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Law

STATUS OF ELDERS VIS A VIS LEGAL PROTECTIVE MECHANISM: AN OVERVIEW

KEY WORDS:

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

- Kofi Annan

INTRODUCTION

India is renowned for its remarkable diverse population and rich cultural heritage. Reverence for elders is a fundamental aspect of Indian culture. In Indian culture, elders are traditionally revered for their accumulated wisdom, life experience and receive the highest respect. The various stories and teachings within Indian mythology emphasise the importance of showing respect to elders such as, Indian epics like the Mahabharata and the Ramayana showcase numerous examples of filial piety and respect for elders. The story of Shraavan Kumar, where he represented as a obliged and dedicated son who carried his blind parents on two baskets on his shoulder for a pilgrimage and the character like Lord Rama and the Pandavas are depicted as ideal sons who respect and care for their parents and elders and even in Mahabharata also, Bhishma tells Yudhisthira, “The worship of mother, father and teacher is most important according to me.” In India, there are several religions such as Hinduism, Christianity, Islam and Buddhism etc., and all of these put stress upon and highlight the reverence for elders, honouring the elders, showing kindness and respect to parents and additionally, Islamic law mandates support for ageing parents etc. Due to these strong cultural, religious and mythological foundations, the concept of elder abuse was traditionally not recognized and acknowledged in India. It was assumed that respect and care for elders were universal and unquestionable. But, with changing socio-economic conditions, impact of industrialization, the influence of urbanization, and the introduction of nuclear family system by replacing the strong joint family system during the British colonial period etc., resulted into rejection of the aged and increase the instances of abuse of the elderly which encompasses physical violence, psychological manipulation, sexual harassment, economic abuse and disregard or desertion by caregivers etc. In India, the 2011 census recorded that 8% of the population was aged 60 or older. By 2026 and 2050, this proportion is forecasted to increase to 12.5% and 20%, respectively. With these demographic shifts, there are growing concerns about the safety and security of the elderly. Consequently, it is crucial to address issues related to elder abuse and ensure their protection. The existing legal framework for older people needs to be re-examined, and a robust mechanism must be established to safeguard their interests and minimise the escalating abuse against them. This paper discusses very concisely the legal position of elders. For conceptual analysis to deliberate on the important aspects, the words elder, senior citizen, older adults, old people, old age parents, elder parents are used interchangeably in the subsequent discussion.

Meaning, Definition and Concept of “Old Age”

Old Age, or senescence (growing old), is the final milestone of a life span. It is also generally seen as second childhood.

Individuals in old age are commonly cited as elderly, senior citizens, elders, or older adults. Aging is not a fixed physiology stage, as the chronological phase that defines it varies across cultures and historical contexts. Consequently, there is no universally accepted age that is considered “old” within or between societies. Physical signs that often indicate aging include edentulism, hair loss or graying hair, rounded back, disability and hearing impairment. Increasing frailty is the most definitive sign of advancing age. There are several accepted views regarding the meaning of old age of an individual: According to Potter and Perry, “Old age or elderly is defined as the individual who is after 65 years of age and showing physical, social and psychological deterioration of activities and behaviours and may or may not require assistance by others.” According to Aysel Ozdemir, “Old age is a natural process which starts with intrauterine life, continues until death and is caused by irreversible degeneration of cells and systems.” According to the World Health Organization (WHO), “Old age denotes the decrease in an individual’s environmental compliance ability out of her/his control and chronologically defines individuals aged 65 years and older.” Regardless, there is a lack of universal consensus on the specific age bracket at which an individual is considered as old. The United Nations considers 60 years as the beginning of old age. In most developed countries, a person is considered elderly after 65 years of age, whereas in less developed countries, this threshold varies from 55 to 65 years, depending on the context and purpose. Demographers classify the elderly into four categories: young old (ages 60-69), old (ages 70-79), oldest old (ages 80-89), and extreme old (90 years and older). Internationally, the term “older persons” is used for individuals above the age of 60. And, in the Indian context, individuals above 60 years are cited as “senior citizens.” Under Section 2(h) of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, “senior citizen” is “any person being a citizen of India, who has attained the age of sixty years or above.” Consequently, in India, older people are those who have reached the age of 60.

