

Social Security and Rights of the Elderly People in India – An Analysis

B. K. Das

Senior faculty, L.R.Law College
Sambalpur Odisha, India

Abstract:- The United Nations World Assembly on ageing, held at Vienna in 1982, formulated various recommendations, giving priority to the issue of ageing. It has recommended for more research related to development and humanitarian aspect of ageing. Since then, the phenomenon of population of ageing becomes a major concern for policy makers all over the world. But the problem arising out of it was not well realized in India. Since time immemorial, it was the responsibility of children or family members to regard the issue of parent and aged person in the family. During 20th century the founding father of Indian constitution noticed the insecure condition of old age. They inducted some measures and thrust responsibility on the state to initiate legislation to protect the interest of old people. It is pertinent to notice that, last century has witnessed rapid changes in the social scenario. In recent years, the emerging prevalence of nuclear family setups in India marked that elderly people are exposed to emotional, physical and financial insecurity. This had drawn the attention of the policy makers, administrations at center and states, NGOs, Judiciary and Civil Society. Despite the fact the elderly people in India, like any other developing country of the world, facing challenges. The government of India issued various policies on elderly persons, yet vast population of elderly people face predicament of life. They deserve not only financial aid but require emotional support. The legislation which intend to provide support to elderly persons, fails to serve the purpose. This article highlights the issues of elderly persons.

Keywords:- International Conventions, Constitution, Fundamental rights, Directive Principles of state policy, Elderly population, Problem of ageing, Right to maintenance, National planning.

Introduction:-

Social security is a basic need of all people regardless of the position they hold. It is an important embodiment life begins with birth and continues till death. Social security is a measures extended by the society and state. It is a kind of protection guaranteed by the state to overcome various contingencies of life. Old age is such contingency of human life, mostly people feel insecure and helpless. At the moment there is vast social change. Due to materialistic perception people underestimate the value of old people. The selfish attitude and greedy mind always underrate the contribution of parents. The joint family system is replaced to nuclear family. The living pattern of nuclear families and westernized culture curtail down the status of elderly people. The valuable contribution of old people is regarded as useless and insignificant. Old persons are estimated as burden to the family and neglected. Old age is an indispensable stage in the life of human being, need protection.

In India the problem of elderly people has not been given serious consideration. But due to the modern technology and self-awareness life expectancy has been increased to the greatest extent. It has resulted in an increase of elderly population in India. As per 2011 census report, the elderly population in India has reached to 98.3 million. By 2021, the elderly population in the country will number 143 million and 2030, this figure will bounce to 20 crores.¹ As a result of the change in the socio-economic

scenario, the lives of the elderly have adversely changed. It is a social challenge. It is a time to ensure that, the elderly people are able to lead a secure, healthy and comfortable life. With the steady increase in number of the elderly people, there is need to establish more old age homes. Many children leaves their parents to the destiny, creates helpless condition for them. The working condition of old age home in our country is dismal and not up to the standard to lead a meaningful life as is designed in the constitutional law. The rights of elderly people in India is well recognized since time immemorial, now requires a new strategy. In this article the entire gamut of the problem is analyzed. The article makes an in-depth study on the effective implementation of the Maintenance and Welfare of Parents and Senior Citizen Act-2007. Since right to health is recognized as fundamental rights, the health of the elderly people need be protected.

Magnitude of old age problem:-

The concerns of old age include physical and socio-environmental problems. It is estimated that, out of every 10 elderly couples in India, more than 6 parents are forced by their children to leave home. They are not only become homeless, but also face socio-environmental challenges. It becomes a difficult task to lead a life with all insecurity. Mostly they resort to old age home with new environment to adjust with divergent categories of people. Every parent wants to see their child grow and have nice family, where they

