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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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CHANGED SOCIO- DEMOGRAPHIC STRUCTURES AND PROBLEMS OF SENIOR CITIZENS

AUTHORED BY - NALINI CHANDRASHEKAR

Introduction

This chapter is basically describing the statement of the problem of my thesis. Core concern of the thesis is to analyze the social and economic justice available to senior citizens in India. To understand what may amount as socially and economically justifiable to senior citizens, in the given context, it is necessary to understand the position of senior citizens in India. This is where the present chapter is very important. Every stage of human being requires specific attention in terms of the need of that age, but some stages are more in need of the care and attention than others. childhood and old age are two such stages in human life where not only the family they belong to, but the State equally has to take care with need specific obligations.. Everybody has to pass through these stages. India has realized of late that senior citizens should be given specific attention. As estimated by UN population division, revised time and again that in the coming 40-50 years Indian elderly people rise from existing 85 million to over 300 million and highest among themselves will be 80 plus¹.

There are two concerns, firstly, to look into reasons of increasing number of elderly people in India and secondly, whether merely because of increasing number special attention required to be given or due to other reasons. Demographic shifts may be denoted to several factors like declining total fertility rate, decreasing mortality rate at the time of death and improving expectancy. Do we really need to give attention now to senior citizens" care and look after? Or, so far whatever, has been done that has worked successfully and has not let us realized that senior citizens should be given special care?

Every coin has two sides. On one hand medical science has successfully tackled menacing diseases, which were life threatening and thus life expectancy was very low. which is really a

¹ Moneer Alam, Ageing in India: Socio-Economic and Health Dimensions, 2(Academic Foundation, New Delhi, 2006)

matter to cheer but on the other hand increase in life expectancy has to rise in number of elderly populations. These changing dimensions of population require an insightful policy making. The First United Nations Assembly on Ageing at Vienna² highlights beautifully the transitional phase from childhood to oldage and why the senior citizens are considered to have significant impression on intergeneratioal learning. The first world assembly on ageing 1982 observes that, “The human race is long characterized by a long childhood and by a long old age. Throughout history this has enabled older persons to educate younger and pass on value to them; this role has ensured man’s survival and progress. The presence of the elderly in the family home, the neighborhood and in all forms of social life still teaches an irreplaceable lesson of humanity.”² Thirty-ninth report of the Standing Committee on Social Justice and Empowerment (2013-14) elaborated the position of senior citizens as following: “The elderly people are a precious asset of a nation who are deemed to be the repository of rich experience and wisdom. They give moorings to society and act as lodestar³³ when the wisdom and accumulated knowledge of the elders is counted. With the improvement in child survival and adoption of small family norms and increased life expectancy, a significant feature of demographic change in world population including India is the progressive increase in the number of elderly persons. This ageing of world population represents an unparalleled challenge to the Governments to ensure that the needs of aged and their human resource potential are adequately addressed through appropriate programmatic and policy interventions.”⁴

The problem of ageing and old age people was perceived as a problem of the developed countries. Old age is commonly associated with physical inability, mental unsettlement and social disassociation. ⁵ Old age, if, not maintained to take care of itself, credit must be given to their devotion and sacrifice to let their future (their children) grow and prosper in all possible ways. The same children, often leave their parents and grandparents in State of destitute. “Young old moves to the older old”, as there is progression in age so the complexities emerge.⁶

² Ibid.

³ The Vienna International Plan of Action on Aging was adopted by the World Assembly on Aging held in Vienna, Austria from 26 July to 6 August 1982. This is also referred as the „Vienna International Plan of Action on Ageing.” For further detail see Chapter 3 (Infra).

⁴ The Standing Committee on Social Justice and Empowerment chaired by Mr Hemanand Biswal, them Member of Parliament, submitted its report on the implementation of schemes for the welfare of seniorcitizens on February 7, 2014. The document can be accessed at : https://eparlib.nic.in/bitstream/123456789/64808/1/15_Social_Justice_And_Empowerment_39.pdf , (Visited on 15 July, 2018)

⁵ Ibid.