Existing Legal Framework Relating to the Protection of the Elders In India:

Protection under Constitution of India, 1950

The preamble of the Constitution of India encompasses terms such as, Justice, Equality, Liberty and Fraternity, which ensure social, economic and political justice, equal protection under the law, guarantees individual freedoms and autonomy and promotes as sense of brotherhood and solidarity among all the citizens of India including the elders. In addition to this, in Article 39(e) the State shall, especially, direct its protocols in relation to safeguarding “the health and strength of workers, men and women, and tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength.” Article 41 mandates that, “the State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want.” Apart from these provisions, Article 14, 21, 38, 46, and 47 also plays indirect contribution in promoting the interest of elders in India.

Protection under Personal Laws:

The Hindu Adoptions and Maintenance Act, 1956

The Sec. 20(1) of HAMA provides that, "subject to the provisions of this Section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate children and his or her aged and infirm parents" and Sec. 20(3) mentions that, "The obligation of a person to maintain his or her aged or 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 earning or property." Explanation of Sec. 20, encompasses a without offspring stepmother within the definition of 'parent'.

Under Muslim Law.

Muslims are legally obligated to support their parents and grandparents if they have the means to do so. According to Mulla's fundamentals of Muhammadan Law:

1. Children are required to support their poor progenitors, despite if the parents have some means of income.
2. A son must provide maintenance for his mother under challenging state of affairs, if she has limited financial resources, even if she is not decrepit.
3. A son who, though poor, is earning something, must support his father if the father is not earning.

Under Sunni Law, the ability of the parents to earn does not affect this obligation. In contrast, Shia Law relieves children of their obligation if the parents have the ability to earn. According to Hanafi Law, among the both parents, the mother has a priority right to maintenance over the father.

Under Christian and Parsi Laws.

Christians and Parsis do not be subject to personal legal rules that mandate the maintenance of parents. Instead, parents seeking maintenance must lodge a petition under Section 125 of the Code of Criminal Procedure, 1973. This provision has since been updated and is now addressed under Section 144(1)(d) of the Bharatiya Nagarik Suraksha Sanhita, 2023. This legal framework allows parents to seek financial support through the judicial system, irrespective of their religion, if necessary.

Right Of Elders Under The Code Of Criminal Procedure, 1973.

Section 125(1)(d) of the CrPC (Section 144(1)(d) of Bhartiya Nagarik Suraksha Sanhita, 2023) states that, " if any person having sufficient means neglects or refuses to maintain his father or mother, unable to maintain himself or herself, a magistrate of the first class may, upon proof of such neglect or refusal, order such person make monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit." This Section also talks about the awarding interim maintenance during pending proceedings.

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

The statute aims to establish enforceable Sections for the elderly care and support as confirmed and acknowledged by the Constitution of India. In this legislation, parents and grandparents who are incapable to support their own selves from their personal earnings can request maintenance from their children, grandchildren, or relatives. This support includes food, clothing, residence, and medical care, with a maximum limit of Rs. 10,000 monthly. The regulation also provides support to the elders without offspring, ensuring facilities and economic security for older individuals. While the statute has been implemented in 22 states, the remaining states have implemented their own laws for the well being of elderly people. Examples include The Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009; The Tamil Nadu Maintenance and Welfare of Parents and Senior Citizens Rules, 2009; The Himachal Pradesh Maintenance of Parents and Dependants Act, 2001; and The Assam

Maintenance and Welfare of Parents and Senior Citizens Rules, 2012.

Policies, Programmes and Schemes for Promoting the Welfare of Senior Citizens in India.

The National Policy on Older Persons (NPOP): it was adopted by the Indian Government in 1999. It aims to provide Government assistance or economic and dietary security, medical care, housing and another necessities of elderly individuals. The policy also seeks to ensure their equitable participation in development, protection from ill-treatment and manipulation, and access to services that elevate overall living standards.

The National Policy for Senior Citizens (NPSC): endorsed in 2011, the policy remarks issues affecting senior citizens in both towns and village areas, with particular emphasis on the necessities of the "Oldest of the Old" and elderly females.

The Atal Pension Yojana, launched on May 9, 2015, the scheme targets all individuals in the informal sector who enroll the National Pension Scheme, administered by the Pension Fund Regulatory and Development Authority. It ensure a basic pension of Rs. 1,000, Rs. 2,000, Rs. 3,000, Rs. 4,000, or Rs. 5,000 to subscribers upon reaching the age of 60.

The Ministry of Social Justice and Empowerment administers the 'Vayoshreshtha Samman,' a National Award for older people, which is presented annually on International Day of Older Persons. First awarded in 2013, it includes a citation, a memento, and a cash prize.

Rashtriya Vayoshri Yojana, unveiled by the Hon'ble Finance Minister in the 2015-2016 fiscal report, it provides free aid and supportive living aids—such as canes, lofstrand crutches, three-legged stands/four-legged stands, auditory aids, and mobility aid—to senior citizens from the economically disadvantaged group.