can live with happiness. But the dream turned reverse, when children preferred to live separately. Sometimes, parents are subjected to cruelty and compelled to carry out house hold chores. They are circumscribed to lead measurable life. They are sometimes beaten up and forced to part with the property i.e. asked to deliver pension benefit as well sell away the old house and land. The situation of elderly people in India is grim and they lead life of a destitute. Nearly 40% of senior citizens are living with their family, reportedly facing the abuse of one kind or other. Health problem is a serious problem, causing detriment to their status. They failed to recognize their own people due to Alzheimer. In such causes children feel that, old parents are burden to their nuclear family setup. Some children dump their parents in the old age home and others left their parents in the crowded place of the pilgrimage. They are forced to stay in the unhealthy conditions at the old aged home. Children or near and dears pay seldom visit to understand their problem.² Sometimes elderly people are maltreated by the youths, and they were abused by gesture and action. They were harassed and humiliated by the young people. They play jokes with the elderly people. The deteriorating health condition causes mental imbalance. Financial position becomes bleak and social relation diminishes. They are forced to lead isolated life. They failed to get proper treatment and medical care. The majority of elderly people are unaware of their rights and entitlements.³ The life become insecure as they failed to manage with the helpless situation of limited generative abilities and income. Gerontologists have recognized various conditions of old people. They face chronic disease like uncontrolled hypertension, arthritis, heart disease, respiratory problem, digestive disorder. Apart from these diseases diminished eyesight, impairment of hearing, immunosenescence and urinary incontinence and other problems are very common. Their mental condition is depressed.⁴ Health problem surfaced as being very common for all most all elderly persons. The widows are facing more problem than man due to their economic dependency. Negative attitude of younger generation is most obvious cause of 'maltreatment' in the present day scenario.⁵ India is facing various socio-economic problems. There is emerging need to pay greater attention to issues of the elderly persons. There is necessity to promote holistic policies and programmes for them. Indian society is marked with vast social transformation under the impact of urbanization, industrializations, globalization and liberal market.⁶ Deterioration of traditional values, resulting in the weakening of inter generalization ties. Respect and emotional bond was the hall mark of traditional family. It is diminishing day by day. there is high need to effectuate legal protection of elderly people.

International Concern and elderly people:-

Universal Declaration of Human Rights (UDHR) declared that – All human beings are born free and equal in dignity and rights.⁷ No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment. Everyone has right to life, liberty and security of persons and has right to social security. These rights are indispensable for his dignity, subject to resources of each state. Everyone has right to standard living, adequate for the health and well-being of himself and his family. Such rights includes food, clothing, housing, medical care and right to security in the event of sickness, disability, widowhood, old age and other circumstances beyond of his control. Everyone is entitled to such rights subject to a social and international order and these rights and freedoms can be fully realized as set forth in the UDHR. Everyone has duty towards the community for free and full development of the human personality.

There is alarming growth of the old people. Today 760 million people are over 60 yrs of age, which will rise to 2 billion by 2050. The global population of older people is rapidly expanding, which outnumber young children below 15 yrs by 2050. The impact of advances in health and longevity were not foreseen during the formation of UDHR. The instrument has not explicitly deals with the problem of the older people. In 1982 the first international document on ageing was endorsed by General Assembly.⁹ It directs the signatories to carry out the recommendations on different areas such as the family, social welfare, health and income security. It recommended carrying out action plan for older people, with general references to the objectives of UDHR. The UN General Assembly in 1991 adopted 18 principles to cover 5 clusters i.e. Independence, participations, care, self-fulfillment and dignity of older persons.¹⁰ The committee on Economic, Social and Cultural Rights adopted certain principles for the older persons in the year 1995. In 1999 there was consensus opinion to observe 1st October as the International Day for the Elderly persons. It adopted to give basic preference to key areas like the lifelong development of individual and the relationship between generations, situation of older persons, ageing and development.

The Madrid International Plan of Action on Ageing (MIPAA) of 2002 was adopted by the Second World Assembly. It has unanimously adopted a political and International strategic plan on ageing. It contains three priority themes i.e. development, health and well-being and enabling environment. But as per the report of the United Nations high commissioner for human rights (of the Economic and Social Council) July 2012, implementation of the action plan is not up to the mark. The report says, action plan "does not systematically consider linkages to the obligation of the state parties under international human rights instruments."¹¹ It lack proper co-ordination and commitment to reinforce the plan in the line of human rights treaty.¹² It is

pertinent to note that none of the fundamental human Right instruments i.e. UDHR, International covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) explicitly prohibits discrimination on the basis of age. The convention on the Elimination of all forms of Discrimination Against Women (CEDAW) provides for the equal rights of women to social security including old age. Yet the women all over the world face serious challenge during old age. The soft law provisions on the right of the older people in well perceived in international and regional sphere.¹³ The United nations General Assembly initiated action to have a legal instrument in the fields of social development human rights and gender equality. India, China, USA, Germany were among the 18 countries that abstained from voting in favors of resolution. However, the protocol of San Salvador provide special protection to the elderly people.¹⁴ similarly African charter provides that the aged shall have the right to special measures of protection in keeping with their physical or moral needs.¹⁵ It is to be stated that, in the international and regional sphere elderly persons require protection and deserve to have specific instrument to upkeep their needs. World Health Organization (WHO) dealt with the issue of elderly people with less legal relevance. It deals with the health care and social welfare from technical perspective of gerontology and geriatrics and demography as well clinical studies.¹⁶