⁶ T. C. Camacho et al., “Functional Ability in the Oldest Old”, 5(4) Journal of Aging and Health 439- 459(1993).

Ancient Scriptures and the Senior Citizens

Ancient Hindu texts, the Dharmasutras, ⁷Dharmasastras ⁸and Hindu epics (Ramayana and Mahabharata) have taken up the issues of ideal life cycle. For Hindus the life cycle includes only three phases childhood, youth and old age. Vridhavastha (Old age), in India has been a matter of boundless respect and unquestionable wisdom. Such illustration may be observed in Ramayana and Mahabharata, the two great epics of India. Wherein, the respect towards elders does not diminish, even in circumstances, which may be termed as most unwelcome-able. Presence of Bhishma Pitamaha, Dronacharya, Kripacharya, Vidur and Dhritrashtra at the time of „cheerharan’, might have been subject to criticism due to their unjustifiable inaction and being passive onlookers, during the happening of „cheer-haran’ but that did not, anyhow, dent their respect of being old age. In Ramayana, the decision of the King, Dashratha, the king of Ayodhya, to send his eldest son, Ram, to van was accepted by all the humility, even without thinking otherwise. These are the examples wherein; it has been depicted that elders are to be respected beyond any doubt. Ramayana says, children, women and old people, must be protected by the King.

Kautilya, famously known as Chanakya, authored the Arthashastra. The book is considered as a reliable source to understand the economic and State Policy in ancient India. It is identified as a treatise not only on economic affairs but contains detailed account of nature of government and legal system and nature of duties and obligations of a king. Kautilya, writes “To consider any State, a well-organized, the king shall enforce the laws regarding discipline among members of family, slaves and persons mortgaged. He shall maintain, at State expense children, the old, the destitute those suffering from adversity, childless women and the children of destitute women. The village elders shall act as trustees of temple property and the inheritance of minors, till they come of age”.⁹

He adds further, “Every man has obligation to maintain his wife, children, parents, minor brothers and dependent (unmarried and widowed) sisters. Even, no one can renounce the world without providing maintenance to wife and children.”¹⁰

⁷ Manuals consisting of terse rules about appropriate human behaviour

⁸ K.P. Jaiswal, Hindu Polity 20 (Chaukhamba Sanskrit Pratishthan., Delhi, 2005). Various treatises on the Hindu concept of dharma, a Hindu term identically difficult to translate but often glosses as natural law, duty, justice, essential nature or character and patterns of behaviour that sometimes articulate contradictory perspectives. Also see: <https://www.britannica.com/topic/Dharma-shastra> (Visited on March, 20, 2020)

⁹ L.N. Rangarajan, Kautilya The Arthashastra, 156 (Penguin Classics, 1st edn., 1992).

¹⁰ Ibid.

Our scriptures carved out a life span of 100 years and Manu, who is referred as the law giver of Dharamashastra, this life span was divided into four stages of life. Each stage of life was attached with specific objectives of life to achieve by discharging assigned duties in that stage of life.¹¹ The progression from one stage to another was very much duty bound. This classification itself meant to achieve the objective of life. This specification did not have probability of conflict of interest due to which never, two generations of father and children could ever come face-to-face. When a son enters into Grihstha Ashram, father would proceed to vanprashtha Ashram.¹² Kautilya, has detailed the „Four Ashramas’¹³ with their specific attainments, as following

