



ELDERLY AND THE LAW

Arpita Tripathy

ABSTRACT

Ageing is a natural phenomenon. It is a phase of life and the last stage of any human being. In our country, the responsibility of taking care for the elderly is that of family and mostly of children. Due to the rapid socio-economic change in the society, the elderly is left alone and viewed as burden for the family. India is a country where age and wisdom are respected traditionally but the changes in the society are growing and the trend of nuclear family is increasing. Since the elderly people of our countries are facing complex problems in their everyday life so certain legal provisions have been enacted to protect and promote their basic and fundamental rights. Therefore, this paper aims at mentioning the status of elderly in our society, the challenges or problems faced by them in terms of both mental and health criteria and the proper remedial measures available for them. I mention and discuss some of the important provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. This paper aims about bringing positive changes with regard to the protection of the rights of the elderly.

Keywords: Ageing, old age, elderly, rights, challenges.

INTRODUCTION

Old people or Elderly refers to the ages nearing the life expectancy of human beings, and is thus marked the end of the human life cycle. There are different terms used like old people, the elderly, senior citizens etc. India is supposed to be the world's most populous country, and according to the Population Census 2011 there are nearly 104 million elderly persons aged above 60 years and above. It is estimated that out of 104 million, 53 million are females and 51 million are males. Also, a report by the United Nations Population Fund and Help Age India suggests that the number of elderly persons will grow to 173 million by the year 2026. The southern states (Andhra Pradesh, Karnataka, Kerala and Tamil Nadu) are considered the biggest drivers of aging while other states (Haryana, Himachal Pradesh, Maharashtra, Odisha and Punjab) are also experiencing an elderly population boom in the rural areas.

STATUS OF ELDERLY IN INDIA

Traditionally, in India, the common form of family structure has been the joint family. The joint family structure always consists of at least two and more generations living together and this arrangement has proved to be in advantage of the elderly as they enjoy special status and power. But with the growing urbanization and industrialisation and dependency on the availability of jobs, the younger generations are opting out of the joint family setup. Earlier, elders were considered to be an asset to impart wisdom, making family decisions but in the present years, as the family structure is changing from joint to nuclear, children opting to work is resulting the elders to be a burden to the family. Living arrangements among the elderly was not an issue in India till few decades ago but with the declining family support the elderly are likely to live alone and manage their material and physical needs on their own. The proportion of senior citizens living alone (without spouse) has increased over time from 2.4% in the year 1992-93 to 5% in the year 2004-05.

PROBLEMS RELATED

The elderly people presents its special and unique problems but these have been increased due to the socio-economic transformation leading to a number of changes in different aspects of living conditions. The needs and problems of the elderly vary significantly based on age, socio-economic status, health, living status and other background characteristics. According to the Report on the Status of Elderly in Selective States of India 2011, it shows that elderly in social life, public meetings,

organisational meetings or any religious programmes shows the lowest involvement. In urban areas, it is the lowest with 73% of men and 88% of women stating that they never attended any such meetings and 58% men and 81% women in rural areas. In India, the elderly women tend to be negatively affected with factors such as illiteracy, unemployment, widowhood, economic dependence and lack of health care.¹ Also, seeing from the economic aspect, the personal income and asset ownership has become a major determinant of well-being of older persons. A survey by The Building Knowledge Base on Population Ageing in India (BKPAI) indicates that one third of the older men and women receive income from employers or social pensions. The major source of income especially for old men still remains salary or wages and this shows that older men still work to support themselves even during old age and meet their daily needs. Around 50% of the elderly have economic problems and are financially dependent on others and are unable to fulfil their basic needs. A substantial proportion of the older persons work beyond the age 80 mainly in the states like Bihar, Uttar Pradesh and Jammu & Kashmir. Another major concern of the older people is the health problems. Older people are more prone to suffer from ill health than any other age groups. Ageing is always accompanied by multiple illness and physical ailments. According to the Report Situation Analysis of the Elderly in India, 2011, the prevailing health problem was the heart diseases among elderly men and women in urban areas than in rural. Urinary problems and joints problems were more common among men and women respectively. Another report, State of Elderly in India, 2014 shows that health problems faced by elderly mostly included asthma, poor eyesight, cold and cough, joint problems and physical weakness.² Most of them were dependent on doctor, hospitals and others were left neglected. Living with/without children affected the health status of elderly. It was found out in one of the survey report that most elderly (60%) felt their living conditions were satisfactory and 26% comfortable and 13% reported it was uncomfortable. It was concluded that the health of those living with their sons/daughter is better compared to those living alone. Lastly, as a person starts growing old he/she faces a lot of problem, not only physical but psychological too. The older generation has started feeling lonely, as the younger generation does not have time for them. The older people feel limited, insecure, lonely because they can't share their feelings and find it difficult to adjust according to the fast and busy schedule of their children. As the traditional values are changing, family structure is changing,

¹ Status of Elderly in India by Nidhi; Available in: <http://ignited.in/I/a/89072>