Constitutional framework for elderly:-

The constitution of India guarantees fundamental right to the people of India. These rights are natural and inalienable. Such rights have been declared as essential rights by which human liberty can be preserved and human personality can be developed. The learned justice P.N. Bhagwati held that, ‘these fundamental rights represent the basic values cherished by the people of this country (India) Since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a pattern of guarantees on the basic structure of human rights and impose negative obligation on the state not to encroach on individual liberty in its various dimensions.¹⁷ Explaining the importance of fundamental right justice S.H. Kapadia stated that – “it is a fallacy to regard fundamental rights as a gift from the state to its citizens. Individuals possess basic human rights independently of any constitution by reason of basic fact that they are members of the human race.¹⁸ They carry intrinsic value and it confirms their existence towards protection of human value without any distinction. It is an indispensable requirement of free society for protection of basic right of the people. Art. 14, 19, 21 contain the basic rights, without which one can’t live a decent and meaningful life in a democratic society. Art.21 provides that “No

person shall be deprived of his life and personal liberty except according to the procedure established by the law.” The concept of ‘life’ is very wide to mean a quality life and implies a reasonable standard of comfort and decency. The apex court said that, the right to life with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy (DPSP).¹⁹

The judiciary in India has taken the perception of ‘life’ to include various condition of life. Though the constitution of India specifically has not addressed the issue of elderly people, yet it protects the interest of the vulnerable groups of people. Art.38 provides that, the state shall strive to promote welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. The state shall in particular, strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst group of people residing in different areas or engaged in different avocations. Further, the state shall, within the limits of its economic capacity and development, make effective provision to give public assistance in case of unemployment old age, sickness and in other cases of undeserved want.²⁰ The state shall make provision for securing just and human conditions for work and protect vulnerable class of people “from social injustice and all forms of exploitation.”²¹ It is the primary duty of the state to raise the level of nutrition and standard of living and improvement of public health.²² The supreme court held that, the right to life means a dignified life and it include various facets and dimensions. Right to life include the right to livelihood, food, clothing, shelter, reasonable accommodation, right to decent environment and right to decent living.²³ It include the right to decent burial/cremation as per the religious belief, of the homeless persons dying on roads.²⁴ An old man made everything towards decency, according to his standard and perception, at the last moment of his life, should be given opportunity to be realized his posterity. Old age is a important paradigm of one’s life, a tribute time, a glorious amalgam and unification of virtues, which makes a man feel proud of his did and a true time to rejoice, need be protected. The founding father of Indian constitution designed part-III and DPSP to tribute it’s people.

National initiative and legal protection:-

In India there are few initiations have been taken for the cause of elderly people. One of the early steps taken to protect elderly person’s interest is the Hindu Adoptions and Maintenance Act – 1956. It provides that, “a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents. The obligation of a person to maintain his

or her aged or infirm parent or daughter who is unmarried extends in so far as parents or unmarried daughter, as the case may be, unable to maintain himself or herself out of his or her own earnings or other property.²⁵ The courts are to determine the amount of maintenance according to the position and status of the parties. The court to adjudge various aspects like reasonable wants of the claimant, the value of claimants' property and income thereof, including the other resources.²⁶ The Muslim law also cast duty on children to maintain their poor parents. According to Tyabji, under Hanafi law, both sons and daughter have a duty to maintain their parents, if they have some means. The Parsis and Christian personal law does not have prescribed such legal obligations, though people feel it as a moral and social obligation to maintain their parents. The criminal procedure code-1973, provides provision for maintenance to wives, children and parents. The Act is a secular law and governs the persons belonging to all religion and religious denominations.²⁷ It is putting obligations on both son, daughter and even married daughter to maintain their parents, having means to sustenance. If any person having sufficient means neglects or refuses to maintain his/her parents, shall be made liable to punishment.²⁸ The protection of women from Domestic Violence Act-2005 has partial action to protect the women from any kind of domestic violence occurring within her domestic relations. It is gender biased legislation fails to protect man, and it crucify the old parents.²⁹ It protects women from several abuses like affecting health, safety, life, limb and well being. It includes emotional abuse and economic abuse that affects old women.³⁰

