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## HUMAN RIGHTS OF THE VULNERABLES: AN ASSESSMENT OF THE AGED PERSON'S RIGHTS IN INDIA



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#### ABSTRACT:-

Human rights are rights people are entitled to simply because they are human beings. Older men and women have the same rights as anyone else. Our human rights do not change as we grow older. In the society, the nuclear families are increasing and thereby diminishing the thousands years practice where the parents were treated as pious form of God adversely affecting the oldage/aged parents as they face neglect from their children. Because of this snag increasing number of old people have to head towards the Old Age Homes. With eroding social values in India, cases of elder abuse and mistreatment in every neighborhood are daily routine. In this backdrop an attempt is made to take review of international and particularly national efforts in the protection and promotion of rights of aged people.

**KEYWORDS:** Oldage, Abuse ,Rights ,Crime

**INTRODUCTION:**

People who are easily susceptible to physical or emotional injury, or subject to unnecessary criticism, or in a less advantageous position in any society may be defined as vulnerable people. Accordingly, vulnerable groups are those groups of people who may find it difficult to lead a comfortable life, and lack developmental opportunities due to their disadvantageous positions. Further, due to adverse socio-economical, cultural, and other practices present in each society, they find it difficult many a times to exercise their human rights fully. In the language of human rights vulnerable groups may be defined as, certain groups of population who often encounter discriminatory treatment, or need some kind of special attention for protection of the State to avoid exploitation or from a harmful environment.

According to European Foundation for the improvement of living Working Conditions, vulnerable people means :

“Groups that experience a higher risk of poverty and social exclusion than the general population, ethnic minorities, migrants, disabled people, the homeless, those struggling with substance abuse, isolated elderly people and children all often face difficulties that can lead to further social exclusion, such as low levels of education and unemployment or underemployment, refugees, stateless persons, victims of war are described as vulnerable groups”.

**Who are Vulnerables :**

1. Unborn Persons
2. Children
3. Women
4. Older Persons
5. Refugees
6. Disabled Persons
7. Indigenous People (Aboriginal peoples, First peoples, Tribal peoples)
8. Enforced disappearance : Disappeared persons by arrest, detention, abduction or any other form of deprivation of liberty by the agents of the state
9. Stateless Persons (A persons does not possess the nationality of any state because the parents have no nationality and other reasons)
10. Persons belonging to national, ethnic, religious and linguistic minorities
11. Migrant Workers
12. Internally Displaced Persons (IDPS)

**Human rights of the aged/oldage persons:** International efforts towards aged persons: In view of the existence of large number of vulnerable and disadvantaged people, International Law of Human Rights extends special considerations for the promotion and protection of their rights and works towards eradication of discriminations. Accordingly, the United Nations has adopted a number of Declarations, Conventions, and Covenants to uplift the rights of these people. It also established special commissions and organizations to deal with the rights of such people whose rights are at jeopardy.

Due to lack of an acceptable definition, many a times, the UN bodies work on ad-hoc basis to augment the rights of disadvantaged people. The United Nations and its other bodies including the Human Rights Council regularly adopt a number of guidelines for implementation by the states in their efforts to curb the threats against the disadvantaged people.

Human Rights are natural rights of every individual, acquired by birth and not given by any law or Constitution. They are essential for all round development of all human beings. The United Nations slogan has been "All human rights for all". The Second World War gave birth to the United Nations. The UN Charter of 1945 and the Universal Declaration of Human Rights 1948 serve as reference points for modern human rights concept and mechanisms.

According to Article 25 of the Universal Declaration of Human Rights, 1948. "Everyone has the right to a standard of living adequate for the health and well being of himself and his family, including food, clothing, and 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".

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 guidelines for the national and international action. In 1978, Assembly decided to hold a World Conference on the Ageing. Accordingly, the World Conference on Aging 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.

In addition to above there are some more efforts taken at international level by enacting various documents and instruments having the direct provisions for the protection of interest of aged people.

- International Covenant Civil and Political Rights, 1966
- International Covenant on Economic, Social and Cultural Rights. 1966.
- First World Assembly on Aging ,
- International Plan of Action on Aging (Vienna Plan)
- (Endorsed by U.N. General Assembly in 1982)
- U.N. Principles for Older Persons ,1991
- International Federation on aging the Montreal declaration
- Second World assembly on Aging and Political Declaration (Madrid Plan of Action)
- The Toronto Declaration on the Global Prevention of Elder Abuse (17 November, 2002)

In 1992, the U.N.General Assembly adopted the proclamation to observe the year 1999 as the International Year of the Older Persons. During the year special emphasis was given on

- Situation of older persons,
- Individual life long development,
- Relationship between generations,
- Inter-relationship between 'Population Ageing' and 'Development'

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. 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.