Annapurna Scheme (1999), the scheme provides food security for the older people by offering 10 kg of staple food grains to beneficiaries each 30 days at free of cost.

National Old Age Pension Scheme, announced by GOI in August 1995, it targets individuals aged 65 and above who are landless, destitute, or lack a regular means of subsistence. Initially providing Rs. 75 per month, the assistance amount was later revised to Rs. 150, with some states increasing it further.

Indira Gandhi National Age Pension Scheme, effective from August 15, 1995, this plan offers a Governmental age annuity of Rs. 350 on a monthly basis to individuals aged 60 to 79 years and Rs. 650 on a monthly basis to seniors aged 80 and above, provided they fall under economically disadvantaged section of society.

Senior Citizens Welfare Fund, established in March 2016 through cross-Ministerial Committee with the Ministry of Social Justice and Empowerment as the central Ministry, this fund is dedicated to senior citizen welfare. It supports schemes aligned with the National Policy on Older Persons, consisting initiatives for economic stability, medical services and nourishment, the welfare of elderly widows, and day-care centers.

Pradhan Mantri Shram Yogi Maan-dhan, proclaimed in the Budget 2016, is a pension plan aims to provide elderly security and safety net for informal sector workers, covering cycle rickshaw drivers, peddlers or hawkers, school meal staff, laborers, brick makers, shoemakers and scavengers.

Antyodaya Anna Yojana Scheme, under this plan, Below Poverty Line (BPL) families, including older persons, receive

35 kilograms of food grains per family each month. Individuals aged 60 and above from the poverty-stricken segment are prioritize in the identification process.

In addition to these, the Ministry of Finance, Ministry of Labour and Employment, Ministry of Home Affairs, Ministry of Railways, Ministry of Civil Aviation, Ministry of Road Transport and Highways, and Ministry of Consumer Affairs, Food, and Public Distribution have also played crucial roles in implementing various frameworks and schemes for the support for older people in India.

Role of Judiciary in Promoting and Securing the Rights of Elders in India:

In India, judicial system as plays an pivotal task in promoting the rights of the elderly population, by addressing the issues relating to old age, by supporting legal aid and awareness programs and by making recommendations to the Legislature regarding the need of enactment of required laws for shielding the rights of older adults. U.K. Bhoi v. Smt. Surekha Bhoi, The Chhattisgarh High Court held, our Indian society is a very ancient society in which elders have been sanctioned the highest position of honour and respect. It is the responsibility of children to respect and look after them, such duty of the children has also been specified on our ancient scriptures i.e., Ramayana and Mahabharata. In another case of Sunny Paul and Others v. State of NCT of Delhi and others, The Delhi High Court has governed that child who maltreat, ill-treat or cruel to their progenitors meanwhile living in the parents' home can be ousted from the property. Justice Manmohan clarified that the property does not need to be self-owned by the progenitors. So long as the parents have lawful ownership of the property, those have the right to evict their abusive adult children.

Moreover in S.S. Manicham v. Arputha Bhavani, It was held that Section 125 of the CrPC, 1973, is fundamentally preventive rather than punitive. It was enacted to provide essential relief to deserted, helpless, and destitute parents, aiming to prevent vagrancy and ensure their well-being. In the case of Santosh SurendraPatil v. Surendra Narasgopnda Patil, The facts involved mother, father and sons, with respondents being the sons of the complainants. The respondents were challenging an order requiring them to vacate residence belonged to the complainants. The court addressed necessity of the MWPC Act, 2007, which established the ethical obligation to care for one's mother and father as a statutory obligation. Additionally, the State assumes guardianship of and elderly. The court upheld the ousting order.

In another case of C. Balan v. C. Devi, In a decision by the Kerala High Court, it was ruled that a son cannot refuse to pay maintenance to his mother simply because she lives with her married daughter instead of with him. The law does not require that parents live with their children in order to be eligible for maintenance. In another case of Justice Shanti Sarup Dewan v. Union Territory, court held that, "the courts can't be left helpless to assist the senior citizen whose rights are protected under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, because of obdurate and unreasonable stand of the son. So, the court directs the administration of union territory Chandigarh that it should take steps to bring into force proper rules under sec 32(1) of the said Act for the purposes mentioned under subsection 2 of Sec. 32, so as to protect life and property of senior citizens as envisaged under section 22 of said Act." The Kerala High court ruled that the MWPC Act not only covers the granting of maintenance but also imposes a duty on those who accede the property of elder person to provide for these relatives by ensuring their protection and security.