1. The Grihastha Ashrama: the duties of a grihastha or house holder “are earning his livelihood by pursuing his own profession; marrying a woman,,; procreating children at appropriate times; worship of the gods, ancestors and guest; sacrificing his own pleasures for those dependent on him and being the last to enjoy what is available.”
2. The Brahmachari Ashrama: the duties of a brahmachari are “study of the prescribed scriptures; tending the ritual fires; following the ritual ablutions; living on alms only; being devoted, to the end of life, to his teacher, the teacher’s son and his fellow students.
3. The Vanaprastha Ashrama: the duties of the vanaprastha are “observing celibacy; sleeping on the bare ground, not dressing his hair; following the rituals of the fires and ablutions; worshipping gods; ancestors and guests; and living on things gathered from the forest.”
4. The Parivarajaka Ashrama (a wandering ascetic): the duties of a parivarjaka are “complete control over his senses; refraining from all active life; renouncing all possessions; giving up all attachment to worldly ties; living on the charity of the many, never staying in one place for long; living in forest; maintaining inner and outward purity.” But some duties have been denoted by the author as common, all irrespective the ashramas, these must be followed i.e. Ahimsa; Satyam; Cleanliness, freedom from malice compassion and tolerance. Old persons in India are referred as „vridha“, and these are divided further into four categories. These are: Tapo Vridha who are advanced in penance; Kala Vridha who are advanced in age; Jnana Vridha who are advanced in Knowledge and Dhana Vridha

¹¹ M.G. Athavale, Mobilizing “Senior Citizens for their own cause” in: A.K. Kapoor and Satwanti Kapoor, et. al., (eds.), India’s Elderly: A Multidisciplinary Dimension, 319 (Mutual Publication, New Delhi, 2004).

¹² Shrinivas Tilak, Religion and Aging in the Indian Tradition. (State University of New York Press, 1989)

¹³ Supra note 9. at page 85

who are advanced in Wealth.¹⁴ “The old are respected in India as „Pitrus“. The Upanishads¹⁵ advise people to respect their father, mother, teachers and guests as gods.

Demographic Shifts and Emerging Issues The Population of the elderly people worldwide has increased at an alarming pace. The proportion of the global aged 65 and above in 1990 was one percent. The United Nations in 1950 estimated that there were almost 200 million persons of 60 years or more in the world. It projected that by 1975 this number will increase to almost 150 million and by the age of 2025 a total of 1100 million an increase of 224 percent since 1975.¹⁶ The total population of 60 years and above in the world was in the developed countries while mere 8 percent of that was in developing counties till 2009 but both will increase to 33 and 20 percent respectively by the year 2020.

The United National projection of population of senior citizens in India is noteworthy. The total population growth of senior citizens 60 +, in India between 2000-2050 will be 326 percent while this is unbelievable in older and oldest number population¹⁷ 80+ will be increased by 700 percent.¹⁸ According to the census 2011, elderly population in India is 104 million out of which 53 million are females and 51 million are male. Though in this regard this is notable point that females have outnumbered male after 1991 population.¹⁹ Sex ratio in 1950 was 1028 while 1033 in 2011.²⁰ In this age group of 60-64 married couple were 76 percent while 22 percent widow rest of the elderly population either did not marry or were divorced.

This is also noteworthy that 73 million out of 104 elderly population that is 71 percent is residing in rural areas rest is urban elderly population. Total share and size of elderly people has increased from 5.1 in 1950 to 8.6 in 2011 and as the trends in last two census are appearing, there is significant constant drop-in birth rate while improvements in mortality rate resulting into rapid increase in elderly people in the years to come. The State of Kerala followed by Tamil Nadu and

¹⁴ J.P. Yadav, *Aged in India: The Struggle to Survive*, 15(Anmol Publications, New Delhi, 2004)

¹⁵ S. Radhakrishnan, *The Principal Upanisads*, i(Harper Collins Publishers, 2017). The word Upnisad is derived from upa (near), ni (down) and sad (to sit), i.e. sitting down near.

¹⁶ Supra note 2.

¹⁷ People who have attained sixty years of age, have been accepted in India as „senior citizens“ but general or common term used that is old people or aged people, is variable country to country. Here the projection refers to sixty or more. Those who are just sixty plus have been referred as old, seventy plus as older and eighty plus oldest old.

