cases of unreserved want. The central and state governments, both are empowered under

In the Constitution under entry 24 in list III of Schedule VII 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, entry 9 of the State List and item 20, 23 and 24 of Concurrent List relates to old age pensions, social security and social

⁷BARBARA WEXLER, GROWING OLD IN AMERICA 166 (Paula Kepos ed., 2008).

insurance, and economic and social planning

VI. OTHER STATUTORY PROVISIONS

Numerous of laws intended to support the aged, have been enacted as a part of the social security measures. Following are some of the legislations passed by the government which indirectly protect and promote the human rights and fundamental freedom of the elderly persons:

1. The Pensions Act, 1871: The Pensions Act, 1871 applies both to union pensioners and State pensioners. Here pension implies periodical payment of money, made by the government to a pensioner, on account of past services, consideration or merit.

2. Employee's State Insurance Act, 1948: It provides certain benefits to employed workers in factories, including government factories and seasonal factories, in the event of sickness, maternity and accidents during the course of employment.. Under this Act, the person insured or his/her dependents are entitled to certain benefits during sickness, confinement, miscarriage or sickness arising from pregnancy, disablement as a result of employment injury, medical treatment, payment to the dependents on the death of the insured person, and payment to the eldest surviving member of the family of an insured person towards expenditure on the funeral of the deceased insured person.

4. Employee's Provident Fund and Miscellaneous Provisions Act, 1952: This Act has been a step towards making welfare provision for the future of an industrial worker after his or her retirement or for his benefit of his or her dependents in case of early death.

5. The Hindu Adoption and Maintenance Act, 1956: The Hindu Adoption and Maintenance Act, 1956 lays down obligation on a person to maintain his/her aged or infirm parents. Section 20(3) of this Act deals with obligation of a Hindu to maintain his/her aged or infirm parents in so far as they are unable to maintain himself or herself out of his or her own earnings or other property. It also includes a childless step mother. This obligation is placed both on male and female Hindu. The obligation is personal and independent of possession of property. A daughter's obligation to maintain her aged or infirm father, mother or childless stepmother does not cease on her marriage.

6. The Hindu Succession Act, 1956: In case of the death of a son, the mother inherits the property of the deceased son along with other heirs. She takes her share absolutely. Chastity, divorce or remarriage of the mother is no bar to her benefit. This Act covers an adoptive mother as well as an illegitimate child's mother, excluding a stepmother. The father inherits the whole

property of the intestate son in the absence of any other heir. He can inherit properly from his adoptive son, but not from his illegitimate son or his stepson. When a Hindu daughter dies intestate her parents shall inherit the property only in the absence of children and husband.. However, there is no bar to the disposition of female Hindu or of a Hindu male regarding his self-earned property.

7. The Income Tax Act, 1961: The Income Tax Act, 1961 provides income tax rebates in case of senior citizens.

8. The Payment of Gratuity Act, 1972: The payment of gratuity is a retirement benefit, in addition to Provident Fund and Family Pension Benefits, for employees engaged in factories, mines, oil fields, ports, plantations, railways, companies, shops and other establishment. . This amount definitely helps the retiring person to plan for old age.

9. Code of Criminal Procedure, 1973: Section 125 Cr PC provides that any person having sufficient means to maintain his father or mothers who are unable to maintain himself or herself. This provision is made to give effect to the natural and fundamental duty of a child to maintain his or her parents. This section is applicable to all, irrespective of their religion, and includes adoptive parents. The Supreme Court has interpreted this section so as to make daughters and sons, married or unmarried, equally responsible to maintain their parents.

10. The Finance Act, 1992 :Section 88 of the Finance Act, 1992, provides income tax rebate of up to Rs. 15,000/- or actual tax whichever is less to senior citizens who have attained the age of 65 years at any time during the relevant previous year.

11. The maintenance and Welfare of Parents and Senior Citizens Act, 2007 :This Act casts an obligation on the persons who inherit the property of their parents and aged relatives to maintain such aged and also to make provisions for setting-up old age homes for providing maintenance to the indigent older persons. This Act further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property

VII. INITIATIVES TAKEN BY THE GOVERNMENT

Over a period of time the government has initiated various schemes and policies for elderly persons. These schemes and policies are meant to promote the health, well-being and independence of senior citizens around the country. Some of the programmes have been mentioned below:

a. National Policy for Older Persons

The National Policy for Older Persons was adopted by the government in year 1999 to promote

the health, safety, social security and wellbeing of senior citizens in India. As per this policy a person aged 60years and above is considered as a senior citizen. This policy encourages families to take care of their old family members. To also encourages voluntary organisations and NGOs for supplementing the care given by families and providing care and protection to elderly people.

b. National Council for Older Persons:

Constitution of a National Council for older persons by the Ministry of Social Justice and Empowerment to for operationalising the National Policy on Older Persons

c. Integrated Programme for Older Persons:

Under this scheme the Ministry of Social Justice & Empowerment provides financial assistance up to 90 % of the project cost to NGOs as on 31st March,2007. This amount can be used to establish and maintain old age homes and Day Care centres, mobile medicare and for providing non institutional services to older persons. The scheme is being implemented since 1992.