In Smt Kuldip Kaur v. Surinder Singh & another, and Pradeep Kumar Bhowmick v. Smt Mitu Bhowmick, the court(s) held

that, "if a person commits default of payment regarding maintenance order, said person can be put into jail but remaining in jail said person cannot be absolved from his liability." Hence, the children are not easily escaped from duty to sustain infirm mother and father and elders. In the case of Krishna Kamalini Debiya v. Junior Land Reforms Officer, it was held that the duty to sustain the relationships is a personal one. It arises from personal relationships. A Hindu is bound to discharge it whether or not he possesses any property in which any of these persons claiming maintenance has an interest. His personal property is chargeable with such maintenance.

Thus, despite the existing legal framework and policies aimed at protecting the elderly in India, several limitations hinder their effective implementation and enforcement: Firstly, many elderly individuals are unaware of their rights and the protections available to them. Lack of awareness often results in underutilization of the legal provisions and support systems designed for their welfare. Secondly, there are significant gaps between policy formulation and actual implementation. The enforcement of laws like the MWPC Act, 2007, varies widely across different states and regions, leading to inconsistencies in the protection provided. Thirdly, the judicial process in India is slow and cumbersome. Elderly individuals seeking justice often face prolonged legal battles, which can be physically and emotionally taxing. Fourthly, there is a shortage of adequate infrastructure to support the elderly, such as old age homes, healthcare facilities, and rehabilitation centres. Fifthly, many government schemes and policies for the elderly are underfunded. Insufficient financial resources limit the reach and effectiveness of these programs, leaving many senior citizens without the necessary support. Sixthly, existing laws, such as the MWPC Act, 2007, primarily focus on maintenance and financial support. There is a need for broader legislation that addresses other aspects of elder care, including mental health, social inclusion, and protection from abuse. Seventhly, there is often a lack of coordination among various governmental and NGOs working for supporting older adults. This leads to fragmented efforts and reduces the overall effectiveness of support systems. Eighty, the swiftly developing elderly in India populace poses a challenge for existing systems. The current infrastructure and policies may not be sufficient to meet the increasing demand for elder care and support.

In addition to these, addressing limitations requires a multi-faceted approach, involving increased awareness, stronger implementation mechanisms, better infrastructure, and more comprehensive legislation. Additionally, fostering a societal attitude of respect and care for the elderly is crucial for ensuring their dignity and well-being.

In sum, Indian society has revered and respected its elders, valuing their wisdom and life experiences. But with the changing structures of the Indian societies, the issues relating to elders, specifically issue of elder abuse has increased drastically. The Indian legal framework provides various protections for the elderly, enshrined in the Constitution and personal laws. The MWPC Act, 2007, in particular, is a significant legislative measure geared towards ensuring the well-being of senior citizens. Furthermore, various policies, schemes, and programs, also have been implemented to support the elderly financially and socially. The justice system as also performed a pivotal role in upholding the rights of the older persons, with numerous landmark judgments underscoring the duty of care owed to them by their children and society. As India's elderly population continues to grow, it is imperative to strengthen and expand these protections. The adoption of the UN's draft declaration on the rights of elderly people and the enactment of specific legislation by the Indian Parliament are crucial steps in this direction. In addition, promoting the participation of voluntary organizations in the protection and welfare of the

elderly will further ensure their rights and well-being. Ultimately, safeguarding the rights of the elderly is not just a legal obligation but a moral imperative. By valuing and protecting our elders, we honor their contributions and ensure a just and compassionate society for all.

Taking into account the above mentioned standing of elder people and nature of existing of existing and latest laws the following suggestions deserves special attention. Firstly, The Bhartiya Nyaya Sahinta, 2023 should include special provisions safeguarding elderly individuals from domestic violence, considering the machinery available to address such cases. Secondly, National Commission for Senior Citizens, same as the Commission for women and children, should be immediately established with the authority to conduct of its own volition inquiries into violations of the rights of the elderly. Thirdly, the Legislature should establish provisions for setting up helplines and counselling centres to address the psychological and emotional needs of elderly individuals aged 60 years and above. Fourthly it is strongly recommended that either the special legislation should be enacted for the protection of domestic Violence against elderly persons or special provisions must be incorporated in the existing legislation to protect the elder people. Fifthly, there must be an education and public awareness campaign which conducts a variety of training sessions, workshops, conferences and seminars to change the attitude and behaviour of the society towards elder abuse.

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