¹⁸ Projection is by *World population Ageing: 1950-2050*; Department of Economic and Social affairs, Population Division, United Nations. New York.2002

¹⁹ Government of India, *Report: Elderly in India-Profile and Programmes* (Ministry of Statistics & Prog. Implmentation Central Stats. Off. 2016)

²⁰ Census 2011. Available on its website www.censusindia.gov.in (Visited on April 13, 2018).

Goa comprise the highest percentage of elderly population 12.6, 11.2 and 10.04 respectively. Almost one eighth of the world's old age population lives in India. With Indian perspective it becomes more important that here majority of the working class is involved in private and even in private sector that is unorganized, the emphasis being supplied because that population which is working for livelihood in unorganized sector, irrespective of age will have to work, hence, would not retire on attaining any particular age.²¹ Ellis Smith, narrated that:

“Old grandfathers and grandmothers are afraid to eat too much food lest they should be taking the bread out of the mouths of their grandchildren...an old man bent and worn, who has worked in the steel Industry all his life,” and who had said, „I only have 10s 0d a week. I am living with my son, but his wife says she can no longer afford to keep me. I don't know what to do. I don't want to go to the workhouse, but there is nothing else to be done”.²²

Shrinking family set-up giving way to unitary family. Reasons are quite related to the financial and non-availability of earning resources at place of living, which leads to migrate to newer places leaving behind aged parents to manage on their own.

Life and dignity in the Constitution and Senior citizens

Article 21 of the Constitution is harbor of human dignity. —The human life without dignity is substantially devoid.²³ This is the exactness; human dignity is seen as part of life. United Nations Universal Declaration of Human Right, 1948 recognizes the human dignity as one of the inalienable facets of human right. To protect the human rights, ensuring the dignified life is the primary duty of the State. Our Courts, chiefly, the Supreme Court has time and again given the widest possible amplitude. —Life without dignity would be life a sound that is not hear.²⁴ The Supreme Court reiterated that right to life includes right to live with dignity.

The Open-Ended Group on Ageing in its first Session raised the concern that there is general tendency by other class of citizens towards older person's dignity is very inferior in nature. It observed that —Another central challenge for older persons is living with dignity. The very process of ageing could threaten older people's dignity as they were perceived by others to be

²¹ For further details see Chapter 4 (Infra).

²² Member of Parliament, during debate on welfare issues in the House of Commons in 1938 Chris Phillipson, *Reconstructing Old Age: New Agendas in Social Theory and Practice* 38 (Sage Publication, London, 1998).

²³ *O' Regan J. S. v. Mukwanyane*, (2002) ECHR 588

²⁴ *K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1

inherently less valuable to society. Independence, participation and autonomy were critical components of dignity. In particular, older persons should be perceived as active members of their societies and not only as recipients and social protection.²⁵

Central and State governments in India boast of that by providing financial help (small amount as pension) under National Security Assistance Programme (NSAP), is protecting their right to live with dignity. The Moot question in light of the pension given to the senior citizens is whether these senior citizens are given this pension as gift by the State or something to enjoy with or as subsistence. As welfare State, governments should realize their solemn duty to take care of senior citizens, who sacrifice their everything for the life of the well-being of the State, old age pension is recognition of efforts put by them in the past to make the State successfully achieving its 'goal. Moreover, how this amount of few hundred of rupees, may be substitute of the dignity ingrained under Article 21, to those senior citizens who are deprived of all the basic amenities and nobody is there to take care. The Apex Court observed in Coralie case: —

But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.²⁶

What is human dignity? It cannot be replied in abstraction. It is not within any definable contours. Saying like life under Article 21 is dignified one not an animal existence. This notion has itself transformed. Illustration in light of animal is no more a good one because animals do have rights.²⁷ In this light of dignity of animals, which must be appreciated, but there must be some difference of degrees between human dignity and animal dignity. It does not mean any how giving atrocious

²⁵ Supra note 6. These observations were noted by the Chair, while submitting the report of the First Open Ended Working Group on Ageing.

