

senior citizen rights

**By despising all that has preceded us,
We teach others to despise our self**

Ageing is a natural process, which inevitably occurs in human life cycle. It brings with a host of challenges in the life of the elderly, 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 such human resource as is gifted with knowledge of various sorts, varied experiences and deep insights. May be they have formally retired, yet an overwhelming majority of them are physically fit and mentally alert. Hence, given an appropriate opportunity, they are in a position to make significant contribution to the socio-economic development of their nation.

Growing Population:

The population of the elderly persons has been increasing over the years. As per the UNESCO estimates, the number of the aged(60+) is likely to 590 million in 2005. The figure will double by 2025. By 2025, the world will have more elderly than young people and cross two billion mark by 2050. In India also, the population of elder persons has increased form nearly 2 crores in 1951 to 7.2 crores in 2001. In other words about 8% of the total population is above 60 years. The figure will cross 18 % mark by 2025.

Problems of The Aged:

Problems of the aged as follows:

(i) Economic problems, include such problems as loss of employment, income deficiency and economic insecurity.

(ii) Physical and physiological problems, include health and medical problems, nutritional deficiency, and the problem of adequate housing etc.

(iii) Psycho-social problem which cover problems related with their psychological and social maladjustment as well as the problem of elder abuse etc.

International Efforts:

The question of ageing was first debated at the United Nations in 1948 at the initiative of Argentina. The issue was again raised by Malta in 1969. In 1971 the General Assembly asked the Secretary-General to prepare a comprehensive report on the elderly and to suggest guideline for the national and international action. In 1978, Assembly decided to hold a World Conference on the Ageing. Accordingly, the World Assembly on Ageing was held in Vienna from July 26 to August 6, 1982 wherein an International Plan of Action on Ageing was adopted. The overall goal of the Plan was to strengthen the ability of individual countries to deal effectively with the ageing in their population, keeping in mind the special concerns and needs of the elderly. The Plan attempted to promote understanding of the social, economic and cultural implications of ageing and of related humanitarian and developed issues. The International Plan of Action on Ageing was adopted by the General Assembly in 1982 and the Assembly in subsequent years called on governments to continue to implement its principles and recommendations. The Assembly urged the Secretary-General to continue his efforts to ensure that follow-up action to the Plan is carried out effectively.

(i) In 1992, the U.N.General Assembly adopted the proclamation to observe the year 1999 as he International Year of the Older Persons.

(ii) The U.N.General Assembly has declared 1st October as the International Day for the Elderly, later

rechristened as the International Day of the Older Persons.

(iii) The U.N. General Assembly on December 16, 1991 adopted 18 principles which are organized into 5 clusters, namely-independence, participation, care, self-fulfillment, and dignity of the older persons.

These principles provide a broad framework for action on ageing. Some of the Principles are as follows :

(i) Older Persons should have the opportunity to work and determine when to leave the work force.

(ii) Older Persons should remain integrated in society and participate actively in the formulation of policies which effect their well-being.

(iii) Older Persons should have access to health care to help them maintain the optimum level of physical, mental and emotional well-being.

(iv) Older Persons should be able to pursue opportunities for the full development of their potential and have access to educational, cultural, spiritual and recreational resources of society.

(v) Older Persons should be able to live in dignity and security and should be free from exploitation and mental and physical abuse.

National Efforts:

(I) Constitutional Protection:

Art. 41 : Right to work, to education and to public assistance in certain cases : 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.

Art. 46 : Promotion of educational and economic interests of and other weaker sections : The State shall promote with special care the educational and economic interests of the weaker sections of the people.....and shall protect them from social injustice and all forms of exploitation.

However, these provision are included in the Chapter IV i.e., Directive Principles of the Indian Constitution. The Directive Principles, as stated in Article 37, are not enforceable by any court of law. But Directive Principles impose positive obligations on the state, i.e., what it should do. The Directive Principles have been declared to be fundamental in the governance of the country and the state has been placed under an obligation to apply them in making laws. The courts however cannot enforce a Directive Principle as it does not create any justiciable right in favour of any individual. It is most unfortunate that state has not made even a single Act which are directly related to the elderly persons.