² Discover the top symptoms and risk factors of mental illness in the elderly by Angelike Gaunt; Available in: <https://www.aplaceformom.com/caregiver-resources/articles/mental-illness>

the older people are feeling neglected and sometimes are even abused or exploited. They feel loss of power, unwanted and this imbalance have made a serious issue of social isolation a new concept. Due to this neglect, loneliness and other psychological aspects the elderly people are affected by common health issues like depression, dementia and Alzheimer. As per the 2011 census, India is home to about 65 million people of age 65 and above, constituting 5.5% of the total population. Prevalence of dementia in India is reported to be 2.7%. As the age increase, prevalence of dementia increases. For example, nearly 20% of people above 80 suffer from dementia. Mean age of presentation is relatively younger at 66.3 years in India.

Help Age India in the year 2015, showed that about half of the elderly population in the country face some form of abuse, more in case of women than men. Violence against elderly refers to any intentional or negligent act by a caregiver or any other person that causes harm or a serious risk of harm to a vulnerable adult. Abuse of older persons is considered a global public health problem, seriously impairing the well-being of the elderly. The Report on the Status of Elderly in Selective States of India (2011) collected information on five forms and three sources of abuse faced after age 60.³ Verbal abuse is the main form of abuse for men and women and the least form of abuse for men is neglect and for women it is physical abuse. The main source of physical abuse for men is outside the family while it is within the family in case of women. The main reasons of elderly abuse are emotional and economic dependence and changing morals in the society. Emotional dependence of the abused (46%) has emerged as the major reason for the prevalence of elder abuse while economic dependence of the abused (45%) and changing morals (38%) reveal the reasons of abuse. In 2015, the main point of view of the youth behind elderly abuse are property and inheritance disputes and financial problems in the house. Among those who have experienced abuse, only 59.47% people made an attempt to report the abuse while 40.53% people didn't report abuse that they were facing. The above report is stated as per the Help Age India Report of 2014.

REMEDIAL MEASURES

To provide more effective provision for maintenance and welfare of parents and senior citizens, a legislation, initiated by Ministry of Social Justice and Empowerment, Government of India named as

³ Domestic Violence against Elderly People: A Case Study of India by Punita Govil, Swati Gupta; Available in: https://www.researchgate.net/publication/307868218_Domestic_Violence_against_Elderly_People_A_Case_Study_of_India



Maintenance and Welfare of Parents and Senior Citizens Act, 2007⁴ was enacted to make it a legal obligation for children and heirs to provide maintenance to senior citizens and parents, by monthly allowance. It also provides simple, speedy and inexpensive mechanism for the protection of life and property of the older persons. After being passed by the Parliament of India, it received President's assent on December 29, 2007. Chapter II of the act deals with the Maintenance of Parents and Senior Citizens. Section 4 clause 2 and 3 states 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 and 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 respectively. If relative or such children is not maintaining his parents or senior citizen respectively, then the parents/senior citizen can seek the assistance of Tribunal constituted under this Act, to enforce the remedy of maintenance. Such parents/ senior citizen can file an application before the Tribunal, claiming maintenance and other reliefs from their children/relatives as the case may be. The application for such maintenance can be filed by the senior citizen or a parent himself, or if such person is incapable, then by any other person or any registered organisation authorised by him. After receiving the application, the Tribunal may issue notice to the respondent-children/relative and provide them time to furnish their reply. Such application for maintenance should be disposed of within 90 days from the date of service of notice of application to the respondent. However, the Tribunal can extend time for a maximum period of 30 days in exceptional circumstances after recording reason. The Tribunal is having power to allow interim maintenance pending disposal of the case. Even though the application can be filed against any of children/relative as the case may be, such respondent-children/relative can implead other person who are liable to pay maintenance. Abandoning a senior citizen in any place by a person who is having the care or protection of such senior citizen is a criminal offence and such person shall be punishable with imprisonment for a term which may extend to three months or fine which may extend to five thousand rupees or both. The Act also provides that state governments may establish old age homes at least one in one district to accommodate indigent senior citizens and may also ensure proper medical care for senior citizens.

⁴ Maintenance and Welfare of Parents and Senior Citizens Act, 2007 Available at: <http://www.bareactslive.com/ACA/ACT715.HTM>



CONCLUSION

The growth of the elderly population in the coming decades will bring with it unprecedented burdens of mortality across the country. The key challenges to access to health for the Indian elderly include social barriers shaped by gender and other axes of social inequality (religion, caste, socioeconomic status, stigma). Physical barriers include reduced mobility, declining social engagement, and the limited reach of the health system. Health affordability constraints include limitations in income, employment, and assets, as well as the limitations of financial protection offered for health expenditures in the Indian health system. India should prepare to meet the growing challenge of caring for its elderly population. All social service institutions in the country need to address the social challenges to elderly care in order to improve their quality of life. There is a need to initiate requisite and more appropriate social welfare programmes to ensure life with dignity for the elderly.