**Indian situation:**

Population aging is a worldwide phenomenon, and India is no exception. Indian population has approximately tripled during the last 50 years, but the number of elderly Indians (60+) has increased more than four folds. The 2011 census has shown that the elderly population (60+) of India accounted for 98.3 million, which was projected to cross the 100 million mark during the same year. 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 person's population mark will cross 18% by 2025.

With fast changing socio-economic scenario, industrialization, rapid urbanization, higher aspirations among the youth and the increasing participation of women in the workforce, roots of traditional joint family system has been eroding very fast. In urban areas of the country traditional joint family system has become thing of past. In such changing situations, majority of older people, who have passed most part of their life with their joint/extended families are on the verge of isolation or marginalization in old age. At this age, when they need family support most, they have to live on their own. Even basic needs & rights of many of them are not addressed. Social marginalization, loneliness, isolation and even negligence in old age lead violation of Human Rights of Older people. Ironically, in India older generations are not aware of their human rights due to high prevalence of illiteracy and lack of awareness. On the other hand, due to comparatively high physical as well as psychological vulnerability their cries for help remain within four-walls, that's why only a few cases of violation of human rights of elderly come out. Ever-increasing numbers of distress calls from older people clearly indicate disturbing condition of Human Rights of Older people in India.

Every day we come across reports of older people being attacked, harassed and isolated by anti-social elements, neighbors and even their families. There are instances of old persons being locked-up, denied food, permission to meet other supportive relatives and access to the telephone and post by their children trying to extort money or property from them. There are several reports of thefts and killings of old people living separately by domestic servants, hawkers and other.

According to 'Elder Abuse in India (2013)' report released by NGO Help Age India ,the most common forms of abuse experienced by the elderly were disrespect (41%), verbal abuse (32%) with a shocking 27% also facing physical abuse, including beating/slapping. The son was often the main perpetrator of abuse (34%), followed by daughter-in-law (24 %), the 2013 report said.

"Maintaining confidentiality of the family matter" was the major reason behind not reporting abuse (for 33%), followed by "fear of retaliation" (for 39%). Many did not report abuse, as they "did not know how to deal with the problem."

Large numbers of the world's older people however, live in poverty, neglect and exclusion. Worldwide, poverty during old age is linked to poor diet, ill health, inadequate housing and isolation. These and other socio-economic reasons make the elderly people an important and major vulnerable group in the society. Older widows are among the poorest and most vulnerable groups in developing countries.

### 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”.

### “Civil rights and obligations”.

- The right to respect at home, within 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

### Constitutional and legal backdrop for aged-

In Constitution of India, entry 24 in list III of Schedule IV deals with the “Welfare of Labour, including conditions of work, provident funds, liability for workmen’s compensations, invalidity and Old age pension and maternity benefits.

Further, Item No. 9 of the State List and Item No. 20, 23 and 24 of the Concurrent List relates to old age pension, social security and social insurance, and economic and social planning.

Article 41 of the Directive Principle of the State Policy has particular relevance to Old Age Social Security. According to this Article, “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 case of undeserved want.”

### Legislative Protection:

#### 1. 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.

### Protection under Hindu Laws :

(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.(sec 20 (1))

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. 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 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.

**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.

**2. Protection under Criminal Law:**

According to section 125 of Cr.P.C. (Criminal Procedure Code 1973) a magistrate can order a person to maintain his old parents under the maintenance of Parents Act. But the parent has to prove that the son has neglected or refused to maintain the parent and that he or she is unable to maintain himself / herself.

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, issue 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.

**3. As per the provisions of the Domestic Violence Act,2005 , the elderly parents have a right to seek relief from any kind of abuse.**

**4. Maintenance and Welfare of Parents and Senior citizens Act ,2007**

The Government enacted the Maintenance and Welfare of Parents and Senior Citizens Act 2007 as an answer to the insecurities faced by older persons of the country. This Act accords prime responsibility, on children, grand children or even relatives, who may possibly inherit the property of their parents/ grandparents to maintain and protect the rights of such elderly people. It also calls upon the State to provide facilities for poor and destitute older persons.

