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OLD AGE ABUSE AND THE INDIAN LAW: AN ANALYSIS

Raju Kumar¹

On every year, June 15 is celebrated as world elder abuse awareness day. As the name suggests, this day is celebrated as an awareness day to educate the people about the abuses which are suffered by the elderly population around the world. The abuse may be in the form of verbal, physical, or emotional. This day came into existence in June 2006, when a request was made to declare June 15 as a special day for the elders. However, it was only in the year 2011 when it was officially recognized by the United Nations general assembly. In India, the Ministries support 551 NGOs which run old age homes in which 16290 destitute elderlies are provided accommodation. The maximum number of old age homes is in Odisha with 91 homes. Some of the top states where the Ministries Support is Andhra Pradesh with 75 old age homes, Tamil Nadu, Assam, Karnataka, and Maharashtra where the number of old age homes is 75, 66, 40, 39, and 37 respectively.

With the changing of socio-economic scenario, industrialization, urbanization, higher aspirations among the youth and the increasing participation of women in the workforce, the roots of the traditional joint family system have been eroding very fast.

In urban areas, the traditional joint family system has become a thing of the past. In such changing scenario, the majority of older people, who have spent most parts of their life with their joint families are on the verge of isolation or marginalization in old age. At the age, when they need utmost care and family support, they have to live on their own. Even the basic needs & rights of many of them are not addressed. Social marginalization, loneliness, isolation and even negligence in old age led to the violation of the Human Rights of Older people.

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Ironically, in India, older generations are not aware of their human rights due to the high prevalence of illiteracy and lack of awareness.

RIGHTS - AN INTERNATIONAL PERSPECTIVE

Article 25 of the Universal Declaration of Human Rights (UDHR) defines as *“Everyone has the right to a standard of living adequate for the health and well-being 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.”*

Following are some of the Human rights of older people-

- Right to life shall be protected by law.
- Right not to be subjected to inhuman treatment. *“No one shall be subjected to torture or to inhuman or degrading treatment or punishment”*.
- Right to liberty *“Everyone has the right to liberty and personal security.*
- Right to a fair hearing. *“In the determination of his civil rights and obligations... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”*.

Further, in the terms of Civil rights and obligations, the following are the Rights.

- The right to respect at home, within the family and in private life.
- The right to freedom of thought and conscience.
- The right not to be discriminated against age.

- The right to property - everyone is entitled to the peaceful enjoyment of his possessions.
- The right to education.

PROTECTION OF RIGHTS - NATIONAL PERSPECTIVE

In India, there are many legislations which protect the human rights of older people like the holy Indian Constitution, different personal laws, the code of criminal procedure, and the maintenance and welfare of parents and senior citizens act 2007.

- **The Constitution of India**

By the virtue of Article 41 of the Constitution, it protects the rights of the elder people. Article 41 reads – *“The State shall, within the limits of 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.”*

- **Personal Laws**

The moral duty to maintain parents is recognized by all almost all people. However, so far as the law is concerned, the position and extent of such liability vary from community to community.

- **Hindu Law**

In Hinduism, it is the obligation of sons to maintain their aged parents, who are not able to maintain themselves out of their own earnings and property. It was even recognized in early texts. It was a personal legal obligation enforceable by the sovereign or the state. The Hindu Adoption and Maintenance Act, 1956 is the first personal law statute in India, which imposes an obligation on children to maintain their parents.

The statutory provision for maintenance of parents under Hindu personal law has been laid down in Sec 20 of the Hindu Adoption and Maintenance Act, 1956. It is evident from the wording of the above-mentioned section that the obligation to maintain parents is not confined to sons only but daughters also have an equal duty towards their parents. Section 20(3) of the code reads “*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 earnings or other property. Explanation. —In this section “parent” includes a childless stepmother.*” However, it is also notable that only those parents who are financially unable to maintain themselves from any source, are entitled to seek maintenance under this Act.

- **Muslim Law**

In the Muslim Law, Children have a duty to maintain their aged parents. According to Mulla, Children in easy circumstances are bound to maintain their poor parents, although the latter may be able to earn something for themselves. A son though in strained circumstances is bound to maintain his mother, if the mother is poor, though she may not be infirm. 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 Muslim law. The obligation, however, is dependent on their having the means to do so.

However, unlike Hindu Law, there is no concept of adoption under Muslim laws. Thereby, there exist no provisions for the maintenance of adoptive parents under Muslim law.

- **Christian & Parsi Law**

The Christians and Parsis have no personal laws providing for maintenance for the parents. Parents who wish to seek maintenance will have to apply under the provisions of the Criminal Procedure Code.

THE CODE OF CRIMINAL PROCEDURE

Prior to 1973, there was no provision for the maintenance of parents under this code. The Law Commission, however, was not in favour of making such a provision. The law commission in his report observed that the Cr. P. C is not the proper place for such a provision. There will be considerable difficulty in the amount of maintenance awarded to parents apportioning amongst the children in a summary proceeding of this type. The law commission suggested that It is desirable to leave this matter for adjudication by the civil courts.

However, the provision was introduced for the first time in Sec. 125 of the Code of Criminal Procedure in 1973. It is also essential that the parent establishes that the other party has sufficient means and has neglected or refused to maintain his, i.e., the parent, who is unable to maintain himself. Section 125(d) reads as “...*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: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance until she attains her majority if the Magistrate is satisfied that the husband of such minor female child if married, is not possessed of sufficient means.*” It is here notable that the Cr.P.C, 1973, is a secular law and governs persons belonging to all religions and communities.

Daughters, including married daughters, also have a duty to maintain their parents.

THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007

This act was introduced in the year 2007. The act aims at providing maintenance to senior citizens in the country. It is a special act introduced by the Indian Legislation, which aims to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution of India, and for matters connected therewith or incidental thereto. This act is applicable to the whole of the states in India.

Section 2(h) of the act defines a senior citizen as a person who is above 60 years of age and is a citizen of India. Further, under section 5(1) of this Act, any senior citizen who is also a parent is entitled to get maintenance; where “parent”, under section 2 means “*father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen*”. Moreover, this act also deals with the provisions for the maintenance of childless senior citizens. Furthermore, under this code, Such citizens may be maintained by their legal heir or the person to whom the property may be transferred after the death of such citizen. If the senior citizen or parent is incapable, any other person or a voluntary organization authorized by the senior citizen or parent can apply for maintenance on their behalf.

Section 24 of the code is punitive in nature, and provides the punishment, for those who, taking care of any senior citizen, leave the senior citizen with an intention of wholly abandoning them to a place where no one can find them. Thereby, this Act is very useful in protecting the dignity of senior citizens.

CONCLUSION AND THE WAY FORWARD

In Indian society, almost all of us have a tendency to take senior citizens as a burden. There is a need to change this approach, and we should take it as our responsibility. As per the Government of India, Ministry of Statistics and Programme Implementation, 2016, There are 103.6 million elderly people (whose age is more than 60 years) living in India. Further, according to the survey conducted by the NGO HelpAge-India in 2014, 50% of elderly people are being abused in their homes. It is also notable that, most of these people don't know their rights. Thereby, there is a need of awareness about the human rights of older people in Indian society, particularly among older persons.