



## RIGHTS OF OLD AGED PERSONS IN INDIA

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### I. INTRODUCTION:-

Old age is an indispensable stage of life of a human being which a man cannot refute except ultimately death. The childhood and old age are natural reliant conditions of life where children depend upon parents and vice-versa. Nowadays parents are becoming burdensome for their child whenever they loose their strength to work and earn.

The present demographic scenario of the country shows the rising trend of adult population. According to census report 2011, there are 60.3% people belonging to 15 to 59 years of age group and the percentage of people above 60+ age is 8.6%. On 14<sup>th</sup> December, 1990, the United Nations General Assembly designated 1<sup>st</sup> October as the international day for older persons. . In my Research Paper I will discuss about problems faced by the old aged persons in India like economic problem etc. and mistreatment and harassment faced by the older people in India.<sup>1</sup>

Human rights are the basic rights of an individual. In other words, these are the freedom established by custom or international agreement that impose

standard of conduct on all nations. Thus, these are the fundamental rights which human being possesses by the fact of being human, which are neither created nor can be abrogated by any government.

The rights of elder people are also protected under Constitution of India in Article 41, they are also protected under various Personal Laws like Hindu Law, Muslim Law, Christian and Parsi Law, rights of Old Age Persons are also protected under Code of Criminal Procedure. There are many schemes launched by the Government for the protection of Rights of Old Age Persons in India. The Government has passed various Acts like The Maintenance of & Welfare of Parents and Seniors Citizen Act, 2007. The Government has setup the ministry of Justice and Empowerment has launched the program IGNOAPS, Annapurna Scheme, National Policy on Older Persons (NOPS) etc.

### II. RESEARCH METHODOLOGY:-

The methodology adopted for this paper is a literature survey or Doctrinal research. The research paper makes use of publicly available information on various websites, online newspapers, journals, commentaries, case laws as well as reports by organizations. These sources and the arguments advanced through them have been analyzed in the succeeding sections of the paper to present an analysis to affirm or negate the hypothesis. However, the researcher has made an attempt to analyze the views of various jurists and organization to make his research better.

### III. RESEARCH QUESTIONS:-

<sup>1</sup> Available at:- [www.agewellfoundation.org](http://www.agewellfoundation.org). Last modified 9/7/2017.



The questions dealt with in the Research paper are:-

- To understand the problems faced by old aged persons in India?
- To critically examine the laws regarding the rights of old aged persons of India?
- To study the deciding factors in regarding the protection of Rights of Old Age Persons in India?

#### IV. PROBABLE OUTCOME:-

After this Research paper, we would be able to know the concept of 'Right of old aged persons in India. This paper will give the detailed explanation about the Rights of Old Aged Persons in India, its various aspects, protection given to old aged persons in Indian Laws.

#### V. NATIONAL POSITION:-

In India for the first time in the year 1993 the law relating to human rights was passed in the name of Protection of Human Rights Act, 1993. Under which a National Human Rights Commission in the national level and State Human Rights Commissions were established for smoothen the protection of human rights in India. Presently in India we have apart from national commission 18 state human rights commission in ANDHRA PRADESH, ASSAM, HIMACHAL PRADESH, JAMMU & KASHMIR, KERALA, KARNATAKA, MADHYA RADESH, MAHARASHTRA, MANIPUR, ORISSA PUNJAB, RAJASTHAN, TAMILNADU, UTTAR PRADESH, WEST BENGAL

GUJARAT AND IN BIHAR.<sup>2</sup> A human being is not beyond the reach of the old age in its general cycle of the life. Ageing is a natural process, which inevitably occurs in human life cycle. It brings various challenges in the life of the old age, which are mostly engineered by the changes in their body, mind, thought process and the living patterns. Ageing refers to a decline in the functional capacity of the organs of the human body, which occurs mostly due to physiological transformation, it never imply that everything has been finished. The senior citizens constitute a precious reservoir of indispensable human resource couple with knowledge of various dimensions, varied experiences and deep insights. May be they have formally retired, yet an overwhelming majority of them are physically fit and mentally alert. Hence, they should be given an appropriate opportunity as they remain in a position to make significant contribution to the socio-economic development of the nation.<sup>3</sup>

#### A. Problems faced by old aged persons in India:-

**There are five types of problems faced by old aged persons in India which are as follows:-**

##### i. Economic Problems:-

Retirement from service usually results in loss of income and the pensions that the elderly receive are usually inadequate to meet the cost of living which is always on

<sup>2</sup> See:- [www.agewellfoundation.com](http://www.agewellfoundation.com). Last visited 9/7/2017.

<sup>3</sup>By Dr. Shashi Nath Mandal , "Protection of Rights of Old age Person in India: A Challenging Facet of Human Rights", Volume XI, GJHSS (2011).



the rise.<sup>4</sup> In simple words it includes problems related to loss of employment, income deficiency and economic insecurity.