The Maintenance and Welfare of Parents and Senior Citizen Act 2007, is a milestone to protect the interest of elderly people in India.³¹ The main object of the Act is to provide protection to the parents and senior citizens in India. It is an obligation for the adult children to provide food, shelter, clothing and medical treatment. The word parents include biological, adoptive and step mother, step father, it is immaterial whether he/she is senior citizen or not. The Act defines senior citizen to include person who has attained the age of sixty years or above. Childless senior citizens can claim maintenance from relatives who are in possession of property or likely to inherit the property of senior citizen. The senior citizens can institute a suit for maintenance before the tribunal or he can authorize any person to do so. Any voluntary organisation can institute suit on behalf of the senior citizen and the tribunal may also initiate action *sou motu*. The legislation is designed to provide quicker remedy without following cumbersome procedure.³² It excluded the legal representation of lawyer in such legal proceeding before tribunal. Tribunal is empowered to grant interim relief and order for monthly allowance as maintenance. The tribunal can pass order for

maintenance of maximum amount of Rs. 10,000 per month. The tribunal is empowered to exercise the power of first class magistrate. The state is under obligation to establish one or more tribunals in every sub-division. It shall establish appellate tribunals in every district to act as appellate body.³³ The appellate tribunal to be presided by a officer not below the rank of District Magistrate. The state to setup old age homes in the district and it's periphery to accommodate elderly persons. It can prescribe standard norms and prescribe scheme for maintaining such homes and to provide medical support.³⁴ The Govt. is empowered to protect life and property of senior citizen. The Act empowers Dist. Magistrate to ensure that the provisions are effectively carried out.³⁵ If any person fails to maintain or abandon senior citizen shall be punished with 3 months imprisonment or fine of Rs. 5000/- or with both. The offence is cognizable and bailable. It is to be tried summarily by Magistrate.³⁶ The central govt. and state governments are empowered to make review of such law and frame rules for better implementation of such law.³⁷ The Act has many lacunas need to be cured. Many parents and senior citizens are facing challenges of life, because there is no adequate infrastructure.

Govt. initiative for older persons:-

National policy-1999

The Ministry of Social Justice and Empowerment has launched National Policy for older person in the year 1999. It has addressed following matters.

- Old age pension scheme
- Tax exemption for senior citizen
- Make public distributive system to reach older people
- Provide subsidy in health care, geriatrics care, mental Health care
- Provide Grants and allotment of land to private body for constructing hospitals to provide economic support and specialized care to senior citizen etc.
- Setting up welfare fund for older persons.
- Assistance for maintaining old age home, Day care centres.³⁸

National Policy on Senior Citizen-2011:-

The foundation of the new policy is based on the condition of demographic explosion among the elderly people (51 million elderly live below poverty line). It has taken note of changing economy and social milieu, advancement of Medical research and technology and high level of destitution of elderly women. The policy values an age integrated society and strengthen bonds between young and old. The policy seeks to reach out the bulk of intergenerational understanding and support. It has enhanced the previous programme and focus new policies for better care and protection of elderly persons. It has initiated steps for income security in

old age and PDS to BPL category senior citizen. Oldest old of BPL category would get Rs. 1000/- under Indira Gandhi national Old Age Pension Scheme (IGNOAPS). Income Tax policies reflect sensitivity, provide tax exemption. Similarly loans at reasonable rates of interest are offered to senior citizen. It directs towards health care, safety and security, housing, productive ageing, welfare. It creates provision for multigenerational bonding, disaster management by rebuilding social fabric and sensitizing the policy by using media etc. It has been planned to establish department of senior citizens i.e. Establishment of Directorate in state and Union territories, constitution of National/State Commission for Senior Citizen, Establishment of National council for better implementation of schemes and policies.³⁹