(II) Legal Protections:

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.

(I) Hindus Laws:

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 contained in Sec 20 of the 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.

(II) 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.

(III) Christian And Parsi Law:

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

(III) Under The Code of Criminal Procedure:

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

(IV) Governmental Protections:

1. The Government of India approved the National Policy for Older Persons on January 13, 1999 in order to accelerate welfare measures and empowering the elderly in ways beneficial for them. This policy included the following major steps :

(i) Setting up of a pension fund for ensuring security for those persons who have been serving in the unorganized sector,

(ii) Construction of old age homes and day care centers for every 3-4 districts,

(iii) Establishment of resource centers and re-employment bureaus for people above 60 years,

(iv) Concessional rail/air fares for travel within and between cities, i.e., 30% discount in train and 50% in Indian Airlines.

(v) Enacting legislation for ensuring compulsory geriatric care in all the public hospitals.

2. The Ministry of Justice and Empowerment has announced regarding the setting up of a National Council for Older Person, called agewell Foundation. It will seek opinion of aged on measures to make life easier for them.

3. Attempts to sensitise school children to live and work with the elderly. Setting up of a round the clock help line and discouraging social ostracism of the older persons are being taken up.

4. The government policy encourages a prompt settlement of pension, provident fund (PF), gratuity, etc. in order to save the superannuated persons from any hardships. It also encourages to make the taxation policies elder sensitive.

5. The policy also accords high priority to their health care needs.

6. According to Sec.88-B, 88-D and 88-DDB of Income Tax Act there are discount in tax for the elderly persons.

7. Life Insurance Corporation of India (LIC) has also been providing several scheme for the benefit of aged persons, i.e., Jeevan Dhara Yojana, Jeevan Akshay Yojana, Senior Citizen Unit Yojana, Medical Insurance Yojana.

8. Former Prime Minister A.B.Bajpai was also launch 'Annapurana Yojana' for the benefit of aged persons. Under this yojana unattended aged persons are being given 10 kg food for every month.

9. It is proposed to allot 10 percent of the houses constructed under government schemes for the urban and rural lower income segments to the older persons on easy loan.

The policy mentions:

The layout of the housing colonies will respond to the needs and life styles of the elderly so that there is no physical barriers to their mobility; they are allotted ground floor; and their social interaction with older society members exists.

Despite all these attempts, there is need to impress upon the elderly about the need to adjust to the changing circumstances in life and try to live harmoniously with the younger generation as far as possible.

It may be pointed out that recently the Madurai Bench of the Madras High Court has ruled that the benefits conferred on a Government employee, who is disabled during his/her service period, under Section 47 of Persons with Disabilities (equal opportunities, protection of rights and full

participation) Act, 1995 cannot be confined only seven types of medical conditions defined as 'disability' in the Act. The seven medical conditions are blindness, low vision, leprosy-cured, hearing impaired, locomotor disability, mental retardation and mental illness. A Division Bench comprising Justice F.M.Ibrahim and Justice K.Venkataraman said : We feel that the court cannot shut its eyes if a person knocks at its doors claiming relief under the Act. In a welfare State like India, the benefits of benevolent legislation cannot be denied on the ground of mere hyper technicalities. It may be noted that this Act is not directly related to aged person but seven medical conditions which prescribed in this Act are the common symptom of the aged person.

Need For A Change In Approach:

In the older times, after the completion of 50 years of life, one had to detach oneself from the responsibilities of a 'Grihastha' and switch over to the third stage of human life which was known as 'Vanpristha' which referred to the devotion of the next 25 years of life by the 'Vanpristhi' by mana, vachana and karma to the selfless service of the suffering humanity and the larger society in return to the services received from society during the first 50 years of life.

Certain strategies and approaches at different levels of policy making, planning and programming etc. will have to be adopted in order to harness this vast human resource for promoting the involvement and participation of senior citizens in socio-economic development process on a much larger scale.