²⁶ Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981)1 SCC 608.

²⁷ Animal Welfare Board of India v. Nagaraja, CIVIL APPEAL NO. 5387 OF 2014

or abhorring treatment to animals but human being, no doubt, deserves higher pedestal of dignity today. When it comes to senior citizens, it attracts serious concerns of dignity. What they are entitled for, not only be given but they must be appreciated for the efforts put by them in past. The Supreme Court pointed out in M. Nagraj case; —

It is the duty of the State not only to protect the human dignity but to facilitate it by taking positive steps in that direction. No exact definition of human dignity exists. It refers to the intrinsic value of every human being, which is to be respected. It cannot be taken away.

It cannot be given. It simply is. Every human being has dignity by virtue of his existence.²⁸ There is plethora of cases in which Supreme Court time and again has emphasized and reiterated that life with dignity is part and parcel of Article 21. The Court observed that the petitioner in the case has sought the question of pension should not be seen in isolation but must be envisaged as unalienable part of Article 21 of the Constitution because pension is not any altruistic act on part of the State but being *parens patriae*, this is primary duty and a symbol of recognition the contribution made by senior citizens by sacrificing their youth. The Court further observed that: —

In view of the various decisions of this Court, there cannot be any doubt now that the right to live with dignity is, in effect, a part of the right to life as postulated in Article 21 of the Constitution. Such a right would be rendered meaningless if an aged person does not have the financial means to take care of his basic necessities and has to depend for it on others. It is in this context that the petitioner submitted that all elderly persons must be granted adequate pension so that they are able to sustain themselves with dignity.²⁹

The inequalities in our social and economic life is basically due to our social structure. These will persist till this social structure persist. To bring the preambular notion of socio-economic justice to the ground, first of all, it is necessary, the existing structure must be restructured. This structure must be based on reality, continuously changing and sometimes overlapping realities. These overlapping must be analyzed rationally. Whether it be the social justice by way of reservation or protection of conferring special status by devising a group of people as class that must be treated

²⁸ M. Nagraj v. Union of India (2006) 8 SCC 212. 15 Dr. Ashwani Kumar v. Union of India, WP (C) 1

²⁹ Dr. Ashwani Kumar v. Union of India, WP (C) 193 of 2016 (SC)

separately because including other in this class will desuetude the objective of equality itself. Senior citizens or elderly people must be seen from the mentioned point of view. There are not many senior citizens specific provisions in the Constitution of India. One such specific provision is Article 41. It reads as:

—Right to work, to education and education and to public assistance in certain cases. – 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.

Article is framed in a very wide phraseology. It must be the endeavor of the State to give public assistance in cases of education, unemployment, old age, sickness and disablement. This endeavor of assistance from the State obviously is subjective to its economic capacity. How the State will identify its economic capacity? Justice B. P. Jeevan Reddy in Unni Krishnan case³⁰ deliberated in context of providing compulsory education to all. It was held that the economic capacity of the State is limited and is, ordinarily speaking a matter of subjective satisfaction of the State. It was held: —

Right to education after the child/citizen completes the age of 14 years. The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development. By saying so, we are not transferring Article 41 from Part IV to Part III —

we are merely relying upon Article 41 to illustrate the content of the right to education flowing from Article 21. We cannot believe that any State would say that it need not provide education to its people even within the limits of its economic capacity and development. It goes without saying that the limits of economic capacity are, ordinarily speaking, matters within the subjective satisfaction of the State. In the light of the above enunciation, the apprehension expressed by the counsel for the petitioners that by reading the right to education into Article 21, this Court would be enabling each and every citizen of this country to approach the courts to compel the State to provide him such education as he chooses must be held to be unfounded. The right to free education is available only to children until they complete the age of 14 years. Thereafter, the obligation of the State to provide education is subject to the limits of its economic capacity and

³⁰ Unni Krishnan J. P. v. State of A. P. (1993)1 SCC 645

development. Indeed, we are not stating anything new.

