

Human Rights Abuse on Elderly People

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Abstract

The problem of the elderly people is becoming one of the major Human Rights abuses of the society. It is also part and parcel of the modern society, which is industrialized and advanced. It is something new to the modern society of India. India is traditionally known for living in groups and hamlets and major civilizations which sprout from India or Asia. The famous Indus Valley civilization in which people settled near the banks of river Indus wherein the people lived in groups and in patriarchal family atmosphere. So there is mutual support and concern and help for each other and lived under the guidance of the elders in the family. The value system was different. The elder is respected and the earnings are shared. The modernization and the influence of the west came in; the situation in India also changed. The big collective families segregated into small nucleus family. This is one of the major reasons for the discard of the aged. There was no place for the elder and the aged.

Keywords: Elderly People, Aged, Human Rights, Society, Family, India.

Introduction: With improving health care, our average life expectancy has gone up from 57 years in 1990 to 65 years today. In the next 10 years, India will be the home to the world's second largest population of the elderly people. This age- wave means that the number of senior citizens is expected to touch 194 million in 2030.¹

India has always been proud of its enduring family values. The symbol of these values was the large joint family system, with three generations living under one roof. The value for elders is better explained in one of the chapters of our Manusmriti as follows:

"Once who always serves and respects elderly is blessed with four things: Long Life, Wisdom, Fame and Power."
Manusmriti Chapter 2:121.

Also in Chinese Proverb-

"Those young who show no respect to their elders achieve nothing worth mentioning when they grow up." – Confucius.

The great Tamil poet **Thiruvalluvar** points out this way:

"The way if showing filial devotion is to make others exclaim within the hearing of the father, what penance the father must have performed to beget such a son."

India's elderly population (aged 60 and above) is projected to touch 194 million in 2030 from 138 million in 2021, a 41 per cent increase over a decade, according to the National Statistical Office (NSO)'s Elderly in India 2021 report. The percentage share of the elderly population in the total population is said to rise from 8.6 per cent in 2011 to 10.1 per cent in 2021 and projected to touch 13.1 per cent in 2031.

Census 1991 showed the elderly female population (29.4 million) outnumbered elderly males (27.3 million). The NSO report said this trend has strengthened in the last two decades. The elderly female and male population is now projected to rise to 100.9 million and 92.9 million, respectively, in 2031.

¹ NSO (2021)

The Government of India had adopted 'National Policy on Older Persons' in January, 1999. As per the definition lay down in the policy an 'elderly' is a person who is of age 60 years and above.

Definition of Elder Abuse: Elder abuse is the mistreatment of elders; it is a phenomenon of inter-personal violence. The UK's Action on Elder Abuse developed a definition subsequently adopted by the International Network for the Prevention of Elder Abuse.

It states Elder Abuse as follows:

"Elder abuse is a single or repeated act or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person."

In general elder abuse has been categorized under five headings as follows:

1. **Physical abuse-** Causing physical pain or injury or wound by striking, physical coercion, imposing punishment causing physical agony, slap marks and kick marks etc.
2. **Emotional Abuse-** Humiliation, ridiculing, threatening with shouting, causing fear and anxiety, denial of basic rights like choice or giving opinion or privacy.
3. **Financial Abuse-** The illegal or improper exploitation and use of funds or resources, stealing bank passbook or pension book, force to give power of attorney and using their money for their selfish purpose.
4. **Sexual Abuse-** Unacceptable contact of any kind with an older person; forcing them to watch unnecessary videos, unwelcome talk about sex etc.
5. **Neglect-** Lack of basic care, failure to provide proper health care, proper food and proper cloth, not allowing them to have any social contact.

PROTECTION UNDER THE INDIAN CONSTITUTION:

All Indian citizens are entitled to fundamental rights guaranteed to them by the Indian Constitution. Senior citizens are no exception. They are also entitled to fundamental rights to life and personal liberty, freedom of speech and equality before law but these rights are often difficult for them to achieve for a variety of reasons. Apart from that, entry 24 in list III of schedule VII deals with the "Welfare of Labor, including conditions of work, provident funds, liability for workmen's compensation, invalidity and old age pension and maternity benefits". Further item no. 9 of the State List and item no. 20, 23 and 24 of Concurrent List relates to old age pension, social security and social insurance, and economic and social planning.

Further, the Constitution of India states that, the State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, education etc., for old age⁵. But this article is mentioned in the Directive Principles of State Policy which is not justifiable under Art.37.

As in case of wives and children, provisions for maintenance of parents exist under some personal laws as also under the Code of Criminal Procedure, 1973, which is a secular legislation and applicable to members of all communities. Apart from that, there is a recently enacted Act, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

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

1. A senior citizen including parent who is unable to maintain himself from his own earning or property owned by him, shall be entitled to make an application under section 5 in case of -
 - a. Parent or grand-parent, against one or more of his children not being a minor
 - b. A childless senior citizen, against such of his relative referred to in clause (g) of section 2
2. The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.
3. The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.
4. Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen:

Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.

Protection 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.

1. **Protection under Hindu Laws:** Part IX – Personal Law (Hindu), (Chapter III – Hindu Adoption and Maintenance Act, 1956) A Hindu is bound during his or her life-time, to maintain his or her legitimate/illegitimate children and his or her aged or infirm parents.² The obligation of a person to maintain his or her aged 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 earnings or others property.³ Thus 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 Section 20(1) of 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. **Protection under 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.

Protection under Criminal Laws: Criminal Procedure Code, 1973:

Chapter IX: Order for maintenance of wives, children and parents : 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 to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.⁴ Section 125(3): If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issued a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made.⁵

NATIONAL POLICY FOR OLDER PERSONS, 1999:

In order to address the problems of the older persons the Ministry of Social Justice and Empowerment has launched in the year 1999 a National Policy for Older Persons. National Policy for Older Persons, 1999 seeks to assure older persons that their concerns are national concerns and will not live unprotected,

² Section 20(1) of Hindu Adoption and Maintenance Act, 1956

³ Section 20(3) of Hindu Adoption and Maintenance Act, 1956

⁴ Section 125(1)(d) of Criminal Procedure Code, 1973

⁵ Section 125(3) of Criminal Procedure Code, 1973

ignored and marginalized. It aims to strengthen their legitimate place in society and helps older people to live the last phase of their life with purpose, dignity and peace. Its main features are as follows:

- Old age Pension Scheme.
- Tax Exemption for Senior Citizens.
- Subsidy in healthcare, mental health services, counseling facilities.
- Grants, land grant at concessional rates and private hospitals to provide economical and specialized care for the older person.
- Earmarking 10% of the houses in housing schemes and easy access to loans.
- Layout of housing colonies to be sensitive to the needs of the older persons.
- Quick disposal of cases of property-transfer, property tax, etc.
- Assistance for construction/maintenance of old age home, Daycare centers, multi-service citizens center, outreach services, supply of disability related aids and appliances etc.
- Setting up a welfare fund for older persons.

Conclusion-

The Indian population is ageing faster, it is therefore unrealistic to expect, in the light of the current socio-economic scenario, either the family completely take care of the elderly or the government to subsidize the elderly care programmes any longer. It is time now to think of viable alternatives to supplement the family care giving and to replace the other institutional arrangements, so that the older people can lead a life of dignity free from exploitation and neglect. Abuse of elder person is on the increasing trend. The incidence is grossly under reported as it is considered as an intra family matter, not to be communicated to outsiders so that the dignity of the family can be maintained. This attitude perpetuates its recurrence. There is an urgent need to generate public awareness of the emerging problem of abuse and to initiate steps to alleviate the problem.

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