This participation must result in an end to their social isolation and an increase in their general satisfaction with their life. Any attempt to secure the help of the elderly in offering their service to the nation must simultaneously ensure some sort of package of services aimed at arranging for them a better quality of life and a well-designed social security network for the senior citizen. The society and the state in India need to accept the challenge of their effectively focusing their attention on the following twin issues of:

- (i) How to provide a fair-deal to the senior citizens so that they are able to peacefully, constructively and satisfactorily pass their lives; and
- (ii) How to utilize the vast treasure of knowledge and rich life experience of the older people so that they are able to utilize their remaining energies and contribute to the all round development of their nation.

Palliative Care: Need of the hour : According to a pilot survey, 70% of city's elderly population is undergoing some kind of medication. The average spending per day ranges between Rs. 3 to 200. However, nearly half of the money goes waste. The reason is absence of proper palliative care in the country. World Health Organization has marked October 7 as a day to create awareness about the importance and need for hospice and palliative care. Access to the best quality care, while facing terminal illness is a human right. Ironically, many people in the world are denied this right. The bitter side is that government in many countries does not even realize the important of this right said geriatric physician Dr. Abhishek Shukla.

The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007

THE ACT WILL be enforced by the State government concerned. The date on which the Act will come into force will be notified by the State government concerned in the Official Gazette.

Under Clause 5(1) of the Bill, a senior citizen or a parent may apply for maintenance under Clause 4 of the bill. (A senior citizen is an Indian citizen who is at least 60 years old. A parent could be father or mother, whether biological, adoptive or step father or step mother, whether or not the father or the mother is a senior 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. The Tribunal may take cognizance suo motu (that is, it can act on its own cognizance). These two provisions are welcome since most senior citizens or parents do not have the energy (they do not have the money anyway) to apply for maintenance.

The said Tribunal may, when a proceeding regarding monthly allowance for the maintenance under this section is pending, order such children or relative to pay a monthly allowance for the interim maintenance of the senior citizen including parent. The State government is required to constitute within a period of 6 months from the date of commencement of the law (Act), Tribunals for the purpose of adjudicating and deciding upon the order for maintenance under Clause 5.

According to Clause 4(1), the senior citizen including parent is entitled to apply for maintenance under Clause 5 if he is unable to maintain himself from his own earnings or out of the property owned by him. A parent or grand-parent can make an application for maintenance against one or more of his children who are majors ('children' includes son, daughter, grandson and grand-daughter). 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. A childless senior citizen, on the other hand, can make an application against his relative ("relative" means any legal heir of the childless senior citizen who is a major and is in possession of or would inherit the property after the childless senior citizen's death; property means property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and includes rights or interests in such property).

Thus Clause 4 makes a reference to grand-parent while Clause 5 does not. In other words, Clause 5 is silent about how the application for maintenance should be made by a grand-parent (who is not yet 60) under Clause 4. I wish the learned law-makers took notice of this inconsistency lest vested interests should exploit this well-intended provision.

If the senior citizen has transferred by way of gift or otherwise, his property, subject to the condition that the relative shall provide the basic amenities and basic physical needs to the senior citizen and such relative refuses or fails to provide such amenities and physical needs, Clause 23 (1) says the said transfer of property shall be declared void by the Tribunal, if the senior citizen so desires. This is a welcome provision since it protects naïve senior citizens from exploitation by relatives who intend to renege on their promise subsequently.

The State government is also required to prescribe a comprehensive action plan for protecting the life and property of senior citizens. This is also a welcome provision since the vulnerable senior citizen can be easily harmed or hurt. In fact the senior citizen may be even carted away somewhere to ensure that none else including the voluntary organization and the Tribunal come to know of their

whereabouts. Fortunately Clause 24 of the Bill takes care of this aspect. According to this Clause, 'Whoever, having the care or protection of senior citizen leaves, such senior citizen in any place with the intention of wholly abandoning such senior citizen, shall be punishable with imprisonment of either description for a term which may extend to three months or fine which may extend to five thousands rupees or with both'. I suggest registration of senior citizens with the jurisdictional police station be mandated. The NGO concerned may be requested to visit senior citizens at least every quarter under intimation to the jurisdictional police station.