**ii. Physical and Physiological problems:-**

Old age is a period of physical decline. Even if one does not become sans eyes, sans teeth, sans everything, right away, one does begin to slow down physically..<sup>5</sup>In simple words it includes health and medical problems etc.

**iii. Social problems:-**

Older people suffer social losses greatly with age. Their social life is narrowed down by loss of work associated, death of relatives, friends and spouse and weak health which restricts their participation in social activities.<sup>6</sup>

**iv. Emotional problems:-**

Decline in mental ability makes them dependent. They no longer have trust in their own ability or judgments but still they want to tighten their grip over the younger ones.<sup>7</sup>

**v. Psychological Problems:-**

Mental disorders are very much associated with old age. Older people are susceptible to psychotic depressions.<sup>8</sup>

**B. Growing population of Old aged persons:-**

The population of old aged persons is increasing day by day. According to the 2014 State of Elderly in India report released by the non-profit organization.<sup>9</sup> By 2021, the elderly in the country will number 143 million, the report said. Presently, the elderly in divided into three categories: the young old (60-70) the middle-aged old (70-80) and the oldest old (80 plus).<sup>10</sup>

**C. Abuse of Old aged persons:-**

Older abuse is also very often the result of longer family conflict between parent and child or between spouses. Increasingly, the relationship between domestic violence and older abuse is understood to be important. In few studies which examine the CHHATTISGARH, phenomenon as a specific category, domestic violence accounts for a significant percentage of cases identified as elder abuse.<sup>11</sup>

**VI. PROTECTION UNDER NATIONAL LAWS:-**

The rights of old aged persons are protected under various national laws. Which are as follows:-

**1. Protection under Constitutional Law:-**

<sup>4</sup>5 problems faced by old aged persons in India. Available at <http://www.yourarticlelibrary.com/india-2/top-5-problems-faced-in-old-age/47679>. Last visited 9th November, 2017.

<sup>5</sup> Supra 4

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Nikita Dowal, "20% of population to be elderly by 2050: Help Age India Report", available at <http://www.livemint.com/Politics/z6BacVOwf5SvmpD9P1BcaK/20-of-population-to-be-elderly-by-2050-HelpAge-India-repor.html>. Last visited November 10th, 2017.

<sup>10</sup> Ibid.

<sup>11</sup> Supra 3



The provisions are mentioned in the Constitution of India for the senior citizens of India. The article 41 and article 46 which are described under part 4 of the Constitutional law. Article 41 states that “The state shall, within the limits of its economic capacity and development, make effective provision for securing the Right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”<sup>12</sup> And Article 46 of its state that The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.<sup>13</sup>

## 2. Protection under personal laws:-

The rights of old aged persons are protected under various national laws for example Hindu Law, Muslim Law, Parsi Law etc. which are explained below:-

### a) Hindu Law:-

Under the Hindu personal laws, every Hindu has the obligation to take care of their aged parents who are not able to maintain and take care of themselves. Earlier it was the legal obligation of the son to maintain his aged parents but now, it is the right of a daughter to maintain her parents who are not able to maintain out of

their own earnings or property.<sup>14</sup> section 20 of the Hindu Adoption **And Maintenance Act, 1956, makes it an obligatory provision to maintain an aged parent.**<sup>15</sup>

### b) Muslim Law:-

Muslim law makes it obligatory for a man to provide maintenance for his father, mother, grandfather and grandmother.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> in Muslim Law the children are bound to maintain their parents if they earns money.

### c) Christian And Parsi Law:-

There is no personal law for Christian and Parsi for providing maintenance to the aged parents. If the parents want to seek maintenance from their children, they can apply through the **Criminal Procedure Code** to seek maintenance. The Criminal Procedure Code a secular law which is applicable to the entire region. This is not

<sup>12</sup> Constitution of India, Article 41, available at [https://en.wikisource.org/wiki/Constitution\\_of\\_India/partIV#article\\_41](https://en.wikisource.org/wiki/Constitution_of_India/partIV#article_41). Last modified 9<sup>th</sup> November, 2017.

<sup>13</sup> Ibid.

<sup>14</sup> Sakshi Jain, “Legal Provisions for Elders Under Indian Law”, available at <https://blog.ipleaders.in/legal-provisions-elders-indian-law/>. Last Modified 10<sup>th</sup> November, 2017.

<sup>15</sup> Ibid

<sup>16</sup> Ibid.