Ground reality:-

The National Policy 2001 like previous policies is at work. Block development officers and Panchayat officers are empowered to carry out the work, lack proper implementing capacity. They are not well concerned to initiate action with constitutional spirit. Improper infrastructure failed the mission of the international initiative. The National Policy and action has measurably failed to tackle the problem as it is designed. It does not have well grown infrastructure to meet the challenge. Governments of India and states, at present, have very nominal old-age pension coverage. It varies from Rs. 75 to Rs. 150 in a month in unorganized sector and others.⁴⁰ The government savants are getting better privilege than people of other area. But at the old age the medical expenses go up and the dependency rate goes higher. The problems faced by female are more critical in comparison to male. It is due to low literacy rate, more dependency in economic conditions, customary ownership right, and lack of awareness. The National Sample Survey organisation (NSSO) conducted survey on the elderly persons of 60 yrs and above since July 1986-87. The size of elderly population has risen from 12.1 million in 1901 to approximately 77 million in 2001 census. According to the official population projection, the number of elderly persons will rise to approximately 140 million by 2001. It will face serious challenge if strict measures will not be drawn. As per 2004 survey of NSSO, about 65 percent of the aged had to depend on others for their day-to-day maintenance. More distressing is the conditions of female. The economic solvency of elderly persons shows that, among the rural elderly persons among 50% have monthly per capital expenditure level between Rs.420 to Rs 775 and the urban elderly have per capita expenditure between Rs 665 and 1500.⁴¹ The chronic diseases like heart disease, hypertension diabetes, cancer, joint pain, urinary problem are very common among elderly persons. The labour, agricultural workless and dependent women face serious challenge starting from the age of 55 years. They face chronic diseases and go for high medical

expenses with less financial security. The National policies are formulated for the welfare of the elderly persons. For instance Indira Gandhi Pension (IGNOAPS) is provided to BPL categories of people. It fails to attract the many destitute elderly, as they never belong to BPL. There is vast corruption marked in distributing BPL card. Political lobby and other intricacies involved to get such card. There are vast population of elderly persons who suffer only due to economic dependency and financial insecurity. Income Tax rebate to them is meaningless. The elderly, who require emotional care, during diseased condition, need medical care and financial assistance. Therefore, there is high need to develop insurance policy against chronic diseases.

Government of India is providing various schemes for elderly persons. But these schemes are failed due to improper co-ordination and supportive actions between departments. For instance Old Age Homes, Mobile Medicare units, respite care homes and continuous care homes are created to benefit the destitute and older persons requiring continuous nursing care and respite. During 2007-08 Government has spent more than 16 cores of rupees for 660 such programmes.⁴² But thousands cores are spent to establish commissions to enquire corruption charges against officials. The problem of elderly person's problem is a serious social problem growing day by day. It is our constitutional responsibility to bridge inequality in status and dignity of persons. Ministry of rural development has adopted national old-age pension scheme (NOAPS) for persons above 65 years belonging to BPL category. At the age of 65 years, medical expenses will be more than Rs 1000, an average. The schemes seem to a gracious and fanciful. The cost of living and condition of living require better understanding and consideration. It is just impossible to discuss such things in political sophistication without adjudging the ground reality.

Conclusion:-

The phenomenon of population ageing is a major concern for the policy maker, administrators and adjudicators. It is a worldwide problem for both developed and developing countries. Ageing of population is affected due to downward trends in low birth rates and low mortality rate. This trend is perhaps due to high growth of medical and technological advancement. In India the size of elderly population is bouncing high in recent years. This is posing mounting pressure on various socio-economic fronts to adjust with various policies and schemes i.e. pension scheme, health care and other development activities for elderly groups. The allocation of grants is not equitably distributed to meet the challenges of elderly. Though Govts have established separate ministries and commissions for the same the position of the elderly people remained unchanged. They need to understand the issue with the present change, not with the statistics

of 20th century. The new millennium has witnessed new nuances of life. The term life should not be understood with the pragmatic thought. It must be perceived with the constitutional philosophy and judicious mind. “We the people India” constitute one group of people. We want to eliminate inequality from all walk of our life. In fact the dream was to create an egalitarian society of high order. While considering the matter of elderly person, the policy maker must take note of judicial prerogative. The supreme of India, time and again directed the state to discharge the responsibility with democratic value.⁴³ There is emerging need to pay greater attention to ageing related issues of elderly persons and their social security. We should change our mindset toward designing holistic policies for elderly persons. They are not persons separate, to enjoy the fruits of vibrant democracy. They left few hours to leave the world after a long

journey of life. They want love, affection and an emotional touch at the last part of life. The pronouncement of policies, programmes and enacting law can't wipe out the tears from the eye of elderly persons. There is high need to activate palliative care, so that elderly person can live with dignity of constitutional design.⁴⁴ The supreme court in its various orders emphasized that government and other authorities to give priority to the health conditions and secure welfare of the people. The court held that, the right of life includes the right to live with human dignity and it encompasses diverse forms, not only to meet bare necessities of life, but also to lead a meaningful life. The meaningful life constitute medical care and right to health.⁴⁵ The person in the helm of governance of the country must take note of considering the issues of eldly people accordingly.

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