Obviously, the Bill, in its present form, will meet the needs of only parents and senior citizens from educated families, propertied classes and the urban areas. It cannot cater to the needs of parents and senior citizens belonging to the poorer sections of society or hailing from villages. One may find three generations living in the same village and at times even under the same roof! If the son is also indigent, how can he maintain his parent and grand parent? How would the Tribunal adjudicate such disputes? The son will be only too happy if he is put behind bars because he is at least assured of two square meals a day.

Understandably, given its limited resources, one cannot expect the government to do a thorough job here. But it can at least ameliorate the situation. How? It should allow income tax sops to those who take care of parents / grand-parents / senior citizens. This is only fair because if tax is collected from citizens, they should be provided social security by the government when they grow old. When the government is not able to provide social security, it should at least encourage the citizens to provide it by allowing income tax sops. After all, a citizen taking care of his aged parents or senior citizens is providing them social security which strictly speaking the government should have provided. Our government taxes individuals a la the US government but unlike the US government does not provide social security to all citizens. I have pointed out this anomaly in my article, Why Tirupur has raced ahead of Ludhiana? dated, Nov 20, 2007. All that the government has to do is rob Peter and pay Paul.

It is also unfortunate that the government has not made any serious attempt to cover the senior citizens under Group Health Insurance Scheme. It believes that insurance coverage is mostly required in critical illness and at places where adequately-equipped hospitals are not available (!). Well, for a start, let the government convince me that AIIMS, New Delhi, is adequately equipped to treat indigent senior citizens.

The Bill does not cover old age pension perhaps because State governments are implementing the Old Age Pension Scheme. But the amount of pension and the eligibility criteria are not uniform across the States, under the said Scheme. The Bill should have mandated the State governments to pay old age pension to the senior citizens adequately and uniformly across the country. This should not be difficult because all that the government has to do is rob Peter and pay Paul. It has to deny income tax sops to those who do not maintain parents / grand parents / relatives; it has to deny old age pension to those parents / grand parents / relatives who are being maintained by their children / relatives.

Lastly, the government, while drafting Bills, uses the word 'may' (instead of the word 'shall') even where provisions of a mandatory nature are involved. What leads to this howler? Is it ignorance or lack of conviction on the part of the government?

Note: Union Social Justice and Empowerment Minister Meira Kumar tabled the Maintenance and

Welfare of Parents and Senior Citizens Bill, 2007 in the Lok Sabha. The Bill proposes to make it obligatory on the persons who inherit the property of their aged relatives to maintain them. It also aims to make provisions for setting up old age homes to take care of indigent older persons. It aims to set up an appropriate mechanism for need-based maintenance to parents and senior citizens, better medical facilities and old age homes in every district. It seeks for institutionalisation of a suitable mechanism for the protection of the life and property of older persons. Describing ageing as a major challenge and the need to give more attention to the care and protection of the older person, the statement of objects and reasons said many older persons, particularly widowed women, are now forced to spend their twilight years all alone and face emotional neglect and lack physical and financial support. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is need to have simple, inexpensive and speedy provisions to claim maintenance, the statement said.

A critique of the Maintenance of Parents Bill 2007

On May 8, 2007, the Indian Express carried a critique of the UPA government's Maintenance and Welfare of Parents and Senior Citizens Bill 2007, which was introduced in the Lok Sabha in March. M. R. Madhavan, who works with the PRS Legislative Research at the Centre for Policy Research focuses on larger policy problems with the Bill, while also zeroing in on specific provisions that arouse his concern:

"The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007, which was introduced in Lok Sabha in March, aims to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto. While it is difficult to contest the objective of ensuring a comfortable life for senior citizens, a number of provisions in the Bill may not be easy to implement.

The Bill neatly sidesteps the directive in the Constitution (Article 41), which directs the state to provide public assistance in cases of old age. The Bill does state that, The state government may establish and maintain such number of old age homes at accessible places, as it may deem necessary, in a phased manner, beginning with at least one in each district to accommodate in such homes a minimum of one hundred fifty senior citizens who are indigent. Note the use of may instead of shall — there is no obligation on the state governments to establish these. Even without this clause, there was never any prohibition on them from providing old age homes. Also, one wonders why a Bill should specify details such as the minimum size of an old age home.