VIII. SOCIO LEGAL APPROACH

Though national and International legislations, policies and charters can uphold rights and promote good practice. But they may fail to have effect because of poor communication, implementation and enforcement structures. A human rights perspective to rights of elderly persons implies a responsibility for groups at all levels and across sectors to promote these rights, and to develop effective legislation to protect them. Top priority should be given for greater participation older people in this process, thorough training and awareness raising programmes.

Society along with effective laws has to play an important role in safeguarding human rights of the elderly persons. Some of the following suggestions can be taken into consideration:

1. Creating awareness amongst people to perceive elderly persons more favourably as positive contributors to society.
2. Preventing social isolation and neglect of elderly persons.
3. To train professionals and Civil servants to protect the elderly people from their human rights violations.
4. Empowering elderly people to become self-independent and act for themselves
5. Here role of Media is indispensable in creating create greater awareness in the society.
6. One can adopt the best practices available in rest of the world in dealing with the issues of elderly.

7. Stronger commitment must be shown for implementation laws in respect of elderly persons
8. There should be an elderly helpline in which elderly may register their problems for effective redressed.
9. Senior citizen's cell should be established by police in every police head quarter.
10. Training and sensitization of police to address the problems of elderly persons

IX. CONCLUSION

Family binds together the dynamics of relationship between members of different generations and ages. Family being an agent of social control plays a vital role in looking after the elderly persons. The habit of respecting the elders must be ingrained in youngsters during their formative years. Today however, family is under the influence of demographic changes. Currently there is a paradigm shift of family values from joint family to nuclear family. Moreover, due to growing demand of family resources, more than one family member is opting for employment which considerably reduces quality family time members spend together. Further due to the migration of working members in search of employment, the elderly persons are left behind in isolation. Now they must look after themselves. So, the responsibility of wellbeing of older persons has gradually diverted from family to government and community

X. REFERENCES

1. R. Ramachandran, *Hinduism In The Context Of Manusmriti, Vedas & Bhagavad Gita (English)* , Vista Publication
2. <http://www.un.org/en/documents/undr/>
3. K. Jayshankar and Natti Ronel , .341 *Second International Conference of the South Asia Society of Criminology and Victimology (SASCV)*, India,
4. *2 Thirty Five year plan 2002-2—8 Planning Commission, Government of India. The projected population of senior citizen for the year 2016 is above 11.2 million.*
5. *Help Age International 2009, Why it's time for a convention on the rights of older people*, written by Bridget Sleaf, Help Age International, London, viewed 1 May 2021, <http://www.helppage.org/download/4c3cfa0869630/>.
6. *International Council on Human Rights Policy (ICHRP) 2006, Human rights standards; learning from experience*, International Council on Human Rights Policy, International Council of Jurists & International Service for Human Rights, Geneva, viewed 14 May 2021, http://www.ichrp.org/files/reports/31/120b_report_en.pdf.
7. Johnson, , 'The social construction of old age as a problem', in M Johnson (ed.), *The Cambridge handbook of age and ageing*, Cambridge, New York. M 2005
8. Judge, L 2008, *The rights of older people: international law, human rights mechanisms and the case for new normative standards*, May 11 2021, 10:04 AM, <http://www.globalaging.org/elderrights/world/2008/internationallaw.pdf>.
9. Kanter, 'The United Nations Convention on the Rights of Persons with Disabilities and its implications for the rights of elderly people under international law', 527–573, *Georgia State University Law Review*, AS 2009 ,.
10. Megret, , 'The human rights of older persons: a growing challenge', 37–66, *Human Rights Law Review*, F 2011 , .
11. 65 Moolaert, T & Biggs, , 'International and European policy on work and retirement: reinventing critical perspectives on active ageing and mature subjectivity', *Human Relations*, S 2012
12. Bonnie, RJ & Wallace, *Elder mistreatment: abuse, neglect and exploitation in an aging America*, RB (eds) 2003, National Academies Press, Washington, D.C.
13. Office of the High Commissioner for Human Rights (OHCHR) 2011a, *Background paper: human rights of older persons: international human rights principles and standards*, United Nations, New York.