It is noteworthy that aged people have not been paid special reference like education, which is not only mentioned under this Article but emphasized further under Article 45, which is taking up the issue of education with much vigor. What may be the reason that old age has not been taken with like seriousness? Whether our Constitution framers were oblivious of the fact that in the time to come aged people would not be better than the position of women and children, which have got the space in the Constitution as vulnerable groups³¹, though such inclusion has achieved its objective not, may be a matter of discourse. Non-mentioning of older persons specially may be seen in light of few facts. Firstly, the population as per the census 1941 was not such a big alarm, so that it could be foresighted that the coming decades in India going to be the baby boom'. Secondly, the health services were poor in India, consequently the expected average age was also very dismal senior citizens population in India has been normal³², it has not reached to the alarming scale, it may also be cited as the reason behind Indian efforts to frame senior citizen centric policy so late because of the belief that Indian is the home to the largest young populace of the world. Thirdly and most important from the Constitutional Law point of view that Part-III of the Constitution is very wide, it has not been made enforceable on the basis of age but on the basis of equality. Equal Protection of Laws and Equality before the law are foundational principles of guarantee conferred to the Fundamental Rights. All the elderly people are not any how lesser protected under the provisions of the Fundamental Rights than any other.

Conclusion

Asian Continent, is the house of largest population of the world. United States" which is the third most populous Nation in the world, is almost one ninth of the total population of India and China. India may be one of the largest houses of senior citizens. The United Nations in 1950 estimated that there were almost 200 million persons of 60 years or more in the world. It projected that by 1975 this number will have increase of almost 150 million and by the age of 2025 a total of 1100 million an increase of 224 percent since 1975. Indian awareness towards the issues of elderly people might be late as it framed first National Policy on Older Persons in 1999 but prior to that

³¹ The Constitution of India, 1950, Article 15(3). This is an enabling provision, and reads as, —Nothing in this Article shall prevent the State from making any special provision for women and children.¶

³² Elderly population in 1961 was 5.6 percent of the population while for the year 2001 and 2011 it has been 7.4 and 8.3 respectively of the total population. See, Situation Analysis of the Elderly in India (June, 2011), Central Statistics Office Ministry of Statistics & Programme Implementation Government of India available at http://mospi.nic.in/sites/default/files/publication_reports/elderly_in_india.pdf (visited at Jan 10, 2019)

in 1997 the Government decided to give social assistance to older persons. However, that amount was meagre and despite its revision in 2007 does not appear helping in sustenance. Three focal areas of elderly care are pension, shelter and health, if seen in a comparative with that of United States and Japan, appearing to be in miserable conditions. Huge population may be a cause of economic constraint but more than that it appears that low life expectancy was a blessing in disguise to the government. Pandemic like covid-19 has proved it beyond any doubt that senior citizens are the softest target to any disease due to compromising immunity power. This is highly appreciable the way United States of America and Japan have developed health infrastructure, which is old age friendly and needed one. Long-term care with available options gives the assurance the senior citizens that they are not dependent on their children anymore. The kind of special attention given to armed forces veterans is a learning lesson to India, which has one of the largest armed forces in the world. In India this is general perception that persons retired from Armed forces may be employed easily but the job they are getting of secondary level. Mostly they work as the guard in bank or companies. There is no as such programme for Armed forced retirees to make them mingle with the society with ease but what may generally be referred that they are considered not suitable to live in the society because of their strict discipline and non-flexible approach. A clash of approach is very common. Except few benefits attached to the Armed forced establishment like canteen subsidized retails, hospitals etc. are provided but that is not what may be termed as fitting response to the respect and care they deserve to be paid back after devoting the golden phase of their life to the service of all.

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