Instead, the Bill places the obligation of maintaining a senior citizen on his or her children, grandchildren or any legal heirs. The process and amount differs from the existing provision in the Code of Criminal Procedure (Section 125), under which a first class magistrate may order a person to provide a monthly maintenance to his parents (or wife, including divorced wife or children), limited to Rs 500.

The Bill provides that the children of a senior citizen have the obligation to maintain a senior citizen to the extent that he may lead a normal life. In case of a childless senior citizen, the obligation is on

a relative who is in possession of the senior citizen's property or who would inherit his property. The maximum monthly allowance is to be specified by state governments, subject to a limit of Rs 10,000.

Some of the definitions in the Bill are confusing. Senior citizens are defined as any person being a citizen of India, who has attained the age of sixty years or above and includes parent whether or not a senior citizen. This implies that every parent, including those below sixty years of age, would be considered a senior citizen. Relative means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death. How does one determine who would inherit the property? Does this mean that the senior citizen has to reveal the contents of his will, and does not have the freedom to change it later? If he is allowed to change his will, consider the case of the person who is initially named in the will, forced to provide a maintenance, and who finds on the death of the senior citizen that there is another will that disinherits him.

So what does a senior citizen do if he wants maintenance? He applies to the 'Maintenance Tribunal'. The application may also be made by any other person or organisation authorized by him. However, the Bill clarifies that such an organisation means any voluntary organisation registered under the Societies Registration Act, 1860, or any other law for the time being in force. It seems to ignore the fact that the Societies Registration Act does not define voluntary organisation.

One might be tempted to believe that the purpose of permitting such organisations is to assist a senior citizen. However, the Bill makes it clear that no party to a proceeding before a tribunal or appellate tribunal shall be represented by a legal practitioner. That is, one may not use the services of a legally qualified person in obtaining one's legal entitlements under this law.

Regarding the maintenance tribunal, the Bill states that the state government may... constitute for each sub-division one or more tribunals... The tribunal shall be presided over by an officer not below the rank of sub-divisional officer of a state. There are two points to note here. First, the use of may, leaving the state governments the option of not forming such tribunals. Second, the job is entrusted to the SDO, who has a number of other responsibilities.

To conclude, one is not arguing against the idea of providing a safety net for senior citizens. The point is that any law that provides for such a net should be implement able. Other than the various loopholes discussed, the big issue is whether parents would take their children to the tribunal, given various social pressures. A better approach may be to design a social security system, including financial products such as pension schemes and reverse mortgages that enable the elderly to live a dignified life."

This is a powerful critique of the Bill, which is scheduled to be debated during the current session of Parliament. To my mind, there is only one existing precedent for such a law, which is the Singaporean Maintenance of Parents Act. Significantly, that law is backed by governmental programmes of pension, healthcare and other forms of support for the elderly, which adds weight to Madhavan's core argument. Hopefully, these issues will be aired during the Parliamentary debates on this law.

Anonymous said...

This bill has provisions where the chances of misuse are greater than beneficial use. What if a particular heir or children live out side India or other than the place where the Senior citizen resides? Will that give the Senior citizen a right to live with the heir/children? Will the order of Magistrate be implantable in a foreign jurisdiction to bring him back to fulfill his obligations? What if the senior citizen is the cause of discord, will that still be the reason to keep that person with him/her? What happens to parents with daughters only and no son? Will the law make it compulsory even for the son-in-law to take care of the senior citizen? How many such senior citizen one shall be responsible to take care of?

The law is designed simply to avoid the State's responsibility to provide a better social security system for its citizen and putting the onus on the citizen for such responsibility while the State and its guardians-the executives and legislators wish away the hard earned tax payers money in such wishful bills and squander the same on their own security.

Conclusions:

It may be conclude by saying that the problem of the elderly must be addressed to urgently and with utmost care. There is urgent need to amend the Constitution for the special provision to protection of aged person and bring it in the periphery of fundamental right. With the degeneration of joint family system, dislocation of familiar bonds and loss of respect for the aged person, the family in modern times should not be thought to be a secure place for them. Thus, it should be the Constitutional duty of the State to make an Act for the welfare and extra protection of the senior citizen including palliative care.

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