**The Salient features of the Act are :**

- Parents who are unable to maintain themselves through their own earnings or out of their own property may apply for maintenance from their adult children. The maintenance includes the provision for proper food, shelter, clothing and medical treatment.
- Parents include biological, adoptive and stepmothers and fathers, whether senior citizens or not.
- A childless Senior Citizen who is sixty years and above, can also claim maintenance from relatives who are in possession of or are likely to inherit their property.
- The application for maintenance may be made by Senior Citizens themselves or they may authorize a person or voluntary organization to do so. The Tribunal may also take action on its own.
- Tribunals on receiving these applications may hold an enquiry or order the children/relatives to pay an interim monthly allowance for the maintenance of their Parents or Senior Citizen.
- If the Tribunal is satisfied that children or relatives have neglected or refused to take care of their parents or Senior Citizen, it shall order them to provide a monthly maintenance amount, up to a maximum of Rs.10,000 per month.
- The State Government is required to set up one or more tribunals in every sub division. It shall also set up Appellate Tribunals in every district to hear the appeals of Senior Citizens against the decision of the Tribunals.
- No legal practitioner is required or permitted for this process.
- Erring persons are punishable with imprisonment up to three months or a fine of up to rupees five thousand or with both.
- State Governments should set up at least one Old Age Home for every 150 beneficiaries in a district. These homes are to provide Senior Citizens with minimum facilities such as food, clothing and recreational activities.
- All Government hospitals or those funded by the Government must provide beds for Senior Citizens as far as possible. Also, special queues to access medical facilities should be arranged for them.

**Schemes for aged-**

**• Major scheme-**

**National Social Assistance Programme (NSAP)**

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 and 42 of the Constitution. It introduces a National Policy for Social Assistance benefit to poor households in the case of old age, death of primary bread-winner and maternity. The Programme has three components, namely:-

- \* National Old Age Pension Scheme (NOAPS)
- \* National Family Benefit Scheme (NFBS)
- \* National Maternity Benefit Scheme (NMBS)

These Schemes were partially modified in 1998 based on the suggestions received from various corners and also on the basis of the feedback received from the State Governments.

• **Other schemes-**

- Technology Interventions for Elderly (TIE)
- Concessions and Other incentives
- Programme for Older Persons
- Insurance Policies and Benefits
- Annapurna Scheme
- Mediclaim/Health Insurance
- Free Legal Aids
- National Policy on Older Person
- Rebates
- Health Facilities

**Conclusion:**

In spite of the special arrangements of laws and policies for the oldage persons, the problems of this segment of society is not getting lesser . Moreover, the recent law on oldage person passed by the Parliament is not a complete one so considering all aspects of the problem it requires a thorough revision to make it effective and workable.

Apart from political will in favour of the protection of oldage people a strong and sensitive civil society is to be shaped so that the value based social responsibility of individual as well as of society at large can be created to prevent the pollution of our strong Indian values where parents are consider as God in mortal form.

The modern human rights thought envisages an inclusive society for an ageing population and considers older persons as full and equal citizens enjoying full and equal rights. The aim of all national policies on Ageing must address the need to empower elderly persons to take decisions with a view to lead active, creative and satisfying life. We need to again establish human rights culture in our society which would facilitate welfare of this important segment of the population.

**References:**

- Hindu Adoption and Maintenance Act, 1956
- Criminal Procedure Code 1973
- Maintenance & Welfare of Parents and Senior Citizens Act, 2007.
- Constitution of India
- Universal Declaration of Human Rights, 1948
- Subhash Awate, Human Rights of Aging People, In Vijay Chitnis, Human Rights of Vulnerable Group (ed), Digital Publication,1999, Pune.
- [http://www.agewellfoundation.org/perceptions\\_towards\\_older\\_Persons\\_July\\_2014.pdf](http://www.agewellfoundation.org/perceptions_towards_older_Persons_July_2014.pdf)

- <http://nhrc.nic.in/Documents/Publications/KYR%20Elderly%20English%20Final.pdf>
- [https://globaljournals.org/GJHSS\\_Volume11/4-Protection-of-Rights-of-Oldage-Person-in-India.pdf](https://globaljournals.org/GJHSS_Volume11/4-Protection-of-Rights-of-Oldage-Person-in-India.pdf)
- <http://social.un.org/ageing-working-group/documents/fifth/AgewellFoundationHumanRightsofOlderPeopleinIndia.pdf>
- <http://www.legalservicesindia.com/article/article/vulnerable-groups-in-india-status-schemes-constitution-of-india-1079-1.html>
- <http://www.oldagesolutions.org/Facilities/ConstProv.aspx>
- <http://www.legalserviceindia.com/article/l431-Human-Rights-Of-Vulnerable-Sections.html>