<sup>17</sup> Supra 3

<sup>18</sup> Supra 3



for a particular sect and is applicable to every citizen of the country. To claim maintenance under this law, it is necessary to prove that the parents are neglected and do not have the sufficient means of income to maintain themselves. **Section 125 of the Criminal Procedure Code** makes it obligatory for sons and daughters, including a married daughter, to maintain their parents.<sup>19</sup>

## VII. GOVERNMENTAL PROTECTIONS:-

For protecting the rights of Old Aged Persons in India the Government has passed various acts like The Maintenance of & Welfare of Parents and Senior Citizen Act, 2007. This act also permits State Governments to establish old age homes with the minimum capacity of 150 elders for the neglected elderly people in every district.<sup>20</sup> The State Government may establish a maintenance tribunal in every district under which every old age citizen can go and claim their right of maintenance seeking monthly allowance from their children or heirs. The appellate tribunal may also be established in every district.<sup>21</sup> The Government has setup the ministry of Justice and Empowerment which has launched various programs like:-

### 1) NASP( National Assistance Social Programme):-

The National Social Assistance Programme (NSAP) is a Centrally Sponsored Scheme of the Government of India that provides financial assistance to the elderly, widows and persons with

disabilities in the form of social pensions.<sup>22</sup> The National Social Assistance Programme (NSAP) which came into effect from 15th August, 1995 represents a significant step towards the fulfillment of the Directive Principles in Article 41 of the Constitution. The programme introduced a National Policy for Social Assistance for the poor and aims at ensuring minimum national standard for social assistance in addition to the benefits that states are currently providing or might provide in future.<sup>23</sup>

### 2) Annapurna Scheme:-

The Annapurna Scheme has been launched with effect from 1st April, 2000. It aims at providing food security to meet the requirement of those senior citizens who, though eligible, have remained uncovered under the National Old Age Pension Scheme (NOAPS). The Scheme is targeted to cover, 20% (13.762 Lakh) of persons eligible to receive pension under NOAPS.<sup>24</sup> To provide food security to those indigent senior citizens who are not covered under the targeted Public Distribution System (PDS) and who have no income of their own. Through the new "Annapurna" scheme, it is intended to provide 10 kg. of food grains per month free of cost to all such person who are though eligible for old age pension under

<sup>19</sup> Supra 14

<sup>20</sup> Supra 14

<sup>21</sup> Ibid.

<sup>22</sup> Wikipedia, National Social Assistance Scheme, available at:- <https://en.wikipedia.org/wiki/National-Social-Assistance-Scheme>. Last modified 12<sup>th</sup> November, 2017.

<sup>23</sup> See:- <http://nsap.nic.in/>. Last modified 12<sup>th</sup> November, 2017.

<sup>24</sup> General Knowledge Today, Annapurna Scheme, available at:- [https://www.gktoday.in/gk/annapurna-scheme\\_27/](https://www.gktoday.in/gk/annapurna-scheme_27/). Last Modified 12<sup>th</sup> November, 2017.



NOAPS, are presently not receiving it. The number of persons benefiting from the Scheme are not to exceed for the present 20% of the old age pensioners within a State. The Gram Panchayat would be required to identify, prepare and display a list of such persons after giving wide publicity to the Scheme.<sup>25</sup>

**3) National Policy on Older persons(NPOP):-**

The National Policy on Older Persons (NPOP), 1999 envisages State support to ensure financial and food security, health care, shelter and other needs of older persons, equitable share in development, protection against abuse and exploitation, and availability of services to improve the quality of their lives. The policy also covers issues like social security, intergenerational bonding, family as the primary caretaker, role of Non-Governmental Organizations, training of manpower, research and training.

**4) The Maintenance and welfare of Parents and Seniors Citizen Act, 2007:-**

In 2007, the Maintenance and Welfare of Parents and Senior Citizens Act were passed to provide maintenance support to elderly parents and senior citizens.<sup>26</sup> The Act establishes the Maintenance Tribunal to provide speedy and effective relief to

elderly persons. Section 19 of the act also mandates the establishment of an old age home in every district and provides for the protection of life and property of the elderly.<sup>27</sup> Parents can opt to claim maintenance either under Section 125 of the Criminal Procedure Code, 1973 or under this Act – they cannot opt for both.<sup>28</sup> This Act was passed for Senior citizens who are unable to maintain themselves shall have the right to apply to a maintenance tribunal seeking a monthly allowance from their children or heirs for their maintenance. But on the other hand this act has some criticisms i.e. this act is not easy to implement, there is no obligation casts on the state government to establish old age homes in every district, the is also no provisions for old aged pensions in India.

**CONCLUSION:-**

From the above contention it can be held that there is an urgent need to protect the rights of old aged persons in India. The rights of old aged persons are protected under various national laws like Hindu Law, Muslim Law etc. as discussed above in the research paper. The rights are also protected under CrPC Section 125. The government has also passed a bill on Maintenance and welfare of parents and senior citizens Act, 2007. The Government has launched various schemes to protect the rights of old aged persons in India like NASP(National Assistance Social Programme), Annapurna scheme etc.

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<sup>25</sup> Info Nugget, Annapurna Scheme, available at: <http://pib.nic.in/infonug/infyr2000/infoaug2000/i010820001.html>.

<sup>26</sup> Sujana Bej, “Understanding the ‘Maintenance Welfare of Parents and Senior Citizen Act’”, available at: <https://factly.in/understanding-the-maintenance-and-welfare-of-parents-and-senior-citizens-act/>. Last visited 14<sup>th</sup> November, 2017.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.